



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 2 as defined in the Tribunal's order of 2 July 2014 dealing with the conduct of the proceedings ("**Confidentiality Ring 2 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 paragraph 7 of the Tribunal's Order of 2 July 2014 and which was redacted from the public version of the Final Report ("**Category 2 Information**"), 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; and
 - ii. 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. Category 2 Information shall be marked and highlighted in the same colour as in Confidential Version 2 of the Final Report prepared in accordance with paragraph 9 of the Tribunal's Order of 2 July 2014;

- b. 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 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, shall be disclosed only to the Relevant Advisers or any Relevant Adviser in **Confidentiality Ring 1** (as defined in the Tribunal's order of 2 July 2014 dealing with the conduct of the proceedings) 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.
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.

The Honourable Mr Justice Sales
Chairman of the Competition Appeal Tribunal

Made: 2 July 2014
Drawn: 2 July 2014

SCHEDULE

PART A

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

AXA PPP Healthcare Limited

External solicitors

Kirsten Donnelly (of Linklaters LLP)

External experts

Mark Williams (of ECLM Economics)

Federation of Independent Practitioner Organisations

External counsel

Brian Kennelly

Emily Neil (both of Blackstone Chambers)

External solicitors

Emanuela Lecchi

Kristina Cavanna

Michaela Croft (all of Watson, Farley & Williams LLP)

BUPA Insurance Limited

External solicitors

Isabel Taylor

Alexander Chadd

Naomi Burgoyne

Anna Lyle-Smythe (all of Slaughter and May)

The Association of Anaesthetists of Great Britain and Ireland

External counsel

Anneli Howard (of Monckton Chambers)

External solicitors

Suyong Kim

Paul Castlo

Joshua Esam (all of Hogan Lovells International LLP)

Guy's and St Thomas' NHS Trust

External solicitors

Leah Blackshaw

Bernardine Adkins (both of Wragge Lawrence Graham & Co)

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 2 Order") to any person who is not a Relevant Adviser in Confidentiality Ring 1 or Confidentiality Ring 2 (as defined in the Tribunal's order of 2 July 2014 dealing with the conduct of the proceedings) 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.
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) of which that party was the original provider in these proceedings, or (ii) which that party has already seen in circumstances not subject to the provisions of the Confidentiality Ring Order.

Signed:

Date