

Private patient unit arrangements between HCA International Limited and University Hospitals Birmingham NHS Foundation Trust

PPU/0002-17

The CMA's decision on 18 August 2017. Full text of the decision published on 31 August 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. The Competition and Markets Authority (**CMA**) believes, for the purposes of the [Private Healthcare Market Investigation Order 2014](#) (the **Order**), that private patient unit (**PPU**) arrangements between HCA International Limited (**HCA**) and University Hospitals Birmingham NHS Foundation Trust (**UHB**) have been created, or are in progress or contemplation and will be carried into effect. The CMA has considered whether it should review these arrangements. However, the CMA has decided that there are no grounds for conducting a review of the PPU arrangements in accordance with article 7.2 of the Order.
2. Therefore, the CMA will take no action with respect to this planned PPU.
3. HCA and UHB are together referred to as the **Parties**.

JURISDICTION

The Parties

4. HCA is one of the largest private operators of healthcare facilities in the world, with 169 hospitals and 116 ambulatory care centres across the US and the UK. HCA group's headquarters are in Nashville, Tennessee, USA.
5. In the UK, HCA operates:

- six private hospitals in central London;
 - a number of outpatient and diagnostic centres which provide outpatient consultation, diagnostics and private GP facilities; and
 - five partnerships with NHS Trusts for the provision of private patient services, of which four are located in London and one in Manchester.
6. UHB is a major NHS Foundation Trust providing health services from a single site comprising the Queen Elizabeth Hospital Birmingham (**QEHB**) which hosts the Royal Centre for Defence Medicine, the Institute for Translational Medicine, an ambulatory care facility, the West Midlands Genomics Medicine Centre and the Centre for Rare Diseases.
7. QEHB is the main hospital on site with over 9,000 staff, and houses 1,213 inpatient beds, 32 operating theatres and a 100-bed critical care unit. It provides a wide range of clinical services, handling around 800,000 NHS inpatients, day case and outpatient attendances each year.

PPU arrangements

8. In 2014, UHB decided to invest in the development of a dedicated PPU for the provision of privately-funded patient services and ran a tender process to attract a suitable private sector partner. In August 2016, UHB appointed HCA as its preferred bidder and operator for the contract to design and build an independent patient facility.
9. The arrangement envisages a new purpose-built PPU featuring [REDACTED]. HCA aims to commence operations at the PPU from [REDACTED].
10. The new PPU unit will offer a general range of private healthcare services, including [REDACTED].

Jurisdiction

11. Under article 7.1 of the Order, if the CMA reasonably believes that PPU arrangements have been created, or are in progress or contemplation and will be carried into effect, it must decide whether there are grounds to conduct a review.¹

¹ Article 7.1 of the Order. (Article 7 does not apply to arrangements which give rise to, or would if pursued give rise to, a relevant merger situation within the meaning of section 23 of the Enterprise Act 2002, see Article 12.)

12. The Order defines private patient unit arrangements (**PPU arrangements**) as ‘any arrangements for a private hospital operator to operate, manage or otherwise provide privately-funded healthcare services at a PPU in England, Wales, Northern Ireland or Scotland’.² HCA is a private hospital operator and it is contracting with UHB to establish a PPU at QEHB. The Agreement to Proceed was signed between UHB and HCA on [REDACTED].³
13. Therefore, the CMA reasonably believes that PPU arrangements are in progress and will be carried into effect.

Time limit

14. The Order provides that no review must be started more than four months after the day on which material facts about the relevant PPU arrangements were given to the CMA or were made public so as to be generally known or readily ascertainable.⁴
15. The CMA received a submission from the Parties on 26 July 2017.
16. The CMA considers that, for these purposes, ‘material facts’ means sufficient facts to enable it to decide whether there are grounds to carry out a review. The CMA is satisfied that by 26 July 2017 the Parties had provided material facts about the relevant PPU arrangements.

ASSESSMENT

17. The purpose of a PPU review is to address the likely effect of the relevant PPU arrangements on the adverse effects on competition, which the CMA’s Private Healthcare Market Investigation Report⁵ (**the Report**) decided arise from high barriers of entry and expansion for private hospitals and weak competitive constraints on private hospitals in many local markets in the provision of privately-funded healthcare by private hospital operators, including in PPUs.
18. The CMA therefore assessed whether on the available evidence there were grounds for considering that the PPU arrangements would result, or may be expected to result, in a substantial lessening of competition in the provision of privately-funded healthcare services in the relevant local area.

² See Article 2 of the Order.

³ The Agreement to Proceed [REDACTED].

⁴ Article 7.4 of the Order.

⁵ [Private Healthcare Market Investigation Report](#) (April 2014).

19. In the Report, it was found that, outside central London, the relevant geographic market in which private hospitals compete is the hospital's catchment area from which the majority of the hospital's patients are drawn.⁶
20. HCA does not currently operate any private hospital or PPU in UHB's catchment area, whether on the basis of the median (15 miles) or maximum catchment area (51 miles) identified for the West Midlands in the Report.⁷
21. Once the proposed PPU is in operation, HCA's estimated share of capacity (by number of beds for private patients) in UHB's maximum catchment area (51 miles) would be around [5-10]%.⁸
22. The Parties submitted that the relevant maximum catchment area hosts five BMI (four general hospitals and one specialised hospital), four Nuffield general hospitals, three Spire general hospitals, two Ramsey general hospitals, as well as the Westbourne Centre specialised hospital.
23. Among the private hospitals active in the relevant median catchment area where the new PPU will operate:
 - (a) BMI has a substantial presence in the immediate vicinity: the BMI Priory Hospital and the BMI Edgbaston Hospital have an estimated share of capacity (by number of beds for private patients) of [5-10]% and [10-20]%, respectively.⁹
 - (b) Spire has also a considerable site within 11 miles of UHB: Spire Parkway offers 57 beds, which would amount to an estimated share of capacity (by number of beds for private patients) of [5-10]%.¹⁰
24. In the Report, it was found that some of the private hospitals in the West Midlands were insufficiently constrained.¹¹ These included a number of hospitals which are in the maximum catchment area for the new PPU, such as the BMI Priory Hospital, Nuffield Hereford, Nuffield North Staffordshire, and Nuffield Shrewsbury. The CMA considers that the new PPU may increase the competition that these private hospitals face in this area.
25. The rival hospitals present in the maximum catchment area, taken together, offer all the specialties and treatments that the new PPU will offer. Of these

⁶ Paragraph 5.62 of the Report.

⁷ Paragraph 24 of Appendix 6.5 of the Report.

⁸ Source: HCA's estimates.

⁹ Source: HCA's estimates.

¹⁰ Source: HCA's estimates.

¹¹ Paragraphs 470, 474, 479 and 483 of Appendix 6.7 of the Report.

private hospitals, there are two that offer, on an individual basis, all the specialities and treatments that the proposed PPU will offer; and for each speciality there are at least five private hospitals offering the same service as the proposed PPU ([X]).

26. The CMA therefore believes that there are no grounds for considering that HCA faces weak constraints in the provision of privately-funded general hospital services in the maximum catchment area.

Conclusion

27. The evidence available indicates that the CMA has jurisdiction to review the PPU arrangements under Part 2 of the Order but, for the reasons set out above, the CMA has found that there are no grounds for conducting a review of the PPU arrangements.

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