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Date	23 January 2009	Email	geoffrey.kenton@oft.gsi.gov.uk

Dear Dr Meadows

Competition Act 1998: AXA-PPP Fee pricing Schedule

Thank you for your letter of 28 October 2008 on behalf of your medical trainee association. Please accept my apologies for the delay in replying.

You were concerned about change to accepted practice and the potential effect on the status of young consultants resulting from the new AXA fees schedule. This new schedule sets a standard level of reimbursement and prevents top up payments by the patient to consultants newly authorised to treat AXA patients. You allege that AXA's share of insured patients means that young consultants will have to accept an agreement that is to the detriment of those patients, as it reduces choice and quality of care, and is illegal under competition law.

While you have not expanded on how this schedule will affect competition to the detriment of consumers, we have assumed your concern follows those expressed by others: namely that by setting standard levels of price AXA is restricting competition between consultants for AXA insured patients.

It may be helpful if I mention here, that the main law covering competition in the UK is the Competition Act 1998 (the Act). The Act contains two prohibitions. The Chapter I prohibition prohibits ant-competitive agreements, such as price fixing, that restrict, distort



or prevent competition in a UK product or service market. The Chapter II prohibition prohibits conduct that amounts to an abuse of a dominant position in a UK product or service market.¹

When the OFT receives a complaint we must consider whether to undertake an investigation under the Act. In exercising this discretion we assess a case by reference to our published prioritisation principles².

Having considered your submission, we do not believe that it constitutes an administrative priority at this time.

The OFT's prioritisation principles

In order to make the best use of our resources in terms of real benefits for UK consumers, we need to ensure that we make appropriate decisions about which projects and programmes of work we undertake across all areas of our responsibility. In assessing complaints against our prioritisation principles, the OFT considers a range of factors. I will summarise the key points in that assessment below.

Impact – what is the likely effect on consumer welfare?

When prioritising current and future projects and programmes of work, the OFT will consider the benefits arising to consumers as a result of any OFT intervention. From the evidence we have seen any direct benefit to UK consumers appears to be low.

AXA's new fees schedule does not apply to established AXA consultants, but only to those who are newly appointed. Therefore the new arrangements do not have an impact on competition for or among the existing consultants who are not subject to the new fee schedule. Any consumer detriment resulting from the new arrangements therefore currently appears to be limited.

Furthermore, AXA would not seem to have an incentive to reduce price competition if it has a significant downward effect on price. It would be in AXA's interests to drive down its own costs in order to keep premiums low. Similarly, it would be in AXA's interests to

¹ For Further information on the Competition Act 1998 please visit our website: www.offt.gov.uk/advice_and_resources/publications/guidance/competition-act/

keep fee levels for consultants at a competitive level otherwise it may (if the new fee schedule becomes more generally applicable) lose senior consultants to other insurers, and customers (many of whom are corporate purchasers), may follow.

The OFT considers, on the evidence before us, that the potential direct impact of taking this complaint forward is comparatively limited.

Strategic significance - Is the OFT best placed to act?

In each case, the OFT must consider whether we are justified in committing the necessary resources to investigate a complaint. In addition to, or instead of making a complaint to the OFT, third parties adversely affected by an agreement or conduct which they believe infringes the Act can take action in the courts to stop the behaviour or to seek damages. It may be that they would wish to consider the possibility of taking private action to determine the issues in this case.³

Resource implications

The OFT's limited budget restricts our ability to take on cases and means that decisions whether to take cases forward on the basis of priority alone must be made. In order to pursue this complaint under the Act the OFT would need to divert resources from matters which it believes have greater priority.

After considering your complaint against the OFT's prioritisation principles, we do not consider it appropriate to make further enquiries into this matter. This is an administrative priority decision. It does not reflect a substantive view on the merits of your complaint.

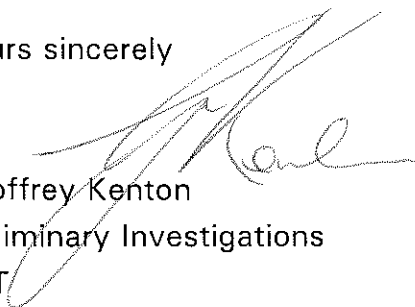
We appreciate the time you have taken in bringing this matter to our attention. The OFT is keen to ensure that markets work well for consumers and the complaints we receive are used to help assess and shape the work of the OFT in the future. In this context, we will retain your concerns on our database and incorporate them when considering areas for future investigation and study.

² A copy of the OFT's current prioritisation principles can be downloaded from the OFT website at: http://www.offt.gov.uk/shared_offt/about_offt/oft953.pdf

³ See for example the Competition Pro Bono Scheme, which provides an independent source of advice to certain individuals and businesses. Further information on the Pro Bono Scheme can be found at: www.probonogroup.org.uk/competition/

For your information, I have written in the same terms to Mr Ben Cresswell President of ASIT, and Mr Sebastian Dawson-Bowling, President of BOTA.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Kenton', written over the typed name and title.

Geoffrey Kenton
Preliminary Investigations
OFT