

Freehills

10 March 2005

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Mr Justin Thompson
Director, Merger & Asset Sales
Australian Competition and Consumer Commission
Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000

By hand

Dear Mr Thompson

Little Company of Mary Health Care Limited re acquisition of St Vincent's Hospital Launceston

As requested by Paul Palisi, we attach the signed undertaking given under section 87B of the *Trade Practices Act 1974* (Cth) by Little Company of Mary Health Care Limited in relation to its application for authorisation no. A90947.

Yours faithfully
Freehills
per:



Lisa Emanuel

Trade Practices Act 1974

Undertaking to the Australian Competition and Consumer Commission given under section 87B by Little Company of Mary Health Care Limited

1 Background

- 1.1 Little Company of Mary Health Care Limited (**LCMHC**) is a Catholic, not-for-profit health and aged care service provider with services in five States and Territories.
- 1.2 In December 2004, LCMHC applied to the Australian Competition and Consumer Commission (**Commission**) under section 88(9) of the *Trade Practices Act 1974* (Cth) (**Act**) for authorisation of the proposed acquisition by its subsidiary, LCM Calvary Health Care Holdings Limited (**LCM Calvary Health Care Holdings**), of St Vincent's Hospital Launceston (**St Vincent's**) (**Acquisition**).
- 1.3 LCMHC's submission in support of its application for authorisation set out the substantial benefits to the public that would result from a merger of LCMHC's existing hospital in Launceston, St Luke's Campus of Calvary Health Care Tasmania (**St Luke's**), and St Vincent's.
- 1.4 In discussions with LCMHC, the Commission expressed the view that, if LCMHC were to give an undertaking to the effect that it would not sell the Merged Hospital to a For-Profit Operator for a specified period, it would satisfy the Commission's concerns relating to the achievement of the benefits to the public that would result from the Acquisition.
- 1.5 LCMHC does not agree with the concerns expressed by the Commission. However, in order to overcome the Commission's concerns in a timely manner, LCMHC gives the undertaking contained in this document.

2 Definitions

In this undertaking:

"Act" means the *Trade Practices Act 1974* (Cth).

"Commission" means the Australian Competition and Consumer Commission.

"Commencement Date" means the date on which the undertaking comes into effect, as defined in paragraph 3.1.

"Completion Date" means the date on which LCM Calvary Health Care Holdings completes its acquisition of St Vincent's.

"For-Profit Operator" means an operator which is not a Not-For-Profit Operator.

"Inpatient Services" means treatment and/or care provided to patients which involves a minimum stay of one night by the patient in the provider's facility.

"LCM Calvary Health Care Holdings" means LCM Calvary Health Care Holdings Limited.

“LCMHC” means Little Company of Mary Health Care Limited.

“Merged Hospital” means the assets and business resulting from the merger of St Vincent’s and St Luke’s, whether carried on on a single campus in Launceston (either St Vincent’s or St Luke’s) or on both campuses.

“Northern Tasmania” means the northern region of Tasmania based around Launceston, and includes the following areas: Break O’Day, Dorset, Flinders, George Town, Launceston, Meander Valley, Northern Midlands and West Tamar.

“Not-For-Profit Operator” means:

- (a) a proposed operator of the Merged Hospital, or a person who proposes to own but not operate the Merged Hospital, which is prohibited, by law or by its constitution, from distributing profits to its members; or
- (b) where the proposed operator of the Merged Hospital, or the person who proposes to own but not operate the Merged Hospital is a subsidiary or controlled entity, an operator or owner whose ultimate holding company is prohibited, by law or by its constitution, from distributing profits to its members.

“Person” includes any corporate or other legal entity.

“St Luke’s” means St Luke’s Campus of Calvary Health Care Tasmania.

“St Vincent’s” means St Vincent’s Hospital Launceston.

3 Commencement of undertaking

- 3.1 This undertaking comes into effect when all of the following conditions are satisfied:
- (a) the undertaking is executed by LCMHC;
 - (b) the undertaking so executed is accepted by the Commission within 30 days of its execution by LCMHC; and
 - (c) the occurrence of the Completion Date.

4 Undertaking

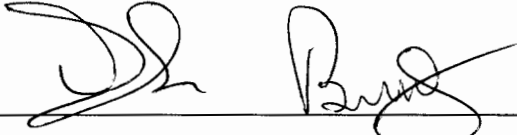
- 4.1 LCMHC will not, and will ensure that its subsidiaries and controlled entities will not, during the period of three years from the Commencement Date, sell the Merged Hospital to a For-Profit Operator.

5 Limitations to the undertaking

- 5.1 The undertaking in paragraph 4.1 will cease to apply if another provider of private health care services provides Inpatient Services in Northern Tasmania for a reasonable period, such period being no shorter than 12 months.
- 5.2 The undertaking in paragraph 4.1 will not prevent LCMHC or any of its subsidiaries or controlled entities selling the assets and business located on either one of its Launceston campuses (St Vincent’s or St Luke’s), as a hospital or for alternative use, provided it (or another provider) continues, for the balance of the

period referred to in paragraph 4.1, to provide Inpatient Services on the other campus.

Signed for and on behalf of
LITTLE COMPANY OF MARY HEALTH CARE LIMITED by:



Signature of National Chief Executive Officer

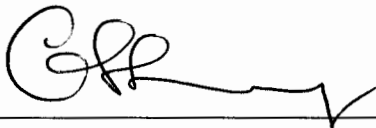
DAVID BRUCE BUTT

Name of National Chief Executive Officer

Date: 9/3/2005

ACCEPTED by the

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION pursuant to
section 87B of the *Trade Practices Act 1974*



Chairman

~~EST~~
Date: 10th March 2005