

Private patient unit arrangements between Nuffield Health and Barts Health NHS Trust

PPU/0001-17

The CMA's decision on 6 April 2017. Full text of the decision published on 12 April 2017.

SUMMARY

1. The Competition and Markets Authority (**CMA**) reasonably believes, for the purposes of the Private Healthcare Market Investigation Order 2014 (**the Order**), that private patient unit (**PPU**) arrangements between Nuffield Health (**Nuffield**) and Barts Health NHS Trust (**Barts**) have been created, or are in progress or contemplation and will be carried into effect.
2. The CMA has decided that there are no grounds for conducting a review of the PPU arrangements in accordance with article 7.2 of the Order.

JURISDICTION

Parties

3. Nuffield is a large not-for-profit organisation offering a range of healthcare and wellbeing services, including the operation of a number of full-service private healthcare hospitals.
4. Barts is the largest NHS trust in the UK and operates in the City of London and in East London, covering a population of 2.5 million through five hospitals and a number of other locations, including St Bartholomew's Hospital at West Smithfield in the City of London.

PPU arrangements

5. On 21 August 2014, Barts issued a Contract Notice seeking a provider to design, build, finance, and operate a private patient facility on one or potentially more of its sites.

6. The PPU will involve the provision of a long-term lease by Barts to Nuffield relating to The Old Pathology Building and the former Residential Staff Quarters (RSQ), Giltspur Street, on St Bartholomew's Hospital's site in Smithfield. It is expected that the PPU will focus on cardiovascular treatments, although other general private hospital services will also be available.
7. The Parties are in the final stages of negotiating the leases and an operating agreement.

Jurisdiction

8. Under article 7.1 of the Order, if the CMA reasonably believes that PPU arrangements have been created, or are in progress or contemplation and will be carried into effect, it must decide whether there are grounds to conduct a review.¹
9. The Order defines PPU arrangements as 'any arrangements for a private hospital operator to operate, manage or otherwise provide privately-funded healthcare services at a PPU in England, Wales, Northern Ireland or Scotland.'² Nuffield Health is a private hospital operator and it is contracting with Barts to establish a PPU at St Bartholomew's Hospital.
10. Therefore, the CMA reasonably believes that PPU arrangements are in progress and will be carried into effect.

Time limit

11. The Order provides that no review must be started more than four months after the day on which material facts about the relevant PPU arrangements were given to the CMA or were made public so as to be generally known or readily ascertainable.³
12. The CMA was notified of the arrangements by the Parties on 3 February 2017.
13. The CMA considers that, for these purposes, 'material facts' means sufficient facts to enable it to decide whether there are grounds to carry out a review. The CMA is satisfied that by 3 February 2017 the Parties had provided material facts about the relevant PPU arrangements.

¹ Article 7.1 of the Order. (Article 7 does not apply to arrangements which give rise to, or would if pursued give rise to, a relevant merger situation within the meaning of section 23 of the Enterprise Act 2002, see Article 12.)

² Article 2 of the Order.

³ Article 7.4 of the Order.

ASSESSMENT

14. The purpose of a PPU review is to address the likely effect of the relevant PPU arrangements on the adverse effects on competition, which the CMA's Private Healthcare Market Investigation Report⁴ (**the Report**) decided arise from high barriers to entry and expansion for private hospitals and weak competitive constraints on private hospitals in many local markets in the provision of privately-funded healthcare by private hospital operators, including in PPUs.
15. The CMA therefore assessed whether on the available evidence there were grounds for considering that the PPU arrangements would result, or may be expected to result, in a substantial lessening of competition in the provision of privately-funded healthcare services in the relevant local area.
16. In the Report, the CMA considered the area covering private hospitals and PPUs in central London⁵ as a separate geographic market.⁶
17. Nuffield does not currently operate any private hospital or PPU in Greater London.⁷
18. There are several large private hospitals active in central London, operated by HCA and BMI, which provide a range of hospital services including cardiovascular treatments. In addition, there are several large PPUs operated by other NHS trusts and foundation trusts in central London, which also provide a range of hospital services.
19. The CMA therefore believes that there are no grounds for considering that Nuffield faces weak constraints in the provision of privately-funded general hospital services in the catchment area.

Conclusion

20. The evidence available indicates that there is jurisdiction to review the PPU arrangements under Part 2 of the Order and, for the reasons set out above, the CMA has found that there are no grounds for conducting a review of the PPU arrangements.

⁴ [Private Healthcare Market Investigation Report](#) (April 2014).

⁵ Central London is defined as the NUTS2 region of Inner London, which roughly coincides with the areas within the North and South Circular Roads. Inner London consists of Camden, City of London, Hackney, Hammersmith and Fulham, Haringey, Islington, Kensington and Chelsea, Lambeth, Lewisham, Newham, Southwark, Tower Hamlets, Wandsworth, and Westminster. NUTS stands for 'Nomenclature of Territorial Units for Statistics' and is a delineation of geographic areas developed and regulated by the EU.

⁶ Paragraph 5.70(c)(i) of the Report.

⁷ Greater London is defined as the NUTS2 regions named 'Inner London' and 'Outer London', roughly the area within the M25 ring road.

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