



DETERMINATION OF MERGER NOTIFICATION M/17/005 – VHI INVESTMENT DAC/VHI SWIFTCARE CLINICS (ARAS SLAINTE LIMITED)

Section 21 of the Competition Act 2002

Proposed acquisition by Vhi Investments DAC of sole control of Aras Slainte Limited

Dated 10 May 2017

Introduction

1. On 1 February 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Vhi Investments DAC, an indirectly wholly-owned subsidiary of the Voluntary Health Insurance Board (“Vhi”), which currently has a 50% interest in three Vhi SwiftCare clinics, would acquire sole control of Aras Slainte Limited (“Aras Slainte”), which currently holds the remaining 50% interest in the aforementioned Vhi SwiftCare clinics.

The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to a Share Purchase Agreement (“SPA”) between Vhi Investments DAC, Jellia Holdings Limited (the “Vendor”), and the covenantors [...] and [...]. Notwithstanding that, at the date of notification, the SPA is unsigned, the Commission considers that the undertakings involved have demonstrated a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act.
3. Vhi Investments DAC and Aras Slainte currently jointly control three *Vhi SwiftCare* clinics located at the following addresses in the State:



- Rockfield Medical Campus, Balally, Dundrum, Dublin 14 (“*Vhi SwiftCare Clinic Dundrum*”);
 - Columba House, Airside Retail Park, Swords, Co. Dublin (“*Vhi SwiftCare Clinic Swords*”); and,
 - City Gate, Mahon, Co. Cork (“*Vhi SwiftCare Clinic Cork*”).
4. Following completion of the proposed transaction, Vhi, through Vhi Investment DAC, will acquire sole control of Aras Slainte and, ultimately, the above three *Vhi SwiftCare clinics*.

The Undertakings Involved

Vhi

5. Vhi, a statutory body established under the Voluntary Health Insurance Act 1957, is primarily active in the provision of private health insurance in the State. Under the Voluntary Health Insurance (Amendment) Act 2008, Vhi established a group structure with subsidiary companies responsible for different aspects of its business activities. Vhi Insurance DAC is a registered insurance intermediary and underwrites Vhi’s health insurance business. It also provides sales and policy administration for the group’s health insurance business. Both Vhi subsidiary companies are regulated by the Central Bank of Ireland.
6. Vhi is also active in the provision of primary care services in the State as a result of Vhi Investments DAC’s 50% interest in three Vhi SwiftCare clinics.
7. For the financial year ending 31 December 2015, Vhi’s worldwide turnover was approximately €1,556 million, all of which was generated in the State.

Aras Slainte

8. Aras Slainte, a limited liability company incorporated in the State, is a subsidiary of Centric Healthcare and is ultimately owned by the Vendor.¹ Centric Healthcare provides

¹ Aras Slainte is currently undergoing a corporate restructuring to ensure that following completion of the proposed transaction its 50% interest in the Vhi SwiftCare clinics constitutes its only business interests. Any and all other interests that Aras Slainte



various healthcare services including medical recruitment, primary care and diagnostic imaging in the State, in the United Kingdom and in Australia.

The Vhi SwiftCare Clinics

9. *Vhi SwiftCare Clinic* Dundrum was established in 2005, followed by *Vhi SwiftCare Clinic Swords* in October 2007 and *Vhi SwiftCare Clinic Cork* in November 2008.² The *Vhi SwiftCare clinics* are a joint venture partnership between Vhi Investments DAC and Aras Slainte. Both Vhi Investment DAC and Aras Slainte have contributed capital, own the assets and the customer data of the three SwiftCare clinics, and share in the profits and losses of the three SwiftCare clinics in equal parts.
10. Both Vhi Investments DAC and Aras Slainte provide a variety of inputs into the operation of the *Vhi SwiftCare* business.³ Aras Slainte currently focusses on the clinical and operational aspects of the *Vhi SwiftCare* business (e.g., doctor recruitment, clinical governance, radiology, finance and human resources support) while Vhi Investment DAC mainly provides marketing, IT and legal support. Currently, the *Vhi SwiftCare clinics'* business is managed by a board jointly appointed by each of Vhi Investments DAC and Aras Slainte. There are approximately 45 full time employees across the three clinics, including doctors, nurses and administrative staff.
11. *The Vhi SwiftCare Clinics* are walk-in emergency care centres that provide medical treatment to patients⁴ who have suffered unexpected illness or injury that does not pose a serious danger to their health but requires urgent treatment. Currently, any patients regardless of their private health insurance status, can be treated at the *Vhi SwiftCare Clinics*.

currently holds are being transferred to other companies and businesses within Centric Healthcare to ensure that Vhi only acquires Aras Slainte's 50% interest in the *Vhi SwiftCare* clinics as a result of the proposed transaction.

² Two additional *Vhi SwiftCare clinics* were opened and operated for a period of time before subsequently closing. One was opened in the Dublin City University campus in Dublin 9 in June 2006 but subsequently closed in December 2010. The other clinic was opened in Waterford city in October 2008 but subsequently closed in December 2009. Vhi provides that "*Decisions to close the Vhi SwiftCare clinics at DCU and Whitefield, Waterford were taken on financial sustainability grounds*".

³ The role of both partners has changed over time. Aras Slainte was initially intended to be responsible for the provision of all primary care medical services while Vhi Investment DAC was to be responsible for financial management, marketing and communications strategy.

⁴ Customers of primary care service providers are referred to as "patients" for the purpose of the Commission's Determination.



12. The *Vhi SwiftCare Clinics* treat medical ailments such as fractures, sprains or bone breaks, lacerations or cuts that need stitching, sports injuries, minor burns and scalds, eye and ear injuries, minor illnesses including fever, infections and rashes, insect and animal bites, and joint, muscular and back pain. The *Vhi SwiftCare clinics* also provide additional services such as dental, minor procedures, physiotherapy, X-Ray services, sports medicine, paediatric services, orthopaedic services and oral maxillofacial.
13. For the financial year ending 30 June 2016, the worldwide turnover of the *Vhi SwiftCare* clinics business was approximately €[...]million, [...] of which was generated in the State.

Rationale for the Proposed Transaction

14. *Vhi* states in the notification:

“Vhi believes that the acquisition of sole control of the Vhi SwiftCare clinics’ business will enhance future retention and growth prospects.”

15. An internal document provided to the Commission by *Vhi* entitled “[...]” dated [...] contains the following statement:

“Transitioning Vhi SwiftCare to an exclusive member benefit will require changing the nature of the current Joint Venture Agreement with Centric Health.”

Preliminary Investigation (“Phase 1”)

16. The Phase 1 investigation involved various contacts with the notifying parties and market enquiries with third parties, mainly competitors of *Vhi*.

Contacts with the Undertakings Involved



17. On 1 February 2017, in addition to the notification, an economic report prepared by Compecon dated 26 January 2017, commissioned by the parties, was submitted to the Commission (“The Compecon Report”).⁵
18. On 13 March 2017, the Commission served a Requirement for Further Information (“RFI”) on each of Vhi Investment DAC and Aras Slainte pursuant to section 20(2) of the Act. This adjusted the deadline within which the Commission had to conclude its assessment of the proposed transaction in Phase 1.
19. Upon receipt of all the responses to the RFI from each of Vhi Investment DAC and Aras Slainte, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 30 March 2017.⁶
20. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

21. No third party submission was received by the Commission during its investigation. The Commission, however, conducted market enquiries due to concerns that the proposed transaction might raise potential foreclosure concerns in the market for the provision of private health insurance in the State.

Market Enquiries

22. During its investigation, the Commission drew up a questionnaire to be answered by competitors of Vhi currently active in the provision of private health insurance in the State. The Commission received a full response from both competitors and, in each case, followed up the responses with telephone calls to further explore the answers in greater detail. The competitors furnished the commission with additional information following the telephone calls.

⁵ Compecon, “*Economic Analysis of Proposed Acquisition by VHI Healthcare of Aras Slainte Limited*”, 26 January 2017.

⁶ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



Industry Background

23. Figure 1 below illustrates the triangular relationship between primary care services providers, private health insurers and private health insurance customers.⁷

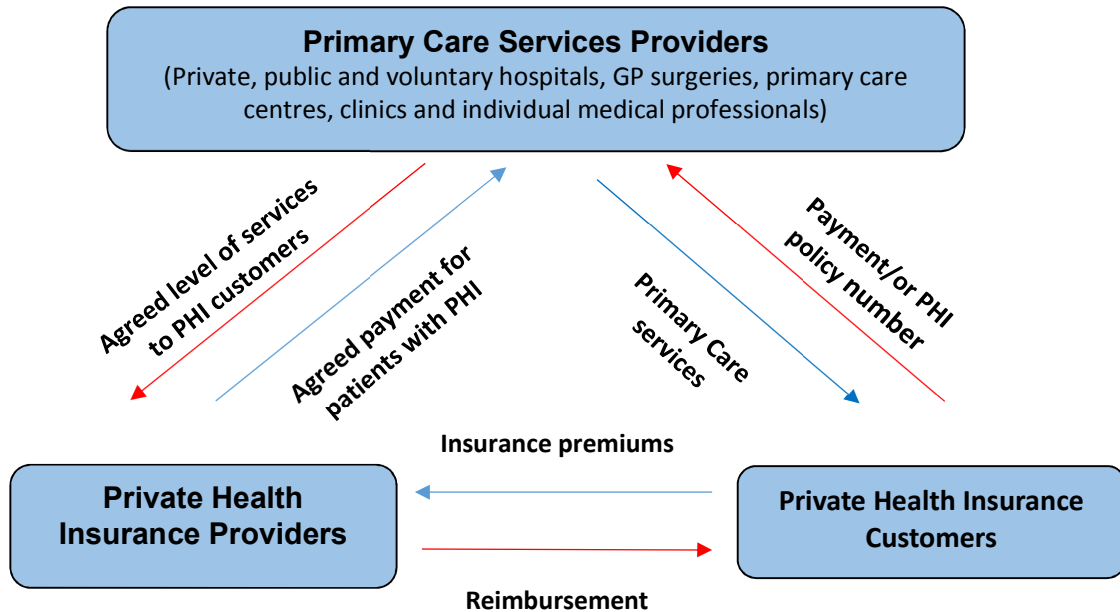


Figure 1 – Triangular Relationship in the Primary Care Services Sector

Source: The Commission

24. The remainder of this section provides further information concerning the interaction between various parties in the triangulation relationship illustrated in Figure 1 above.

The Provision of Primary Care Services in the State

25. The Health Services Executive (“HSE”) describes primary care services as “*all of the health or social care services that [a patient] can find in the community, outside of hospital.*”⁸ In its 2007 report entitled “Competition in the Private Health Insurance Market”, the Commission’s predecessor, the Competition Authority (the “Authority”),

⁷ Government is not represented in the diagram because it has its own primary care services procurement procedure as described in paragraph 28 below.

⁸ <http://www.hse.ie/eng/services/list/2/PrimaryCare/>



described primary healthcare as referring to “healthcare provided by GPs (general practitioner), dentists and other healthcare workers who work as a first port of call for patients.”⁹

26. GPs are a key provider of primary care services in the State, primary care services are also provided by other medical professionals such as nurses, dentists, therapists, etc. Primary care services are provided in different types of clinics and surgeries. Some GPs and medical professionals operate their own practices while some are part of a joint practice comprising two or more GPs and/or medical professionals. Some GPs and medical professionals are part of a multidisciplinary group of health care professionals each providing specific medical services to patients, which are sometimes referred to as primary care clinics or primary care centres.
27. Primary care centres are either publicly or privately owned and the services provided at each type of primary centre may also vary. For example, the *Vhi SwiftCare clinics* are privately owned and they provide a range of medical services as outlined in paragraph 12 above. Other primary care centres are more specialised and focus on, for example, sports injuries, dental services or physiotherapy.
28. The Government is the largest provider and purchaser of primary care in the State. It purchases primary care services from GPs with whom it has entered into ‘General Medical Services’ contracts for patients who hold a medical card or a GP visiting card. The Government also provides primary care services through primary care centres operated by the HSE, which has responsibility for the delivery of public health services in the State.
29. The relationship between a private patient (i.e., a patient that does not qualify for a medical card or GP visiting card) and a primary care service provider is essentially transactional. As illustrated by Figure 1, the patient pays for the medical treatments that he or she has received from the primary care service provider.¹⁰ For a private patient with a private health insurance policy, the cost of primary care services may be covered

⁹ This report can be accessed at <http://www.cpc.ie/sites/default/files/documents/Competition%20in%20the%20Private%20Health%20Insurance%20Market%20-%20Full%20Report.pdf>

¹⁰ This does not include patients who hold a medical card which are treated free of charge by GPs under the General Medical Services scheme.



in full, partially or not at all by that policy, depending on the level of cover set out in their private health insurance policy.

30. Outpatient GP and consultation visits are two of the most commonly claimed outpatient benefits under health insurance policies with primary care coverage. Health insurance claims by patients who attend *VHI SwiftCare clinics* are submitted under the name of a GP or medical consultant in attendance at that clinic rather than under the name of the clinic itself.

The Provision of Private Health Insurance in the State

31. The entire population in the State can avail of medical care in public hospitals. The role of private health insurance however is to offer consumers a greater choice of medical treatments and facilities, higher standards of accommodation during treatment and potentially shorter waiting times for treatment. Private health insurance provides financial cover to its policy holders for the cost of healthcare services,¹¹ which may include some or all of the following:

- In-patient medical treatment provided in public, voluntary and private hospitals and primary care centres in the State;
- Medical treatments received outside the State, either in the case of an accident or emergency or in situations where the customer has been referred overseas on an elective basis;
- Out-patient/non-hospital/day-to-day treatment received in public, voluntary and private hospitals and primary care centres, including GP services and physiotherapy services.

32. Private health insurance is financed by its customers through individual insurance premiums and provides its customers with a certain level of financial support either through direct reimbursement to the customer or by settling payment directly with care service providers at the point of treatment.

¹¹ Secondary healthcare refers to medical treatment in a hospital.



33. Figure 1 above illustrates the commercial relationship between private health insurers and care service providers, which may vary from one private health insurer to another. Most private health insurers agree with hospitals to pay directly for any in-patient costs. For out-patient costs, the policy holders usually pays the primary care service provider and then claims reimbursement (in full or partially depending on the level of cover set out under the policy) from the private health insurer. The level of reimbursement paid to the private insure policy holder is a contractual matter between the patient who has been treated and his or her private health insurer.
34. Over two million people or 46% of the population in the State have private health insurance. The average health insurance premium for in-patient cover paid in 2015 was €1,173 with total private health insurance premiums in the State amounting to €2.45 billion in 2015.¹²
35. Under the Health Insurance Act, any insurance undertaking wishing to establish its head office in the State and carry out the business of insurance or reinsurance must first obtain an authorisation from the Central Bank of Ireland. Private health insurers are also required to register with the Health Insurance Authority (“HIA”), the statutory regulator of the private health insurance sector in the State.¹³
36. The provision of private health insurance in the State operates on the following key principles:
- **Community rating** means that private health insurers charge one national price for any particular health insurance plan, irrespective of age, gender and the current or likely future state of their health, subject to exceptions for children under 18 years of age, discounts for members of group schemes, young adults and lifetime community rating loadings.
 - **Open enrolment and lifetime cover** mean that private health insurers must accept any application for private health insurance and all consumers are

¹² For more information, please see <http://www.hia.ie/publication/market-statistics>.

¹³ For more details about the HIA, see www.hia.ie.



guaranteed the right to renew their policies regardless of their age or health status.¹⁴

- **Minimum Benefit** means that all health insurance products that provide cover for in-patient hospital treatment must provide a certain minimum level of benefit.¹⁵
- **Risk Equalisation** is a common mechanism in countries with community rated private health insurance systems, which neutralises the differences in private health insurers' costs that arise due to variations in the risk profile of their customer base.¹⁶

37. In its 2015 annual report, the HIA states the following: *“As at year end 2015, there were four Open Membership Undertakings operating in the market. In December 2015, Vhi Healthcare’s market share was 51%, having been 95% in the mid-1990s before the market was opened to competition. Laya healthcare had a 26% market share, Aviva Health had 14% and GloHealth a 5% share. Restricted Membership Undertakings have a combined 4% market share.”*¹⁷ Irish Life Health acquired both Aviva Health and GloHealth in 2016.¹⁸

¹⁴ Except in very limited circumstances, and subject to any applicable waiting periods before health insurance cover takes effect. This policy does not apply to certain “Restricted Membership Undertakings”.

¹⁵ The Minimum Benefit Regulations, established under the Health Insurance Act, 1994 (Minimum Benefit) Regulations 1996, detail prescriptive schedules of treatments and minimum amounts of cover that private health insurance providers are required to offer for a wide range of medical treatments, as well as fees for treatments in public hospitals. For example, at present, private health insurers that provide cover for in-patient hospital services must provide a minimum level of cover in respect of day care/in-patient treatment, hospital out-patient treatment, maternity benefits, convalescence, psychiatric treatment, substance abuse, and the minimum accommodation level is semi-private in a public hospital. Minimum Benefit also requires private health insurance policies to cover some out-patient consultation benefits.

¹⁶ In the State, risk equalisation involves health insurance providers receiving higher premiums from members of less healthy groups of the population and the higher part of the premium arising for these customers is paid in the form of Risk Equalisation Credits. The Risk Equalisation Credits payable in respect of premiums varies on the basis of age, gender and the level of cover, and are funded by a stamp duty payable by health insurance providers for each person that they insure, i.e., Community Rating Health Insurance Stamp Duty. The Risk Equalisation Credits and Community Rating Health Insurance Stamp Duty are administered by the health insurance provider and Risk Equalisation Fund. Section 11 (D) of the Health Insurance (amendment) Act 2012 provides that the HIA establish, administer and maintain a Risk Equalisation Fund, which supports the community rated health insurance market by providing age-related health credits for those over the age of 60 to help them meet their higher claims costs.

¹⁷ Page 16 of the 2015 HIA Annual Report:

<http://www.hia.ie/sites/default/files/57311%20HIA%20Annual%20Report%20English%20WEB.pdf>.

¹⁸ On 8 July 2016, the European Commission cleared the proposed transaction whereby Irish Life Group Limited would acquire sole control of GloHealth Financial Services Limited and Aviva Health Insurance Ireland Limited. For more information, please see <https://publications.europa.eu/en/publication-detail/-/publication/f0b8e7e3-c2f5-46b3-8ea8-4627bdaa1bbf/language-en>



Market Definition

Overlap in the activities of the parties

38. As a result of the proposed transaction, Vhi will be active fully both in the provision of private health insurance in the State and, through acquiring the remaining 50% interest in the Vhi SwiftCare clinics business, in the provision of primary care services to consumers (who may or may not have private health insurance).
39. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission has followed precedent and assessed the likely impact of the proposed transaction in two potential markets.

A. Upstream Relevant Product and Geographic Market

40. In its 2007 report, the Authority stated that healthcare can be divided into three broad categories: (a) primary healthcare, (b) secondary healthcare, and (c) tertiary healthcare.¹⁹ Primary healthcare refers to “*healthcare provided by GPs, dentists and other healthcare workers who work as a first port of call for patients*”. In contrast, secondary healthcare refers to “*medical treatment carried out in hospitals*” while tertiary healthcare refers to “*nursing homes, convalescence etc.*”
41. As described above, the *Vhi SwiftCare clinics* provide primary care services which comprise the assessment and treatment of patients who have suffered unexpected minor illness or injury that does not pose a serious danger to their health but requires urgent treatment.
42. The Commission considered the possibility that the relevant product market for the provision of primary care services may be defined narrowly by each type of medical condition (e.g., break or sprain, minor injury, minor illness, etc.). The parties state in the notification that medical conditions are classified under one of the following five

¹⁹ See paragraph 2.4 of the Authority’s report entitled “*Competition in the Private Health Insurance Market*” which can be accessed at <http://www.ccpic.ie/sites/default/files/documents/Competition%20in%20the%20Private%20Health%20Insurance%20Market%20-%20Full%20Report.pdf>



categories depending on the seriousness and urgency of the condition presented by a patient:²⁰

- Category 1 - patients in need of immediate treatment for the preservation of life;
- Category 2 - seriously ill or injured patients whose lives are not in immediate danger;
- Category 3 - patients with serious problems but in a stable condition;
- Category 4 - patients not in immediate danger; and
- Category 5 - patients whose conditions are not accidents or emergencies.²¹

43. Of the five categories of medical conditions listed in paragraph 42 above, categories 4 and 5 comprise medical conditions that are likely to require only primary care services for their treatment. Medical conditions falling under categories 1 and 2 require secondary healthcare treatment.²² Medical conditions falling under category 3 will most likely require both primary and secondary healthcare services for their treatment.

44. The parties state in the notification that over 90% of patients who attend the *Vhi SwiftCare clinics* fall into categories 4 and 5. Less than 1% of patients who attend the *Vhi SwiftCare clinics* are classified under categories 1 and 2.

45. An internal document provided to the Commission by Vhi entitled “[...]” dated June [...] details the results of an online survey carried out by Vhi of users of the *Vhi SwiftCare clinics* during [...].²³ Over [75-85] % of respondents cited one or more of the following three reasons for using a *Vhi SwiftCare clinic*: (a) [...], (b) [...], and/or (c) [...]. This is consistent with the parties submission outlined in paragraph 44 above. In general, all of

²⁰ This is the triage category which is assigned to a patient as a result of an initial assessment by medical or nursing staff in an A&E department. The triage category is used to determine the patient’s priority for treatment and to inform the patient of their waiting time.

²¹ The parties state in the notification that based on an analysis carried out in Tallaght Hospital’s A&E department during the period January to June 2011, approximately 1% of patients were triaged as category 1, 14% as category 2, 56% as category 3, 24% as category 3 and 3% as category 5.

²² It is possible that patients with medical conditions in these two categories may, as a first port of call, present themselves to a primary care services provider for treatment before being sent to hospital for secondary healthcare treatment.

²³ Vhi e-mailed the survey to 2,449 users of the *Vhi SwiftCare clinics*; 545 valid responses were received.



these medical conditions can also be treated by GPs, out-of-hours medical clinics, and in A&E departments in public and private hospitals.²⁴

46. For the purpose of assessing the likely competitive impact of the proposed transaction, the Commission does not need to come to a definitive view on the precise relevant upstream product market. The Commission's conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant upstream product market is narrow (e.g., separate markets for the provision of primary care services for different types of medical conditions) or broader (e.g., the provision of primary care services for all types of medical conditions). In order to determine, however, whether the proposed transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the potential upstream market for the provision of primary care services (including primary care provided by hospitals, clinics and individual medical professionals).
47. With respect to the relevant geographic market, the parties state the following in the notification:

“given the types of medical conditions treated by the Vhi SwiftCare clinics, the parties believe that the geographic scope of any relevant product market must be local...the narrowest relevant market on which the Vhi SwiftCare clinics may be said to operate, for the purposes of the proposed transaction, is the provision of primary care services in local areas within (a) a radius of 10 miles (16 kilometres) from each of the Dundrum and Swords clinics with a natural delineation in Dublin's city centre in each instance, and (b) a radius of 19 miles (30 kilometres) from the Cork city clinic.”

48. In support of this view, the parties in the notification cite the results of a catchment area analysis (detailed in an internal document provided to the Commission by Vhi entitled “[...]” dated [...] conducted by Vhi based on the addresses of customers who

²⁴ The parties state in the notification that a bone break or fracture is a potential exception since, although it will be treated by a physician in the first instance, special diagnostic equipment (e.g., x-ray equipment) is required which is unlikely to be available in a GP surgery or out-of-hours medical clinic.



attended a *Vhi SwiftCare clinic* during the period [...].²⁵ [70-80]% of all visitors to the *Vhi SwiftCare clinic* in Dundrum live within a 10 mile (16 km) radius of the clinic. Similarly, [75-85] % of all visitors to the *Vhi SwiftCare clinic* in Swords live within a 10 mile (16 km) radius of the clinic. The parties state in the notification that *“notwithstanding the fact that a 10 mile radius catchment area for each Vhi SwiftCare clinic in Dublin stretches to the opposing side of the city, it is highly unlikely that any customer based on the northside of Dublin would travel to the Vhi SwiftCare clinic [in] Dundrum for primary care, and vice versa for those living on the southside of the city in travelling to the Vhi SwiftCare clinic in Swords.”*²⁶

49. In the case of the *Vhi SwiftCare clinic* in Cork, the parties state in the notification that *“the [...] of its customers live within 15 to 19 miles(25 to 30 kilometres) of the clinic...Given that there is significantly less of an urban/rural divide in Cork (when compared with Dublin), Vhi believes that the radius of the Cork clinic’s catchment area is significantly wider than that of Dundrum or Swords, stretching to approximately 19 miles/30 kilometres from the clinic.”*²⁷

50. The Commission agrees with the views of the parties that the potential upstream primary care services market in which the *Vhi SwiftCare clinics* compete is local.²⁸ In order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to the potential upstream market for the provision of primary care services in each of the following three geographic areas:

- The geographic area within a radius of 10 mile (16kms) from the *Vhi SwiftCare clinic* in Balally, Dundrum, Dublin 14 (limited to south of the River Liffey);

²⁵ The parties state in the notification that *“There have not been any significant demographic changes in Dublin and Cork since then that might have an impact on this detailed analysis.”*

²⁶ The parties state in the notification that *“the Vhi customer catchment analysis...suggests that the vast majority of visits to the Vhi SwiftCare clinic in Dundrum come from south Dublin, and likewise the vast majority of visits to the Vhi SwiftCare clinic in Swords come from north Dublin.”*

²⁷ The parties state in the notification that *“The sample number of visits for this analysis is considerably smaller than that for the Dundrum and Swords clinics. This is due to the fact that the Vhi SwiftCare clinic in Cork had only opened a short time prior to Vhi conducting [its] analysis. Nevertheless, Vhi is of the view that the sample is representative of the Cork city clinic’s range of visitors.”*

²⁸ The results of an online survey carried out by Vhi of users of the Vhi SwiftCare clinics during April and May 2015 (see paragraph 52 above) indicates that 41% of respondents chose to attend because of their proximity to a Vhi SwiftCare clinic.



- The geographic area within a radius of 10 mile (16kms) from the *Vhi SwiftCare clinic* in Airside Retail Park, Swords, Co. Dublin (limited to the north of the River Liffey); and,
- The geographic area within a radius of 15 mile (25kms) from the *Vhi SwiftCare clinic* in City Gate, Mahon, Co. Cork.²⁹

B: Downstream Relevant Product and Geographic Market

51. The European Commission has, in previous decisions, distinguished between three broad categories of insurance: life assurance, non-life insurance and reinsurance.³⁰ Health insurance is one type of non-life insurance. In its 2016 merger decision concerning a concentration with nexus in the State, the European Commission concluded that *“health insurance does not compete with other types of non-life insurance in Ireland because it is not substitutable from a demand or supply side perspective...it seems reasonable to treat, for the purpose of this case, [the] health insurance market in Ireland as a distinct market.”*³¹
52. The Authority has concluded in a previous merger determination that private health insurance competes in a different product market to other non-life insurance products.³² In coming to this conclusion, the Authority referenced Appendix 2 of its 2007 report entitled *“Competition in the Private Health Insurance Market”* which contains a detailed analysis of relevant market definition.³³ The Authority concluded that, for the purpose of its report, the relevant market is *“open enrolment private health insurance policies that offer indemnity for in-patient hospital services with varying levels*

²⁹ Travel times are normally used when assessing distance. Therefore, for the same travel time, the distance between two locations is normally longer in rural areas than in urban areas. This explains why the catchment area is larger for the Vhi SwiftCare clinic in Co. Cork than for the two Vhi SwiftCare clinics in Dublin

³⁰ See, for example, paragraph 10 of the European Commission’s merger decision in Case No COMP/M.8010 *Irish Life/Aviva Health/GloHealth*. This can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m8010_102_3.pdf.

³¹ See paragraphs 10-23 of the European Commission’s merger decision in *M.8010 – Irish Life/Aviva Health/GloHealth* for an analysis of the relevant product market. This can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m8010_102_3.pdf.

³² See paragraph 6 of the Authority’s merger Determination in *M/08/013 – Hibernian/Vivas* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notice/m08013-hibernianvivas>.

³³ This report can be accessed at <http://www.ccpc.ie/sites/default/files/documents/Competition%20in%20the%20Private%20Health%20Insurance%20Market%20-%20Full%20Report.pdf>



of hospital accommodation in Ireland.” In its report, this is referred to by the Authority as *“the market for private health insurance.”*

53. As noted above, the European Commission concluded in its 2016 merger decision that *“[the] health insurance market in Ireland [is] a distinct market.”* Notwithstanding the different language used in its 2007 report when defining the relevant product market, the Authority ultimately reached the same conclusion that there is a separate product market for private health insurance. The Commission sees no reason to depart from these views for the purpose of assessing the likely competitive impact of the proposed transaction. Thus, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact on competition by reference to the downstream market for the provision of private health insurance.
54. With respect to the relevant geographic market, the European Commission, in its 2016 merger decision, concluded that the market for private health insurance is national in scope. The Authority reached the same conclusion in its 2007 report on the private health insurance market. The Commission sees no reason to depart from these views for the purpose of assessing the likely competitive impact of the proposed transaction.
55. In conclusion, the Commission has assessed the likely competitive impact of the proposed transaction by reference to the downstream market for the provision of private health insurance in the State.

Competitive Analysis

56. There is a vertical relationship between Vhi and the Target in the State. Vhi is engaged downstream in the provision of private health insurance in the State while the Target, through its 50% interest in the *Vhi SwiftCare clinics*, is involved upstream in the provision of primary care services. Therefore, the proposed transaction is not a simple joint- to-sole control acquisition, it is also a vertical merger.
57. Two theories of competitive harm were assessed by the Commission to establish whether the proposed transaction raises vertical competition concerns, namely (a) input foreclosure and (b) customer foreclosure.



Input Foreclosure

58. Currently, the *Vhi SwiftCare clinics* are open to all patients for a fee,³⁴ irrespective of whether or not they have private health insurance.³⁵ Following implementation of the proposed transaction, however, it is Vhi's intention to restrict access to *Vhi SwiftCare clinics* exclusively to Vhi's private health insurance policyholders (the "SwiftCare Exclusivity"). As a result of the SwiftCare Exclusivity, customers of rival private health insurers and patients with no private health insurance will no longer be able to attend the *Vhi SwiftCare clinics* at the same level as pre-transaction.
59. In its assessment of the proposed transaction, the Commission considered whether the proposed transaction would therefore provide Vhi with the ability and incentive to foreclose rival private health insurers from the upstream market of the provision of primary care services by excluding non Vhi private health insurance policy holders from accessing the *Vhi SwiftCare clinics*.³⁶
60. Competitors of Vhi contacted by the Commission expressed the view that they would be disadvantaged if their customers were not allowed to use the services of the *Vhi SwiftCare clinics* post-transaction. This is because reimbursement for using the *Vhi SwiftCare* clinics would no longer be a benefit under their health insurance policies. Competitors of Vhi expressed a concern that such a scenario post-transaction might have two possible negative effects: (a) it might make it harder for Vhi's competitors to attract private health insurance customers to switch away from Vhi, and (b) some customers might decide to switch to Vhi in order to have the option of attending the *Vhi SwiftCare clinics* should the need arise.
61. Paragraph 5.10 of the Guidelines for Merger Analysis states the following:

³⁴ For information concerning the current fee structure in the Vhi SwiftCare clinics, see <https://www.vhi.ie/swiftcare>.

³⁵ Customers with private health insurance who attend a Vhi SwiftCare clinic are reimbursed, in full or partially, by their private health insurance provider if their health insurance policy covers attendance at the Vhi SwiftCare clinics.

³⁶ Paragraphs 5.10-5.13 of the Commission's Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the "Guidelines for Merger Analysis"), provide a detailed description of input foreclosure. See http://www.cpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf



“Competition concerns may arise from input foreclosure only when the merged entity has market power in the upstream market.”

62. For the following reasons, the Commission considers that the proposed transaction is unlikely to give Vhi the ability to foreclose rival private health insurers from accessing primary care services in the State, post-transaction:

- There are a large number of alternative primary care service providers currently active in each of the catchment areas of the three *Vhi SwiftCare clinics*. These include GPs, the A&E departments of public and private hospitals, sports injury clinics, minor injury clinics and primary care centres. Therefore, if Vhi were to implement its SwiftCare Exclusivity, post-transaction, customers of rival private health insurers can visit alternative primary care service providers and seek reimbursement accordingly;
- The total number of patients attending each of the *three Vhi SwiftCare clinics* in any given year is small relative to the total number of customers located in each of the three catchment areas who have private health insurance. This indicates that the *three Vhi SwiftCare clinics* are not significant players in the primary care services market in these local areas³⁷;
- Access to *Vhi SwiftCare clinics* is only one of many benefits that customers consider when choosing their private health insurer. The vast majority of private health insurance policy holders in the State do not have cover for attending the *Vhi SwiftCare clinics*;³⁸ and
- There are no significant barriers to rival private health insurers either introducing their own clinics or seeking to enter into arrangements with other health facilities to provide a similar service to their customers.

63. Each of the above points is discussed in more detail below.

³⁷ Be able to attend Vhi SwiftCare clinic is an option that Health insurance customers are buying.

³⁸ Not all customers are located in the Vhi SwiftCare Clinics' catchment areas.



Alternative Primary Care Service Providers Active in each Catchment Area

64. The parties state in the notification that each of the three *Vhi SwiftCare clinics* compete with a wide variety of primary care service providers in the catchment areas where they operate, in particular:
- GPs and out-of-hours services;
 - A&E departments in public hospitals; and
 - A&E departments in private hospitals.
65. Results of a series of *Vhi “SwiftCare Satisfaction”* and *“SwiftCare Fieldwork”* surveys carried out by *Vhi* of patients who attended *Vhi SwiftCare clinics* between 2012 and 2016,³⁹ indicate that the percentage of *Vhi SwiftCare clinic* customers who considered other treatment options before using the *Vhi SwiftCare clinics* increased from [60-70]% in 2012 to [75-82]% in 2016. Alternative treatment options cited in these surveys include A&E departments in public hospitals, GPs, out-of-hour GPs, and other private emergency care clinics. The results of these surveys also indicate that at least [30-40]% of *Vhi SwiftCare* customers stated that they would consider using A&E departments in public hospitals while [25-35]% stated that they would consider their own GP before visiting a *Vhi SwiftCare clinic*.
66. Third parties have informed the Commission that GPs and the A&E departments in public and private hospitals are credible alternatives to using the *Vhi SwiftCare clinics*. These third parties however expressed the view that it can be more convenient for a patient to use a *Vhi SwiftCare clinic* because treatment times are generally much shorter than they would be in the A&E department of a public hospital.
67. Table 1 below lists the main primary care service providers currently active in each of the catchment areas of the three *Vhi SwiftCare clinics*.

³⁹ SwiftCare Satisfaction (June 2012, Version 1); SwiftCare Satisfaction (June 2013, Version 2); SwiftCare Satisfaction (June 2014, Final); SwiftCare 2015 fieldwork May 2015, Version 1); *Vhi SwiftCare* 2016 fieldwork to June 2016 Version 1.



Table 1: The Main Primary Care Service Providers in the catchment areas of the three Vhi SwiftCare clinics

Vhi SwiftCare Clinic	Public Hospitals (A&E)	GPs	Private Hospitals (A&E)	Out-of-Hours GP Services
Dundrum, Co. Dublin	<ol style="list-style-type: none"> 1. Crumlin 2. Eye & Ear 3. St. Columcille's 4. Mater 5. St. James's 6. St Michael's 7. St Vincent's 8. Tallaght 9. Temple Street 	Approx. 426 GPs ⁴⁰	<ol style="list-style-type: none"> 1. Beacon 2. Blackrock 3. Mater Private 4. Hermitage 	<ol style="list-style-type: none"> 1. Dub Doc, St James 2. DL doc, Sandycove 3. East Doc, St Vincent's 4. Luke Doc, St Luke's
Swords, Co. Dublin	<ol style="list-style-type: none"> 1. Beaumont 2. Connolly 3. Eye & Ear 4. Mater 5. St. James's 	Approx. 348 GPs ⁴¹	<ol style="list-style-type: none"> 1. Mater Private 2. Hermitage 	<ol style="list-style-type: none"> 1. Dub Doc, St James 2. Swords Health Centre ("HC") 3. North Strand HC 4. Hartstown HC 5. North Doc Medical Services 6. Coolock HC 7. Ballymun HC

⁴⁰ Including out-of-hour GPs.

⁴¹ Including out-of- hour GPs.



Cork	<ol style="list-style-type: none"> 1. Cork University Hospital 2. Mercy University Hospital 3. South Infirmary Victoria Hospital 	Approx. 314 GPs ⁴²	<ol style="list-style-type: none"> 1. Mater Private 2. Bon Secours 	1. South Doc ⁴³
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Source: The Commission based information provided by the parties.

68. One third party expressed the view to the Commission that the *Vhi SwiftCare clinics* are popular with patients who have suffered a sports-related injury. The Commission considers, however, that there are a number of alternative sports clinics currently active in Co. Dublin and Co. Cork (e.g., Sports Surgery Clinic, Northwood Avenue, Santry, Dublin 9; Blackrock Physio & Sports Injury Clinic, Blackrock, Co Dublin; Carysfort Clinic, Blackrock, Co. Dublin; Cork Sports Injury Clinic, Ballymah, Co. Cork; and the Bon Secours Hospitals also have a sports clinic). Furthermore, most private hospitals have a sports injury clinic while most public hospitals have a minor injuries unit. Therefore, the Commission considers that there are a sufficient number of alternative primary care service providers available for patients who are seeking treatment for a sports-related injury in the catchment areas where the *Vhi SwiftCare clinics* are located.

69. In the case of some injuries or illnesses such as a bone break or fracture, GPs and out-of-hours GPs may not be a credible alternative to a *Vhi SwiftCare clinic*.⁴⁴ There are, however, a number of alternative primary care service providers available which can deal with such injuries and illnesses. Table 1 above illustrates that there are 13 public and private hospitals located in the catchment area of the *Vhi SwiftCare clinic* in Dundrum. Similarly, there are eight public and private hospitals located in the catchment area of the *Vhi SwiftCare clinic* in Swords and five public and private hospitals located in the catchment area of the *Vhi SwiftCare clinic* in Cork.

⁴² Including out-of- hour GPs.

⁴³ South Doc covers various areas in Cork city and Co. Cork such as Bandon, Blackpool, Fermoy, Kinsale, Millstreet, Mallow, Middleton, and Youghal.

⁴⁴ According to information provided by Vhi, approximately 32% of patients who presented at Vhi SwiftCare clinics sought medical treatment for a bone break or sprain.



70. Paragraphs 64 to 69 clearly illustrate that the proposed transaction will not give Vhi market power in the upstream primary care services market to enable it exclude its rival private health insurers from accessing this market.

Total Number of Patients Attending the Vhi SwiftCare Clinics is small

71. The total number of attendances at each of the three *Vhi SwiftCare clinics* is small relative to the total number of customers located in each of the three catchment areas who have private health insurance. Table 2 below sets out the annual number of attendances at each of the three *Vhi SwiftCare clinics* during the period 2011-2015.

Table 2: Total Number of Attendances at Vhi SwiftCare Clinics, 2011-2016 (year to 30 June)⁴⁵

Vhi SwiftCare Clinic	2011	2012	2013	2014	2015	2016
<i>Dundrum, Co. Dublin</i>	[...]	[...]	[...]	[...]	[...]	[...]
<i>Swords, Co. Dublin</i>	[...]	[...]	[...]	[...]	[...]	[...]
<i>Cork</i>	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]

Source: The Commission based on information provided by the parties.

72. The total number of attendances at each of the three *Vhi SwiftCare clinics* increased over the period 2013-2016. An internal document provided to the Commission by Vhi entitled “[...]” dated [...] contains the following statement: “[...]”
73. However, the total number of attendances at *Vhi SwiftCare clinics* in 2016 [...] represents less than [0-5]% of the total number of customers in the State who have private health insurance. In Co. Dublin, approximately [5-10]% of all private health insurance policy holders attended the two *Vhi SwiftCare clinics* located in Co. Dublin in 2016. Similarly, in Co. Cork, approximately [0-5]% of all private health insurance policy holders attended the *Vhi SwiftCare clinic* in 2016.⁴⁶ The Commission considers that the

⁴⁵ These figures include repeat visits by patients and thus overstate the total number of patients who attended the Vhi SwiftCare clinics during the period 2011-2016.

⁴⁶ These estimates were calculated by the Commission using population statistics for (a) Co. Dublin, and (b) Co. Cork in 2016. For example, the total population of Co. Dublin in 2016 (1.27 million, based on figures listed by the Central Statistics Office) accounts for 26.7% of the total population in the State in 2016 (4.76 million). Thus, of the 2.1 million private health insurance policy holders



fact that the total number of attendances at the *Vhi SwiftCare clinics* represents such a small proportion of the total number of customers who have private health insurance in the State indicates that it would not be possible for Vhi to foreclose rival private health insurers currently active in the State.

74. Table 3 below sets out the estimated percentage of Vhi private health insurance policy holders located within the catchment area of each of the three *Vhi SwiftCare clinics* who attended *Vhi SwiftCare clinics* in 2016.⁴⁷ These percentage figures are calculated based on information provided by Vhi.⁴⁸

Table 3: Estimated percentage of Vhi policy holders who live within the catchment area of the three Vhi SwiftCare clinics and who attended a Vhi SwiftCare in 2016

Vhi SwiftCare Clinic	Number of Vhi policy holders	Attendance at Vhi SwiftCare by Vhi customers	Percentage attendance at Vhi SwiftCare Clinics
Dundrum, Co. Dublin	[...]	[...]	[10-15]%
Swords, Co. Dublin	[...]	[...]	[10-15]%
Cork	[...]	[...]	[10-15]%
Total	[...]	[...]	[10-15]%

Source: The Commission based on information provided by the parties.

75. Table 3 above illustrates that on average approximately [10-15]% of Vhi's private health insurance policy holders that live within the catchment area of each of the three *Vhi SwiftCare clinics* attended a *Vhi SwiftCare clinic* in 2016. This indicates that Vhi's ability to foreclose the upstream private health insurance market in the State is constrained by the fact that a small number Vhi policy holders attend the *Vhi SwiftCare clinics*.

in the State, it can be extrapolated that approximately 560,700 are located in Co. Dublin, of which approximately [5-10]% attended a *Vhi SwiftCare clinic* in Co. Dublin in 2016.

⁴⁷ Competitors of Vhi informed the Commission that they do not capture information regarding attendance numbers at Vhi SwiftCare clinics or others by their private health insurance customers.

⁴⁸ The number of Vhi private health insurance customers that attended the Vhi SwiftCare clinics in 2016 is based on Vhi's estimate that around [60-70]% of its Vhi SwiftCare patients are Vhi private health insurance policy holders. The Commission notes, however, that some private health insurance policy holders may attend a Vhi SwiftCare clinic close to their work place rather than their home.



76. Paragraphs 71 to 75 clearly illustrate that the proposed transaction will not give Vhi market power in the upstream primary care services market to enable it to foreclose rival private health insurers from accessing this market.

Access to Vhi SwiftCare Clinics is one of many factors when choosing a private health insurance product

77. The Commission considers that having the option of accessing the *Vhi SwiftCare clinics* is only one of many factors that customers consider when choosing a private health insurer. Customers do consider other significant factors including: the price of individual private health insurance policies, access to hospitals, access to specific types of primary care facilities, accommodation type, whether there is a contribution for day-to-day expenses and customer services.
78. Not all private health insurance policies provide coverage for visiting GPs and consultants. As mentioned in paragraph 29 and 32 above, claims for attending at the *Vhi SwiftCare clinics* are made under the out-patient day-to-day expenses for visiting GPs and consultants. Furthermore, the total level of reimbursement by private health insurers to patients attending Vhi SwiftCare clinics accounts for a small proportion of all reimbursements to patients who have private health insurance in the State.⁴⁹ . In fact, rival private health insurers were unable to provide the Commission of a breakdown of information which shows the number of their health insurance policy holders who attended Vhi SwiftCare Clinics. This illustrates that access to Vhi SwiftCare clinics is only one of many other factors that customers consider when considering the coverage of a private health insurance policy.
79. The Commission therefore considers that paragraphs 77 and 78 further illustrate that the proposed transaction will not give Vhi market power in the upstream primary care services market to enable it exclude its rival private health insurers from accessing this market.

⁴⁹ Vhi informed the Commission that its total pay-out for all primary care services was €[...] million in 2016. This figure includes all out-patient consultant claims. Claims with respect to Vhi SwiftCare clinics are only part of this figure. Compared to around €[...] billion paid out by Vhi in 2016 under the Vhi Hospital Schemes (claims for the cost of attending public and private hospitals), this is a small amount.



No significant barriers to enter provision of Primary Care Services market by Private Health Insurers

80. For completeness, the Commission investigated the extent to which rival private health insurers could seek to enter the primary care services market.
81. The parties state in the notification that a Vhi SwiftCare clinic type primary care centre can be easily replicated by a rival private health insurer with the initial capital expenditure in setting up such a facility the only prerequisite. Furthermore, Vhi expressed the view that it may be possible for a rival private health insurer to lease and fit out premises and set up equipment/resources for a primary care services centre within a six month period.
82. The Commission considers that there are no regulatory barriers that will prevent or restrict rival private health insurers from entering the primary care services sector in the State. Private health insurers could enter the primary care services sector by either:
- Setting up a new primary care services centre (on their own or in partnership with other companies); or
 - Using an existing primary care services facility (through a partnership agreement or in the form of a joint venture).
83. Paragraph 6.19 of the Commission's Guidelines for Merger Analysis states the following: *"With new entry, expansion by rivals must be timely, likely and sufficient to prevent an SLC. While expansion that is effective within two years is normally considered timely..."*⁵⁰
84. An internal document provided to the Commission by Vhi entitled "[...]" dated [...] indicates that it will take two to three years to build three [new] primary care centres similar to the existing three *Vhi SwiftCare clinic* and at a total cost of €[...]million. This suggests a rival private health insurer could build a new primary care services centre, similar to a typical *Vhi SwiftCare clinic*, within [...] for an approximate cost of €[...] million.

⁵⁰ See http://www.ccpic.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf



85. The Commission has found that a quicker and less costly way for a rival private health insurer to enter the primary care services sector in the State may be to partner with an existing private hospital or primary care services centre. The parties have expressed the view to the Commission that it may take one to three months for a private health insurer to negotiate an arrangement with an existing primary care services centre or hospital depending on the nature of the arrangement.
86. The Commission considers that the barriers for a rival private health insurer to replicate the Vhi SwiftCare business model are relatively low and surmountable. This further supports the view that the proposed transaction will not give Vhi market power in the upstream primary care services market to enable it exclude its rival private health insurers from accessing this market.
87. In conclusion, the Commission considers that the proposed transaction will not provide Vhi with the ability to foreclose its rival private health insurers from accessing the upstream primary care services market in the State.

Customer Foreclosure

88. The Commission also considered whether the proposed transaction would provide Vhi with the ability and incentive to foreclose upstream primary care service providers which compete with the *Vhi SwiftCare clinics* by, for example, restricting its private health insurance policy holders from using rival primary care services.⁵¹
89. Paragraph 5.17 of the Commission's Guidelines for Merger Analysis states that: "*the full effects of customer foreclosure may take time to occur. For example, upstream competitors might exit the market as a result of lost sales revenue to the merged entity.*"⁵²
90. Paragraph 5.15 of the Commission's Guidelines for Merger Analysis further states the following:

⁵¹ Paragraphs 5.10-5.13 of the Commission's Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the "Guidelines for Merger Analysis"), provide a detailed description of input foreclosure. See http://www.ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf

⁵² Paragraphs 5.14-5.17 of the Guidelines for Merger Analysis provide a detailed description of customer foreclosure. See http://www.ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf



“The ability of a merged entity to harm an upstream competitor through customer foreclosure depends on a number of factors. For example, harm to competitors is more likely if the merged entity is a significant customer and hence a significant source of sales revenue for the upstream competitor than if the merged entity is but one of many customers.”

91. Vhi has expressed the view to the Commission that it has no incentive to restrict its health insurance policy holders from attending rival primary care services centres. Vhi submits that such a strategy would adversely impact its private health insurance business since it does not have primary care services centres across the State.
92. For the following reasons, the Commission considers that the proposed transaction does not give Vhi the ability or incentive to foreclose competitors in the provision of primary care services in the State:
 - As described in paragraph 28 above, the government is the biggest purchaser of primary care services in the State. Furthermore, as stated at paragraph 34 above half of the population in the State does not have private health insurance. The estimated total number of private health insurance policy holders in all three catchment areas is approximately 693,710, which is approximately one third of the total number of private health insurance policy holders in the State.⁵³ Thus, approximately [60-70]% of private health insurance policy holders in the State would be unaffected post-transaction by Vhi making access to the *Vhi SwiftCare clinics* exclusive to Vhi private health insurance policy holders. Therefore, the Commission considers that although Vhi has a significant market share in the private health insurance market, there are a large number of customers (including those who have private health insurance and those who do not) who will be unaffected by any move to SwiftCare Exclusivity by Vhi post-transaction. Therefore, the proposed transaction is unlikely to give Vhi the ability to foreclose competitors in the provision of

⁵³ 33% is estimated on the basis that the total number of private health insurance policy holders in the State is approximately 2.1 million.



primary care services in the State. The three *Vhi SwiftCare clinics* operate in localised markets in Dublin and Cork. Information obtained by the Commission shows that approximately 66% of Vhi's private health insurance policy holders live outside the catchment areas of the *Vhi SwiftCare clinics* and thus will be unaffected by any move to SwiftCare Exclusivity by Vhi post-transaction.⁵⁴ Therefore, Vhi's private health insurance policy holders located outside the three catchment areas will continue to use alternative primary care services. The proposed transaction is therefore unlikely to give Vhi the ability to foreclose rival primary care services providers in the State.

- Private health insurance policy holders are free to switch between different private health insurers. If, post-transaction, Vhi were to prevent its private health insurance policy holders from using alternative primary care services providers, it is likely that it would lose customers to competitors in the private health insurance market who currently allow their own customers to attend a wide range of primary care service providers in the State. Therefore, this further suggest that Vhi will have little or no incentive to attempt to foreclose rival primary care services providers.

93. In the light of the above, the Commission considers that the proposed transaction will not give Vhi the ability or incentive to foreclose its rivals in the upstream primary care services market. There will remain a sufficient number of customers for primary care services providers to compete for. Members of rival private health insurers will continue to visit alternative primary care service providers post-transaction.

94. In conclusion, the Commission considers that the proposed transaction will not provide Vhi with the ability and incentive to foreclose upstream primary care service providers which compete with the *Vhi SwiftCare clinics*.

Potential Impact of the SwiftCare Exclusivity on Patients

⁵⁴ This number is calculated based on the information that there are approximately [...] Vhi private health insurance members located within the catchment areas of the three Vhi SwiftCare clinics and the total number of Vhi customers are more than[...].



95. The Act requires the Commission to determine whether the proposed transaction would result in a substantial lessening of competition. Paragraph 1.9 of the Commission's Guidelines for Merger Analysis states the following:

*"In applying the SCL test the Authority analyses not only the effect on the price of affected products but also other effects that can impact on consumers, such as changes to output (quantity), quality, consumers choice and innovation (e.g., development of the new products or enhancements to existing products)."*⁵⁵

96. Post-transaction, the Commission was concerned about the impact SwiftCare Exclusivity would likely to have on choice of primary care services providers available to non-Vhi private health insurance policy holders who live within and outside of the catchment areas of the three *Vhi SwiftCare clinics*. As shown in Table 1 and discussed in from paragraph 64 to 69 above, the Commission's investigation has found that all patients within the catchment areas of the three *Vhi SwiftCare clinics* will continue to have access to alternative primary care service providers.
97. In addition, Vhi Investment DAC informed the Commission that it will continue to treat all patients who present themselves at any of the three Vhi SwiftCare clinics with urgent medical needs regardless of whether or not they are Vhi private health insurance policy holders. Vhi submits that urgent medical needs and medical emergencies would include (among other things): *"active bleeding, chest pain, signs of stroke, signs of meningitis, breathlessness, listlessness in a child."*⁵⁶
98. The Commission was also concerned about the potential effect on all patients due to the lack of sufficient information about the SwiftCare Exclusivity. During the investigation, the Commission engaged with Vhi to ensure that it addressed this concern.

⁵⁵ See <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines.pdf>

⁵⁶ Vhi Investments DAC letter to the Commission dated 12 May 2017.



99. In response, Vhi Investment DAC informed the Commission that it will provide sufficient information and lead time to ensure that patients are aware of the SwiftCare Exclusivity and how they are likely to be affected. Vhi Investment DAC submitted:

- *“In designing its communications approach, patient/customer needs to be central to Vhi’s planning. Vhi plans to maximise awareness of the proposed change in the most widespread manner possible to minimise disruption for patients. Vhi will give appropriate notification of the change and take all due care to time communications so as to maximise understanding of the message.”*

⁵⁷

- *“In practice,...following an appropriate notice period and a significant communications and public information campaign, a customer without Vhi insurance who presents at a Vhi Swiftcare clinic will be given information as to alternative care providers where they can receive treatment and will not be entitled to services in Vhi SwiftCare clinics after a particular date...”⁵⁸*

100. On the basis that Vhi will (i) provide sufficient information to all patients about the changes that are likely to occur and (ii) provide consumers with sufficient lead time, the Commission considers that the likely impact of the SwiftCare exclusivity on patients would be minimised.

Conclusion

101. In the light of all of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

102. Clause [...] of the SPA restrictive covenants on the seller, the Vendor’s group and the covenanters [...] and [...], in particular non-compete and non-solicitation obligations. The duration of these restrictive covenants does not exceed the maximum duration

⁵⁷ Letter of 28 April 2017 from legal representatives of Vhi to the Commission.

⁵⁸ Letter from Vhi Investment DAC to the Commission dated 10 May 2017.



acceptable to the Commission and the Commission considers that these restraints are directly related and necessary to the implementation of the proposed transaction.⁵⁹

⁵⁹ In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2002). For more information see [http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed transaction, whereby Vhi Investments DAC, an indirectly wholly-owned subsidiary of the Voluntary Health Insurance Board, which currently has a 50% interest in three Vhi SwiftCare clinics, would acquire sole control of Aras Slainte Limited, which currently holds the remaining 50% interest in the aforementioned Vhi SwiftCare clinics, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Patrick Kenny
Member
Competition and Consumer Protection Commission