



Our ref: AA1000671
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21/05/2024

Dear Leigh

Re: Application for authorisation (AA1000671) from St. Luke's Medical and Hospital Benefits Association – ACCC request for information

I refer to St. Luke's Medical and Hospital Benefits Association's (**St Lukes**) application for authorisation lodged with the Australian Competition and Consumer Commission (**ACCC**) on 8 May 2024 seeking authorisation to enter into and give effect to certain pricing arrangement provisions in agreements with participating dental providers via the 'St Lukes Gap Free Network'.

To assist the ACCC's consideration of St Lukes' substantive application for authorisation, we request that St Lukes provide further information as set out in Attachment A to this letter by the specified dates.

This letter, including Attachment A, will be placed on the ACCC's [Authorisations Public Register](#). A copy of St Lukes' response will also be placed on the Authorisations Public Register, subject to any request to exclude certain information from the public register. For further information please refer to the ACCC's [Guidelines for excluding information from the public register](#).

Should you have any questions in relation to any aspect of this information request, please do not hesitate to contact myself on (02) 92309188 () or Rebecca Ryan on (02) 6243 1300 ().

Yours sincerely

Naomi Menon
Director
Competition Exemptions

Attachment A

St. Luke's Medical and Hospital Benefits Association application for authorisation AA1000671 – ACCC request for information

21 May 2024

Please refer to the defined terms at the end of Attachment A.

Request to exclude information from the public register

Please provide the further information requested below by **28 May 2024**:

1. Section 11 of the application outlines St Lukes' partial request for exclusion from the public register. As per the ACCC's [Guidelines for excluding information from the public register](#), the particular information said to be confidential should be clearly identified and reasons must be provided in support of a request for exclusion from the public register.
 - a. Please provide detailed reasons for each request for exclusion from the public register, including for paragraphs 2.13(b)(i) and 5.4(b), Schedule 1 and Annexure D of the application.
 - b. Please provide the confidential version of the application with said claimed confidential information clearly marked (e.g. with highlight).

Scope of the proposed conduct

Please provide the further information requested below by **4 June 2024**:

2. We understand the proposed conduct for which authorisation is sought to be described in paragraph 2.1 of the application, which states that St Lukes seeks authorisation specifically for '*Clause 5 of the St Lukes Gap Free Network Terms & Conditions [...] replicated at Annexure A*'. Please clarify whether St Lukes is also seeking authorisation for any other conduct, including for:
 - a. clause 6 of the St Lukes Gap Free Network Terms & Conditions (replicated at Annexure B of the application); and/or
 - b. the 'Dental Services Utilisation and Servicing Metrics' reports St Lukes will provide to Participating Dental Partner Providers regarding their services delivery and billing to St Lukes members to enable the Participating Dental Partner Provider to make comparison with their peers in terms of services and billing (referred to at paragraph 8.13(b) of the application).
3. Paragraph 2.2. of the application states that St Lukes proposes to enter into agreements with Participating Dental Partner Providers that are located geographically in Tasmania.
 - a. Please confirm whether St Lukes plans to enter into these agreements with Participating Dental Partner Providers across all of Tasmania, or only in specified locations.
 - b. Please provide further information regarding St Lukes' plans to enter into agreements with Participating Dental Partner Providers, including the number of agreements it plans to enter into and how St Lukes is planning to identify and/or decide which providers to partner with.

4. We note the application states that St Lukes *'does not seek authorisation for the establishment of its Applicant Practices'* (footnote 4 of the application). However, we note that the risk of contravention section identifies the *'potential risk that the Participating Dental Partner Providers practices could be considered to be in competition with existing Applicant Dental Practice(s) at some relevant time'* (paragraph 3.1 of the application).
- a. Please clarify whether St Lukes is seeking authorisation for all geographic areas where it enters into and gives effect to certain pricing arrangement provisions in agreements with Participating Dental Partner Providers via the St Lukes Gap Free Network, or only the areas in which they overlap with Applicant Dental Practices.¹
 - b. With regard to your response to question 4(a) above, if St Lukes is seeking authorisation for all areas where it enters into and gives effect to certain pricing arrangement provisions in agreements with Participating Dental Partner Providers via the St Lukes Gap Free Network, please explain how Part IV of the *Competition and Consumer Act 2010* (Cth) would or might apply to the areas that do not overlap with Applicant Dental Practices.
 - c. Please provide further information on St Lukes' plans to establish the Applicant Dental Practices including:
 - i. the number of Applicant Dental Practices that St Lukes plans to open;
 - ii. locations for the planned Applicant Dental Practices (including whether any specific sites have been identified or secured);
 - iii. more precise timelines for the establishment of each planned Applicant Dental Practice;
 - iv. how many agreements with Participating Dental Partner Providers St Lukes intends to enter into in geographic proximity to each Applicant Dental Practice.
5. Section 5 of the application outlines St Lukes' request for interim authorisation, where St Lukes *'seeks an interim authorisation within six weeks of lodgement to allow it to commence entering into agreements with potential dental providers.'* With regard to your response to questions 4(a), (b) and (c) above, please clarify why St Lukes is seeking interim authorisation for it to commence entering into agreements with potential dental providers.

St Lukes Gap Free Network

Please provide the further information requested below by **4 June 2024**:

6. The application refers to the name of the program as the 'St Lukes Gap Free Network'. The application also notes that *'[t]he operation of the St Lukes Gap Free Network will allow members to receive: [...] No-gap or known-gap experience[s]'* for services included in Schedule 3 (paragraph 2.4 of the application). Please confirm whether St Lukes intends to proceed with naming the program the 'St Lukes Gap Free Network', and if so, whether it intends to use this name in instances where the program provides known-gap experiences (rather than gap-free or no-gap experiences).

¹ We note that the ACCC is empowered to grant authorisation for conduct to which one or more of the competition provisions of the *Competition and Consumer Act 2010* (Cth) would or might apply.

7. Clause 5.3 of Annexure A specifies that: *'Where a 'Participating Dental Partner Provider' normal business practice is to offer discounts or benefits to its patients, the 'Participating Dental Partner Provider' will also provide such discounts or benefits or an equivalent amount of the discount or benefit to St Lukes members'*. Please clarify the meaning of 'normal business practice' in this clause.

Authorisation term sought

Please provide the further information requested below by **4 June 2024**:

8. Section 4 of the application outlines the authorisation term sought by St Lukes, being 10 years. Please provide further information and specify the reasons why St Lukes is seeking authorisation for 10 years.

Public benefits

Please provide the further information requested below by **18 June 2024**:

9. Paragraph 8.4 of the application refers to findings from the 2017-18 National Study of Adult Oral Health report regarding dental visits. If possible, please provide more current data.
10. Paragraphs 8.8 and 8.9 of the application refer to findings regarding the volume of dental services performed in Tasmania, preventative dental services uptake and major dental services. Please provide further information supporting these findings, including any relevant data.
11. Paragraph 8.13(b) of the application states that St Lukes *'could potentially adopt a different model to achieve similar benefits resulting from the proposed conduct'*. Please explain what this different model is and why the proposed conduct for which authorisation is sought is the preferred model for St Lukes.
12. Paragraph 8.13(d)(ii) states that a public benefit which will or is likely to arise from the proposed conduct is that *'competition is encouraged between dental providers in the same area'*. Please provide further information supporting this claim.

Defined terms

The singular includes the plural and the plural includes the singular.

St Lukes Gap Free Network Terms & Conditions – The proposed terms and conditions of the St Lukes Gap Free Network provided to the ACCC on a confidential basis, where clauses 5 and 6 of the terms and conditions are extracted at Annexures A and B to the application.

Applicant Dental Practices – as described in paragraph 1.5 to the application for authorisation.

Participating Dental Partner Provider – as described in paragraph 1.17 to the application for authorisation.

St Lukes Gap Free Network – as described in paragraph 1.7 to the application for authorisation.