

**From:** [REDACTED]  
**To:** [Rebecca Ryan](#)  
**Cc:** [Bethany White](#); [Naomi Menon](#); [REDACTED]  
**Subject:** RE: AA1000639 - HCF application for re-authorisation [SEC=OFFICIAL] [ACCC-ACCANDAER.FID3464555]  
**Date:** Thursday, 11 May 2023 1:37:03 PM  
**Attachments:** [image003.png](#)  
[image004.gif](#)  
[image005.jpg](#)

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Dear Rebecca,  
HCF's responses to your questions are interlined in red below.  
Kind regards,  
Peter and Issy

**Peter Armitage**

Partner  
[REDACTED]

**Ashurst**  
[REDACTED]

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**From:** Rebecca Ryan <Rebecca.Ryan@acc.gov.au>  
**Sent:** Wednesday, 10 May 2023 9:25 AM  
**To:** Armitage, Peter 66119 <[REDACTED]>; Hunt, Isabella 66774 <[REDACTED]>  
**Cc:** Bethany White <Bethany.White@acc.gov.au>; Naomi Menon <Naomi.Menon@acc.gov.au>  
**Subject:** AA1000639 - HCF application for re-authorisation [SEC=OFFICIAL] [ACCC-ACCANDAER.FID3464555]

Dear Isabella and Peter,

Thank you for your time yesterday. As discussed, we are in the process of preparing the

interim decision and draft determination and we have some questions in relation to HCF's application.

Our questions are outlined below. Please note, we may have further questions based on the responses to the below and further assessment.

### **1. Relevant provisions of the *Competition and Consumer Act 2010 (the Act)***

The application refers to a risk of potential technical breach of prohibitions on price fixing and prohibitions on cartel provisions (see [16]-[17], [30]). It also states that authorisation is sought on substantially the same terms to the Initial Authorisation, which referred to both the cartel provisions and section 45 of the Act. Please confirm which provisions of the Act in respect of which authorisation is sought, in particular whether the applicant seeks authorisation in relation to section 45 as well as Division 1 of Part IV and provide any supporting reasons.

HCF seeks authorisation of the Proposed Conduct to which sections 45AF, 45AG, 45AJ, 45AK and 45 of the *Competition and Consumer Act* might apply. Section 45 might apply to making or giving effect to contracts and arrangements containing provisions affecting price which might have the purpose or likely effect of substantially lessening competition. HCF does not concede that the Proposed Conduct would contravene the Act. However, HCF seeks certainty and protection afforded by reauthorisation.

### **2. Proposed conduct**

Paragraph 15 of the application describes the Proposed Conduct for which authorisation is sought as follows: "*In the same local catchment areas as the DCN centres, HCF and Participating MFT Providers enter into and give effect to PPAs for MFT Services, including agreeing with those Providers their maximum fees for the MFT Services.*"

- a. Please confirm the intended scope of the Proposed Conduct, in particular whether HCF seeks authorisation only in respect of the provisions of the PPAs that set maximum fees for the MFT Services or in respect of PPAs more broadly. Please consider whether you also wish to include as part of your response:
  - i. descriptions or references to the specific provisions in the PPAs / MFT agreements by which maximum fees are to be agreed; and/or
  - ii. to the extent relevant, descriptions of the scope of the PPAs and/or other provisions in respect of which authorisation is sought.

The Proposed Conduct is defined in paragraph 15 of the Application. For the avoidance of doubt the Proposed Conduct involves all provisions in the MFT Agreements which affect the fees charged by Participating MFT Providers for MFT Services which they supply to HCF members, including those provisions which specify the maximum fees to be charged.

- b. HCF describes the Proposed Conduct as "substantially the same" as the Initial Authorisation. To the extent not covered by your response to (a) above, please explain the reasons HCF is seeking authorisation for Proposed Conduct as described in the application and the request for interim authorisation, as compared to the Initial Authorisation.

HCF is seeking authorisation of the Proposed Conduct, as defined in the Application, which is substantially the same as the conduct previously authorised. As noted in the Application the conduct was the prospective opening of dental centres in locations in which there were also Participating MFT Providers. Three dental centres have opened and, in

that way, the Proposed Conduct is slightly different from the conduct previously authorised. The reasons for seeking authorisation of the Proposed Conduct are set out in the Application (see, in particular, paragraphs 12, 15 and 71-74).

We would appreciate if you could provide a response to the above by **end of today**, if possible. If you have any concerns with this timeframe or questions on the information requested, please let us know.

Your response will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

We look forward to receiving your response.

Kind regards,

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**Rebecca Ryan** (*she/her*)

Senior Analyst | Competition Exemptions | Mergers, Exemptions and Digital

**Australian Competition & Consumer Commission**

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