

## **PRIVATE HEALTHCARE REMITTAL**

### **Summary of hearing with Bupa on 16 December 2015**

#### **Introduction**

1. Bupa stated that it strongly agreed with the Competition and Markets Authority's (CMA's) provisional findings of an adverse effect on competition (AEC) in central London caused by high market concentration, HCA's dominant position in this market and high barriers to entry. Bupa noted that the headline finding in the CMA's updated Insured Price Analysis (IPA) – that HCA charged higher prices than other hospital operators – reflected its experience in the market today, even more so than in 2011, noting HCA's increase in aggregate share and its more rapid increase in revenue than other central London operators. Bupa reiterated that it was not aware of any objective quality or complexity data that would justify HCA's higher prices. It also noted that there was substantial additional evidence that HCA's market power had grown since the period of the original analysis and so the provisional findings in fact underestimated HCA's strength in central London. It noted that HCA was able to maintain dominant positions in key specialisms and so could leverage this power across all of its spend with an insurer. Bupa said that major structural change was necessary in the highly concentrated central London market to address the AEC and asked the CMA to go further than the proposed divestment packages – as both were insufficient to create competition at the specialism level.

#### **Market entry**

2. In relation to the possible new entry of the Cleveland Clinic into the central London Market, Bupa did not consider that this would significantly change competition in the central London market. This was because of the time it would take to set up. Further, the Grosvenor Place location would not provide any competitive constraint on [REDACTED]. Bupa also noted that it would be difficult to prise specialist consultants away from HCA. In addition, the proposed new entrant hospital would not be big enough to make a difference to the market on its own. Bupa had not had any further contact with VPS Healthcare and had been told by Spire that [REDACTED].

## Capacity

3. In relation to whether the growing central London markets required extra capacity, Bupa noted that the argument raised by HCA that there was plenty of spare capacity in the market missed the point. The real issue was that the market needed more competition, not spare capacity. Bupa considered that spare capacity did not of itself introduce competition into the market, given (for example) the additional need for resources at a specialism level and in the right geographic location within central London in order for such capacity to be utilised competitively. At present Bupa could not realistically offer a package to customers that did not include HCA hospitals. For example, [redacted] Bupa considered that ownership of [redacted] was a critical contributor to HCA being 'must-have'.

## Quality and complexity

4. Bupa considered that ICD10 data available currently in the private healthcare market was incomplete and a very poor indicator of complexity and more costly treatment of patients. Therefore, the HCA argument that proportionately more patients with co-morbidities went to HCA rather than to TLC and that this was a driver of cost could not be substantiated and did not stand. Bupa did not have any evidence which showed that patients with cardiac co-morbidities going in for other treatments were being sent to HCA for treatment rather than to TLC.

## Views on remedies

### ***Remedy 1 – Divestiture of one or more hospitals and/or other assets owned or operated by HCA in central London***

5. Bupa considered that urgent and decisive action was needed and that remedies would only be effective if they introduced real and sufficient competition at the specialism level. In Bupa's view, requiring HCA to divest a package of hospitals was the only effective way to restore good competition to the central London market. However, Bupa considered that the two divestment packages the CMA had proposed did not go far enough as they were insufficient to introduce real competition in some of the key specialisms, such as [redacted]. In addition, if HCA were to retain the [redacted] it would remain a must-have across all of its services and facilities. Bupa proposed two alternative divestment packages: the first was the London Bridge Hospital and the Harley Street Clinic, with each sold to different acquirers. The second was the London Bridge Hospital and Wellington Hospital with some additional oncology services, each sold to different acquirers.

6. Bupa considered that greater competition could be generated much more quickly if entrants to the market had the option to buy an existing hospital (sold as a going concern with staff and equipment in it), as compared with new entry on a start-up basis. In circumstances where an existing hospital was sold as a going concern, and assuming that HCA no longer had binding agreements with consultants, Bupa considered that consultants were highly likely to carry on treating patients and practising at the hospital following a sale. It would not take long for Bupa to establish contractual arrangements with the acquirer of a newly divested hospital.

***Remedy 3 – Restrictions on HCA’s further expansion in central London***

7. Bupa knew of two examples where HCA had outbid other competitors for new sites. Bupa considered that because HCA’s prices were higher than its competitors, its business case when bidding for new sites was far stronger.

***Remedy 4 – ‘Light-touch’ price control***

8. Bupa considered that there would be many complexities in formulating an effective light-touch price control. Some of these complexities included: the huge number of prices; the fact that treatment costs were affected by volume and type of care delivered as well as the headline price (so you would need to control for the amount of treatment that was taking place within the packages); and new services coming online. The price control would need to be fast and flexible enough to be able to deal with new prices for new services.