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Dear Ms Kent,

Private Healthcare Market Investigation

The following brief submission has been prepared by Aspen Healthcare Limited ("Aspen") to supplement its recent submission to the Competition Commission ("CC"). It is not intended to be a complete review of Aspen's position in respect of all of the issues identified by the CC in the Annotated Issues Statement ("AIS").

This submission relates to the AIS findings on the relationship between hospital operators and consultants, and specifically equity based Joint Ventures ("JVs"). The AIS findings on Theory of Harm 5 (Barriers to Entry) indicate that there are a number of incentive schemes which are designed to preclude or deter consultants from switching their practice and referrals to a new entrant. We are concerned that long term equity interests in JVs have been grouped together with other incentive arrangements which could be said to be aimed more directly at providing some form of benefit to consultants in return for patient referrals or commitments to refer patients (see for example para 131 of the AIS).

[&]

Aspen would like to summarise the reasons it disagrees with the below clarification of its approach to equity based JVs with consultants and explain why we believe that these arrangements:

1. contribute to raising standards of healthcare facilities and patient care; yet
2. do not give rise to any significant competition concerns or barriers to entry;
3. do not lead to a higher number of revenue generating tests; and
4. do not increase the cost of care to the payor or patient.

Background and philosophy

Aspen is a US owned, UK based private healthcare provider, owning and operating 8 private healthcare facilities across the UK. Being US owned, whether by way of our American private equity backers, Welsh, Carson, Anderson and Stowe, and our close operational ties to United Surgical Partners International (USPI), Aspen conforms to a number of US federal regulations intended to govern the illegal remuneration of physicians in the US, that is also translatable to consultants within the UK. Section 1128B of the Social Security ACT, the illegal remuneration or Anti-Kickback statute prohibits the knowing and willful, paying, soliciting or receiving of any remuneration to induce or to reward referrals of patients. There are also a number of safe harbor provisions that specifically permit certain arrangements. By complying with these safe harbors, Aspen as a healthcare provider would be in compliance with this statute.

These US regulations are more prescriptive than any current regulations within the UK. By taking the approach that we will conform to the stricter US standards, we have always believed that we are adopting a stance which will avoid any ethical issues in relation to long-term equity investment models.

[redacted]. Experience in the US has shown that the sort of co-ordinated care achieved in physician owned healthcare facilities means that such facilities have better healthcare outcomes, shorter length of stays and significantly higher patient satisfaction ratings than non-physician owned facilities. Further, USPI's own experience has shown that the alignment of all parties' interests contributes to improving the quality of service and patient outcomes whilst driving cost efficiencies, and better value for money healthcare.

Other examples of clinicians owning services

In addition, it is also worth noting that there are many examples of clinicians owning the services they participate in. The following is relevant within the UK:

- GPs owning the premises that their practices are in and the equipment that furnish these
- Consultants owning consulting and treatment rooms from which they practice
- Consultants being owners of daycase surgery facilities
- Consultants being owners of healthcare facilities, including overnight stay facilities

In general therefore, any equity partnership model is therefore only giving an option for ownership in another location.

Aspen approach to equity based JVs

[redacted]. It should be stressed that Aspen's strategy is not based entirely around consultant partnerships, but Aspen will consider implementing them where appropriate conditions exist and there is sufficient interest from consultants.

In most cases these take the form of [redacted].

In all of these arrangements, Aspen maintains managerial, operational and clinical control by owning more than 50% of any interests or shares in the JV entity.

The invitation to participate in a JV is [redacted]. These equity investors are also not the only users of a facility, and indeed the vast majority of consultants that refer patients to the relevant facilities are not equity investors. Equity investors are not offered preferential terms at the facility.

The invitation to participate in a JV is generally made to [redacted]. Those invited to participate are generally those who are active participants at the relevant facility. The model is not about attracting in new consultants with financial incentives over quality of care or standard facilities. [redacted]. It encourages the consultants to work cohesively, to provide a more co-ordinated service, and to input into the long-term development of the facility and clinical models of care.

Aspen's JV agreements are based on the following key principles:

- [redacted]. No consultant is ever "awarded" equity or receives equity at less than market value in consideration of a commitment to make referrals;
- Financial returns to consultants are derived from the profits of the JV, and the return to each consultant is based on and proportionate to the level of the consultant's equity investment and not on the number of patients that the consultant refers or treats. The proportion of financial returns are never based on the number of patients the consultant refers or treats;
- The JV agreement requires a consultant to exercise clinical judgement when deciding the most appropriate treatments and facility venue for patients and stipulates that they must always act in the best interests of the patient;
- The arrangement is transparent to patients, with the JV agreement containing a requirement that the consultant informs his/ her patients of his/ her stakeholding;
- [redacted].

Key benefits and advantages of the equity based JV model

As stated above, Aspen believes that equity based JVs with consultants:

1. contribute to raising standards of healthcare facilities and patient care; yet
2. do not give rise to any significant competition concerns or barriers to entry;
3. do not lead to a higher number of revenue generating tests; and
4. do not raise the cost of care to the payor or the patient.

The model is about creating a long term partnership for the improvement of both care models and facilities achieved through the alignment of interests. If there is an argument that consultants are incentivised by their equity stake to direct referrals to that facility, then we do not believe that this significantly reduces competition between hospital operators. There is effective competition in the sense that the particular facility must be of sufficient quality to attract consultants to practise and direct referrals there in the first place, as well as to invest their own funds. Subsequently it drives up standards by consultant input into the development of clinical services, pathways and facilities in general, and the need to constantly improve facilities to persuade consultants against the possibility of withdrawing their investment (and encourages effective dialogue in this regard).

Equity based JVs contribute to raising standards because the interests of consultants are aligned with one another, the PHP and with the success of the facility. This means that:

1. [X].
2. [X].
3. [X].

Meanwhile, we do not believe that equity based JVs give rise to any significant concerns in terms of barriers to entry, for the following reasons:

1. Aspen has successfully implemented equity based JVs with consultants when it has itself been a new entrant in a particular market.
2. [X].
3. [X].

Lastly, there has also been reference within the responses to Annotated Issues Statement quoted earlier that equity ownership leads to an increased number of inappropriate tests. We would argue that this is improbable due to governance mechanisms in place both at provider level and monitoring done by the insurers:

1. As part of MAC mechanisms, peer review, appraisal and revalidation, trends of such a nature would be identified and dealt with
2. As part of ongoing monitoring done by the insurers on individuals consultants activities, it would also be flagged if these practices were indeed occurring.

Differentiation from other consultant incentive schemes

We believe that equity based JVs in the form implemented by Aspen should be clearly distinguished and considered separately from other direct or indirect financial incentive schemes in the CC's thinking. In addition to the benefits outlined above, the following factors and features differentiate equity based JVs from other incentive schemes:

1. Equity based JVs involve consultants investing their own cash for an equity stake at market value. Consultants are not "awarded" equity (whether for referrals, commitments to refer, or anything else). Nor do they receive any discount against the value of the equity.
2. Equity returns are based on the amount of equity invested. There is no link between the size of caseload or number of patients referred and the equity return.
3. No preferential terms are offered to consultants who invest in the equity (whether rates for services provided at the facility or anything else).

4. The arrangement is transparent, with consultants providing information to patients about their stakeholding.
5. There is no cost increase to purchasers of healthcare services. The model is about sharing the profits, not increasing costs to cover incentive payments.
6. There is no reduction in the profits available for reinvestment. Far from reducing available profits for investment, equity based JVs (a) initially raise capital for improvements (through equity subscriptions); and (b) involve consultants in the decisions about how profits are reinvested most efficiently and effectively in improvements to facilities.
7. [~~8~~].

Yours Sincerely



Des Shiels
CEO
Aspen Healthcare Ltd