

# **Private healthcare - final statement of scope**

March 2011

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## **1 EXECUTIVE SUMMARY**

- 1.1 The OFT has commenced a market study into the market for the provision of Private Healthcare (PH) treatment and services in the United Kingdom (UK)<sup>1</sup> in order to examine whether the market is working well for consumers and, if not, whether there is potential for improving how it functions.
- 1.2 The market for PH encompasses a range of medical treatments, which are mainly privately funded, and provided to patients via private hospitals/clinics, through the services of consultants and other medical professionals who work within these facilities. The OFT's consideration of PH primarily will focus on the provision of the most commonly sought acute medical treatments provided in such PH facilities to privately funded patients.
- 1.3 In 2009 the total value of the market for PH in the UK was estimated at just over £5.8 billion. Private hospitals and clinics account for the largest part of the overall PH market, generating an estimated £3.75 billion in revenue during 2009. Fees to surgeons, anaesthetists and physicians generated an estimated £1.6 billion in 2009.<sup>2</sup>

### **What prompted this market study**

- 1.4 On 14 December 2010, the OFT announced its proposal to conduct a market study, and published a Scoping Paper<sup>3</sup> for consultation setting out

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<sup>1</sup> For ease, referred to as the 'market for PH' in this document. The OFT's use of the term 'market' or 'sector' in this paper is not intended to suggest that the OFT has reached any conclusion on any relevant market definition according to the standard OFT analysis as set out in Market definition, understanding competition law guideline OFT403 December 2004  
[http://www.oft.gov.uk/OFTwork/publications/publication-categories/guidance/competition\\_act/oft403](http://www.oft.gov.uk/OFTwork/publications/publication-categories/guidance/competition_act/oft403)

<sup>2</sup> All data in this paper is provided from Laing's Healthcare Market Review 2010-2011, Laing & Buisson, 23rd edition 2009 (L&B Review), Table 1.2, page 35. Note, the £5.8bn total market figure does not include revenue from mental health hospitals or long-term care of the elderly.

<sup>3</sup> Private Healthcare – A Scoping Paper, OFT 1295 December 2010.

the proposed scope of its examination based on preliminary research into the market and submissions from a number of market participants, which called into question whether the market for PH is working effectively. This suggested to the OFT that consumers of PH may not be receiving the benefits of a fully competitive market.

- 1.5 The OFT's preliminary research indicated that there have been a number of changes in the market for PH over the last decade, in particular consolidation amongst private hospital providers and a move by Private Medical Insurers (PMI) providers away from vertical integration and towards a greater reliance on network arrangements with PH providers. Increasingly, there is also a greater usage of the PH sector by the NHS. The NHS is the second largest funder of medical treatments provided via PH and this funding has more than doubled in the last four years.
- 1.6 Following the publication of its Scoping Paper, the OFT received over 100 responses from a range of stakeholders including: PH providers, PMIs, consultants, other medical professionals, professional bodies, Government and regulatory bodies, and consumers. The OFT also held a number of meetings with market participants and sought views on the proposed scope from an Expert Panel comprising of representatives from the Department of Health, Monitor, the Competition and Cooperation Panel (CCP) and leading academics in health economics. The OFT will continue to seek their views at various stages of this market study.
- 1.7 These submissions and discussions confirmed that there are a number of concerns which merit further consideration.

## **Summary of scope**

- 1.8 The OFT has taken into consideration the submissions that it received and the meetings it held with market participants in determining the finalised scope of this market study into PH.
- 1.9 The focus of the market study remains similar to that set out in the Scoping Paper, with the following five core areas to be examined:

- the nature of competition in the provision of PH
  - levels of concentration across suppliers in the provision of PH
  - barriers to entry in the provision of PH
  - potential constraints on the ability of consultants and other medical professionals to practice, and
  - constraints on consumers in relation to how they access and assess information, and how they exercise choice in the provision of PH.
- 1.10 The changes from the Scoping Paper are mainly clarificatory in nature, and cover how the OFT will consider:
- the role of the NHS (see paragraphs 3.4 to 3.12)
  - the role of consultants (see paragraphs 3.20 to 3.22), and
  - the role of PMI (see paragraphs 3.27 to 3.29 and 3.33 to 3.35).
- 1.11 In order to ensure that the OFT can deliver a suitably targeted market study in a timely manner, the market study will focus on the provision of the most commonly sought acute medical treatments provided in PH facilities, and the actions of those professionals who provide these services. The OFT will identify these specific treatments shortly through discussions with relevant market participants. While this will mean that a number of treatments are not directly examined as part of the market study, the aim is that any findings and recommendations that the OFT makes will have a more general application across a wider range of PH services, and will not just be limited to those that are directly within scope.

## **Next steps**

- 1.12 The first phase of the project is expected to last until early summer, during which time the OFT will meet with, gather and assess evidence from interested parties. The final duration and scope of the project will

depend on the outcome of this first phase, and the OFT plans to issue a progress statement in late summer. The market study is expected to be completed by the end of 2011.

1.13 The remainder of this paper provides information on the following:

- the role and possible outcomes of a market study
- the finalised scope of the market study, and
- information on how to respond to this paper.

## **Transparency**

1.14 The OFT is committed to working constructively and transparently with interested parties during the market study. The OFT's website page<sup>4</sup> will be updated as the market study progresses and will include, amongst other things, further information on timing and contact details for key team members. If you would like to be notified when the website is updated the OFT recommends that you register on the OFT website ([www.oft.gov.uk/subscribe](http://www.oft.gov.uk/subscribe)).

1.15 Parties wishing to obtain further information on the market study should contact:

- Senior Responsible Officer: Sonya Branch on 020 7211 8707,  
[sonya.branch@oft.gsi.gov.uk](mailto:sonya.branch@oft.gsi.gov.uk)
- Project Director: Alastair Mordaunt on 020 7211 5819,  
[alastair.mordaunt@oft.gsi.gov.uk](mailto:alastair.mordaunt@oft.gsi.gov.uk)
- Team Leader: Sue Aspinall on 020 7211 8788,  
[sue.aspinall@oft.gsi.gov.uk](mailto:sue.aspinall@oft.gsi.gov.uk)
- Lead Economist: Philip Hand on 020 7211 8477,  
[philip.hand@oft.gsi.gov.uk](mailto:philip.hand@oft.gsi.gov.uk)

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<sup>4</sup> Available at: [www.oft.gov.uk/private-healthcare](http://www.oft.gov.uk/private-healthcare)

## **2 THE ROLE AND POSSIBLE OUTCOMES OF A MARKET STUDY**

### **Role of a market study**

- 2.1 The OFT aims to make markets work well for consumers. It achieves this by promoting and protecting consumer interests throughout the UK, while ensuring that businesses are fair and competitive.
- 2.2 Typically, market studies are examinations into the causes of why particular markets may not be working well for consumers, leading to proposals as to how they might be made to work better. They take an overview of regulatory and other economic drivers in a market and patterns of consumer and business behaviour.<sup>5</sup>

### **Possible outcomes of a market study**

- 2.3 Market studies can lead to a range of outcomes. They may conclude that a market can be given a clean bill of health and that initial concerns about consumer detriment are not substantiated by the information collected over the course of the market study.
- 2.4 Where the market is found not to be working well, there are several options that OFT will consider to address the causes. These may include one or more of the following:
  - recommendations to the industry, including for example consultants, GPs, PH providers and PMI providers
  - improving the quality of information available to patients regarding, for example, their decisions over choice of consultant and/or private hospitals

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<sup>5</sup> Further details about the OFT's approach to market studies can be found in the OFT's publication *Market Studies: Guidance on the OFT approach* (June 2010) [www.oft.gov.uk/shared\\_oft/business\\_leaflets/enterprise\\_act/oft519.pdf](http://www.oft.gov.uk/shared_oft/business_leaflets/enterprise_act/oft519.pdf).

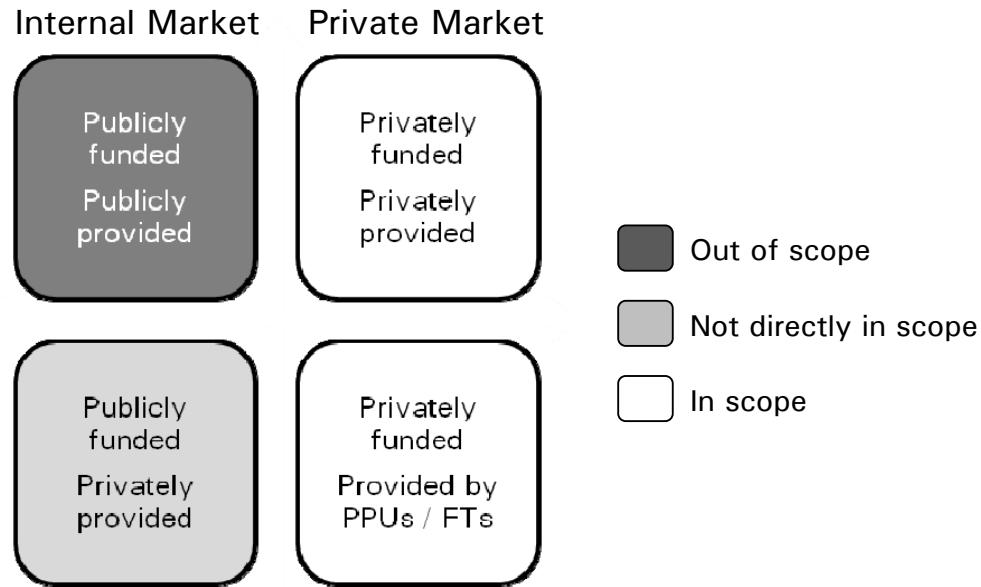
- investigations and enforcement action against businesses suspected of breaching consumer or competition law
  - making a market investigation reference to the Competition Commission
  - recommendations to Government, and
  - an OFT-led consumer campaign.
- 2.5 The above is merely an illustrative list of possible outcomes. At this stage, it is not clear which outcomes, or combination of outcomes, may be appropriate to address any concerns that the OFT may identify during the course of this proposed market study.

### **3 FINAL SCOPE OF THE MARKET STUDY**

- 3.1 Following its consultation on the proposed scope, the OFT has considered over 100 submissions and conducted meetings with a number of interested parties. The majority of consultees support the examination of the issues identified in the Scoping Paper, but a number also sought clarification and/or expansion of the proposed scope in certain respects.
- 3.2 Taking each of the five core areas identified in the Scoping Paper in turn (see paragraph 1.9 above), the OFT sets out in this section the finalised scope, and, in doing so, the OFT explains whether the scope has altered and, if so, how. For ease, a summary of the key differences between the proposed scope and Final Scope is set out in Annex A at the end of this paper.

#### **Nature of competition in the provision of PH**

- 3.3 In the Scoping Paper, the OFT said that it will consider issues around the nature of competition in the provision of PH, in particular the main parameters on which PH providers compete (for example, price and quality of treatment). The OFT did not receive any submissions that suggested this would not be appropriate.
- 3.4 As regards the role of the NHS, the OFT said that it would take account of how the NHS feeds into competition for the provision of PH, both as a potential supplier (for example, through NHS hospital Private Patient Units or PPUs) and as a funding source for PH (for example, where NHS patients receive medical treatment from private providers), albeit that these treatments are publicly funded.
- 3.5 The diagram below divides the healthcare market into four areas split by provider status and funding source. The shadings show the differing focus of the OFT study:



- 3.6 A number of consultees said it was important that the role of the NHS, both as potential supplier and procurer should be directly within scope, in order to see the 'full picture' given that the healthcare market is now truly a 'mixed' market (that is, it is a combination of the public and private sectors). More specifically, some consultees noted that:
- The NHS is the second largest procurer of services (after PMIs) from PH providers on behalf of NHS patients, most recently through the universal introduction of patient choice from 2007 onwards, including the current Government's 'Any Willing Provider' initiative.<sup>6</sup>

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<sup>6</sup> See the Department of Health's NHS White Paper, Equity and excellence: Liberating the NHS, published on 12 July 2010 and available at: [www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/@ps/documents/digitalasset/dh\\_117794.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_117794.pdf).

- The NHS may become a more significant provider of PH if the proposal to remove the cap on private income for Foundation Trusts hospitals is included in the Health Bill.<sup>7</sup>

3.7 A number of consultees also expressed concerns that:

- PPUs appear to enjoy several unfair competitive advantages including access to state funded pensions, corporation and VAT exemptions, no regulatory fees and access to facilities such as NHS intensive care units, and that the NHS is cross-subsidising PPUs to create an unlevel playing field with PH providers.
  - NHS Trusts appear to be imposing restrictions on NHS consultants requiring them to limit their private practice to a PPU which may then limit the supply of consultants (or their time) to independent PH providers.
- 3.8 Some consultees suggested, however, that the OFT should not look at the NHS's<sup>8</sup> role as a procurer of PH since this aspect of the market had different characteristics in both the way that it is procured, and how it is supplied by PH providers. In particular, pricing is set at the level of the NHS tariff,<sup>9</sup> and the patient pathway and specification is set by the commissioning Primary Care Trust.<sup>10</sup> By contrast, privately funded patients receive a number of additional benefits such as choice of consultant, date of outpatient appointment, and more immediate access to treatment. Pricing is negotiated separately with each purchaser, the large majority of whom are PMIs acting on behalf of their customers.

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<sup>7</sup> [www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/HealthandSocialCareBill2011/index.htm](http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/HealthandSocialCareBill2011/index.htm). The income cap applies to Foundation Trusts (not NHS Trusts), and limits their income from PH to 3 per cent of total earnings.

<sup>8</sup> Currently managed by Primary Care Trusts.

<sup>9</sup> <http://data.gov.uk/dataset/payment-by-results-2010-11-national-tariff-information>

<sup>10</sup> [www.nhs.uk/NHSEngland/thenhs/about/Pages/authoritiesandtrusts.aspx#primary](http://www.nhs.uk/NHSEngland/thenhs/about/Pages/authoritiesandtrusts.aspx#primary)

## **Finalised scope**

- 3.9 The focus of the market study will be on the provision of **privately funded** PH – this includes the provision of PH by public providers (that is, PPUs) as well as private providers.
- 3.10 The OFT will therefore assess the extent to which PPUs can be considered to form part of the PH market (as the OFT has done in past merger reviews),<sup>11</sup> and will cover the possible issues raised in paragraphs 3.6 and 3.7 above. The OFT is aware, however, that some of these issues (such as the potential impact of the private patient income cap, and concerns expressed around any potential financial advantages enjoyed by PPUs over private providers) are relevant to and/or are already under consideration by other bodies, such as the CCP, Monitor and the Department of Health. The OFT will therefore maintain close liaison with these bodies during this market study.
- 3.11 While the OFT will need to understand how the **publicly funded** section of the market operates, the NHS's role as a procurer of PH is not directly within scope. This is because of the various distinguishing features from the privately funded section of the market, and the fact that this forms part of CCP's ongoing review of the 'Any Willing Provider' initiative.<sup>12</sup>
- 3.12 This means that any findings (and recommendations) that the OFT makes are likely to be focussed on the 'privately funded' section of the market. Notwithstanding this, any such findings will potentially be relevant to, and potentially have an important impact on, the 'publicly funded' section of the market.

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<sup>11</sup> See, for example, ME/4560/10 Completed acquisition by General Healthcare Group of control of four Abbey hospitals and de facto control over Transform Holdings Limited, previously part of the Covenant Healthcare Group (14 September 2010).

<sup>12</sup> [www.ccpanel.org.uk/ccp-news/index.html](http://www.ccpanel.org.uk/ccp-news/index.html)

## **Concentration of PH provision**

- 3.13 In the Scoping Paper, the OFT said that it would consider the level of market concentration amongst PH providers at the national, regional and local levels, and what impact this concentration has on the extent of competition in the market.
- 3.14 The submissions received generally supported the consideration of these issues, and therefore confirm that they are included within the scope of the market study.

## **Barriers to entry: structural**

- 3.15 In the Scoping Paper, the OFT said that it would consider whether there are structural barriers to entering or expanding into the market for PH which could deter potential entrants, or hamper the ability of recent entrants or smaller providers to compete effectively in the market to the detriment of consumers.
- 3.16 The submissions received supported this aspect of the proposed scope. In particular, a small number of consultees expressed concerns as to whether certain geographic areas had higher structural barriers due to higher start up costs and limited land for expansion. There were also concerns about whether the costs of inspection and regulation<sup>13</sup> are higher in the PH market than for NHS hospitals and whether the current regulatory regime creates significant barriers to entry for smaller innovative enterprises. Additionally, concern was also expressed as to whether the fact that private PH providers provide non-standardised or dissimilar information compared to NHS hospitals may make it difficult for the Care Quality Commission to compare performance and potentially this may lead to an increased frequency of inspection, higher regulator costs and higher regulatory fees for private PH providers than for NHS trusts.

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<sup>13</sup> For example of fees that may be applicable then please see  
[www.cqc.org.uk/guidanceforprofessionals/independenthealthcare/registration/registrationfees.cfm](http://www.cqc.org.uk/guidanceforprofessionals/independenthealthcare/registration/registrationfees.cfm)

3.17 The OFT agrees that these types of issues merit further consideration, and therefore it confirms that they are included within the scope of the market study.

### **Barriers to entry: non-structural**

- 3.18 In the Scoping Paper, the OFT said that it would also consider whether there are any non-structural barriers to entry and expansion, in particular whether there are arrangements between certain PH and PMI providers in the form of hospital 'network agreements'<sup>14</sup> making entry and expansion difficult for those PH providers not listed under these agreements.
- 3.19 The submissions received supported the OFTs consideration of these issues and, in particular, the focus on the relationships between PH providers, consultants, GPs and PMIs in general, and what impact these may have on the market for PH. Therefore, the OFT confirms that non-structural barriers such as these are included within the scope of the market study.

### **Role of consultants**

- 3.20 In the Scoping Paper, the OFT said that it would look at the actions of PH and/or PMI providers, and whether they placed any constraints on the freedom of consultants to practice to the detriment of consumers. The submissions received supported investigating further this aspect of the scope.
- 3.21 A number of submissions also requested that the OFT look at the role of consultants more generally, in particular their role in determining how patients are treated, where they are treated and by whom. This aspect of the role of consultants was in fact set out in the Scoping Paper<sup>15</sup> under

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<sup>14</sup> Network agreements are arrangements whereby PMI insurers approve only certain PH providers for the treatment of their policyholders.

<sup>15</sup> See paragraph 5.14

the 'constraints on consumers' section, and so the OFT confirms that this is included within the scope of the market study.

- 3.22 A number of submissions also asked the OFT to consider what incentives the clinician-led partnership<sup>16</sup> model places on consultants. The OFT agrees that this issue also merits further consideration, and therefore it confirms that it is now included within the scope of the market study.

## **Constraints on consumers**

- 3.23 In the Scoping Paper, the OFT said that it would look at the factors and incentives in the market for PH which influence how consumers make decisions regarding, for example, the choice of consultant and/or PH provider. It proposed that the market study would seek to examine how and when the consumers of PH are provided with choices during the patient journey from the moment a consumer first consults a GP to receiving the PH treatment. In particular, the OFT would examine the role of GPs, consultants and PMI providers in advising consumers of their healthcare choices.
- 3.24 The submissions received supported these issues as a potential area of concern, and therefore the OFT confirms that they are included within the scope of the market study.
- 3.25 A number of submissions requested that the OFT also specifically consider:
- how price and quality of PH providers feature in the decision making processes across the patient journey, particularly who makes these decisions and on what basis, and what incentives do GPs and consultants have to identify the lowest cost and highest quality pathways

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<sup>16</sup> Typically, such models involve clinical staff owning a stake in the equity of a company providing PH.

- the obstacles to publishing cost and quality information regarding private hospitals and clinics and consultants
  - how the provision of cost and quality information to GPs and patients and any requirements by PMIs to do so, compare to what is provided by PH providers to the NHS and
  - the extent to which patients have clarity about consultant charges, and are given choices as to which consultants to use - in particular where use of a particular consultant will mean that the costs incurred exceed a patient's insurance cover.
- 3.26 The OFT agrees that these issues also merit further consideration in order to fully assess the constraints on consumers, and therefore it confirms that they are now included within the scope of the market.
- Issues arising at 'point of sale' of PMI are excluded**
- 3.27 The OFT's main focus in examining any constraints on consumers when making decisions as to the appropriate consultant and PH provider, is at the point of referral by a GP (or consultant) to a consultant (or PH provider).
- 3.28 The OFT had originally said in its Scoping Paper that it would also consider certain issues at the 'point of sale' of PMI. For example:
- Whether certain terms and conditions in PMI policies (or lack thereof) result in consumer decisions which are likely to have adverse effects on competition in the market for PH.
  - Whether certain aspects of PMI cover make switching policies difficult such as the fact that known medical conditions may be excluded from any new policy.
- 3.29 In order to ensure that the OFT can deliver a suitably targeted market study in a timely manner, the OFT will not include any issues arising at the 'point of sale' of PMI within scope. This will permit the OFT to focus on the 'point of referral', which is the start of the patient's access to PH. The

OFT also notes that issues relating to transparency of terms and conditions at the 'point of sale' fall within the remit of the FSA. The OFT will direct concerns raised in this regard to the FSA.<sup>17</sup>

## **Other aspects of PH raised during the consultation**

### **Treatments and medical professionals within scope**

3.30 In the Scoping Paper, the OFT proposed that the scope of the market study should consider a range of medical treatments, which are mainly privately funded,<sup>18</sup> and provided to patients via private hospitals/clinics through the services of consultants and other medical professionals who work within these facilities. The OFT proposed that the definition of PH primarily will focus on the provision of acute medical treatment<sup>19</sup> and not on the treatment of longer term conditions.<sup>20</sup>

3.31 A number of submissions asked for the scope to be extended so as to:

- include all professionals who provide acute private healthcare such as anaesthetists, psychologists, therapists, counsellors and physiotherapists and acute mental health, and
- consider all facilities which provide acute treatment.

3.32 In order to ensure that the OFT can deliver a suitably targeted market study in a timely manner, the OFT will focus on the most commonly

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<sup>17</sup> The OFT plans to contact those consultees who wrote with these concerns and ask whether it can direct their submissions to the FSA.

<sup>18</sup> Private Healthcare- A Scoping Paper, OFT 1295 December 2010, See paragraph 3.3 for details of funding mix.

<sup>19</sup> Short-term medical treatment, usually in a hospital or out-patient facility, for patients having a brief but severe illness or injury or recovering from surgery.

<sup>20</sup> The OFT does not propose focusing on longer term treatments such as long-term mental health treatment and long-term care of the elderly.

sought acute medical treatments provided in PH facilities, and the actions of those professionals who provide these services. The OFT will identify these specific treatments shortly through discussions with relevant market participants. While this will mean that a number of treatments are not directly examined as part of the market study, the aim is that any findings and recommendations that the OFT makes will have a more general application across a wider range of PH services, and will not just be limited to those that are directly within scope.

### **Private Medical Insurance**

- 3.33 In the Scoping Paper, the OFT explained that the focus of the market study is on the provision of PH treatment/services although it recognised that PMI is a critical input into PH. In addition, where relevant, the relationship between PMI providers with PH providers would be examined within the proposed scope. The OFT did not, therefore, propose to include the following at the PMI provider level within the scope of the market study:
- data or information relating to market entry or expansion in the provision of PMI
  - a consideration of whether the market for the provision of PMI is competitive
  - innovation and diversity of PMI products, and
  - how consumers select their PMI product, for example on the basis of reputation of the provider, or branding of the product.
- 3.34 There were a number of submissions requesting that the OFT extend its scope, and consider the PMI market in its entirety on the basis that it is the major funder of PH provision in the UK. These consultees indicated that the OFT should specifically examine:
- whether the market for PMI is competitive, and the reasons for high levels of concentration

- whether the terms and conditions of PMI policies are transparent and whether insurance companies properly inform policyholders of the nature, variations, benefits and restrictions of their policies at the outset, or at the point of claim when the policyholder is potentially vulnerable.
- 3.35 The OFT does not propose to focus directly on PMI as a separate, stand-alone market, or on whether it is competitive, but instead will focus on the role of PMI in the context of the provision of PH, in particular, PMI's relationships with PH providers, consultants and GPs. This is to ensure that the OFT can deliver both a suitably targeted market study in a timely manner and one which reflects the OFT's focus on the provision of PH treatments/services. As noted above, the OFT will direct any concerns regarding the transparency of terms and conditions in PMI contracts to the FSA.

## **4 CONTACTING THE OFT**

- 4.1 The OFT will be contacting specific bodies directly seeking specific information within the next few weeks.
- 4.2 Interested parties can also submit any comments that are relevant to this market study by email to [privatehealthcare@oft.gsi.gov.uk](mailto:privatehealthcare@oft.gsi.gov.uk), or write to us at:

Private Healthcare Team  
Services Group  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX

- 4.3 Respondents are asked to supply a brief summary of the interests or organisations they represent, where appropriate.

### **Update on progress**

- 4.4 The first phase of the project is expected to last until early summer, during which time the OFT will meet with, and gather and assess evidence from interested parties. The final duration and scope of the project will depend on the outcome of this first phase, and the OFT plans to issue a progress statement in late summer. The market study is expected to be completed by the end of 2011.
- 4.5 Additional information about this market study, including information on next steps and timing will be added to the Private Healthcare Market Study webpage<sup>21</sup> on the OFT's website as appropriate.

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<sup>21</sup> [www.oft.gov.uk/private-healthcare](http://www.oft.gov.uk/private-healthcare)

## **Disclosure of information provided to the OFT**

- 4.6 The OFT would like to make interested parties aware that it may choose to disclose information that it obtains during the course of this market study. It may also publish it in any document the OFT produces at the end of this review. In deciding whether to do so the OFT will have regard, in accordance with its statutory duties under Part 9 of the Enterprise Act 2002, to the need for excluding, so far as that is practicable, any commercial information relating to a business or any information relating to the private affairs of an individual which, if published, the OFT thinks might significantly harm the legitimate business interests of that business or, as the case may be, the individual's interests (referred to individually and collectively as 'confidential information').
- 4.7 If you should consider that the information that you will provide contains such confidential information, you should identify each separate item (for example, individual data) or category of information (for example, a row or column of data in a spreadsheet) and explain in each case why you consider it is confidential by reference to the above test - blanket requests for confidential treatment (for example, the entire submission) will not be sufficient. In the event that the OFT proposes to include any sensitive commercial or personal information in a document that will be published it will, save in exceptional circumstances, contact the relevant persons prior to publication to give them the opportunity to explain why disclosure would cause significant harm and to request excision (or aggregation or generalisation) of any material that will still be sensitive at the time of publication.
- 4.8 The OFT is also bound by the Freedom of Information Act 2000 (the 'FoIA'). Where a person makes a request in accordance with the FoIA the OFT may have to disclose whether it holds the information sought and the information itself (including confidential information). The FoIA contains exemptions (including one which may exempt confidential information) and the OFT will not have to make those disclosures if an exemption applies. If you consider that any information you provide may be exempt from such disclosures you should say so and explain why. Similarly, to the extent that information you provide constitutes personal

data under the Data Protection Act 1998, the OFT will process such data in accordance with that Act.

## A SCOPE SUMMARY TABLE

<b>Issues</b>	<b>Proposed scope</b>	<b>Final scope</b>
<b>Nature of competition in the provision of PH</b>	Take account of how the NHS feeds into competition for the provision of PH, both as a potential supplier (for example, through NHS hospital Private Patient Units or PPUs) and as a funding source for PH (for example, where NHS patients receive medical treatment from private providers).	Clarifies that OFT will focus on the provision of privately funded PH – this includes the provision of PH by NHS Private Patient Units as well as by private providers.  The NHS's role as a procurer of PH is not directly within scope, but the OFT will seek to understand how the publicly funded section of the market operates.
<b>Concentration of PH Provision</b>	Consider the level of market concentration amongst PH providers at the national, regional and local levels, and what impact this concentration has on the extent of competition in the market.	No changes.
<b>Barriers to entry – structural barriers</b>	Consider whether there are structural barriers to entering or expanding into the market for PH which could deter potential entrants, or hamper the ability of recent entrants or smaller providers to compete effectively in the market to the	No changes, but some clarifications on what this includes.

	detriment of consumers.	
<b>Barriers to entry</b> - non-structural barriers	Consider whether there are any non-structural barriers to entry and expansion, in particular whether there are arrangements between certain PH and PMI providers in the form of hospital 'network agreements' making entry and expansion difficult for those PH providers not listed under these agreements.	No changes, but clarifies that the OFT will focus on all the relationships between PH providers, consultants, GPs and PMIs.
<b>Role of consultants</b>	Consider the actions of PH and/or PMI providers, and whether they place any constraints on the freedom of consultants to practice to the detriment of consumers.	Clarifies that the OFT will look at the role of consultants more generally, in particular their role in determining how patients are treated, where they are treated and by whom.  In addition, the OFT will examine what incentives the clinician-led partnership model places on consultants.
<b>Constraints on consumers</b>	Consider the factors and incentives in the market for PH which affects how consumers make decisions regarding, for example, the choice of consultant and/or PH provider.  Examine how and when the consumers of PH are provided	No changes, but some clarifications on what this includes.  <b>Excluded from scope</b>  Transparency of terms and conditions in PMI contracts at the point of sale, and the

	with choices during the patient journey from the moment a consumer first consults a GP to receiving the PH treatment.	ability of consumers to switch PMI provider.	
<b>Other aspects of PH raised during the consultation</b>	<p><b>Treatments and Professionals:</b> Consider a range of medical treatments, which are mainly privately funded, and provided to patients via private hospitals/clinics through the services of consultants and other medical professionals who work within these facilities. Focus on the provision of acute medical treatment and not on the treatment of longer term conditions.</p> <p><b>Private Medical Insurance:</b> The OFT did not propose to examine issues relating to the entry or expansion in the provision of PMI or to whether the market for the provision of PMI is competitive. Nor did the OFT propose to examine issues relating to the innovation and diversity of PMI products, and how consumers select their PMI product (for example, on the basis of reputation of the provider or branding of the product).</p>	The OFT will focus on the most commonly sought acute medical treatments provided in PH facilities, and the actions of those professionals who provide these services. The OFT will identify these treatments shortly through discussions with market participants.	No changes, but clarifies that the OFT will not focus directly on PMI as a separate, stand-alone market or whether it is competitive. Instead, the OFT will focus on the role of PMI in the context of the provision of PH, in particular PMIs' relationships with PH providers, consultants and GPs. The OFT will direct any concerns regarding the transparency of terms and conditions in PMI contracts to the FSA.