

NON-CONFIDENTIAL VERSION

ULSTER INDEPENDENT CLINIC

**SUPPLEMENTARY SUBMISSION
TO THE COMPETITION COMMISSION
IN RESPONSE TO ITS
PROVISIONAL FINDINGS REPORT AND THE
NOTICE OF POSSIBLE REMEDIES
RELATING TO THE
PRIVATE HEALTHCARE MARKET INVESTIGATION**

8 NOVEMBER 2013

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1. INTRODUCTION

1.1 The Ulster Independent Clinic (**UIC**) made a submission (**Submission**) to the Competition Commission (**CC**) on 1 October 2013 in response to the CC's Provisional Findings Report (**Report**) and the Notice of Possible Remedies relating to the Private Healthcare Market Investigation. UIC's advisers have now had access to the data room operated by the CC and would like to make this Supplementary Submission.

2. THE MEANING OF ADVERSE EFFECT ON COMPETITION

2.1 Section 134(2) of the Enterprise Act 2002 states that:

“For the purposes of this Part, in relation to a market investigation reference, there is an adverse effect on competition if any feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom”.

2.2 The CC's Guidelines for market investigations state that potential sources of competitive harm flow from five main sources: (i) unilateral market power; (ii) barriers to entry and expansion; (iii) coordinated conduct; (iv) vertical relationships; and (v) weak customer response. The UIC does not believe that any of these sources of competitive harm is present in relation to the provision of private healthcare in Northern Ireland. In particular, the CC has not shown that any of the indicators of unilateral market power, such as high profits, high price-cost margins, low single-firm demand elasticities or other evidence of adverse effects in the form of high prices, low quality and limited choice are present in relation to UIC. In addition, the successful new entries of Kingsbridge Hospital and the Chichester Clinic/St.Francis Private Hospital as full service private hospitals in Belfast show that barrier to entry and expansion are not high.

2.3 Section 134(4) of the Enterprise Act 2002 goes on to state that:

“The Commission shall, if it has decided on a market investigation reference that there is an adverse effect on competition, decide the following additional questions-

- (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

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(b) ...

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.”

2.4 Section 134(5) of the Enterprise Act 2002 states that:

“...there is a detrimental effect on customers if there is a detrimental effect on customers or future customers in the form of-

(a) higher prices, lower quality or less choice of goods or services in any market in the United Kingdom (whether or not the market to which the feature or features concerned relate); or

(b) less innovation in relation to such goods or services.”

2.5 It is unclear which adverse effect on competition or detrimental effect on customers the CC is trying to remedy, mitigate or prevent by listing the UIC as a ‘hospital of concern’. [REDACTED].

2.6 In addition, the UIC’s charitable status means it is required to act in the public benefit [REDACTED]. Therefore, the CC has not shown that there is any detrimental effect on customers or future customers in the form of higher prices, lower quality, less choice or less innovation in respect of UIC.

3. CC’S EVIDENCE FOR NORTHERN IRELAND

3.1 UIC has not been shown any data or evidence in either the local competitive assessment or the data room which shows any feature or combination of features in the relevant market within which UIC operates which prevents, restricts or distorts competition in connection with the provision of private healthcare services. Indeed, the CC appears to have very little information in relation to Northern Ireland and, in UIC’s opinion, has not shown any evidence to support its provisional finding that an adverse effect on competition exists in Northern Ireland or that there is any justification in listing UIC as a ‘hospital of concern’.

4. CONCLUSIONS

4.1 UIC has not seen any data or evidence which supports the CC’s provisional finding that there is an adverse effect on competition in relation to UIC’s local market power with respect to self pay patients. In particular, UIC would like to reiterate the following:

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- the special position of Northern Ireland, including its physical remoteness from Great Britain and its geographical and cultural links with the Republic of Ireland, do not appear to have been considered by the CC when defining the catchment area of private hospital operators in Northern Ireland or when assessing the AEC;
- Northern Ireland is the only region in the UK which has seen effective new entry by more than one full service private hospital operator (i.e. Kingsbridge Hospital and the Chichester Clinic/St.Francis Private Hospital), thus confirming that barriers to entry are not high;
- private hospitals treating NHS patients (such as Kingsbridge Hospital and Chichester Clinic/St.Francis) can switch utilisation of their capacity from NHS patients to private patients quickly and therefore pose an effective competitive constraint on private hospital operators (such as UIC). In addition, the fact that Kingsbridge Hospital and Chichester Clinic/St.Francis undertake NHS work reduces waiting times for NHS patients is likely to have a major impact on the number of patients seeking private hospital treatment in Northern Ireland. [REDACTED];
- UIC's charitable status means that it is required to act in the public benefit [REDACTED];
- [REDACTED].

4.2 For the reasons set out above, UIC submits that it should not be listed as a 'hospital of concern' as there is no feature or combination of features of the relevant market which has been shown to prevent, restrict or distort competition and which would justify the imposition of a remedy on UIC over and above any remedy imposed on any other private hospital operator.

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APPENDIX 1

**TOP 10 PROCEDURES: COMPARISON BETWEEN COMPETITION COMMISSION
(PCA APPENDIX) AND UIC PRICING**

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