

CMA guidance on the review of PPU arrangements under the Private Healthcare Market Investigation Order 2014

Consultation document

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1. About the consultation

Introduction

- 1.1 As a result of its Private healthcare market investigation (2014) the Competition and Markets Authority (CMA) made the Private Healthcare Market Investigation Order 2014 (the Order) which contains a market-opening remedy in the form of a scheme to enable the CMA to review Private Patient Unit (PPU) arrangements.¹
- 1.2 The PPU scheme set out in the Order is intended to complement the merger control regime that applies to all market sectors. Thus, PPU arrangements which constitute 'relevant merger situations' under Part 3 of the Enterprise Act 2002 (the Act) are subject to review under the merger control regime.² However, where PPU arrangements do not constitute a relevant merger situation, Part 2 of the Order allows the CMA to review the impact on competition of those arrangements, having regard to the competitive constraints in the relevant local area and, if appropriate, take remedial action.
- 1.3 The CMA is consulting on a draft guidance on its approach to the review of PPU arrangements under the Order. That is, arrangements for a private hospital operator to operate, manage, or otherwise provide privately-funded healthcare services at a private patient unit in England, Wales, Northern Ireland, or Scotland.
- 1.4 This draft guidance is concerned with those PPU arrangements which do not constitute relevant merger situations under the Act and fall within the scope of Part 2 of the Order. To date the CMA has reviewed three PPU arrangements.³ This experience is reflected in the draft guidance to the sector.

Scope of this consultation

- 1.5 The CMA is consulting on its draft guidance on the review of PPU arrangements under the Order. This draft guidance is intended to provide

¹ The CMA's report on the private healthcare market investigation (April 2014) and the Order are available on the CMA's webpage relating to the private healthcare market investigation, at <https://www.gov.uk/cma-cases/private-healthcare-market-investigation>. Part 2 of the Order, which relates to PPU arrangements, entered into force on 1 October 2014.

² See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#) and [CMA guidance on the review of NHS mergers \(CMA29\)](#). Readers may also find it helpful to read NHSI's guidance on relevant customer benefits, available at https://improvement.nhs.uk/uploads/documents/Monitor_mergerbenefits_guidance_8NohSvz.pdf

³ CMA's decision of 18 August 2017 on [HCA and University Hospitals Birmingham: PPU arrangements](#); CMA's decision of 6 April 2017 on [Nuffield Health and Barts Health NHS Trust: PPU arrangements](#); and CMA's decision of 4 June 2015 on [HCA and University Hospital of South Manchester: PPU arrangements](#).

parties to PPU arrangements (which do not constitute relevant merger situations under the Act and fall within the scope of Part 2 of the Order) with an overview of the approach of the CMA when reviewing PPU arrangements under the Order.

- 1.6 This draft guidance should be read in conjunction with the Order and its explanatory notes, and the CMA's report on the Private healthcare market investigation (the **Report**).⁴
- 1.7 The specific questions on which we are seeking respondents' views are provided in section 2.
- 1.8 We are seeking the views of interested parties, particularly parties to PPU arrangements and their legal or other advisers who have been involved in these processes.

Consultation process

- 1.9 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments. We would welcome your comments on the draft guidance. In particular, we want to ensure that it is clear and contains sufficient information for parties to PPU arrangements and their advisers.

How to respond

- 1.10 We encourage you to respond to the consultation in writing (by email or alternatively in writing by letter) using the contact details provided in paragraph 1.13 below.
- 1.11 When responding to this consultation please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 1.12 In pursuance of our policy of openness and transparency, we will publish non-confidential version of responses on our webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on our

⁴ The Report, the Order and the explanatory notes are available on the CMA's webpage relating to the private healthcare market investigation, at <https://www.gov.uk/cma-cases/private-healthcare-market-investigation>.

webpages which omits that material and which explains why you regard it as sensitive at the same time.

Duration

- 1.13 The consultation will run for three weeks, from 1 June 2018 to 22 June 2018. Responses should be submitted by post or email and should be sent to:

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

Email: MergerSupportTeam@cma.gsi.gov.uk

Compliance with government consultation principles

- 1.14 In consulting, the CMA has taken into account the published [government consultation principles](#), which set out the principles that government departments and other public bodies should adopt when consulting with stakeholders.

Statement about how we use information and personal data that is supplied in consultation responses

- 1.15 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018.
- 1.16 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 1.17 We are processing this personal data for the purposes of our work. This work relates to the issuance of guidance on the CMA's approach to the review of PPU arrangements under the [Private Healthcare Market Investigation Order 2014](#), for which we are consulting. This processing is necessary for the performance of our functions and is carried out in the public interest in order to take consultation responses into account.
- 1.18 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact us, details of the CMA's

Data Protection Officer, and how long we retain personal data, see our [Privacy Notice](#).

- 1.19 Our use of all information and personal data that we receive is also subject to Part 9 of the Enterprise Act 2002.
- 1.20 We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.
- 1.21 Please note that information and personal data provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding such requests, we will take fully into account representations made by you here in support of confidentiality. We will also be mindful of our responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.
- 1.22 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

After the consultation

- 1.23 After the consultation, we will publish a final version of the guidance and a summary of the responses received that fall within the scope of the consultation. As noted above, we propose to publish non-confidential versions of the responses received. These documents will be available on our webpages and respondents will be notified when they are available.

2. Questions for consideration

- Q1. Is the content, format and presentation of the draft guidance sufficiently clear? If there are particular parts of the guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- Q2. Is the draft guidance sufficiently comprehensive? Does it have any significant omissions? Do you have any suggestions for additional or revised content that you would find helpful?
- Q3. Do you have any other comments on the draft guidance?