

26 July 2023

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

Dear Naomi

**Re: Response to Draft Determination in relation to authorisation application by Health Partners AA1000636**

Thank you for providing the Australian Dental Association (ADA) an opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) draft determination and interim authorisation decision, published 13 July 2023, relating to an application for authorisation lodged by Health Partners Limited in respect of agreements to establish a network of partner dental practices (application for authorisation AA1000636).

**Our comments**

The ADA supports the cautious approach taken by the ACCC in the Draft Determination which recognises the specific circumstances of this insurer and the narrow conduct for which authorisation would be granted in this case, but also lays a foundation for ongoing assessment and monitoring of the wider concerns that the ADA has raised with the ACCC.

We acknowledge the challenge of dealing with the wider concerns in the narrow scope of an individual authorisation assessment, where the ACCC must focus on specific impacts that are attributable to the specific conduct of the specific insurer for which authorisation has been sought.

Mindful of that challenge, our key focus is to ensure that the authorisation assessment process does not 'lose sight of the forest for the trees', specifically that the assessment is cognisant that we are dealing with two markets, where competition in one market may impact competition in the other and where what benefits consumers in one market may come at a greater cost to them in the other; and that the two markets are very different because one involves financial services and the other healthcare services.

The ADA has an important role in advocating for a 'win-win' situation for consumers in both markets. Consumers should be able to benefit from competition between private health insurers, without that undermining patient choice or treatment decisions agreed by them with their chosen dentist in a clinical setting.

There must be strong protection of the confidential and sensitive information patients need to disclose to their dentist as part of the special healthcare relationship, and patients must be able to have trust that this information cannot be used by financial service providers to reach into that healthcare relationship and influence treatment decisions as part of how they compete in those financial services.

In this regard, the ADA notes that Health Partners has not sought, and the ACCC is not proposing to grant, authorisation for any provisions that give Health Partners oversight over partner practices or treatment decisions.

The ADA supports the ACCC's statements, at paragraphs 4.32 and 4.35, that:

*... dentists are subject to standards of practice imposed by regulatory bodies (such as the National Safety and Quality Health Service Standards – as administered by the Australian Commission on Safety and Quality) and the Dental Board of Australia's registration standard. Dentists must meet these standards with or without the Proposed Conduct.*

*... the ACCC is not satisfied that there is an inadequacy or deficiency in the current regulation of dentists, such that a higher standard is required. Further, the ACCC is not satisfied that Health Partners has the expertise and incentive to use any additional control to rectify such an issue if it were to exist.*

In relation to the basis on which the ACCC proposes to grant authorisation, the ADA supports the balance the ACCC has struck in the following respects –

#### *narrow scope of authorised conduct*

The ADA notes that the proposed authorisation is limited to exempting the conduct of an insurer which has its own practices seeking to cap pricing by partner practices, whether under Division 1 of Part IV or section 45.

To the extent that Health Partners may wish to engage in other conduct that the ADA has raised in the wider picture, such as imposing differential rebates based on the patient's choice of dentist, reaching into clinical decisions or access to patient records, this will continue to be subject to competition and consumer law.

#### *relevance of market share of the insurer*

The ADA notes that the ACCC has been explicit that the risk of detriment in this specific authorisation is low because of the small market share of Health Partners in both private health insurance and dental services, and the small number of proposed partner practices.

This makes it clear that a different conclusion may be reached for larger insurers engaging in more widespread conduct, particularly insurers who may hold more market power.

#### *price capping is only beneficial as long as there remains healthy competition in dental services*

The ADA notes that the ACCC has assessed the likely impact of the authorised conduct by Health Partners on the basis that healthy competition in dental services will remain in the relevant market/s.

In relation to the wider picture, the ADA believes it would be helpful for the ACCC to provide some guidance on what measures it will use to monitor the health of competition in dental services, i.e. what is the 'canary in the coal mine' that signals a potential change in this fundamental assumption.

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

Yours sincerely,



Damian Mitsch  
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