



**IN THE COMPETITION
APPEAL TRIBUNAL**

**Case Nos.: 1228/6/12/14
1229/6/12/14
1230/6/12/14**

BETWEEN

AXA PPP HEALTHCARE LIMITED

Applicant /
Intervener in Case No. 1229

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

-and-

**THE LONDON CLINIC
BRITISH MEDICAL ASSOCIATION
BUPA INSURANCE LIMITED
ASSOCIATION OF ANAESTHETISTS OF GREAT BRITAIN AND IRELAND
GUY'S AND ST THOMAS' NHS TRUST**

Interveners

HCA INTERNATIONAL LIMITED

Applicant /
Intervener in Case No. 1228

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

-and-

**THE LONDON CLINIC
BUPA INSURANCE LIMITED**

Interveners

FEDERATION OF INDEPENDENT PRACTITIONER ORGANISATIONS

Applicant

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

ORDER

UPON the Tribunal having made an order establishing Confidentiality Ring 1 in these proceedings on 2 July 2014 (the “Confidentiality Ring 1 Order”)

AND UPON the Tribunal having made an order establishing a data room in these proceedings on 30 July 2014

AND UPON HCA International Limited having applied to amend the Confidentiality Ring 1 Order

AND UPON there being no objections to that application

IT IS ORDERED THAT:

1. The Confidentiality Ring 1 Order be amended in the form of the Annex to this Order
2. There be liberty to apply

The Honourable Mr Justice Sales
Chairman of the Competition Appeal Tribunal

Made: 30 September 2014
Drawn: 30 September 2014

ANNEX

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos.: 1228/6/12/14
1229/6/12/14
1230/6/12/14

BETWEEN

AXA PPP HEALTHCARE LIMITED

Applicant /
Intervener in Case Nos. 1229-30

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

-and-

THE LONDON CLINIC
BRITISH MEDICAL ASSOCIATION
BUPA INSURANCE LIMITED
ASSOCIATION OF ANAESTHETISTS OF GREAT BRITAIN AND IRELAND
GUY'S AND ST THOMAS' NHS TRUST

Interveners

HCA INTERNATIONAL LIMITED

Applicant /
Intervener in Case No. 1228

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

-and-

THE LONDON CLINIC
BUPA INSURANCE LIMITED

Interveners

FEDERATION OF INDEPENDENT PRACTITIONER ORGANISATIONS

Applicant /
Intervener in Case No. 1228

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

ORDER

UPON hearing counsel for the parties at a case management conference on 25 June 2014

AND HAVING REGARD TO the terms of the Order made on 2 July 2014 regarding the future conduct of these proceedings

IT IS ORDERED THAT:

1. This Order establishes **Confidentiality Ring 1** as defined in the Tribunal's order of 2 July 2014 dealing with the conduct of the proceedings ("**Confidentiality Ring 1 Order**").
2. This Order becomes effective in respect of each of the persons named in Part A of the Schedule to this Order only upon receipt by the Tribunal of a signed undertaking in the terms of Part B of the Schedule to this Order.
3. For the purposes of this Order:
 - a. "**Confidential Information**" means
 - i. In relation to the Final Report, the information disclosed pursuant to paragraphs 5 ("**Category 1 Information**") and 7 ("**Category 2 Information**") of the Tribunal's Order of 2 July 2014 and which was redacted from the public version of the Final Report, including, for the avoidance of doubt, where that information is incorporated in the unredacted versions of the parties' pleadings and other documents filed with, or otherwise provided to, the Tribunal for the purposes of these proceedings;
 - ii. Any information incorporated in the parties' pleadings and other documents filed with, or otherwise provided to, the Tribunal for the purposes of these proceedings which is Confidential Information as defined in Schedules B and C to the Tribunal's order of 30 July 2014 ("**the Data Room Order**"), save for any information that is publicly available otherwise than as a result of a contravention of the undertakings and data room rules in Schedules B and C to the Data Room Order ("**the Data Room Information**"); and
 - iii. Other information contained in the unredacted versions of the parties' pleadings and other documents filed with, or otherwise provided to, the Tribunal for the purposes of these proceedings, where such information (i) has been identified by any party to these proceedings and (ii) is (or is likely to be) accorded confidential treatment pursuant to rule 53 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003).
 - b. "**Final Report**" is the Respondent's Final Report dated 2 April 2014, entitled "Private Healthcare Market Investigation", and supporting Appendices.
 - c. "**Relevant Advisers**" are those persons:

- i. listed in Part A of the Schedule to this Order who have given a written undertaking to the Tribunal in the terms of Part B of the Schedule to this Order; or
 - ii. authorised by the Tribunal upon further application.
4. For the purposes of paragraph 5 below:
 - a. the Category 1 Information and Category 2 Information shall be marked and highlighted in the same colour as in Confidential Version 1 of the Final Report prepared in accordance with paragraph 9 of the Tribunal's Order of 2 July 2014 and the Data Room Information shall be marked and highlighted in the same colour as the Category 1 Information;
 - b. and all other unredacted versions of pleadings and other documents served in these proceedings must be marked or highlighted so as to indicate the parts in relation to which confidential treatment is claimed, in the manner referred to in paragraph 13.22 of the Tribunal's Guide to Proceedings (October 2005).
5. Each of the parties shall hereafter disclose to the other parties the Category 1 Information, the Category 2 Information and unredacted versions of their pleadings and other documents served in these proceedings on the condition that such unredacted versions, and any Confidential Information contained within these proceedings shall be disclosed only to the Relevant Advisers or any Competition and Markets Authority staff or member working on these proceedings or the matters which have given rise to them and not to any other officer or employee of that party or to any other person, save that Confidential Information which is not Category 1 Information or Data Room Information can also be disclosed to Relevant Advisers in **Confidentiality Ring 2** as defined in the Tribunal's order of 2 July 2014 dealing with the conduct of the proceedings.
6. If any party wishes to add any additional person as a Relevant Adviser for the purposes of paragraph 3.c.ii. above, they shall apply to the Tribunal in writing, copied to the other parties, indicating whether each of the other parties consents or does not consent to the addition of that person.
7. Nothing in this Order prevents the disclosure of any information to the Competition and Markets Authority (including any Competition and Markets Authority staff or member) to facilitate the exercise of its functions.
8. Costs in the case.
9. There be liberty to apply.

SCHEDULE

PART A

This part contains the names, for each party, of Relevant Advisers:

AXA PPP Healthcare Limited

External counsel

Kelyn Bacon QC

Sarah Love (both of Brick Court Chambers)

External solicitors

Simon Pritchard

Helen Crossley

Rok Lasan (all of Linklaters LLP)

HCA International Limited

External counsel

Dinah Rose QC

Jessica Boyd

Hanif Mussa (all of Blackstone Chambers)

Josh Holmes (of Monckton Chambers)

External solicitors

Cyrus Mehta

Kabir Garyali

Ella Belsham

Jonathan Carter-Lewis

Tom Dane

Tim Sales

Christopher Tanoh (all of Nabarro LLP)

Nicholas Levy

Paul Gilbert (both of Cleary Gottlieb Steen & Hamilton LLP)

External experts

Nicola Mazzarotto

Heather Sharp

Claudio Calcagno

Joshua White

Roberto Alimonti

Giuseppe Buglione

Adam Rivers

E Wah Wan
Gregory Yap
Gotz Kunze
Adrien Cervera-Jackson
David Thomas
Helen Gardner
Patrick Baldwin
Jenny Burrage
Sanjay Raja (all of KPMG LLP)

Michael Waterson (of Warwick University)

Professor Bruce Lyons
Dr Lars Nesheim

Competition and Markets Authority

External counsel

Kassie Smith QC
Robert Palmer
Rob Williams
Brendan McGurk (all of Monckton Chambers)

External solicitors

Neera Gajjar
Muhammad Saley
Simon Bell
Richard Lancaster
Linda Maynard
Richard Hilton
Manjula Vekaria
Christopher Roylance (all of the Treasury Solicitor's Office)

The London Clinic

External counsel

Ronit Kreisberger (of Monckton Chambers)

External solicitors

Stephen Rose
Georgina Lake
Nicola Holmes (all of Eversheds LLP)

BUPA Insurance Limited

External counsel

Tim Ward QC (of Monckton Chambers)

British Medical Association

External counsel

Aidan Robertson QC (of Brick Court Chambers)

PART B

Cases:

1228/6/12/14 – AXA v Competition and Markets Authority

1229/6/12/14 – HCA v Competition and Markets Authority

1230/6/12/14 – FIPO v Competition and Markets Authority

In respect of any Confidential Information disclosed to them pursuant to this Order, each Relevant Adviser mentioned in Part A of this Order undertakes that they will comply with the following requirements in the following terms:

I, [name], of the [firm, company or establishment] being a [legal or other qualification] and regulated so far as my professional conduct is concerned by [regulatory body if any] undertake to the Tribunal as follows:

1. I will not disclose the Confidential Information (as defined in the Tribunal's Order of 2 July 2014, the "Confidentiality Ring 1 Order") to any person who is not a Relevant Adviser for the purposes of Confidentiality Ring 1 or a Competition and Markets Authority staff or member working on these proceedings or the matters which have given rise to them without the consent of the party originally disclosing the information or the permission of the Tribunal save for Confidential Information which is not Category 1 Information, and which I may disclose to Relevant Advisers in Confidentiality Ring 2 (as defined in the Tribunal's order of 2 July 2014 dealing with the conduct of the proceedings).
2. I will use the Confidential Information only for the purpose of these proceedings (and for no other proceedings or use).
3. The documents containing the Confidential Information will remain in my custody or the custody of the other Relevant Advisers at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
4. The production of further copies by me of the documents containing the Confidential Information shall be limited to those required for the use of the Relevant Advisers or any Competition and Markets Authority staff or member working on these proceedings or the matters which have given rise to them for the purposes of these proceedings.
5. Any copies and the documents in paper form containing the Confidential Information will be destroyed or returned to the party originally disclosing the documents at the conclusion of the present proceedings (including the determination of any appeals); any such copies and the documents containing the Confidential Information in electronic form will be returned where possible or, where that is not possible, will be rendered inaccessible from any computer system, disk or device so that it is not readily available to any person. In the event that material containing Confidential Information is to be

destroyed (or rendered inaccessible if it is in electronic form) the party destroying (or rendering the material inaccessible if it is in electronic form) shall notify the party originally disclosing the documents as to the manner of, and date of, the destruction (or rendering inaccessible if it is in electronic form).

6. Save that none of the requirements listed at paragraphs 1 to 4 above shall prevent the Relevant Advisers from disclosing to the party advised by them information (i) which that party has already seen in circumstances not subject to the provisions of the Confidentiality Ring Order or (ii) of which that party was the original sole provider; for the avoidance of doubt a party is not considered to be the original sole provider of information if any information, statement or ranking has not been derived solely from that party's data.
7. I will not advise any party in relation to any pricing negotiations between any hospital operator and any private medical insurer ('PMI') concerning the price and/or terms and conditions of services supplied to patients of the PMI for a period of two years starting from the date on which I sign these undertakings.

Signed:

Date