



# DETERMINATION OF MERGER NOTIFICATION M/16/040 - BON SECOURS HEALTH SYSTEM/BARRINGTONS HOSPITAL

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Bon Secours Health System Company Limited by Guarantee of Barringtons Hospital Limited

Dated 21 December 2016

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#### Introduction

1. On 24 August 2016, 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 (“the Proposed Transaction”) whereby Bon Secours Health System Company Limited by Guarantee (“Bon Secours”) would acquire sole control of Barringtons Hospital Limited (“Barringtons Hospital”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) entered into on 11 August 2016, whereby Bon Secours would acquire the entire issued share capital and thus sole control of Barringtons Hospital, which operates as a private hospital in Limerick City.<sup>1</sup>
3. Bon Secours will, at completion of the Proposed Transaction, acquire the freehold interest in the property from which Barringtons Hospital operates and in another small premises, known as 44 Mary Street<sup>2</sup>. [...].

#### The Undertakings Involved

##### *Bon Secours*

4. Bon Secours is a private company limited by guarantee registered in the State. It is part of a not-for-profit organisation founded in 1824 by the Sisters of Bon Secours. According to the Bon Secours website<sup>3</sup>, the group is the largest independent hospital group in the State, which operates four technologically advanced hospitals located in

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<sup>1</sup> The SPA was entered into by Bon Secours and the two individual shareholders of Barringtons Hospital, Paul O’Byrne and Nuala O’Byrne, who are the vendors of Barringtons Hospital under the SPA.

<sup>2</sup> The freehold interest in the property from which Barringtons Hospital operates is currently owned by Paul O’Byrne and the freehold interest in the premises known as 44 Mary Street is currently owned by Barringtons Hospital.

<sup>3</sup> <http://www.bonsecours.ie/>



Cork, Dublin, Galway and Tralee, a consultation centre located in Limerick and a care village located in Cork.

5. In the State, Bon Secours is active in the provision of a broad range of private hospital services<sup>4</sup>, which include in-patient, day-care and out-patient healthcare services, and pathology and laboratory testing services<sup>5</sup>.
6. For the financial year ending 31 December 2015, Bon Secours' worldwide turnover was approximately €230 million, the entirety of which was generated in the State.

### ***Barringtons Hospital***

7. Barringtons Hospital is a private company limited by shares, registered in the State, which currently has two individual shareholders.<sup>6</sup>
8. In the State, Barringtons Hospital operates an elective (i.e. non-emergency) surgical hospital. It is currently the only private hospital in County Limerick, situated on George's Quay, Limerick City. According to the parties, Barringtons Hospital provides a smaller, less complex range of services than most other private hospitals in the State.<sup>7</sup>
9. For the financial year ending 31 December 2015, Barringtons Hospital's worldwide turnover was approximately €12 million, the entirety of which was generated in the State.

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

10. The parties state in the notification:

*"The Purchaser has identified a need for a fully operational private hospital in the Mid-West region which can provide inpatient, day case and outpatient medical services. The Mid-West region and the City of Limerick is critically short of private medical facilities. Through the Proposed Transaction, the Purchaser sees an opportunity to further develop a quality private hospital in this region that would:*

1. *ensure that demand for full private hospital services in the Mid-West region are met;*
2. *reduce the burden on the public hospitals in the region; and*
3. *expand the mission of the Purchaser/the Sisters of Bon Secours Ireland of providing advanced medicine and exceptional care for the region."*

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<sup>4</sup> Hospital services include the provision of patient beds, nursing care, diagnostic facilities, surgery facilities, pharmacy facilities, post-operative care, imaging and, in most instances, intensive care units and emergency services.

<sup>5</sup> The parties state that the provision of laboratory and pathology testing services is ancillary to the provision of hospital services and that such services are provided to other healthcare service providers, including the Health Service Executive ("HSE"), hospitals (both private and public) and other medical practitioners.

<sup>6</sup> Namely, Paul O'Byrne and Nuala O'Byrne.

<sup>7</sup> The range of services provided by the parties will be discussed further in the Competitive Analysis section of this Determination below.



### **Extended Phase 1 Investigation**

11. The Commission analysed the Proposed Transaction as part of an extended Phase 1 investigation which included taking the steps described in paragraphs 12 to 19 below.

### ***Market Enquiries***

12. The Commission issued information requests (“IRs”) to key existing customers of the parties, which included private health insurance companies (“Health Insurers”) in the State<sup>8</sup>, the HSE (National Treatment Purchase Fund) and individual medical consultants which currently provide professional services to the parties. IRs were also issued by the Commission to competitors of the parties located in relatively close proximity to Barringtons Hospital which provide private health services to patients, such as the University Hospital Limerick, Galway Clinic and Mater Private Cork.

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

13. On 29 September 2016, the Commission issued a formal Requirement for Information (“RFI”) to each of Bon Secours and Barringtons Hospital pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Commission’s Phase 1 assessment of the Proposed Transaction. Each of Bon Secours and Barringtons Hospital responded to the RFI on 20 October 2016. The issuing of the RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1. Upon receipt of the responses to the RFIs, the “appropriate date” (as defined in section 19(6)(b) of the Act) became [20 October] 2016.<sup>9</sup>
14. On 24 November 2016, the Commission had a meeting with representatives of Bon Secours and Barringtons Hospital, their legal advisors and Professor Francis O’Toole, who had been retained by the parties as an economic adviser. The purpose of the meeting was to discuss the Commission’s preliminary views on the Proposed Transaction and any potential competition concerns identified by the Commission at that stage of its review of the Proposed Transaction. At the meeting, the parties undertook to make additional submissions to the Commission for the purpose of seeking to address any potential competition concerns identified by the Commission and indicated that this may include the possibility of submitting proposals to the Commission in accordance with section 20(3) of the Act.
15. On 28 November 2016, Bon Secours submitted to the Commission proposals regarding measures to be taken to ameliorate any effects of the Proposed Transaction on competition in accordance with section 20(3) of the Act. The submission of these proposals by Bon Secours extended the Commission’s Phase 1 review period from 30 working days to 45 working days in accordance with section 21(4) of the Act.
16. The Commission engaged with Bon Secours’ legal advisors for the purpose of discussing and developing the proposals submitted to the Commission by Bon Secours and on 21

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<sup>8</sup> Namely, the Voluntary Health Insurance Board, Irish Life Health DAC and Laya Healthcare Limited.

<sup>9</sup> The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



December 2016, Bon Secours submitted to the Commission a final set of proposals under section 20(3) of the Act. These proposals are discussed in more detail in paragraphs 36 and 37 of this Determination.

### ***Third Party Submissions***

17. The Commission received two submissions from third parties which raised concerns over the Proposed Transaction.
18. One of the third party submissions raised issues that are currently part of ongoing litigation and which were not considered by the Commission to be merger-specific. Consequently, those issues are not addressed in this Determination.
19. The second third party submission raised a concern that Bon Secours, having a Catholic Church ethos, may remove certain procedures from the range currently provided at Barringtons Hospital, on the basis that such procedures are not in line with its ethos. Upon making enquiries of the parties, the Commission was informed by the parties that Barringtons Hospital performed only seven procedures that would fall into this category in 2015 and only three in 2016 up to the date of the Commission's enquiries. It was also established that these procedures are available in University Hospital Limerick. On this basis, the parties argued that it would not create a substantial competition concern if certain procedures were no longer to be performed at Barringtons Hospital following the implementation of the Proposed Transaction.

### **Competitive Analysis**

#### *Market Definition*

20. 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 competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., the provision of private hospital services) or more broadly (e.g., to encompass the provision of private healthcare services in general).
21. In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to a narrow product market, i.e. the provision of private hospital services.
22. 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. However, in order to determine whether the Proposed Transaction could result in a substantial lessening of competition, the Commission analysed its impact by reference to a narrow regional geographic market, namely the supply of private hospital services to patients originating from Counties Clare, Limerick and North Tipperary (collectively referred to hereafter as the "Mid-West Region"). Given that more than [...] % of Barringtons Hospital's patients are drawn from



the Mid-West Region, the Commission formed the view that the Mid-West Region would be an appropriate regional geographic market.

23. Thus, for the purposes of its review of the competitive effects of the Proposed Transaction, the Commission has examined the competitive impact of the Proposed Transaction by reference to the market for the supply of private hospital services in the Mid-West Region.

#### *Horizontal Overlap*

24. There are a number of areas of overlap between the activities of the parties in the State, as discussed further below.

- *The Provision of Private Hospital Services*

25. Bon Secours and Barringtons Hospital are both active, in the State, in the provision of private hospital services, which include the provision of in-patient, day-care and out-patient healthcare services, and pathology and laboratory testing services. Bon Secours operates a network of private hospitals in Cork, Dublin, Galway and Tralee, and Barringtons Hospital is a family owned, standalone single-unit private hospital in Limerick City.

26. However, the services provided by the hospitals operated by each of Bon Secours and Barringtons Hospital are different. Bon Secours operates four technologically advanced, full service, private hospitals, whereas Barringtons Hospital is an elective only (i.e. non-emergency) surgical hospital which does not offer the same range of services as those offered by the hospitals operated by Bon Secours.<sup>10</sup> Furthermore, the services offered by the parties cater for patients located in different geographic catchment areas. In particular:

- a. Barringtons Hospital is situated in Limerick City and its patients are primarily drawn from the city and County of Limerick, parts of County Clare and North Tipperary; and
- b. Bon Secours is currently involved in the provision of private hospital services, through its network of private hospitals in Cork, Dublin, Galway and Tralee. Patients of each of the hospitals operated by Bon Secours are primarily drawn from areas surrounding such hospitals and in 2015 annual revenue attributable to such patients in each of the hospitals were as follows:

[...].

27. It is important to note that private healthcare services are also provided by public hospitals and many of the procedures undertaken in private hospitals can also be undertaken by public hospitals on a private basis. This is a particular feature of the Mid-West Region, where public hospitals in the region account for approximately [...] % of

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<sup>10</sup> Barringtons Hospital does not offer all of the services which are provided by hospitals operated by Bon Secours, which include Angiography, Breast Care, Cardiac Rehabilitation, Emergency Medicine, Occupational Therapy, Oncology, Palliative Care, Podiatry, Rapid Access Clinics, Sleep Medicine, Weight Loss Surgery, and Diabetes Care and Intensive Care Units.



private health insurance claims in that region. Public hospitals providing private hospital services to patients originating from the Mid-West Region include the six hospitals making up the University of Limerick Hospital Group (University Hospital Limerick, University Maternity Hospital Limerick, Croom Hospital, Ennis Hospital, Nenagh Hospital and St John's Hospital).<sup>11</sup> On this basis, the Commission considers that public hospitals located in the Mid-West Region will continue to act as a competitive constraint on Barringtons Hospital following implementation of the Proposed Transaction.

- *Regional Overlaps*

28. Bon Secours submits that, although there may be some overlap between the provision of private healthcare services by Barringtons Hospital and the hospitals operated by Bon Secours in Galway and Tralee, the three hospitals in question mainly cater for patients located in different geographic catchment areas.
29. In a previous merger determination, M/16/055<sup>12</sup>, the Commission referenced the practice of the HSE of dividing the State into four main regions (namely Dublin Mid Leinster, Dublin North East, the South and the West) and of grouping hospitals in the State into eight further sub-regions or hospital groups.<sup>13</sup> As such, for the HSE's purposes, while Barringtons Hospital is located in the West region, the hospitals operated by Bon Secours in Cork and Tralee are both located in the South region. Although the hospital operated by Bon Secours in Galway also falls into the West region for the HSE's purposes, it falls into a different sub-region to Barringtons Hospital, namely the HSE's "Western Hospitals Group" whereas Barringtons Hospital falls into the HSE's "Mid Western Hospitals Group". Thus, it could be concluded that although there is an overlap between the parties' activities at a regional level, such overlap is likely to be limited.
30. Bon Secours submitted that only a small percentage of turnover of the hospitals operated by Bon Secours in Galway and Tralee, being [...] % and [...] % respectively for 2015, was generated from the provision of private hospital services to patients originating from within the Mid-West Region.<sup>14</sup>
31. Nevertheless, the Commission notes that Bon Secours operates a consultation clinic in Limerick (established by the hospital operated by Bon Secours in Tralee in June 2013) for the purpose of allowing visiting consultants from the hospital operated by Bon Secours in Tralee to see patients at the clinic and to refer patients seen at the clinic who require tests and further investigation/therapy to the hospital in Tralee for further treatment and procedures. However, no private hospital services are provided at the consultation clinic in Limerick other than [...]. On this basis, the Commission considers that the provision of these services by the consultation clinic in Limerick does therefore

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<sup>11</sup> <http://www.hse.ie/eng/services/list/3/acutehospitals/hospitals/ulh/about/>

<sup>12</sup> Commission Determination dated 09 December 2016 - UPMC/Bon Secours Health System/Druid Stone (JV).

<sup>13</sup> <http://www.hseland.ie/LCdnn/Portals/0/pdf/HSE%20Hospitals%20Map%20260210.pdf>.

<sup>14</sup> In 2015, the hospital operated by Bon Secours in Galway generated turnover of approximately €[...], of which approximately €[...] was from patients originating in the Mid-West Region, and the hospital operated by Bon Secours in Tralee generated turnover of approximately €[...], of which approximately €[...] was from patients originating in the Mid-West Region.





not have any substantial effect on competition for the provision of private hospital services in the Mid-West Region.

32. Given the areas of overlap between the parties' activities in the Mid-West Region, the Commission considered further whether the Proposed Transaction could give rise to any consumer harm and whether any customers would have the ability to exercise countervailing buyer power in order to constrain the activities of the parties following implementation of the Proposed Transaction.

- *Consumer Harm*

33. Private hospitals usually negotiate reimbursement rates for procedures with the relevant Health Insurers, generally every two years. The rate of reimbursement will be based on the costs to the private hospital in carrying out a particular procedure plus a margin. Depending on the type of insurance plan held by a patient, the patient may be required to pay a standard excess charge for each admission or, with respect to certain "special procedures" a co-payment charge, which are (in each case) determined by the Health Insurers.
34. As a single, standalone, private hospital, Barringtons Hospital [, in contrast with Bon Secours, who in some instances applies national reimbursement rates,] has individually negotiated reimbursement rates with each of the relevant Health Insurers. [...].
35. As mentioned above, Barringtons Hospital is an elective only (i.e. non-emergency) surgical hospital and does not offer the same range of services as the Bon Secours group of hospitals. Although Bon Secours indicated that, following implementation of the Proposed Transaction, it intends to invest in expanding the private hospital services provided at Barringtons Hospital, thereby delivering greater quality of care and choice of services to patients, a potential concern for the Commission was the possibility that, post-transaction, Bon Secours may seek to introduce unilaterally its national reimbursement rates at Barringtons Hospital, which are in most instances higher than those currently agreed between Barringtons Hospital and Health Insurers, without having made any investment in advance. This would technically result in an increase in the reimbursement rates at Barringtons Hospital, including for two of the three large Health Insurers active in the State, which could potentially be passed on to consumers by way of increased private healthcare premiums.
36. The Commission did not, however, have to reach a definitive position on this particular aspect of the Proposed Transaction, as, on 21 December 2016, Bon Secours submitted to the Commission final proposals under section 20(3) of the Act for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State. In particular:
- a. Bon Secours committed not to unilaterally amend or vary, or seek to amend or vary, the reimbursement rates agreed between Barringtons Hospital and Health Insurers pursuant to an agreement between Barringtons Hospital and each of the relevant Health Insurers which is in force at the date of the Commission's Determination until the expiry or termination of such agreement; and



- b. Bon Secours committed, upon the expiry or termination of such agreement, to negotiate reimbursement rates with each of the relevant Health Insurers in question in accordance with the terms and procedures set out in the proposals submitted by Bon Secours to the Commission on [21 December 2016].
37. The Commission has taken the proposals submitted by Bon Secours on [21 December 2016] into account and is of the view that they are sufficient to address the competition concerns arising from the Proposed Transaction in the potential market for the provision of private hospital services in the Mid-West Region as identified by the Commission. In accordance with section 20(3) and section 26(1) and section 26(4) of the Act, the proposals submitted by Bon Secours on [21 December 2016] form part of the basis of this Determination and accordingly have become commitments binding upon Bon Secours. The proposals are set out in full in the section of this Determination entitled “Determination” below.
- *Countervailing Buyer Power*
38. With the exception of a very small number of self-paying patients (comprising less than approximately 5% of the overall turnover of each of the parties), the primary end-user of private hospital services – the patient – is not the paying customer. Purchasers of the services offered by private hospitals instead are typically private health insurance companies<sup>15</sup> and, to a lesser extent, the HSE through the National Treatment Purchase Fund. Accordingly, strong countervailing buyer power (particularly from the three largest Health Insurers active in the State), is a predominant feature of this sector and will continue to provide a competitive constraint on Bon Secours following implementation of the Proposed Transaction.

#### *Vertical Relationship*

39. There is no vertical relationship between the parties in the State and the Proposed Transaction does not raise vertical competition concerns.

#### *Conclusion*

40. In light of the proposals submitted by Bon Secours on 21 December 2016, and in light of its analysis as set out in this Determination, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

41. The SPA between the parties contains restrictive covenants, which the parties state are necessary in a transaction of this type, i.e. the transfer of a business as a going concern, including goodwill. The parties therefore view the restrictive covenants to be fair and reasonable in the specific circumstances of the Proposed Transaction.

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<sup>15</sup> [https://www.hia.ie/regulation/register-of-health-benefit-undertakings/ru\\_list](https://www.hia.ie/regulation/register-of-health-benefit-undertakings/ru_list)





42. The Commission was of the view that the non-compete obligation in the SPA went beyond what was reasonable and proportionate to ensure the protection of Bon Secours' legitimate business interests as the purchaser of Barringtons Hospital. In particular, the non-compete obligation in the SPA sought to restrict one of the current individual shareholders in Barringtons Hospital from becoming involved in any business competing with Barringtons Hospital anywhere in the State for a specified period following the implementation of the Proposed Transaction. The geographic scope of the non-compete obligation was therefore broader than the potential market affected by the Proposed Transaction, which was regional in scope. The parties subsequently proposed to the Commission that they would amend the geographic scope of the non-compete obligation in the SPA so that the individual shareholder would be restricted from becoming involved in any business competing with Barringtons Hospital only within a [...] mile radius of Barringtons Hospital. The parties submitted to the Commission a signed side letter dated 02 December 2016 amending the geographic scope of the non-compete obligation in the SPA accordingly and the Commission has accepted the amendment to the non-compete obligation in the SPA.
43. The duration of the restrictive covenants in the SPA (including the duration of the non-compete obligation mentioned above) does not exceed the maximum duration acceptable to the Commission. Given the particular nature of the Proposed Transaction, and on the basis of the abovementioned amendment to the geographic scope of the non-compete obligation, the Commission considers the restrictive covenants in the SPA to be directly related and necessary to the implementation of the Proposed Transaction.



## **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (“Act”), Bon Secours Health System Company Limited by Guarantee (“Bon Secours”) has submitted to the Competition and Consumer Protection Commission (“CCPC”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to the said proposals becoming binding on Bon Secours.

The CCPC has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Bon Secours would acquire the entire issued share capital and thus sole control of Barringtons Hospital 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

**Patrick Kenny**

**Member**

**Competition and Consumer Protection Commission**



## PROPOSALS BY BON SECOURS TO THE CCPC RELATING TO THE PROPOSED ACQUISITION OF BARRINGTONS HOSPITAL (“Proposals”)

### RECITALS

- a) Pursuant to section 20(3) of the Competition Act 2002, as amended, Bon Secours has submitted to the CCPC the following Proposals relating to the proposed acquisition of Barringtons Hospital for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Bon Secours.
- b) Bon Secours has agreed with the CCPC to commit:
- (i) not to unilaterally amend or vary, or seek to amend or vary, the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement until the expiry or termination of such Existing Agreement;
  - (ii) upon the expiry or termination of an Existing Agreement with a Relevant Health Insurer, to negotiate Reimbursement Rates with such Relevant Health Insurer in accordance with the terms and procedures set out in these Proposals.

### A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**Barringtons Hospital**” means Barringtons Hospital Limited, a private company limited by shares, incorporated under the laws of Ireland (Registration No. 172854), with its registered address at George’s Quay, Limerick.

“**Bon Secours**” means Bon Secours Health System Company Limited by Guarantee, a private company limited by guarantee, incorporated under the laws of Ireland (Registration No. 198596), with its registered address at College Road, Cork.

“**CCPC**” means the Competition and Consumer Protection Commission and its successors;

“**Completion**” means completion of the Proposed Transaction as defined in the share purchase agreement dated 11 August 2016 between Paul O’Byrne, Nuala O’Byrne and Bon Secours;

“**Determination**” means the Determination of the CCPC pursuant to Section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

“**Effective Period**” means the period beginning on the date of expiry or termination, as appropriate, of an Existing Agreement and ending on either (i) the date falling [...] after



the date of expiry or termination of such Existing Agreement, or (ii) [...], whichever shall be the earliest;

**“Existing Agreement”** means an agreement between Barringtons Hospital and a Relevant Health Insurer in relation to Reimbursement Rates which is in force at the date of the Determination;

**“Hospital Services”** means all treatment (surgical and/or medical) and services provided to a patient insured by a Relevant Health Insurer, including but not limited to [...];

**“Proposed Transaction”** means the proposed acquisition by Bon Secours of the entire issued share capital and thus sole control of Barringtons Hospital, as notified to the CCPC on 24 August 2016;

**“Reimbursement Rates”** means the relevant rates, charges and price schedules (with descriptions and codes for various medical procedures) agreed between Barringtons Hospital and a Relevant Health Insurer which are to be applied by such Relevant Health Insurer when calculating the payment to be made by the Relevant Health Insurer to Barringtons Hospital on behalf of a patient insured by the Relevant Health Insurer for the provision of Hospital Services to such patient by Barringtons Hospital; and

**“Relevant Health Insurer”** means a provider of private health insurance who, at the date of the Determination, has entered into an Existing Agreement with Barringtons Hospital [...].

## **B. Undertakings by Bon Secours**

### 2. Bon Secours undertakes:

- (i) not to unilaterally amend or vary, or seek to amend or vary, the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement until the expiry or termination of such Existing Agreement; and
- (ii) upon the expiry or termination of an Existing Agreement with a Relevant Health Insurer, and for the duration of the Effective Period, to negotiate with such Relevant Health Insurer all Reimbursement Rates separately to the rates and charges to be applied by such Relevant Health Insurer in relation to Hospital Services provided by any other hospital owned or operated by Bon Secours.

### 3. The undertakings in paragraph 2 of these Proposals shall come into effect and shall be implemented by Bon Secours upon Completion.

### 4. The undertaking in paragraph 2(i) of these Proposals in relation to an Existing Agreement shall continue to apply until the expiry or termination, as appropriate, of such Existing Agreement. The undertaking in paragraph 2(ii) of these Proposals shall continue to apply for the Effective Period or until such time as the CCPC determines that the undertaking in paragraph 2(ii) of these Proposals is no longer required (whichever is the earlier).



5. Following the Determination and pending Completion, Bon Secours shall refrain from influencing or attempting to influence any decision by Barringtons Hospital with respect to the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement, and in particular shall refrain from taking any action which has the aim of encouraging or inducing Barringtons Hospital to amend or vary, or seek to amend or vary, the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement until the expiry or termination of such Existing Agreement.
6. Bon Secours shall submit to the CCPC within [...] of the date of the Determination a written certificate in the form set out in the Schedule hereto (the “**First Certificate**”), signed by the CEO of Bon Secours, confirming Bon Secours’ compliance with its obligations set out in these Proposals since the date of the Determination. Bon Secours shall submit to the CCPC within [...] of the date of submission of the First Certificate and at intervals of [...] thereafter, a written certificate in the form set out in the Schedule hereto (each, a “**Compliance Certificate**”), signed by the CEO of Bon Secours, confirming Bon Secours’ continued compliance with its obligations set out in these Proposals until the expiry of [...] after the Effective Period.
7. The CCPC reserves the right to require Bon Secours to provide to the CCPC, at any time, such additional information as the CCPC requires in order for the CCPC to verify Bon Secours’ compliance with its obligations set out in these Proposals.
8. The CCPC may at its sole discretion vary any of the time periods provided for in these Proposals in response to a reasoned request from Bon Secours. The CCPC may further, at its sole discretion, in response to a reasoned request from Bon Secours showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Proposals.



## SCHEDULE TO THE PROPOSALS

*[Bon Secours Headed Paper]*

*[date]*<sup>16</sup>

[Cormac Keating]  
Mergers Division  
Competition and Consumer Protection Commission  
[Parnell House]  
[14 Parnell Square]  
Dublin 1

### **Merger Notification M/16/040 Bon Secours Health System Company Limited by Guarantee (“Bon Secours”) / Barringtons Hospital Limited (“Barringtons Hospital”)**

Dear [Mr. Keating],

I refer to Merger Notification M/16/040 in relation to the acquisition by Bon Secours of the entire issued share capital of Barringtons Hospital, which was approved by the Competition and Consumer Protection Commission (“CCPC”) on [ ] December 2016 (the “Transaction”).

The CCPC issued its Determination approving the Transaction on [ ] December 2016.

In accordance with the terms of the proposals given by Bon Secours to the CCPC on [ ] December 2016 in relation to the Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002 as amended, have become commitments binding upon Bon Secours (the “Commitments”), I hereby confirm Bon Secours’ compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Bon Secours] and ending on the date hereof.

Yours faithfully,

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[Name]

CEO

Bon Secours Health System Company Limited by Guarantee

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<sup>16</sup> This certificate should be dated and issued to the Competition and Consumer Protection Commission within [...] of the date of the Determination and, thereafter, within [...] after the date of submission of the first certificate issued to the Competition and Consumer Protection Commission and at intervals of [...] thereafter.