

The Competition and Consumer Protection Commission

-and-

**Independent Nursing Home Ireland Company Limited by Guarantee trading
as Nursing Homes Ireland**

AGREEMENT AND UNDERTAKINGS

This Agreement and Undertakings (the "Agreement") is made by and between the Competition and Consumer Protection Commission ("CCPC") and Independent Nursing Home Ireland Company Limited by Guarantee (incorporated in Ireland under Company Number 447347) trading as Nursing Homes Ireland ("NHI"), on the date set forth below. The CCPC and NHI are referred to collectively herein as the "Parties".

WHEREAS:

- i. The CCPC is a statutory body and one of its functions pursuant to the Competition and Consumer Protection Act 2014 (the "2014 Act") is to enforce the Competition Act 2002 as amended (the "2002 Act") and Articles 101 and 102 of the Treaty on the Functioning of the European Union (the "TFEU"). Section 4 of the 2002 Act and Article 101 of the TFEU prohibit anti-competitive arrangements between undertakings, and section 5 of the 2002 Act and Article 102 of the TFEU prohibit the abuse of a dominant position by one or more undertakings.
- ii. The CCPC's role is to investigate suspected breaches of provisions of the 2002 Act and/or Articles 101 or 102 of the TFEU and to take appropriate enforcement action to deter such breaches and encourage on-going compliance with provisions of the 2002 Act and/or Articles 101 and 102 of the TFEU.
- iii. NHI is a company limited by guarantee incorporated under the laws of Ireland which has the company registration number 447347. NHI has its registered office at Unit 2051, Block A, Castle Drive, Citywest Road, Dublin 24. NHI is a representative organisation for operators of private and voluntary nursing homes in the State.
- iv. The CCPC is of the view that private nursing home operators are undertakings within the meaning of section 3 of the 2002 Act and under EU competition law. As such, NHI is an association of undertakings and therefore its actions also fall within the scope of competition law.
- v. The CCPC became aware of a meeting organised by NHI which was held in the Clarion Hotel, Liffey Valley on 23 October 2015 (the "Meeting"). The CCPC has in its possession a written attendance note of the Meeting (the "Attendance Note"). The CCPC has been assessing whether the matters discussed at the Meeting and recorded in the Attendance Note could potentially contravene section 4 of the 2002 Act and/or Article 101 of the TFEU.
- vi. In particular, the CCPC had concerns that, during the Meeting, NHI may have:
(i) advised, recommended or suggested to its members pricing and/or terms and conditions for the supply of services; (ii) attempted to coordinate the

actions of its members in relation to the supply of services; and/or (iii) encouraged and/or facilitated the exchange of competitively sensitive information between its members. The CCPC had concerns that the suspected conduct of NHI at the Meeting could potentially infringe section 4 of the 2002 Act and/or Article 101 of the TFEU (the "CCPC's Competition Concerns").

- vii. NHI has cooperated fully with the CCPC's enquiries.
- viii. In order to address the CCPC's Competition Concerns with respect to the suspected conduct of NHI at the Meeting and to assist the CCPC with bringing its inquiries to a close, NHI has agreed to enter into this Agreement and to give the confirmation set out in paragraph 1 and the undertakings set out in paragraph 2 below.

NOW NHI AND THE CCPC HEREBY AGREE AS FOLLOWS:

1. NHI hereby confirms that NHI and, to the best of its knowledge, its members did not at any stage implement any collective actions in relation to the supply of services in the nursing home sector in the State which would constitute a breach of section 4 of the 2002 Act and/or Article 101 of the TFEU and which may have been discussed during the Meeting.
2. NHI hereby undertakes:
 - (i) not to organise or engage in any discussions or convene any meetings in relation to collective actions by NHI and/or members of NHI which would constitute a breach of section 4 of the 2002 Act and/or Article 101 of the TFEU;
 - (ii) not to seek to influence the pricing decisions of members of NHI or decisions on the terms and/or conditions under which members of NHI provide services to consumers of nursing home services in any of NHI's future communications whether by way of advice, recommendation or suggestion;
 - (iii) to inform members of NHI in writing within 21 calendar days from the date of this Agreement that they are obliged under competition law to decide individually the terms and conditions, including pricing, on which they are willing to provide nursing home services to consumers and to provide the CCPC with a copy of this correspondence;
 - (iv) to inform members of NHI in writing within 21 calendar days from the date of this Agreement that collective boycotts or collective negotiations could potentially breach section 4 of the 2002 Act and/or Article 101 of the TFEU and to provide the CCPC with a copy of this correspondence; and
 - (v) to introduce a competition law compliance programme for the senior management and the Board of Directors of NHI and to report to the CCPC on the implementation of such competition law compliance programme within 6 months from the date of execution of this Agreement and Undertaking.
3. In consideration of NHI entering into this Agreement, the CCPC undertakes that it shall conclude its inquiries and shall refrain from instituting proceedings

or taking any further action against NHI in relation to the CCPC's Competition Concerns with respect to the suspected conduct of NHI at the Meeting for so long as the NHI remains in compliance with the Agreement.

4. This Agreement shall be and is intended by the Parties to be a binding and enforceable agreement which may be enforced by the Parties by an action in any court of competent jurisdiction in the State.
5. This Agreement shall be binding on the NHI and on the successors and assigns of NHI and its employees, servants and agents and on the CCPC.
6. The Agreement is without prejudice to NHI's position in any other judicial or administrative proceedings in any jurisdiction. Nothing in the Agreement may be construed as implying that NHI has infringed competition law in relation to the matters at issue in the CCPC's inquiry.
7. This Agreement will take effect upon the execution of same by both Parties.

EXECUTED BY:

For and on Behalf of the Competition and Consumer Protection Commission



Name BRIAN MC HUGH

Title MEMBER

Date 19th JANUARY 2018

EXECUTED BY:

For and on behalf of Independent Nursing Home Ireland Company Limited by Guarantee trading as Nursing Homes Ireland



Name TADGH DAY

Title Chief Executive Officer

Date 19th JANUARY 2018