



## DETERMINATION OF MERGER NOTIFICATION M/18/083 - CARECHOICE (INFRAVIA)/ TMNH HOLDINGS

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### Section 21 of the Competition Act 2002

### Proposed acquisition by InfraVia Group through CareChoice (Group) Limited of sole control of TMNH Holdings Unlimited Company

Dated 27 November 2018

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#### Introduction

1. On 17 October 2018, 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 InfraVia European Fund III FPCI and InfraVia European Fund III SCSp (collectively “InfraVia Funds”) (managed by InfraVia Capital Partners (“InfraVia CP”)), through CareChoice (Group) Limited (“CareChoice”), would acquire the entire issued share capital and thereby sole control of TMNH Holdings Unlimited Company (“TMNH”) (the “Proposed Transaction”). InfraVia Funds, InfraVia CP and other funds managed by InfraVia CP are referred to collectively in this determination as “InfraVia Group”.

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement (the “Agreement”) dated 15 October 2018<sup>1</sup> between Michael Carey, Oisín O’Buachalla, Declan Lernihán, Ríonach Uí Ógáin, MacDara Ó hÓgáin, Tuala Ní Ógáin, Conall Ó hÓgáin and Holmwood Asset Holdings Limited (collectively the “Vendors”), and CareChoice. Pursuant to the Agreement, InfraVia Funds (through CareChoice) will acquire sole control of TMNH.

#### The Undertakings Involved

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<sup>1</sup> As amended by Deed of Amendment to Share Purchase Agreement dated 15 November 2018



### ***The Acquirer - InfraVia Funds***

3. CareChoice is a private company limited by shares formed under the Irish Companies Act 2014. CareChoice is active in the provision of residential care and nursing home services in: Ballynoe, Clonakilty, Montenotte and Macroom in Co. Cork; Dungarvan, Co. Waterford; Trim, Co. Meath; and Finglas and Northern Cross in Dublin.<sup>2</sup> CareChoice is ultimately owned by InfraVia Funds. InfraVia Funds are managed by InfraVia CP.
4. InfraVia CP is a société par actions simplifiée formed under French law and based in Paris, France. InfraViaCP is an investment firm specialising in sustainable infrastructure assets, which typically invests in companies operating within the following sectors: utilities, transportation, energy, environment, communications, telecommunication, and social infrastructure. InfraVia CP has a pan-European investment strategy focusing its investment in the eurozone with a particular focus on mid-cap infrastructure investments.
5. In the State, InfraVia Group's operations consist of the provision of the following : (i) residential care and nursing homes in the State through CareChoice, (ii) telecommunications tower infrastructure services in the State;<sup>3</sup> and (iii) private hospital services in the State through MP Healthcare Holdings Unlimited Company.<sup>4</sup>
6. For the financial year ending 31 December 2017, InfraVia Group's worldwide turnover was approximately €[...], of which approximately €[...]<sup>5</sup> was generated in the State.

### ***The Target - TMNH***

7. TMNH is a private unlimited company incorporated in Ireland. TMNH is a provider of residential care and nursing home services in the State, through the operation of the [Marlay] Nursing Home ("The [Marlay]"), located at Kellystown Road, Rathfarnham,

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<sup>2</sup> For completeness CareChoice currently are building a new residential care and nursing home in Swords Co. Dublin.

<sup>3</sup> Through its 98% ownership stake in the portfolio company, Signal Infrastructure Limited.

<sup>4</sup> The private hospital operator, which it acquired in July 2018. See the Commission's merger determination in M/18/049 -InfraVia/MP Healthcare for further details  
<https://www.ccpic.ie/business/mergers-acquisitions/merger-notifications/m18049-infraviamp-healthcare/>

<sup>5</sup> This does not include the turnover of MP Healthcare Holdings Unlimited Company which was approximately €[...] worldwide, of which €[...] was generated in the State. This is because MP Healthcare Holdings Unlimited Company was not acquired by InfraVia Group until July 2018.



Dublin 16. The operation of The [Marlay] and the ownership of the property on which it is situated is the sole business of the TMNH.

8. For the financial year ended 31 March 2018, TMNH's turnover was approximately €[...], all of which was generated in the State.

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

9. The parties state the following in the notification:

*“The purpose of the Proposed Transaction is to allow CareChoice to enhance its presence in the provision of residential care and nursing homes services in Dublin, and in particular, South Dublin, where it has no residential care and nursing homes whatsoever.”*

#### **Third Party Submissions**

10. No submission was received.

#### **Competitive Analysis**

##### *Horizontal Overlap*

11. There is a horizontal overlap between the parties' activities in the State with respect to the provision of residential care and nursing home services in the State.
12. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. With respect to the relevant product market, it is not necessary for the Commission to define the precise relevant markets in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction. However, in order to examine the competitive impact of the Proposed Transaction, the Commission has analysed its impact by reference to the potential product market of the provision of residential care and nursing home services.
13. 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 Transactions will be unaffected whether the precise relevant



geographic market is defined as local or national. However, 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 local area, being the Dublin area. For the sake of completeness, the likely impact of Proposed Transaction has also been analysed by reference to the State.

*The provision of residential care and nursing home services in the Dublin area*

14. The Health Information and Quality Authority (“HIQA”) provides a register<sup>6</sup> of residential care and nursing home services for older people. At the local level, that is, the Dublin area, the HIQA register indicates there are 108 residential care and nursing home facilities for older people, providing a maximum of 7,563 beds. The [Marlay], which is located at Rathfarnham in Dublin provides [...] beds which represents an estimated market share of [...]% of the Dublin area market. CareChoice have two residential care and nursing homes in Dublin, at Finglas and Northern Cross, providing a total of [...] beds, representing an estimated market share of [...]%. Therefore post-transaction, the combined market share of the parties would be approximately [...]% in the Dublin area. The market in the Dublin area is characterised by a relatively large number of operators including the following *Mowlam Healthcare, T.L.C Group, First Care, Silver Stream Healthcare* and *Trinity Care* which will continue to compete in this market following completion of the Proposed Transaction.

*The provision of residential care and nursing home services in the State*

15. The HIQA register indicates that there are 575 facilities, providing a maximum of 30,780 beds, in the State. CareChoice operates eight residential care and nursing homes in the State, providing a total [...] beds. TMNH operates one residential care and nursing home, *The [Marlay]*, which provides [...] beds. These represent estimated market shares of [...]% and [...]%, respectively, resulting in a combined market share of [...]%. In addition, the market is characterised by a large number of operators. Following completion of the Proposed Transaction, CareChoice will continue to face competition from these operators including the following *Mowlam Healthcare, T.L.C Group, First Care, Silver Stream Healthcare* and *Trinity Care*.

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<sup>6</sup> See the following link <https://www.hiqa.ie/areas-we-work/older-peoples-services>



16. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the provision of private hospital services either in the Dublin area or in the State.

#### *Vertical Relationship*

17. The parties informed the Commission that there is no vertical relationship between TMNH and any of the companies managed and/or controlled by InfraVia Group which generate turnover in the State. The Commission has not identified any vertical relationships between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

#### **Conclusion**

18. 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**

19. The Agreement contains non-compete and non-solicitation obligations on the Vendors. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission.<sup>7</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

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<sup>7</sup> In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” ([2005]). For more information see

[http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



## **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 InfraVia European Fund III FPCI and InfraVia European Fund III SCSp (managed by InfraVia Capital Partners), through CareChoice (Group) Limited, would acquire the entire issued share capital and thereby sole control of TMNH Holdings Unlimited Company, 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**