

# DETERMINATION OF MERGER NOTIFICATION M/21/024

## ORPEA/FIRSTCARE

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### Section 21 of the Competition Act 2002

**Proposed acquisition by Orpea S.A, through its subsidiary Orpea Care Ireland Limited, of sole control of six companies trading under the name FirstCare**

**Dated 06 July 2021**

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### Introduction

1. On May 10 2021, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Orpea S.A. (“Orpea”), through its subsidiary Orpea Care Ireland Limited would acquire sole control of Firstcare Beneavin House Limited, Firstcare Beneavin Lodge Limited, Firstcare Beneavin Manor Limited, Firstcare Blainroe Lodge Limited, Firstcare Mountpleasant Lodge Limited and Firstcare Earlsbrook House Limited (together, the “Firstcare Companies”) as well as certain freehold and development property interests described further below (collectively with the Firstcare Companies, “FirstCare”) from Primemount Pt Limited and Primemount FC Limited respectively (the “Proposed Transaction”).

### The Proposed Transaction:

2. The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (“SPA”) dated 6 May 2021 between Primemount Pt Limited, Mr. Mervyn Smyth<sup>1</sup>, Orpea Care Ireland Limited and Orpea. Pursuant to the SPA, Orpea will acquire the entire issued share capital, and thereby sole control of the FirstCare Companies.
3. The Proposed Transaction is also to be implemented pursuant to a separate contract for sale between Careprime Holdings FC Limited, Primemount FC Limited, Orpea Care Ireland Limited and Orpea dated 6 May 2021 (the “Contract for Sale”). Pursuant to the Contract for Sale, Orpea will purchase (i) certain freehold and development property consisting of land on which two of the

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<sup>1</sup> Primemount Pt Limited is ultimately controlled by Mr Mervyn Smyth.

nursing homes operated by the FirstCare Companies are situated on; (ii) the properties in which said homes are operated, known as Beneavin Manor and Beneavin Lodge; (iii) a one acre site at Beneavin Manor with planning permission for 10 apartments and; (iv) two of other development sites with planning permission for nursing homes, at Limetree Avenue, Portmarnock, Co. Dublin, and School Road, Finglas, Dublin 11.

## The Undertakings Involved:

### The Acquirer: Orpea

4. Orpea is publicly traded on the Euronext stock exchange in Paris, and its shareholding is widely held.<sup>2</sup> Orpea is active in the residential care and nursing home services sector worldwide, with a presence across 22 countries on three continents.<sup>3</sup>
5. In the State, Orpea is active in the provision of nursing home and residential care services through its subsidiary Orpea Care Ireland Limited. Orpea entered the Irish market in 2020 through the acquisition of the TLC nursing home portfolio (the “TLC Portfolio”)<sup>4</sup> in January 2020. Following its acquisition of the TLC Portfolio, Orpea has expanded its presence in the State with the acquisition of Brindley Healthcare Limited (“Brindley”)<sup>5</sup> and Belmont Care Limited (“Belmont”) which owns the Belmont Nursing Home.<sup>6</sup> The Commission has included the Belmont Nursing Home in its competitive assessment notwithstanding this transaction has not yet completed and Orpea does not currently have control of this asset, as the Commission has not identified any reasons that would suggest that the transaction will not be implemented. [The Commission is aware that the Belmont transaction closed on 1 July 2021]. For clarity, the residential and nursing homes in the State operated by Orpea and including the Belmont Nursing Home are referred to in this determination as the “Orpea Portfolio”.

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<sup>2</sup> See <https://www.orpea-corp.com/actionnaire-menu/structure-du-capital>

<sup>3</sup> Further information on Orpea’s worldwide activities can be found via the following link: [www.orpea-group.com/le-groupe/form/orpea-worldwide](http://www.orpea-group.com/le-groupe/form/orpea-worldwide).

<sup>4</sup> Further details of the TLC Portfolio is available at: <http://tlccentre.ie/>

<sup>5</sup> Orpea currently holds joint control of Brindley (see *M/20/020 – Arthropoda (Orpea)/Brindley*). The acquisition by Orpea of sole control of Brindley was cleared by the Commission on 4 May 2021 (see *M/21/020 – Orpea/Brindley*).

<sup>6</sup> The Commission notes that Orpea is set to acquire Belmont Nursing Home, which was subject to CCPC approval in *M/21/019 Brindley / Belmont*. [The Commission is aware that the Belmont transaction closed on 1 July 2021].

6. Orpea's Portfolio of 16 residential care and nursing homes in the State is listed in Table 1 below.

**Table 1: Orpea's Portfolio of residential care and nursing homes in the State**

Residential Care and Nursing Home	County	Beds
TLC Carton	Dublin	163
TLC Centre Santry	Dublin	128
TLC Centre Maynooth	Kildare	141
TLC City West	Dublin	139
TLC Cara Care Santry	Dublin	103
Brentwood Manor Private Nursing Home	Donegal	56
Mill Lane Manor	Kildare	70
Maynooth Lodge Nursing Home	Kildare	79
Brindley Manor Private Nursing Home	Donegal	43
Oughterard Manor	Galway	41
Brookvale Manor Private Nursing Home	Mayo	57
Beach Hill Manor Private Nursing Home	Donegal	48
Millbrae Lodge Nursing Home	Tipperary	81
Ashley Lodge Nursing Home	Kildare	55
Kilminchy Lodge Nursing Home	Laois	52
Belmont Nursing Home <sup>7</sup>	Dublin	161

<sup>7</sup> Orpea's acquisition of the Belmont Nursing Home has been approved by the Commission but not yet completed. The Commission has not identified any reasons that would suggest that Orpea's acquisition of the Belmont Nursing Home will not be implemented and it is therefore included in the Orpea Portfolio in Table 1

Total		1417 beds
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7. For the financial year ending 31 December 2020, Orpea’s worldwide turnover was €[...] billion, of which €[...] million was generated in the State.

#### The Target: FirstCare

8. FirstCare is active in the provision of nursing home and residential care services in the State and is ultimately controlled by Mr Mervyn Smith. FirstCare consists of six residential care and nursing homes in the State, as detailed in Table 2 below. FirstCare is not active outside of the State.

**Table 2: FirstCare’s portfolio of residential care and nursing homes in the State**

Residential Care and Nursing Home	County	Beds
Beneavin House Nursing Home	Dublin	150
Beneavin Lodge Nursing Home	Dublin	70
Beneavin Manor Nursing Home	Dublin	115
Earlsbrook House	Wicklow	64
Blainroe Nursing Home	Wicklow	72
Mountpleasant Nursing Home	Kildare	81
<b>Total</b>		<b>552 beds</b>

9. For the financial year ending 31 December 2020, FirstCare’s worldwide turnover was €[...] million, [...] of which was generated in the State.

#### Rationale for the Proposed Transaction

10. The parties state in the notification:

“[...]”.

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for the reasons explained above in paragraph 5. [The Commission is aware that the Belmont transaction closed on 1 July 2021].

## Third Party Submissions

11. No third party submissions were received. The Commission did contact both the National Treatment Purchase Fund (“NTPF”) and the Health Information and Quality Authority (“HIQA”) in relation to the Proposed Transaction.

## Competitive Analysis

### *Horizontal Overlap - Product Market*

12. There is a horizontal overlap between the parties’ activities in the State with respect to the provision of residential care and nursing home services.
13. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market because the product market definition adopted will not alter the Commission’s assessment of the Proposed Transaction. In order to examine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its likely impact by reference to the potential product market for the provision of residential care and nursing home services. This is consistent with the Commission’s approach in its previous determinations, M/20/020 *Arthropoda (Orpea) / Brindley*, M/21/019 *Brindley / Belmont*, and M/21/020 *Orpea / Brindley*.

### *Geographic Market*

14. The parties argue that the geographic market is the State, or, at its narrowest the Greater Dublin Area (“GDA”).<sup>8</sup> They state that services and prices of residential care and nursing homes offered in the GDA and across county lines are generally comparable such that the conditions of competition are similar. They also state that counties within the GDA are geographically proximate and well connected and most of the areas within the GDA are ‘satellite’ or ‘commuter’ towns for people working in Dublin and extensions of the greater Dublin community.
15. The Commission considers that it is not necessary 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

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<sup>8</sup> The GDA is generally considered to include Dublin City, Fingal, South Dublin, Dún Laoghaire-Rathdown, Meath, Kildare and Wicklow and is consistent with the definition used by Central Statistics Office (“CSO”) and the National Transport Authority (“NTA”).

local or national. In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed the likely impact by reference to the provision of residential care and nursing home services in (i) the State, (ii) the GDA, (iii) Co. Dublin and (iv) Co. Kildare, as counties Dublin and Kildare are the two counties in which the parties' activities overlap.

### The Market for Residential Care and Nursing Home Services in the State

16. HIQA maintains and provides a register of residential care and nursing home services for older people in the State. The HIQA register indicates that there are 571 facilities providing residential care and nursing home services in the State. These facilities provide a total of 32,103 beds for residential care and nursing home services.<sup>9</sup>

<b>Table 3. Market for Residential Care and Nursing Homes Services in the State</b>		
<b>Residential Care and Nursing Home Providers</b>	<b>Residential Care and Nursing Home beds</b>	<b>Estimated shares</b>
Orpea Portfolio	1417 beds	[0-5]%
FirstCare	552 beds	[0-5]%
<b>Parties' Combined Portfolio</b>	<b>1969 beds</b>	<b>[5-10]%</b>
<i>Competitors</i>		
HSE	5591 beds	[15-20]%
Mowlam Healthcare	1592 beds	[0-5]%
CareChoice	1185 beds	[0-5]%
Sonas Group	644 beds	[0-5]%
Trinity Care / Costern	611 beds	[0-5]%
Grace Healthcare	542 beds	[0-5]%
Aperee / Ditchley Group	499 beds	[0-5]%

<sup>9</sup> The HIQA Register is available to access at: <https://www.hiqa.ie/areas-we-work/older-peoples-services>

<b>Table 3. Market for Residential Care and Nursing Homes Services in the State</b>		
<b>Residential Care and Nursing Home Providers</b>	<b>Residential Care and Nursing Home beds</b>	<b>Estimated shares</b>
Emera / Virtue Group	464 beds	[0-5]%
Brookhaven Healthcare	414 beds	[0-5]%
Newbrook Nursing Homes Group	397 beds	[0-5]%
Silver Stream Healthcare	350 beds	[0-5]%
IMAAC / Beechfield Care Group	314 beds	[0-5]%
Bartra Healthcare	273 beds	[0-5]%
Others	17,[...]263 beds	[50-55]%
<b>Total beds available in the State</b>	<b>32,103 beds</b>	<b>100%</b>

Source: HIQA Register of older people's services

17. Table 3 shows that the sixteen residential care and nursing homes in the Orpea Portfolio provide 1417 beds and represent an estimated market share of [0-5]% of the residential care and nursing home beds available in the State. FirstCare owns and operates six residential care and nursing homes in the State providing a total of 552 residential care and nursing home beds. This represents an estimated market share of [0-5]% of residential care and nursing home beds available within the State. Therefore, post-transaction, the parties' combined share of residential care and nursing homes in the State would be approximately [5-10]%.
18. Following completion of the Proposed Transaction, the merged entity will continue to face competition from a significant number of residential care and nursing home providers including *CareChoice* ([0-5]%), *Mowlam Healthcare* ([0-5]%) and *Sonas Group* ([0-5]%).
19. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the provision of residential care and nursing home services in the State.

## The Market for Residential Care and Nursing Home Services in the Greater Dublin Area

20. On the potential market for the provision of residential care and nursing home services in the GDA, the parties' estimated shares in the GDA would be as follows:

<b>Table 4. Market for Residential Care and Nursing Homes Services in the GDA</b>		
<b>Residential Care and Nursing Home Providers</b>	<b>Residential Care and Nursing Home beds</b>	<b>Estimated share</b>
Orpea Portfolio	1039 beds	[5-10]%
FirstCare	552 beds	[0-5]%
<b>Parties' Combined Portfolio</b>	<b>1591 beds</b>	<b>[10-15]%</b>
<i>Competitors</i>		
HSE	1241 beds	[5-10]%
Mowlam Healthcare	628 beds	[5-10]%
CareChoice	639 beds	[5-10]%
Trinity Care	471 beds	[0-5]%
Emera / Virtue Group	383 beds	[0-5]%
Grace Healthcare	348beds	[0-5]%
IMAAC / Beechfield Care Group	314 beds	[0-5]%
Silver Stream Healthcare	300 beds	[0-5]%
Bartra Healthcare	273 beds <sup>10</sup>	[0-5]%
Brookhaven Healthcare	112 beds	[0-5]%
Others	5969 [...] beds	[45-50]%
<b>Total beds available in Greater Dublin Area</b>	<b>12,269 beds</b>	<b>100%</b>

<sup>10</sup> The parties to the Proposed Transaction noted that an additional 221 beds are due to be opened in 2022.



Source: HIQA Register of older people's services

21. The Orpea Portfolio includes sixteen residential care and nursing homes in the State, nine of which are located in the GDA.<sup>11</sup> Table 4 shows that these nine residential care and nursing homes provide 1039 beds and represent an estimated market share of [5-10]% of the residential care and nursing home beds available in the GDA. FirstCare owns and operates six residential care and nursing homes in the State, all of which are located in the GDA. These nursing homes provide a total of 552 residential care and nursing home beds and represent an estimated market share of [0-5]% of residential care and nursing home beds available within the GDA. Therefore, post-transaction, the combined market share of the parties would be approximately [10-15]% in the GDA.
22. Table 4 also shows that there are a significant number of other providers of residential care and nursing home services in the GDA, including CareChoice, Mowlam Healthcare, Emera / Virtue Group, Silver Stream Healthcare and Trinity Care, all of which will continue to provide residential care and nursing home services following completion of the Proposed Transaction.
23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the GDA.

#### The Market for Residential Care and Nursing Home Services in Co. Dublin

24. On the potential market for the provision of residential care and nursing home services in Co. Dublin, the parties' estimated shares would be as follow:

<b>Table 5. Market for Residential Care and Nursing Homes Services in Co. Dublin</b>		
<b>Residential Care and Nursing Home Providers</b>	<b>Residential Care and Nursing Home beds</b>	<b>Estimated share</b>
<b>Orpea Portfolio</b>	<b>694 beds</b>	[5-10]%
<b>FirstCare</b>	<b>185 beds</b>	[0-5]%
<b>Total</b>	<b>1040 beds</b>	[10-15]%
<i>Competitors</i>		

<sup>11</sup> These figures include Belmont Nursing Home which is not currently operated by Orpea as explained above in paragraph 5. [The Commission is aware that the Belmont transaction closed on 1 July 2021].

<b>Table 5. Market for Residential Care and Nursing Homes Services in Co. Dublin</b>		
<b>Residential Care and Nursing Home Providers</b>	<b>Residential Care and Nursing Home beds</b>	<b>Estimated share</b>
CareChoice	509 beds	[5-10]%
Mowlam Healthcare	314 beds	[0-5]%
Silver Stream Healthcare	171 beds	[0-5]%
Bartra Healthcare	273 beds <sup>12</sup>	[0-5]%
HSE	849 beds	[10-15]%
Others	5093 [...] beds	[60-65]%
<b>Total beds available in County Dublin</b>	<b>8,249 beds</b>	<b>100%</b>

Source: HIQA Register of older people's services

25. The Orpea Portfolio includes five residential care homes in Co. Dublin.<sup>13</sup> Together these homes have 694 beds and represent an estimated [5-10]% of the market in Co. Dublin. FirstCare owns and operates three residential care and nursing homes in the Co. Dublin. These homes have 185 beds and represent an estimated market share of [0-5]% of the residential care and nursing home beds available in Co. Dublin. Therefore post-transaction, the combined market share of the Parties would be approximately [10-15]% in Co. Dublin.
26. Further, the parties will continue to face competition from a number of nursing homes in Co. Dublin following completion of the Proposed Transaction, including CareChoice, Mowlam Healthcare, Silver Stream Healthcare and Bartra.
27. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in Co. Dublin.

### **The Market for Residential Care and Nursing Home Services in County Kildare**

<sup>12</sup> The Commission notes an additional 221 beds are due to be opened by year end.

<sup>13</sup> These figures include Belmont Nursing Home which is not currently operated by Orpea. [The Commission is aware that the Belmont transaction closed on 1 July 2021].

28. On the potential market for the provision of residential care and nursing home services in County Kildare, the parties' estimated shares would be as follows:

<b>Table 6. Market for Residential Care and Nursing Homes Services in County Kildare</b>		
<b>Residential Care and Nursing Home Providers</b>	<b>Residential and Nursing Home beds</b>	<b>Estimated share</b>
<i>Orpea / FirstCare</i>		
<b>Orpea</b>	<b>345 beds</b>	[20-25]%
<b>FirstCare</b>	<b>81 beds</b>	[0-5]%
<b>Combined</b>	<b>426 beds</b>	[25-30]%
<i>Competitors</i>		
Mowlam Healthcare	60 beds	[0-5]%
HSE	146 beds	[5-10]%
Others	1027 beds	[60-65]%
<b>Total beds available in County Kildare</b>	<b>1659 beds</b>	<b>100%</b>

Source: HIQA Register of older people's services

29. Using the data from the HIQA registry, the Commission estimates that the Herfindahl-Hirschman Index ("HHI") for the Kildare market is approximately 887.<sup>14</sup> This will rise by 193 to 1080 post-transaction. This indicates that, following implementation of the Proposed Transaction, the Kildare market will be concentrated as explained in the Commission's guidelines.<sup>15</sup>
30. Orpea currently owns and operates four residential care homes in Co. Kildare. Together these homes have 345 beds and represent an estimated [20-25]% of the market in Co. Kildare. FirstCare owns and operates one residential care and nursing home in the Co. Kildare. This home has 81 beds and represents an estimated market share of [0-5]% of the residential care and nursing

<sup>14</sup> A commonly used measure of concentration is the HHI, which is defined as the sum of the squares of the market shares of all firms participating in the market. The HHI represents both the number of firms in the market and their relative size. Both the absolute level of the HHI and the change in the HHI as a result of a merger provide an indication of whether the merger is likely to raise competition concerns.

<sup>15</sup> Commission, 'Guidelines for Merger Analysis', (2013) page 13, para. 3.10. which states that 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.

home beds available in Co. Kildare. Therefore post-transaction, the combined market share of the parties would be approximately [25-30]% in Co. Kildare.

31. In light of the above, the Commission has potential concerns regarding Orpea's market share in Co. Kildare post-implementation of the Proposed Transaction and any potential future expansion in this area by Orpea. In particular, should Orpea acquire control over additional residential care and nursing home(s) in County Kildare (a "Possible Transaction"), the Commission considers that there is a possibility that such Possible Transaction(s) would not meet the mandatory thresholds for a merger filing to the Commission given the size of the "Other" competitors in Co. Kildare. In such a scenario, the likely competitive effects of a Possible Transaction on competition in this potential market would not be reviewed by the Commission.
32. Orpea submitted a draft proposal to the Commission in accordance with section 20(3) of the Act on 18 June 2021 with a view to ameliorating the competition concerns identified by the Commission. On 6 July 2021, Orpea submitted a final proposal to the Commission under section 20(3) of the Act (the "Proposal"). The Proposal submitted by Orpea includes a commitment by Orpea that if it enters a legally binding agreement to, directly or indirectly, acquire control (for the purposes of section 16(1) of the Act) over any residential care and nursing home in County Kildare, Orpea will inform the Commission of the Possible Transaction, and voluntarily notify the Possible Transaction to the Commission before it is put into effect, pursuant to section 18(3) of the Act should it be directed to do so by the Commission.
33. The Commission is of the view that the Proposal is appropriate and effective to address the competition concerns identified by the Commission in relation to the potential market for the provision of residential care and nursing home services in Co. Kildare. In accordance with section 20(3) and section 26(1) and section 26(4) of the Act, the Commission has taken the Proposal into account and the Proposal forms the basis or part of the basis for this determination. Consequently, the Proposal has become a commitment binding upon Orpea.
34. In light of the above, and having taken the Proposal into account, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the provision of residential care and nursing home services Co. Kildare.

#### *Vertical Relationship*

35. The parties informed the Commission that there is no vertical relationship between the parties in the State as the parties operate on the same level of the supply chain and are not potential customers of one another.
36. The Commission has not identified any vertical relationship between the parties and on this basis, considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

37. In light of the above, and having taken the Proposal into account (which forms the basis or part of the basis for its 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**

38. The parties state in the notification that certain ancillary restraints in relation to the Proposed Transaction are included in Clauses 10.1-10.5 of the SPA. The parties submit that these restrictions are directly related and necessary to the Proposed Transaction.
39. The scope and duration of the restrictions of Clauses 10.1.1, 10.1.2, 10.1.3 and 10.1.5 of the SPA do not exceed the maximum scope and duration acceptable to the Commission. The Commission considers the restrictions in Clauses 10.1.1, 10.1.2, 10.1.3 and 10.1.5 of the SPA to be directly related to and necessary for the implementation of the Proposed Transaction, insofar as they relate to the State.
40. The Commission notes that Clauses 10.1.4 and 10.1.6 of the SPA contains other restrictive obligations which restrict Primemount PT Limited and [...] from interfering or taking any steps as may interfere with the continuance of supplies to FirstCare and from disclosing confidential information. The Commission notes that, unlike the restrictions in Clauses 10.1.1, 10.1.2, 10.1.3 and 10.1.5 of the SPA, the restrictions contained in Clauses 10.1.4 and 10.1.6 of the SPA are not limited in time and apply at any time after completion of the Proposed Transaction. For these reasons, the Commission has not reached a view as to whether or not Clauses 10.1.4 and 10.1.6 of the SPA is directly related and necessary to the implementation of the Proposed Transaction.

Clauses 10.1.4 and 10.1.6 of the SPA will not therefore benefit from the protections offered by sections 4(8) and 5(3) of the Act.

## **Determination**

Pursuant to section 20(3) of the Act, Orpea S.A. has submitted to the Commission the proposal set out below relating to the Proposed Transaction for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposal becoming binding on Orpea S.A.

The Competition and Consumer Protection Commission, has taken the proposal into account and in light of the said proposal (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, that, in its opinion, the result of the proposed acquisition whereby Orpea S.A., through its subsidiary Orpea Care Ireland Limited, would acquire sole control of Firstcare Beneavin House Limited, Firstcare Beneavin Lodge Limited, Firstcare Beneavin Manor Limited, Firstcare Blainroe Lodge Limited, Firstcare Mountpleasant Lodge Limited and Firstcare Earlsbrook House Limited as well as certain freehold and development property interests from Primemount PT Limited and Primemount FC Limited respectively 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**

## MERGER NOTIFICATION M/21/024 – Orpea/ FirstCare

### PROPOSAL BY ORPEA TO THE COMPETITION AND CONSUMER PROTECTION COMMISSION RELATING TO THE PROPOSED ACQUISITION BY ORPEA, THROUGH ITS SUBSIDIARY ORPEA IRELAND, OF SOLE CONTROL OF THE FIRSTCARE COMPANIES AS NOTIFIED TO THE COMMISSION PURSUANT TO SECTION 18(1)(A) OF THE ACT ON 10 MAY 2021 (“Proposal”)

#### RECITALS

- a) On 10 May 2021, the Commission received *notification* under Part 3 of the Act of a proposed transaction whereby Orpea, through its subsidiary Orpea Ireland, would acquire sole control of the Firstcare Companies as well as certain freehold and development property interests from Primemount PT Limited and Primemount FC Limited respectively (the “Proposed Transaction”).
- b) Pursuant to section 20(3) of the Act, Orpea has submitted to the Commission this Proposal relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to this Proposal becoming binding on Orpea.
- c) The Proposal submitted by Orpea is intended to ensure that within the next two years from the Commencement Date, should (a) Orpea and/or any entity with a controlling interest in, and/or any entity owned by, and/or any entity controlled by Orpea, acquire, directly or indirectly, control over a Residential Care and Nursing Home in County Kildare and (b) that acquisition does not meet the mandatory thresholds for a merger filing to the Commission, Orpea will inform the Commission of such acquisition and (c) should the Commission direct it to do so within a reasonable period, Orpea will voluntarily notify such acquisition to the Commission before it is put into effect pursuant to section 18(3) of the Act.

#### A. Definitions

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

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

“**Commencement Date**” means the date of the Commission's Determination;

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

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

“**FirstCare Companies**” – means the following companies, (1) FirstCare Beneavin House Limited with a business address of Beneavin House, Beneavin Road, Dublin 11, D11 F576; (2) FirstCare Beneavin Lodge Limited with a business address of



Beneavin Lodge, Beneavin Road, Dublin 11, D11HA25; (3) FirstCare Beneavin Manor Limited with a business address of Beneavin Manor, Beneavin Road, Dublin 11, D11HDT7; (4) FirstCare Blainroe Lodge Limited with a business address of Blainroe Lodge, Coast Road, Blainroe, Co Wicklow; (5) FirstCare Mountpleasant Lodge Limited with a business address of Mountpleasant Lodge, Clain Road, Kilcock, County Kildare; and (6) FirstCare Earlsbrook House Limited with a business address of 41 Meath Road, Bray, County Wicklow;

**“Merger Notification Commitment”** means the commitment outlined at paragraph 1 of this Proposal;

**“Orpea”** – refers to Orpea S.A., a publicly listed company on the Euronext stock exchange in Paris. For the avoidance of doubt, this definition of “Orpea” includes all its subsidiaries, including without limitation Orpea Ireland;

**“Orpea Ireland”** – refers to Orpea Care Ireland Limited, a private company limited by shares, incorporated under the laws of Ireland (Registration No. 660981), which has its registered address at 13-18 City Quay, Dublin 2, Dublin, D02 ED70, Ireland;

**“Possible Transaction”** has the meaning set out at paragraph 1 below;

**“Proposed Transaction”** has the meaning set out at Recital a) above;

**“Residential Care and Nursing Home”** – refers to a residential centre for older people that is under the regulatory remit of the Health Information Quality Authority including residential care homes and nursing homes; and

**“Term”** means the period beginning on the Commencement Date and ending two years after the Commencement Date.

## B. Undertakings by Orpea

### ***Merger Notification Commitment***

#### 1. In the event that during the Term;

(a) Orpea, and/or any entity with a controlling interest in, and/or any entity owned by, and/or any entity controlled by Orpea enters a legally binding agreement to, directly or indirectly, acquire control (for the purposes of section 16(1) of the Act) over any Residential Care and Nursing Home in County Kildare (the **“Possible Transaction”**); and

(b) the Possible Transaction is not required to be notified to the Commission under section 18(1) of the Act,

Orpea agrees that it will (i) inform the Commission of the Possible Transaction before the Possible Transaction is put into effect, and, (ii) if required in writing by the Commission to do so within a reasonable period, voluntarily notify the Possible Transaction to the Commission before the Possible Transaction is put into effect, pursuant to Section 18(3) of the Act.

### C. Compliance

2. Orpea shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in the Schedule hereto (a “Compliance Certificate”), signed by the CEO of Orpea confirming that Orpea has complied with its obligations set out in this Proposal in the preceding period.
3. The Commission reserves the right to require Orpea to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission reasonably requires to (a) assess whether to exercise its rights under paragraph 1 of this Proposal to require that a Possible Transaction shall be notified to the Commission under Section 18(3) of the Act; or (b) verify Orpea’s compliance with its obligations set out in this Proposal in the preceding period. Orpea shall promptly provide to the Commission all such information in its possession.
4. The Commission may provide, with reasonable notice and on reasonable terms, such written directions to Orpea from time to time as needed to require compliance with this Proposal. Orpea shall comply promptly with any such written direction issued by the Commission pursuant to this Proposal.
5. Orpea shall nominate a duly authorized representative (the “**Orpea Representative**”) who will have responsibility for monitoring compliance by Orpea with this Proposal and for responding to any request for information received from the Commission in connection with this Proposal. Orpea shall provide the name and contact details of such Orpea Representative to the Commission within 10 working days from the Commencement Date and shall promptly inform the Commission of any change of Orpea Representative nominated pursuant to this paragraph of this Proposal and shall promptly provide to the Commission the name and contact details of any Orpea Representative who is to replace the prior nominated Orpea Representative.
6. This Proposal will come into effect on the Commencement Date and will remain in force during the Term.
7. For the avoidance of doubt, in the event that Orpea can demonstrate to the satisfaction of the Commission that the Proposed Transaction has been irrevocably abandoned, for any reason and will not be implemented, this Proposal shall no longer apply.

Dated \_\_ [ ] 2021

SIGNED for and on behalf of  
ORPEA S.A., by its truly authorised representative

By: \_\_\_\_\_

## SCHEDULE TO THE PROPOSAL

[Orpea Headed Paper]

[date]

Ibrahim Bah  
Competition Enforcement and Mergers Division  
Competition and Consumer Protection Commission  
Bloom House  
Railway Street  
Dublin 1

### MERGER NOTIFICATION M/21/024 – Orpea/ FirstCare

Dear Mr. Bah,

I refer to Merger Notification M/21/024 in relation to the proposed acquisition by Orpea S.A. (“Orpea”), through its subsidiary Orpea Care Ireland Limited, of sole control of Firstcare Beneavin House Limited, Firstcare Beneavin Lodge Limited, Firstcare Beneavin Manor Limited, Firstcare Blainroe Lodge Limited, Firstcare Mountpleasant Lodge Limited and Firstcare Earlsbrook House Limited (together, the “Firstcare Companies”) as well as certain freehold and development property interests from Primemount PT Limited and Primemount FC Limited respectively, which was notified to the Competition and Consumer Protection Commission (“Commission”) on 10 May 2021 (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on [ ] 2021.

In accordance with the terms of the proposal given by Orpea to the Commission on [ ] 2021 in relation to the Proposed 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 Orpea (“the Commitments”), I hereby confirm Orpea’s compliance with the terms of the Commitment during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Orpea] and ending on the date hereof.

Yours faithfully,

[Name]

[Duly authorised representative of Orpea]

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