

SPIRE HEALTHCARE

**COMPETITION & MARKETS AUTHORITY
PRIVATE HEALTHCARE MARKET INVESTIGATION**

**RESPONSE TO THE SUPPLEMENTAL PROVISIONAL DECISION
ON REMEDIES - REMITTAL**

20 JULY 2016

SPIRE'S RESPONSE TO THE SUPPLEMENTAL PROVISIONAL DECISION ON REMEDIES

1. This document provides the response of Spire Healthcare (*Spire*) to the supplemental provisional decision on remedies (*SPDR*) issued on 7 July 2016 by the Competition and Markets Authority (*CMA*) in the context of the private healthcare market investigation remittal.
2. Spire is disappointed with the CMA's provisional decision not to impose any remedy to address the adverse effect on competition (*AEC*) of structural features in the markets for the provision of privately funded healthcare services to insured patients in central London which the CMA has confirmed in its Provisional Findings (*PFs*). Spire considers that the failure to order the proposed divestiture package (along with other complementary remedies) is a missed opportunity to bolster competition in the London market for insured patients and is inconsistent with the CMA's duty under the Enterprise Act to remedy adverse effects on competition.
3. The CMA's decision, in its initial provisional decision on remedies (*PDR*) issued on 22 March 2016, not to impose any remedy was largely predicated on the finding that "*large scale entry seems likely to take place by early 2020*". In fact, it was predicated on the CMA's belief that one particular greenfield provider, the Cleveland Clinic, was likely to enter the market with a new hospital by 2020. However, the CMA has received evidence from various parties, including the Cleveland Clinic, that there is still considerable uncertainty as to whether effective entry will occur (and if so in what timescale). Despite this evidence and the CMA's own finding in its SPDR that it could "*no longer conclude that the Cleveland Clinic entry is likely to take place in 2019 to 2020 or, if it occurs, that it will be sufficient (in terms of the range of specialisms offered) to constrain HCA fully (together with other non-HCA hospitals) by early 2022*", the CMA has confirmed its initial provisional decision to not impose a divestment remedy. [✂]
4. If the CMA concludes in its final report that structural features in the markets for the provision of privately funded healthcare services to insured patients in central London are leading to an AEC and weak competitive constraints on HCA, the CMA has a duty under the Enterprise Act to remedy, mitigate or prevent that AEC.
5. As a result, the CMA should have considered appropriate measures to remedy this aspect of the Insured AEC or at least to mitigate its effects until new entry is able to sufficiently constrain HCA. Even if the CMA is correct that divestment was not an appropriate remedy, the CMA has failed to give proper (or, apparently, any) consideration to alternative remedies. These could have included: (i) prohibiting clauses in contracts between insurers and HCA which restrict the ability of insurers to refer patients to competing hospitals; (ii) restricting HCA's ability to expand in the London market until the market conditions had improved as the CMA expects; and (iii) requiring an alternative divestment package.
6. Therefore, the SPDR is entirely unreasonable.