



**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

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**ORDER**

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**UPON** reading the Notices 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 (the “Investigation”) by:

1. AXA PPP Healthcare Limited (“AXA”) dated 30 May 2014 in Case No. 1228/6/8/14;
2. HCA International Limited (“HCA”) dated 30 May 2014 in Case No. 1229/6/8/14; and
3. the Federation of Independent Practitioner Organisations (“FIPO”) dated 2 June 2014 in Case No. 1230/6/8/14

**AND UPON** reading the application made by HCA in its Notice of Application for permission to adduce expert evidence in the form of the Expert Report of Dr Nicola Mazzarotto dated 30 May 2014

**AND UPON** reading the applications for disclosure made by HCA in paragraphs 256 to 272 of its Notice of Application

**AND UPON** the CMA indicating that it does not oppose further requests for disclosure made by AXA in a letter dated 16 June 2014 and FIPO in a letter dated 24 June 2014

**AND UPON** reading an application by HCA for the hearing of a preliminary issue in relation to Ground 1 of its Notice of Application

**AND UPON** reading the requests for permission to intervene made pursuant to rule 16 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the “Tribunal Rules”) and set out in the Annex to this Order

**AND UPON** hearing counsel for the parties and the proposed interveners at a case management conference on 25 June 2014

**IT IS ORDERED THAT:**

**Forum**

1. Pursuant to rule 18 of the Tribunal Rules, the proceedings be treated as proceedings in England and Wales.

**Interventions**

2. Permission for the interventions set out in the Annex to this Order be granted.

**Evidence and Confidentiality**

3. HCA’s application for disclosure of certain sections of the CMA’s Final Report in the Investigation (the “Final Report”) in unredacted form, as set out in paragraph 267 of its Notice of Application (save that the reference to Appendix 2.2 should be read as a reference to Appendix 2.1), be granted.

4. HCA's application for disclosure of its confidential submissions, as described in paragraphs 259 to 261 of its Notice of Application (the "Confidential Submissions"), be granted.
5. The CMA prepare a version of its Final Report in relation to the Investigation ("Confidential Version 1") in which the following parts are unredacted:
  - a. The sections referred to in the CMA's letter of 27 June 2014 ("Category 1 Information"); and
  - b. The further information falling within paragraph 3 above together with the parts of the Final Report referred to in AXA's letter of 16 June 2014 and in FIPO's letter of 24 June 2014 ("Category 2 Information").
6. Confidential Version 1 of the Final Report and the Confidential Submissions shall be disclosed into a confidentiality ring ("Confidentiality Ring 1"), which shall be established by a separate order of the Tribunal. That order shall provide that any person inspecting material under Confidentiality Ring 1 shall give an undertaking in the following terms:

*"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."*
7. The CMA shall also prepare a further version of its Final Report in relation to the Investigation ("Confidential Version 2") in which the following parts are unredacted:

The information falling within paragraph 3 above (but excepting that referred to in paragraph 5(a) above) together with the parts of the Final Report referred to in AXA's letter of 16 June 2014 and in FIPO's letter of 24 June 2014 (i.e. the Category 2 Information)
8. Confidential Version 2 of the Final Report shall be disclosed into a confidentiality ring ("Confidentiality Ring 2"), which shall be established by a separate order of the Tribunal.
9. Confidential Version 1 and Confidential Version 2 shall be prepared such that:
  - a. they are each printed on different coloured paper so as to distinguish them from the published version of the Final Report and from each other; and
  - b. Category 1 Information and Category 2 Information (to the extent unredacted) are each to be shaded or marked in different colours which identify them as confidential and which distinguishes between the two different categories.
10. The CMA shall provide one copy of each of Confidential Version 1 and Confidential Version 2 to such of the solicitors to the parties and interveners as have entered into the relevant confidentiality rings by 4pm on 2 July 2014.

11. In so far as it is necessary to make reference to the confidential version of the Final Report at the final hearing of the applications, Confidential Version 1 shall be used.
12. There be liberty to any party or intervener to apply to vary the arrangements set out in paragraphs 5–11 above.
13. HCA's applications (1) to adduce expert evidence and (2) for disclosure of the CMA's insured pricing analysis be adjourned.

#### **Future Conduct of the Proceedings**

14. HCA's application for Ground 1 of its application to be heard as a preliminary issue be refused.
15. HCA, AXA and FIPO shall serve confidential versions of their Notices of Application and supporting documentation on the parties granted permission to intervene in their respective applications by 4pm on 2 July 2014 and non-confidential versions of the same documents by 4pm on 4 July 2014.
16. The London Clinic ("TLC") and BUPA Insurance Limited ("BUPA") shall file and serve Statements of Intervention in AXA's application by 4pm on 18 July 2014.
17. The CMA shall serve its Defence to the applications of HCA, AXA and FIPO by 4pm on 15 August 2014.
18. All Statements of Intervention other than as provided in paragraph 16 above shall be filed and served by 4pm on 8 September 2014.
19. HCA, AXA and FIPO shall file and serve Replies to the CMA's Defence and to the Statements of Intervention referred to in paragraph 18 above by 4pm on 29 September 2014.
20. The applications of HCA, AXA and FIPO shall be heard together, commencing on 19 January 2015, with an estimate of 7 days, with time allocated as follows:
  - a. 4 days for the hearing of HCA's application and Grounds 1 and 2 of AXA's application; and
  - b. 3 days for the hearing of FIPO's application and Grounds 3 to 5 of AXA's application.
21. Costs in the case.
22. There be liberty to apply.

**ANNEX**  
**Interventions for which permission is granted**

**Interventions in AXA's application for review dated 30 May 2014**

1. Application dated 13 June 2014 by HCA to intervene in support of the CMA.
2. Application dated 20 June 2014 by FIPO to intervene in support of the CMA.
3. Application dated 23 June 2014 by TLC to intervene in support of AXA.
4. Application dated 24 June 2014 by the Association of Anaesthetists of Great Britain and Ireland to intervene in support of the CMA.
5. Application dated 24 June 2014 by the British Medical Association to intervene in support of the CMA.
6. Application dated 24 June 2014 by BUPA to intervene in support of AXA.
7. Application dated 25 June 2014 by Guy's and St Thomas' NHS Trust in support of the CMA.

**Interventions in HCA's application for review dated 30 May 2014**

8. Application dated 19 June 2014 by AXA to intervene in support of the CMA.
9. Application dated 23 June 2014 by TLC to intervene in support of the CMA.
10. Application dated 24 June 2014 by BUPA to intervene in support of the CMA.

**Interventions in FIPO's application for review dated 2 June 2014**

11. Application dated 19 June 2014 by AXA to intervene in support of the CMA.