

# Review of the undertakings and revised undertakings given by Circle Healthcare Holdings Limited

## Decision that undertakings might be accepted

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 2 April 2024. Full text of the decision published on 2 April 2024.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

### 1. INTRODUCTION

1. On 8 January 2020, Circle Holdings Limited (**Circle**) acquired all the issued share capital of GHG Healthcare Holdings Limited (**GHG**), the indirect parent company of BMI Healthcare Limited (collectively **BMI**) (the **Merger**).
2. On 8 April 2020, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On 17 April 2020, Circle offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act (the **Original Undertakings**). On 23 June 2020, the CMA accepted the Original Undertakings under section 73(2) of the Act, pursuant to which Circle agreed to divest Circle Hospital (Bath) Limited (**Circle Bath**) and Circle Birmingham Limited (**Circle Birmingham**).
4. On 1 June 2021, Circle completed the divestiture of Circle Bath to Royal United Hospitals Bath NHS Foundation Trust. However, despite running a formal divestiture process, Circle received no formal offers for Circle Birmingham Hospital. Therefore, on 21 June 2021, Circle requested the CMA varies the undertakings in lieu of a reference insofar as they relate to the divestiture of Circle Birmingham Hospital (**UILs Variation Request**).

5. On 2 April 2024, the CMA published a revised provisional decision with respect to the UILs Variation Request, whereby the CMA provisionally found that there has been a change of circumstances as a result of which Circle's undertaking to divest Circle Birmingham Hospital is no longer appropriate to address the relevant competition concerns identified by the CMA in the SLC Decision. Following consultation, the CMA provisionally found that divestment of the Edgbaston Hospital (**BMI Edgbaston**) would instead resolve the competition concerns in a clear-cut manner. The CMA has therefore provisionally decided to accept revised undertakings allowing Circle to divest BMI Edgbaston instead of Circle Birmingham (the **Revised Undertakings**).
6. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Circle that it considers that there are reasonable grounds for believing that the Revised Undertakings offered, or a modified version of them, might be accepted by the CMA.

## 2. THE UNDERTAKINGS OFFERED

7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of Private Hospital Medical Services (**PHMS**) in Bath and Birmingham.
8. To address this SLC, Circle offered to give undertakings in lieu of a reference to divest Circle Bath and Circle Birmingham. Given that the CMA has provisionally found that there has been a change of circumstances as a result of which Circle's undertaking to divest Circle Birmingham is no longer appropriate to address the competition concerns identified by the CMA, Circle offered to give Revised Undertakings to divest BMI Edgbaston instead.
9. Under the Revised Undertakings, Circle has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. Circle have proposed Practice Plus Group (**PPG**) as the upfront buyer (**the Upfront Buyer Condition**). This agreement will be conditional on acceptance by the CMA of the Revised Undertakings, including approval of PPG as the buyer of the Divestment Business.

## 3. THE CMA'S PROVISIONAL VIEWS

10. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point

when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.<sup>1</sup>

11. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Revised Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Revised Undertakings or concerns about their implementation.<sup>2</sup>
12. The CMA believes that the Revised Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that the divestment of BMI Edgbaston will fully remove the overlaps between the Parties that gave rise to the finding of a realistic prospect of an SLC in Birmingham. As such, the Revised Undertakings may result in replacing the competitive constraint provided by Circle that would otherwise be lost following the Merger.
13. The CMA currently considers that the Revised Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns.
14. The Upfront Buyer Condition means that the CMA will only accept the Revised Undertakings after Circle has entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects of the Revised Undertakings. In order to consider the proposed buyer as being suitable, the CMA will need to be satisfied that the purchaser suitability criteria in the Remedies Guidance are met.<sup>3</sup> These criteria include the requirement that the proposed purchaser has the financial resources, expertise, incentive and intention to maintain and operate BMI Edgbaston as part of a viable and active business in competition with the merged entity in the relevant market.
15. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Revised Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

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<sup>1</sup> [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

<sup>2</sup> Merger remedies guidance ([CMA87](#)), December 2018, paragraph 3.28.

<sup>3</sup> Remedies Guidance, Chapter 4 (in particular paragraphs 4.30 – 4.34), and Chapter 5 (in particular paragraphs 5.20 – 5.32).

## **4. SUITABILITY OF THE PROPOSED PURCHASER**

16. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
- (a) the acquisition by the proposed purchaser must remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable;
  - (b) The purchaser should be independent from and have no significant connection to the Parties that may compromise the purchaser's incentives to compete with the merged entity (eg an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance). It may also be appropriate to consider links between the purchaser and other market players;
  - (c) The purchaser must have sufficient capability, including access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, to enable the divested business to be an effective competitor in the market;
  - (d) The CMA will wish to satisfy itself that the purchaser is committed to, and has an appropriate business plan and objectives for competing in, the relevant market(s), and that the purchaser has the incentive and intention to maintain and operate the divested business as part of a viable and active business in competition with the merged entity and other competitors in the relevant market; and
  - (e) Divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.<sup>4</sup>

### **4.1 PPG**

17. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 16 above, the CMA currently considers PPG to be a suitable purchaser based on its initial view that:

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<sup>4</sup> Merger remedies (CMA87), December 2018, Chapter 5, paragraphs 5.20 to 5.27.

- (a) the sale of BMI Edgbaston to PPG would remedy, mitigate or prevent the SLC, and adverse effect resulting from them, achieving as comprehensive a solution as is reasonable and practicable for the SLC.
  - (b) The evidence available to the CMA indicates that PPG is independent and does not appear to have any significant connection to Circle that may compromise its incentives to compete with Circle if it were to acquire the BMI Edgbaston.
  - (c) The evidence available to the CMA indicates that PPG has the appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, and incentive needed to maintain and develop BMI Edgbaston as viable and active competitive business in competition with Circle and other competitors on an ongoing basis.
  - (d) The evidence available to the CMA indicates that the acquisition of BMI Edgbaston by PPG should not create a realistic prospect of further competition concerns.
18. Therefore, subject to responses to the consultation, the CMA currently considers PPG to be a suitable purchaser of BMI Edgbaston.

## **5. PROPOSED DECISION AND CONSULTATION**

19. For the reasons set out above, the CMA currently considers that the Revised Undertakings and the purchase of BMI Edgbaston by PPG are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
20. Additionally, the CMA currently considers PPG to be a suitable purchaser of BMI Edgbaston.
21. The CMA therefore gives notice that it proposes to accept the Revised Undertakings. The text of the proposed undertaking is available on the CMA web pages.<sup>5</sup>
22. Before reaching a decision as to whether to accept the Revised Undertakings and approve PPG as a suitable purchaser, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in

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<sup>5</sup> Please visit the [Circle/BMI review of undertakings case page](#).

response to this consultation and may make modifications to the Revised Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Revised Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>6</sup>

23. Representations should be made in writing to the CMA and be addressed to:

Marta Freire  
Principal Case Officer, Mergers

Email: [marta.freire@cma.gov.uk](mailto:marta.freire@cma.gov.uk)

**Deadline for comments: 16 April 2024**

**Sorcha O'Carroll**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**2 April 2024**

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<sup>6</sup> Under paragraph 2(4) of Schedule 10 to the Act.