



## DETERMINATION OF MERGER NOTIFICATION M/19/042 – PORTLON (PARMA)/GALWAY CLINIC

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### Section 21 of the Competition Act 2002

**Proposed acquisition of joint to sole control by the Portlon Trust of Marpole Limited.**

**Dated 24 April 2020**

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#### **Introduction**

1. On 13 December 2019, 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 acquisition, whereby the Portlon Trust, through its subsidiary Parma Investments Limited (“Parma”), would acquire, from Mr Ken Fennell of Deloitte Ireland LLP (“Deloitte”) in his capacity as receiver over the assets of Blackrock Medical Partners Limited (“BMP”), BMP’s shareholding, and thus sole control, of Marpole Limited (“Marpole”) (the “Proposed Transaction”).

#### **The Proposed Transaction**

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 12 December 2019 between Parma, Mr Ken Fennell of Deloitte (in his capacity as receiver over the assets of BMP) and BMP (the “SPA”), whereby Parma would purchase BMP’s 25% shareholding in Marpole from Mr Ken Fennell. Marpole owns 100% of the issued share capital of Galway Clinic Doughiska Limited (“Galway Doughiska”).
3. The remaining 75% of the issued share capital of Marpole is owned and controlled by Parma. Following implementation of the Proposed Transaction, the Portlon Trust, through Parma, will hold 100% of the issued share capital of Marpole and will therefore acquire sole control of Marpole and its wholly-owned direct subsidiary, Galway Doughiska.



## The Undertakings Involved

### *The Acquirer - the Portlon Trust & Parma*

4. The Portlon Trust is [...]. The Portlon Trust primarily focuses on making investments in the beef and lamb procurement and processing sectors worldwide, and also has investments in business areas such as real estate, agriculture, renewable energy and private healthcare services.
5. Parma is ultimately owned and controlled by the Portlon Trust. Parma holds and acquires assets as a nominee shareholder for the Portlon Trust and/or its subsidiaries. Parma is the registered shareholder of 75% of the issued share capital of Marpole. [...].
6. The parties submitted to the Commission the following list of companies owned and controlled (directly and indirectly) by the Portlon Trust, which generated turnover in the State in 2018 and 2019 (the “Portlon Trust Portfolio Companies”):

<b>Table 1: Portlon Trust Portfolio Companies</b>	
<b>Portfolio Company</b>	<b>Business Activity</b>
[...]	Beef processing and supply, renewable energy and manufacture and supply of pet food.
[...]	Investment holding company. The company holds an investment in Blackrock Hospital Limited (“BHL”) and Hermitage Clinic Limited (“HCL”) and derives dividend income from this investment.
[...]	Provision of agricultural project management and administrative services. The company also holds an investment in BHL and derives dividend income from this investment.
[...]	Rental income from investment property held.
[...]	Rental income from investment properties held.
[...]	Provision of hangar and air transportation services.
[...]	Trading in quoted stocks and securities.
[...]	Rental income from investment properties held.
[...]	Construction and sale of residential properties.
[...]	The company holds investments in Marpole and HCL.
[...]	The company holds an investment in Marpole.
[...]	The company holds an investment in HCL.
<b>Source: the parties</b>	

7. The parties also provided to the Commission information on companies in which the Portlon Trust holds shareholdings (both directly and indirectly) and which are active in



the supply of healthcare services sector (i.e. the operation or management of hospitals and/or private clinics) in the State. These companies are BHL, HCL and Marpole; the Portlon Trust's shareholdings in these three companies are set out in Table 2 below.

<b>Company Name</b>	<b>Portlon Trust's Shareholding</b>	<b>Location</b>
BHL	[...]%	Dublin
HCL	[...]%	Dublin
Marpole	[...]%	Galway
<b>Source: the parties</b>		

8. On 19 March 2020, in accordance with section 18(1)(a) of the Act, the Commission received two separate notifications of proposed transactions whereby the Portlon Trust would acquire (i) sole control of HCL, and (ii) an additional [...] shareholding in BHL. On 14 April 2020, in accordance with section 18(1)(a) of the Act, the Commission received a notification of another proposed transaction whereby the Portlon Trust would acquire an additional [...] % shareholding in BHL. The Commission will assess those three notifications separately from the Proposed Transaction.
9. BHL is the parent company of, and holds 100% of the shares in, Blackrock Clinic Limited ("BCL"), which is the operating entity of Blackrock Clinic, a 168-bed private clinic in South County Dublin located at Rock Road, Blackrock, County Dublin ("Blackrock Clinic"). Blackrock Clinic is active in the provision of a broad range of private hospital services, which include in-patient, day-care and out-patient healthcare services, and pathology and laboratory testing services.
10. HCL is the entity responsible for the current operation and management of Hermitage Medical Clinic, a 112-bed private hospital in Lucan, West Dublin located at Old Lucan Road, Fonthill, Dublin ("Hermitage Clinic"). Hermitage Clinic is active in the provision of a range of private healthcare services that includes in-patient, day-care and out-patient healthcare services.
11. The parties state in the notification that the Portlon Trust does not hold controlling interests in any of BHL, BCL or HCL.



12. For the financial year ending 31 March 2019, the Portlon Trust's worldwide turnover (including Parma's turnover) was approximately €[...] billion, of which approximately €[...] billion was generated in the State.

#### *Marpole*

13. Marpole is the sole direct parent company of Galway Doughiska, which is the entity responsible for the operation and management of the Galway Clinic, located at Doughiska, County Galway ("Galway Clinic"). Marpole is currently jointly controlled by Parma (with a 75% shareholding) and BMP (with the remaining 25% shareholding). The parties state in the notification that: "[...]."
14. Galway Clinic is a private healthcare provider. It is active in the provision of a range of private healthcare services, which include in-patient, day-care and out-patient healthcare services, and pathology and laboratory testing services. Galway Clinic has 146 beds and 8 operating theatres located in Doughiska, County Galway. It also operates an outreach clinic in Raheen, County Limerick which comprises consultant suites and radiology services, including MRI scanning, and is used by consultants attached to Galway Clinic to hold consultations with patients based in Limerick (with treatment taking place at Galway Clinic).
15. For the financial year ending 31 December 2018, Galway Doughiska's worldwide turnover was approximately €[...] million, all of which was generated in the State.

#### **Rationale for the Proposed Transaction**

16. The parties state in the notification that:

*"Parma's commercial objectives of the transaction are to [...]."*

#### **Contact with the Undertakings Involved**

17. On 24 January 2020, the Commission served a Requirement for Further Information ("RFI") on the Portlon Trust and Parma 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.



18. Upon receipt of a full response to the RFI from the Portlon Trust and Parma on 13 March 2020 (the “RFI Response”), the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 13 March 2020.<sup>1</sup>
19. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the undertakings involved in the Proposed Transaction.

### Third Party Submissions

20. No third party submission was received.

### Competitive Analysis

#### *Horizontal Overlap*

21. According to information provided by the parties, the Portlon Trust holds shares in companies which operate two private hospitals in Dublin, namely BHL and HCL (see Table 2 above). In their submissions to the Commission, the parties stated that the Portlon Trust’s shareholdings in BHL and HCL do not enable the Portlon Trust to exercise either sole or joint control of those companies for the purpose of section 16 of the Act. Furthermore, the parties submitted to the Commission that the Portlon Trust did not hold controlling interests in any companies whose activities overlapped horizontally with Galway Clinic (i.e. companies that were also active in the provision of private healthcare services) in 2018 or 2019.
22. The Commission’s predecessor, the Competition Authority, closely examined the cross-shareholdings and cross-ownership of News Corporation plc and Liberty Global Inc. in its assessment of *M/05/024 UGC(Chorus)/NTL*.<sup>2</sup> The European Commission has also analysed cases where there were pre-existing structural links between competitors, including cases *M.4439 Ryanair/Aer Lingus*, *IV/M042 Alcatel/Telettra* and *M.833 Coca*

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<sup>1</sup> The “appropriate date” is the date from which the time limits for making Phase 1 or Phase 2 determinations begin to run.

<sup>2</sup> Determination *M/05/024 UGC (Chorus)/NTL*, available at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m05024-ugc-chorus-ntl/>.



*Cola/Carlsberg*.<sup>3</sup> In light of these precedents, the Commission considers that, regardless of whether the Portlon Trust's existing shareholdings in BHL and HCL confer "control" within the meaning of section 16 of the Act, the Commission must take account of the Portlon Trust's cross-shareholdings in the owners and/or operators of three private healthcare clinics (i.e., Galway Clinic, Blackrock Clinic and Hermitage Clinic) when assessing the Proposed Transaction.

23. The Commission has, however, received notifications in respect of three proposed transactions involving the Portlon Trust and Blackrock Clinic and Hermitage Clinic, as outlined at paragraph 8 above. Accordingly, the Commission will fully consider the competitive effects of the acquisition by the Portlon Trust of additional shareholdings in Blackrock Clinic and Hermitage Clinic in its review of those proposed transactions. The Commission does not consider that the Proposed Transaction will have a significant impact on its review of those proposed transactions.
24. In the light of the above, the Commission considers that there is a horizontal overlap between the business activities of the parties in the State. This is because both Parma and Marpole are active in the provision of private healthcare services in the State.

### *Market Definition*

#### *Product Market Definition*

25. In previous determinations, the Commission did not come to a definitive view on the precise relevant product market in respect of the provision of private healthcare services. In its determination in *M/16/055 – UPMC & Bon Secours / Druid Stone JV*,<sup>4</sup> the Commission made reference to a potential market for the provision of radiotherapy services. In its determination in *M/16/040 – Bon Secours Health System/Barringtons Hospital*,<sup>5</sup> the Commission made reference to a potential market for the provision of

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<sup>3</sup> *M.4439 Ryanair/Aer Lingus*, available at:

[https://ec.europa.eu/competition/mergers/cases/decisions/m4439\\_20070627\\_20610\\_en.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m4439_20070627_20610_en.pdf);

*M.42 Alcatel/Teletra*, available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m42\\_en.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m42_en.pdf); and

*M.833 Coca Cola/Carlsberg*, available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m42\\_en.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m42_en.pdf).

<sup>4</sup> Determination *M/16/055 – UPMC & Bon Secours / Druid Stone JV*, available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-055-Determination-UPMC-Bon-Secours-JV.pdf>.

<sup>5</sup> Determination *M/16/040 – Bon Secours Health System / Barringtons Hospital*, available at:

<https://www.ccpc.ie/business/wp-content/uploads/sites/3/2016/08/M-16-040-Full-Determination-Bon-Secours-Barringtons-Hospital.pdf>.



private hospital services. In both cases, it was not necessary for the Commission to come to a definitive view on the relevant product market.

26. The United Kingdom's Competition and Markets Authority (the "CMA"), in its final report on its Private Healthcare Market Investigation,<sup>6</sup> suggested that for the provision of consultation services, each speciality healthcare service is considered as a separate potential product market, meaning that the product market is no wider than each speciality and for each speciality, inpatient, day-patient and outpatient care are considered to be distinct product markets. However, for the purpose of its assessment of the competitive constraints in its market investigation, the CMA considered it appropriate to aggregate 16 separate speciality healthcare services.<sup>7</sup>
27. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the likely competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g. separate potential markets for the provision of each speciality healthcare service) or more broadly (e.g. to encompass the provision of private healthcare services.)<sup>8</sup>
28. For the purposes of this determination, the Commission has followed the approach of assessing the likely competitive impact of the Proposed Transaction in both broad and narrow potential markets. In this case the Commission has assessed the potential markets in which the parties' business activities overlap, namely: (i) the provision of private healthcare services<sup>9</sup>; and (ii) the provision of individual speciality healthcare services by Galway Clinic.

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<sup>6</sup> *Private Healthcare Market Investigation: Final Report* (CMA, 2 April 2014), section 5, available at: [https://assets.publishing.service.gov.uk/media/533af065e5274a5660000023/Private\\_healthcare\\_main\\_report.pdf](https://assets.publishing.service.gov.uk/media/533af065e5274a5660000023/Private_healthcare_main_report.pdf).

<sup>7</sup> This is on the basis that supply-side substitution appears to be greater across treatments in different specialities when the hospital already provides the relevant specialties, given that many hospitals under the investigation are already active in the provision of treatments across the set of 16 specialities and therefore, well placed to expand into new treatments across each of those specialities.

<sup>8</sup> Determination M/16/055 – UPMC & Bon Secours / Druid Stone JV, see footnote 4 above.

<sup>9</sup> Note, the Commission does not need to take a definitive view on whether the provision of private healthcare services includes private provision in public hospitals and sports clinics for the purposes of this determination see paragraph 36 below.



### Geographic Market Definition

29. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined as regional or national. In its previous determination in *M/16/055 – UPMC & Bon Secours / Druid Stone JV*, the Commission examined the competitive impact of the relevant transaction by reference to potential regional and national geographic markets. For the purpose of this determination, the Commission has followed the approach taken in its determination in *M/16/055 – UPMC & Bon Secours / Druid Stone JV*.
30. Accordingly, for the purposes of its review of the competitive effects of the Proposed Transaction, the Commission has examined the potential markets identified in paragraph 28 above by reference to both regional and national geographic markets.
31. In respect of the potential regional geographic market, the Health Service Executive (“HSE”) divides the State into four main regions,<sup>10</sup> namely Dublin Mid Leinster,<sup>11</sup> Dublin North East,<sup>12</sup> South<sup>13</sup> and West.<sup>14</sup> Galway Clinic is located within the West region. Regarding Galway Clinic’s patients, the parties submit that over [...] % of Galway Clinic’s patients in 2019 came from the West region, meaning that just under [...] % of Galway Clinic’s patients in 2019 came from outside the West region.
32. Hermitage Clinic is located within the Dublin Mid Leinster region, which includes part of the Greater Dublin Area (“GDA”). The parties state in the RFI Response that “*Hermitage [Clinic] primarily serves patients in the GDA, although it does serve patients from outside the GDA. Based on 2019 figures, just over [...] % of its patients came from the GDA, meaning that just under [...] % of its patients came from outside the GDA. These patients primarily came from other parts of Leinster, although just over [...] % of patients came from outside Leinster.*”

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<sup>10</sup> <http://www.hseland.ie/LCdn/Portals/0/pdf/HSE%20Hospitals%20Map%20260210.pdf>

<sup>11</sup> Comprising Counties Kildare, Laois, Longford, Offaly, Westmeath and Wicklow, and south Dublin.

<sup>12</sup> Comprising Counties Cavan, Louth, Meath and Monaghan, and north Dublin.

<sup>13</sup> Comprising Counties Carlow, Cork, Kerry, Kilkenny, Waterford and Wexford, and south Tipperary.

<sup>14</sup> Comprising Counties Clare, Donegal, Galway, Leitrim, Mayo, Roscommon and Sligo, and north Tipperary.





33. Blackrock Clinic is located within the Dublin Mid Leinster region. The parties state in the RFI Response in respect of Blackrock Clinic that *“in general terms, Portlón [Trust] understands that, while its patients primarily come from the GDA, a proportion of the hospital’s patients come from outside the GDA.”*
34. In respect of the geographic location of Galway Clinic and its patients, and in respect of the provision of private healthcare services, the Commission considers that (i) there is no or negligible horizontal overlap between Galway Clinic and Blackrock Clinic’s activities in the West region and (ii) there is no or negligible horizontal overlap between Galway Clinic and Hermitage Clinic’s activities in the West region, regardless of whether the potential product market is defined narrowly (e.g. separate potential markets for the provision of each speciality healthcare service provided by Galway Clinic) or more broadly (e.g. to encompass the provision of private healthcare services.). Therefore, if the geographic market is defined as regional, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in respect of the provision of any speciality healthcare services in the West region and is unlikely to raise any horizontal competition concerns in respect of the provision of private healthcare services in the West region.
35. For the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission also examined the potential markets identified in paragraph 28 above on a national basis (i.e. in the State).

#### Private Healthcare Services in the State

36. In respect of the potential market for the provision of private healthcare services in the State, the parties provided information to the Commission indicating that Galway Clinic’s estimated market share is approximately [0-10]% by revenue and [0-10]% by number of beds. The parties stated that the estimated market share by revenue is calculated by using private healthcare services providers’ financial revenue information and the total claims paid by private health insurers to private hospital operators and public hospital operators in the State (i.e. not including claims paid to consultants/others). The parties also submitted that the provision of private healthcare services includes sports clinics and private provision in public hospitals. However, the Commission does not need to take a definitive view on this for the purposes of this



determination, on the basis that, regardless of whether the provision of private healthcare services includes sports clinics and/or private provision in public hospitals or not, Galway Clinic's estimated market share is likely to be below [0-10]% in the State.

37. According to the estimated market shares provided by the parties, following implementation of the Proposed Transaction, the increment in the Portlon Trust's interest in private healthcare services in the State would be minimal. Furthermore an acquisition of sole control over Galway Clinic is unlikely to raise any significant anti-competitive impact since the Portlon Trust (through Parma) already exercises joint control over Galway Clinic in relation to the provision of private healthcare services in the State.
38. In addition, the Commission found that there are a number of competitors (including Bon Secours Health System, Mater Private Group, St. Vincent's Private Hospital, UPMC Kildare and Beacon Hospital) which will continue to exert a competitive constraint on the Portlon Trust's interests in the provision of private healthcare services in the State following implementation of the Proposed Transaction.
39. In light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any horizontal competition concerns in relation to the provision of private healthcare services in the State.



Speciality Healthcare Services Provided by Galway Clinic in the State

40. With regard to the potential market for speciality healthcare services in the State, Table 3 below provides the top [five] specialisms of Galway Clinic by revenue.

<b>Galway Clinic</b>	<b>% of revenue</b>	<b>market share( best estimate)%<sup>16</sup></b>
[...]	[...]%	[0-10]%
[...]	[...]%	[0-10]%
[...]	[...]%	[5-15]%
[...]	[...]%	[0-10]%
[...]	[...]%	[0-10]%

**Source: the parties**

41. As can be seen from Table 3, the provision of [...] accounts for [...] of Galway Clinic's 2019 revenues. This is followed by [...], which accounted for just over [...] of its 2019 revenues and [...], covering both [...], which accounted for just less than [...] of its 2019 revenues. The estimated market shares provided by the parties would indicate that Galway Clinic's estimated market share for each of these specialism's is relatively low, [0-10]%, with the exception of [...] which has an estimated market share of [5-15]%. In relation to [...], estimates provided by the parties would indicate that there are a number of other providers, including Mater Private and Bon Secours, which have market shares above [...] or more.
42. The remainder of Galway Clinic's 2019 revenues was derived from a broad range of other speciality healthcare services, such as [...]. This range of services indicates that Galway Clinic's provision of speciality healthcare services is not concentrated on any particular specialism that would lead the Commission to have competition concerns arising from the Proposed Transaction.

<sup>15</sup> The parties state in the RFI Responses that "the classification of individual specialities is performed separately by each hospital and, to the best of the Parties' knowledge, there is no common approach across hospitals to allocating revenue by specialty category such that individual procedures may be recorded differently in different hospitals.

<sup>16</sup> These estimates are provided by the parties on a best efforts basis.



43. In addition, the Commission found that there are a number of competitors (such as Bon Secours Health System<sup>17</sup>, Mater Private Group<sup>18</sup>, St. Vincent's Private Hospital<sup>19</sup>, UPMC Kildare<sup>20</sup> and Beacon Hospital<sup>21</sup>) which will continue to exert a competitive constraint on the Portlón Trust's interests in the provision of the speciality healthcare services provided by Galway Clinic in the State following implementation of the Proposed Transaction.
44. Furthermore, an acquisition of sole control over Galway Clinic is unlikely to raise any significant anti-competitive impact since the Portlón Trust (through Parma) already exercises joint control over Galway Clinic in relation to the provision of speciality healthcare services in the State.
45. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns either in respect of the provision of private healthcare services in the State or in respect of the provision of speciality healthcare services in the State.

#### *Vertical Relationship*

46. The parties state in the RFI Response that: *"no active referrals between Galway Clinic and either [...] or [...] were recorded in the period 2017 -2019."*<sup>22</sup> The Commission has not identified any existing vertical relationship between the parties in the State. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion**

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<sup>17</sup> Bon Secours' hospitals/clinics located in Galway, Cork, Dublin, Limerick offer a range of specialisms, such as [...]. Please see <https://www.bonsecours.ie/galway-departments>; <https://www.bonsecours.ie/dublin-departments>; and <https://www.bonsecours.ie/cork-departments>.

<sup>18</sup> Mater Private Group offers a range of specialisms, such as [...]. Please see <https://www.bonsecours.ie/cork-departments>.

<sup>19</sup> St Vincent's Private Hospital offers a range of specialisms, such as [...]. Please see <https://svph.ie/speciality/>.

<sup>20</sup> UPMC Kildare offers a range of specialisms, such as [...]. Please see <https://www.upmc.ie/upmc-kildare/departments/>.

<sup>21</sup> Beacon Hospital offers a range of specialisms, such as [...]. Please see <https://www.beaconhospital.ie/our-service/>.

<sup>22</sup> The parties informed the Commission, however, that Galway Clinic [...].



47. In light 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**

48. No ancillary restraints were notified.



## **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 acquisition, whereby the Portlon Trust, through its subsidiary Parma Investments Limited, would acquire, from Mr Ken Fennell of Deloitte Ireland LLP in his capacity as receiver over the assets of Blackrock Medical Partners Limited (“BMP”), BMP’s shareholding, and thus sole control, of Marpole Limited, 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

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**