

PRIVATE HEALTHCARE REMITTAL

Summary of hearing with British United Provident Association Limited on 12 August 2015

Introduction

1. British United Provident Association Limited (Bupa) considered that the CMA's original conclusion, that there was an adverse effect on competition (AEC) in central London, remained valid. It noted that the headline finding in the updated Insured Price Analysis (IPA), that HCA charged higher prices than other hospital operators, reflected its experience in the market. Bupa saw no difference in clinical quality or customer experience at HCA facilities that would merit such a price differential. Bupa noted that while the IPA was important, it was just one amongst a number of pieces of evidence that establish an adverse effect on competition (AEC) in the central London market.
2. Bupa said that HCA's dominance had grown since publication of the Final Report and there had been no evidence of new entrants into the market. It considered that this dominance was demonstrated by the lack of alternative provision in key specialisms and HCA's higher prices, price increases and excess profits. Bupa considered that HCA's profitability would have increased since the CMA's previous investigation and should be revisited.

Quality and complexity

3. Bupa said it did not see any material difference in the complexity of services provided by HCA and TLC. For example, it noted a piece of internal analysis, which it had recently completed, which looked at the age of patients seen by HCA as compared with other providers (patient age being an indicator of complexity). The analysis showed that HCA in fact saw marginally younger patients than other providers.
4. Bupa stated moreover that the level of service that HCA and TLC were able to provide was very similar, and that therefore service level was not a metric that should have any bearing on a consultant, GP or individual's decision as to which of the two hospital operators complex cases should be referred. Bupa said it did not guide patients on the basis of complexity to HCA over TLC.

5. Bupa said it did not see the number of line items within an invoice (for example, the number of pathology tests) to be a clear measure of complexity, as the number of line items do not necessarily relate to complexity but rather can relate to other factors with no clinical rationale (eg contracting with the hospital provider to package price certain treatments). Bupa noted that because of the different coding structures used by HCA and TLC for diagnostic tests, it was difficult to observe whether there was a difference in the frequency of testing (and therefore in clinical practice) between HCA and TLC. For example, Bupa stated that, while the percentage of spend Bupa had with HCA on pathology was far higher than with any other provider, it was unclear whether this was an indication of HCA charging Bupa higher prices for pathology tests or simply undertaking more tests. Bupa confirmed that, in order to judge the appropriateness of testing, it undertook comparisons against agreed protocols, be that NHS or other national and international comparators. Bupa said that when it ran these comparisons, it found that HCA was using more tests than other hospital providers and would often follow this up with HCA to determine the reason behind this.
6. [✂]
7. Bupa said it was not aware of any specific treatments which might be disproportionately driving the price differential between HCA and TLC.
8. Bupa confirmed that its patient satisfaction scores showed that HCA was in line with the UK average private hospital score. [✂]. There was very little evidence from Bupa's customer surveys that suggested that the quality of care at HCA was better from a patient's perspective than at other hospital operators. Bupa stated that it had not seen any evidence that demonstrated a difference in clinical quality between TLC and HCA. Bupa further noted that quality measures were often attributable to the (quality of the) consultant, and it therefore became difficult to determine whether such quality could reasonably be attributed to the facility itself. Further, in Bupa's view, good quality of care could often be delivered in a way that was more cost effective for the patient.
9. In relation to the introduction of ICD-10 coding, and whether this would improve the measurement of clinical quality, Bupa's view was that it would allow Bupa to understand the clinical inputs better, but not necessarily the treatment outcomes.

Bargaining

10. Bupa stated that in contract negotiations, it took into account a variety of factors, including pricing.

11. In Bupa's view, HCA has improved its negotiating position in Central London in comparison to the CMA's original analysis of the market. HCA has dominant positions in a number of strategically important specialisms, and its position was growing.
12. In relation to service-line tenders and restricted network policies, Bupa's view was that these could help to create additional competition and downward pressure on prices for those services in the tenders. However, Bupa said that HCA was able to insulate itself from these effects through contractual clauses that was is able to negotiate through its dominant position.
13. [✂]
14. [✂]
15. [✂]
16. [✂]
17. [✂]
18. [✂]

Competitive constraints

19. In relation to whether competitive constraints and the nature of the market in central London had changed, Bupa stated that HCA's continued growth was the only notable change in the London market over the past two years. Bupa also noted that HCA was extending its reach into locations where it previously got fewer referrals (for example, Bupa said HCA had acquired the Roodlane and Blossoms facilities, and was in the process of opening further outpatient facilities, for example, in Chiswick). Bupa stated that the key things that made it difficult to negotiate effectively with HCA was its size and the location of its facilities.
20. Bupa further noted that the Central London market had become an increasingly important part of the private healthcare market because the overall UK market was shrinking while the Central London market had continued to grow every year.
21. Regarding spare capacity, Bupa stated that there may theoretically be sufficient capacity in relation to available beds. However, they were generally in Private Patient Units (PPUs) that were less attractive to consultants to work in and less attractive to patients to go to (eg they are less attractively situated). Bupa said it was unlikely that a significant number of Bupa's

policyholders would be likely to purchase a Bupa product that was heavily biased towards PPU's. Bupa emphasised that even if there was spare capacity not controlled by HCA, there were further compelling reasons that made it extremely difficult for Bupa to live without HCA, given HCA's size and dominance of the Central London market. [REDACTED]

22. Bupa also stated that the overseas business that HCA brought in could form an attractive way for consultants of earning additional money if they continued to practice at HCA facilities. So potentially, Bupa said that overseas business was a way of making sure that more consultants wanted to stay with HCA. The overseas business segment also gave HCA a separate revenue stream, meaning Bupa was of less importance to HCA. Bupa noted that HCA's international business had grown as a proportion of its overall business over the last few years. This had had an effect on Bupa's bargaining position by making HCA less reliant on Bupa in Central London.

Barriers to entry and expansion

23. The two cases of possible entry into Central London of which Bupa was aware related to Nuffield and Spire. [REDACTED] However, Bupa explained that these examples were merely speculative at this stage. Bupa noted that there were, and have been, a lot of providers with an intent to open in Central London, but which ultimately have not yet managed to do so. Bupa noted that neither Nuffield nor Spire has shared with Bupa any plans that they may have as to specific sites in Central London.
24. Bupa was not aware of any statements by VPS Healthcare about the old Masonic Hospital at Ravenscourt Park. Bupa considered that a new hospital at this site was unlikely to materially change the competitive situation in Central London, given HCA's size and dominance. [REDACTED]