

PRIVATE HEALTHCARE MARKET INVESTIGATION

Summary of hearing with Circle Health Partnership held on 8 March 2013

Background

1. Circle Health Partnership (Circle) told us that although it had built two private hospitals, it believed that the sector remained fundamentally restricted to new entrants. Circle had been the only new provider with national ambitions to enter the market in the past decade.
2. Circle's ability to survive in spite of considerable barriers, and against a challenging economic backdrop, was down to a unique combination of factors, paramount of which was an abiding belief that the combination of clinical leadership and employee ownership presented a better way of delivering innovation and high-quality care. This belief was shared by a small but committed group of shareholders who had invested over £200 million in equity capital to date to fund Circle's entry into a market that was shut off for almost everyone else.
3. All of the money raised by Circle to date had been in the form of high-cost equity. It had been unable to secure debt finance at reasonable commercial rates, in part because debt funders perceived the uncertainty regarding insurer recognition as a crucial factor.
4. Circle pointed out that it continued to face significant competition problems, which threatened not only its ability to grow and build new hospitals, but also the long-term financial viability of its existing facilities. Circle considered that the overriding factor undermining greater competition in the private healthcare market was the uncertainty and arbitrariness surrounding PMI recognition and pricing and the market power of the incumbent hospital groups.
5. In Circle's view, the current structure and arrangements served the incumbent operators and the insurers equally well. The problem was not who had the market power—the insurers or the hospitals—but a structural one.
6. Circle considered that three areas needed to be addressed. First, Circle believed that there needed to be a transparent recognition regime. Providers which treated NHS funded patients did not have recognition or access problems, owing to the 'Any Qualified Provider' regime. As a consequence, providers operating in the public sector competed for patients on the basis of quality, expertise, outcomes and convenience. Circle thought there were real advantages to adopting a variant of this regime for private healthcare.
7. Whilst Circle recognized that English law respected the freedom of contract, given the market power and gatekeeper role of PMIs, it proposed that automatic recognition of providers by PMIs should be the norm, with PMIs being entitled to refuse recognition only on the basis of objective transparent criteria such as clinic quality.
8. Secondly, providers should be prevented from putting undue pressure on consultants. Any direct or indirect pressure on consultants, or the targeted use of direct financial incentives directed at particular consultants to prevent them from moving any of their business, should be prohibited. Consultants should be free to offer their services where they wished without fear of retaliation.

9. Finally, the market power of incumbents should be nullified. Hospital operators might have market power in certain areas, and this, together with the scale of an operator's network of hospitals, may translate into national market power, and thus give the operator particular strength in negotiations with PMIs. The bargaining power between PMIs and hospital chains created barriers to new local entrants because PMIs were disincentivized from recognizing new entrants. Locally powerful operators might also flex that market power through pressures on consultants.

OFT/CC investigations

10. Circle believed that the OFT and CC's investigations had had an effect on the health-care market. Two examples came to mind. First, AXA PPP had immediately recognized Circle's hospital in Reading when it opened in August 2012, whereas it had previously taken 21 months for the insurer to recognize the hospital in Bath. Secondly, since the investigations, Bupa had de-recognized BMI's hospitals in an effort to renegotiate quality and price. Circle believed that the CC's investigation had given Bupa confidence to challenge the incumbent hospital providers.
11. However, there were also several examples where there had been no effect. Bupa, when recognizing Circle's Reading hospital, had insisted that none of the anaesthetist charged shortfall fees to patients. Circle was not aware of this condition being imposed on any other hospital in the country, and it was a condition that was given to Circle within a month of the hospital opening. If not accepted, it could have led to the hospital not being recognized. Circle considered such conditions to be a barrier to entry.
12. Circle had also seen instances where consultants in the Reading area had been de-recognized by a hospital on the basis that they had committed to join Circle when its hospital opened. This left the consultants with nowhere to practise in the interim period and effectively cut off the patient flow. Circle believed that there was a strong desire to prevent consultants from owning their own facility, and this accounted for the lack of privately-owned surgery centres in the UK compared with the rest of Europe. This in Circle's view played into the hands of the incumbent operators.

Incentives

13. Circle pointed out examples of privately-owned facilities in the healthcare market, including GPs' facilities, dentists and pharmacists, and that there was evidence to support the claim that a partnership or ownership model produced 5 per cent more efficiency. Circle's ownership model included doctors, nurses, managers etc and this worked as a driver to provide innovation and change. This model was absolutely transparent to the patient. Circle was not involved in and did not manipulate the GP referral process. It believed that there was enough professional regulation for the doctors to safeguard the patient.
14. Doctors who had a long-term equity ownership in successfully changing the delivery of care and developing a facility were not making immediate decisions on a patient's treatment based on short-term cash rewards. Consultants should be free to determine where they wished to work as any other professional. If they wished to work in only one facility, whether or not they held an equity interest, there should be no reason to prevent that, provided, where there was an equity stake, there was transparency. Consultants who had an equity stake were also incentivized to help change the system for the longer-term development. Consultants were free to leave Circle's partnerships and many worked 50/50 in other facilities.

15. Circle did not believe that consultants were incentivized to refer patients to the hospital where they had an equity share. Consultants could not control who was referred to them and patients were free to choose the consultant they saw.
16. Consultants had a duty of care to put the patients' best interests first and clinical judgements should always outweigh any narrow financial interests. Incentives or financial gains should be made transparent to the patients. Circle clearly stated the ownership of its facilities on its website and encouraged consultant partners to disclose the information to their patients.
17. The UK market in healthcare was not an integrated market and GPs were the gatekeepers to secondary care. Circle was therefore against GPs accepting financial incentives to refer patients to particular hospitals or consultants.

Local competition

18. In Bath, Circle saw BMI as its main competitor, with both hospitals offering comparable facilities. It also believed that it should compete with the private hospitals in Bristol, as patients should be willing to travel for the best treatment and care. However, the reality was that Circle probably did not compete with the Bristol hospitals because of the blocking of consultants transferring their business to Circle and other barriers to entry.
19. In relation to Reading, Circle did not consider that the Ramsay and Spire facilities had the latest equipment. Circle had invested significantly in a number of specialties and stated that it had invested more than its competitors in this market with a better range of newer equipment. Circle's staff were also well motivated and willing to engage with patients on a day-to-day basis and this added to the overall reputation of Circle's facilities.
20. Circle did not consider Reading to be a competitor of London hospitals. GPs mainly knew the local NHS and private hospitals, so locality to the GP was the important factor in the referral process. If a patient saw a central London GP, the GP would not consider consultants on the periphery of London, let alone further afield. Circle had offered insurers Reading as an alternative hospital to those of central London, offering to drive patients out and back into London at a low cost, but no insurer had taken it up on that offer. Reading was at least a 45-minute drive away and was on the boundaries of what patients would find acceptable. This accounted for the lack of enthusiasm by the insurers. In addition, Circle Reading did not offer the same high level of acuity offered by the central London facilities. It could offer such facilities but the demand was not sufficiently high (less than 10 per cent of surgical procedures required high-acuity facilities).
21. Although it provided 90 per cent of the treatments offered by the top London hospitals, Circle considered that for London-focused patients, the decision-making process was driven more by their GP, their knowledge of consultants on the London network and their belief that London hospitals and the specialty treatment they offered had a more powerful draw than similar hospitals outside London.

Negotiations

22. Funding was Circle's main concern for future expansion. The question of whether it would seek to secure any additional funding would be severely in doubt if no action was taken on the problem of recognition. Being a new entrant, Circle had been un-

able to raise debt. The Reading facility was 100 per cent equity financed by a third party.

23. Circle had acquired a piece of land in Edinburgh with the intention of entering the market there. Spire had the solus facility in Edinburgh and had in 2010 opened a secondary facility very close to Circle's piece of land. Circle had now decided against entry. The close proximity of Spire's new facilities made the market too difficult to enter, especially without the certainty that it would be able to secure the consultants and obtain insurer recognition.
24. Insurer recognition should be open to everyone. Beyond that, Circle believed that it would be fair for providers to fight equally for the best discounting and offers that they could negotiate in order to secure preferred supplier status. However, incumbent operators should not be able to influence that discounting process through contractual terms or use other hospitals in their network to influence arrangements for preferred supplier in particular local areas.
25. Circle told us that the larger hospital providers had a significant degree of market power over the private medical insurers, including the larger insurers. Certain hospital providers through their solus facilities or local market monopolies were unfairly pushing up pricing and this disadvantaged the smaller hospitals, which were consequently unable to compete fairly against the local competitors. If pricing was freer at local level, an operator irrespective of the number of hospitals it owned could compete fairly at local level.
26. Circle noted that the day before it had, the previous day, compared BMI's self-pay prices at three of its facilities in Bath, Glasgow and central England. This back-of-the-envelope exercise showed that BMI Bath's self-pay prices were significantly lower, for example, for a CT scan or an MRI than in Glasgow etc. In Glasgow it was almost 100 per cent more expensive than in Bath.
27. Circle believed that the market was currently large enough to permit two full-service hospitals to operate profitably in areas such as Bath and Edinburgh provided the market was opened up. Both NHS and private work helped drive competition, innovation of facilities and delivery of better care for privately- and publicly-funded patients.
28. The pressure from lack of early insurer recognition at Bath, and the inequilibrium in pricing that existed, put into question whether Bath would ever be profitable. If the market did not change, Circle thought it would have to question whether BMI would always be able to use its power to be able to maintain volumes, under-price Circle on self-pay treatments and incentivize GPs with cash to keep patients from the better facility.

Insurer schemes

29. Circle was supportive of insurers' schemes, eg assured fee system or open referrals. If people were happy to accept such open market pricing schemes and there were alternatives options available to patients, then Circle did not view such schemes as a problem.

Vertical integration

30. Circle had not been affected by the development of privately-owned GP centres, referral clinics or diagnostic centres. It believed that professional integration was

desirable and advocated the GP having relationships with consultants on education and knowledge. However, such decisions should not be based on financial incentives.

Patient information

31. Patient information was a complex issue. Circle told us that although information was available in the USA, it did not mean patients used it. Patients preferred to use word of mouth or be advised by their GP. Circle did believe in patient satisfaction and carried out surveys. Results and views were put on its website and sent to GPs. It aimed to publish its clinical outcomes in the future.
32. Circle believed that any future publication of information for patient use would be led by the NHS.
33. The main consideration when moving from primary to secondary care was the consultant or consultant group. Circle had encouraged consultants to set up their own groups professionally and believed that a referral to such a group would help ensure that the patient saw the correct consultant.
34. Circle told us that in the absence of clinical outcome measures, GPs in general had a good knowledge of consultants and their individual outcomes. This could in part be due to word of mouth, with patients reporting their experiences back to the GP.
35. The lack of information in the market was largely evident in the primary to secondary decision rather than consultant to hospital decisions, where in general consultants would use the most appropriate hospital.
36. Circle concluded that to make the market more competitive it was important that new entrants could freely enter and become profitable in order to attract the cheaper capital to expand.