PRIVATE HEALTHCARE REMITTAL

Summary of hearing with The London Clinic on 15 December 2015

Introduction

1. The London Clinic (TLC) said that it broadly agreed with the conclusions reached by the Competition and Markets Authority (CMA) and that it supported the first proposed remedy option in the CMA's Notice of Possible Remedies proposing divestment as a viable option to resolve HCA's dominance in central London. However, TLC also indicated that the divestiture package as proposed, specifically in relation to oncology services and related to the radiotherapy part of cancer care, might not fully address the adverse effect on competition.

2. Of the other remedy options put forward by the CMA, TLC said that the only other remedy option it would support would be a constraint on HCA acquiring more private patient units (PPUs).

New entry

3. TLC said that it welcomed more competition in the market. TLC considered that the Cleveland Clinic was a credible entrant with a good reputation. However, in TLC's view, the entry of the Cleveland Clinic alone would not result in a change in the central London marketplace. HCA would remain its main competitor for the 'foreseeable future'. TLC considered that a new entrant would face difficulties in recruiting consultants and their related support staff. TLC said that it was HCA's hold over consultants, rather than its investment in equipment, that made entry into the central London market difficult. In addition, the new entrant would initially find it difficult to establish relations with the private medical insurers until it had established a sufficient reputation within the central London market and built the necessary staff teams.

4. TLC said that it was aware of smaller-scale entrants coming into the market on a more specialised basis, focusing on specialities such as day-case surgery and ophthalmology. TLC indicated that such operators had some impact on competition.

5. TLC said that the key constraint on capacity in the central London market related to oncology. TLC said that only a big hospital, with the capacity to invest in radiotherapy equipment, would be able to offer the whole cancer pathway and that this could not be done through small clinics. TLC noted in this context Leaders in Oncology Care (LOC), a private cancer treatment clinic owned by HCA. In TLC's view, if the new entrant did not offer oncology services covering the whole of the cancer pathway then HCA would remain dominant in relation to the supply of oncology services in central London.

6. TLC said that Spire remained 'very keen' to enter the central London market. TLC added that it was not easy to enter the central London market with a new build. TLC commented that an affordable divestment option would be a new entrant's preference. Overall, TLC did not believe that there were any differences in the quality and complexity of the patients they treated which justified in part, or wholly, the alleged price difference between HCA and TLC.

Competitive constraints

7. TLC said that it was able to negotiate better rates with the smaller insurers than the bigger insurers. While this was an issue for TLC it did not consider that this had any adverse impact on patient choice.

Complexity

8. TLC said that in its view the cases that it dealt with were equally or more complex than those cases dealt with by HCA. TLC noted that a lot of consultants chose to bring their most complex work to them. Further, TLC contended that the number of pathology tests and the length of the invoice '… cannot be a consideration in terms of how complex is a case'.

9. TLC said that it had a very strong endoscopy department and that this treated the full range of practice, carrying out complex as well as routine treatments. TLC confirmed that it carried out a full range of endoscopy procedures including Laparoscopic Cholecystectomy procedures.

10. TLC also said that it was currently building a new intensive care unit, scheduled to open in May 2016. In TLC's view, it had a good reputation with consultants because it offered many sub-specialties that supported complex surgery.

11. TLC confirmed that it currently did not hold the information on patients with co-morbidities within a particular Clinical Coding and Schedule Development Group code that would enable it to make a comparison with other private healthcare providers. TLC noted that only in exceptional circumstances would

patients be directed or treated elsewhere if they had a related cardiac condition. While TLC did not provide cardiac surgery it did have cardiologists and was fully able to support patients through their post-operative phase.

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

12. TLC considered that purchasing a divested hospital would be a faster route to entering the central London market than building a new hospital because the acquirer would take on all the existing consultant relationships and infra-structure. This was provided the bar on incentives outlined in the Order was effective.

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

13. TLC reiterated its concerns about oncology, noting HCA's acquisition of PPUs such as Guy's and St Thomas' and its interest in Stanmore. TLC said that restricting HCA's expansion of new inpatient facilities, particularly in relation to oncology services, would make the market more competitive because it would open up opportunities for existing and new entrants to acquire PPUs.

Remedy 4 – 'Light-touch' price control

14. TLC said that price controls would not change in terms of HCA's bargaining position in the market. Investment decisions, for example in relation to build-ing a new radiotherapy department, were taken on a long-term basis and, as such, price controls would need to be in place into the longer term for them to start to change the dynamics of the market. TLC also considered that a price control remedy might make banks less likely to finance necessary investment in the central London market.