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*Case No COMP/M.6154–
Carlyle/ Palamon*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 4/4
Date: 22/03/2011



EUROPEAN COMMISSION

Brussels, 22.03.2011

C(2011) 2009 Final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 4(4) DECISION

To the notifying party:
To the Office of Fair Trading

Dear Sirs,

Subject: Case No COMP/M.6154– Carlyle/ Palamon
**Reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹
for referral of the case to the United Kingdom**

Date of filing: 15 February 2011

Legal deadline for response of Member States: 11 March 2011

Legal deadline for the Commission decision under Article 4(4): 22 March 2011

I. INTRODUCTION

1. On 15 February 2011 the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. A copy of this Reasoned Submission was transmitted to all Member States on 16 February 2011.
4. By letter of 2 March 2011 the Office for Fair Trading as the competent authority of United Kingdom informed the Commission that United Kingdom agrees with the proposed referral.

II. THE PARTIES

5. **Carlyle** is a member of the Carlyle Group of companies (the "Carlyle Group"). The Carlyle Group is a global alternative asset manager, which sponsors funds that invest globally across four investment disciplines (buyout, credit alternatives, growth capital and real estate) in a range of industries. Carlyle Group does not have any interests in any business providing dental treatment in the UK or elsewhere in the EEA.
6. **Palamon** is a mid market private equity firm. It focuses on investing in Europe in service-orientated businesses with high growth potential.
7. Associated Dental Practices ("**ADP**") is a group of entities solely controlled by Palamon through ADP Healthcare. The main operating entity is ADP Dental Company Limited. ADP is active in dental care solely in the UK. ADP operates 130 practices throughout England and Wales with approximately 330 self-employed dentists. It generated revenues of approximately [...] solely in the UK in 2009.
8. Integrated Dental Holdings Limited ("**IDH**") is a dental group, also solely active in the UK. It operates approximately 325 practices throughout the UK consisting of 281 practices in England, 29 practices in Scotland and 15 practices in Wales, with approximately 850 self-employed dentists. It offers National Health Service ("NHS") and private dental treatment. It generated revenues of approximately [...] solely in UK.

III. THE OPERATION AND CONCENTRATION

9. Carlyle and Palamon (the "parties") intend to jointly control a newly established joint venture company (the "JV") following a series of inter-dependent transactions. Both Parties will have [...]. This transaction therefore constitutes a concentration pursuant to Article 3 of the Merger Regulation.

IV. EU DIMENSION

10. The transaction has an EU dimension within the meaning of Article 1 (2) of the Merger Regulation as each of Carlyle and Palamon have an EU turnover of more than EUR 250 million (Carlyle [...], Palamon [...]) and a combined world-wide turnover of more than EUR 5 000 million (Carlyle [...], Palamon [...]).

V. ASSESSMENT

11. Based on the information provided by the parties in the Reasoned Submission it has to be concluded that the proposed transaction is an appropriate candidate for pre-filing

referral from the Commission to the United Kingdom in accordance with Article 4(4) of the Merger Regulation.

12. Following a preliminary assessment, the transaction appears to meet the legal requirements set out in Article 4(4) of the Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in a market within the UK.

A. Relevant product markets

13. ADP and IDH are both providing general dental services under contract with the NHS, orthodontic services under contract with the NHS and private dental and orthodontic treatment as well as some other specialty services.²
14. The parties explain that in UK there are two ways of funding the dental (and orthodontic) treatment for individuals: via the NHS or self-funded (i.e. private). The NHS – funded patients represent approximately 65% of demand whereas self-funded patients represent 35 % of demand for general dental services.
15. Since, according to the parties, they do not dedicate a significant part of their practices to private patients, the effects of transaction shall be analysed on the segment for provision of general dental and orthodontic services with NHS.
16. Accordingly, the parties provide that the transaction give rise to effects on the following product markets:
 - i) Provision of general dental services under contract with the NHS, which encompass treatment services provided by dentists under contract with NHS
 - ii) Provision of orthodontic services under contract with NHS which includes provision of orthodontic services encompasses the activity of treatment of malocclusions resulting from tooth irregularity of jaw deformity. Such orthodontic treatment can correct teeth crowding, protrusion, asymmetry bite anomalies and impacted teeth under contract with NHS.
17. The dental and orthodontic services are procured by NHS private care trusts (the "PCTs") through long term contracts with Service Level Agreements. Each PCT has a designated dental budget which is split into Units of Dental Activity, Units of Orthodontic Activity and other services such as emergency treatment and treatment access. These Units are allocated through a tendering process. According to the parties there is no local price competition for patients in the NHS context as the fees paid by patients are determined nationally by the NHS.
18. The parties submit that although there is no precedent decision of the Commission with respect to dental and/or orthodontic services, it has been indicated that the provision of healthcare services under contract with the national public healthcare provider could constitute a separate market.³

² The parties provide that the other specialist dentistry services include: oral surgery, sedation, endodontic, periodontics, prosthodontics and restorative dentistry. Since the parties claim that their market share post transaction on the specialty services will be *de minimis*, these will not be analysed further.

³ Case COMP/M.4367 APW/APSA/Nordic Capital/Apio.

19. On the basis of the above it is proposed to analyse the effects of the transaction on the markets as presented by the parties.

B. Relevant geographic market

20. The geographic markets for provision of dental services, orthodontic services and specialty dentistry services are likely to be national or narrower.⁴
21. The Parties claim that the markets for dental services and orthodontic services under contract with the NHS could even be sub-national and equal to the regions covered by PCTs.
22. Also from a private patient perspective, the markets are likely to be more local in scope, since the patients usually attend the dentists close to their work or home.

C. Assessment

23. Both parties are providing general dental services and orthodontic services under contract with the NHS as well as other specialty services.

- *Provision of general dental services under contract with NHS*

24. Post transaction the merged entity would have a market share for provision of general dental services of approximately [10-20] in the UK (based on Units of Dental Activity).
25. The parties would have overlapping activities with respect to the general markets for general dental treatment, in more than [...] of UK (approach based on the regions allocated to relevant PCTs). [...] would be affected with over 40% combined market shares by Unit of Dental Activity Volume.
26. If a more local approach would be taken into account the transaction might lead to market shares of over 15% approximately in [...] of 3 mile radius and in 6 local areas of 5 mile radius with respect to general dental services.

- *Provision of orthodontic services under contract with NHS*

27. Post transaction the merged entity would have a market share for the provision of orthodontic services of approximately [5-10%] in the UK (based on Units of Orthodontic Activity) with an increment of [0-5%] due to ADP.
28. In view of the foregoing, the principal effects of the proposed operation would be restricted to the UK. Further, the markets in question present all the characteristics of a distinct market.

Additional factors

29. Given that the likely focus of the competitive effects of the proposed transaction is confined to the UK, the Office of Fair Trading ("OFT") is well placed to examine the

⁴ The parties provided an example of a previous Commission's decision where the Commission indicated that the geographic market for the provision of healthcare services in UK could be regional/local in scope, e.g.: case COMP/M.4367 APW/APSA/Nordic Capital/Apio.

UK markets. The OFT has substantial experience in considering healthcare markets (including where the NHS is the primary customer procuring services).

30. A referral is also consistent with previous cases in the healthcare sector where the Commission took the step of referring the matters to the respective national competition authority⁵.

VI. REFERRAL

31. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.
32. The Commission notice on case referral in respect of concentrations⁶ (points 16-18) indicates that, in seeking a referral under Article 4(4), "*the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". The notice on case referral also states that in addition to above, as a second condition "*the parties are required to show that a geographic market in which competition is affected by a transaction [...] is national or narrower than national in scope.*"
33. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the concentration is liable to have a principal impact on competition in a national markets of even narrower markets in United Kingdom. Therefore the requested referral is consistent with the legal requirements of Article 4(4) of the Merger Regulation as explained by the notice on case referrals.

VII. CONCLUSION

34. For the above reasons, and given that United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom]. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission

(Signed)
Alexander ITALIANER
Director General

⁵ See e.g. Case M.3668 Blackstone TBG Care/NHP; Case M.3990 Boots/Alliance/Unichem; Case M.3995 Southern Cross Healthcare/Cannon Capital.

⁶ OJ C 56, 05.03.2005, p.2.