

23 August 2023

Naomi Menon
Director, Competition Exemptions
Australian Competition and Consumer Commission
2 Lonsdale Street
Melbourne VIC 3000

By email: naomi.menon@accc.gov.au

Dear Naomi

Re: supplementary information in relation to authorisation application AA1000639 by Hospitals Contribution Fund of Australia Limited

Thank you for providing the Australian Dental Association (ADA) an opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) consideration of supplementary information provided by Hospitals Contribution Fund of Australia Limited (HCF) in relation to authorisation application AA1000639.

Our comments

The ADA supports the ACCC taking a cautious approach on re-authorisation of these arrangements which has regard to the size of the insurer and the scope of the specific conduct for which authorisation would be granted, and is mindful of:

- preserving benefit that may currently exist for health fund members or dental practices participating in this program (given it is an existing arrangement); and
- preventing insidious detriment the ADA has raised in the wider picture relating to comparable arrangements; and
- facilitating ongoing assessment and monitoring of these wider concerns.

If the ACCC is proposing to grant authorisation to HCF, The ADA believes that, for the reasons set out below, a cautious approach would involve limiting authorisation to:

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

Fundamental guiding principles

The ADA has been attempting to emphasise that these types of arrangements involve an intersection between two different markets, one involving financial services and the other healthcare services.

Conduct driven by financial services providers competing in an insurance market may impact competition in healthcare services; and what may benefit particular consumers of a particular insurance product could come at a cost to consumers of healthcare services more generally.

As such, we believe two fundamental guiding principles should apply:

1. Consumers should be able to choose their dentist and their insurer based on competition on the merits in each activity. Specifically, the rebate offered by insurers should be the same regardless of who the consumer chooses as their dentist. If an insurer wants to offer its members a financial benefit for using its own, or partner, dental practices, it should do this via the price of the dental services at its own or partner practices (i.e. by price capping); it should not be allowed to create financial disincentives for members who choose to use a dental practice that is not owned by or aligned with their insurer (differential rebates).
2. Consumers should be able to have confidence that their choice to use private health insurance will never result in their insurer being able to undermine clinical confidentiality or treatment decisions agreed by them with their chosen dentist in a clinical setting.

Limiting authorisation to no more than 5 years

The ADA believes it would be appropriate to limit the term of any authorisation having regard to:

- The fact that HCF is a large insurer engaged in widespread conduct. In its Report to the Australian Senate on anti-competitive and other practices by health insurers and providers in relation to private health insurance, the ACCC indicates that HCF was the third largest insurer with 13.1% market share by Australians covered. In its application of 23 March 2023, HCF indicates that around 7,942 dentists participate in its 'More for teeth' program, and that it operates 16 HCF dental centres.
- The fact that the contractual provisions disclosed in the Supplementary Information (Annexure A) may be changed during the term of the authorisation. The Supplementary Information clarifies that authorisation is being sought for those provisions and future variations to those provisions, having the same or substantially similar price capping effect.
- The fact that HCF may, during the term of the authorisation, expand its own practices, as disclosed in the Supplementary Information.

Limiting authorisation to cartel conduct risk only

The ADA believes it appropriate to limit any authorisation to the risk of cartel conduct under Division 1 of Part IV arising where an insurer who has its own practices is seeking to impose price capping on third party dental practices and not to extend authorisation protection to Division 2 of Part IV (e.g. section 45) because the reason for seeking authorisation is clearly about cartel conduct risk only.

This is clear from the counterfactual disclosed in the Supplementary Information, which is basically to avoid geographic overlap between participating third-party dental practices and HCF's own dental practices and not to cease price capping. Specifically, in the absence of authorisation, HCF would either divest its own practices to remove such overlap or terminate arrangements with third party dental practices to remove such overlap.

Limiting authorisation to price capping effect

The ADA believes it would be appropriate to limit any authorisation to the price capping effect of the specified contractual provisions only, and not to extend authorisation protection to any aspects of those provisions that relate to differential rebates, having regard to the fundamental guiding principles discussed above.

We note that the ACCC asked whether HCF members will receive the same rebate no matter which dental practice they visit, and the response disclosed in the Supplementary Information was that the rebate would be the same for non 'More for teeth' services.

If HCF, or any insurer, wishes to pay a differentiated rebate based on the consumer's choice of dental practice, the effect on competition in dental services should be open to be tested under Division 2 of Part IV.

We would be most happy to discuss the comments provided herein. Should you have any questions, please do not hesitate to contact me on 02 8815 3333 or at ceo@ada.org.au.

Yours sincerely,



Damian Mitsch
Chief Executive Officer