



Case C-010

Proposed acquisition of Civil Service Healthcare Society Ltd  
by Bupa Insurance Ltd

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Decision

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Jersey Competition Regulatory Authority  
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## SUMMARY

1. Bupa Insurance Limited (the **Purchaser**) proposes to acquire all the engagements of Civil Service Healthcare Society Ltd (the **Target**). The transaction has been notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).
2. The Authority has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

## THE NOTIFIED TRANSACTION

3. On 6 August 2020, the Authority received a joint application from Bupa Insurance Limited and Civil Service Healthcare Society Limited for the proposed transfer of the Target's engagements to the Purchaser.
4. The Authority registered the application on its website with a deadline for comments of 19 August 2020. No submissions were received.

## THE PARTIES

5. The Purchaser is a private company incorporated on 27 March 2000 as Officecard Ltd, and changed its name to Bupa Insurance Limited on 13 October 2000. The ultimate parent entity is The British United Provident Association Limited (**Bupa**), registered number 432511, a private company limited by guarantee with no shareholders.
6. Bupa is a global company providing a number of activities in the healthcare sector, its main business being health insurance. The Purchaser provides private medical insurance (**PMI**) in Jersey to individual customers and employers.
7. The Target was established in 22 May 1929 as the Civil Service Medical Aid Association. It changed its name to Civil Service Healthcare Society Limited in 1995. It is an incorporated friendly society under the Friendly Societies Act 1992.
8. The Target is also a provider of PMI in the UK. Until 2019, it provided PMI only to those who worked in, or had previously worked for, the Civil Service or other Public Services and their families.

## JERSEY: REQUIREMENT FOR JCRA APPROVAL

9. Under Article 2(1)(b) of the 2005 Law, a merger and acquisition (**merger**) occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the notified transaction, the Purchaser will acquire all the

engagements and control of the Target. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

10. According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the Authority.
11. Article 2 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if the merger or acquisition would create an undertaking with a share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, or enhance such a share held by an undertaking, then the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law.
12. According to information provided by the parties to the transaction, the parties' combined share of supply of PMI exceeds 25%. The notified transaction therefore requires the approval of the Authority prior to its execution.

## MARKET DEFINITION

### Approach

13. Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey.
14. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed. However, the boundaries of the market do not necessarily determine the outcome of the analysis of the competitive effects of the merger. This is because there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market or other ways in which certain constraints are more significant than others. The Authority will, where appropriate, take these factors into account in its assessment.
15. When defining a market, the Authority may take note of its own previous decision making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on the Authority. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts<sup>1</sup>.

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<sup>1</sup> This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

## Views of the Parties

16. The parties consider that the PMI market is a distinct market for the purposes of assessing competition effects of the transaction. This follows previous decisions of the JCRA, the UK Competition and Markets Authority and European Commission<sup>2</sup>.

### *Product Market: General Insurance Business Market*

17. The transaction relates to the overall market for the provision of one sector of General Business (as defined in the Insurance Business (Jersey) Law 1996) in Jersey, i.e. PMI. PMI is a form of non-life insurance which provides indemnity cover against the cost of medical treatment in private hospitals or clinics by consultants or therapists.

18. The parties' view is that PMI constitutes a distinct product market for the purpose of assessing the competition effects of the transaction, as PMI is not substitutable for another insurance product such as travel, motor vehicle, or business insurance.

### *Product Market: PMI Insurance*

19. PMI is a form of non-life insurance which provides indemnity cover against the cost of medical treatment (for acute medical / surgical conditions) in private hospitals or clinics by consultants or therapists. The parties consider the appropriate market is 'the provision of PMI services'.

20. The parties did not consider any further market segmentation (for example, based on customer type) as the Target only covers [Redacted] in Jersey across [Redacted] policies.

### *Geographic Market*

21. While insurers outside Jersey may provide insurance services to Jersey customers, the ability to market directly to Jersey customers is only available to those insurers licensed by the Jersey Financial Services Commission (**JFSC**). Those insurers not registered by the JFSC may therefore only offer business on an unsolicited basis or through third party persons registered to carry on general insurance mediation business by the JFSC. Due to these factors, the Authority has previously decided to view the relevant geographic market as limited to the Bailiwick of Jersey<sup>3</sup>.

22. The parties therefore consider that the relevant geographic market for the provision of PMI is limited to Jersey, with no further geographic sub-markets.

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<sup>2</sup> See respectively:

- JCRA M713/11;
- <E/6531/15 Anticipated acquisition by AXA PPP Healthcare Limited of the private medical insurance business of Simplyhealth Limited; and
- COMP/M.8010 Irish Life Group Limited / Great-West Lifeco Inc / GloHealth Financial Services Limited / Aviva Health Insurance Ireland Limited.

<sup>3</sup> M713/11

## JCRA Consideration

23. The relevant product market is defined primarily by reference to the likely response of consumers and competitors<sup>4</sup>. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.
24. In a previous decision, the JCRA has considered the market for PMI, and there is no reason why a different approach on this occasion. This is consistent with the views of the parties and other Authorities. In any event, the precise market definition can be left open since the notified transaction will not give rise to a substantial lessening of competition in the provision of PMI in Jersey on any reasonable basis.

## EFFECT ON COMPETITION

### Approach

25. After defining the relevant market, the Authority estimates the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be used as an indication of the overall level of market concentration which will be brought about as a result of the merger
26. The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.
27. For horizontal mergers, the Authority can assess two potential types of anti-competitive effects – unilateral effects (i.e. the ability of the merged entity to raise prices unilaterally) and co-ordinated effects (i.e. the ability of the merged entity to raise prices either the implicit or explicit co-operation of other competitors). For vertical or conglomerate mergers, the Authority's focus will be on assessing whether the merged entity would have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs upstream, or by denying access to 'routes to market' downstream.
28. When assessing horizontal and non-horizontal mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger

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<sup>4</sup> CICRA Guideline 7 – Market Definition

guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

29. The notified transaction will increase the share of supply of PMI supplied to persons in Jersey and is therefore the horizontal effects of the merger and their impact on competition are considered below. There are no vertical effects associated with the transaction.

## Horizontal effects

30. Both parties are active in the supply of PMI in Jersey. CSH is not registered by the JFSC and therefore can only provide PMI services to residents in Jersey on an unsolicited basis or through third party persons registered to carry on general insurance mediation business by the JFSC.
31. European Guidelines provide that where the combined market share of the merging undertakings does not exceed 25%, the concentration may be presumed not to impede effective competition<sup>5</sup>.
32. The parties were not able to provide data confirming the number of customers in Jersey who either purchase PMI as individuals or have it provided by their employer. The parties estimate that there are in the region of 10,470 to 11,360 policy holders in Jersey provided with policies as part of their employment for the government and finance sector. Taking this range, the Purchaser could be considered to provide between [25 – 30%] of those policy holders. This may understate the total number of policies held as it does not include those held by individual policy holders or smaller companies. The Target has [Redacted] held in Jersey.
33. A horizontal merger may impede effective competition in a market by removing competitive constraints on one or more firms, which consequently would have increased market power without resorting to coordinated behaviour (non-coordinated effects). This is more likely in circumstances where, for example, the merging firms have large market shares or consumers' ability to switch supplier is limited.
34. The increase in market share held by the Purchaser on completion of this transaction is negligible. The concentration can therefore be presumed not to impede effective competition in this market which will remain largely unchanged as a result of the transaction.

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<sup>5</sup> Article 60 of the 2005 Law provides that so far as possible questions arising in relation to competition must be dealt with in a manner that is consistent with the treatment of corresponding questions arising under EU competition law.

## Decision

35. Based on the preceding analysis, the Authority concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey; and the merger is therefore approved under Article 22(1) of the 2005 Law.

**2 September 2020**

**By Order of the Jersey Competition Regulatory Authority**