



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

In respect of a notification lodged by

Tasmania Primary Health Network Organisation

in respect of

collective negotiation with the Western Australian
Primary Health Alliance

Date: 12 September 2019

Notification number: CB10000468

Commissioners:

Rickard
Court
Ridgeway

Summary

The ACCC does not object to the collective bargaining notification lodged by Tasmania Primary Health Network Organisation (**Primary Health Tasmania**), on behalf of the participating Primary Health Network Organisations (the participating **PHN Organisations**). The PHN Organisations propose to collectively negotiate the terms of information and communication technology (**ICT**) service agreements with the Western Australian Primary Health Alliance (**WAPHA**). WAPHA will conduct a procurement process to acquire the ICT services and will resupply these services to the participating PHN Organisations. A common ICT platform will make it easier for the PHN Organisations to collect, share and analyse population and health data.

The notification was lodged on 15 July 2019 and the ACCC has decided to allow it to remain in force for a period of 10 years from that date. Accordingly, the notification came into force on 29 Jul 2019 and will remain in force until 14 July 2029, unless it is withdrawn or revoked.

The notification

1. On 15 July 2019, Primary Health Tasmania, on behalf of the participating PHN Organisations, lodged a collective bargaining notification¹ proposing to collectively negotiate the terms of ICT service agreements with the lead primary health network organisation, WAPHA (the **Notified Conduct**).
2. In 2015, the Commonwealth Department of Health established the 'Primary Health Network Grant Program' (the **Health Program**) with the objectives of increasing efficiencies and effectiveness of primary health services, and improving the coordination of patient care. The Department of Health identified 31 geographical areas (called primary health networks) across Australia as requiring the appointment of a not-for-profit PHN Organisation to implement and run the Health Program.
3. In order to facilitate communication and data sharing between themselves, the PHNs Organisations are seeking to procure a Common National Data Storage and Analysis Solution (the **NDSAS**). Primary Health Tasmania advise that the NDSAS will likely be based on "commercial-off-the-shelf" data management tools, which may include secure cloud platforms, business intelligence and 'big data' analytical tools.
4. The procurement of the common NDSAS services will involve two contracting arrangements:

A. Contracting Arrangement A

- WAPHA, the lead PHN Organisation and the target of the notified collective bargaining arrangement, will approach the market and finalise the procurement of the NDSAS. The Department of Health will provide grant funding to cover the implementation and establishment costs of the NDSAS incurred by WAPHA.

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010* (CCA) for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

- WAPHA will enter into a single contract with the successful NDSAS provider. WAPHA will procure the NDSAS from a single provider, but multiple providers may be engaged if required.
- Contracting Arrangement A *does not* form part of the Notified Conduct.

B. Contracting arrangement B (the Notified Conduct)

- WAPHA will provide, or resell, the NDSAS services it procures (under contracting arrangement A) to the participating PHN Organisations under service agreements between WAPHA and each PHN Organisation. WAPHA will charge PHN Organisations for the NDSAS services on a costs recovery basis.
 - Primary Health Tasmania (the representative PHN Organisation), on behalf of the participating PHN Organisations, will collectively negotiate the terms of the service agreements with WAPHA. This may include terms relating to payments to WAPHA for ICT services from each participating PHN Organisation. The PHN Organisation nominated to be the Representative PHN (currently Primary Health Tasmania) could change at some point.
5. The contracting arrangement A and B will run in parallel. WAPHA will enter into service agreements with each PHN Organisation and the NDSAS provider at the same time.
 6. Primary Health Tasmania submits that participation in the proposed arrangement is voluntary for the PHN Organisations and for the target, WAPHA, as the Notified Conduct does not include a collective boycott. Primary Health Tasmania further submits that each PHN Organisation will be free to procure its own ICT services if preferred and WAPHA is not obligated to enter into an agreement with the participating PHN Organisations.
 7. The notification has been expressed so as to extend to other PHN Organisations who may join the bargaining group in the future.
 8. Primary Health Tasmania requests that the notification continue for 10 years.

Background

9. Under the Health Program, the PHN Organisations act as frontline service delivery providers, and work directly with general practitioners, other primary health care providers, secondary care providers and indigenous community health providers to coordinate the Department of Health's primary health objectives. There are now 29 PHN organisations operating the Health Program in Australia.²
10. As part of the Health Program, the PHN Organisations are required to collect and analyse a range of population and health data, specifically including:
 - de-identified data supplied by medical practices and community health providers and
 - a range of reference data sets such as ABS census data and the Australia Institute of Health data.

² A single PHN Organisation (WAPHA) operates the Health Program for three primary health networks in Western Australia.

11. The PHN Organisations analyse this data to develop an understanding of trends in primary healthcare delivery, and to better identify the needs of local populations.
12. Primary Health Tasmania submits that the Department of Health expects the PHN Organisations to cooperate with one another to enable more effective and coordinated approaches to the delivery of the Health Program, and more consistent reporting. Tasmania Primary Health further submits that this coordination is difficult without appropriate ICT infrastructure to facilitate communication and data sharing. It is anticipated that the NDSAS will provide the PHN Organisations with the capability to accept, store, analyse and report on data received from health providers.
13. The PHN Organisations have agreed to enter into an Unincorporated Joint Venture Arrangement (**UJV**) for the purposes of establishing the NDSAS and managing the provision of ongoing services from the NDSAS service provider. Primary Health Tasmania anticipates that all PHN Organisations will choose to acquire their ICT solution through the UJV; however, no PHN Organisation will be obligated to.
14. In addition to the initial provision of software, the NDSAS service provider will also be responsible for overall implementation of the technology, including any modifications required. WAPHA will provide ongoing contract management services and ancillary services to the participating PHN Organisations over the term of the service agreements.

Consultation

15. The ACCC invited submissions from a range of interested parties including ICT service providers, the PHN Organisations, state government health departments and the Office of the Australian Information Commissioner.
16. The ACCC received one submission in relation to the notification, from the target, WAPHA. WAPHA is supportive of the proposed arrangement and has no objections to the proposed collective bargaining.

ACCC's assessment

17. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* Cth (**CCA**).
18. In doing so, the ACCC has taken into account:
 - The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each PHN Organisation is likely to individually negotiate the supply of ICT services with ICT service suppliers. This may result in different ICT platforms being used by the PHN Organisations, which will make it more difficult for PHN Organisations to coordinate with other PHN Organisations, as required by the Department of Health.
 - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition is the supply and acquisition of ICT services. The ACCC notes that Primary Health Tasmania considers this market to be comprised of a large number of national and international suppliers (such as IBM, Microsoft and Amazon Web Services).

Public benefit

19. The ACCC considers that the Notified Conduct is likely to result in public benefits in the form of improved efficiency through:
- Improved coordination of data and communication between the PHN Organisations, facilitated by the use of a common ICT platform, which may result in improved service delivery. Common ICT infrastructure will likely improve the quality, and therefore utility, of the data collected by the participating PHN Organisations as a whole, and improve reporting practices
 - Transaction cost savings (such as negotiation and contracting costs, and the time taken to negotiate) for the PHN Organisations, compared to each PHN Organisation conducting negotiations with suppliers of ICT services on an individual basis.
 - Increased input into contracts with the ICT supplier, which may result in terms of supply that better reflect the needs of the PHN Organisations in the bargaining group, compared to a situation in which there are individual negotiations between ICT suppliers and each PHN Organisation. Primary Health Tasmania submits that although only WAPHA will be negotiating with ICT suppliers, the PHN Organisations will have significant input into the approach to market process through WAPHA and play a strong role in determining a solution that meets their collective needs.

Public detriment

20. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between the Participating PHN Organisations to acquire ICT services for the following reasons:
- The PHN Organisations represent a very small proportion of the acquisition of ICT services in Australia³ (and an even smaller share globally). There will be a significant number of remaining potential and actual acquirers of ICT services both nationally and internationally.
 - Participation in the Notified Conduct is voluntary for the participating PHN Organisations and for the target, WAPHA.

Period for which the notification will be in force

21. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
22. In this case Primary Health Tasmania asked that the notification remain in place for 10 years. Primary Health Tasmania submits the NDSAS solution is expected to be the primary data management platform used by the PHN Organisations for at least a 10 year period, and accordingly, the services contracts between WAPHA and the participating PHN Organisations will extend for up to 10 years.

³ Tasmania Primary Health submits the anticipated cost of the NDSAS is likely to be less than \$7 million over its implementation period.

23. The ACCC considers that it is appropriate for the notification to remain in force until 14 July 2029 for the following reasons:
- The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
 - The extended notification period is unlikely to change the minimal public detriment which is likely to result from the Notified Conduct.

Decision

24. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
25. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
26. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 23, in accordance with s 93AD(5), the ACCC is satisfied that:
- a three year notification period is not appropriate in all the circumstances, and
 - another period is appropriate in all the circumstances, being the period ending on 14 July 2029.⁴
27. Accordingly, the protection provided by notification CB10000468 commenced on 29 July 2019 and will continue until 14 July 2029, unless the notification is withdrawn or revoked.
28. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

⁴ As required by s 93AD(5)(b), this period will end no later than 10 years after the day that the notification was lodged.