



Private healthcare market investigation

Response to Provisional Decision on Remedies

Aviva Health UK

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Aviva Health Response to Provisional Decision on Remedies

Aviva Health (Aviva) welcomes the Competition Commission's (CC's) Provisional Decision on Remedies (PDR). We are largely supportive of the provisional decision on remedies but have concerns that the remedies that the CC has put forward will not adequately address the AECs that it has identified. In this response, we provide a brief summary of Aviva's position on the CC's provisional decision on remedies before discussing each of the remedies in more detail. This response puts forward Aviva's initial position in relation to the provisional decision on remedies.

Summary

1. Aviva has previously commented on the provisional findings noting that the structural remedies proposed at that time would not effectively address the weak competitive constraints in local markets that lead to hospital operators' market power, particularly in single or duopoly areas.¹ Aviva explained why it believed that a combination of structural and behavioural remedies are required.
2. Aviva supports the structural remedies proposed as they address local areas of weak competitive constraint as identified by the detailed analysis conducted by the CC. The market in central London has been shown to have a high degree of concentration and the proposed divestments here are likely to have a strong effect, however we do have concerns that vertical integration may dilute the effectiveness.
3. Restrictions placed on existing private hospitals taking on the management of PPUs in areas where the private hospital is subject to weak competitive constraints locally is a welcome remedy to stimulate competition.
4. Aviva agrees that a remedy to prevent incentive schemes run by hospital operators that potentially influence consultant's decisions on both treatment and choice of hospital is required. Aviva still believes that this remedy should not only address the direct effect on consultants but also the influence that could be made on sources of referrals such as GP or Occupational Health provision.
5. Aviva strongly supports the intention of the information remedies proposed. The role, structure and governance of the information body is appropriate to deliver the outcomes required. The risk of specifying the information too precisely at this point in time has been avoided and the description of how the information will be developed over time allows the required flexibility to evolve to meet customer needs. However, we do have reservations about the enforced move away from CCSD codes for billing purposes as OPCS codes do not adequately meet the requirements for accurate billing of private healthcare treatments.
6. Whilst the reasons for deciding not to put in place a remedy to prevent tying and bundling are set out clearly Aviva remain concerned that national scale for insurers becomes more important and market power would shift to the largest insurers.

¹ Response to Provisional Findings and Possible Remedies, Aviva Health UK, September 2013

Remedies

The decision to develop a package of remedies is sound as both structural and behavioural features can then be addressed. The immediate issue of solus and duopoly sites is not directly addressed but over time may be resolved by a more competitive private healthcare market.

1. Divestiture of nine private hospitals

Aviva generally supports the CC's view that divestitures will be required to address the structural features of the market that contribute to the market power of hospital groups. However, divestitures are likely to be more effective in central London than elsewhere in the UK and a robust package of behavioural remedies alongside the information remedies is required to effectively address the market power of hospital operators.

Central London

Aviva believes that the divestiture of the London Bridge and Princess Grace hospitals will have a significant impact on the London market and reduce the concentration, and consequently the market power, enjoyed by HCA without reducing the range and quality of provision for patients.

However, we and other insurers have repeatedly raised concerns about the ability of HCA to capture patients early in the clinical journey as they own significant numbers of consulting rooms, private GP and occupational health services.² In particular in the City of London (EC1 postcode) our analysis shows that HCA own approximately 95% of consultation rooms, outpatient and diagnostic centres. Coupled with the 3 occupational health facilities (Rood Lane, Blossoms and Galen) all based within this location it is probable that any new owner of the London Bridge hospital will not achieve the same number of referrals that were achieved under HCA ownership. These facilities essentially act as an extension of HCA's hospital facilities and they are used by HCA to control the pathway in this crucial central London location.³

Aviva notes that the provisional decision on the specification of the package is to limit this to the hospitals only. The analysis conducted by the CC has not shown that the vertical integration of GP and occupational health facilities has given rise to an AEC. However, we understand that prior to formal ownership of such facilities a relationship existed between a number of these organisations and HCA and we are not convinced that the analysis conducted was in sufficient depth to make this conclusion with confidence. In addition we are not aware that the analysis on referral patterns considered the ownership of consulting rooms and outpatient clinics in this manner.

We also note that the whilst the provisional conclusion is that the minimum package of divestiture does not need to include the facilities described above it does not preclude some or all of these being included. We assume that the CC's intention is to review this matter in detail to ensure that the central London divestment adequately addresses the AEC and that any purchaser of the divested hospitals is able to compete effectively.^{4,5}

The other point Aviva has made is that creating a market of three strong competitors in central London is likely to address the AEC identified most effectively and this will need to be considered as the divestiture package is specified in more detail.³

UK, outside central London

Outside of London, a total of 7 hospitals have been provisionally identified as requiring divestiture. Aviva agrees that the CC should require divestitures in those areas where they have identified that competitive pressures will increase post divestment. Aviva's position remains unchanged in that the existence of so many

² Provisional decision on Remedies appendices A2(1) para 94

³ Aviva remedies hearing

⁴ 'In defining the scope of a divestiture package that will satisfactorily address an AEC, the CC will normally seek to identify a divestiture package that comprises a viable, stand-alone business that can compete successfully on an on-going basis and is of sufficient scale and scope to enable its acquirer to become an effective competitor' (CC guidelines for market investigations, Annex B: remedial action, page 92, para 9).

⁵ Provisional decision on Remedies appendices A2(1) para. 96

solus and must-have hospitals severely impacts competition between hospital operators and this proposed structural remedy, whilst welcome, will not address this issue.⁶

Tying and bundling

The CC has decided that a remedy to prevent hospital operators from leveraging the number of solus and “must have” hospitals is not warranted. Aviva wishes to make it clear that it still holds the view that without such a remedy the hospital operators will still be able to exert market power, particularly against the smaller insurers.

2. A new competition test applied to PPU arrangements with private hospital operators in areas where they face little competition

Aviva supports this remedy and the enforcement mechanism proposed.

3. Prohibition or restriction of clinician incentive schemes

Aviva supports this remedy and the enforcement mechanism proposed.

However, we note that whilst many terms used in the CC’s investigation have been defined “hospital” has not. There are numerous types of facility that would fit under the generally accepted definition (Oxford English Dictionary), our definition would also include very small outpatient treatment facilities that would not necessarily describe themselves as hospitals. As the intention is to apply this to facilities that carry out treatment performed by consultants we would suggest the CC consider defining this in a similar way to how the Care Quality Commission define the regulated activity of “Treatment of disease, disorder or injury”.⁷ This would introduce greater clarity to the remedy and ensure that the definition is aligned to an existing regulators definition.

4. Collection and publication of information on the performance of private hospitals and individual consultants

Aviva strongly supports this remedy and believes that it is both workable and effective in addressing the AEC. By creating an independent body to own the development of the performance measures of hospitals and consultants, with membership and funding by the key parties, the remedy supports the development and publication of information relevant to customers. The additional governance proposed by including membership by CMA representatives to ensure independence and oversight strengthens the effectiveness of this remedy considerably.

However, the blanket assumption that CCSD codes can be replaced by OPCS codes is not correct for a number of reasons:

- OPCS codes are designed to collect clinical information and require significant modifications to allow them to be used for private healthcare billing purposes.
- The governance for the OPCS coding system and structure lies with the NHS, there is no incentive for the NHS to develop the OPCS codes to support the private healthcare market.
- The NHS plans to move away from using OPCS codes and although there is no confirmed timescale for this there is a significant risk that the private healthcare market will then be aligned to an outdated coding system that does not resolve the concerns identified by the CC.
- There will be significant costs of such a transition borne by hospitals, PMIs and consultants (via their practice billing systems) that will ultimately be passed on to customers.

Aviva believes that there are more appropriate alternative solutions such as maintaining the dual coding approach suggested by the CC as an interim stage. This would meet the objective of allowing comparison with NHS performance whilst removing the disadvantages described.

⁶ Aviva response to the Provisional Findings and Possible Remedies

⁷ www.cqc.org.uk/sites/default/files/media/documents/ra_5_treatment_of_disease_disorder_or_injury.pdf

Aviva, as a member of the CCSD group, are aware that CCSD are sending a more detailed response on this matter but remain happy to discuss in more detail directly if required.

5. Obligation placed on consultants to provide fee information to patients and a requirement placed on hospitals to ensure they comply

Aviva supports this remedy and look forward to being able to support our customers with clearer information throughout their claim. The requirement that hospitals ensure that consultants comply with this requirement as a condition of gaining and retaining admitting privileges is an appropriate compliance mechanism.

Conclusion

Aviva is largely supportive of the CC's provisional decision on remedies. We believe that the improved information and the combination of structural and behavioural remedies will help to bring more effective competition to the private healthcare market. Whilst this helps ensure that this market is sustainable in the long-term we do not believe that it goes as far as it needs to. The largest problem that will remain is that HCA will retain the ability to control the patient pathway by its ownership of consulting rooms, out patient facilities, occupational health clinics and private GP premises. We hope that this will be explored in more detail once potential purchasers are involved and can assess in detail whether the divestiture package will enable them to compete effectively.