PMI buyer power – further recent initiatives

1. BUPA / outpatient diagnostic tests

1.1 BUPA is changing the way in which it is reimbursing consultants for performing outpatient diagnostic tests (e.g. ECGs, ultrasound, optical, etc.) and it is imposing fixed, "bundled" fees for both consultants and hospitals.

1.2 BUPA is requiring consultants to enter into a Healthcare Services Agreement taking effect from February 2013. The new Agreement (i) establishes a new fixed-fee structure for all outpatient diagnostic tests and (ii) "packages" the consultant and facility fee so that in future consultants will not be able to invoice BUPA directly for their fees. We attach the relevant details from BUPA's website.[1] Consultants who do not apply for a Healthcare Services Agreement will no longer be able to invoice BUPA for diagnostic tests.

1.3 The new scheme extends the concept of PMI fixed-fee schedules which establish a fixed fee for consultants (see HCA's response to the CC's market questionnaire, para 19.2(iv)). It restricts the ability of consultants to set their own charges to patients, either above or below the BUPA reimbursement rate. The OFT has already noted that price or fee caps are capable of distorting supply and restricting choice.

1.4 The scheme also extends the "bundling" of facility and consultant charges, interfering with the consultant's right to determine his or her own charges directly with the patient.

1.5 It is very likely that BUPA will in due course extend the concept of fixed, bundled charges to other outpatient and even in-patient services.

1.6 It is a further illustration of BUPA's market power that it is able to impose significant, unilateral changes of this nature. It bears out in particular HCA's comments concerning BUPA's buyer power in relation to theory of harm 4 in the Competition Commission's Issues Statement.

2. BUPA / NHS cash benefits

2.1 As previously submitted, insurers are offering cash incentives to patients to opt for NHS care rather than claiming under their PMI policy (see e.g. HCA's response to the CC's Issues Statement (para 7.26(iii)).

2.2 BUPA is now offering significant cash payments specifically for NHS cardiac treatment. We attach a recent BUPA circular to subscribers. BUPA's policyholders are entitled to payments of between £500-£2,000 if they elect to go to the NHS for certain cardiac procedures, including angiography and angioplasty. These payments are provided as fixed-sum cash payments directly to the subscriber.

2.3 These types of cash incentives are relevant for two reasons:

(i) They illustrate the growing extent to which NHS public hospitals compete with private hospitals and clearly show that PMI companies regard these as

[1] www.bupa.co.uk/provider-application-out-patient–diagnostic-tests

competitive alternatives for their subscribers. The BUPA circular states that BUPA is offering "*greater choice in the care you receive*" by incentivising subscribers to use the NHS.

(ii) The use of cash payments is also a further way in which an insurer such as BUPA can re-direct patients away from private hospitals, and forms part of the "directional" strategy of PMI operators which strengthens their bargaining position in relation to private hospitals. PMI providers can use "cash back" schemes as a way of constraining private hospital pricing.

3. BUPA/clinical authorisation for back pain treatments

3.1 HCA understands that BUPA has recently implemented a policy of requiring clinical pre-authorisation for the treatment of back pains, which covers a wide area of commonly delivered care. Specialist consultants are asked to complete a pre-authorisation form, setting out the patient's circumstances and medical case for treatment, and return it to BUPA's Back Care Team, who conduct a further medical review and decide whether to authorise treatment.

3.2 As noted by HCA in its response to question 33 of the CC's market questionnaire, clinical pre-authorisation is one of the means by which insurers can exercise buyer power and influence what treatment is delivered and the patient's choice of facility. BUPA has implemented clinical pre-authorisation policies for a number of procedures, including knee arthroscopies, the surgical removal of teeth and percutaneous vertebroplasty (see in particular paragraphs 33.12-33.17 of HCA's responses). This initiative relating to back pain treatments is one further instance. It is clear that BUPA is determined to continue widening the scope for clinical pre-authorisation, which enhances its ability to intervene in clinical decision-making on grounds of cost containment. In addition, such policies impose an administrative burden on healthcare providers and consultants in order to comply with BUPA's medical review process.