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Divestment as a remedy in competition cases

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Spock checks

Breaking up markets

Two recent, important divestment cases

- **"Aggregates"** (Aggregates, Cement and RMX market investigation)
  - Divestment by LafargeTarmac of one cement plant (and possibly some RMX sites) to resolve **coordination** among Lafarge (that became LafargeTarmac in 2003), Hanson and Cemex
  - Divestment to resolve Hanson's exclusive supply of GGBS (a partial substitute for cement)

- **Private Healthcare**
  - Divestment by HCA to resolve **high concentration** in Central London
  - Implicit market share test (divest below 40% in Central London)

- **Both cases on appeal before the CAT**

- The following slides provide background useful for the subsequent panel discussion taken from the CMA final reports. In both cases, many of the CMA's findings were vigorously contested. A critique of the CMA approach is not provided in the following slides.

Aggregates, Cement and RMX: AEC finding

- Combination of structural and conduct features in the GB cement market gave rise to an **AEC through coordination**
- Coordination mechanism was over share of sales of cement made by the GB producers
- Leading to higher prices of cement than would otherwise be the case, for all cement users, and higher GGBS prices than would otherwise be the case

Aggregates, Cement and RMX: Reasoning behind AEC (1)

Conduct features of the cement market

- Focus on market share stability by the majors
- “Tit-for-tat” used to balance shares
- Price announcement letters
- Cross-sales
- Targeting of importers beyond normal competition

Structural features of the cement market

- High market concentration
- Transparency (sales and production shares, wins/losses)
- High barriers to entry
- Homogeneity of product
- Customer characteristics (regularity of purchases, concentration of customers)
- Vertical integration

Aggregates, Cement and RMX: Reasoning behind AEC (2)

Market outcomes

- Small movements in annual shares of sales despite demand slump
- Industry profitability exceeded cost of capital over the review period
- Variable profit margins remained stable (or increased) despite demand slump
- Cement importers operate at a cost disadvantage to GB producers

Internal documentary evidence

- No “smoking gun” but…
- …provided direct evidence of coordination by Lafarge, Hanson and Cemex and/or a strategic approach by them to activity in the market that was aimed at coordinating to achieve market stability
- Strength of evidence varied over time
- More recent documents provided examples of competition between the GB producers

Aggregates, Cement and RMX: Remedy decision

Remedies

- Divest one of two specific cement plants (Cauldon or Tunstead) owned by Lafarge Tarmac
- Measures aimed at reducing transparency in cement markets
- Measures to promote competition in the GGBS supply chain, including divestiture of a GGBS plant by Hanson

Justification for a cement plant divestiture

- Ability to coordinate is harder with five players than four
- Creation of a fifth player increases strategic uncertainty, with two players now outside the coordinating group
- Resolve consumer detriment (measured by excess profitability and estimate of “but for” price)

Justification for a GGBS plant divestiture

- Break-up of the exclusive position of Hanson’s supply of GGBS
- More competitive GGBS market would reduce the price of GGBS and in turn the price of cement (a partial substitute)

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Private Healthcare: Main AECs

Main AECs*

- **Self pay inpatients (some day-case and out-patients)**
- higher prices at 70 hospitals outside central London were subject to weak competitive constraints.
- BMI had 37 such hospitals, Spire 12, Nuffield 11, Ramsay 6
- Also higher self pay prices within central London set by HCA

- **Private hospital services to insurers**
- higher prices across the range of treatments being charged by HCA to private medical insurers (insurers) for hospital services to insured patients in central London.

*** Other AECs**

Consultant schemes: certain benefits and incentive schemes provided by private hospital operators which reward (directly or indirectly) referring clinicians for treating patients at, or commissioning tests from, their private healthcare facilities.

Lack of sufficient publicly available information: (i) performance information on private healthcare facilities and (ii) performance and fee information on consultants.

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Private Healthcare: Reasoning behind main AEC

Market outcomes

- **Self pay prices:**
  - Econometric regression (price concentration analysis) for self pay indicated that 20pp increase in “weighted average market share” leads to 3.4% price rise
- **Insured prices:**
  - Within central London HCA set higher prices when compared to The London Clinic
  - Outside central London, results were “mixed”
- **Quality:**
  - No issue (and hard to measure)
- **Profitability:**
  - BMI, HCA, Spire earning substantially and persistently above WACC
  - Ramsay profits above WACC only for latter years of review period
  - Nuffield (no issue)

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Private Healthcare: Remedy decision

Non-unified panel regarding insured prices outside central London

- Final decision “reverses” provisional divestments outside central London

Divestment / structural remedies

- The divestiture by HCA of either the London Bridge and the Princess Grace hospitals or the Wellington hospital including the Wellington Hospital Platinum Medical Centre (PMC).
- CMA review (under merger regime) of arrangements between NHS trusts and private hospital operators to operate or manage a PPU

Other remedies

- A restriction or ban on certain benefits and incentive schemes provided by private hospital operators to clinicians
- A combination of measures to improve the public availability of information on consultant fees and of information on the performance of consultants and private hospitals

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