
Completed acquisition by the Blackstone Group of NHP plc

The OFT's decision on reference under section 22 given on 5 April 2005. Full text of decision published 13 April 2005

Square brackets indicate where information has been excised or replaced by a range at the parties' request.

PARTIES

1. **The Blackstone Group (Blackstone)** is a private merchant banking firm based in New York. Blackstone's private equity and real estate funds hold investments in a variety of companies and properties. In September 2004, Blackstone entered the UK care home sector when it acquired from West Private Equity, Southern Cross, a business which operates 159 care homes across the UK¹.
2. **NHP Plc (NHP)** is a UK-listed public company active in the care home sector. It holds a portfolio of approximately 358 homes which it leases out to private operating companies, including its affiliate, Highfield Care Ltd (Highfield) and Southern Cross. Highfield operates 187 care homes for the elderly across the UK. NHP's UK turnover to the financial year ending 30 September 2003 was €254m (approximately £177m).

TRANSACTION

3. Blackstone's proposal to acquire NHP met the threshold for investigation under the EC Merger Regulation (ECMR) and was notified to the EC Commission on 9 December 2004. The OFT subsequently requested referral of this case in accordance with Article 9(2)(b) of the ECMR as the OFT could not rule out potential competition concerns in some local areas of the UK for the provision of care or nursing homes for the elderly.

¹ The completed transaction was notified in the UK under the Enterprise Act on 4 January 2005 and was cleared on the basis of there being no overlaps between the parties.

4. The EC Commission granted referral of this case on 1 February 2005.² The parties have since completed the merger, on 9 February 2005. In accordance with Art. 9(6) ECMR, the relevant statutory deadline expires 14 April 2005. The OFT's administrative deadline for dealing with this case is 7 April 2005.

JURISDICTION

5. As a result of this transaction Blackstone and NHP have ceased to be distinct. The UK turnover of NHP exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. A relevant merger situation has therefore been created.

RELEVANT MARKET

Product scope

6. In previous cases³ the OFT has considered the distinction between residential and nursing care homes. Residential care consists of the provision of personal care for the elderly while nursing care caters for persons suffering from sickness, injury or infirmity, and requires the presence of staff with nursing and / or medical qualifications. The parties dispute that such a distinction exists due to there being no legislative distinction between the two and factors such as the existence of many homes catering for both categories of care and that individuals' needs may themselves vary over time.
7. On the demand side, for individuals requiring high levels of care, there is no real alternative to nursing care. The additional care required for nursing as opposed to residential care is reflected in prices for the former being on average £151 higher than for residential care.⁴ In the alternative, nursing care may provide a substitute for residential care, although residents may not necessarily want to be surrounded by substantially less able individuals. Care at home could also be considered a substitute for residential care in some circumstances and indeed it is currently government policy to promote this option.
8. In terms of supply side substitution, in order to start providing nursing care, a residential home would have to hire additional nursing staff in order to provide 24

² The Commission's decision is available on

http://europa.eu.int/comm/competition/mergers/cases/decisions/m3669_en.pdf

³ Acquisition by Takecare PLC of Court Cavendish Group PLC (1997); Proposed Acquisition by the British United Provident Association Ltd of Care First Group PLC (1997)

⁴ Average weekly fees are £496 for private nursing care for elderly people and £345 for private residential (personal) care. (Source: Care of Elderly People, UK Market Survey 2004, Laing & Buisson)

hour nursing cover and register with the Commission for Social Care Inspection, (incurring a fee of approximately £400). On the basis of the available data, it appears that an average care home could recoup its investment into nursing facilities in a maximum of 10 weeks. There has been a growth in the number of dual registered homes, and residents' associations are suggesting that there is increasing demand for such homes, as they enable residents to stay at the same location even though their needs changed.

9. The OFT has also looked at the issue of whether care for the elderly mentally infirm (EMI) and dementia care could be considered separately from other nursing care provision. It has been submitted that to accept individuals with dementia, nursing homes need to apply for a variation of registration, which can take up to ten weeks, and would have to employ a registered mental health nurse.
10. The above considerations suggest that residential homes pose a potential constraint on nursing homes, however, it is not necessary to conclude on this issue as even on the narrow frame of reference no competition concerns arise. The lack of competition concerns at even the narrowest level also means that the OFT does not need to conclude on whether a separate frame of reference may exist with regard to EMI.

Geographic scope

11. The parties contended that from the supply side, the geographic scope is national, as the conditions for operating a care home are broadly similar across the UK.
12. From the demand side it appears that many residents opt for a care home that is close enough to relatives or friends to maintain regular contact and it was submitted to the OFT by the parties and supported by third party enquiries that the narrowest possible geographic frame of reference should be a 15-20 minute drive time within a given location. This corresponds to radii of 3 to 10 miles, depending on the nature of the area.⁵
13. The OFT also notes that, as local authorities account for the majority of care homes' revenues (approximately two thirds), much competition may also take place at the local authority level. We have therefore considered where appropriate both the local overlaps resulting from a drive time of 15-20 minutes and overlaps at the local authority level.

⁵ For rural areas (i.e. a population density of 0-999 p/km²) we have considered a 10-mile radius; for suburban areas (i.e. a population density of 1000-2999 p/km²) a 5-mile radius; and for urban areas (i.e. a population density of 3000 p/km² +) a 3-mile radius.

HORIZONTAL ISSUES

Shares of supply

14. On a national basis, the parties' combined share of (all) care homes is [0-5] per cent (on the basis of number of homes) and [2-7] per cent (on the basis of number of beds), and no competition concerns therefore arise.
15. In terms of local areas, there are nine areas (on either a local authority basis or on the basis of a 3-10 mile radius from a Highfield home) where the parties post-merger hold a share of supply of more than 30 per cent, of either nursing, residential or EMI care provision, either on the basis of the number of beds or the number of homes. Table 1 below, summarises the relevant shares of supply in each of these areas.

Table 1: []

16. The data suggest that there are areas where post merger the parties will have the majority of residential, nursing or EMI provision. However, these areas are locally limited to the provision of nursing care around Highfield's [] in Arbroath, Angus and the provision of EMI beds around Highfield's [] in Nottingham. Considerations relevant to these areas include that, in Scotland, pricing rates tend to be agreed nationally between the Convention of Scottish Local Authorities and the providers' representative body, Scottish Care. In Nottingham the evidence indicates that there is a great deal of excess capacity in Southern Cross' homes, with an occupancy rate of only [] per cent and that other providers' homes in the city are similarly under-subscribed. In addition it is the case that a number of other competitors will remain in each of the areas listed at table 1.

Barriers to entry and expansion

17. In general, barriers to entry in the provision of care homes are considered to be low (with the possible exception of London due to high property prices). The key entry requirements are a suitable property and the need to obtain registration from the relevant authorities by meeting the National Minimum Standards of Care⁶. As well as establishing minimum standards relating to the running and facilities of the home, this includes requirements that 50 per cent of care home staff have suitable care qualifications (to NVQ Level 2). More advanced nursing qualifications are required for nursing care homes. Barriers to expansion into particular localities by

⁶ See: Care Homes for Older People – National Minimum Standards (DoH) 2002.

established care home operators will be lower still given that they will already be operating similar homes in other areas and be well aware of the necessary regulatory requirements. As outlined above, entry from residential providers into nursing and EMI care would be relatively easy (if these types of care were to be considered separately).

Buyer power

18. As noted above, local authorities pay around two thirds of all care fees, and, in fact, account for an even higher proportion of the merging parties' revenues (around [] per cent). This buyer power is to some extent limited by factors such as an inability to restrict demand⁷, the need to move people from hospitals into care homes quickly and a reduced ability to self-supply resulting from a reduction in local-authority-run homes. Nonetheless, the OFT considers that, on balance, given the high proportion of fees that they pay, local authorities will be able to exert sufficient buyer power to counteract any potential adverse effect on competition. With regard to self-funding residents, buyer power is likely to be more limited.

VERTICAL ISSUES

19. NHP has a property-holding business which rents out properties for use as nursing homes, with a portfolio of 358 homes. [] of the homes operated by Southern Cross, and [] out of 187 homes operated by Highfield are owned by NHP. This implies that there are a further [] homes leased out to third parties.
20. It had been submitted to us that NHP is financed and managed separately from the care home operation business of Highfield and Southern Cross. The current leases are of long durations []. Responsibility for the operation of the care home, for complying with the relevant regulatory requirements, for contracting with customers and suppliers and for employing staff rests exclusively with the tenant and NHP plays no role in these activities. Given the nature of these contracts, as well as NHP's very small share of total UK care homes, the OFT does not believe that this transaction raises any vertical competition concerns.

THIRD PARTY VIEWS

21. Overall, third parties were largely unconcerned about this transaction. Some residents' groups felt that there was a general trend towards fewer, larger care homes which would eventually reduce choice for customers. However, they did not

⁷ Local authorities are under a legal obligation to find care homes for anyone who meets certain criteria.

feel that this particular merger would tip the balance as regards the choice available to potential residents. Specific local concerns have been addressed in the above assessment.

ASSESSMENT

22. This inquiry focused on the parties' overlaps in the local supply of care homes. While on the narrowest possible frame of reference the parties have a high combined share of supply in a number of areas, the OFT has found that in the areas with the highest combined share (Arbroath and Nottingham) specific constraints, in the form of pricing restrictions and overcapacity exist in the respective areas. In addition, the OFT considers that overall the care homes sector in the UK is subject to sufficient constraints from countervailing buyer power and low barriers to entry.
23. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

24. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.