

PRIVATE HEALTHCARE MARKET INVESTIGATION

Notice of the Competition and Markets Authority's intention to hold a disclosure room on the insured pricing analysis and disclose into the existing confidentiality rings the un-redacted insured pricing analysis working paper

As part of the initial phase of the private healthcare market investigation remittal (the 'Remittal'), the Competition and Markets Authority (CMA) is re-considering the insured price analysis in the central London market, as described in Section 6 and Appendix 6.12 of the Final Report (the 'IPA').¹ In early June, the CMA is intending to publish a working paper on its review of the IPA (the 'IPA Working Paper'). The detailed results of the IPA, as well as other confidential information, are highly sensitive and, therefore, will be redacted from the published version of the IPA Working Paper.

The un-redacted version of the IPA Working Paper, as well as the IPA itself (including its underlying data and results) contain 'specified information' within the meaning of section 238 of the Enterprise Act 2002 (the 'Act'), to which a general restriction on disclosure by the CMA in section 237 of the Act applies.

Pursuant to section 241 of the Act, the CMA may disclose specified information for the purpose of facilitating the exercise by it of its functions. The CMA has decided that it is necessary to disclose:

- (a) the un-redacted version of IPA Working Paper into the established confidentiality rings (the 'Confidentiality Rings'); and
- (b) the IPA by way of a disclosure room (the 'Disclosure Room').

Confidentiality rings

As explained in the CMA's Notice of 25 February 2014, during the Competition Appeal Tribunal (CAT) proceedings which led to the Remittal, certain confidential

¹ Final report in the market investigation into the acquisition and supply of privately-funded healthcare services, published on 2 April 2014.

information was disclosed to the parties to those proceedings (ie HCA, Bupa, AXA PPP and TLC) through two separate confidentiality rings which were established by the CAT.

At the start of the Remittal, the CMA set up new confidentiality ring arrangements to enable the external legal and/or economic advisers of those parties to use that same confidential information for the purposes of the Remittal, should they wish to do so. These advisers have to give undertakings to the CMA, which include an undertaking not to advise any party in relation to any pricing negotiations between any hospital operator and any private medical insurance ('PMI') concerning the price and/or terms and conditions of services supplied to patients of the PMIs for a period of 18 months (the 'Adviser Disqualification Clause').

The CMA now intends to disclose an un-redacted version of the IPA Working Paper into the existing Confidentiality Rings.

Disclosure room

The CMA has also decided to disclose to HCA the following material relevant to the IPA, by way of a disclosure room:

- (a) The raw data (ie the Healthcode data).
- (b) The cleaned data.
- (c) Full details of the methodology, analyses and various coding values used in the computer modelling to produce the IPA.
- (d) The means to reproduce the full set of results from each step of the analysis, including all standard outputs, together with all such results as are in the possession of the CMA.
- (e) The means to reproduce the full set of results from any sensitivity analysis or robustness checks which the CMA performed, together with all such results as are in the possession of the CMA.

Together the 'Disclosed Material'.

In light of the particularly sensitive and confidential nature of the Disclosed Material, the CMA considers it necessary to operate strict rules governing access to the Disclosure Room, which will only be open to external economic and/or legal advisers and not to parties' directly or their staff (eg parties' employees). The CMA will have to approve any external advisers, who will be required to sign undertakings before being granted access to the Disclosure Room and, while in the Disclosure Room, abide by a set of rules governing its use. Those undertakings contain the Adviser

Disqualification Clause.² The Disclosure Room undertakings and rules will be sent in advance to those whom access will be granted by the CMA.

The Disclosure Room will be open on each CMA Working Day³ for a period of one month following publication of the IPA Working Paper from 9:30am until 5:30pm on each day. Numbers of individuals allowed access to the Disclosure Room at any one time will be limited.

This notice invites other interested parties to submit expressions of interest to access the Disclosure Room or Confidentiality Rings or both, together with an explanation of their interest and the reasons for requesting access, and details of the interested party's external legal and/or economic advisers (ie name, job title and employer) seeking entry to either the Disclosure Room, or Confidentiality Rings, or both. Any expressions of interest must be sent **by 5:00pm on 20 May 2015** at the very latest to the private healthcare investigation team at Private-Healthcare@cma.gsi.gov.uk.

The CMA will consider each expression of interest received before deciding whether to grant access to the interested party to the Disclosure Room and/or Confidentiality Rings.

Further information about the CMA's private healthcare market investigation and details of the Remittal can be found on the [case page](#).

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² The CMA proposes that the Adviser Disqualification Clause should be in effect for a period of 15 months as from the signing of the undertakings. This is to reflect the passage of time since the signing of the Confidentiality Ring undertakings.

³ CMA 'Working Day' means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.