

## **OFT's response to the CC's provisional decision on remedies for Private Healthcare**

### **Private Healthcare: Provisional Decision on Remedies**

1. Thank you for the invitation to comment on the Competition Commission's provisional decision on remedies, published 16 January 2014.
2. This response is focused on the proposed package of remedies and in particular on practical issues surrounding the implementation, monitoring and enforcement of the remedies proposed.
3. In your provisional decision, you set out the package of remedies that you provisionally consider best suited to address the adverse effect on competition and the consumer detriment provisionally identified.
4. We would welcome a remedies package which is designed to address the AEC arising from the structural feature of weak competitive constraints; which stimulates competition and addresses concerns as to price and performance transparency.
5. There are a number of issues regarding the monitoring/enforcement and review of the proposed package that we think it right to highlight. We have particular comments regarding the proposed monitoring role of the OFT/CMA under Remedy 3 in the light of the existing merger control regime, and, also the application of the proposed competition test. We also draw your attention to some considerations on price transparency issues under Remedy 6.
6. For convenience, we have set out our comments in a table.

<b>Proposed Remedy</b>	<b>OFT's comments</b>
<b>Remedy 1 – Divestiture</b>	Post-publication of the Order - is there anything to prevent clusters of commonly operated hospitals that would create AECs again in the market?
<b>Remedy 2a – Preventing hospitals from taking punitive price measures against PMIs in certain circumstances</b>	No comments.
<b>Remedy 2b – separate pricing of Hospitals</b>	No comments.
<b>Remedy 3 – restrictions on expansion</b>	<p>Agree that operation of a PPU to be evaluated on a case by case basis on merits.</p> <p>The test should be simple and straight forward as the Market Remedies Team had previously discussed with the CC team. The design of the test should take account of resource implications and time constraints.</p> <p>The OFT's Mergers Team held informal discussions with the CC specifically on remedy 3. The OFT understands the intention is not to have a mandatory notification regime but to put in place a mechanism for trusts and private providers to voluntarily notify and for the OFT/CMA to review any such transactions it sees fit where they do not constitute mergers. The usual regime will continue to apply to relevant merger situations.</p>

<p><b>Remedy 4 – preventing incentive schemes being offered to consultants by private hospital operators</b></p>	<p>Concerns outlined by the OFT, in relation to the difficulties of monitoring large numbers of agreements, may be mitigated by transparency of any payments to consultants; information being required on private hospital operators’ websites.</p> <p>The OFT/CMA can carry out spot checks on websites to monitor the availability of information to patients. There is a potential limitation on monitoring where the quality and quantitative aspects of the information on websites may remain unknown or difficult/impossible to assess, i.e. as to whether payments to consultants are reasonable, fair or proportionate to services provided. The OFT/CMA may be unclear to the nature of the incentives (direct or indirect incentives)? The CC may want to consider other forms of information i.e. information packs for patients / posters etc, besides information on websites. In particular, elderly or disabled people may have limited use of the internet.</p>
<p><b>Remedy 5 – recommendation to health departments on consultant performance indicators</b></p>	<p>Who will be the nominated information organisation?</p> <p>We agree that performance information can be beneficial to stimulate private hospital operators and consultants and may result in higher quality of services if this is made more transparent.</p> <p>Will this be organised by reference to geographical areas since the distance can determine where patients choose to have treatment.</p>

	<p>Standard content and format may enable information to be more easily comparable.</p>
<p><b>Remedy 6 – Information on consultants’ fees</b></p>	<p>Standard prescribed format enables information to be more easily comparable.</p> <p>While there are clear benefits in consumers being able to choose on the basis of transparent comparable information, it will be important that the mechanism is designed to minimise or negate the risk of anti-competitive information exchange or price collusion.</p> <p>Consideration should be given to whether there are any concerns over price transparency as, depending on the information (e.g. how current it is, how aggregated it is) it could raise some competition concerns, e.g. it could facilitate collusion through making an anti-competitive concerted practice more likely. However, on the other hand, price transparency can also help drive consumer switching etc. / facilitate the kind of active consumer decisions that incentivise the process of rivalry / competition. So, the line needs to be drawn in the right place. To the extent the proposal is for consultants to make current prices each decides unilaterally clear to patients in a genuinely public fashion, that may be less likely to raise big concerns.</p> <p>Standard terms can sometimes raise issues but that is often where the standard terms (e.g. in insurance contracts) define the scope of the product, and standardisation can therefore affect / restrict businesses’ competitive offerings and / or consumer choice.</p>

	<p>In designing this remedy, we want to highlight that price setting by individuals should be made independently to avoid the potential risk of concerted practices.</p> <p>Practical issues to consider may include:</p> <ul style="list-style-type: none"> <li>• How often will fee information be updated? Or change? Annually?</li> <li>• The scheme should be designed to have sufficient transparency in order to promote competition.</li> </ul>
<p><b>Remedy 7 – Transparency on private hospital performance</b></p>	<p>This is still bound by geographical areas of where consultants choose to offer treatments. Some patients will benefit more than others in different geographic areas.</p> <p>Communications to patients via websites seems a good effective way assuming patients are good at shopping around and using the internet. However, need to have other forms of communications? Local newspapers or posters. Patients may be elderly, disabled and unable to access websites easily?</p>
<p><b>Remedy 8 – Price control</b></p>	<p>No comments.</p>

Markets Remedies Team

Office of Fair Trading

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