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DETERMINATION OF MERGER NOTIFICATION M/21/037 – BON SECOURS/ALLIANCE MEDICAL/BARRINGTONS (JV)

Section 21 of the Competition Act 2002

The proposed acquisition of joint control by Bon Secours Health System Company Limited by Guarantee and Alliance Medical Diagnostic Imaging Limited of Barringtons MRI limited.

Dated 26 August 2021

Introduction

1. On 16 July 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 Bon Secours Health System Company Limited by Guarantee (“Bon Secours”) would acquire 50% of the issued share capital, and therefore joint control, of Barringtons MRI Limited (“Barringtons MRI”) (the “Proposed Transaction”). The remaining 50% of the shares in Barringtons MRI are held by Alliance Medical Diagnostic Imaging Limited (“Alliance Medical”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a share purchase agreement dated 15 July 2021 between Ms Anna Costello (“the Seller”) and Bon Secours (the “SPA”). Following the implementation of the Proposed Transaction, Barringtons MRI will be jointly owned and controlled by Bon Secours and Alliance Medical.

The Undertakings Involved

The Acquirer – Bon Secours



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3. Bon Secours is the largest provider of private healthcare services in the State and operates private hospitals in Cork, Dublin, Galway, Limerick and Tralee. The private healthcare services provided by Bon Secours comprise a broad range of in-patient, day-care and out-patients healthcare services. Since 2019, Bon Secours has been an indirect wholly-owned subsidiary of Bon Secours Mercy Health, Inc. ("Bon Secours Mercy Health") which is one of the largest health care providers in the United States.¹
4. Bon Secours also operates a care village at Mount Desert in Cork and is a shareholder with UPMC Ireland Limited in Cork Radiation Oncology Associates Limited, a 50:50 joint venture that provides radiotherapy services to patients at the Bon Secours Hospital in Cork.²
5. For the financial year ending 31 December 2020, Bon Secours Mercy Health's worldwide turnover was approximately €7.3 billion,³ of which approximately €319.9 million was generated in the State.

Alliance Medical

6. Alliance Medical is a provider of diagnostic imaging services across Europe. In the State, it is headquartered in Limerick and operates 30 clinical locations throughout the island of Ireland (including Barringtons MRI), in Dublin, Cork, Galway and Belfast. Alliance Medical provides diagnostic imaging services to the Health Service Executive ("HSE") in the Republic of Ireland ("ROI"), to the National Health Service ("NHS") in Northern Ireland, to patients directly and to medical professionals commissioned by private health insurance companies in the State. Alliance Medical also provides outsourced diagnostic imaging services to the Bon Secours Hospital in Tralee.
7. Alliance Medical is a private limited company with company number 441778 and is a wholly owned direct subsidiary of Alliance Medical Limited, a company incorporated in England and Wales with company number 02128897, which is in turn a wholly owned indirect subsidiary

¹ Further information on Bon Secours Mercy Health Inc. is available from its website: <https://bsmhealth.org/>

² Further information on UPMC Ireland Limited is available from its website: <https://hillman.upmc.com/find/locations/cork-ireland>

³ Worldwide turnover is worldwide turnover of Bon Secours Mercy Health Inc. (of which Bon Secours is a wholly owned indirect subsidiary) for the financial year ending 31 December 2020.

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of Life Healthcare Group Holdings Limited ("Life Healthcare"), a publicly traded company based in Johannesburg, South Africa.⁴

8. For the financial year ending 30 September 2020, Life Healthcare's worldwide turnover was approximately €1.3 billion, of which approximately €26.6 million was generated in the State.⁵

The Target - Barringtons MRI

9. Barringtons MRI is a private limited company with company number 324672. Barringtons MRI is 50% owned by Alliance Medical and 50% owned by the Seller. Barringtons MRI provides diagnostic imaging services and operates from a premises within the Bon Secours Hospital Limerick at Barringtons, George's Quay, Limerick ("Bon Secours Hospital Limerick") providing diagnostic imaging services to that hospital and to other patients.⁶
10. Barringtons MRI provides all diagnostic imaging within Bon Secours Hospital Limerick and has full operational responsibility for the maintenance and replacement of radiology equipment as well as the day-to-day running of the service pursuant to the terms of a radiology services agreement with Bon Secours (the "Radiology Services Agreement").
11. The Radiology Services Agreement covers the provision of radiology services comprising computed tomography ("CT"), ultrasound, X-ray, Mobile X-ray, mobile screening or other diagnostic modalities as agreed from time to time but excluding magnetic resonance imaging ("MRI") in Bon Secours Hospital Limerick.
12. The Radiology Services Agreement was originally between Barringtons MRI and Barringtons Hospital Limited but was formally novated to Bon Secours in May 2020 when the business and

⁴ Further information on Life Healthcare Group Holdings Limited is available from its website:
<https://www.lifehealthcare.co.za/>

⁵ Worldwide turnover is worldwide turnover of Life Healthcare Group's (of which Alliance Medical is a wholly owned indirect subsidiary) for the financial year ending 30 September 2020.

⁶ Further information on Bon Secours Hospital Limerick is available from its website:
<https://www.bonsecours.ie/limerick>



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assets of Barringtons Hospital Limited were acquired by Bon Secours.⁷ The term of the Radiology Services Agreement is for up to [...] years.

13. Separately, there is a [...] -year lease agreement in place between Bon Secours and Barringtons MRI which was signed in October 2019. Pursuant to this lease agreement, Barringtons MRI operates an MRI and dual energy X-ray absorptiometry (“Dexa”) scan service from an area within the Bon Secours Hospital Limerick that is leased to it from Bon Secours.

14. For the financial year ending 30 September 2020, Barringtons MRI’s worldwide turnover was approximately €5.4 million, all of which was generated in the State.

Rationale for the Proposed Transaction

15. The parties state in the notification:

“The Seller wishes to sell her shares in the Target [i.e. Barringtons MRI] and by acquiring her 50% interest in the Target the Proposed Transaction will safeguard and provide security of access for Bon Secours’ existing patients to diagnostic imaging services and enable the Bon Secours to maintain operational efficiencies with input into patient flow particularly as the Target is located at and operates from the hospital premises.”

Third Party Submissions

16. No third-party submissions were received.

Market Definition

Relevant Product Market

17. 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

⁷ In 2016, in M/16/040 *Bon Secours Health System/Barringtons Hospital*, the Commission cleared the acquisition by Bon Secours of sole control of Barringtons Hospital Limerick following an extended Phase 1 investigation. Further details are available from the Commission’s website: <https://www.ccpic.ie/business/mergers-acquisitions/merger-notifications/m16040-bon-secours-health-system-barringtons-hospital/>



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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 (i.e., the provision of standalone diagnostic imaging services in respect of GP referrals only) or more broadly (i.e., the provision of all standalone diagnostic imaging services).

18. On a cautious basis, the Commission has analysed whether the Proposed Transaction might result in a substantial lessening of competition by reference to the narrower potential product market, i.e. the provision of diagnostic imaging services in respect of GP referrals. This is discussed further below.⁸

Relevant Geographic Market

19. 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 national or regional.
20. Standalone diagnostic imaging services based on GP referrals are provided in hospitals (both public and private) or in dedicated imaging centres/facilities in multiple locations across the State.
21. The Commission understands that standalone diagnostic imaging services based on GP referrals are marketed directly to the public and to GPs and consultants who will refer patients directly to a hospital or imaging centre. 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 both the State and to a narrow regional geographic market, namely Counties Clare, Limerick and North Tipperary (collectively referred to hereafter as the “Mid-West”

⁸ The Commission has also considered whether a substantial lessening of competition would arise in a broader market for the provision of all standalone diagnostic imaging services and has concluded that it would not, for similar reasons to those supporting its conclusion on the narrow product market. This broader potential market is not discussed further in this Determination.



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region. However, its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined as regional or national.

Horizontal Overlap

22. There is a horizontal overlap between Bon Secours and Alliance Medical, and Barringtons MRI in the provision of diagnostic imaging services. Diagnostic imaging involves the use of technology to examine the interior of the human body for the purposes of accurate diagnosis. There are a number of different types of diagnostic imaging modalities including X-ray, portable X-ray, DEXA, CT, MRI and ultrasound. Diagnostic imaging is typically carried in the following circumstances:

- (a) As part of a patient's 'episode of care' within a hospital (whether as an outpatient or inpatient) where the diagnostic imaging forms one of the many acute hospital services provided to the patient; or,
- (b) As a standalone service in response to a referral from a patient's general practitioner ("GP"), an occupational health provider or a consultant (for general diagnostic purposes, these are described as "direct GP referrals") or as part of a national health screening programme.

23. For Bon Secours, diagnostic imaging forms an integral part of the acute hospital services provided across its private hospitals and is typically provided as part of a patient's episode of care within the hospital. However, Bon Secours also provides diagnostic imaging as a standalone service in response to direct GP referrals and more recently has been contracted to provide diagnostic imaging services on a standalone basis under HSE and National Treatment Purchase Fund "NTPF" tenders.⁹ Both Alliance Medical and Barringtons MRI are only involved in the provision of diagnostic imaging services on a standalone basis and are not involved in the provision of acute hospital services.

⁹ Bon Secours concluded an agreement with the HSE in December 2020 to provide GPs with direct access to MRI, CT, X-Ray and DEXA scan services at its Tralee hospital and an agreement for its Galway hospital to provide CT scan services to the Saolta University Hospital Group (HSE) from October 2020 but it was discontinued following the cyber-attack on the HSE though these arrangements account for a negligible proportion of its overall diagnostic imaging activity.

24. On that basis, the parties submit that the two areas of horizontal overlap are:

- (a) The provision of diagnostic imaging services as a standalone service in response to direct GP referrals; and
- (b) The provision of diagnostic imaging services as a standalone service under HSE or NTPF tenders.

Table 1. Number of standalone diagnostic imaging (“DI”) scans provided in the State in 2019¹⁰

Firm Name	HSE/NTPF Contract		Direct GP Referral		Total No. of standalone DI scans	Market share
	Estimated No. of DI scans	% Market share	Estimated No. of DI scans	% Market share		
Alliance Medical	[...]	20-30%	[...]	10-15%	[...]	10-20%
Bon Secours	[...]	0-5%	[...]	0-5%	[...]	0-5%
Barringtons MRI	[...]	0-5%	[...]	0-5%	[...]	0-5%
Affidea Diagnostics Ireland Limited	[...]	40-50%	[...]	10-20%	[...]	20-30%
Medica Group PLC (formerly Global Diagnostics (Ireland) Limited)	[...]	20-30%	[...]	0-5%	[...]	5-10%
HSE Hospitals	[...]	0-5%	[...]	50-60%	[...]	40-50%
Other Private Hospitals (13)	[...]	0-5%	[...]	0-5%	[...]	0-5%
Independent Scan Centres	[...]	0-5%	[...]	0-5%	[...]	0-5%
Total	[...]	100%	[...]	100%	[...]	100%

Source: The notifying parties.

¹⁰ Owing to the impact of COVID-19, turnover data for 2020 is not representative of the parties’ activities and therefore turnover has been provided for 2019 instead.

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25. Table 1 is based on the figures submitted by the parties and shows that the overlap between the parties is minimal as Bon Secours do not provide any DI scans as part of a HSE/NTPF Contract and the number of diagnostic imaging scans provided by Bon Secours in response to a GP referral accounted for less than 0-5% of all diagnostic imaging scans performed in the State in 2019 provided as standalone services in response to a direct GP referral.

Table 2. Turnover from the provision of standalone DI scan services in the State in 2019

Name	GP direct referral	% Market share	HSE/NTPF contract	% Market share	Total	Total % market share
Bon Secours	[...]	0-5%	[...]	0-5%	[...]	0-5%
Alliance Medical	[...]	30-40%	[...]	50-60%	[...]	40-50%
Barringtons MRI	[...]	5-10%	[...]	0-5%	[...]	5-10%
Affidea Diagnostics Ireland Limited	[...]	40-50%	[...]	20-30%	[...]	40-50%
Medica Group PLC (formerly Global Diagnostics (Ireland) Limited)	[...]	0-5%	[...]	10-20%	[...]	5-10%
Total	[...]	100%	[...]	100%	[...]	100%

Source: The notifying parties.¹¹

26. Table 2 shows the turnover generated by providers of standalone diagnostic imaging services in the State in 2019 broken down into turnover generated as a result of GP Direct referral and HSE/NPTS contracts. Bon Secours holds a 0-5% share for the provision of standalone

¹¹ The parties state in the notification that it is not possible to estimate diagnostic imaging turnover for other competitors, particularly the HSE and private hospitals, as this information is not in the public domain.

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diagnostic imaging services in the State by turnover and this is largely generated from the provision of diagnostic services from GP referrals.

27. While regional market shares for the provision of standalone diagnostic imaging services from GP referrals are not publicly available and the market shares submitted by the parties in this notification are based on the parties' estimates, Limerick Clinic (which is part of the Galway Clinic which in turn is owned by the Blackrock Health Group), and Affidea Diagnostics Ireland Limited provide standalone diagnostic imaging services from GP referrals in the Mid-West region while University Hospital Limerick provides standalone diagnostic imaging services from consultant referrals only. Bon Secours does not currently provide standalone diagnostic services of any kind in the Mid-West region.

Competitive Analysis

28. The notifying parties consider that the Proposed Transaction will not lead to a substantial lessening of competition in the provision of diagnostic imaging services in the State for the following reasons:
- (a) Barringtons MRI is currently jointly controlled by Alliance Medical and the Seller, the Proposed Transaction will not result in any increase to Alliance Medical's market share in the provision of diagnostic services in respect to GP/consultant referrals or HSE/NTPF tenders;
 - (b) Bon Secours' share of the market in the provision of standalone diagnostic imaging services in respect of direct GP referrals and NTPF/HSE outsourced work is insignificant;
 - (c) The estimated increment to Bon Secours' market share of standalone diagnostic imaging services for GP referrals and HSE/NTPF contracts in the State resulting from the Proposed Transaction is low single digits and other providers of diagnostic imaging services such as Affidea Diagnostics Limited and Medica Group PLC hold significantly larger market shares in terms of both the number of scans provided and the turnover generated from the provision of diagnostic imaging services.

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- (d) The primary purchasers of diagnostic imaging services are private health insurance companies, the HSE and the NTPF who will continue to exercise significant countervailing buyer power (in particular the VHI) and significantly limit the ability of the jointly controlled entity to raise prices post completion of the Proposed Transaction since their approval for service reimbursement is a necessity for the viability of a private hospital or diagnostic imaging facility.
- (e) Bon Secours does not currently provide diagnostic imaging services in the Mid - West region in which Barringtons MRI operates. In addition, there are a number of competitors in this geographic region, for example, Limerick Clinic (which is part of the Galway Clinic which in turn is owned by the Blackrock Health Group)¹² and University Hospital Limerick. Therefore, the existing competitive dynamic will not be negatively impacted by the Proposed Transaction.

Views of the Commission

29. The Commission has conducted its own assessment and accepts, that as Alliance Medical already jointly controls Barringtons MRI, the Proposed Transaction will not result in any increase to Alliance Medical's market share in the provision of diagnostic services in respect to GP/consultant referrals or HSE/NTPF tenders. In addition, Bon Secours does not hold a significant presence in the provision of standalone diagnostic imaging services in respect of direct GP referrals and NTPF/HSE contracts in the State. Therefore, the Proposed Transaction will result in a modest increment to Bon Secours' market share of standalone diagnostic imaging services for GP referrals and HSE/NTPF contracts in the State.
30. In addition, Bon Secours does not currently provide standalone diagnostic imaging services for GP referrals in the Mid-West region, in which Barringtons MRI operates, and the Commission has identified other providers who provide similar services who will compete with Barringtons MRI in the Mid-West region post transaction.

¹² The Galway and Limerick Clinics are part of the Blackrock Healthcare Group. Further information on the Galway Clinic and Limerick Clinic is available from the Galway Clinic's website: <https://www.galwayclinic.com/>

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31. In light of the above, the Commission considers that the Proposed Transaction will not give rise to any horizontal competition concerns in the market for the supply of standalone diagnostic imaging services from GP referrals in the State or in any part of the State.

Vertical Relationship

32. There is a vertical relationship between Bon Secours and Barringtons MRI in relation to the provision of diagnostic imaging services at one site, namely Bon Secours Limerick Hospital. Barringtons MRI provides all diagnostic imaging services for that hospital.
33. The Commission considered whether the merged entity would have the ability and the incentive to foreclose upstream or downstream competitors post transaction. Bon Secours Limerick Hospital is the only hospital that Barringtons MRI provides diagnostic imaging services to. Other hospitals, including other Bon Secours hospitals in the State, have their own agreements in place with third parties for the provision of diagnostic imaging services. Given that Barringtons MRI does not supply diagnostic imaging services to any competitors of Bon Secours Limerick Hospital, the merged entity is unlikely to be able to foreclose other hospitals from accessing diagnostic imaging services and therefore the threat of input foreclosure does not arise.
34. The Commission has also considered whether Bon Secours supplies inputs to competitors of Barringtons MRI which are important to the ability to compete of these competitors. However, Bon Secours does not supply any inputs to competitors of Barringtons MRI. Bon Secours leases property to Barringtons MRI on the premises of Bon Secours Hospital Limerick and this is the only site from which Barringtons MRI provides diagnostic imaging services. Competitors of Barringtons MRI provide standalone diagnostic imaging services from locations across the State and in the Mid-West region, for example, the Limerick Clinic. The Proposed Transaction will not prevent any of these competitors from providing their services as standalone diagnostic imaging services. GP referrals can be provided from any location and therefore the threat of the merged entity foreclosing entry to other providers of standalone diagnostic imaging services from GP referrals does not arise.



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35. In light of the above, the Commission considers that the Proposed Transaction is not likely to give rise to any vertical competition concerns with respect to the provision of standalone diagnostic services from GP referrals in the State.

Conclusion

36. 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

37. The parties state in the notification that Clause 10 of the draft Shareholders' Agreement between Bon Secours, Alliance Medical and Barringtons MRI to be entered into on completion of the SPA (the "Draft Shareholders' Agreement") contains certain post-completion non-compete obligations which the parties believe are directly related and necessary to the implementation of the Proposed Transaction. In particular, Clause 10 of the Draft Shareholders' Agreement contains provisions restricting each of Bon Secours and Alliance Medical from [...]

38. The duration of the restrictive covenants in Clause 10 of the draft Shareholders' Agreement (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, the Commission considers the restrictive covenants in the draft Shareholders' Agreement to be directly related and necessary to the implementation of the Proposed Transaction.



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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 Bon Secours Health System Company Limited by Guarantee would acquire 50% of the issued share capital, and therefore joint control, of Barringtons MRI 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