

MinterEllison

26 June 2020

BY EMAIL ONLY

Ms Susan Philp
Director | Adjudication
Merger & Authorisation Review Division
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 3000
adjudication@accc.gov.au

Copy to: emma.stiles@accc.gov.au | sophie.matthiesson@accc.gov.au susan.philp@accc.gov.au


Dear Ms Philp

State of South Australia as represented by the Department of Health and Wellbeing for authorisation AA1000498 – response to request for further information

1. On 17 April 2020, the Australian Competition and Consumer Commission (**ACCC**) granted interim authorisation to the State of South Australia as represented by the Department of Health and Wellbeing (together the **Department**), together with specified private healthcare providers and public hospitals and healthcare facilities operating in the State of South Australia (together, the **Applicants**) to discuss, enter into and give effect to contracts, arrangements or understandings (**Agreement(s)**) which have the broad purpose of maximising healthcare capacity and ensuring the State-wide coordination of healthcare services to facilitate the most efficient and effective allocation of healthcare during the period of the COVID-19 pandemic (the **Proposed Conduct**), (the **ACCC Interim Authorisation Decision**).
2. We refer to the email from the ACCC dated 19 June 2020, in which the ACCC set out a request for further information.
3. The purpose of this letter is to provide a response to this request, which is set out in the **Annexure** to this letter.

Please let us know if the ACCC has any questions.

Yours faithfully
MinterEllison



Lisa Jarrett
Partner

Contact: Lisa Jarrett T: 

OUR REF: 1299572 | KMG | LNJ

Annexure – Response to request for further information

1. ACCC request for further information

1.1 The ACCC has requested that the Department explain, prior to the COVID-19 pandemic:

- (a) in what circumstances the Department would enter into agreements with private healthcare providers to provide services to public patients in their facilities; and
- (b) in broad terms, what form these agreements would take.

2. Response to request for further information

3. *Circumstances in which the DHHS would enter into agreements with private healthcare providers to provide services to public patients in their facilities*

3.1 Prior to the COVID-19 pandemic, the Department has entered into agreements with private healthcare providers to facilitate the treatment of public patients in private facilities from time to time and on a relatively limited basis.

3.2 Agreements have occasionally been entered into directly between the Department and private healthcare providers where it is in the public interest to do so and typically to supplement public capacity to provide specific types of health care services.

3.3 For example, in 2019, the Department established a panel of private healthcare providers for the provision of a broad range of patient services (**Patient Services Panel**). Within the SA public health system, the Patient Services Panel is available for use by any of the LHNs and the SA Ambulance Service. Decisions regarding which private healthcare provider to use for specific patient services are made by the individual assist Local Health Networks (**LHNs**) or SA Ambulance Service, depending on their requirements.

3.4 Prior to entering into the Patient Services Panel agreements, the Department undertook a regular public sector procurement process, and selected its preferred suppliers in respect of patient services after completing a tender assessment. The Patient Services Panel has been reopened in 2020 and another group of providers has applied to be engaged in a similar manner. This process is nearing conclusion.

3.5 The primary purpose of the Department entering into the panel arrangements is to enable the Department (through SA Health) to assist LHNs to relieve the public health system where there are excess demands, overflow, backlogs and peak demand periods, including during winter demands or due to medical and organisational necessity. For example, these arrangements may include engaging with the private health sector to deliver elective surgical services for public patients, in order to reduce surgery waiting times in the public health system.

3.6 Prior to 2019, there were no panel arrangements and limited work was undertaken in the private health sector.

Form that the agreements would take

3.7 Agreements between the Department and private healthcare providers would typically take the form of a panel services agreement, which would specify the patient services and equipment to be provided by the private healthcare provider, as requested by the Department from time to time (**Panel Services Agreement**).

3.8 Some key features of the Panel Services Agreements include that:

- (a) the Department reserves the right to appoint any number of Panel members and to contract with any Panel member for the provision of patient services;
- (b) the Department may request patient services from a Panel member from time to time, when required;
- (c) there is no guarantee of the level of work to be provided to a private healthcare provider;

- (d) the Department will reimburse the relevant private healthcare provider for the patient services provided;
- (e) all patients referred to a private healthcare provider must be treated as public patients and must not incur any out of pocket expenses; and
- (f) the Panel Services Agreement is subject to comprehensive confidentiality obligations between the Panel member and the Department.