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Dear Darren

**Private Healthcare Market Investigation Remittal**

On behalf of Nuffield Health ("Nuffield"), I respond below to the request for further submissions and evidence in your 13 April 2015 letter to Andrew Whithorn of Nuffield.

*The Insured Pricing Analysis ("IPA") and the general scope of the remittal*

Nuffield believes that it is critical that the CMA, in its remitted investigation, give due weight to the entirety of the evidence before it regarding the competitive position in the central London private healthcare market and that its remitted investigation avoid giving disproportionate consideration to the detail of the IPA.

Although alleged flaws have been identified in the methodology and/or application of the IPA and although the IPA has therefore become the focal point of the remittal process, it is important to remember that the overriding purpose of the remitted investigation is to review the AEC finding which is found at 10.5 of the CMA's market investigation report and which states that "... [a number of] features also give rise to AECs in the markets for the provision of hospital services which lead to higher prices being charged by HCA to PMIs across the range of treatments for insured patients in central London". It is clear from the preceding paragraphs of section 10 of the report that this AEC arises through a number of features regarding barriers to entry and weak competitive constraints in a large number of product areas, as described at earlier points in the report.

As quoted in the CMA's 13 April 2015 letter, the CAT's 23 December 2014 ruling invites the CMA to consult afresh on the IPA in the broader context of the impact any new information and representations may have on "the existing statements of reasoning contained in the Final Report with respect to those decisions [on the AEC as quoted from 10.5 and also on the resulting divestment]". The CAT has also confirmed that all aspects of the report other than the IPA are still applicable. There is nothing in the CAT's ruling on the quash and remittal which obliges the CMA to base any AEC or divestment decision on an altered view of the existing IPA, or on a new IPA, although of course the CMA is free to use IPA evidence in reaching such decisions.

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Finally, in referring to the IPA above, Nuffield is making no comment on the content or evidential value of the IPA or on the alleged flaws. Indeed, Nuffield was only granted limited access to the IPA during the CMA's initial investigation.

*Implications of a further IPA review for Nuffield*

Nuffield appreciates that the IPA will apply to an AEC in a geographical area (central London) in which Nuffield is not active. However, it is possible that the IPA or other parts of the CMA's review of the insured AEC decision will entail some consideration of, or implied commentary upon, the national pricing practices of the main hospital groups and/or their negotiations on a national basis with private medical insurers. To the extent that such general practices are considered, they are likely to involve reference to Nuffield practices or to have indirect relevance to Nuffield.

Nuffield commented upon such possible implications for its pricing in a 9 March 2015 letter, which the CMA has already published in redacted form. Nuffield's detailed points from its recent letter are not set out here, but are repeated by reference to that letter. The CMA is asked again to be mindful that Nuffield's commercial offering is radically different from that of its competitors and that any suggestion otherwise could cause it material detriment.

*Market profile points in Annex to 13 April 2015 CMA letter*

It remains Nuffield's view that HCA's market coverage makes HCA a "must have" partner for consultants and insurers, giving it a dominant status in central London on many therapeutic areas and in all pricing negotiations. These points were described in Nuffield's 20 July 2012 Response to the then OFT's Issues Statement, with particular reference to 3.20-3.30, 3.38-3.52 and 7.9-7.20. The 20 July 2012 Response document is re-attached to the soft copy of this letter for ease of reference.

Nuffield is unable to comment on the detailed points in the Annex to the CMA's recent letter on the basis of direct experience, since it does not operate in central London. However, on the basis of its general awareness of the private healthcare market, Nuffield does not see how HCA's dominance in central London could have reduced since 2012. Nuffield notes the points relating to HCA's sustained market power in the 9 March 2015 letter from AXA PPP's advisers, as published on the CMA's website. Nuffield supports those points.

*Procedural points relating to the remitted investigation*

Nuffield requests that it be consulted on all aspects of the remitted investigation, including being given access to all data rooms and to other information and drafts, including any provisional findings or provisional remedies or similar documents, in all respects on a par with other parties. As described above, any commercial information, even if expressly relating to central London only, could have implications for the general business of Nuffield and its competitors.

Nuffield believes that any failure to treat it equally in the above terms would represent an unfairly discriminatory process.

Yours sincerely

**John Markham**