



IN THE COMPETITION
APPEAL TRIBUNAL

Case No.: 1229/6/12/14

B E T W E E N:

HCA INTERNATIONAL LIMITED

Applicant

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

-and-

AXA PPP HEALTHCARE LIMITED
THE LONDON CLINIC
BUPA INSURANCE LIMITED

Interveners

ORDER

UPON reading the Notice of Application for review of decisions made by the Competition and Markets Authority (“the CMA”) in its investigation into the markets for privately funded healthcare services in the UK by HCA International Limited (“HCA”) dated 30 May 2014 in Case No. 1229/6/8/14

AND UPON reading HCA’s application contained in paragraphs 268 to 272 of its Notice of Application, and paragraph 3 of its skeleton argument dated 7 July 2014, for the disclosure of the data and underlying analysis which the CMA used to support the revised insured prices analysis (“the IPA”) contained in the Final Report, and in particular:

- a. the raw data which underlies the IPA;

- b. the cleaned data;
- c. full details of the methodology, analyses and various coding values used in the computer modelling to produce the IPA;
- d. the means to reproduce the full set of results from each step of the analysis, including all the standard outputs, together with all such results as are in the possession of the CMA; and
- e. the means to reproduce the full set of results of any sensitivity analysis or robustness checks which the CMA performed, together with all such results as are in the possession of the CMA

(“the Relevant Material”)

AND UPON hearing counsel for HCA, the CMA and The London Clinic at a case management conference on 8 July 2014

AND UPON the Tribunal having handed down its Ruling on HCA’s application for disclosure of the Relevant Material on 25 July 2014

AND UPON considering the terms of a draft agreed order filed by the Respondent on 29 July 2014

IT IS ORDERED THAT:

1. HCA’s application for disclosure of the Relevant Material be allowed.
2. The CMA establish, by 1 September 2014, a data room (“the Data Room”), in which HCA’s Relevant Advisers, as defined in the undertakings set out at Part B of the Schedule to this Order, have access to the Relevant Material for a period of one month.
3. The Data Room shall operate in accordance with the rules set out at Part C of the Schedule to this Order (“the Data Room Rules”).

4. The parties, upon the closure of the Data Room, agree or seek further directions in respect of the handling of any confidential material identified by HCA's Relevant Advisers which HCA wishes to introduce into the proceedings by way of amendments to its pleaded case or as evidence.
5. Costs be in the case.
6. Liberty to apply.

The Honourable Mr Justice Sales
Chairman of the Competition Appeal Tribunal

Made: 30 July 2014
Drawn: 30 July 2014

SCHEDULE

PART A

This part contains the names of Relevant Advisers:

External counsel

Dinah Rose QC
Jessica Boyd (both of Blackstone Chambers)
Josh Holmes (of Monckton Chambers)

External solicitors

Cyrus Mehta
Kabir Garyali
Ella Belsham
Jonathan Carter-Lewis
Tom Dane
Tim Sales (all of Nabarro LLP)

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

External economic advisers

Nicola Mazzarotto
Heather Sharp
Claudio Calcagno
Joshua White
Roberto Alimonti
Giuseppe Buglione
Adam Rivers
Patrick Baldwin
Jenny Burrage
Adrien Cervera-Jackson
Helen Gardner
Gotz Kunze
Sanjay Raja
David Thomas
E Wah Wan
Gregory Yap

Professor Bruce Lyons
Dr Lars Nesheim

PART B

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Each Relevant Adviser mentioned in Part A of the Schedule to this Order undertakes to 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 Confidential Information as defined below to any person who is not a Relevant Adviser for the purposes of the Order 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 (including the determination of any appeals) (and for no other proceedings or use).
3. I will comply with the rules set out in Part C of the Schedule to the Order (“the Data Room Rules”) for access to the Data Room and disclosure of the Confidential Information.
4. Save as expressly provided for in paragraph 15 of the Data Room Rules, I will not remove any Confidential Information in any format from the Data Room.
5. I will keep a record on a daily basis of any documents I take out of the Data Room which refer to or are based on the Confidential Information. I will retain all such documents until the conclusion of the present proceedings (including the determination of any appeals) and such documents will remain in my custody and will not be communicated to anyone other than a Relevant Adviser at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access. I will disclose any such document which

refers to or is based on Confidential Information only to other Relevant Advisers or such other persons permitted by the Tribunal for the purpose of the proceedings.

6. I agree that, at the conclusion of the present proceedings (including the determination of any appeals), any documents in paper form which I have prepared in the Data Room and which refer to or are based on any Confidential Information shall be destroyed; and any documents in electronic form which I have prepared in the Data Room and which refer to or are based on any Confidential Information will be rendered inaccessible from any computer system, disk or device so that such documents are not readily available to any person.
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.
8. For the purposes of these undertakings:

“Confidential Information” means information used for the purposes of the CMA’s IPA contained in the report, namely:

- (a) the raw data;
- (b) the cleaned data;
- (c) full details of the methodology, analyses and various coding values used in the computer modelling to produce the IPA;
- (d) the means to reproduce the full set of results from each step of the analysis, including all the standard outputs, together with all such results as are in the possession of the CMA; and
- (e) the means to reproduce the full sets of results from any sensitivity analysis or robustness checks which the CMA performed, together with all such results as are in the possession of the CMA,

but not including any Own Client Confidential Information or Non-Confidential Information.

“IPA” means the insured pricing analysis as described in Section 6 and Appendix 6.12 of the Report.

“Non-Confidential Information” means any information that is publicly available otherwise than as a result of a contravention of these undertakings, the Data Room Rules or section 237(3) of the Enterprise Act 2002.

“Own Client Confidential Information” means any information that relates specifically to treatments provided by HCA, including the price of such treatments.

“Relevant Adviser” means a person listed in Part A of the Schedule to the Order, or authorised by the Tribunal upon further application, who has given a written undertaking to the Tribunal in the terms of Part B to the Schedule to the Order.

“Report” means the final report of the CMA dated 2 April 2014 titled “Private Healthcare Market Investigation” (CMA 25).

[Name of Adviser]

[Signature]

[date]

PART C

DATA ROOM RULES

1. The CMA will give access to a Data Room and will disclose the Relevant Material to Relevant Advisers in the following manner at its offices at Victoria House, Southampton Row, London WC1B 4AD for the purpose of enabling Relevant Advisers to review the data and underlying analysis which the CMA used to support the IPA contained in the Report and conduct their own analysis of this data.

2. For the purposes of these Data Room rules:

“Confidential Information” means the Relevant Material with the exception of any Non-Confidential Information or Own Client Confidential Information contained in the Relevant Material.

“IPA” means the insured pricing analysis as described in Appendix 6.12 of the report.

“Non-Confidential Information” means any information that is publicly available otherwise than as a result of a contravention of the undertakings in Part B of the Schedule to the Order, these Data Room rules or section 237(3) of the Enterprise Act 2002.

“Own Client Confidential Information” means any information that relates specifically to treatments provided by HCA, including the price of such treatments.

“Personal Data” means any information which could be used with or without other information outside of the Data Room to identify an individual patient.

“Relevant Adviser” means a person listed in Part A of the Schedule to the Order, or authorised by the Tribunal upon further application, who has given a written undertaking to the Tribunal in the terms of Part B to the Schedule.

“Relevant Material” means the information used for the purposes of the CMA’s IPA contained in the Report, namely:

- (a) the raw data;
- (b) the cleaned data;
- (c) full details of the methodology, analyses and various coding values used in the computer modelling to produce the IPA;
- (d) the means to reproduce the full set of results from each step of the analysis, including all the standard outputs, together with all such results as are in the possession of the CMA; and
- (e) the means to reproduce the full sets of results from any sensitivity analysis or robustness checks which the CMA performed, together with all such results as are in the possession of the CMA.

“Report” means the final report of the CMA dated 2 April 2014 titled “Private Healthcare Market Investigation” (CMA 25).

“Working Day” means any day of the week, Monday to Friday, on which the CMA office is open, excluding public or bank holidays.

3. The Data Room will be open between 9.30am and 5:30pm on each Working Day for a period of one month beginning on [●] and ending on [●]. Relevant Advisers will advise the CMA the previous working day if they do not require access to the Data Room on the following Working Day. There is no limit to the number of Relevant Advisers, however, the CMA reserves the right to limit the number of Relevant Advisers admitted to the Data Room at any one time to not less than 10.
4. A member of CMA staff will be present in the Data Room at all times in order to assist, or call for assistance, as regards any defect with the equipment which prevents access to or analysis of the Relevant Material.
5. The Data Room will contain the following equipment giving access to the Relevant Material:

- (a) Three laptops (containing the raw data); and
 - (b) Seven laptops (containing the Relevant Material other than the raw data).
6. In particular:
- (a) The USB ports will be enabled.
 - (b) Advisers will be able to save material to the hard drive overnight;
 - (c) No internet or email capability will be available;
 - (d) The laptops will have access to three printers in the Data Room; and
 - (e) The laptops will be networked to each other.
7. The CMA will upload to the laptops a selection of standard econometric textbooks.
8. Stationery will be available in the Data Room.
9. If relevant advisers do not understand a technical aspect of the methodology used for the analysis they may ask the CMA in writing for assistance and the CMA will deal promptly with any requests.
10. Relevant Advisers must adhere to the usual rules for access to the CMA office; in particular, visitors' badges must be worn visibly at all times, and should not leave the data room at any time without first informing a member of CMA staff.
11. The CMA will use reasonable endeavours to provide Relevant Advisers with a breakout room equipped with a telephone during the hours of opening of the Data Room. Relevant Advisers may not take any Confidential Information from the Data Room into the breakout room, save as provided in paragraph 15 below.
12. Relevant Advisers must not take any recording or communications device into the Data Room, including but not limited to: mobile phones, PDAs, laptop computers and cameras.
13. Each Relevant Adviser may bring into the Data Room:

- (a) a hard copy of any written materials as the Relevant Adviser may require;
and
 - (b) such memory sticks as the Relevant Adviser requires.
14. Relevant Advisers may store all materials brought into the Data Room at the CMA office overnight and will be provided with a key to a lockable cabinet in the Data Room in which they may store any such materials securely.
15. No copy (electronic or otherwise) of the Confidential Information in whole or in part (for example all the data relating to a particular treatment or speciality or to a particular hospital operator) is to be made or removed from the Data Room in any format whatsoever, save that Relevant Advisers may take out of the Data Room the results of their analyses conducted in the Data Room (including any notes, papers or workings). Such results may include such Confidential Information as the Relevant Advisers consider necessary for the purposes of presenting or explaining their analyses or the results thereof. However, such results may not include any Personal Data.