COMPETITION COMMISSION

PRIVATE HEALTHCARE MARKET INVESTIGATION

Summary of hearing with Theatre Group held on 18 February 2014

Introduction

1. Theatre Group clarified that it was entirely separate from BMI: Theatre Group was the landlord and BMI was the tenant. It further explained that Theatre Group and BMI were entirely separate entities controlled by entirely different stakeholder groups; that they had entirely separate boards and that Theatre Group's board fiduciary and legal interests were to its lenders and not its shareholders.

2. Theatre Group explained that it was not in the healthcare market and that whether BMI had a market position with an adverse effect on competition was not the Theatre Group's concern. That said, Theatre Group noted that this became Theatre Group's concern when the Competition Commission (CC) proposed divestiture remedies that included the sale of Theatre Group assets which would have a detrimental financial impact on the Theatre Group.

Financial consequences of the proposed divestment remedies

3. Theatre Group explained that it had 35 companies which, taken together, owned 35 properties (32 were freeholds and three were very long leaseholds) plus one as agent. All these properties were leased to BMI in 2006 at market rents and market terms on [✂]-year institutional leases.

4. Theatre Group explained that it currently owed its lenders [✂] and that the value of the property was between [✂]. It explained that the repayment date for the loan was [✂]. At present, the loan was being restructured [✂].

5. Theatre Group explained that [✂].

6. Theatre Group made the following points in relation to costs it would incur if the proposed remedies went ahead:

   (a) The four freehold properties relevant for the divestment proposal had a total value of up to [✂]. Although difficult to quantify, Theatre Group estimated that it would lose between [✂] through the sale process.

   (b) The sale of the four properties would involve transaction and tax costs of [✂] and the [✂]. Additionally, [✂].

   (c) The impact would be even more detrimental since it had a contractual position with [✂].

   (d) The total cost to Theatre Group of the freehold disposal remedy would be substantial and could potentially run to [✂].

7. Theatre Group equated the proposed divestitures with 'confiscation' of Theatre Group's assets and that this remedy would be the first of its kind and would have consequences for the trillions of pounds being invested from around the world in the UK property market.

8. The Inquiry Group explained that there was no question of any Theatre Group assets being 'confiscated'. In the event that divestment was an appropriate remedy, the Inquiry Group confirmed that the overriding aim and goal was to have a successful divestment process, meaning that any new owner or owners of the relevant hospitals would be able to compete effectively in the market. To the extent that any existing rental arrangements were significantly above market rents, this could make the hospitals unattractive to a prospective purchaser. The Inquiry Group was open to any solutions which minimized the cost and in convenience to all parties concerned of divestment and this included devising a process that did not unfairly penalize any party in terms of allocating value from the divestment process. This included solutions which achieved the aim of divestment but which kept Theatre Group and its creditors whole.

9. Theatre Group explained that the leases were struck in July 2006 and that it was a fair deal which was a market deal that had simply played out in a particular way: the fact that the rental agreed was higher than the fair market rent as of 2014 was simply due to the fact that the sales were agreed in 2006 when the property market was doing better than it was at the moment. The leases that were put in place between Theatre Group and BMI were very typical of the time—[✂].

10. Under the terms of the leases, Theatre Group's consent was required to an assignment of the lease, not to be [✂] but subject to [✂]. However, the incoming tenant would need to have a [✂] was at the inception of the lease. The CC explained that it saw this as a potential barrier to bringing in new entrants since the requirement to have such a [✂] actually restricted the pool of potential new operators of the hospital.

11. Theatre Group stated that it was very important to gain clarity as to who was going to bear the ultimate economic loss of the consequences of the divestment remedy.

Other views on divestment remedies

12. Theatre Group stated that the detrimental impact on it of having to sell freeholds far outweighed the benefits that the CC had calculated in terms of consumer benefit.

13. Theatre Group stated that the CC had neither properly considered nor quantified the detriment to Theatre Group of requiring it to dispose of its freeholds nor considered less detrimental remedies.

14. The proposed disposal process was likely to attract less interest from the market (thereby giving the divestiture remedy less likelihood of success) than selling the businesses with the [✂].

15. Theatre Group suggested that the divestments be market-tested on the basis of the current contractual position as it stood rather than trying to internalize the rents.

16. Theatre Group stated that from its understanding of the private hospital market, the majority of operators expressly did not wish to own the property as well. [✂]

Concluding remarks

17. Theatre Group expressed a feeling that the process to date had cut Theatre Group out of something which was going to impact it. In particular, Theatre Group referred to the CC's remedy involving the choice of the Chelsfield or Sloane hospitals and that the two options were presented as equal in balance, equally proportionate, whereas

in fact, for Theatre Group, one option was hugely adverse and the other was not, so there was a difference.

18. Theatre Group also raised the issue of [✂] and regretted that this point had only just come up. It explained that in the BAA case, the point made against the CC was that the property would be sold at a loss compared with the price at which it was bought. Theatre Group further stated that the present circumstances differed from those in BAA in that there was here a contractual consequence rather than a property valuation issue and that there was an inevitable cost of the [✂]. Theatre Group asked for it to be put on record that it challenged and rejected the proposition that the current case was comparable with that in BAA.

19. The Inquiry Group confirmed that the Theatre Group's testimony had been extremely helpful in terms of pushing the CC's thinking forward. The Inquiry Group invited Theatre Group to put some of its explanations and proposals in writing, which would help the CC.