

Merger Support Team  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London WC1B 4AD

22 June 2018

Dear Sir/Madam

## **Consultation on draft guidance on the CMA's approach when reviewing Private Patient Unit (PPU) arrangements**

On behalf of our client, AXA PPP, we set out below some brief representations on the CMA's draft guidance on the CMA's approach when reviewing Private Patient Unit (PPU) arrangements. AXA PPP welcomes the CMA's decision to publish guidance on this topic, and its comments on the draft guidance fall into two main areas, as follows.

### **Factors to be taken into consideration by the CMA**

AXA PPP considers that it would be helpful to all interested parties if the guidance contained greater detail (with more specific cross references to the relevant parts of the Private Healthcare Final Report (the Report) and the Merger Assessment Guidelines) on the factors that the CMA is likely to take into account when assessing (a) whether to conduct a review of a PPU arrangement that does not qualify as a merger; and (b) in the event that a review is initiated, whether competition concerns are likely to arise. These should include, for example:

- The approach to assessing the relevant product market (e.g. by reference to the clinical specialties offered / to be offered, and the type of facility (inpatient / outpatient)) (see paragraphs 5.5 onwards of the Report)
- The approach to assessing the relevant local area over which competition is to be assessed (see paragraphs 5.58 onwards of the Report)
- The approach to assessing whether an operator faces weak competitive constraints, including e.g. the approach to market shares and the assessment of barriers to entry (see Chapter 6 of the Report)

The inclusion of the Form at Annex A is useful. However, the scope of "same geographic area" is not clear (and differs from the "relevant local area" terminology used in the guidance) which may lead to relevant information being excluded from the form. AXA PPP would suggest that either more detailed guidance is given, or that parties are requested to provide a full list of any other UK facilities in response to section 2, enabling the CMA to form its own views on the extent of any overlap. AXA PPP would also suggest that the

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Form includes a request for parties to provide contact details of key competitors and other relevant stakeholders, including private medical insurers, consistent with the approach when notifying a merger.

### **Transparency / third party consultation**

AXA PPP recognises that it is not mandatory for the CMA to publish an invitation for third parties to comment on whether a review should be conducted. However, we do not see any disadvantage to the CMA in issuing such an invitation to comment (ITC) (assuming the relevant arrangements are public), in order to inform its assessment to the greatest extent possible. In AXA PPP's view, the CMA's default position should be to issue an ITC, unless there are particular reasons not to do so.

Once a review is underway, it is not entirely clear from paragraphs 3.8 and 4.15 of the draft guidance whether the CMA would issue an ITC, or decide itself which third parties to approach. Again, we see no reason why the CMA should not, at the outset of a review, publish details of the review (as set out in paragraph 3.9 of its Transparency and Disclosure Guidance) and invite comments, consistent with its approach in merger reviews. We would encourage the CMA to make this clearer in the guidance.

Finally, we note that the reviews that the CMA has conducted to date are not easy to find on the CMA website. Once the guidance has been finalised it would be helpful to create a separate page on the CMA's website with links to the Order, the guidance and the CMA's decisions.

We would be happy to discuss these comments if useful.

Yours sincerely

- Sent by email -

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Counsel