



Conference Record

Application for Authorisation – AA1000402

Lodged by Hospitals Contribution Fund of Australia Limited

2:30pm AEST

10 April 2018

**Level 20, 175 Pitt Street,
Sydney NSW 2000**

and

**Level 4, 23 Marcus Clarke Street
Canberra ACT 2600**

The information and submissions contained in this conference record are not intended to be a verbatim record of the conference but a summary of the matters raised. A copy of this document will be emailed to each of the interested parties who attended the conference.

Attendees

Australian Competition and Consumer Commission

- Sarah Court, Commissioner (Chair of conference)
- Jeanne Pratt, Executive General Manager, Mergers and Authorisation Review Division
- David Jones, General Manager, Adjudication
- David Hatfield, Director, Adjudication
- Jana Shearer, Principal Lawyer, Mergers and Authorisation Law Unit
- Hannah Ransom, Senior Analyst, Adjudication (attended by video from Canberra)
- Simon Bell, Assistant Director, Adjudication (attended by video from Canberra)

The Applicant

Hospitals Contribution Fund of Australia Limited (HCF)

- Peter Sandyford, Head of Dental Services
- Peter Armitage, Lawyer, Ashurst Solicitors
- Elizabeth Sarofim, Lawyer, Ashurst Solicitors

Interested Parties

Australian Dental Association (ADA)

- Hugo Sachs, President
- Damian Mitsch, CEO
- Bryan Nguyen, Senior Policy Officer

Private Healthcare Australia

- Kristy Domitrovic, Director of Engagement, Policy and Strategy

Conference commenced: 2:30pm AEST

Introduction

Commissioner Court welcomed the attendees, introduced ACCC staff present, made some introductory remarks outlining the purpose of the conference, provided an overview of how the conference would be conducted and then opened the conference for discussion.

Commissioner Court stated that at a high level, ADA's concerns appear to relate to:

- Private health insurance market consolidation.
- Discriminatory rebates for dental services potentially affecting patient care and consumer choice for dental services.
- The impact of any detriment is likely to be high because HCF is a large private health insurer.

Commissioner Court also stated that if the proposed conduct is authorised, authorisation is not an endorsement of the broad policy and arrangements of HCF's provision of dental health services.

Opening statements

Commissioner Court invited Mr Sachs from the ADA to make a statement.

Mr Sachs thanked the ACCC for the opportunity to make an oral submission. Mr Sachs provided conference attendees with a hard copy of presentation slides, which are available on the [ACCC public register](#).

Mr Sachs stated that granting authorisation to HCF will exacerbate existing detriments (that outweigh benefits) arising from the private health insurer (PHI) model where policyholders pay the same health insurance premiums but receive different rebates for dental services depending on the dentist they choose to see. In these circumstances, some PHIs operate their own clinics or enter into arrangements with independent dentists to provide dental services to policyholders capped at a maximum price. Accordingly, the ADA submits that the ACCC should not grant authorisation to HCF.

Mr Sachs stated that the detriments include:

- Conflict of interest associated with PHI vertical integration - HCF sets the health insurance premium paid by policyholders, it also sets the rebate for each procedure and has capacity to control treatment. The policyholder does not receive a choice of treatment; HCF sets the dental procedures covered under the *More for Teeth* (MFT) program and also operates its own dental clinics.
- Rebate inequality based on the policyholder's choice of dentist is used as a steering mechanism, which consolidates the dental services market, lessens competition and impedes policyholders' continuity of care. The Australian Senate Private Insurance Inquiry recommended outlawing discriminatory rebates.
- Potential for misuse of data - The '*Health Industry Claims and Payments Service*' (HICAPS) provides health insurers with patient data about dental services. This data can be used by HCF to target policyholders and funnel them towards HCF services, reducing competition in the provision of dental services.

These detriments arise in an environment of market consolidation. Currently the top five PHIs control 80 per cent of the private health insurance market. If the proposed merger of HCF and HBF proceeds, the merged entity will have significant market power.

The claimed public benefits are minimal:

- Price certainty – Policyholders who attend non-MFT dentists or HCF dental clinics do not enjoy price certainty. These policyholders subsidise higher rebates and better access to care of other policyholders who attend HCF aligned dentists.
- The 'gap-free' arrangements are limited to 10 items, which are likely to be used as loss leaders with HCF steering policyholders to HCF aligned dentists for other dental services.
- The percentage of people attending dentists doesn't change significantly if you offer discounted preventative care. One third attend regularly, one third only attend when they have a problem and one third never go.

Mr Sachs also made the following points:

- MFT rebates for some procedures are higher than the fees non-MFT dentists charge for the same procedure. In these circumstances, consumers are worse off and competition reduced. The impact will be greater in rural areas where competition is already limited.
- Rebate schedules are not available on PHI websites, making it difficult for dentists to advise patients on what procedures are covered by PHIs and what the level of rebate (and hence net cost to patients) will be. Consumers need rebate information to make an informed choice when selecting a PHI.
- If a patient contacts their PHI to inquire about rebates, they are inevitably steered to insurer-owned clinics, implying they are less expensive. This is misleading. Patients have to pay more at non-MFT dentists because the rebate is less than that provided for services at MFT dentists.
- Dentists' arrangements with PHIs are not exclusive; dentists can seek arrangements with several PHIs. However, PHIs may reach saturation point in particular regions and decide not to enter into new arrangements with dentists leaving those dentists at a disadvantage.
- PHI premium increases have far outweighed increases in dental fees.
- Dentists are discounting their services to be a MFT Provider, so they may have an incentive to over-service patients – ie to provide many of the listed services regardless of whether they are needed.
- As more dental health clinics are established, HCF may end its MFT program arrangements with individual dentists.
- The draft determination does not acknowledge the detriment for policyholders who choose to see a non-HCF dentist.

The ADA requested the following enforceable undertakings:

- HCF to end discriminatory rebates so that its own clinics can compete in a fair and open market
- HCF to establish verifiable 'Chinese Wall' arrangements between its health insurance and health services arms to ensure that commercially sensitive information from competing dental practices is not used to unfairly benefit HCF.
- HCF and all PHIs request that HICAPS and other health claiming businesses remove clauses from their contracts that allow PHI to access competitors' commercially sensitive information.
- That HCF request Private Healthcare Australia to work with the ADA to develop a code of conduct to impose similar restrictions on other PHIs who own or operate health service businesses.

Commissioner Court stated that some aspects of the ADA's concerns are beyond the scope of the current authorisation process but some of the ADA's concerns may be considered by the ACCC in a separate forum.

Commissioner Court stated that if the ACCC grants authorisation to HCF, it can impose conditions of authorisation but it cannot require HCF to enter into enforceable undertakings.

Mr Sandyford stated that HCF agrees with and supports the ACCC's draft determination. HCF has made several submissions in relation to its application for authorisation and interested party submissions, and it does not wish to repeat its views or make additional remarks.

Ms Domitrovic referred to PHA's submission on HCF's application for authorisation and its stated support for the proposed conduct, noting that there are benefits to consumers in the form of 'no-gap' or 'known-gap' from the proposed arrangements.

Concluding remarks

Commissioner Court invited HCF and interested parties who wish to provide further submissions to do so by **Friday 13 April 2018**. Commissioner Court explained that the ACCC will consider the matters raised at the conference and any further submissions before deciding whether or not to grant authorisation and on what terms.

Conference ended 3:38pm AEST.