

Completed acquisition by General Healthcare Group of control of four Abbey hospitals and de facto control over Transform Holdings Limited previously part of the Covenant Healthcare Group

ME 4560/10

The OFT's decision on reference under section 22(1) was given on 14 September 2010 (the Decision). The full text of that Decision was published on 11 October 2010.

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

1. **General Healthcare Group Holding Partnership LLP (GHG)** is a provider of independent healthcare services in the UK. GHG operates two primary businesses: BMI Healthcare Limited (BMI), which operates 60 acute care private hospitals; and Netcare Healthcare (UK) Limited, which provides specialised clinical services to patients under contract to the NHS.
2. **Covenant Healthcare Group (Covenant)** comprised **Transform Holdco Limited (Transform)**, which provides cosmetic surgery, and non-surgical cosmetic treatments across the UK from a network of clinics, and other venues and two Transform owned and operated hospitals; and **Abbey hospitals** which owned and operated five private hospitals in North West England and Scotland as well as the London Churchill Clinic. However both the London Churchill Clinic and Abbey Caldew hospital in Carlisle were sold prior to the GHG transaction. Covenant's turnover (including the London Churchill and

Abbey Caldew hospital) in the financial year to 30 September 2009 was approximately £65.8 million.

TRANSACTION

3. GHG, Covenant and the Bank of Scotland plc (the Bank) agreed to a sale and restructuring of certain divisions of Covenant that resulted in GHG purchasing Abbey Hospitals (Holdings) Ltd and its subsidiaries and shares equivalent to 42.5 per cent of the issued share capital of Transform. The Abbey transaction is structured as an asset purchase while the Transform purchase is structured as a share purchase.
4. Under the terms of the agreement GHG has purchased the business of the Abbey Hospitals for a consideration of [], via BMI. Abbey Propco was established, in which the Bank and its joint venture partner, Prestbury, together own 100 per cent of the shares. GHG has entered into long leases with Abbey Propco. Transform Newco was established with the Bank, Cognetas (previous controlling shareholder of Covenant) GHG and the Management holding [] per cent, [] per cent, [] per cent and [] per cent of the shares respectively.
5. At the date of the transaction Abbey owned and operated four private hospitals, namely:
 - Abbey Kings Park, Stirling, Scotland
 - Abbey Carrick Glen, Ayr, Scotland
 - Abbey Sefton, Liverpool, England
 - Abbey Gisburne, Clitheroe, England.

While Transform owned and operated from a network of 19 clinics across the UK, in England its surgical operations were carried out at two Transform-owned and operated hospitals, Pines, in Manchester, and Riverside, in Brentford, both of which are dedicated to the provision of cosmetic surgery, while in Scotland its surgical operations were carried out at Abbey Kings Park and Abbey Carrick Glen hospitals.

JURISDICTION

6. As a result of this transaction, GHG, the four Abbey Hospitals and Transform have ceased to be distinct.¹ The parties overlap in the supply of private medical services (PMS) through the operation of private acute care hospitals in the UK. By beds, the merger creates a combined share of 27.7 per cent (increment 0.9 per cent); therefore the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

BACKGROUND

7. In its decision of 14 September 2010, the OFT stated that it believes 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 in respect of the supply of PMS services in the local market around Abbey Carrick Glen.
8. In particular, the OFT found that in this area, the merger is properly characterised as a '3 to 2', with more limited competition from the other provider. The OFT concluded that BMI Ross Hall generates significant revenue, comparatively, in Abbey Carrick Glen's catchment area, and there was clear internal documentary evidence demonstrating the constraint that BMI Ross Hall exerted on Abbey Carrick Glen, which would be lost post merger.
9. Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission (CC).

DIVESTMENT UNDERTAKINGS OFFERED BY GHG

10. To address the OFT's competition concerns, GHG offered to divest the Abbey Carrick Glen hospital.

¹ GHG's shareholding of 42.5 per cent in Transform gives it de facto control over Transform.

11. The OFT stated in its decision that the proposed undertaking is a structural remedy to remove the increment resulting from the merger in relation to the Abbey Carrick Glen/BMI Ross Hall overlap. Thus, the OFT believes it constitutes a clear-cut remedy, rendering it appropriate for the OFT to suspend its duty to refer.
12. For the reasons given in the Decision, the OFT considered that, in the circumstances of this case, it was not appropriate and proportionate to require that the Abbey Carrick Glen hospital be sold to an upfront buyer.
13. On 14 September 2010, the OFT therefore announced that it was suspending its duty to refer the acquisition to the CC under section 22 of the Act because the OFT was considering whether to accept appropriate undertakings from GHG in lieu of reference.

CONSULTATION

14. On 12 October 2010 the OFT published the proposed undertakings in lieu of reference, inviting interested parties to give their views on them by 1 November 2010 pursuant to paragraph 2(1) Schedule 10 of the Act. The consultation text published on the OFT's website alongside the proposed undertakings in lieu is set out in the Annex to this decision.
15. The OFT received comments from three interested parties during the consultation period, all welcoming the proposed undertakings requiring the divestment of the Abbey Carrick Glen hospital.
16. Only one third party proposed amendments to the undertakings. It suggested two minor modifications to paragraph 9 ('Interim Action'). After careful consideration by the OFT, the suggested amendments were rejected since the proposed undertakings already imposed a general requirement that GHG 'shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business'. In the OFT's view, this general obligation in the undertakings was sufficient to address the concerns raised by the third party such that the suggested modifications were not required.

DECISION

17. The Decision concluded that the merger would be referred to the CC if the parties failed to give suitable undertakings pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
18. The OFT considers that the undertakings provided by GHG are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings offered by GHG.
19. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by GHG, will come into effect from this date.

9 November 2010

Annex – Consultation Paper published on 12 October 2010

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Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002

OFT's duty to refer

On 14 September 2010, the OFT announced its decision to suspend its duty to refer the completed acquisition by General Healthcare Group (GHG) of control of four Abbey hospitals and de facto control over Transform Holdings Limited previously part of the Covenant Healthcare Group to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings from GHG in lieu of reference.

The OFT believes 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 in relation to the supply of private medical services (PMS) in the catchment area around the Abbey Carrick Glen hospital. The text of the OFT's decision, published on 11 October 2010 (the decision), provides full details on the OFT's findings.

In summary, the OFT found that in respect of the local market around the Abbey Carrick Glen hospital, the merger is properly characterised as a '3 to 2', with more limited competition from the other PMS provider. The GHG overlapping hospital, BMI Ross Hall, generates significant revenue, comparatively, in Abbey Carrick Glen's catchment area. There is clear internal documentary evidence demonstrating the constraint that BMI Ross Hall exerted on Abbey Carrick Glen, which will be lost post merger.

Accordingly, the OFT found itself under a duty to refer the merger to the CC.

Divestment undertakings offered by GHG

To address the OFT's competition concerns, GHG offered to divest the Abbey Carrick Glen hospital.

The proposed undertaking is a structural remedy to remove the increment resulting from the merger in relation to the Abbey Carrick Glen / BMI Ross Hall overlap.

In the event that GHG does not divest the Abbey Carrick Glen hospital within the specified Divestment Period following acceptance of the undertakings in lieu to a purchaser approved by the OFT, the OFT is able either to require GHG to divest the Abbey Carrick Glen hospital or to require the appointment of a Divestment Trustee to seek to procure a sale.

Process going forward

The acceptance by the OFT of these proposed undertakings in lieu is dependent on this public consultation.

The OFT considers that the proposed undertakings offered by GHG are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the decision.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the proposed undertakings.