

PRIVATE HEALTHCARE MARKET INVESTIGATION

AXA PPP healthcare's ("AXA PPP") Response to the Competition Commission's ("CC") Divestment Paper received 20 September 2013

1. Introduction

- 1.1. AXA PPP has carefully considered the divestment options proposed by the CC. AXA PPP agrees with the approach that the CC has taken and broadly agrees with its main conclusions, although AXA PPP has some differences of opinion in particular geographic areas that are discussed below. AXA PPP has considered each of the regions commented on by the CC and followed the same format for ease of reference.
- 1.2. An important point to note is that AXA PPP has considered for each region, the ownership of hospitals by providers and concentrations of ownership in locations, from AXA PPP's perspective as a private medical insurer so taking into account only AXA PPP's insured population of customers. As discussed at the Remedies Hearing on 8 October 2013 (the "**Hearing**"), AXA PPP accepts that the CC will have additional information relevant for the self-pay and NHS markets that may lead to different conclusions to those reached by AXA PPP.
- 1.3. To this end AXA PPP has considered, for each location, whether a change of ownership would give AXA PPP greater opportunity, in the event of running a competitive tender, to exclude provision. By removing or threatening to remove hospital operators, AXA PPP anticipates that it would have the opportunity to increase competition and apply downward pressure on price and/or upward pressure on the quality of facilities and/or services provided. Therefore, AXA PPP has also commented, where relevant, if in its opinion a particular hospital operator in a location should be prevented from acquiring facilities proposed to be divested.
- 1.4. Three of the areas under consideration included options to 'divest', by ceasing to manage NHS Private Patient Units ("**NHS PPU**s"). As AXA PPP has considered these areas, it has concluded that decisions around NHS PPU are further complicated by the fact that, in most cases, they do not currently compete effectively with proximate private facilities. To compete effectively such facilities may require significant investment. Even if investment is made, it does not necessarily follow that requiring an incumbent private provider to divest an NHS PPU would create an effective competitive constraint in the location. On balance, however, allowing an incumbent to remain in place is likely to discourage investment, since the incumbent is unlikely to compete with itself.
- 1.5. Allowing an incumbent to take over the management of an NHS PPU, in all likelihood, will discourage investments being made to increase competition (because, again, the incumbent has no interest in competing with itself) and, therefore, will, in and of itself, prevent an NHS PPU competing in a location. Therefore, AXA PPP continues to believe that, when NHS PPU are tendered for management contracts, they ought to constitute a 'relevant merger situation' for the purpose of s33 of the Enterprise Act 2002 which could then, after preliminary

analysis, lead to a triggering of the OFT’s duty to refer such “mergers” for investigation to the CC and/or Monitor.

- 1.6. Finally, AXA PPP has also considered whether it believes there are other geographic areas that have not been covered by the CC in the divestment paper where consideration needs to be given to potential further divestment. AXA PPP has not, at this stage, identified any other areas that should be considered but would be pleased to comment if the CC has specific or follow up questions.

2. Central London

- 2.1. At this stage AXA PPP has no additional comments to those it has already made on divestment outcomes for London as set out in our response to the CC’s Potential Remedies document and as discussed at the Hearing.
- 2.2. AXA PPP considers that HCA should be required to divest:
- Either the [redacted] or [redacted], and
 - Either [redacted] or [redacted], and
 - Either [redacted] or [redacted], and
 - [redacted]
- 2.3. AXA PPP also believes that consideration should be given to requiring HCA to negotiate terms separately for [redacted].
- 2.4. As previously stated AXA PPP believes that to remedy the identified Adverse Effect on Competition (“AEC”) effectively in central London the above combined divestment needs to be imposed at a minimum and that divestment of one or two hospitals alone would not be effective. Therefore, if the CC were to determine that HCA should not be required to divest primary care and specialist oncology services AXA PPP would take a more specific view on which particular hospitals HCA should be required to divest.

The following sections cover the areas outside central London.

3. North West London: BMI Bishops Wood, BMI Clementine Churchill, Spire Thames Valley, Spire Bushey

Table 1

Total AXA PPP annual spend at these facilities	£[redacted]
BMI	[redacted]%
Spire	[redacted]%

- 3.1. AXA PPP’s most significant spends by far are at the BMI Clementine Churchill and Spire Bushey both receiving £[redacted]m and both being two of the most significant hospitals in the two group’s portfolios.
- 3.2. AXA PPP initially concluded that the divestment of either The BMI Clementine Churchill or the BMI Bishops Wood would bring greater contestability into the local area. AXA PPP has supported the conclusion that, given NHS PPU’s would

be able to compete in some locations with private facilities, as a principle an incumbent provider should not be able to also run the local NHS PPU and thereby disenable potential competition by common ownership.

- 3.3. In this location if BMI was required to divest either BMI Bishops Wood or BMI The Clementine Churchill it is extremely likely that this would result in BMI removing themselves from the management contract at the Mount Vernon Hospital (in the grounds of which BMI Bishops Wood is located). AXA PPP still concludes that NHS PPUs as a principle should not be run by the incumbent for the reasons outlined further above.
- 3.4. In reality however, in this location, if the NHS PPU was managed by an alternative provider (who could not be replaced by Spire) the likely outcome, if AXA PPP was to run a competitive tendering process in the short term the provider most likely to be considered for exclusion would be the BMI Bishops Wood. Even with significant investment this NHS PPU is unlikely to be able to compete with The BMI Clementine Churchill or Spire Bushey for private patients to the extent that AXA PPP would be able to remove, or realistically threaten to remove either of these hospitals given their size and significance in the market.
- 3.5. Therefore AXA PPP concludes that removing BMI's ability to manage The BMI Bishops Wood would have a limited effect, if any, on competition in this local market from an insured patient perspective unless substantial investment was made to enable the facility to contest Spire Bushey and/or BMI Clementine Churchill. This is unlikely in the short to medium term.
- 3.6. AXA PPP is therefore ambivalent about this proposal.

4. North West London: BMI The Cavell, BMI Kings Oak, Holly House, Spire Bushey

Table 2

Total AXA PPP annual spend at these facilities	£[redacted]
BMI	[redacted]%
Spire	[redacted]%
Aspen	[redacted]%

- 4.1. The large share of spend going to Spire is reflective of the dominance of Spire Bushey in this location. Currently BMI gives AXA PPP a [redacted] at both facilities in this location.
- 4.2. Given the proximity of the two BMI facilities and the high private patient insured spend in this market, AXA PPP believes that greater contestability would be brought in to the market if BMI was required to divest one of these facilities and has no preference for either. Either would have a similar contestability effect as AXA PPP would be able to exclude or threaten to remove either one of these facilities if under separate ownership. Neither facility, given the ownership of other providers in the area, should be divested to Spire or Aspen.

- 4.3. AXA PPP supports the proposed divestment in this location.

5. North West London: BMI Shelburne, BMI Chiltern, Spire Thames Valley

Table 3

Total AXA PPP annual spend at these facilities	£[redacted]
BMI	[redacted]%
Spire	[redacted]%

- 5.1. In addition to BMI Chiltern, BMI also owns a daycase unit in Princess Risborough.
- 5.2. The current spend at the BMI Shelburne NHS PPU is relatively small at c.£ [redacted]m with a spend of £[redacted]m at the BMI Chiltern. In the event that BMI was required to divest the BMI Chiltern or cease to manage the BMI Shelburne NHS PPU it is more than likely that BMI would remove its management of the NHS PPU. Similar to the situation around Spire Bushey, BMI The Clementine Churchill and BMI Bishops Wood, it is probable that to compete effectively in the location, the Shelburne facility would require some investment.
- 5.3. However, it is easier to see how this might happen in this location. The Shelburne facility is not competing with such significant hospitals as in the Bishops Wood/Clementine example and this facility could be attractive to a management provider other than BMI and increase contestability in the relatively short to medium term. With investment the Shelburne could compete with BMI Chiltern and potentially other facilities in a very densely populated area in terms of private insured customers.
- 5.4. Therefore AXA PPP agrees that BMI should be required to cease to manage the BMI Shelburne NHS PPU or divest.

6. South East London: BMI Sloane, BMI King's Oak, BMI Blackheath, BMI Chelsfield Park, BMI Fawkham Manor

Table 4

Total AXA PPP annual spend at these facilities	£[redacted]m
BMI	[redacted]%

- 6.1. Currently AXA PPP would have very little opportunity to carry out a competitive tender in this area to drive down costs for customers and/or encourage increase competition for services and facilities. [redacted].
- 6.2. St Anthony's in Cheam offers some limited contestability to the edge of this cluster of hospitals but it is not significant in the opinion of AXA PPP. AXA PPP believes that significantly greater contestability would occur if BMI was required to divest two of its facilities in this cluster and agrees with the CC that the biggest effect would be achieved by requiring BMI to divest The Sloane and BMI Chelsfield Park to break up the centre of the cluster. AXA PPP further believes

that two separate providers should ideally be required to acquire these facilities to achieve maximum opportunity for competition and to avoid creating another cluster. If this was effected AXA PPP believes that it would have an opportunity to carry out a tender and exclude facilities where effective prices cannot be achieved.

- 6.3. An important point to note is that St Anthony’s is currently up for sale. AXA PPP believes that if BMI wants to acquire St Anthony’s even after divesting BMI The Sloane and BMI Chelsfield Park, further consideration should be given to requiring BMI to divest a further facility in the event that they are successful in acquiring St Anthony’s.
- 6.4. Therefore, AXA PPP agrees with the CC that BMI should be required to divest BMI The Sloane and BMI Chelsfield Park.

7. South West: Runnymede, Princess Margaret, Mount Alvernia, Nuffield Guildford, Nuffield Woking

Table 5

Total AXA PPP annual spend at these facilities	£[redacted]
BMI	[redacted]%
Nuffield	[redacted]%

- 7.1. AXA PPP spends [redacted] with the two hospitals in Guildford (Nuffield Guildford and BMI Mount Alvernia) and therefore from a private insured perspective, Guildford is well contested.
- 7.2. Broadening the geographic outlook, BMI owns 3 of the 4 private hospitals in the area as described by the CC and runs a significant NHS PPU. The AXA PPP spend at Nuffield Woking from a private insured perspective is [redacted] compared with the other hospitals in the cluster for AXA PPP because this facility is not in the main AXA PPP hospital network. The breakdown of spend is as follows:
 - BMI Mount Alvernia £[redacted]m
 - Nuffield Guildford £[redacted]m
 - Nuffield Woking £[redacted]m
 - BMI Runnymede £[redacted]m
 - BMI Princess Margaret £[redacted]m
- 7.3. When running a competitive tender, as described above, from AXA PPP’s perspective contestability will only be achieved if more facilities can be excluded from an insurers list of recognised hospitals in the event that this was necessary. It would be possible in the area to exclude BMI Princess Margaret or BMI Runnymede only in the event that they were owned/run by different providers.
- 7.4. AXA PPP therefore supports the CC’s proposal that BMI should be required to pass the management of the BMI Runnymede to an alternative provider that is not Nuffield, given their ownership of Nuffield Guildford and Nuffield Woking.

8. Birmingham and the Midlands: BMI Priory, BMI Edgbaston, BMI Droitwich Spa, BMI Meriden

Table 6

Total AXA PPP annual spend at these facilities*	£[redacted] m
BMI	[redacted]%
Spire	[redacted]%
Nuffield	[redacted]%
Ramsay	[redacted]%

*The total spend includes Spire Parkway, Ramsay West Midlands, Spire Little Aston and Nuffield Wolverhampton.

- 8.1. Reviewing the Droitwich Spa first, AXA PPP does not consider this to be effective competition for Birmingham provision so whilst private insured patients in the local area to the Droitwich Spa might travel to Birmingham for treatment the alternative scenario would not occur. Therefore in AXA PPP's perspective the divestiture of BMI Droitwich Spa by BMI would not add contestability to the location. In addition the BMI Droitwich Spa is contested by the Spire South Bank in Worcester so AXA PPP does not believe there is a problem in this location.
- 8.2. Reviewing Birmingham, Spire Parkway and BMI The Priory offer some constraints on each other, although it is difficult to envisage a credible proposition for the Birmingham market that does not include BMI Priory given its dominance in the centre of Birmingham. Therefore the constraint from Spire is partial. Due to its proximate location it can be envisaged that if BMI is required to divest BMI Edgbaston, this facility could compete for BMI Priory patients and Spire Parkway patients. (Note private insured patient spend at the Ramsay West Midlands is relatively insignificant and the hospital in all likelihood concentrates on the NHS and self-pay markets). However, this would require significant investment in the BMI Edgbaston facility (current AXA PPP private patient spend is £[redacted]m against £[redacted]m at the BMI Priory). This is unlikely to happen in the short to medium term. While AXA PPP is unable to consider removing a facility, in this instance BMI Priory in favour of another facility (BMI Edgbaston under new ownership), there will be ineffective competition between the facilities. Therefore, AXA PPP is not convinced that divestiture will effectively increase competitive constraints on BMI Priory in even the medium term.
- 8.3. Therefore, AXA PPP does not believe the divestiture of the BMI Droitwich Spa will have any competitive effects on the market. Further AXA PPP is ambivalent about the divestiture of the BMI Edgbaston (from an insured patient perspective, accepting that the self-pay market is a separate issue) unless to a provider (not Spire) who would invest significantly and actively compete for private insured patients.

9. Birmingham and The Midlands: BMI Saxon Clinic, BMI Manor, BMI Three Shires, BMI Foscote, Ramsay Pinehill, Spire Harpenden

Table 7

NON – CONFIDENTIAL VERSION

25.10.13

Total AXA PPP annual spend at these facilities	£[redacted]m
BMI	[redacted]%
Spire	[redacted]%
Aspen	[redacted]%

- 9.1. This is a relatively large area with the hospitals quite widely spread out. From a private insured patient's perspective, a travel distance of 15 miles or more is broadly regarded as unacceptable (unless there is no alternative provision) so both the BMI Saxon Clinic and BMI Three Shires are in effect solus.
- 9.2. However, AXA PPP believes that if the BMI Saxon Clinic was owned by an alternative provider it would be able to carry out a competitive tender in the area and exclude, or have a credible threat of excluding one of the facilities.
- 9.3. Therefore, AXA PPP supports the proposal to divest the BMI Saxon Clinic.

10. North West: BMI Gisburne Park, BMI Beardwood, BMI Lancaster, Ramsay Fulwood Hall, BMI Beaumont, BMI Highfield, Ramsay Euxton Hall, Ramsay Oaklands

Table 8

Total AXA PPP annual spend at these facilities	£[redacted] m
BMI	[redacted]%
Ramsay	[redacted]%

- 10.1. This is a large geographic area where AXA PPP's annual spend is relatively small due to the fact that there are a relatively small number of private insured customers in the location, although BMI is clearly the dominant provider. Spend at the BMI Alexandra is significant (£[redacted]m) but none of the above hospitals in the cluster listed above will compete with Manchester.
- 10.2. Given the concentration of BMI ownership in the location AXA PPP believes that divestment of a facility would potentially increase competition to a small extent although from a PMI perspective this will be of questionable value as the pool of private insured patients [redacted]. The BMI Beardwood and BMI Highfield attract the two highest spends in the group of hospitals (£[redacted]m each) with others such as BMI Gisburne Park for example, only receiving £[redacted]m therefore being [redacted] from a private insured perspective.
- 10.3. AXA PPP believes, given BMI's ownership dominance in the area that it should be required to divest one out of BMI Beardwood and BMI Highfield which would bring some contestability albeit small given the relatively small pool of private insured patients (as mentioned on a number of occasions the landscape relative to the self-pay and potentially the NHS market may look different).
- 10.4. Therefore AXA PPP agrees with the divestiture of one out of BMI Beardwood and BMI Highfield.

11. North West: Spire Methley Park, Nuffield Leeds, Spire Leeds, Spire Elland

Table 9

Total AXA PPP annual spend at these facilities	£[redacted]m
Spire	[redacted]%
Nuffield	[redacted]%

- 11.1. The percentage of spend going to Nuffield is skewed because AXA PPP does not recognise Nuffield Leeds in its main network.
- 11.2. AXA PPP believes that Spire Leeds and Nuffield Leeds compete effectively with each other as evidenced by the fact that AXA PPP has only recognised one of the facilities (Spire) following the establishment of its network. [redacted]. Further, neither Spire Methley Park nor Spire Elland, compete with Leeds from a private insured perspective, as whilst patients proximate to these facilities might travel to Leeds for treatment, the opposite would not happen.
- 11.3. Therefore AXA PPP does not agree that Spire should be required to divest Spire Methley Park and Spire Elland.

12. North West: Spire Liverpool, Spire Wirral, Spire Cheshire, BMI Sefton Hall

- 12.1. AXA PPP has no comments in addition to those made by the CC and agrees with the CC's conclusions.

13. East Midlands: BMI Lincoln, St. Hugh's, BMI Park, Ramsay Park Hill, Ramsay Nottingham Woodthorpe.

- 13.1. AXA PPP has no comments in addition to those made by the CC and agrees with the CC's conclusions.

14. East of England: Ramsay Springfield, Ramsay Rivers, Ramsay Oaks

- 14.1. AXA PPP has no comments in addition to those made by the CC and agrees with the CC's conclusions.

15. Scotland: BMI Carrick Glen, BMI Kings Park, BMI Ross Hall, Nuffield Glasgow, Spire Murrayfield

- 15.1. AXA PPP has no comments in addition to those made by the CC and agrees with the CC's conclusions.