



EUROPEAN COMMISSION
DG Competition

*Case M.8320-BUPA /
OASIS*

Only the English text is available and authentic.

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

Article 4(4)
Date: 3.2.2017



EUROPEAN COMMISSION

Brussels, 3.2.2017
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

To the Competition and Markets Authority:

**Subject: Case M.8320 – BUPA / OASIS
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area.²**

Date of filing: 23.12.2016

Legal deadline for response of Member States: 23.01.2017

Legal deadline for the Commission decision under Article 4(4): 06.02.2017

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 23 December 2016, 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 proposed acquisition of The Oasis Healthcare Group Limited ("Oasis") by Bupa Finance plc ("Bupa") by way of purchase of shares (the "Transaction"). Oasis and Bupa are hereafter referred to as the "Parties".

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.

² OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

- (2) The Parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom.
- (3) 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.
- (4) A copy of this Reasoned Submission was transmitted to all Member States on 23 December 2016.
- (5) By letter of 23 January 2017, the Competition and Markets Authority ("CMA") as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

2. THE PARTIES

- (6) **Bupa** (United Kingdom) is a global health and care company, which offers health insurance, medical subscription schemes and other health and care funding products. Bupa's service includes the provision of private general dentistry and specialist treatments. In the EU, Bupa provides such services in Poland, Spain and the United Kingdom. In the United Kingdom, Bupa provides private general dentistry and specialist treatments from 40 dental clinics,³ as well as medical and dental insurance (sold either stand-alone or together with private medical insurance to individuals or corporate employers).
- (7) **Oasis** (United Kingdom), currently controlled by the international private equity group Bridgepoint, provides NHS and private general dentistry and specialist treatments from 381 dental practices across the United Kingdom (through the Oasis, Total Orthodontics and Dental Care Plus brands) and Ireland (through the Smiles Dental brand), engaging with over 1 800 clinicians.
- (8) Given the above, the Parties' activities only overlap in the United Kingdom. There is no overlap in any other jurisdiction.⁴

3. THE TRANSACTION

- (9) The Transaction involves the acquisition of sole control by Bupa over Oasis within the meaning of Article 3(1)(b) of the EU Merger Regulation, through the purchase by Bupa of 100% of Oasis' share capital.

4. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Bupa: EUR 13 033 million; Oasis: EUR 376 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Bupa: EUR [...] million; Oasis: EUR [...] million). [...]. Therefore the undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

³ Ten of which are corporate onsite practices which are not open to the general public.

⁴ Form RS, paragraph 7.

- (11) Therefore, the Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

5. ASSESSMENT

- (12) According to the Parties, the Transaction concerns the market for dentistry in the United Kingdom. More particularly, both Parties provide private general dentistry and specialist treatments (i.e. orthodontics, specialist endodontics, specialist minor oral surgery, specialist restorative dentistry, specialist prosthodontics, specialist periodontics and implants⁵) in the United Kingdom.

A. Relevant product markets

- (13) The Commission has only briefly assessed the dentistry market in Case M.6154 – *Carlyle/Palamon*. It has considered a distinction between NHS and private treatments, and between general dentistry and orthodontics, before ultimately referring the case to the Office of Fair Trading ("OFT").
- (14) The OFT and the CMA have investigated the dentistry market in detail in a number of cases⁶ and have distinguished between NHS and private treatments, and between general dentistry, orthodontics and various other forms of specialty services.

Distinction between NHS and private treatments

- (15) The CMA has previously found that the requirement for an NHS commissioning contract limits practices' ability to switch from the provision of private to NHS services, such that the conditions of competition are not the same for the two types of treatments.
- (16) Bupa submits that the Transaction should be assessed on the basis of an overall market encompassing both NHS and private services, since NHS providers are able to constrain suppliers of private dentistry, the area of overlap between the Parties.⁷

Distinction by service type

- (17) The CMA has distinguished between the following services: (i) general dentistry, (ii) orthodontics, (iii) specialist endodontics, (iv) specialist minor oral surgery, (v) specialist restorative dentistry, (vi) specialist prosthodontics, (vii) specialist periodontics, and (viii) implants.⁸

⁵ Implants are not listed by the General Dental Council as a specialism.

⁶ OFT decision in case ME/4926/11, Completed joint venture between the Carlyle Group and Palamon Capital Partners LP for the acquisition of Integrated Dental Holdings Group and associated dental practices, 10 June 2011 (*IDH/ADP*); CMA decision in case ME/6422/14, Completed acquisition by Oasis Dental Care (Central) Limited of JDH Holdings Limited, 28 July 2014 (*Oasis/Smiles*); CMA decision in case ME/6530/15, Completed acquisition by Oasis Dental Care (Central) Limited of Total Orthodontics Limited, 2 September 2015 (*Oasis/Total Orthodontics*).

⁷ Notwithstanding Bupa's two small NHS contracts valued at circa EUR [...] (Bupa Dental Centre - Kelvin Lodge) and EUR [...] (Bupa Dental Centre - St Ann's Manchester) per annum in 2015/16. These two sites already provided NHS treatments (in addition to private treatments) at the time of Bupa's acquisitions. [...] (Form RS, paragraph 45 and footnote 11).

⁸ CMA decision in case ME/6422/14, Completed acquisition by Oasis Dental Care (Central) Limited of JDH Holdings Limited, 28 July 2014 (*Oasis/Smiles*).

- (18) Bupa follows the same approach and has provided market share data for each of those distinct product markets.

B. Relevant geographic market

- (19) In Case M.6154 – *Carlyle/Palamon*, the Commission has considered that the geographic markets for the provision of dental services, orthodontic services and specialty dentistry services are likely to be of a national or narrower scope.
- (20) The OFT and the CMA have assessed previous dentistry cases primarily by reference to local or regional markets.⁹ In particular, they have applied the following ranges of geographic radii:¹⁰
- (a) For general dentistry: (i) 2.5 mile radius within the M25; (ii) 5 mile / 8 mile radius in urban areas; and (iii) 8 mile / 13 mile radius in rural areas;
 - (b) For orthodontics: 15 mile / 7 mile radius in urban areas;
 - (c) For specialist treatments: 23 mile radius in urban areas.
- (21) Bupa agrees that the relevant markets are not wider than national in scope and has provided market share data for each of these radii to the applicable areas and services.
- (22) To conclude, all the above plausible relevant geographic markets appear to be not wider than national.

C. Assessment

- (23) According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4) of the Merger Regulation, the following two legal requirements must be fulfilled.¹¹

There must be indications that the concentration may significantly affect competition in a market or markets

- (24) The Transaction gives rise to no affected market for general dentistry. However, it gives rise to affected markets with respect to orthodontics, endodontics, periodontics, and implants, regardless of whether NHS and private providers are considered together¹² or whether only private providers are taken into account.¹³ In both cases, the Parties' combined market shares range between [20-30]% and [30-40]%.¹⁴
- (25) Therefore, the first legal requirement set forth by Article 4(4) of the Merger Regulation is met.

⁹ See footnote 4.

¹⁰ OFT decision in case ME/4926/11, Completed joint venture between the Carlyle Group and Palamon Capital Partners LP for the acquisition of Integrated Dental Holdings Group and associated dental practices, 10 June 2011 (*IDH/ADP*); CMA decision in case ME/6422/14, Completed acquisition by Oasis Dental Care (Central) Limited of JDH Holdings Limited, 28 July 2014 (*Oasis/Smiles*).

¹¹ Commission Notice on Case Referral in respect of concentrations, paragraph 16.

¹² Annex 3.1 "Overlap analysis – NHS & Private" to the Form RS.

¹³ Annex 3.2 "Overlap analysis – Private" to the Form RS.

¹⁴ Annex 3.3 "List of Affected Markets" to the Form RS for private providers only.

The market(s) in question must be within a Member State and present all the characteristics of a distinct market

- (26) As indicated in section 5.B above, the distinct markets for the provision of orthodontics and of other forms of specialty dentistry services have been considered to be local or regional markets. There are therefore strong indications that the markets for the provision of orthodontics, endodontics, periodontics, and implants services would be at most of national dimension (i.e. the United Kingdom).
- (27) Therefore, the second legal requirement set forth by Article 4(4) of the Merger Regulation is met.

Additional factors

- (28) The CMA has extensive and specific expertise in examining the market for dentistry services. In particular, in 2014 and 2015, the CMA dealt with the acquisition by Oasis Dental Care (Central) Limited of, respectively, JDH Holdings Limited and Total Orthodontics Limited.¹⁵
- (29) Moreover, a referral of the Transaction to the United Kingdom would be consistent with the Commission's practice regarding the British healthcare sector.¹⁶ In particular, the Commission referred Case M.6154 – *Carlyle/Palamon*, also involving the provision of dental services in the United Kingdom, to the United Kingdom.
- (30) Finally, the requested referral would preserve the principle of "one-stop-shop" to the extent that the case would be referred to a single competition authority, which is an important factor of administrative efficiency.

6. 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 concentrations¹⁷ (point 17) indicates that, in seeking a referral under Article 4(4), *"the requesting 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..."*.
- (33) The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the notice.

¹⁵ CMA decision in case ME/6422/14, Completed acquisition by Oasis Dental Care (Central) Limited of JDH Holdings Limited, 28 July 2014; CMA decision in case ME/6530/15, Completed acquisition by Oasis Dental Care (Central) Limited of Total Orthodontics Limited, 2 September 2015.

¹⁶ Case M.716 – *Gehe / Lloyds*; Case M.3990 – *Boots/Alliance UniChem*; and Case COMP/M.7721 – *Celesio/Sainsbury's UK pharmacy business*.

¹⁷ OJ C 56, 5.3.2005, p. 2.

7. CONCLUSION

- (34) For the above reasons, and given that the 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 and Article 57 of the EEA Agreement.

For the Commission

(signed)

Johannes LAITENBERGER

Director-General