

PRIVATE HEALTHCARE REMITTAL

Summary of hearing with AXA PPP Healthcare Limited on 17 May 2016

Opening comments

1. AXA PPP said that it was ‘extremely surprised and very disappointed’ at the CMA’s position in its Provisional Decision on Remedies (PDR) and that it had two main points that it wished to highlight in its opening statement to the CMA. The first of its two points was that the assumptions in the cost benefit analysis were ‘extremely generous’ to HCA and were usually at one end of the spectrum as opposed to the middle of the ranges. The second was that the CMA had placed ‘a huge amount of reliance’ on the Cleveland Clinic entering the market and addressing the adverse effect on competition (AEC). However, it seemed quite clear from the subsequent publication of the summary of Cleveland Clinic’s hearing that there was a significant misunderstanding concerning the timing of proposed entry, and the scope of hospital services that Cleveland Clinic intended to provide. Indeed there appeared to be some doubt that the Cleveland Clinic would enter the market at all, given the CMA’s change in position in the PDR.
2. Noting the CMA’s agenda item about the shape of the market in ten years’ time, AXA PPP suggested that, without the imposition of any divestment remedies on HCA, the CMA would probably be carrying out a further investigation of the private healthcare market. AXA PPP speculated that HCA would probably have a [X] market share, continue its pricing well above its competitors and that very few if any material new entrants would have come into the market. On the latter point, AXA PPP noted that ‘there is always a lot of talk’ about new market entry, but a realistic look at the investment required to overcome the barriers to entry placed in the way, particularly by HCA, meant that new market entry had not taken place.
3. AXA PPP said that the imposition of reasonable divestment proposals could mean that the market would look different in ten years’ time. AXA PPP said that there would be a better balance between the larger players. In addition, AXA PPP considered that the Cleveland Clinic would be more likely to have entered, and that other parties such as Spire and Nuffield would also be more likely to have come into the market, offering either near-full range hospitals or niche-hospitals providing particular treatments on a cost-effective basis. In

summary, a divestment remedy would make a material difference to the size of the market and result in better prices to consumers.

Competitive constraints and oncology

4. AXA PPP confirmed that from July 2014 to June 2015, HCA accounted for just under [redacted]% of its oncology spend, TLC [redacted]% and Bupa Cromwell hospital [redacted]%. [redacted]% of its oncology spend was with NHS Trusts. Of the [redacted]% spend, more than [redacted]% was with the Royal Marsden.
5. AXA PPP said that the in the vast majority of cases oncology spend is based on [redacted]. [redacted] Asked why more of AXA PPP's oncology spend does not go to The London Clinic, AXA PPP said that one of the main selling points of most private medical insurance to the large corporate clients is that they expect to have choice in where they are treated and by whom. While many do choose to use The London Clinic, the choice is basically determined by the advice received from the patient by others, eg which consultant the General Practitioner (GP) is familiar with and their normal referral pattern.
6. AXA PPP said that, in the case of oncology, [redacted]. AXA PPP said that on matters of life and death customers were less likely to allow their insurer to direct them to one consultant over another, but would take advice from others (or do their own research). In practice, once a patient has been referred to a consultant, [redacted].
7. AXA PPP noted that HCA has the most oncology consultants, and also highlighted the close relationships between consultants at Leaders in Oncology Care (LOC) and HCA as a result of HCA's majority ownership which meant business was likely to be channelled to HCA facilities. AXA PPP said that this was a significant barrier to new entrants in oncology. Another contributory factor to its high market share in oncology was HCA's '...monopolisation of hospital supply in the Canary Wharf, City area'.
8. Asked why private medical Insurers (PMIs) do not place more emphasis on directing customers to suppliers with less expensive treatments and cheaper policies, AXA PPP said that there was a market for this. AXA PPP said that in the individual and SME market it did have a product that excluded all HCA hospitals (as well as some others). AXA PPP estimated that [redacted]. However, with regard to its big corporate customers, AXA PPP had [redacted] that excluded HCA hospitals. AXA PPP estimated that [redacted].
9. Asked why there was not more market entry in relation to oncology, AXA PPP responded that oncology was 'extremely expensive' with high fixed costs and that the barriers to entry relating to oncology were 'enormous'. AXA PPP also

said, while it did not have information about the profitability of individual services provided by HCA (which would in any event be hard to measure), it could be the case that oncology may not be significantly more profitable for HCA relative to other services provided by HCA (as in AXA PPP's experience it pays HCA significantly over the odds for less complex treatments). As hospital providers bargain across a bundle of services, it may be possible for HCA to leverage its position in relation to 'must-have' services in order to achieve higher margins elsewhere.

10. AXA PPP said that to enter the oncology market, a credible new entrant would require a reasonable-sized hospital, surgery facilities (or a very strong link to a surgical supplier) and radiotherapy facilities (which are costly, and in relation to which it is difficult to find suitable premises). AXA PPP said there was limited provision in the private sector in London. While AXA PPP acknowledged that there was a 'fair amount' of non-HCA radiotherapy facilities in London in Private Patient Units (PPUs), it noted that some of these had been won by HCA.
11. AXA PPP said that what made oncology a 'must-have' was that it provided the reputation which in turn meant that PMIs have to have HCA in their network. Because it was a 'must-have' HCA could then charge more for its run-of-the-mill services, such as hip replacements, because they are a 'must-have' in at least oncology. AXA PPP said that other high-acuity services, like cardiology, were of 'somewhat less concern' than oncology because while HCA's share of the market was high, it was highest in oncology.
12. AXA PPP said that the issue it faced when contemplating a reduction in volume of business to HCA was that this would result in an increase in price to HCA for whatever services were left over. With regard to any changes AXA PPP had noted in its negotiating power in the period since 2011, AXA PPP [✂]. However, AXA PPP said that [✂].

Consultants

13. AXA PPP said that it was the consultant that determined which private hospital would be used. AXA PPP said that only a small minority of consultants worked in more than one private hospital.
14. With regard to how consultants got a reputation with GPs, AXA PPP said that this was gained mostly during the earlier part of the consultant's career while working in the NHS. When they moved into private practice some consultants then advertised their services to these GPs.

15. AXA PPP said that HCA charges significantly more than other suppliers, and that a subset of its revenues appears to be channelled into payments to specialists, which creates significant barriers to entry to other suppliers. AXA PPP said that, in its experience, HCA's competitors had not been successful in attracting consultants away from HCA because they could not offer consultants more money than HCA (as HCA charge more for their services, they can afford to pay their consultants more).
16. Asked whether the CMAs consultants/incentives remedy has made any difference, or was likely to make a difference going forward, AXA PPP said that it was important because it made patients aware that consultants were receiving fees from a third-party supplier. AXA PPP said that on the basis of the published information it had been able to track down in excess of 400 consultants who, either through advice contracts, consultancy contracts or through various types of shareholding (ie an equity shareholding in a hospital or profit share agreements), had an interest in or were being paid by HCA. Asked about the impact that holding an equity interest might have on where consultants might direct patients, AXA PPP said that there was a lack of clarity about what the return was to those consultants while noting that the arrangements were 'opaque and complicated' and that 'a lot of money in total' must be being paid to the consultants. AXA PPP said that it was difficult to get information from consultants about the actual sums they were being paid by HCA because HCA is publishing their hourly rates only, not total remuneration. AXA PPP does not believe this is in accordance with the intent of the remedy.
17. AXA PPP said that requiring HCA to divest some of its hospitals alongside a fuller disclosure about the financial arrangements between consultants and hospitals, would increase its capability [redacted], and would be the best way of effectively addressing the CMA's concerns. [redacted]

New entry

18. AXA PPP said that it had not spoken to Cleveland Clinic about its entry plans. AXA PPP's view was that if HCA was not required to divest facilities, Cleveland Clinic would not come into the market because it would not be able to attract enough consultants or negotiate a sufficiently good deal with the PMIs. In AXA PPP's view, divestment would make it easier for Cleveland Clinic and other potential entrants, such as Spire, to enter the market. [redacted] AXA PPP confirmed that it has had contact with the Schon Klinik, Fortius and Spire about their entry plans. AXA PPP noted that throughout the course of the investigation there had 'always been three or four people...on the verge of

coming into the London market', but that large scale entry had not materialised.

19. [REDACTED] AXA PPP estimated that [REDACTED] of its spend was covered by the specialties that would be provided by Cleveland Clinic which put them in the category of a 'multi-niche player'. AXA PPP said that there could be really strong competition for patients in the more standardised treatments and that an effective divestment remedy would mean that, for top-end treatments, there would be a more '...even fight between a reasonable number of suppliers' and consequently a more competitive market than was currently the case.
20. AXA PPP said that even if Cleveland Clinic did come into the market (without any divestment remedy having been imposed on HCA) and was able to get some business from the PMIs, the price benefit would not come through to customers because AXA PPP's costs would remain unchanged because HCA would charge it more for the 'must-have' services AXA PPP still required from HCA.
21. AXA PPP said that other suppliers, such as Nuffield, have opened outpatient clinics in the city that provide GP and some diagnostic services. However, these are not the same as the consultant outpatient clinics that HCA operates.
[REDACTED]

Remedies

22. AXA PPP said that oncology coverage was a big reason for buying PMI. AXA PPP said that it had [REDACTED].
23. AXA PPP added that if HCA did not own the London Bridge (including the London Radiotherapy Centre) and The Princess Grace hospitals [REDACTED].
24. Asked what would happen to prices after a divestment, AXA PPP said that prices would come down because it could then credibly threaten to derecognise HCA. A divestment would also create a more diverse market and improve its ability to direct business to the more efficient suppliers, especially for the less complex specialities, without having major negative financial consequences.
25. With divestment, AXA PPP said that it would be looking for a [REDACTED]% reduction in HCA prices from their current level. AXA PPP clarified that prices would not fall to the same degree if the divestment package did not include the London Bridge hospital, or radiotherapy facilities, because HCA would retain its market power in oncology and monopoly in the city area. AXA PPP did not

think that prices would move if there was new entry without any divestment remedy.

26. AXA PPP said that it was assuming that there would be some conditions (at least for an interim period) around any divestment remedy for the top end specialties, like oncology, to prevent consultants moving from London Bridge and to keep their teams in place. Beyond that, it considered that consultants already practising at London Bridge would be unlikely to want to move away from London Bridge, and that there were also other impediments to moving business in top end specialties away from an established facility. AXA PPP therefore continued to believe that divestment of the London Bridge would be an effective remedy.
27. With regard to remedies other than divestment, AXA PPP said that no other remedy would work. However, given the likely time delay between the imposition of a divestment remedy and the actual divestment, AXA PPP asked that the CMA consider imposing interim price controls on HCA.

Concluding comments

28. AXA PPP said that it continued to agree with the CMA's finding that there was an AEC in relation to central London, which derives from HCA's market power across a number of specialties, and which is then leveraged across the entire bundle of hospital services. AXA PPP considered that the further evidence from Cleveland Clinic meant that it was now necessary to revert to the CMA's prior position, namely its findings in its Notice of Possible Remedies that only a divestment would be an effective remedy. AXA PPP reiterated that in order for a divestiture package to be effective, it needed to include the various ingredients set out in its submissions, including a flagship hospital and radiotherapy facilities.