

20 April 2023

Rebecca Ryan
Senior Analyst, Competition Exemptions
Australian Competition and Consumer Commission
2 Lonsdale Street
Melbourne VIC 3000

By email

Dear Rebecca

Re: Hospitals Contribution Fund of Australia Limited application for revocation of authorisation AA1000402 and substitution of AA1000639

Thank you for providing the Australian Dental Association (ADA) the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) consideration of an application for revocation of authorisation AA1000402 and substitution of authorisation AA1000639 (authorisation) from the Hospitals Contribution Fund of Australia Limited (HCF).

About us

The ADA is the peak representative body for dentists in Australia and an active member of the World Dental Federation. Our 17,000 members operate more than 7,500 small businesses across Australia. They include dentists who work across the public and private sectors, over 14 specialty areas of practice in education and research roles, and dentistry students currently completing their entry-to-practice qualification.

The primary objectives of the ADA are to encourage the improvement of the oral and general health of the public, promote the ethics, art and science of dentistry and support members to provide safe, high-quality professional oral care.

Context

The Applicant is seeking re-authorisation under the *Competition and Consumer Act 2010*, which would give it legal protection from competition laws to engage in entering into and giving effect to contracts, arrangements or understandings for particular services with dental clinics who participate in its More For Teeth program, and which are located in the same local catchment areas as the Applicant's own dental clinics in its Dental Centre Network. The agreements seek to set maximum fees for those services. The Applicant is seeking authorisation for 10 years.

Comments

The ADA has raised long-standing concerns about the overall impact of price-capping arrangements by private health insurers.

As the ACCC is currently considering two authorisations relating to such arrangements, the ADA will be providing to the ACCC a general submission on the wider issues (especially in relation to competition impacts for dental services and the potential detriment for patients). These wider issues are relevant to all authorisations that the ACCC is, or may in future be, considering with respect to price-capping arrangements.

It is a concern of the ADA that these wider issues have not been subjected to comprehensive analysis, largely because of the piecemeal nature of such arrangements being brought to the ACCC for authorisation, and the narrow focus of each individual authorisation.

For example, in the 2018 determination relating to the HCF arrangements, the ACCC acknowledged the importance of the concerns raised by the ADA at that time but noted that they were largely beyond the scope of the ACCC's assessment of the specific application before it at that point in time.

Accordingly, because there are these wider issues that have not been subjected to comprehensive analysis, the ADA believes it would be appropriate for the ACCC, in exercising its statutory responsibilities, to adopt a cautious approach so that it can be satisfied that it would not be inadvertently entrenching or aggravating potential competition and consumer impacts due to the piecemeal nature and narrow focus of specific authorisations at a point in time.

The ADA submits that a cautious approach would mean:

- granting authorisation for a short term only, so impacts can be monitored and tested more frequently; and
- limiting the scope of authorisation granted to the application of Division 1 of Part IV in so far as the applicant is in competition with the third party dental practices with whom it has such arrangements.

Insurers who have sought authorisation have only done so where their concern is that having their own practices puts them at risk of being considered to be in competition with third party dental practices with whom they have price-capping arrangements.

Given that is the reason for seeking authorisation, and commensurate with a cautious approach given that there are wider issues, limiting the scope of authorisation in the manner submitted by the ADA addresses the specific concern of applicants by putting such insurers on the same footing as other insurers who don't have their own dental practices (and therefore have not submitted their arrangements for authorisation) while leaving all insurers subject to the application of Division 2 of Part IV in relation to competition impacts, including the impacts of creating and operating 'hub and spoke' arrangements (meaning these impacts can be monitored by the ACCC and, where the ACCC believes it is appropriate, addressed by enforcement action).

In the 2018 determination relating to HCF, the ACCC granted a five-year term (instead of the 10 years sought by HCF) to provide the opportunity to assess the benefits and detriments arising from the conduct in light of industry changes and any changes to the particular program which was the subject of the authorisation.

In the current application, HCF presents, from paragraph 76 to 84, evidence of public benefits, which includes:

- reference to a report prepared by the University of Adelaide, titled Australia's Oral Health: National Study of Adult Oral Health 2017–18; and
- HCF claims data, which is redacted in the public document, although some description of the claims data and its analysis is available.

We acknowledge the University of Adelaide report finding cited, that adults with dental insurance reported a higher percentage of visiting for a check-up (79.0%) than uninsured persons (48.8%), but we don't necessarily recognise that the applicant's conclusion automatically follows:

... that this Study highlights the importance of encouraging regular check-ups through the MFT Program with its 'no gaps' for basic dental services.

The claims data included is described as covering the years 2016 to 2019. We infer from the context this range refers to full calendar years. The application states this period was chosen so as not to have been impacted by COVID-19.

Given the existing ACCC authorisation was granted on 11 May 2018 and remains active at time of writing, we have some concern about drawing conclusions about public benefits flowing from authorisation, from the claims data presented – which seems to relate to a substantially different period. The claims data presented appears to cover:

- around 861 days **prior to** the beginning of the authorisation period;
- 599 days **during** the authorisation period; and
- to **omit** around 1,206 days of the authorisation period.

In summary, the data presented seems to relate to a period that is of limited relevance to the authorisation period. Therefore, relying on this data as the key evidence of public benefit could be questioned.

It may well be that claims data within the authorisation period show trends similar to the 2016 to 2019 data described, but information is not presented that would allow us to ascertain this.

COVID-19 may have influenced outcomes that depart from longer term trends, but even if that is the case, we consider it would be preferable for compatible data to be presented. Naturally, possible explanations for any unusual effects could be described.

The ADA submits that, in assessing whether the public benefits claimed by HCF in 2018 did materialise, and whether (as claimed by HCF) there has been no reduction in competition in the provision of dental services to patients, the ACCC should have regard to the issues discussed above, and to wider issues, which the ADA intends to supply the ACCC detailed discussion of in the near future.

We would be most happy to discuss the comments provided herein. Should you have any questions, please do not hesitate to contact Mr Damian Mitsch, Chief Executive Officer, on 02 8815 3333 or [REDACTED].

Yours sincerely,

[REDACTED]

Damian Mitsch
Chief Executive Officer