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CC: Ms Christiane Kent

19 April 2012

Dear Mr Pigott,

**Market Investigation Reference – Private healthcare**

This letter is provided to the Competition Commission ("CC") in response to the Office of Fair Trading ("OFT") Decision on 4 April 2012 (the "Decision") to make a market investigation reference in respect of privately-funded healthcare (PH) in the UK.

**Bupa welcomes the OFT's Decision and looks forward to assisting the CC with its investigation**

Bupa supports the decision to make a market investigation reference and looks forward to working constructively with the CC to help it understand how competition works within the market and how the consumer could be best served by it. We would be happy to talk the CC through the evidence we have already submitted to the OFT during its market study. Building on those submissions, this letter sets out what Bupa considers the key issues for the CC investigation should be.

Bupa is committed to the long-term sustainability of the UK PH market. We want consumers to be able to access high quality and affordable PH, and a competitive and diverse marketplace of providers is needed to achieve this. As an organisation without any shareholders, Bupa seeks to represent the interests of our members to achieve high quality and affordable PH in everything that we do.

We share the OFT's concerns that a number of features of the market for PH provision distort, restrict and prevent effective competition between hospitals and between consultants. We believe these features relate both to the structure of the PH provision market and to the conduct of certain hospitals and consultants within it. These features harm consumers directly by leading to higher costs of care, less choice, suboptimal quality and weakened innovation. And, over time, they have contributed to PH becoming increasingly unaffordable, which puts at risk the long term sustainability of this important market for all UK consumers.

Many of the features are now firmly entrenched and in some cases actively protected by hospitals and consultants that benefit from them. Patients and private medical insurers, acting on their policyholders' behalf, do not have the countervailing buyer

power to deliver substantive improvements in the market. We therefore believe the CC needs to take decisive action either to remedy the features distorting competition directly or to protect against their negative impact on consumers.

### **Key issues for the CC to consider in its investigation**

We know the CC starts afresh in its examination of issues; however, we consider that the OFT's Decision provides strong foundations for the CC's investigation on the following issues:

- To understand the dynamics of competition in this market it is critical to understand the patient's treatment journey, the various influences and actors along it, and the ability and incentives of these players to make decisions that impact on the patient. These decisions have both clinical and financial dimensions as both are important to patients' satisfaction and ongoing use of PH. However, GPs and consultants do not always consider the financial impact of their decisions and some have conflicts of interest (often undeclared). This increases costs in the system, dulls price competition between hospitals and between consultants, and results in conflicts of interest that may unfairly constrain consumers' choice. Additionally, the fee for service model impacts on the incentives of both hospitals and consultants in relation to the type and volume of treatment they provide to patients.<sup>1</sup> For these reasons, Bupa considers it important the CC understands the patient journey (building on the strong analysis conducted by the OFT through its surveys), as this will impact the design of remedies that can most effectively improve the value for money and quality patients receive from PH.
- A large number of hospitals in the UK have market power in the narrow local markets they serve (overall and at the level of specialties). These hospitals, or the hospital group which owns them, use this market power in their interactions with self-pay patients and insurers (impacting pricing and quality), and often actively entrench the market positions through conduct that builds barriers to entry and expansion for other providers. The Decision overstates the effectiveness of competition between hospital groups at the national level. The five large hospital groups do not compete head-to-head across the UK and estimates of concentration at a national level are therefore misleading. This is particularly the case in central London where only one hospital group has a significant presence. Bupa does not consider hospital competition in London to be effective, and believes that remedies are needed in this market.
- Hospital competition for consultants does not necessarily translate into good outcomes for patients. Direct and indirect consultant (and GP) incentive schemes add cost to the system without necessarily improving outcomes for

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<sup>1</sup> The 'fee for service' model means that payments to consultants and PH providers are dependent on the quantity of treatments provided rather than the quality of care (or outcomes) provided.

patients and, in specific cases, can be used by existing hospitals to build barriers to entry and expansion. Bupa believes there should be transparent declaration of incentive schemes by both hospitals and consultants, and that certain types of scheme should be prohibited.

- The OFT is correct that insurers do not have countervailing buyer power. There are limits to the ability of PMI providers to exercise buyer power due the control of PH providers over the patient journey, the need to have access to key ('must have') hospitals and the significant reputational and financial cost to insurers if negotiations with the hospital group breakdown.
- The OFT recognises that insurers use networks to incentivise competition between hospitals, but that the effectiveness of these networks has been limited by the actions of larger hospital groups. The actions of these hospital groups – in particular 'one in, all in' negotiation tactics – have contributed to barriers to entry for other hospitals and have restricted the ability of insurers to launch innovative PMI products.
- A lack of comparable information on the quality and costs of hospitals and consultants undermines effective decision making by patients, GPs and insurers. These information asymmetries shield less efficient providers from competition, meaning higher quality providers are not rewarded for their efforts and innovation. As the OFT notes, the actions by hospitals to resolve the asymmetries has lacked sufficient pace, coverage and robustness. And very little progress has been made by consultants in providing comparable information on both quality and costs. These asymmetries are preventing the development of more flexible, innovative, and affordable private medical insurance products, as well as causing consumer harm in the form of shortfalls and uninformed patient decisions about the choices available to them. The Decision is correct that resolving information asymmetries will require the mandatory participation of all PH providers if it is to improve the market over the longer term. Bupa believes, however, that information transparency, while part of a long term solution, is not sufficient on its own and that further remedies should be applied directly by the CC.
- The OFT recognises the important role insurer benefit limits play in controlling consultant costs for patients. Consultant fees are not under sufficient competitive pressure in part because of the lack of comparable information on consultant quality and performance, but also because of issues such as increasing switching costs as the patient moves through his or her treatment journey.
- The growing trend for consultants (notably anaesthetists) to form into groups can have negative impacts on choice and the cost of care for patients within affected local markets. Bupa has evidence, and has received complaints from policyholders directly, that some of these groups have significantly higher incidence of fee shortfalls than the average, and that patients feel they have little choice but to pay the shortfall because the vast majority of consultants in

the relevant hospital or local area are members of the group. Bupa would like the CC to consider the activities of these groups and provide guidance on when they are in the patient's interests and when they are not.

In addition to the issues raised in the OFT's Decision, Bupa considers the following issues as important for the CC investigation:

- The prevalence of material treatment variation between certain hospitals and consultants. Treatment variation may appear to be only a clinical issue, but it is also driven by the fee for service model, a lack of comparable data on consultant/hospital performance, and the incentives of players along the patient journey. It is driving significant additional costs into the PH system and will continue in the absence of effective competitive pressure and information transparency. The CC should, therefore, consider how these incentives and effects can be mitigated.
- Certain hospitals and consultants claim their high prices are justified by the higher quality of service that is provided. Bupa, however, is not aware of any evidence that hospital/consultant quality is correlated with price, nor evidence that the claimed economies of scale and scope by large hospital groups translate into better value for money for patients. The CC should, therefore, investigate the evidence supporting these claims.
- Competitive neutrality between the NHS and the private sector is desirable. But the issue of competitive neutrality is complex and should not be a priority for the CC investigation. The focus of the CC investigation should be on remedying the issues at the heart of the PH market that will unlock most value to patients. As the OFT Decision notes the majority of NHS PPU's are not effective competitors in PH and there is not compelling evidence that this will change - even with the removal of the private patient income cap. Therefore, any improvements to competitive neutrality would have effects only at the margins of the market (and may have no effect at all if other distortive features remain).

Bupa believes decisive action is needed from the CC to protect current and future consumers of PH.

#### **Next steps**

Bupa looks forward to assisting the CC in providing the evidence it requires. Bupa also welcomes the CC to visit Bupa to meet with our senior management and staff.

Yours sincerely,

**Natalie-Jane Macdonald**  
**Managing Director, Bupa Health & Wellbeing**