

PRIVATE HEALTHCARE MARKET INVESTIGATION

Notice of Competition Commission's intention to hold a disclosure room and operate a confidentiality ring to allow review on items of analysis carried out by the Competition Commission in support of its provisional findings

As part of its investigation, the Competition Commission (CC) has undertaken detailed pieces of analysis, including:

- local competitive assessments of hospitals which we provisionally consider have local market power (hospitals of concern) (Local Competitive Assessments);
- insured prices analysis, where we have analysed the prices charged by the private hospital operators from 2007 to 2011 to different private medical insurers (PMIs) for treatment of insured patients (Insured Prices Analysis); and
- national bargaining analysis, where we have analysed the evidence relating to how the main hospital operators and the private medical insurers (PMIs) negotiate and their respective strengths and weaknesses in national negotiations (National Bargaining Analysis).

The confidential version of the provisional findings report (the Report) contains confidential information relating to the Local Competitive Assessments, the Insured Prices Analysis and the National Bargaining Analysis. Some of this confidential information is specified information within the meaning of section 238 of the Enterprise Act 2002 (the Act) which relates to the business of an undertaking and therefore falls within the general restriction on its disclosure pursuant to section 237 of the Act. The detailed results of our analysis are highly sensitive. This material will therefore be redacted from the published version of the Report.

Pursuant to section 241 of the Act, the CC may disclose specified information for the purpose of facilitating the exercise by it of its statutory functions. The CC has decided that it is necessary to disclose the Local Competitive Assessments, Insured Prices Analysis and parts of the National Bargaining Analysis to certain interested parties.

The CC proposes to disclose to those hospital operators who have hospitals of concern the unredacted material contained in the Report relating to the Local Assessments for all hospitals operating in the same region as the hospital of concern. The disclosure will be made via a confidentiality ring which will comprise the external legal and/or economic advisers of the hospital operators who operate hospitals of concern.

The CC also proposes to disclose to the five main hospital operators,¹ the unredacted Insured Prices Analysis and related material contained in the Report. The CC also proposes to disclose to these same parties those parts of the unredacted National Bargaining Analysis relating to their own negotiations with each PMI. These disclosures will be made to their external legal and/or economic advisers in a disclosure room to be open from 9 September to 10 September 2013 between 9am and 5pm at the CC's offices.

In order to safeguard the confidentiality of the material contained in the confidential extracts of the Report which are to be disclosed in the confidentiality ring and the disclosure room, in line with usual confidentiality ring and disclosure room procedures, those persons to whom

¹ BMI, HCA, Spire, Ramsay and Nuffield.

disclosure is being made will be required to sign confidentiality undertakings and abide by certain procedures. The number of individuals who will be party to the confidentiality ring and who will have access to the disclosure room will be limited.

The CC is of the view that disclosure of the material described in this notice is only necessary to the parties identified in this notice. However, if you consider that you should be included in the confidentiality ring or have access to the disclosure room, expressions of interest explaining the interest and stating the reasons for requesting access to the confidentiality ring and/or disclosure room together with details of the your external legal and/or economic advisers must be sent by **5pm on 4 September 2013** at the very latest to the private healthcare investigation team at Private-Healthcare@cc.gsi.gov.uk.

28 August 2013