



DETERMINATION OF MERGER NOTIFICATION M/16/040 - BON SECOURS HEALTH SYSTEM/BARRINGTONS HOSPITAL

Section 22 of the Competition Act 2002

Proposed acquisition by Bon Secours Health System Company Limited by Guarantee of Barringtons Hospital Limited

Dated 21 December 2016

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“Act”), Bon Secours Health System Company Limited by Guarantee (“Bon Secours”) has submitted to the Competition and Consumer Protection Commission (“CCPC”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to the said proposals becoming binding on Bon Secours.

The CCPC has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Bon Secours would acquire the entire issued share capital and thus sole control of Barringtons 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

Patrick Kenny
Member
Competition and Consumer Protection Commission

PROPOSALS BY BON SECOURS TO THE CCPC RELATING TO THE PROPOSED ACQUISITION OF BARRINGTONS HOSPITAL (“Proposals”)

RECITALS

- a) Pursuant to section 20(3) of the Competition Act 2002, as amended, Bon Secours has submitted to the CCPC the following Proposals relating to the proposed acquisition of Barringtons Hospital for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Bon Secours.



- b) Bon Secours has agreed with the CCPC to commit:
- (i) not to unilaterally amend or vary, or seek to amend or vary, the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement until the expiry or termination of such Existing Agreement;
 - (ii) upon the expiry or termination of an Existing Agreement with a Relevant Health Insurer, to negotiate Reimbursement Rates with such Relevant Health Insurer in accordance with the terms and procedures set out in these Proposals.

A. Definitions

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

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

“Barringtons Hospital” means Barringtons Hospital Limited, a private company limited by shares, incorporated under the laws of Ireland (Registration No. 172854), with its registered address at George’s Quay, Limerick.

“Bon Secours” means Bon Secours Health System Company Limited by Guarantee, a private company limited by guarantee, incorporated under the laws of Ireland (Registration No. 198596), with its registered address at College Road, Cork.

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

“Completion” means completion of the Proposed Transaction as defined in the share purchase agreement dated 11 August 2016 between Paul O’Byrne, Nuala O’Byrne and Bon Secours;

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

“Effective Period” means the period beginning on the date of expiry or termination, as appropriate, of an Existing Agreement and ending on either (i) the date falling [...] after the date of expiry or termination of such Existing Agreement, or (ii) [...], whichever shall be the earliest;

“Existing Agreement” means an agreement between Barringtons Hospital and a Relevant Health Insurer in relation to Reimbursement Rates which is in force at the date of the Determination;

“Hospital Services” means all treatment (surgical and/or medical) and services provided to a patient insured by a Relevant Health Insurer, including but not limited to [...];



“Proposed Transaction” means the proposed acquisition by Bon Secours of the entire issued share capital and thus sole control of Barringtons Hospital, as notified to the CCPC on 24 August 2016;

“Reimbursement Rates” means the relevant rates, charges and price schedules (with descriptions and codes for various medical procedures) agreed between Barringtons Hospital and a Relevant Health Insurer which are to be applied by such Relevant Health Insurer when calculating the payment to be made by the Relevant Health Insurer to Barringtons Hospital on behalf of a patient insured by the Relevant Health Insurer for the provision of Hospital Services to such patient by Barringtons Hospital; and

“Relevant Health Insurer” means a provider of private health insurance who, at the date of the Determination, has entered into an Existing Agreement with Barringtons Hospital [...].

B. Undertakings by Bon Secours

2. Bon Secours undertakes:
 - (i) not to unilaterally amend or vary, or seek to amend or vary, the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement until the expiry or termination of such Existing Agreement; and
 - (ii) upon the expiry or termination of an Existing Agreement with a Relevant Health Insurer, and for the duration of the Effective Period, to negotiate with such Relevant Health Insurer all Reimbursement Rates separately to the rates and charges to be applied by such Relevant Health Insurer in relation to Hospital Services provided by any other hospital owned or operated by Bon Secours.
3. The undertakings in paragraph 2 of these Proposals shall come into effect and shall be implemented by Bon Secours upon Completion.
4. The undertaking in paragraph 2(i) of these Proposals in relation to an Existing Agreement shall continue to apply until the expiry or termination, as appropriate, of such Existing Agreement. The undertaking in paragraph 2(ii) of these Proposals shall continue to apply for the Effective Period or until such time as the CCPC determines that the undertaking in paragraph 2(ii) of these Proposals is no longer required (whichever is the earlier).
5. Following the Determination and pending Completion, Bon Secours shall refrain from influencing or attempting to influence any decision by Barringtons Hospital with respect to the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement, and in particular shall refrain from taking any action which has the aim of encouraging or inducing Barringtons Hospital to amend or vary, or seek to amend or vary, the Reimbursement Rates agreed between Barringtons Hospital and a Relevant Health Insurer pursuant to an Existing Agreement until the expiry or termination of such Existing Agreement.



6. Bon Secours shall submit to the CCPC within [...] of the date of the Determination a written certificate in the form set out in the Schedule hereto (the “**First Certificate**”), signed by the CEO of Bon Secours, confirming Bon Secours’ compliance with its obligations set out in these Proposals since the date of the Determination. Bon Secours shall submit to the CCPC within [...] of the date of submission of the First Certificate and at intervals of [...] thereafter, a written certificate in the form set out in the Schedule hereto (each, a “**Compliance Certificate**”), signed by the CEO of Bon Secours, confirming Bon Secours’ continued compliance with its obligations set out in these Proposals until the expiry of [...] after the Effective Period.
7. The CCPC reserves the right to require Bon Secours to provide to the CCPC, at any time, such additional information as the CCPC requires in order for the CCPC to verify Bon Secours’ compliance with its obligations set out in these Proposals.
8. The CCPC may at its sole discretion vary any of the time periods provided for in these Proposals in response to a reasoned request from Bon Secours. The CCPC may further, at its sole discretion, in response to a reasoned request from Bon Secours showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Proposals.



SCHEDULE TO THE PROPOSALS

[Bon Secours Headed Paper]

[date]¹

[Cormac Keating]
Mergers Division
Competition and Consumer Protection Commission
[Parnell House]
[14 Parnell Square]
Dublin 1

Merger Notification M/16/040 Bon Secours Health System Company Limited by Guarantee (“Bon Secours”) / Barringtons Hospital Limited (“Barringtons Hospital”)

Dear [Mr. Keating],

I refer to Merger Notification M/16/040 in relation to the acquisition by Bon Secours of the entire issued share capital of Barringtons Hospital, which was approved by the Competition and Consumer Protection Commission (“CCPC”) on [] December 2016 (the “Transaction”).

The CCPC issued its Determination approving the Transaction on [] December 2016.

In accordance with the terms of the proposals given by Bon Secours to the CCPC on [] December 2016 in relation to the 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 Bon Secours (the “Commitments”), I hereby confirm Bon Secours’ compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Bon Secours] and ending on the date hereof.

Yours faithfully,

[Name]

CEO

Bon Secours Health System Company Limited by Guarantee

¹ This certificate should be dated and issued to the Competition and Consumer Protection Commission within [...] of the date of the Determination and, thereafter, within [...] after the date of submission of the first certificate issued to the Competition and Consumer Protection Commission and at intervals of [...] thereafter.