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Our ref: AA1000507
Contact officer: Emma Stiles
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13/05/2020

Sarah Benbow
Partner
Herbert Smith Freehills
101 Collins Street
Melbourne VIC 3000

By e-mail: [REDACTED]

Dear Ms Benbow

State of New South Wales as represented by the Ministry of Health application for authorisation AA1000507- request for further information and update

I refer to the interim authorisation granted by the Australian Competition and Consumer Commission (the **ACCC**) on 1 May 2020 in response to the authorisation application lodged by the State of New South Wales as represented by the Ministry of Health (the **Ministry**) on 30 April 2020.

The Ministry, together with specified private healthcare operators operating in the State of New South Wales (the **Private Operators**), New South Wales Public Health Organisations in respect of public hospitals and healthcare facilities (the **Public Health Organisations**), the Australian Private Hospitals Association and Day Hospitals Australia (together, the **Applicants**) have sought authorisation to discuss, enter 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 purpose of this letter is to formalise with you the content of and timeframes for providing updates to the ACCC under Conditions 1 and 2 of the interim authorisation (set out in **Attachment 1** to this letter).

Condition 1

Condition 1 requires that the Ministry provide regular updates to the ACCC. Pursuant to this requirement we request that the Ministry provide the following:

- a) a summary of each of the Agreements entered into under the interim authorisation, which:
 - i. identifies the parties to the Agreement; and
 - ii. outlines the key features of the Agreement.
- b) a summary of matters discussed at any meetings of service control, integration and continuity groups established the Ministry (the **Ministry Group(s)**).

We request that the Ministry provide these updates to the ACCC every **14 days** commencing **19 May 2020**. If no new Agreements are made or no meetings of the Ministry Group(s) are held in a given fortnight, please confirm that in the fortnightly update. The frequency of these updates may be reduced in future if appropriate.

Subject to any requests for exclusion, it is expected that the Ministry's updates will be placed on the ACCC's public register for this matter (see [Guidelines for Excluding Information from the Public Register](#) for more information on how to make a request for exclusion and how we assess requests).

Condition 2

Condition 2 of the interim authorisation requires the Ministry to notify the ACCC of future parties to the arrangement. We request that this notification be given within **three working days** of the Ministry determining that a party participate in the authorised conduct. Please note that the notification will be included on the ACCC's public register for this matter.

Request for further information

The ACCC is progressing its assessment of the authorisation application. To assist in this assessment it is requested that the Ministry provide the following information:

1. Item (b)(2) of the Proposed Conduct described in the application for authorisation provides that under the Agreements, the Ministry will be responsible for coordinating the restriction of the type of services provided by the Private Operators, or their capacity to provide services.

It is requested that the Ministry provide further detail expanding on item (b)(2), including:

- a. a summary of the circumstances in which the Ministry would restrict the services provided by a Private Operator, or its capacity to provide services; and
- b. a summary of any principles agreed between the Ministry and Private Operators in implementing this aspect of the Proposed Conduct.

It is requested that the Ministry, to the extent possible, provide an illustrative example of how the services offered by a Private Operator may be restricted in response to a surge in demand for the Public Health Organisations' services and resources due to the COVID-19 pandemic.

We request that the Ministry provide this information by **Friday, 22 May 2020**. Please note that subject to any request for exclusion, the Ministry's response will be placed on the ACCC's public register for this matter.

Provision of information to the ACCC

Please send all updates and information to adjudication@acc.gov.au copying emma.stiles@acc.gov.au.

This letter has been placed on the public register.

If you wish to discuss this letter, please contact Emma Stiles on 02 9102 4036 or Sophie Matthiesson on 03 9910 9456.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "S Philp". The signature is written in a cursive style with a large initial 'S'.

Susan Philp
Director
Adjudication

Attachment 1 – Conditions of Interim Authorisation

Condition 1 – Reporting Requirements

The Ministry must provide regular updates to the ACCC at a frequency agreed between the Ministry and the ACCC, and provide any additional information reasonably requested by the ACCC.

Condition 2 – Notification of future parties

To the extent that the Ministry believes it necessary or desirable for any other private healthcare operators (other than the private healthcare operators listed in Attachment 1 to the interim authorisation decision) to participate in the Proposed Conduct, the Ministry must notify the ACCC of the identity of those parties.