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DISSENTION AT CAT OVER FIPO APPEAL

By a majority judgment, the Competition Appeal Tribunal (CAT) has rejected a challenge by the Federation of Independent Practitioner Organisations (FIPO) to the finding of the Competition and Markets Authority (CMA), that the power of private medical insurers does not have an adverse effect on competition. This followed the CMA's investigation into the Private Healthcare Market. FIPO is disappointed with the outcome of the challenge

FIPO welcomes however the strong dissenting opinion of Dermot Glynn, the expert economist on the Tribunal panel. FIPO is informed that dissenting opinions such as these are an extremely rare occurrence at the CAT and Mr Glynn's opinion raises a number of pertinent questions.

FIPO considers that the incentives under which private insurers operate have not been properly investigated or understood by the CMA. As Mr Glynn notes, while insurers have an interest in the provision of high quality medical services, they also have a strong financial incentive to steer patients towards low cost medical solutions.

Unlike in a well-functioning healthcare market, patients cannot just assume that the advice they receive from the insurers is based entirely on their medical needs. FIPO agrees wholeheartedly with Mr Glynn's conclusions that because there is no real price competition between consultants vis-à-vis the policyholders, the imposition of a fee information remedy on consultants (the remedy adopted by the CMA) cannot do anything to improve the competitive outcome.

Indeed, FIPO agrees that providing this information may well facilitate tacit collusion, encouraging smaller private medical insurers to follow the Bupa or AXA PPP benefit schedules, leading to further loss of competition between consultants.

FIPO is surprised that the CMA failed to recognise that competition between consultants is restricted by the actions of the biggest medical insurers. One possible reason is that these practices were relatively new at the time of the CMA's investigation and were yet to have their full effect on the viability of private practice,

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which in turn will have knock-on effect on the NHS as recognised by Mr Glynn in his opinion.

Since the CMA Report, FIPO has seen a steady stream of new initiatives by the major PMIs, who between them control 85% of the market by revenue, further restricting effective competition between consultants.

A new policy of compulsory e-billing is being put in place across the board. In the case of AXA PPP it is accompanied by an extensive and wide ranging decrease in the benefits available to policyholders. In addition, AXA PPP “fee approved” consultants are no longer permitted to provide their patients with an account of their fees, thus removing the vital link between consultant and patient.

PruHealth has also embarked on a similar strategy of obligatory e-billing and as with AXA PPP, no patient is permitted to receive a bill from the consultant relating to their treatment. Bupa is also rolling out a policy of obligatory e-billing in addition to its long-standing fixed benefit programmes for consultants’ services.

These initiatives have been strongly promoted since the CMA issued its final report but given the nature of a challenge before the CAT, new evidence could not be used in support of FIPO’s challenge. However, in its report the CMA itself accepted that if the practices of the PMIs were to be “extensively and rigidly” applied, there could be an adverse effect on competition. The time has now come to recognise that there is such an effect. FIPO will continue to pursue all possible options available to it.

-ends-

1st May 2015

Notes to Editors

The Federation of Independent Practitioner Organisations (FIPO) represents professional independent medical organisations and specialist groups in Britain. It provides guidance, policies and co-ordination to membership organisations, acting on behalf of the profession to advance the cause of independent health care. FIPO promotes the highest standards of health care provision, which is based on expert consultant advice for best patient care and clinical outcomes monitored through hospital clinical governance and audit.

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More than twenty five professional medical organisations including Royal Colleges, the major specialist associations, the GMC and the Patients Association have signed the **FIPO Charter for Patients and their Doctors**, reaffirming their commitment to high-quality patient care. Outlined in the Charter is the ethos that governs each doctor's duties to their patients, the patient's rights and the principles inherent in best medical practice, such as the GP to consultant referral pathway.

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