

PRIVATE HEALTHCARE MARKET INVESTIGATION

Notice of provisional findings made under Rule 10.3 of the Competition Commission Rules of Procedure

1. On 4 April 2012, pursuant to section 131 of the Enterprise Act 2002 (the Act) the Office of Fair Trading referred to the Competition Commission (CC) for investigation and report the supply or acquisition of privately funded healthcare in the UK.

Provisional findings

2. The CC inquiry group (the Group) appointed to consider this reference has provisionally found that there are features of the supply and acquisition of privately funded healthcare services that, either alone or in combination, prevent, restrict or distort competition such that there are adverse effects on competition.
3. The Group has provisionally identified the following structural features as relevant features in the market for the supply of privately funded healthcare services by hospitals:

(a) high barriers to entry for full service hospitals; and

(b) weak competitive constraints in many local markets including central London.

Together these features give rise to AECs in the markets for hospital services that are likely to lead to higher prices for self-pay patients in certain local markets and to higher prices for insured patients for treatment by those hospital operators (HCA, BMI and Spire) that have market power in negotiations with insurers.

4. We identified the operation of incentive schemes by private hospital operators to encourage patient referrals for treatment at their facilities as a conduct feature in the provision of privately funded healthcare by private hospitals. This feature gives rise to an AEC due to the distortion of referral decisions to particular hospitals and the distortion of patient choice of diagnosis and treatment options.
5. We identified the lack of sufficient publicly available performance information on private hospital performance as a conduct feature in the provision of privately funded healthcare by hospitals. This feature gives rise to an AEC due to the distortion of competition between private hospital operators by preventing patients from exercising effective choice in selecting the private hospitals at which to be treated. This reduces competition between private hospital operators on the basis of quality and price.
6. We identified the lack of sufficient publicly available performance and fee information on consultants as a conduct feature in the provision of privately funded healthcare by consultants. This feature gives rise to an AEC due to the distortion of competition between consultants by preventing patients from exercising effective choice in selecting the consultants by whom to be diagnosed and treated. This reduces competition between consultants on the basis of quality and price.
7. The Group's reasons are set out in full in the provisional findings report, which is attached to this notice, and are summarized in the summary of the provisional findings report (see note below).

The next steps

8. The Group now invites interested parties to submit reasons in writing as to why these provisional findings should not become final (or as the case may be, should be varied).
9. Unless otherwise specified to a party, these reasons should be received by the Group no later than 5pm on 20 September 2013.
10. Unless a different date is agreed with any party, the Group will have regard to any such reasons provided by this date in making its final decisions in this investigation.
11. The Group is today also publishing a Notice of possible remedies which it considers might be taken by the CC to remedy the adverse effects provisionally identified, comments upon which should be received no later than 5pm on 20 September 2013 unless otherwise agrees with any party.

(signed) ROGER WITCOMB
Group Chairman
28 August 2013

Notes:

A copy of this notice and the summary of the provisional findings report will be placed on the [CC website](#) on 28 August 2013. The CC proposes to publish the provisional findings report on its website in the next few working days. The published version of the provisional findings report will not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act.

Comments should be made by email to Private-Healthcare@cc.gsi.gov.uk or in writing to:

Inquiry Manager
Private Healthcare Market Investigation
Competition Commission
Victoria House
Southampton Row
London, WC1B 4AD