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FIPO NEWSLETTER – January 2014

To all Consultants

Dear Colleague,

The Competition Commission Provisional Report on Remedies

The Competition Commission (CC) has produced its Provisional Remedies Report at;
http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/private-healthcare-market-investigation

There is a short period for comments on this and then the final report will be issued at the beginning of April 2014 but is unlikely to show major changes. These remedies will be legally enforceable.

The report is positive in some ways but disappointing in the sense that the CC has looked predominantly at the macroeconomics of the situation i.e. the relationship between the insurers (PMIs) and the hospital providers and has largely ignored the issues of patient detriment and consultant relationships with the private medical insurers (PMIs).

This is a summary of the CC's report. A more detailed analysis of the report is given in the Appendix to this letter together with FIPO's comments. For the profession, perhaps the key thing to note is that the failure of the CC to address the influence of the medical insurance companies has resulted in an effective endorsement for BUPA to pursue vigorously its campaign to persuade consultants to sign up to its partnership arrangements and a schedule of fees which in the long term will make private practice uneconomic for the majority and by default for patient choice to be decimated.

Summary - Competition Commission's Provisional Remedies

Remedy 1 - Divestiture of nine private hospitals
In order to induce more local competition HCA must divest two hospitals and BMI seven hospitals because of local dominance. This may be challenged by the companies.

Remedy 3 – NHS PPU arrangements with private hospital operators
Private hospitals cannot contract with NHS PPUs if they are already dominant in that geographical area.

Remedy 4 - Ban on clinician incentives
Hospital inducements to consultants are banned (up to £500 per annum allowed). An individual consultant's equity share in hospitals owned by private hospital groups at which the consultant has practising rights or the ability to commission tests is limited to 3%. These must be bought at market price and must not be linked to any obligation to refer patients. There are no apparent restrictions on

doctors owning clinics, X-ray units etc., where there is no private hospital involvement.

Remedies 5 and 7 – Clinical outcome data
PHIN (Private Healthcare Information Network) will be supported by hospitals and PMIs who will share in the collection and publication of information on hospital and consultant performance. The structure of PHIN will be mandated and there will be professional input.

Remedy 6 – Fee Information from consultants.
Consultants will be obliged to provide consultation and procedure fees in advance where possible to patients in a prescribed written format. Hospitals will monitor that this is being done for all in-patients. Ultimately in 2 -3 years when more "quality" information is available fees will be more directly related to consultant performance, and will be published on hospital websites.

The Current Situation

The Competition Commission

The Private Patient Forum (PPF) and FIPO have submitted evidence to the Commission about patient detriment as have individual consultants and other professional groups. There is very little in the CC's Provisional Report on Remedies which deal with patient detriment and loss of choice. The CC does however say *"We have not, at this stage, made a final decision regarding customer detriment"*. We hope that patient detriment will be properly addressed in the final report.

In terms of consultant issues FIPO, along with many organisations (including the BMA, LCA, IDF, AAGBI and others) and consultants has submitted evidence about:

- The impact of "open referral" on patient care
- The changing terms and conditions of some PMI contracts for patients
- The dominance of PMIs vis a vis the consultants
- The de-recognition of consultants on dubious financial grounds
- The relentless attack on fees and reduction of patient benefits
- The barriers to entry for new consultants on fixed and very low fees
- The future economic unsustainably of consultant practice

This evidence seems to have been largely ignored. Some of it, the CC says, has fallen outside the remit of the CC's inquiry. However, there is reference to the fee charging arrangements for consultants (See Appendix). Whilst there remains a question about where and how fee information should be published, any such list would make no sense if fees are set by the PMIs. In a "fee assured" system, which does not allow subscribers to top-up or co-pay, the consultant submits his/her account to the PMI, thus totally bypassing the patient. Fee information then becomes irrelevant as under these circumstances there can be no competition on costs.

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Insurance Issues

During the Commission's work during the last 18 months or more the major insurers (Bupa and PPP) have continued to enforce their fixed fee schedules on young consultants and are trying to persuade or pressurise senior consultants to become "fee assured." Bupa is leading on this but other PMIs are following a similar strategy.

At the moment approximately 50% of consultants are Bupa "fee assured" and of those a substantial proportion, possibly 15 -20%, are newly appointed younger consultants who appear to have no option in this matter. The pressure on established consultants from Bupa is often based on the allegation that their consultation fees are in the top 10%, although in many instances this seems most unlikely. Of course in any free market there will always be some consultants who are in the top 10% (just as there will always be half the consultants who charge above average!).

Consultants must make a personal decision about how they react to the Bupa pressure but they should be clear about the meaning of this. Those who become "fee assured" should realise that they are **losing their contract with the patient**. The patient no longer has responsibility for any part of their fees.

Consultants may become "fee assured" because they are asked to just lower their consultation fees by a small amount and some have said they are still getting more than a colleague; others may feel that they are temporarily gaining patient referrals.

Of course it is clear that if the larger PMIs are ultimately successful not only will all PMIs follow suit and lower their benefits (which is already happening) but any temporary gain in volume will vanish as the general pool of patients will remain the same but the number of consultants dealing with them will have increased. This is a "no win" situation for any consultant and it will lead to quite severe economic difficulties for many.

FIPO has written to consultants previously about theses issues which can be seen here; http://www.fipo.org/docs/FIPO-Surveys.htm. Please see the "Gaming Theory" and a slide demonstration that is shown under **'Can consultants negotiate fees with insurers – an extension of game theory?'**

Consultants have asked why Bupa are trying to coerce them in to signing up to consultation fees, which may be higher or sometimes already even lower than a colleague in the same specialty that has not been approached. The point is that this is just the start of the process and the actual fee is irrelevant; it is the contract between the consultant and the PMI which matters and the patient is now no longer involved.

FIPO has calculated that the initial and follow up consultation fees for the new young consultants has been fixed at 40% below the average fees charged by established consultants. These doctors will gradually increase in number (although those going in to private practice are far less than previously) and senior doctors

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will retire. Once the PMIs reach a tipping point with the vast majority of consultants signed up (whether young or senior consultants) then experience in the USA has shown that the insurer will gradually ratchet down the benefits for all and those who fail to comply will simply be delisted.

We have given extensive evidence to the CC about the PMI actions and the economic impact of this strategy from the PMIs. We know that there are barriers to entry now for young consultants, particularly in high-risk specialities (high indemnity and general costs and low fixed fees). This information has largely been ignored by the Commission.

Future Professional Actions

Established" consultants should discuss all these matters with their local colleagues. Mostly consultants are sole traders and may not act in concert or form cartels. Each consultant must make his/her own decision. However, the full implication of these PMI approaches should be perfectly clear. FIPO does not advocate unreasonable fees and we ask always that patients are informed of their likely charges.

FIPO will go back to the Competition Commission but it seems unlikely at this late stage that they will change their position. However, we will wait to see the final outcome of the report in April and then depending on circumstances we will consider whether or not there is any formal challenge we can make at that stage.

This has been a disappointing report for both patients and the profession, as the actions of the PMIs and the resulting detrimental effect on patients has been side-lined. The FIPO board has discussed this matter in detail and we would be grateful if you would circulate this letter to all your colleagues. Do not hesitate to let us have your views and of course this does not prevent you writing to the Competition Commission at the address below to express any views you may have. If you do this then would you kindly keep us informed?

The competition may be approached through their coordinators
Julia Hawes Julie.Hawes@cc.gsi.gov.uk or
Christiane Kent Christiane.Kent@cc.gsi.gov.uk

Or write to: Ms. Julie Hawes
Inquiry Coordinator
Competition Commission
Victoria House
Southampton Row
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Please let us have your views on any of these issues.

From The FIPO Board