

Private Healthcare Market Investigation (Variation and Commencement) Order 2017

Draft for consultation

1. On 4 April 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Act) concerning the supply of privately-funded healthcare services in the UK.
2. On 2 April 2014 the successor body to the CC, the Competition and Markets Authority (CMA), published its report titled *Private healthcare market investigation: Final report* (the report).
3. In the report, the CMA concluded that:
 - (a) features of the markets for privately-funded healthcare services each (and, in certain circumstances, in combination) prevent, restrict or distort competition, and thereby have an adverse effect on competition (AEC); and
 - (b) the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from these features.
4. The CMA indicated in its report that it intended that the CMA would implement some remedies by an order rather than by undertakings.
5. On 1 October 2014 the CMA made the Private Healthcare Market Investigation Order 2014, in performance of its duty under section 138 of the Act, within the period permitted by section 138A of the Act, and in exercise of its powers under section 161 of, and Schedule 8 to, the Act, and under sections 86 and 87 as applied by section 64 of the Act.
6. On 10 October 2016, in accordance with section 165 of and paragraph 2(1)(a) of Schedule 10 to the Act, the CMA published a Notice of its intention to vary the Order and bring Article 22 of the Order into force.
7. The CMA has, in accordance with paragraph 2(1)(b) of Schedule 10 to the Act, considered the representations made in accordance with the Notice and now makes modifications to this Order.

ORDER

8. The CMA makes this Order in exercise of its powers under sections 161(4) and 165 of, and Schedules 8 and 10 to, the Act and under sections 86 and 87 (as applied by section 164) of the Act.

1. Title, commencement and interpretation

- 1.1 This Order may be cited as the Private Healthcare Market Investigation (Variation and Commencement) Order 2017 and comes into force on the day it is made.
- 1.2 In this Order 'the Principal Order' means the Private Healthcare Market Investigation Order 2014.

2. Amendments to the Principal Order

- 2.1 In article 21.2(b) delete the words 'or alternative information from which an NHS number may be derived or a pseudonymised equivalent,'.
- 2.2 In article 22.1 of the Principal Order for '1 December 2016' substitute: '31 December 2018 and thereafter from time to time on a regular basis'.
- 2.3 In article 22.2 delete the words: 'from the date this article 22 is brought into force, and'.
- 2.4 In article 22.1(a) insert as the opening words: 'as from 31 December 2017,'.
- 2.5 In article 22.1(b) insert as the opening words: 'as from 28 February 2018,' and after 'consultant' insert the words ', or such lower number as the Information Organisation may require having regard to the performance information published in accordance with article 21.1'.
- 2.6 For the opening sentence of article 22.7 of the Principal Order substitute: 'Subject to article 22.8, the operator of a private healthcare facility shall ask every privately-funded patient undergoing any inpatient, day-case or outpatient procedure, including diagnostic tests and scans at that facility, to sign a form confirming that the relevant consultant provided the information required by article 22.4, and shall take appropriate action if there is evidence that a consultant has failed to do so.'
- 2.7 Following article 22.7 of the Principal Order add: '22.8 The duties in article 22.7 owed by the operator of a private healthcare facility do not apply in the case of a private patient who attends a consultation at premises which are not

part of the relevant facility and who does not thereafter have treatment at the relevant facility pursuant to attending the consultation.'

- 2.8 In article 24.6 of the Principal Order after 'performance information' insert the words 'as required by article 21 and fees information as required by article 22'.
- 2.9 In article 24.6 after 'shall publish all such' insert the word 'performance'.
- 2.10 In article 24.6 after '30 April 2017' insert the words 'and all such fee information no later than 30 April 2019'.

3. Commencement of Article 22 of the Principal Order

- 3.1 Article 22 of the Principal Order comes into force on XXXX [*ie two months from the date of the Order*]