



**The Hospitals Contribution Fund of Australia Limited –
Application for revocation of AA1000402 and the substitution of
authorisation AA1000639
Interim authorisation decision
26 May 2023**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation AA1000402 and to grant interim authorisation in substitution for the authorisation suspended. The application for revocation of authorisation AA1000402 and substitution of authorisation AA1000639 was lodged by The Hospitals Contribution Fund of Australia Limited (**HCF**) on 23 March 2023.
2. The ACCC grants interim authorisation to enable HCF and current and future dentists who are members of HCF's More for Teeth program, to enter into and give effect to contracts between them which contain provisions specifying the maximum prices for preventative and diagnostic dental services to be provided by dentists to HCF members as part of the More For Teeth program (the **Authorised Conduct**). The Authorised Conduct is the same as was authorised under authorisation AA1000402.
3. Interim authorisation is granted in respect of Division 1 of Part IV and section 45 of the *Competition and Consumer Act 2010* (the **Act**).
4. Interim authorisation commences immediately and remains in place until it is revoked, the application is withdrawn, or the date the ACCC's final determination comes into effect.

The application for re-authorisation

5. HCF is a private health insurer registered under the *Private Health Insurance (Prudential Supervision) Act 2015* (Cth). HCF offers private health insurance policies under which it may pay benefits to its members to cover, in whole or in part, the cost of general treatment which is supplied by health care providers. HCF also provides other insurance cover such as life, travel and pet insurance.
6. HCF also operates its own eyecare and dental centres (**Dental Centre Network**). The dental professionals who operate and work in its dental centres are all employees of HCF. In addition, HCF has entered into agreements with More For Teeth program partners, who are private dentists who have agreed to charge HCF members at or below maximum fees set by HCF for certain services.
7. HCF is seeking revocation of the authorisation previously granted by the ACCC on 11 May 2018 (the **Previous Authorisation**) and substitution of a new authorisation pursuant to section 91C of the Act (**re-authorisation**). HCF sought the Previous Authorisation as it wished to extend its Dental Centre Network into areas where members of its More For Teeth program also operate. The Previous Authorisation was in respect of the Authorised Conduct, for 5 years, until 1 June 2023.
8. HCF states it is seeking re-authorisation on substantially the same terms and for conduct that is substantially the same as in the Previous Authorisation, in order to

facilitate the ongoing operation of its More For Teeth Program where it overlaps with its Dental Centre Network, for a 10-year period.

9. Specifically, HCF seeks re-authorisation to enable, in the same local catchment areas as the Dental Centre Network clinics, HCF and certain healthcare providers that are counterparties to its More For Teeth Program to enter into and give effect to participating provider agreements for More For Teeth Services, including agreeing with those providers their maximum fees for the More For Teeth Services (the **Proposed Conduct**).

The authorisation process

10. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

11. Section 91 of the Act allows the ACCC to grant interim authorisation if it considers it appropriate to do so for the purpose of enabling due consideration to be given to an application for the revocation of an authorisation and the substitution of a new one.
12. HCF seeks interim authorisation in respect of the Proposed Conduct. It requests interim authorisation on the basis that:
 - the current authorisation expires on 1 June 2023
 - interim authorisation will not change the current market status quo
 - interim authorisation is required for the continued operation of the Dental Centre Network and the More For Teeth Program in overlapping areas
 - the More For Teeth Program is an important benefit for its members
 - HCF has made considerable investment in its Dental Centre Network since the Previous Authorisation was granted.

Consultation

13. The ACCC invited submissions from a range of potentially interested parties including competitors, relevant industry associations or peak bodies, consumer groups and state and federal government.¹ The ACCC received 4 submissions.
14. The Members Health Fund Alliance and Private Healthcare Australia Limited provided submissions in support of HCF's application for re-authorisation and do not have any concerns regarding the Proposed Conduct. The Members Health Fund Alliance submits that it does not see competition issues arising from the Conduct and believes that the program provides choice and certainty in pricing for preventive and diagnostic dental services to consumers, and that provider participation in the More for Teeth Program is on a voluntary and non-exclusive basis.
15. The Australian Dental Association (**ADA**) provided 2 submissions in response to the application for re-authorisation. The ADA submits that it has raised long-standing concerns about the overall impact of price-capping arrangements by private health insurers and the ADA believes it would be appropriate for the ACCC to adopt a cautious approach in exercising its statutory responsibilities in relation to the application for re-authorisation. The ADA submits that a cautious approach would mean:

¹ The public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

- granting authorisation for a short term only, so impacts can be monitored and tested more frequently
 - limiting the scope of authorisation granted to the application of Division 1 of Part IV of the Act in so far as HCF is in competition with the third-party dental practices with whom it has such arrangements.
16. The ADA also submits that the claims data presented by HCF seems to relate to a period that is of limited relevance to the authorisation period and, therefore, relying on this data as the key evidence of public benefit could be questioned. The ADA considers it would be preferable for compatible data to be presented with possible explanations for any unusual effects (e.g. COVID-19).
17. The ADA also provided views on its concerns regarding:
- competition and consumer harm
 - public benefit and private benefit
 - competition in dental services and competition between insurers
 - the extent to which these arrangements are voluntary
 - the impact on how consumers choose dental practices and services
 - claimed benefits by insurers in the context of the broader picture.
18. The ADA also suggested that the ACCC consider whether all arrangements between insurers and dental practices that affect how dental practices operate (including the services they offer and pricing for dental services) should be submitted for authorisation as 'hub and spoke' arrangements.
19. HCF responded to the ADA's first submission and provided a summary of the public benefits and claims data for the calendar years 2018 to 2022.
20. The ACCC will consider the issues raised by the ADA in considering the substantive application for authorisation and prior to issuing a draft determination.
21. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

22. The ACCC considers it appropriate to grant interim authorisation on terms equivalent to the Previous Authorisation.
23. In granting interim authorisation for the Authorised Conduct, the ACCC considers that:
- The current authorisation will expire on 1 June 2023, and interim authorisation of the Authorised Conduct will maintain the status quo that existed under the Previous Authorisation while the ACCC considers the substantive application for re-authorisation and issues raised by the ADA.
 - Without interim authorisation, it may impact the continued operation of the Dental Centre Network and More For Teeth Program in the overlap areas.
 - Although the ACCC has not reached any concluded views about the application for re-authorisation, in the Previous Authorisation the ACCC did conclude that the Authorised Conduct was likely to result in public benefits and that these outweighed the public detriments that were likely to result from the Authorised Conduct.

Reconsideration of interim authorisation

24. The ACCC may review the interim authorisation at any time.

25. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.