

## Completed acquisition by Oasis Dental Care (Central) Limited of JDH Holdings Limited

**ME/6442-14**

The CMA's decision on reference under section 22(1) given on 28 July 2014. Full text of the decision published on 07 August 2014.

**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

### Summary

1. Oasis Dental Care (Central) Limited (Oasis) and JDH Holdings Limited (Smiles) (together, the 'parties') both supply dental services in England, Wales, and Northern Ireland, including general dental services, orthodontic services, and other specialist treatments.
2. Oasis acquired the issued share capital of Smiles on 19 May 2014 (the 'Merger'). The parties have a combined share of supply in excess of 25% in NHS orthodontic services in an area between West Kent and East Sussex. The CMA considers that this area constitutes a substantial part of the UK. Accordingly the share of supply test under section 23(4) of the Enterprise Act (the Act) is met. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created pursuant to section 23(2) of the Act.
3. The CMA has assessed the Merger in relation to competition for the market on the basis of:
  - The provision of general dental services under contract to the NHS.
  - The provision of orthodontic services under contract to the NHS.
4. The CMA has assessed the Merger in relation to competition in the market on the basis of:
  - The provision of NHS general dental treatments.
  - The provision of private general dental treatments.
  - The provision of NHS orthodontic services.
  - The provision of private specialist treatments by specialty (including orthodontic services).

5. In relation to the geographic scope of the frames of reference, the CMA used the parties' data on their 80% catchment area as a starting point, but also carried out sensitivity checks. The CMA did not however find it necessary to conclude on the precise scope of the frames of reference.
6. With respect to competition for the market, the CMA noted the absence of material competition between the parties in relation to tenders and their low combined share of supply of treatment units in overlap commissioning areas (below [0 to 10%] in most areas, in volume). In addition, the CMA noted the presence of other credible providers and the absence of substantial third party concerns. Several commissioning entities, who responded to the merger investigation, told the CMA that there were a number of competing providers for NHS contracts in their area such that they were not concerned about a possible reduction of choice in their area.
7. The CMA therefore does not consider that there is a realistic prospect that the Merger will give rise to a substantial lessening of competition as a result of horizontal effects in competition for the market.
8. With respect to competition in the market, the parties provided the CMA with a filtering analysis, which captured every area in relation to which there was a fascia count of 6 to 5 or fewer fascia, applying the radials used in *IDH/ADP*.<sup>1</sup> The parties noted that their share of supply would be in excess of 25% in the Tunbridge Wells area (NHS orthodontic services) and that there would be a fascia reduction of 6 to 5 or fewer in the Towcester area (private general dental treatment). The CMA carried out sensitivity analysis<sup>2</sup> of the data provided by the parties: in addition to reviewing information available online on dental practices, the CMA contacted competitors of the parties in a number of overlap areas. The CMA did not identify areas warranting closer examination in addition to the ones identified by the parties.
9. In the Towcester area, on a 6 to 9 mile radius centred on Smiles' practice, the parties have a combined share of supply of [40 to 50%] based on the number of dentists and [40 to 50%] based on the number of chairs. Two other competing practices provide geographically close alternatives to the parties' practices (around 0.5 mile). Another competing practice is also within the catchment area.

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<sup>1</sup> 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*).

<sup>2</sup> See paragraphs 50 and 74 below.

10. In the Tunbridge Wells area, on a 15 mile radius centred on Oasis' practice in Sevenoaks, the CMA estimated that the parties have a combined share of delivered Units of Orthodontic Activity (UOA) of [30 to 40%], with an increment of [10 to 20%] and that the parties' combined share of contracted UOAs would be [20 to 30%], with an increment of [0 to 10%] (in volume). The parties are not each other's closest geographic competitor (three competing practices are situated between the Oasis and Smiles practices). In addition, post-Merger there will be one equally sized competitor to the parties, and other rival practices, which, taken together represent some further constraint on the combined entity.
11. None of the third parties that the CMA contacted during its merger investigation raised significant competition concerns in relation to these areas.
12. Overall and based on the evidence available to it, the CMA does not consider that there is a realistic prospect that the Merger will lead to a substantial lessening of competition in the provision of private general dental treatments in the Towcester area and/or in the provision of NHS orthodontic services in the Tunbridge Wells area.
13. In relation to the provision of specialist treatments to private patients, the parties submitted that Oasis' practice in Thayer Street, London, overlaps with 8 Smiles practices on a [rounded to 23 mile] radius for endodontics and/or periodontics. Applying sensitivity analysis<sup>3</sup> the CMA found that within a 3 mile radius of the 8 Smiles practices referred to above there are at least 30 competitors. There are around 60 competitors geographically closer to Smiles Epsom Surrey than the Oasis Thayer Street Practice.
14. Overall, based on the evidence available to it, the CMA does not consider that there is a realistic prospect that the Merger will lead to a substantial lessening of competition in the provision of private specialist treatments in any local area in the UK.

## **Decision**

This Merger will therefore not be referred under section 22 (1) of the Act.

Assessment

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<sup>3</sup> See paragraph 83 below.

## Parties

15. Oasis Dental Care (Central) Limited (Oasis) provides NHS and private dental care in the UK. It operates 282 dental practices throughout England, Wales, and Northern Ireland. Oasis is ultimately controlled by Bridgepoint Advisers Group Limited, which is an international private equity group that invests in a broad range of sectors, including business services, financial services, healthcare and media. Oasis's turnover in the UK in 2013 was £[REDACTED].
16. JDH Holdings Limited (Smiles) provides NHS and private dental care in the UK. It is the holding company for Smiles' UK dental business. It operates over 60 practices in England, Northern Ireland, and Wales. It is incorporated in the UK. Its turnover in the UK in 2013 was £[REDACTED].

## Transaction

17. The parties signed a sale and purchase agreement on 7 April 2014 pursuant to which Oasis acquired the entire issued share capital of Smiles for a consideration of around £[REDACTED]. The parties completed the Merger on 19 May 2014. The CMA imposed an initial enforcement order pursuant to section 72(2) of the Act on 19 May.
18. The parties formally notified the CMA by providing a complete merger notice on 5 June 2014. The statutory timetable for the CMA's review expires on 31 July 2014.

## Jurisdiction

19. Oasis and Smiles engage in activities which constitute 'enterprises' for the purposes of section 23 of the Act. They ceased to be distinct when the Merger completed on 19 May 2014.
20. Smiles' turnover did not exceed £70 million in the UK in the last financial year, therefore the turnover test is not met. Nevertheless, the parties submitted that the share of supply test appears to be satisfied on the basis that the parties would achieve a combined share of supply of at least 25% in relation to the supply to patients of NHS orthodontic services in an area which includes parts of West Kent and East Sussex (see paragraph 78.). The CMA considers that this area constitutes a substantial part of the UK. In this regard, the CMA notes that the towns of Maidstone, Tunbridge Wells, Tonbridge, and Sevenoaks are

within the area.<sup>4</sup> The CMA considers that the share of supply test under section 23(4) of the Act is met.

21. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created under section 23(2) of the Act.

### **Frame of reference**

22. The parties both provide general dental and specialist treatments (including orthodontic services) under contract to the NHS and to NHS and private patients in England, Wales, and in Northern Ireland (Oasis does not have dental practices in Scotland).<sup>5</sup>

### **Product scope**

23. The parties submitted that the relevant markets for the competitive assessment of the Merger are:
  - NHS General Dental Services (provision of dental services under contract with the NHS).
  - NHS Orthodontic Services (provision of a separate service provided by trained orthodontics and administered under a different regime).
  - Patient General Dental Services (provision of dental services to patients privately and on the NHS).
  - Patient Orthodontic Services (provision of orthodontic services to patients privately and on the NHS).
24. The parties submitted that there is no clear distinction between general dental services and other specialist treatments such that the correct frame of reference includes all practices which provide general dental services as well as specialist treatments.
25. The CMA has considered whether the frame of reference should be segmented between competition for the market and competition in the market, NHS and private treatments, and between general dentistry and specialist treatments.

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<sup>4</sup> Based on the UK National Statistics (2011), the population in Maidstone was around 113,127; Tunbridge Wells (57,772); Tonbridge (38,657) and Sevenoaks (29,506). In aggregate, the population is over 239,000. The CMA also notes that the population is much larger when areas surrounding these towns are included.

<sup>5</sup> The CMA notes that in Northern Ireland, the Health and Social Care Board (**HSCB**) is responsible for the administration of public health and other social care services (including dental treatments).

## **Competition for the award of NHS contracts (competition for the market) and for the provision of services to patients (competition in the market)**

26. The CMA notes that competition for the award of NHS contracts in England and Wales is characterised by a tendering process, giving winners of such contracts the right and ability to offer dental services to patients located within the area of the relevant commissioning authority (that is, competition for the market). Competition for the provision of services to NHS patients subsequently takes place between dental practices that have been awarded contracts at the retail level (that is, competition in the market).
27. In this case, based on the parties' and third party responses during its merger investigation and in line with *IDH/ADP* the CMA has examined competition for the award of NHS contracts and competition for the provision of services to patients (NHS and/or private) separately for overlaps in England and Wales.
28. In Northern Ireland dental services are provided through a fee-for-item mechanism commissioning where dentists register with a particular local commissioning group. No tenders are organised for the provision of dental services. Practitioners apply to come onto the dental list. The CMA therefore considers that competition for the market is not relevant for the purposes of assessing the impact of the Merger in Northern Ireland.

### **Provision of services to NHS and/or private patients**

29. In terms of the provision of dental services to patients in England and Wales, the parties submitted that services provided under the NHS or on a private basis form part of the same market. In relation to demand-side substitution, they stated that when choosing a provider, patients will consider the difference in price, quality, and timely access to treatment between NHS and private services. On the supply-side, they submitted that the vast majority of practices provide both NHS and private services to patients. They added that there are no regulatory impediments to a wholly private practice bidding to provide services under NHS contracts.
30. The CMA, however, found evidence suggesting that NHS and private treatments should be considered separately, both from a demand-side and a supply-side perspective.<sup>6</sup>
31. On the demand-side, the OFT's 2012 survey showed that the majority of patients receive NHS dental treatment, with only a minority of patients receiving

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<sup>6</sup> The CMA's methodology to identify the relevant frame(s) of reference, and in particular its consideration of demand-side and supply-side factors is described at paragraphs 5.2.6 ff of OFT

mixed NHS and private treatment. In addition, it found that 72% of those looking for an NHS dentist had not considered a private dentist.<sup>7</sup> In most cases, this was because they considered private dentistry to be too expensive. The CMA considers this survey information, while not directly related to substitutability in the context of assessing the Merger, to nevertheless be probative generally of the limited ability or willingness of patients to switch between NHS and private treatment. The CMA also notes that some private treatments are not available under the NHS (for example, cosmetic whitening or cosmetic fillings), which suggests that NHS and private dental treatments do not belong to the same frame of reference.

32. On the supply-side, the CMA notes that in order to supply NHS treatments, a practice must have a contract with the relevant commissioning entities (Local Area Team or LAT in England, Local Health Board or LHB in Wales), which is not the case for the provision of private treatments. This suggests that there are limits to switching capacity easily from private to NHS for many practices and the conditions of competition are not the same for NHS and private dental treatment. The CMA notes that this is however not the case for Northern Ireland (for private registered dentists, there are no additional restrictions to be registered as a practitioner with the HSCB).
33. Based on the above, and taking a cautious approach, the CMA has assessed the provision to NHS patients and private patients separately.<sup>8</sup>

### **General dental and orthodontic services**

34. The parties submitted that orthodontic services are a specialty of dentistry provided by a trained orthodontist and are administered under a different NHS regime to dentistry in England and Wales.
35. From the demand-side, the CMA notes that substitution between general dental and orthodontic services will be very limited, if there is any at all, as they are different treatments for different dental requirements.
36. On the supply-side, the CMA notes that some general dentists may provide a limited range of orthodontic services (including teeth straightening with clear and removable braces). However, for most other treatments, patients will

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1254, Merger Assessment Guidelines, A joint publication of the Competition Commission and the Office of Fair Trading, September 2010 ([Merger Assessment Guidelines](#)).

<sup>7</sup> OFT 1419, [Dentistry Consumer Research: A Research Report by TNS-BMRB](#), January 2012, referred to in the OFT market study in dentistry, OFT 1414, January 2012 ([OFT dentistry market study](#)).

<sup>8</sup> This is consistent with the OFT's approach in *IDH/ADP*.

generally be referred to a specialist orthodontist registered as such with the General Dental Council (GDC) and with the required training. As such, supply-side substitution also appears to be limited.

37. Based on the above, the CMA considers that general dental and orthodontic services are in different frames of reference.

### **Specialist dental treatments**

38. The parties submitted that the term “specialist treatments” is commonly used to refer to any form of treatment other than general dental services. They submitted that the only specialist treatments for which it is compulsory to be a registered specialist are minor oral surgery provided on the NHS and NHS orthodontic services. These two services are the only ones which the parties recognise as distinct specialist treatments.

39. The parties submitted that the following ‘specialist treatments’ can be provided by any dental practitioner if the practitioner believes that this type of work is within their competence (without registration as a specialist):<sup>9</sup>

- endodontics
- minor oral surgery
- restorative dentistry
- prosthodontics
- periodontics
- implants

40. Third party responses generally supported the parties’ submission that specialist treatments may be provided by any dentist to the extent he/she feels competent. Where the case is more complex, it will generally be referred to a specialist registered with the GDC.<sup>10</sup> In addition, to market him/herself as a ‘specialist’, a dentist must be registered as such with the GDC. However, some third parties were sceptical of the extent to which any general dentist would provide as strong a constraint on a specialist dentist as another specialist, especially given the complexity of treatments. The CMA considers that it does not have sufficient evidence to conclude on the strength of the constraint from general dentists on the provision of specialist treatments by specialist dentists registered as such with the GDC.

41. On a cautious basis, the CMA has considered that specialist treatments only include treatments provided by dentists registered as specialists with the GDC.

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<sup>9</sup> It also includes sedation services, which are generally provided in relation to oral surgery.

<sup>10</sup> [GDC’s list of specialties](#)

The CMA has assessed the Merger on the basis of each specialty as a separate frame of reference.

### **Conclusion on frame of reference**

42. The CMA has assessed the Merger in relation to competition for the market on the basis of the following frames of reference:
- The provision of general dental services under contract to the NHS.
  - The provision of orthodontic services under contract to the NHS.
43. In relation to competition in the market, the CMA has assessed the Merger on the basis of the following frames of reference:
- The provision of NHS general dental treatments.
  - The provision of private general dental treatments.
  - The provision of NHS orthodontic services.
  - The provision of private specialist treatments by specialty (including orthodontic services).

### **Geographic scope**

#### **Competition for the market: NHS general dental services and NHS orthodontic services**

44. The parties submitted that the scope of the relevant geographic market is at least as wide as the geographic boundary that correlates with the relevant NHS contracting entity (LAT in England, LHB in Wales), in line with the approach followed in *IDH/ADP*.
45. Several commissioning entities that responded to the CMA's merger investigation submitted that they would consider awarding a contract to a practice not currently present in their area. This would suggest that the geographic scope may be wider than the boundary of the relevant commissioning entity.
46. On a cautious basis, the CMA has assessed the impact of the merger on a geographic scope that corresponds with the boundary of the relevant commissioning entity in relation to England and Wales.

#### **Competition in the market to attract patients**

47. The parties submitted that the catchment areas set out in *IDH/ADP* should apply in this case. In *IDH/ADP*, the OFT assessed the merger on the basis of a

2.5 mile radius within the M25 motorway, 5 mile radius for urban areas and 8 mile radius for rural areas in dentistry; and a radius of 15 miles for orthodontic services.

48. In line with its decisional practice, the CMA considers that it is more appropriate to use the parties' 80% catchment areas (although it is based on a sample of their practices) to assess the Merger.<sup>11</sup>
49. The CMA therefore used data provided by the parties on their 80% catchment areas as a starting point. In this case, the parties only provided catchment areas for a limited sample of their practices. These sample radii showed that 80% catchment areas included a wide range of distances. Taking this into account, the CMA has been cautious in applying the average catchment area from this sample to all of the areas of potential overlap between the parties. The CMA also used radials from *IDH/ADP*, information received from third parties during its merger investigation, together with results from the OFT dentistry market study and a preliminary assessment of additional areas not focused on by the parties, as a sensitivity check.<sup>12</sup>

#### Provision of general dentist treatments to NHS and private patients

50. With respect to NHS patients, the data provided by the parties show that their practices' 80% catchment area is within a [rounded to 3 mile] radius for urban areas and [rounded to 11 mile] radius for rural areas.<sup>13</sup>
51. With respect to private patients, the data provided by the parties show that their practices' 80% catchment area is within a [rounded to 8 mile] radius for urban areas and [rounded to 13 mile] radius for rural areas.
52. Data provided by a third party on average travel times suggested that the majority of its patients are generally within 30 minutes' drive time of the practices.

#### Provision of NHS orthodontic services

53. The parties submitted that a patient will attend an orthodontist on referral from his or her treating general dentist and that is likely to be located in relatively close proximity. However, there is often a long waiting list for appointments for

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<sup>11</sup> The CMA notes that a catchment area is typically narrower than a geographic market identified using the hypothetical monopolist test. [Merger Assessment Guidelines](#) at section 5.2, and in particular paragraphs 5.2.2 and 5.2.25.

<sup>12</sup> The CMA applied maximum reach radials to identify overlaps.

<sup>13</sup> The survey in the OFT dentistry market study stated that most patients (91%) travelled to their dentist from home and most (69%) said it took them up to 15 minutes to reach their dentist. It also found that 82% of those looking for an NHS dentist said they had been looking within 30 minutes travel time from home and 44% had only been looking within 15 minutes.

orthodontic provision due to comparative shortages of NHS Orthodontic Services. Patients accessing orthodontic services are likely to travel significantly further than patients seeking to access local general dental services, as such services are relatively more scarce, according to the parties.

54. The parties' data, based on a limited sample of practices, suggests that their practices' 80% catchment area in NHS orthodontic services is within a [rounded to 7] mile radius for urban areas in the UK.
55. A third party told the CMA that the majority of patients travel 3 to 5 miles. Another third party stated that that the majority of patients travel around 10 miles.

#### Specialist treatments

56. The CMA has not received separate information for the provision of private orthodontic services but the practices who responded to its merger investigation are mixed practices so it considers that a similar catchment area would apply.
57. Based on data provided by the parties for the provision of private specialist treatments, their practices' 80% catchment area is within a [rounded to 23] mile radius for urban areas. The CMA however notes that this is based on a limited number of practices.

### Conclusion

58. The CMA used 80 per cent catchment areas provided by the parties for a sample of practices as a starting point for its analysis. Given the limited sample and range of distances within that sample, the CMA has taken a cautious approach in its competitive assessment, undertaking significant sensitivity analysis of the catchment areas used.

### Counterfactual

59. The parties submitted that the CMA should assess the Merger against the pre-existing competitive situation.
60. Based on the evidence available, the CMA has considered the Merger on the basis of the pre-Merger situation.<sup>14</sup>

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<sup>14</sup> [Merger Assessment Guidelines](#), at paragraph 4.3.5.

## Horizontal issues

61. The CMA considered whether the Merger might lead to a realistic prospect of an SLC in relation to (i) competition for the market for NHS general dental and orthodontic services and (ii) competition in the market for the provision of general dental services, orthodontic services and other specialist treatments to NHS patients and/or private patients.

## Competition for the market

62. In order to assess the effect of the Merger on competition for the market, the CMA considered whether the Merger might lead to reduced competition in relation to bids for NHS general dental treatments and orthodontic services, because commissioning entities in England and Wales would have less choice of possible providers for these services.
63. The parties' activities overlap in general dental services in 11 NHS contracting areas (LATs and LHBs) in England and Wales.<sup>15</sup>
64. In relation to England and Wales, the parties provided estimates of their shares of supply based on NHS Dental Services Vital Signs quarterly reports (NHS Vital Signs Reports) for each LAT and LHB where their activities overlap. Shares of supply are based on units of treatments contracted for: Units of Dental Activity (UDA) for general dental services and Units of Orthodontic Activity (UOA) for orthodontic services. Based on NHS contracted for volumes provided by the parties, their combined shares of supply are below [0 to 10%] in most overlap commissioning areas.<sup>16</sup> Their combined share of supply is around [10 to 20%] in Aneurin Bevan, Wales, which was broadly confirmed by third parties.
65. The CMA notes that several commissioning entities told the CMA that they would award or have awarded a contract for the provision of NHS dental services to practices not present at the time in their area if they meet the specifications. This suggests that the parties may be potential competitors in commissioning areas in which their activities do not currently overlap.
66. The parties submitted that Oasis and Smiles have not historically competed in tenders for UDAs or UOAs; Smiles being focused on the private sector. Data

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<sup>15</sup> There is no overlap in the Parties' activities in NHS contracts for minor oral surgery. Only Oasis has NHS contracts for minor oral surgery.

<sup>16</sup> NHS Vital Signs Reports are available online and provide information on contract details, including value, activity information (in particular, volume contracted and delivered) and performance measures. They include UDA and UOA information and are published for each LAT in England and LHB in Wales.

provided by the parties on tenders shows that they have not competed in tenders. Smiles submitted that it only bid for [X] withdrew, prior to awarding. Oasis, on the other hand, took part in [X] tender processes from 2012 to present.

67. Commissioning entities contacted during its merger investigation did not raise concerns. When asked by the CMA, the commissioning entities who responded to the merger investigation did not consider that the Merger would lead to a reduction in the choice of providers for future contracts from commissioning entities.
68. Overall, on the basis of the evidence, including the absence of material competition between the parties, the presence of other credible providers, and the absence of substantial third party concerns, the CMA does not consider that there is a realistic prospect that the Merger will give rise to a substantial lessening of competition as a result of horizontal effects in competition for the market.

### **Competition in the market**

69. The CMA notes that, while price is a relevant parameter of competition for private dental treatment, prices paid by patients under the NHS are regulated and payments received by the practices from the LATs, LHBs and LCGs are unaffected by the Merger. Non-price factors may nevertheless be affected by the Merger. As set out in *IDH/ADP*, non-price factors that could be affected include waiting time, opening hours, quality, and ease of access.
70. The CMA has assessed whether the Merger might lead to reduced competition in relation to the provision of general dentist treatments, orthodontic services, and other specialist treatments to NHS and private patients.

### **Competition in local areas**

#### **General dental and orthodontic services**

71. The parties provided the CMA with a list of local areas where their activities overlap for the provision of general dental services and orthodontic services to (NHS and private) patients based on radials identified in *IDH/ADP*. The overlap areas were then filtered out based on a fascia count of 6 to 5 or fewer fascia. For overlaps with a reduction in fascia count of 6 to 5 or fewer fascia in the provision of NHS treatments to patients, the parties estimated shares of supply on the basis of NHS Vital Signs Reports. For overlaps with a reduction in fascia count of 6 to 5 or fewer fascia in the provision of private treatments, the parties estimated shares of supply based on dentists and chairs. The parties also

provided the CMA with information on the distance between (each of) their closest sites and the distance between their sites and that of their competitors in overlap areas with a fascia reduction of 6 to 5 or fewer fascia.

72. For the provision of NHS services to patients, only one area showed a post-Merger share greater than 25%: the Tunbridge Wells area in respect of NHS orthodontic provision. For the provision of private services, for each fascia of 6:5 or fewer, the parties conducted further manual searches to determine the number of alternative suppliers within the relevant radius. Their analysis showed that there were no areas in which Oasis and Smiles overlap in the provision of private general dental services to patients, in respect of which there would be a reduction in fascia of 6:5 or fewer.
73. The CMA carried out a sensitivity analysis of the data provided by the parties. In addition to the issues associated with the sampling approach taken by the parties identified above, the CMA notes that the radials in the sample provided were on average narrower than the radials identified in *IDH/ADP* (in particular for orthodontic services). This highlights that some caution should be taken in applying specific distances identified in one case to another case involving the same services but entirely different local areas. As a result, the CMA has been especially cautious in its sensitivity analysis and, in particular, in assessing both the parties' filtering of unproblematic areas and assessment of competition within each catchment area.
74. In addition to reviewing information available online on dental practices, the CMA contacted competitors of the Parties in a number of overlap areas.
75. The CMA identified no competition concerns in any of the other overlap areas due to the larger number of competing practices in the other areas. It also notes that third parties did not raise competition concerns in relation to the Merger. Further to the parties' initial filtering exercise and on a cautious basis, the CMA identified two areas warranting closer examination: (i) on a 6 to 9 mile radius in the Towcester area in the provision of private general dental treatments and (ii) on a 15-mile radius in the Tunbridge Wells area in the provision of NHS orthodontic services.
76. Data on units of treatments is not available for private dental treatments. The parties therefore estimated shares of supply based on capacity measures, that is the number of full-time equivalent (FTE) dentists and number of chairs. The CMA contacted third party competitors to corroborate the parties' estimates. On a 6 to 9 mile radius centred on Smiles' practice in the Towcester area<sup>17</sup>, the

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<sup>17</sup> The CMA also centred its analysis on Oasis' practice in the Towcester area. It did not have a material impact on the outcome of its assessment.

parties have a combined share of capacity of [40 to 50%] based on the number of dentists and [40 to 50%] based on the number of chairs.<sup>18</sup> Two other competing practices provide geographically close alternatives to the parties' practices (around 0.5 miles) and another competing practice is located within the catchment area. Third parties did not raise competition concerns resulting from the Merger.

77. On the basis of a 15-mile radius centred on Oasis' practice in Sevenoaks<sup>19</sup> in the Tunbridge Wells area,<sup>20</sup> the parties have a combined share of supply of contracted<sup>21</sup> UOAs of [20 to 30%] with an increment of [0 to 10%] (in volume).<sup>22</sup> They have a combined share of supply of delivered UOAs of [30 to 40%] with a [10 to 20%] increment (in volume). The CMA does not consider that the level of the parties' shares of supply gives rise to competition concerns in this case.<sup>23</sup> The parties are not each other's closest geographic competitor (three competing practices are situated between the Oasis and Smiles practices). In addition, post-Merger there will be one equally sized competitor to the parties, and other rival practices, which, taken together, represent some further constraint on the combined entity. Third parties did not raise competition concerns resulting from the Merger.
78. Overall and based on the evidence available to it, the CMA does not consider that there is a realistic prospect that the Merger will lead to a substantial lessening of competition in the provision of private dental services in the Towcester area and/or in the provision of NHS orthodontic services in the Tunbridge Wells area.

### **Specialist treatments by specialty for private patients**

79. The parties estimated that their practices' 80% catchment area was within a [rounded to 23] mile radius for urban areas in the UK (based on a sampling of their practices providing private specialist treatments). The CMA however only

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<sup>18</sup> Towcester is classified as urban by the Office for National Statistics. The parties' catchment area sampling analysis suggested that the 80% catchment area for private general dentistry was around [rounded to 8] miles in urban areas. Given the different data received by the CMA, it considered a range of distances in its analysis to check the sensitivity of the catchment area used.

<sup>19</sup> The CMA also centred its analysis on Smiles' practice in Tunbridge Wells. It did not have a material impact on the outcome of its assessment.

<sup>20</sup> The parties' sampling analysis suggested that the 80% catchment area for NHS orthodontic services was around a [rounded to 7] mile radius in urban areas. The parties' activities would not overlap on this basis. The CMA has considered a range of distances to check the sensitivity of the assessment of the catchment area used.

<sup>21</sup> There has been a recent award of two new contracts of NHS orthodontic volumes to two rival practices, which commenced in April 2014.

<sup>22</sup> Smiles' practice is located within 12 miles of Oasis's practice in Sevenoaks so there is no overlap in the parties' practices on a narrower radius.

<sup>23</sup> *IDH/ADP*, at paragraphs 100 ff.

used the [rounded to 23] mile radius catchment area as a starting point for its analysis given the limited number of practices on which this radial is based.

80. The CMA has not received separate information for the provision of private orthodontic services but the practices who responded to its merger investigation are mixed practices so it considers that a similar catchment area would apply. The parties did not identify any area as leading to a reduction in fascia count of 6 to 5 or fewer, based on their filtering analysis described above. In addition, the CMA carried out a sensitivity analysis of the data provided by the parties and did not identify areas requiring closer examination.
81. The parties submitted that Oasis' practice in Thayer Street, London, overlaps with 8 Smiles practices on a [rounded to 23] mile radius (7 of these practices are within a 3 mile radius and 1 practice in Epsom, 13.7 miles) for endodontics and/or periodontics.
82. The CMA conducted a sensitivity analysis using different catchment areas. It found that within a 3 mile radius of the 8 practices referred to above there are at least 30 competitors. There are almost 60 competitors geographically closer to Smiles Epsom Surrey than the Oasis Thayer Street Practice.
83. Overall, based on the evidence available to it (and in particular the number of other competing practices), the CMA does not consider that there is a realistic prospect that the Merger will lead to a substantial lessening of competition in the provision of specialist treatments to private patients in any local area in the UK.

### **Barriers to entry and expansion**

84. On the basis that no competition concerns arise as a result of the Merger, the CMA does not consider it necessary to assess barriers to entry and expansion.

### **Third party views**

85. As part of its merger investigation, the CMA received comments from LATs and LHBs where the Parties' activities overlap. The CMA received responses from commissioning entities who have contracts with both Smiles and Oasis. Other commissioning entities who responded to the CMA's merger investigation have contracts with Oasis only. The CMA also received comments from the HSCB, other NHS and private providers, and Monitor.
86. The CMA did not receive competition concerns from third parties in relation to the Merger.

87. One third party stated that the increasing merging of dental corporate bodies is not in the best interest of patients as corporate bodies are more concerned with profit than patient care. The CMA refers to its competitive assessment of the Merger and notes that the detriment suggested by this concern, however valid, would not arise from a significant lessening of competition as a result of the Merger.
88. Third party comments have been taken into account where relevant in the decision.

## **Decision**

This Merger will therefore **not be referred** under section 22(1) of the Act.