COMPETITION COMMISSION

PRIVATE HEALTHCARE MARKET INVESTIGATION

Summary of hearing with Aspen Healthcare held on 26 February 2013

Background

1. Aspen was owned by a private equity company called Welsh Carson Anderson & Stowe. Its sister company, United Surgical Partners International (USPI), based in Dallas, Texas, was founded in 1998. Aspen told us that USPI's success to date was based primarily on a partnership model with not-for-profit health system organizations in the USA. This model involved an ownership structure involving the not-for-profit healthcare system, USPI and also doctors. Aspen had, over the years, anglicized this model and implemented an equivalent version in the UK as one strategy of working effectively with clinicians.

2. Aspen's philosophy was to adhere where possible to US regulations in terms of the structure and conduct of its partnerships in the UK. The reason for this was that the US system was much more heavily regulated than that in the UK in regard to consultant arrangements, and the company felt more comfortable abiding by those standards.

Partnerships as an element of strategy

3. Aspen owned and operated four hospitals, a Cancer Centre and three Ambulatory Surgery Centres in the UK. It had developed a small number of partnerships with doctors at some of its sites. Its policy was to identify like-minded doctors and invite them to acquire equity in a given facility. Equity was purchased on the basis of the fair market value of the interests. The benefit of this arrangement was that the doctors became involved in the strategic direction and management of the facility. The doctors as part owners had a direct impact and input into the quality and delivery of the service. Part of the agreement was that the doctors were actively involved in the business of the facility. However, there was no absolute obligation on consultants to refer or treat all of their patients at the facility, and active participation was always subject to a patient's clinical needs and best interests. Aspen currently had two such limited liability partnerships (LLPs) in the UK, with another to launch in 2013. There was also one limited company partnership, where Aspen bought into an existing business owned by four clinicians. The first such partnership was implemented in the Cancer Centre in Wimbledon in 2010, with others at Midland Eye in Solihull and Highgate Hospital in north London. Such arrangements with doctors were typically set up in an LLP arrangement, whereby Aspen leased the property to the LLP at the market value, and the partnership took on the business of the facility.

4. Each partnership was a stand-alone separate legal business entity with the consultant business partners sharing the financial risks and rewards. Financial returns to consultants (ie distributions/equity calls etc) were determined by a supervisory board of which invested consultants were part. Each partnership had a supervisory board made up of Aspen representatives and members of the LLP.

5. Aspen was also keen to replicate the success its sister company had had in the USA in terms of specialist clinics and outpatient facilities. One example of such an outpatient facility was Aspen's recent acquisition, The Edinburgh Clinic. Also Aspen's recent investment with four doctor partners in the specialist eye clinic (Midland Eye) was run on a similar basis to the USPI ambulatory surgery facilities in the USA.

6. Aspen was also interested in partnering with NHS Trusts to be a private provider partner for managing private patient units.

Barriers to entry

7. The main barriers to entry that Aspen had experienced historically were in the London market (within the M25).

8. When Aspen acquired the Highgate Hospital in 2003, its intention had been to quickly turn it into a typical multi-specialty Aspen facility. At the time of purchase, it did not have medical insurance provider recognition and was heavily dependent on non private medical insurance (PMI) business (ie plastic surgery). It took Aspen from 2003 until 2011 to achieve recognition from AXA PPP due apparently to the ongoing threats from the larger providers in the north London market. Eventually recognition was granted but in order to gain that recognition Aspen had to agree to grant significant discounts to tariff compared with existing facilities in the same Greater London geography.

9. Aspen had also experienced recognition problems with Bupa back in the early 2000s. Bupa had two products, its network and non-network products, and back in 2003 Bupa would not grant Holly House Hospital network recognition. The same thing happened at Parkside, and again Aspen had to agree significant discounts with Bupa in order to gain recognition.

10. Exclusion of a hospital from a network by any of the top four insurers affected more than just that insurer's business. Doctors were reluctant to split their work according to whether an insurance company recognized a hospital or not, and a hospital would be severely disadvantaged in this situation.

11. PruHealth had sought permission from Spire and BMI for Aspen to be allowed into the network, but had been turned down. In general, if Aspen were to offer any PMI a good deal it was always overshadowed by the reaction of the bigger providers in terms of the next round of negotiations by using their network of facilities as commercial leverage.

Competition for consultants

12. Aspen strongly believed that in order to attract consultants and patients, and be a healthcare provider of choice for referrers, it was important to provide facilities of a high quality standard. As a result, Aspen has invested heavily in its facilities over the years. Staff needed to be of the highest calibre in terms of their professionalism, expertise and attitude—if this were not the case, there would be difficulty in attracting doctors. Location was also a vitally important consideration.

13. Aspen was aware of occasions when consultants had been offered cash incentives by other private healthcare providers (PHPs), and had approached the General Medical Council for guidance on such situations. Aspen believed that such practices were unethical and did not comply with governance standards stated earlier.

14. When selecting doctors to join potential LLPs, Aspen looked for well-experienced doctors with established practices who would support the facility in the development of services and quality standards.

15. Aspen partnerships also received work from consultants who were not partners. Aspen would never encourage a doctor to bring a patient to any of its hospitals if it was not clinically appropriate for him or her to do so.

16. Aspen's biggest competitor for cancer services was the private patient services of the Royal Marsden NHS Trust, which was in a position to offer oncologists a lot of additional arrangements (research, support facilities, etc) which was difficult for a company like Aspen to compete against.

17. Aspen had noted a more aggressive feel to the market in recent years. The number of privately-insured patients had dropped and there was the same or a greater number of providers fighting for a smaller market. The London market was particularly competitive for providers attempting to recruit consultants.

18. Aspen was aware of loyalty schemes that other PHPs had offered their consultants. It was aware of some other PHPs offering doctors payments to move their practices from one hospital to another and then over a number of years writing off that payment. It was also aware of a different provider historically having a loyalty scheme whereby doctors were incentivized according to the amount of revenue that they generated, including, for example, payments for, among other things, golf membership fees, and donations to research funds. Aspen had not engaged in these sorts of schemes.

19. Aspen charged its consultants the full cost for their use of facilities, eg rent for consulting rooms, based on the market rate for consultants. These charges applied whether a consultant was an equity partner in the facility or just a user of the facility.

GPs

20. Aspen was struggling to break into the NHS's 'Choose and Book' system in north London specifically. Under Choose and Book, a GP should offer a patient the option of a number of different hospitals, one of which was a private hospital. Aspen's experience was that control of where the patient ended up was in many instances being taken away from the GP and directed via a remote triaging system. Aspen was aware that it was getting a smaller percentage than expected. In most instances, GPs sent their patients to the most appropriate consultant that they believed would provide the best treatment.

21. Aspen actively sent consultants to talk to GPs about the services, equipment and facilities it offered. It held regular GP seminars, with consultants and managers speaking about the services Aspen offered.

Vertical integration

22. Aspen had been approached by Roodlane, a private GP practice (owned by HCA), regarding a possible contract to use The Edinburgh Clinic in Scotland. In regard to the London market, on enquiry Aspen did not have an issue with its current referral practice, as the Aspen facilities would be unaffected. However, this could cause a barrier if Aspen were to develop a central London facility.

Negotiations with insurers

23. Aspen tried to work amicably with the large insurance companies. Its main advantage with the insurers was that its outer London hospitals were significantly less expensive

than the inner London hospitals. Both sides were aware that it would be to the benefit of the insurers to take advantage of this situation.

24. To gain initial recognition, Aspen had to offer discounts initially. This had tended to be a one-off event and in subsequent years it continued with normal negotiations, which often resulted in small tariff increases. Small companies like Aspen had been very dependent on the insurance companies and very exposed to derecognition.

25. Aspen carried out group negotiations for all its hospitals with each insurer. The agreed tariffs per facility were then applied individually to each hospital.

26. Aspen had not tended to distinguish between whether a patient was a corporate, non-corporate or a private individual, and so was not aware of the volume of corporate business per se within Aspen. It was aware of particularly big corporate employers based in its markets, and targeted them specifically. However, Aspen facilities tended to be based in more residential areas.

27. Aspen was aware that Bupa had been putting a lot of its patients on to an open referral type system and favoured 'fee-assured' consultants. Aspen viewed this as a strategy focused on doctors rather than providers. However, such action could impact negatively on the hospitals when doctors refused to accept the rates being offered by the insurance companies and the hospitals lost the work as a result.

28. Aspen was also aware of concerns within the market that the open referral system meant that patients were being referred to newer, less experienced consultants in some instances. Excluding very experienced consultants with excellent reputations was not a healthy situation for the independent sector, and something Aspen would wish to work collaboratively with the insurers on.

Profitability

29. Aspen believed that profitability (the difference between the revenue and the costs incurred) had become an issue for private hospitals. In the past, the mainstay of the business had been a combination of private medical insurance and, to a smaller extent, self-pay; but with the performance of the PMI industry in recent years, companies were seeking to compensate for the drop-off in business from lower-margin work, particularly from the NHS.

30. PMI or self-pay patients had certain expectations in terms of the healthcare facility and service delivery (ie the accommodation and hotel service provided, as well as the clinical aspects of the delivery). It was important to provide a high-quality service that satisfied those expectations, as otherwise an Aspen hospital would lose that patient to a neighbouring hospital. Delivering such a high-quality service impacted profitability. There might be differences between facilities in parts of the country outside London compared with facilities in London on the accommodation and hotel side, but never on the clinical side.

31. A significant amount of the activity at Aspen's Claremont Hospital in Sheffield was NHS work, and profit was largely generated by NHS work. Aspen pointed out that it was important to operate very efficiently, particularly in terms of the NHS business. Some NHS procedures were actually loss making, but there was a wide variation of NHS procedures so loss could be spread. The work tended to balance itself out.

32. Although Aspen was happy to carry out NHS work, it saw the mainstay of its business as being PMI and self-pay. The quantity of NHS/private work varied depending on the market. Aspen was willing to invest both in areas where the higher-margin

private work existed to a reasonable level but also where NHS business was likely to be available on an ongoing basis. Usually, private business was the mainstay of the investment justification. Aspen fundamentally saw itself as a private healthcare company.

33. The current reduction in private business was due to the current recession. Self-pay patients were important, although Aspen had yet to see an increase in numbers.

Medical inflation

34. Oncology was one area where costs had dramatically increased in recent years and Aspen believed this was a factor in driving medical inflation. This was a big issue for the insurance companies. For example, a hip replacement at a private hospital might cost about £10,000, whereas treatment for an oncology patient had the potential to be many times that amount. As research improved and treatments that were available to oncology patients improved, this would drive medical inflation. Although higher-complexity work had also become more expensive, some procedures, eg MRI scans, were cheaper than five years ago, and pay freezes for NHS salaries, which the private sector tended to follow, also had a dampening effect on medical inflation.