

HCF'S MORE FOR TEETH PROGRAM

FURTHER SUPPLEMENTARY SUBMISSION IN SUPPORT OF APPLICATION FOR
REAUTHORISATION

6 SEPTEMBER 2023

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**RESPONSE TO PUBLIC SUBMISSIONS MADE BY
INTERESTED PARTIES ON HCF'S APPLICATION
FOR REAUTHORISATION AA1000639**

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Introduction

1. The Hospitals Contribution Fund of Australia Limited ACN 000 026 746 (**HCF**) lodged its application for revocation of existing ACCC authorisation AA1000402 granted on 11 May 2018 (**Initial Authorisation**) and substitution of a new authorisation on 23 March 2023 (**Reauthorisation Application**) ([AA1000639](#)).
2. The ACCC granted Interim Authorisation on 26 May 2023.
3. This submission by HCF sets out the conduct for which authorisation is sought and responds to certain issues raised in the public submission dated 23 August 2023 made by Australian Dental Association (**ADA**).
4. Unless indicated, defined terms in this submission have the same meaning as those in the Reauthorisation Application.

Proposed Conduct

5. The Proposed Conduct was defined in paragraph 15 of the Reauthorisation Application (by reference to terms defined in paragraphs 6 and 7) and aspects of it were also referred to paragraphs 71 to 73. The Proposed Conduct was further explained in HCF's supplementary submission to the ACCC dated 11 May 2023 and its response to the ACCC's request for further information dated 9 August 2023.
6. For the avoidance of doubt, HCF seeks authorisation for it and Participating MFT Providers to enter into and give effect to the specified provisions in the MFT Agreements in the same local catchment areas as HCF's DCN centres (including any future HCF dental centres). HCF currently operates 16 DCN centres. 13 in metropolitan and greater Sydney, and one in each of Belconnen (ACT), Melbourne CBD (Victoria) and Chermside (Queensland). The relevant provisions in the MFT Agreements are extracted in Annexure A of HCF's response to the ACCC's request dated 9 August 2023 (the **Annexure A provisions**). Authorisation is sought for the Annexure A provisions and any variations to them that have the same or a substantially similar effect (**Proposed Conduct**).

Limitation of Reauthorisation

7. The ADA has suggested in its submission that the ACCC should adopt a "cautious approach" to granting authorisation by limiting it to:

- a. the price capping effect of specified contractual provisions only;
- b. Division 1 of Part IV (ie, cartel conduct risk) and not any of the provisions of Division 2 of Part IV; and
- c. no more than 5 years.

Price capping effect only

8. The suggestion that reauthorisation should be limited to the price capping effect of the specified contractual provisions only is misconceived.
9. As stated above, the authorisation sought by HCF is for it and Participating MFT Providers to enter into and give effect to the specified provisions in the MFT Agreements in the same local catchment areas as HCF's DCN centres (including any future HCF dental centres). The Annexure A provisions speak for themselves and placing a gloss on them is not appropriate or necessary.

Cartel conduct risk only

10. The suggestion that reauthorisation should be limited to the cartel conduct provisions under Division 1 of Part IV of the CCA is also misconceived.
11. As stated in its supplementary submission dated 11 May 2023, HCF seeks authorisation of the Proposed Conduct to which sections 45AF, 45AG, 45AJ, 45AK and 45 of the CCA might apply. The Annexure A provisions affect prices and making contracts containing them or giving effect to them could also contravene section 45, if that conduct had the purpose, effect or likely effect of substantially lessening competition. HCF does not concede that the Proposed Conduct would contravene the CCA, but it seeks the certainty of the protection afforded by reauthorisation from any possible contraventions of section 45 (in addition to the other provisions listed above) by engaging in the Proposed Conduct.
12. The ACCC can be satisfied on the material before it that the Proposed Conduct would not have the effect or be likely to have the effect of substantially lessening competition in any relevant market and that the benefit to the public likely to result from the Proposed Conduct would outweigh any detriment likely to result from the Proposed Conduct.

Length of Reauthorisation

13. The ADA submits that reauthorisation should be limited to no more than 5 years. This is apparently primarily because HCF is a large insurer engaged in widespread conduct.

14. HCF has engaged in conduct substantially the same as the Proposed Conduct since May 2018. The absence of any impact on competition and the benefit to the public resulting from that conduct can be objectively observed.
15. HCF seeks reauthorisation for a period of 10 years and submits that the ACCC can be satisfied, having regard to the evidence of the past 5 years, that a reauthorisation period of 10 years is reasonable in these circumstances and would not be problematic.
16. Paragraphs 98 to 104 of the Reauthorisation Application explain the basis on which HCF seeks reauthorisation of the Proposed Conduct for a period of 10 years upon expiry of the Initial Authorisation.
17. The Proposed Conduct involves HCF and Participating MFT Providers entering into and giving effect to the Annexure A provisions in the same local catchment areas as HCF's DCN centres (including any future HCF dental centres).
18. The establishment and operation of the DCN centres involves long-term planning and long term certainty. In particular:
 - a. For a DCN centre HCF typically takes out a long term lease (with options to renew) because of the significant financial commitment that is required to build a modern dental practice. The typical tenure of leases secured by HCF for its existing DCN centres is 10 years. HCF needs long term certainty as part of its future business planning, and to provide a level of confidence to its staff and members.
 - b. HCF takes a long term approach to employment which seeks to provide its dentists and support staff with a future outlook of 10 years or more. A significant number of HCF's staff maintain employment with HCF for long periods of time. HCF has been operating its DCN centres in Sydney since 1987 and has a number of dentists and staff that have worked with HCF for over 15 years. HCF considers that the opportunity to work with one company, which has a long-term future, valuable training opportunities and modern facilities, is an important part of the attractiveness of employment in its DCN centres.
19. Accordingly, HCF submits that the ACCC should be satisfied, in all the circumstances, that the Proposed Conduct ought to be reauthorised for a period of 10 years following the expiry of the Initial Authorisation.