



# DETERMINATION OF MERGER NOTIFICATION M/20/036 – UPMC/AUT EVEN

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## Section 21 of the Competition Act 2002

### Proposed acquisition of sole control of Aut Even Hospital Limited by UPMC Investments Limited.

Dated 14 January 2021

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#### Introduction

1. On 11 December 2020, 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 UPMC Investments Limited (“UPMC Ireland”) would acquire sole control of Aut Even Hospital Limited (“AEL”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to an agreement for the sale and purchase of AEL dated 10 December 2020 between UPMC Ireland and the Receiver, whereby UPMC Ireland is to acquire the shares of AEL<sup>1</sup> (the “SPA”). Following implementation of the Proposed Transaction, UPMC Ireland will acquire sole control of AEL and AEL’s wholly owned subsidiary, Aut Even MRI Limited.

#### The Undertakings Involved

##### *The acquirer – UPMC Ireland*

3. UPMC Ireland is a wholly owned subsidiary of UPMC International Holdings Inc, which is in turn wholly owned by University of Pittsburgh Medical Centre (“UPMC”). UPMC is a non-profit corporation, based in Pittsburgh in the United States.

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<sup>1</sup>Pursuant to the SPA, the Receiver is to [...].



4. UPMC Ireland provides healthcare services through the following activities in the State:
- i. UPMC Whitfield Hospital - a private hospital in Waterford City, Co. Waterford with 67 beds (“UPMC Whitfield”)<sup>2</sup>;
  - ii. UPMC Kildare Hospital - a private hospital in Clane, Co. Kildare with 39 beds (“UPMC Kildare”)<sup>3</sup>;
  - iii. Cork Radiation Oncology Associates Limited. – a joint venture between UPMC Ireland and Bon Secours Hospital Cork which operates a cancer centre and radiotherapy centre (“Cork Radiation Oncology Joint Venture Centre”);<sup>4</sup>
  - iv. UPMC Carlow Outreach Centre – an outreach centre in Carlow, Co. Carlow;
  - v. UPMC Concussion Network – a network that provides specialised diagnostic tests, facilities and treatment plans for patients with potential concussions;
  - vi. UPMC Global Technology Operations Centre – a health-tech centre which provides support to UPMC International Division; and,
  - vii. UPMC Sports Medicine – a clinic in Waterford Institute of Technology Arena which provides patients with sports-related injury treatment and rehabilitation.
5. For the financial year ending 31 December 2019, UPMC’s worldwide turnover was approximately €18.2 billion,<sup>5</sup> of which approximately €[...] million was generated in the State.

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<sup>2</sup> UPMC Whitfield is operated by Euro Care Healthcare Limited, a wholly owned subsidiary of UPMC Investments Limited, a company which is in turn wholly owned by UPMC Ireland.

<sup>3</sup> UPMC Kildare is operated by Clane General Hospital Limited, a UPMC Ireland group company and subsidiary of Clane Hospital Developments Associates Limited, a company owned by UPMC Ireland and the Institute of Eye Surgery.

<sup>4</sup> For more information on Cork Radiation Oncology Associates see the Commission’s determination in M/16/055 – *Joint Venture UPMC (Ireland) & Bon Secours Health System*, available at: [https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-055-Determination-UPMC\\_-Bon-Secours-JV.pdf](https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-16-055-Determination-UPMC_-Bon-Secours-JV.pdf)

<sup>5</sup> Based on European Central Bank 2019 average euro foreign exchange reference USD 1 = EUR 0.8835.



### *The Target – AEL*

6. AEL owns Aut Even Hospital, a 71 bed private hospital located in Co. Kilkenny (“Aut Even”). AEL provides a range of private healthcare services, including surgical, diagnostic and medical services to patients at Aut Even.
7. [...]<sup>6</sup>
8. For the financial year ending 31 December 2019, AEL’s worldwide turnover was approximately €[...] million, all of which was generated in the State.

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

9. The parties state in the notification that:

*“The Transaction will allow UPMC Ireland to provide a wider selection of high-quality patient care to Irish patients. The Transaction will allow UPMC Ireland to improve the standard of healthcare delivery for the benefit of patients in Ireland. In particular, UPMC Ireland plan to expand the range of services available at Aut Even, bring significant investment to Aut Even in terms of medical equipment, clinicians and information technology, and integrate services in a seamless manner as part of the UPMC network. UPMC Ireland plan to also work closely with local public hospitals to assist in alleviating service deficits and addressing capacity issues.”*

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

10. 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.

### **Market Enquiries**

11. During its investigation, the Commission conducted market enquiries which involved issuing questionnaires to a number of private health insurers. The Commission received a response from each of the third parties it contacted.
12. During the Commission’s market enquiries, a potential competition concern was raised [...] that following implementation of the Proposed Transaction, UPMC Ireland could be

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<sup>6</sup> As noted at footnote 2 above, [...].



in a position to negotiate its contracts with private health insurers on a bundled hospital basis and a failure to reach agreement could lead to the withdrawal of services by the hospital group. This potential competition concern is considered further in the competitive analysis of the Proposed Transaction below.

### **Third Party Submissions**

13. No third party submission was received.

### **Competitive Analysis**

#### ***Horizontal Overlap***

14. There is a horizontal overlap between the parties' activities in the provision of private healthcare services in the State, since both UPMC Ireland and AEL operate private hospitals in the State.
15. As noted above, AEL operates Aut Even and UPMC Ireland operates UPMC Whitfield, UPMC Kildare and the Cork Radiation and Oncology Joint Venture Centre.<sup>7</sup>

### **Market Definition**

#### **Product Market Definition**

16. In previous determinations, the Commission did not come to a definitive view on the precise relevant product market in respect to the provision of private healthcare services. In its determination in *M/20/015 – Portlón/Blackrock (Tullycorbett/Xroon)*,<sup>8</sup> the Commission made reference to a potential market for the provision of private healthcare services and also considered whether the relevant product market could be

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<sup>7</sup> As noted at paragraph 5 above, this is a joint venture between UPMC Ireland and Bon Secours Hospital Cork.

<sup>8</sup> Determination *M/20/015 – Portlón/Blackrock (Tullycorbett/Xroon)*, available at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2020/04/M-20-015-Portlón-Parma-Blackrock-Public-Determination.pdf>.



defined more narrowly by defining separate markets for the provision of individual speciality healthcare services.<sup>9</sup>

17. In the present case, the parties submitted an economic report to the Commission in relation to the Proposed Transaction prepared by Professor Francis O’Toole, titled “UPMC’s Proposed Acquisition of Aut Even: An Economics of Competition Policy Report” (the “Economist Report”). In relation to product market definition, the Economist Report stated *“it seems clear that the basic product is private healthcare services (covering inpatient, day-patient and outpatient) and the major providers include private hospitals, public hospitals and private healthcare clinics.”*
18. 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).
19. For the purposes of this determination, therefore, the Commission has followed the approach taken in previous determinations<sup>10</sup> in relation to private healthcare and assessed the likely competitive impact of the Proposed Transaction in both broad and narrow potential product markets, namely: (i) the provision of private healthcare services,<sup>11</sup> and (ii) the provision of private speciality healthcare services.

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<sup>9</sup> See also, determination M/20/010 – Portlón (Parma)/Blackrock, available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/03/M-20-010-Portlón-Parma-Blackrock-Public-Determination.pdf>, M/20/009-Portlón (Parma)/Hermitage, available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/03/M-20-009-Portlón-Parma-Hermitage-Determination-public-determination.pdf> and M/19/042 – Portlón (Parma)/Galway Clinic, available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2019/12/M-19-042-Portlón-Parma-Galway-Clinic-public-determination.pdf>.

<sup>10</sup> See for example the Commission’s determination in M/20/015 – Portlón/Blackrock (Tullycorbett/Xroon), M/20/010 – Portlón (Parma)/Blackrock, M/20/009- Portlón (Parma)/Hermitage and M/19/042 – Portlón (Parma)/Galway Clinic.

<sup>11</sup> Note, the Commission does not need to come to 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 further paragraph 29 below.



### Geographic Market Definition

20. In its previous determinations, the Commission examined the competitive impact of the relevant transactions by reference to potential regional and national geographic markets. 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. Accordingly, for the purpose of its competitive assessment of the Proposed Transaction, the Commission has followed the approach taken in previous determinations with respect to the potential geographic market and assessed the likely competitive impact of the Proposed Transaction by reference to potential regional and national geographic markets.
21. The parties state in the notification that *“... a significant cohort of patients in the South East region already leave the region to travel to hospitals in Dublin or Cork. To take one example, UPMC Ireland estimate one third of radiotherapy patients leave the South East region for treatment. In other words, the Parties submit that it would be inappropriate and artificial to define a narrow regional market that would include UPMC Whitfield and Aut Even but would exclude Dublin or Cork.”* The parties further state in the notification that *“for the purpose of analysing the Transaction on a regional geographic market, the Parties have submitted market share estimates on the basis of a South Leinster region encompassing Dublin and Cork.”*
22. Annex 16 of the notification titled [...] indicates the primary catchment area of UPMC Whitfield and Aut Even is County Waterford, County Wexford, County Carlow, County Kilkenny, half of County Tipperary and half of County Laois (the “Primary Catchment Area”). The [...] also outlines that the secondary catchment area of UPMC Whitfield and Aut Even is the same as the Primary Catchment Area while also including the remaining half of County Tipperary and the remaining half of County Laois (the “Southeast Region”).
23. Information provided by the parties in the notification indicates that [...] % of UPMC Whitfield’s patients came from County Waterford ([...] %), County Wexford ([...] %), County Tipperary ([...] %) and County Kilkenny ([...] %) in 2019. The information provided in the notification indicates that [...] % of Aut Even’s patients came from County Kilkenny



([...]%), County Tipperary ([...]%), County Carlow ([...]%), County Laois ([...]%), County Wexford ([...]%) and County Waterford ([...]%). As such, the Commission considers that the potential overlap between the patients served by the parties predominantly encompasses the Southeast Region.

24. The [...] also stated that approximately [...]% of revenue relating to patients located in the Southeast Region is generated by private healthcare providers located outside of this area. Furthermore, the parties state in the notification that *“a significant cohort of patients in the South East region already leave the region to travel to hospitals [in] Dublin or Cork”*.
25. Furthermore, patients may be required to travel a longer distance to avail of appropriate speciality treatment as not all hospitals offer all complex procedures. Therefore, with regard to the potential geographic market for the provision of private speciality healthcare services, the Commission understands that the more complex the treatment and/or procedure, the wider the geographic area from which a hospital is likely to draw patients.
26. Accordingly, for the purposes of its review of the competitive effects of the Proposed Transaction, and without coming to a definitive view on the geographic market definition, the Commission has examined the Proposed Transaction by reference to the potential geographic markets identified in paragraph 19 above in each of: (i) the State; and (ii) the Southeast Region.

### ***The Provision of Private Healthcare Services in the State***

27. Paragraph 3.1 of the Commission’s Merger Guidelines<sup>12</sup> states that *“A central element in assessing the competitive impact of a merger is identifying its effect on market structure.”* Market structure can be characterised by the number, size and distribution of firms in a market. A merger or acquisition will have an impact on market structure as

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<sup>12</sup> Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014 (the “Commission’s Merger Guidelines”).



the merging parties which were two firms pre-acquisition become one firm post-acquisition.

28. Table 1 below shows that in the State, the parties estimate that UPMC Ireland and AEL's market shares in respect of the provision of private healthcare services were approximately [0-5]%<sup>13</sup> and [0-5]% respectively in 2019, when private healthcare in public hospitals is excluded. Thus following implementation of the Proposed Transaction, with a minimal increment [0-5]%, UPMC Ireland would hold an estimated [0-10]% share in respect of the provision of private healthcare services in the State if private healthcare services provided by public hospitals in the State is excluded.<sup>14</sup>
29. For the purposes of this determination, the Commission does not need to take a definitive view on whether or not the potential product market for the provision of private healthcare services in the State includes private healthcare services in public hospitals. The Commission considers that if private healthcare services in public hospitals are taken into account the merging parties combined market share of revenue generated from the provision of private healthcare services in 2019 would have been lower than [0-10]%.

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<sup>13</sup> This estimate does not include UPMC Sports Medicine. The Commission considers in this case, regardless of the estimated market share of UPMC Sports Medicine, the estimated market share of UPMC Ireland will not alter significantly.

<sup>14</sup> Note, although the parties' estimated market share for private health services providers includes Santry Sports Surgery, Commission does not need to come to a definitive view on whether the provision of private healthcare services includes sports clinics for the purposes of this determination, on the basis of the minimal presence of Aut Even in the private health sector in the State.





<b>Table 1: Private Health Services Providers' Estimated Market Share by Revenue in the State in 2019</b>	
Private Healthcare Provider	Estimated Market Share (Excluding private provision in public hospitals)
Portlón Group <sup>15</sup>	[20-30]%
Bon Secours Group	[20-30]%
Mater Private	[20-30]%
Beacon Hospital	[5-15]%
St Vincent's Private	[5-15]%
Santry Sports Surgery	[0-5]%
UPMC Ireland (Whitfield, Kildare, Cork)	[0-5]%
AEL (Aut Even)	[0-5]%
Kingsbridge Sligo	[0-5]%
St Francis Ballinderry	[0-5]%
<b>Total</b>	<b>100%</b>
<b>Merging Parties Combined</b>	<b>[0-10]%</b>
<b>Pre-merger HHI<sup>16</sup></b>	<b>1874</b>
<b>Post-merger HHI<sup>17</sup></b>	<b>1889</b>
<b>Change in HHIs</b>	<b>15</b>
<b>Source: based on information provided by the parties</b>	

30. Market concentration refers to the degree to which production/supply in a particular market is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman Index (“HHI”), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Commission’s Merger Guidelines<sup>18</sup>, any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and any market with a post-merger HHI greater than 2,000 may be regarded as highly concentrated. In a concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 250 is “*unlikely to cause concern*”. In a highly concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 150 is “*unlikely to cause concern*”. Therefore, if the post-merger HHI is above 2,000 and the change in the HHI is greater than 150, this indicates that firms in that market may be able to exercise market power.

<sup>15</sup> Comprises Blackrock Clinic, the Hermitage Clinic and the Galway Clinic.

<sup>16</sup> Before the implementation of the Proposed Transaction.

<sup>17</sup> After the implementation of the Proposed Transaction.

<sup>18</sup> Commission’s Merger Guidelines, paragraph 3.10.



31. Based on the market share estimates set out in Table 1 above, the Commission is of the view that the market for the provision of private healthcare services in the State is concentrated with a HHI of 1874 prior to implementation of the Proposed Transaction. Following implementation of the Proposed Transaction the HHI is 1889 and the change in the HHI would be 15. Pursuant to the Commission's Merger Guidelines, such HHI levels indicate that the Proposed Transaction is unlikely to raise competition concerns on this basis.
32. In addition, the Commission's analysis has found that, even on the basis of a market for the provision of private healthcare services in the State which excludes the provision of private healthcare services in public hospitals, there are a number of significantly stronger competitors of the merging parties, offering a range of private healthcare services, which have a strong incentive to compete with the merging parties in the State. Such competitors include the Portlón Group, the Mater Private Group and Bon Secours Health System.
33. 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.

#### ***Private Speciality Healthcare Services in the State***

34. The parties both provide a broad range of private speciality healthcare services, such as, ophthalmology, orthopaedics, general surgery, urology, gynaecology, vascular, pain, ear nose and throat ("ENT") and radiology. This broad range of services indicates that while each hospital may have a focus on one or more speciality healthcare service, generally speaking, the activities of the parties are not highly specialised in one area of speciality healthcare. While UPMC Ireland provides radiotherapy services, cancer services and cardiology services, Aut Even does not provide those speciality healthcare services. Therefore, if the potential product market is defined as private speciality healthcare services, then there is no overlap between the parties' activities in respect of these three speciality services.
35. Table 2 below lists the private speciality healthcare services in which the parties' activities overlap in the State. It shows that the parties' estimated combined market



shares by revenue in respect of the provision of each of the different speciality healthcare services provided by the parties in the State was below [10-20]% in 2019, when private speciality healthcare services in public hospitals are excluded. The parties' estimated combined market shares for more than half of the specialities provided by them was below 5% in 2019 (gynaecology, vascular, pain, ENT and radiology). If private speciality healthcare services provided by public hospitals in the State are taken into account the parties' combined market share of revenue generated from the provision of private speciality healthcare services in 2019 would have been lower.

36. Similar to the discussion in paragraph 29 above, for the purposes of this determination, the Commission does not need to take a definitive view on whether or not the potential market for the provision of private speciality healthcare services in the State includes private speciality healthcare services in public hospitals. This is because, the Commission considers that if private speciality healthcare services in public hospitals are taken into account, the parties' combined market share by revenue in respect of the provision of each private speciality healthcare service provided by them in 2019 would have been lower than 15%.

<b>Table 2: The parties' combined estimated Market Shares by revenue by speciality healthcare service provided in the State in 2019</b>	
<b>Speciality</b>	<b>Estimated Market Share (Excluding private provision in Public hospitals)</b>
Ophthalmology	<[10-20]%
Orthopaedics	<[5-15]%
General Surgery	<[5-15]%
Urology	<[5-15]%
Gynaecology	<5%
Vascular	<5%
Pain	<5%
ENT	<5%
Radiology	<5%
<b>Source: based on information provided by the parties</b>	

37. The Commission's analysis has found that, even excluding the provision of private healthcare services in public hospitals, there are a number of competitors which offer a range of private speciality healthcare services in the State. Following implementation of the Proposed Transaction, these companies, such as the Portlón Group, the Mater Private Group and Bon Secours Health System, will still have a strong incentive to



compete with UPMC Ireland in respect of the provision of private speciality healthcare services in the State.

38. 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 speciality healthcare services in the State.

### ***The Provision of Private Healthcare Services in the Southeast Region***

39. Following implementation of the Proposed Transaction, UPMC Ireland would exercise sole control over UPMC Whitfield, UPMC Kildare and Aut Even and joint control over Cork Radiation Oncology Associates. UPMC Whitfield and Aut Even are the closest private hospitals to one another by location and they are the only private hospitals located in the Southeast Region. However, the Commission considers that the Proposed Transaction will not significantly lessen competition for the provision of private healthcare services in the Southeast Region for the reasons discussed further below:

- Competitive constraint from private healthcare services in public hospitals in the Southeast Region;
- Competitive constraint from private healthcare providers located in County Dublin and County Cork; and,
- Health insurers will continue to have a certain level of negotiating powers in their negotiations with private hospital groups.

### **Competitive constraint from private healthcare services in public hospitals in Southeast Region**

40. As noted above the Commission does not need to take a definitive view on whether the potential product market for the provision of private healthcare services in the State includes private healthcare services in public hospitals. However, the Commission has considered the extent to which such services would act as a competitive constraint on the merging parties.

41. There are a number of public hospitals which provide private healthcare services located in the Southeast Region, namely, University Hospital Waterford, Dunmore Road, Waterford (“UHW”), St. Luke’s General Hospital, Freshford Road, Friarsinch, County Kilkenny, (“St. Luke’s Hospital”), Wexford General Hospital, Newtown Rd,



Carricklawn, County Wexford (“Wexford General”), Kilcreene Orthopaedic Public Hospital, Kilcreene, County Kilkenny (“Kilcreene Orthopaedic”) and South Tipperary General Hospital, Clonmel, County Tipperary (“South Tipperary General”).

42. The parties state in the notification that *“the competitive overlap between UPMC Whitefield and Aut Even is rather weak- and UPMC Whitefield is not a close competitor of Aut Even.”* In addition, the Economist Report states that *“it seems clear that included among the major competing entities to UPMC with respect to the provision of private healthcare services are Waterford University Hospital and Wexford General Hospital. Similarly, it seems clear that among the major competing entities to Aut Even with respect to the provision of private healthcare services is St. Luke’s Hospital, Kilkenny.”*
43. St. Luke’s Hospital is the closest hospital in proximity to Aut Even, both hospitals are located in County Kilkenny. In the response to an informal information request from the Commission, the parties submitted that *“St Luke’s Kilkenny is the closest competitor to Aut Even, the CCPC should also recognise that Kilcreene Orthopaedic Public Hospital, Kilkenny plays a competitive role given its proximity.”* The parties submitted that, of the eight main specialities offered in Aut Even, five are offered between St Luke’s Hospital and Kilcreene Orthopaedic in the following manner: four are offered in St Luke’s Hospital (general surgery, gynaecology, vascular and radiology) and two are offered in Kilcreene Orthopaedic (orthopaedics and radiology). Furthermore, the parties estimate that St. Luke’s Hospital operates approximately 57 inpatient beds for private patients, in comparison to Aut Even’s 71 inpatient beds. The parties estimate that the number of St Luke’s Hospital’s private discharges is equivalent to [40-50]% of the discharges at Aut Even and St. Luke’s Hospital’s revenue generated from private patients is equivalent to [50-60]% of Aut Even’s revenue.
44. UHW is the closest hospital in proximity to UPMC Whitfield, both hospitals are in Waterford. In the response to an informal information request from the Commission, the parties submitted that *“it is clear that [University Hospital Waterford] and Wexford General [Hospital] and (to a lesser extent) South Tipperary [General Hospital] represent large competing hospitals to UPMC Whitfield based on the following evidence: (i) overlapping services, (ii) competing specialities, (iii) admissions, and (iv) revenue.”* Of the 11 main specialities offered in UPMC Whitfield, other than radiotherapy, all are also



offered in UHW, three are offered at Wexford General Hospital and South Tipperary General (general surgery, gynaecology, and radiology). Cancer services are also offered at South Tipperary General. Furthermore, the parties estimate that UHW, Wexford General and South Tipperary General together had more private discharges than UPMC Whitfield (approximately [...] in comparison to UPMC Whitfield's [...]) in 2019. The parties estimate that together UHW, Wexford General and South Tipperary General generated revenue of approximately €[...] million from private activity in 2019.

45. In response to a questionnaire issued by the Commission, two health insurers suggested that Aut Even and St. Luke's Hospital compete in respect of general surgery and gynaecology. A third health insurer was of the view that Aut Even does not compete with St. Luke's Hospital in respect of its private health insurer members. One of these health insurers also suggested that UPMC Whitfield and UHW compete mainly in the areas of orthopaedics, general surgery and gynaecology.
46. The Commission considers that given the limited number of private hospitals in the Southeast Region, private healthcare services in public hospitals play an important part in providing private healthcare services to private patients in the Southeast Region. In particular, as outlined in paragraphs 43 and 44 above, St. Luke's Hospital and UHW currently provide a significant amount of private healthcare services in the Southeast Region. Information provided by the parties indicated that in the Southeast Region, revenue generated by all public hospitals from private healthcare services is approximately [75-85]% of UPMC Whitfield and Aut Even's revenue together in 2019. Therefore, the Commission considers that public hospitals in the Southeast Region have the ability and capacity to compete with Aut Even and UPMC Whitfield in the Southeast Region in respect of private healthcare services.
47. Therefore, following implementation of the Proposed Transaction, the Commission considers that private healthcare services in the public hospitals in the Southeast Region



will continue to exert a competitive constraint on UPMC in respect of the provision of private healthcare services in the Southeast Region.

Competitive constraint from private healthcare providers located in County Dublin and County Cork

48. The parties estimate that approximately [35-45]% of patients located in the Southeast Region obtain private healthcare services from entities located outside the region. The parties estimate that [65-75]% of this activity occurs in County Dublin, while the remaining [25-35]% occurs in County Cork.
49. The [...] states: "..."
50. In response to a questionnaire issued by the Commission, one health insurer stated *"Patients still travel from this region to Dublin in order to access private healthcare ...."*
51. Table 3 below outlines estimated the drive time between Aut Even and hospitals in the Southeast Region, Dublin and Cork. As shown in Table 3, hospitals in Dublin and Cork, including Hermitage Clinic, Beacon Hospital, Blackrock Clinic and Bon Secours, are all within a two hour drive of Aut Even.

<b>Table 3: Estimated drive times from Aut Even</b>	
Private Healthcare Provider	Estimated Drive Time
St Luke's Hospital	4 minutes
UPMC Whitfield	41 minutes
University Hospital Waterford	45 minutes
South Tipperary General	53 minutes
UPMC Kildare	1 hour 10 minutes
Wexford General	1 hour 16 minutes
Hermitage Clinic, Dublin	1 hour 16 minutes
Beacon Hospital, Dublin	1 hour 21 minutes
Blackrock Clinic, Dublin	1 hour 29 minutes
Mater Private, Dublin	1 hour 31 minutes
St Vincent's Private	1 hour 38 minutes
Bon Secours, Cork	1 hour 40 minutes
<b>Source: based on information provided by the parties</b>	

52. The Commission notes that for more specialised private healthcare services (such as cardiology, oncology, neurology, sports surgery and spinal) patients may be required to travel a longer distance to avail of the appropriate treatment as Aut Even and UPMC



Whitefield do not offer all complex procedures. In this instance, patients located in the Southeast Region do travel to County Dublin and County Cork for private healthcare services, however, there is no evidence suggesting patients from Dublin and Cork travel to the Southeast Region seeking private healthcare services.<sup>19</sup>

53. In light of the above, the Commission considers that following the implementation of the Proposed Transaction, UPMC Ireland will continue to face competition from private hospitals located in County Dublin and County Cork, in particular, those outlined in Table 3 above.

*Health insurers will continue to have a certain level of negotiating power*

54. The Commission considers that following implementation of the Proposed Transaction, UPMC Ireland will likely be constrained by the private health insurers, who will continue to have a certain level of negotiating power with private hospital groups.
55. In merger determination *M/20/015 – Portlón/Blackrock (Tullycorbett/Xroon)* at paragraph 48, it is stated “*In the State, the cost of over 90% of all private healthcare services are covered by patients’ private health insurance, with three private health insurers (VHI, Laya and Irish Life) providing around 90% of cover*”.
56. 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 Southeast Region.

***Private Speciality Healthcare Services in the Southeast Region***

57. As noted in paragraph 34, the parties both provide a broad range of speciality healthcare services in the Southeast Region and this broad range of services indicates that while each clinic may have a focus on one or more speciality healthcare services, generally speaking, the activities of the parties are not highly specialised in one area of speciality healthcare. Furthermore, there is no horizontal overlap between the parties

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<sup>19</sup> See paragraph 23, which notes that information provided by the parties indicates that approximately 86% and 96% of UPMC Whitfield and Aut Even’s respective patients come from the Southeast region.





in the provision of radiotherapy services, cancer services and cardiology services in the Southeast Region.

58. As discussed in paragraphs 45 and 46 above, public hospitals in the Southeast Region compete with Aut Even and UPMC Whitefield in respect of certain private speciality healthcare services. Table 4 outlines the private speciality healthcare services offered by both the parties and the public hospitals in the Southeast Region. Table 4 indicates that together the public hospitals in the Southeast region offer all of the private speciality services provided by the parties with the exception of radiotherapy.

<b>Table 4: Activities of public and private hospitals in the provision of private speciality healthcare services in the Southeast Region</b>							
<b>Speciality</b>	<b>Aut Even</b>	<b>UPMC Whitfield</b>	<b>UHW</b>	<b>St Luke's</b>	<b>Wexford General</b>	<b>South Tipperary</b>	<b>Kilcreene</b>
Orthopaedics	✓	✓	✓				✓
Ophthalmology	✓	✓	✓				
General Surgery	✓	✓	✓	✓	✓	✓	
Urology	✓	✓	✓				
Gynaecology	✓	✓	✓	✓	✓	✓	
Vascular	✓	✓	✓	✓			
Pain	✓	✓	✓				
ENT	✓	✓	✓				
Radiology	✓	✓	✓	✓	✓	✓	✓
Radiotherapy		✓					
Cancer services		✓	✓	✓		✓	
Cardiology		✓	✓				
<b>Source: based on information provided by the parties</b>							

59. The parties submit that UHW represents the largest competitor to UPMC Whitfield as it offers all of the speciality healthcare services offered by UPMC Whitefield (and also Aut Even) other than radiotherapy.<sup>20</sup> The Commission considers that the public hospitals in the Southeast Region will continue to exert a competitive constraint on the parties post transaction in the provision of private speciality healthcare services in the Southeast Region.

<sup>20</sup> UPMC Whitfield provides radiotherapy services to patients in the Southeast Region under an agreement with the Health Service Executive and National Cancer Control Programme.



60. The parties informed the Commission that the speciality healthcare services offered by the parties are all related to elective treatments, which means that the patient must make an appointment to receive the treatment and, unlike emergency treatments, elective treatments are generally speaking not required to be carried out urgently. Patients are therefore more able to travel for these elective treatments than they would be for emergency treatment. In response to a query from the Commission, UPMC Ireland stated: *“The nature of almost all of the Parties’ activity is elective and carried out according to scheduled appointments. In other words, patients generally travel to UPMC Ireland or Aut Even Hospital at defined times and it is feasible to alternatively travel to Dublin or Cork. UPMC Ireland notes that neither it nor Aut Even Hospital operate an A&E department, which might be regarded as the type of service that needs to be run on a more local basis.”* Similar to what is noted in paragraphs 53 above, hospitals in County Dublin and County Cork will continue to exert a competitive constraint in the provision of private speciality healthcare services on UPMC Ireland following implementation of the Proposed Transaction.
61. 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 speciality healthcare services in the Southeast Region.

***Potential benefits to the Southeast Region’s private patients***

62. Furthermore, the Commission considers that the Proposed Transaction might benefit consumers of private healthcare services in the Southeast Region. The parties state in the notification that “...”
63. In its response to the Commission’s questionnaire, one private health insurer submitted that *“... investment in the facility has been minimal and Aut Even could benefit from ownership by a Healthcare leader such as UPMC who are committed to investing in their facilities and services [as well] as supporting innovation and community partnerships. The purchase by UPMC would bring much needed financial stability and could potentially improve access to specialities and advanced technologies for members in this region. There may also be potential to pass on to members any value unlocked by the scale efficiencies arising from the consolidation.”* Another private health insurer submitted that the Proposed Transaction will maintain medical services where there is a shortage



of medical capacity due to chronic disease management (or CDM) and an ageing population.

64. The Commission considers that following implementation of the Proposed Transaction Aut Even may be better positioned to utilise its capacity and some of the patients currently leaving the region could instead obtain private healthcare services in the Southeast Region.

***Impact on UPMC Ireland's negotiating position with private health insurers***

65. As set out paragraph 12 above, during the Commission's market enquiries, a concern was raised [...] in relation to the potential impact of the Proposed Transaction on UPMC Ireland's negotiation position with private health insurers. The health insurer stated that *"Collectively the proposed merger is likely to affect the negotiation of reimbursement rates as a merger of these hospitals will potentially make it more challenging to negotiate competitive rates and lead to the consolidated group seeking to align and promote more favourable contract clauses and rates..."*
66. [...] states that *"The impact of the proposed transaction on negotiations is minimal as Aut Even is one of the smaller hospitals in our network, however, should UPMC continue to acquire more hospitals in the Irish market it may make negotiations considerably more complex due to the size and scale of the group, they could have the ability to influence / attract a large number of consultants working within their wider organisation and potentially put significant pressure on smaller private hospitals."*
67. The Commission considers that following implementation of the Proposed Transaction UPMC Ireland's market share in the State (less than [0-10]%) is not sufficient to allow the merged entity to be successful in unilaterally increasing reimbursement rates in respect of the provision of private healthcare services. In the Southeast Region, as indicated in paragraph 43, a significant amount of private healthcare services are provided by public hospitals in the region. Therefore, the impact of the Proposed Transaction regarding the negotiation between the private health insurers and UPMC Ireland is limited.

**Vertical Relationship**



68. The parties provide in the notification that there is no vertical relationship between the parties in the State. 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**

69. 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**

70. 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 UPMC Investments Limited would acquire sole control of Aut Even 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

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