

THE LONDON CLINIC ("TLC") CASE STUDY : HCA'S COMMENTS

7 June 2013

1. The case study of TLC's recent expansion with its new cancer care centre strongly supports HCA's submission that there is relative ease of entry and expansion in London and that the London market offers significant growth opportunities for providers of tertiary care. As HCA has submitted in its response to the CC's annotated Issues Statement, the evidence of new entry and growth in London, which includes the TLC case study, does not bear out the CC's views in its Annotated Issues Statement that entry is restricted.
2. HCA has a few brief comments on a number of findings in the CC's case study.

Charitable status

3. The CC rightly notes (paragraph 4 of the case study) that as a charity TLC "*benefits from certain tax reliefs and exemptions*". Charitable hospitals, which in London include TLC, St. John and St. Elizabeth, King Edward VII and St. Anthony's enjoy significant benefits from charitable status, including the fact that they do not pay corporation tax, have the benefit of reliefs from VAT and business rates, are not required to earn a return or pay dividends and have lower costs of capital.
4. HCA has recently commissioned a study by Cass Business School (attached in Annex 1) into the tax advantages of charitable status for private hospitals. This calculated that in 2011 there was a total financial benefit from applicable tax reliefs and exemptions of £31.2 million to the four hospital groups with charitable status (St. John and St. Elizabeth; King Edward VII; TLC; and Nuffield Health). The total financial benefit to TLC alone is estimated to be nearly £10 million. Charitable status provides these hospitals with substantial competitive advantages which should be fully taken into account in any evaluation of the competitiveness of the private healthcare market in London.
5. HCA invites the CC to consider this issue in more detail. The CASS research provides an indication of the level of tax subsidy, but the CC will be in a better position to ascertain the VAT savings from data submitted by the hospitals concerned. These subsidies affect their cost base, and hence provide them with a competitive benefit in terms of investment in the business and pricing. This issue is therefore highly relevant to any comparative assessment of HCA's costs and prices against those of other London competitors.

Competitors in oncology

6. Paragraphs 6–18 of the case study discuss TLC's "main competitors". Is it assumed that these are competitors in oncology (the subject-matter of the case study) only, since as the CC notes

TLC also provides a range of other clinical services, in respect of which it competes with numerous competitors in London.

7. The case study refers to "cancer treatment" (i.e. oncology) in very general terms. In order to understand the range of competitors in oncology, it may be helpful to consider the types of treatments which are involved. Oncology refers to the diagnosis and treatment of cancer in both outpatient and inpatient settings. It covers both medical oncology, which is the diagnosis (e.g. through x-ray, CT scans or MRI scans) and treatment of cancer (e.g. through chemotherapy), and clinical oncology, which includes biopsies (removing samples of tissue for examination) and the surgical removal of tumours and other cancer surgical procedures.
8. The case study refers to TLC, HCA, the Cromwell and the Royal Marsden as the main competitors but there are numerous other providers of oncology services in London who compete effectively with HCA:
 - (i) Aspen, Parkside in South-West London is a dedicated cancer treatment centre which offers radiotherapy, chemotherapy and inpatient cancer treatment and support services, and lists 25 consultants in this specialty.
 - (ii) The London Independent (BMI) in Canary Wharf offers chemotherapy and has nine listed consultants in this field.
 - (iii) The Hospital of St. John and St. Elizabeth offers chemotherapy, with five listed consultants.
 - (iv) St. Anthony's, Cheam offers chemotherapy with eight listed consultants.
 - (v) CancerPartners UK has a dedicated cancer centre in Elstree, Hertfordshire which offers both radiotherapy and chemotherapy, and has partnered with Spire (Bushey) to offer inpatient cancer treatment.
 - (vi) The case study refers to the Royal Marsden NHS Foundation Trust. This is undoubtedly a very significant competitor in private oncology services, which has approximately 100 specialist consultants in this field and offers radiotherapy, chemotherapy and inpatient treatments. However, there are also other NHS PPUs which provide a similar range of oncology treatments including King's College, Imperial, Royal Free, St. Bartholomew, St. George's and Mount Vernon. While Royal Marsden is the largest NHS operator, there is in fact very significant provision of private medical and clinical oncology by other London-based NHS PPUs.
 - (vii) In addition to the above, there are also hospitals which do not provide radiotherapy or chemotherapy but which have consultants who perform inpatient cancer surgery, e.g. breast surgery.

9. The case study does not therefore do full justice to the range of competitors providing private oncology services in London. Some are also briefly mentioned in paragraph 33, but this is not a full list of competitors.
10. The case study (paragraph 18) refers to the Royal Marsden's expansion plans and its intention in the light of the removal of the cap on PPU earnings to "*double the amount of revenue that is generated from private patients*". Similarly, other London NHS Trusts have announced plans to expand provision in private oncology services following the lifting of the cap:
- (i) St. George's NHS Trust has launched a tender exercise for a new private patient hospital development which will include oncology amongst other specialties.
 - (ii) King's NHS Trust has also issued a tender for a strategic partner for new private hospital facilities which will include oncology services.
 - (iii) St. Bartholomew's NHS Trust advertised in 2011 for a partner to develop and operate a new PPU and it is understood that the Aspen hospital group has been selected to take this project forward, significantly expanding the Trust's range of cancer private healthcare services.

Open Referral

11. HCA notes with interest the comments (paragraph 12 and Appendix 1 of the case study) concerning BUPA's directional strategy of using Open Referral to steer patients to the Cromwell: "*BCH's 2012 Business Plan noted that the direction of Open Referrals would increasingly be in a position to provide more patients to consultants which would allow it to attract new consultant users ...*". This endorses HCA's long-held concern that the Cromwell is benefiting significantly from its vertical integration with BUPA and that there is not a level playing-field when competing for BUPA patients in Central London. [38]. In addition, Appendix 1, paragraph 3 of the case study refers to the fact that the Cromwell is developing GP practices and also satellite outpatient clinics under the BUPA Wellness brand. That being the case, it is difficult to see how BUPA can credibly criticise HCA for a similar strategy of creating GP and outpatient services.

AXA PPP

12. The CC's description of the discussions between AXA PPP and HCA in 2009/2010, which led to AXA PPP's agreement not to recognise additional radiotherapy provided in London for a two month period, is misleading, because it omits the very specific context in which this particular discussion took place. HCA refers to its response of 14 December 2012 to the CC's queries on network integrity:

- (i) As HCA explained, the background to this discussion concerned AXA PPP's launch of a new PMI product, Corporate Pathways, which had appointed BMI as the exclusive hospital provider under that product. [§<].
- (ii) It is not therefore the case, as appears to be implied by the case study, that HCA is generally seeking protection from new providers being added to AXA PPP's network.
- (iii) As the case study notes, in Schedule 3, clause 4 of the 2010 Agreement there was a very short term (approximately two months) agreement to retain the existing network of providers for radiotherapy services in Central London.
- (iv) HCA has also pointed out, and the CC omits to mention, that AXA PPP has subsequently modified its Corporate Pathways product to include TLC alongside BMI as the hospital provider but continues to exclude HCA hospitals on this network product, in spite of HCA's request to be added to this product in its last negotiating round in autumn 2012.

PMI recognition

13. The CC correctly observes that, in this case, AXA PPP recognised TLC's new facilities (and indeed included them in its restricted network product, Corporate Pathways) and thus "*PMI recognition did not restrict entry or expansion in this case*". That said, the case study attests to the importance to TLC of gaining AXA PPP recognition for its new facilities. The case study (paragraph 44) states that "*recognition did not appear to present a problem to most of the PMIs*". Consequently, the overall conclusion – that PMI recognition is critical for a new entrant and that PMIs have the power to block or impede new entry – remains true for all London providers, new or existing.

Consultant incentives

14. The case study notes the TLC's concern "*that HCA would target TLC consultants to transfer their practice to HCA hospitals*". TLC is, equally, targeting consultants at HCA – this is part of the competitive process (see HCA's response of 3 June 2013 to TLC's submission). Indeed, HCA notes the CC's finding in paragraph 54 of Appendix E of the annotated Issues Statement that TLC has entered into agreements with clinicians which "*specifically prevented them from working at any HCA facility*". HCA has never imposed any such restrictions on its own consultants.
15. HCA fully supports the CC's finding (paragraphs 79 and 80) that collaborative arrangements between hospitals and consultants do not in themselves raise entry barriers. As the CC has observed, TLC had entered into referral arrangements with the LOC partners under a Collaboration Agreement which required them to refer patients to TLC. This demonstrates that it is open to any provider to compete to attract consultants by offering attractive terms (in this

case an interest free loan). As the case study indicates, the LOC consultants decided ultimately not to continue the Collaboration Agreement because of the high level of managerial and clinical control which TLC wished to impose. The case study illustrates the competitive process between hospitals to attract talented clinicians. Although consultants are principally attracted to practise at a facility by factors such as quality, clinical infrastructure and location, the terms and conditions which a hospital is able to offer can also play a role. However, the critical point here is that new entrants are able to compete on exactly the same basis as incumbent providers.

Availability of sites

16. In paragraph 81, the CC states: "*We do consider that the ability of an entrant to find, acquire and build on a site in the immediate vicinity of Harley Street may represent a barrier to entry or expansion*". HCA strongly disagrees that a new entrant would find it difficult to find appropriate sites in Central London to establish new inpatient facilities.
17. The CC refers to sites "*in the immediate vicinity of Harley Street*" but Central London is, of course, wider than simply Harley Street. HCA and its competitors have hospitals in various locations across Central London, and a Harley Street location is certainly no pre-requisite for a competitor seeking to establish a new hospital in Central London.
18. In HCA's experience, at any one time there are a significant range of sites in Central London (including in the vicinity of Harley Street) which are available for new hospital developments. Currently, [REDACTED]:
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED].
 - [REDACTED].
 - [REDACTED].
 - [REDACTED].
 - There are also numerous smaller sites which are available for new outpatient and diagnostic facilities right across London. HCA has recently expanded its own outpatient provision and it has not encountered any difficulty in identifying and securing appropriate sites, either in co-location with its existing hospital, or in separate, satellite locations.

19. There are, therefore, currently a wide range of potential development opportunities which are available to hospital operators in Central London. It is simply not the case that site availability represents a significant barrier to entry. [3<].
20. The Chairman of Spire has recently publically expressed Spire's interest in expanding its operations in London within the "*next two to three years*" (see Dailey Telegraph, 15 April 2013, "Why the NHS must learn to tackle risk of rationing") . In addition, there have been recent media reports that the BUPA Cromwell Hospital is set to invest £30 million to completely refurbish and upgrade the hospital (see The Times, 25 May 2013, "Abu Dhabi royals set to buy hospital to the stars"), with Mace (the constructor of the Shard) appointed as the preferred bidder to undertake the project.

Planning permission

21. The case study (paragraph 81) notes that TLC encountered problems in obtaining planning permission for its cancer centre. HCA sees no reason why this should be the case. HCA's experience is that, provided a hospital operator engages in a timely and reasonable way with planning authorities, and take on board at the outset the potential need to make adjustments to the development project, the planning process can be successfully navigated.
22. HCA refers to its observations on the planning regime in paragraphs 14.7-14.14 of its response to the CC's Issues Statement. It has not encountered any particular problems in obtaining planning permission for any of its own developments in London. Furthermore, planning authorities tend to be more receptive to new hospital developments near major NHS sites or established areas of medical practice such as Harley Street. The "Harley Street Special Policy Area" is a planning policy framework which is intended to encourage the dual use of the areas of the provision of private medical facilities and related professional and medical services and for residential use.
23. As HCA has submitted in response to question 72 of the CC's Market Questionnaire, over the last six years there have been a number of hospital construction or refurbishment projects. HCA is not aware that any of these have raised any particular problems from a planning perspective. Again, HCA stresses that early engagement with planning authorities, and a willingness to address any issues at the outset, will generally facilitate the planning process.
24. In response to question 70 of the CC's Market Questionnaire, HCA has set out details of its recently approved planning applications.
25. HCA's straightforward experience in gaining planning consent can be shown in two recent projects:
 - (i) HCA did not encounter any difficulties in obtaining planning permission for its 2011/12 development on Devonshire Street, the site of the Harley Street Diagnostic Centre. HCA

sought permission to convert offices and residential accommodation to medical use. To offset the loss of residential space, planning consent was linked to nearby developments to convert office space into residential accommodation. In its decision granting consent, the planning authority considered that the project would "*enhance the prevailing medical character of the area and would be neither harmful to residential amenity or the character and function of the locality*".

- (ii) HCA obtained planning consent for the establishment of the Platinum Medical Centre, involving the redevelopment of a commercial office building of approximately 50,000 sq. ft. spread over seven floors. The local planning authority, the City of Westminster, granted planning consent subject to conditions e.g. relating to the collection and removal of clinical waste.

Conclusions

The TLC case study therefore illustrates the following:

- It serves as an example of substantial new investment (with a capital cost of £90 million) in a new inpatient and outpatient facility in Central London.
- There are significant growth opportunities in tertiary services which make new entry in London both attractive and profitable and justify the capital costs incurred. The strong demand for private healthcare in London may be contrasted with other parts of the UK where the CC suggests that limited demand may raise entry barriers for new, full-service hospitals.
- PMI recognition is important to the viability of any new facility, and TLC secured the necessary approvals from all the insurers and indeed was added within a short space of time to AXA PPP's restricted network product, Corporate Pathways.
- The PMIs were not subject to any contractual restrictions in terms of their ability to recognise a substantial new facility of this nature. Similarly, they were not disincentivised from recognising the new cancer centre as a result of any volume-related agreements with any other hospital operators. This case study therefore provides no evidence to support theory of harm 5(a) of the CC's annotated Issues Statement.
- TLC was able to get ready access to specialist consultants to support the new facility and there is no evidence that any consultant incentive arrangements operated by any other hospital providers impeded TLC's ability to attract consultants.

- The new cancer centre has successfully established itself within two to three years and the CC notes that there has been nothing to prevent it within this period from "operating profitably".
- The case study involves a specialist facility with a substantial level of capital spend, including the high cost of equipment (linear accelerators, etc.). The conclusion concerning the relative ease of entry into the market would apply *a fortiori* in respect of facilities focusing on a lower level of clinical acuity where the capital cost of equipment is lower.
- The only relative difficulty which TLC encountered was in acquiring an appropriate site, but as HCA has submitted above, there is at any one time a wide range of property development opportunities open to new entrants for new hospital developments.