

THE LONDON CLINIC
COMPETITION COMMISSION PRIVATE HEALTHCARE MARKET INVESTIGATION
RESPONSE TO NOTICE OF POSSIBLE REMEDIES

Introduction and General Comments

1. The London Clinic ("The Clinic") welcomes this opportunity to comment on the Provisional Findings ("PF") and notice of possible remedies (the "Notice") published by the Competition Commission (the "CC") on 28 August 2013.
2. The Clinic would also repeat its request for a Remedies Hearing as it believes that it is well placed to assist the Competition Commission in its consideration of remedies in the Central London market, given that it is the second largest provider and the key competitor to HCA in a number of specialties. As one of the main parties which has played a full part in the Investigation to date, The Clinic would also like to have an opportunity to comment orally on possible remedies to which it may be subject.
3. In relation to the PF, The Clinic welcomes the findings of the CC and agrees with the main conclusions reached in relation to the Central London market. Accordingly, The Clinic does not propose to comment further on the PF in this Response subject only to detailed comments made below in the context of specific remedies. The following paragraphs consider the possible remedies included in the Notice, as they would apply in the Central London market.

Remedy 1: Structural remedies in the Central London market

4. In light of the CC's provisional finding of high barriers to entry and weak competitive constraints in the Central London market, The Clinic considers that divestment of hospitals (and other assets) by HCA would in principle be an effective, reasonable and proportionate remedy. We would need to understand in more detail the CC's proposals before we could comment meaningfully on whether a specific divestiture package would in practice be appropriate to address the AEC. That said, we would make the following general observations in response to the questions posed in the Notice.
5. A divestiture remedy on its own would not be sufficient to address the AECs identified. At the very least, it would need to be combined with the possible remedies identified in the Notice as Remedy 2 (Tying and bundling) and Remedy 4 (Incentives) in order to address HCA's market power and avoid circumvention by HCA, for example, by using incentives to consultants or other medical professionals, including GPs, to divert patients to HCA's hospitals. (See further below.)

6. *Composition risk*: It is essential that the CC finds a remedy that is comprehensive and addresses those specialities and sub-specialities in which HCA is most dominant and in which it currently faces only limited competition. The PF identifies the following specialities as those in which HCA's market power is greatest: cardiology (market share of admissions over 60%), oncology (over 60%), trauma and orthopaedics (over 60%), obstetrics and gynaecology (over 60%). Indeed HCA has a share greater than 60% in inpatient admissions across all tertiary treatments.¹
7. In the field of oncology, HCA's market power is entrenched by its super-dominant position in relation to certain sub-specialities: chemotherapy and radiotherapy. HCA's ownership interest in Leaders in Oncology Care ("LOC") brings over 30 of the leading oncology consultants in Central London within the HCA Group and gives HCA a share of 80-90% of chemotherapy treatment in Central London. The Clinic also notes that the estimate of 60-70% share by oncology admissions attributed to HCA at paragraph 6.127, PF, may understate its actual share in oncology and the Clinic queries whether the HCA figures include all treatments undertaken at LOC which, the Clinic believes, will have been invoiced directly by LOC to the relevant PMI.
8. In relation to radiotherapy, HCA also enjoys a super dominant position through the Harley Street Clinic and the automatic referral from LOC consultants to the Harley Street Clinic.
9. In summary, in designing an effective divestiture package, the CC must address a number of factors, as described in the following paragraphs.
10. Firstly, an effective divestiture package must include one or more hospitals which currently offer a range of tertiary treatments on a sufficient scale to be viable as an independent entity. The Clinic considers that this is likely to be the case in respect of the following HCA hospitals: London Bridge Hospital, The Wellington Hospital and The Harley Street Clinic.
11. Secondly, an effective divestiture package must include oncology within that range of tertiary treatments. To be effective, the remedy should seek to separate ownership of the assets and facilities which underpin HCA's dominant position in oncology.
12. For example, HCA's oncology services are split between the Wellington, London Bridge, Princess Grace, Harley Street Clinic, Leaders in Oncology Care ("LOC") and the PPUs which it operates at Guys and St Thomas's and University College Hospital. Accordingly, divestment of, say, the Portland and/or Lister Hospitals would not be effective to address the AEC in oncology. In The Clinic's opinion it would not be viable to build credible oncology specialties in either hospital within

¹ PF, paragraph 6.127

a short period of time (less than 5 years) for a variety of reasons, including the reputation, location and size of the two hospitals and the difficulty in attracting consultants to a new entrant in that specialty.

13. Thirdly, an effective divestiture package must also address HCA's super dominant position at a sub-specialty level. For example, in oncology that would mean the Wellington and LOC coming under separate ownership to address the super dominant position in chemotherapy and the Harley Street Clinic and LOC coming under separate ownership to address the super dominant position in radiotherapy.
14. An alternative remedy might be to divide the current LOC business such that part of this could form part of a divestment package with one or more other units.
15. A divestment package which consisted of one or more hospitals could also include other facilities or practices so as to address a particular specialty or sub-specialty. We have mentioned LOC in the previous paragraphs and other relevant elements of a package might include the contracts to manage PPUs or other smaller practices.
16. Finally, The Clinic considers that the final remedy should include a prohibition on hospitals with significant market power in Central London from making further acquisitions of hospitals or relevant assets without prior approval from the Competition and Markets Authority.
17. *Purchaser risks:* The Clinic considers that the decision as to whether divestment assets should be bought by a single purchaser obviously depends on the assets to be divested and the identity of the prospective purchaser. The Clinic considers that a suitably composed divestiture package would attract interest from independent, capable and committed prospective purchasers. We believe that a number of hospital groups which are not currently present in Central London would be interested and there would also be interest from abroad.
18. *Asset risks:* Sales of private hospitals are comparatively common and present no particular obstacles. Indeed HCA's current portfolio of hospitals was built through a series of acquisitions, as described in the PF. Accordingly, The Clinic considers that a short divestiture period of 6 months would suffice. This would avoid any risk of deterioration of the relevant assets or defection of key consultants in the interim. This would also allow sufficient time for HCA to put in place any transitional agreements to effect a smooth separation.

Remedy 2: Preventing tying and bundling

19. The Clinic would be strongly supportive of a remedy which prevented HCA from using tying or bundling to foreclose rival hospitals. The Clinic considers that either Remedy 2(a) or 2(b) would be effective and practicable.

Remedy 3: Restrictions on expansion in Single or Duopoly areas

20. No comment.

Remedy 4: The existence of incentive schemes operated by private hospital operators to encourage patient referrals for treatment at their facilities

21. The Clinic considers that this possible remedy would be an essential component of any remedies package. Such conduct has been used extensively by HCA in recent years to divert patients to HCA hospitals and increase its market power in Central London and this conduct continues, for example with the recent acquisition of The Prostate Centre.
22. The Clinic is not familiar with the detailed working of the Stark Law but based on limited information considers that it could be a useful model for prohibition of incentives which limit patient choice and distort competition.
23. If such a prohibition is considered impractical or if the prohibition extends only to certain forms of incentive, then The Clinic would also support a simple transparency based remedy. Such a remedy might require annual disclosure by consultants of all payments or other benefits received from private hospitals or other links with private hospitals. Such a "register of interests" could be administered by the GMC and made available online. There would be no de minimis level. PMIs, hospitals, referring doctors and patients would have access to this register so that they would be able to make informed choices about patient care and choice of consultant. Consultants and GPs should also be required specifically to disclose relevant interests to patients ahead of any decision to refer the patient to a private hospital.
24. The Clinic considers that all existing equity sharing arrangements in the Central London market should be unwound and there should be a prohibition on hospitals with significant market power entering into further equity deals.
25. In order to be comprehensive the remedy would apply to a wider group of medical professionals and service providers. The HCA strategy of acquiring or entering equity sharing agreements with important GP practices forecloses competition and limits patient choice. The Clinic considers that the strategy and effect of those acquisitions was anti-competitive – to protect the existing patient

referral pathway to HCA hospitals and insulate this pathway from competition from other hospitals, thus depriving the patient of choice.

Remedy 5: Recommendation to the health departments of the nations

26. No comment.

Remedy 6: An information remedy on consultants' fees

27. No comment.

Remedy 7: An information remedy on private hospital performance

28. The Clinic supports publication of information on private hospital performance and patient outcomes. We consider this would act as a spur to increased competition and better decision making by PMIs and patients.

29. The Clinic would support the collection and suitable publication of HES equivalent and PROMS data provided that the process was independent, proportionate and operated fairly for smaller or single site hospitals as well as the large hospital groups. The Clinic would be willing to work with other industry participants to implement a suitable scheme.

Remedy 8: A price control

30. The Clinic would not support a price control.