

2 November 2023

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Australian Competition and Consumer Commission  
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By email: [naomi.menon@accg.gov.au](mailto:naomi.menon@accg.gov.au)

Dear Naomi

**Re: draft determination of application AA1000639 relating to 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) draft determination of 20 October 2023 relating to authorisation application AA1000639 involving Hospitals Contribution Fund of Australia Limited (HCF).

**Our comments**

The ADA is supportive of the ACCC granting a 5 year authorisation that is reliant on, and assumes there will continue to be, strong competition in dental services. The draft determination makes this clear, noting that a 5 year period allows the ACCC to assess the benefits and detriments in light of changes over this period and that the ACCC may also initiate a review of the authorisation during this period if it appears that there has been a material change of circumstances.

The ADA's focus is to ensure it is understood that these types of arrangements involve an intersection between two different markets, one involving financial services (insurance) and the other healthcare services (dental services). Consumers should be entitled to benefit through competition in each market.

This requires vigilance towards conduct driven by financial services providers competing in an insurance market adversely impacts competition in healthcare services; and being alive to the risk that insurers seeking to secure benefits for consumers of their insurance products could cause greater cost to consumers of healthcare services in general.

**The authorisation assessment**

The draft determination appears consistent with seeking a 'win-win' for consumers by making clear that the public benefit acknowledged relates only to pricing for the insurer's members, namely something the insurer wants to be able to offer to compete in insurance, and that doing this has potential to cause detriment in dental services, so the balancing exercise in the authorisation test is crucial.

In this instance, the ACCC has undertaken that balancing exercise and formed the view that the authorisation test is met because the potential for detriment is held in check due to the following critical factors (in paragraph 4.30):

- **HCF's relatively small market share in health insurance**, HCF having a "relatively small market share in the areas of overlap, with HCF supplying between 8–16% of health insurance policies in the Australian Capital Territory, Queensland and Victoria"

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- **HCF's relatively small market share in dental services**, HCF's own practices representing a "*relatively small proportion of all providers of dental services in the overlap areas*"
  - **the limited range of dental services involved**, being preventive and diagnostic services, which represent "*a relatively small proportion of all dental services offered*"

We also note that the ACCC has satisfied itself that the contractual terms imposed by HCF are genuinely voluntary, i.e. they will only be imposed on individual dentists who have actively chosen to enter into an agreement with HCF.

#### **Wider issues that remain of concern to the ADA**

We retain wider concerns about just how voluntary arrangements with private health insurers really are. The ADA has previously raised concerns about the practice of insurers imposing conditions on dentists by way of deemed agreements that arise as a result of the dentist treating a patient who is, at the time of treatment, insured by that insurer or as a result of entering into an agreement with NAB for use of a HICAPS machine (which allows patients to send claims to and receive rebates from their insurer when paying their dentist). We intend to continue discussing these issues with the ACCC.

The ADA will also continue to advocate for two fundamental guiding principles:

- Consumers should be able to choose their dentist, and their insurer, based on competition on the merits in each activity. Rebates to consumers offered by insurers should be the same regardless of which dentist the consumer chooses to visit, as this is a healthcare decision by the patient.
- 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.

If an insurer wants to offer its members a *financial incentive* to choose 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. price capping under an authorisation where the ACCC can assess the critical factors referred to above). The insurer 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 (i.e. differential rebates). We intend to also continue discussing this issue with the ACCC.

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](mailto:ceo@ada.org.au).

Yours sincerely,



Damian Mitsch  
Chief Executive Officer