

Our Ref: C2004/1959
Contact Officer: Jacqueline Brown
Contact Phone: (02) 6243 1247

23 December 2004

Name
Position
Organisation
Address

Facsimile:

Dear

Application for Authorisation A90947 lodged by Little Company of Mary Health Care Limited

As you may recall, we contacted you in November 2004 seeking your views about whether the acquisition by the Little Company of Mary Limited (LCMHC) of St Vincent's Hospital (Launceston) Ltd was likely to result in a substantial lessening of competition in breach of section 50 of the *Trade Practices Act 1974* (the Act). However, this investigation has been superseded by the application for authorisation lodged by the LCMHC on 21 December 2004 for its proposed acquisition of St Vincent's Hospital (Launceston) Ltd (St Vincent's). The other private, overnight hospital in Launceston, St Luke's Campus of Calvary Health Care Tasmania (St Luke's), is owned by LCMHC.

As you will be aware, a key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that competition may not always be in the public interest. It therefore allows the Commission to grant immunity from the Act for anti-competitive conduct in certain circumstances.

One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the Commission. Broadly, the Commission may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The Commission conducts a comprehensive public consultation process before making a decision to grant or deny authorisation. A pamphlet is enclosed which outlines the authorisation process in more detail.

In accordance with section 90, the Commission would usually be required to assess this application within 30 days (by 20 January 2005). However, LCMHC has agreed to extend this time frame until 18 February 2005. If the Commission has not made a decision by this time, authorisation will be deemed to be granted and the parties will be free to implement the merger.

Attached to this letter is a copy of the application and supporting submission received by the Commission concerning the proposed arrangements.

In order to grant authorisation the Commission must be satisfied that the public benefit arising from the proposed merger outweighs any public detriment. We have attached a list of questions for your consideration. We would also appreciate your views on any other matters you consider relevant to the proposed merger. The Commission asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the Commission may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the Commission may take it into account, even though not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

The General Manager
Mergers & Asset Sales Branch
Australian Competition & Consumer Commission
P O Box 1199
DICKSON ACT 2602

Submissions can also be lodged by e-mail to: jacqueline.brown@accc.gov.au and copied to paul.palisi@accc.gov.au.

While we do recognise the difficulty in preparing a submission at this time of year, considering the time frame for the Commission to assess the authorisation application, we request that your submission be provided by close of business **Friday, 14 January 2005**. If you are unable to furnish us with a response by that time, please contact staff to arrange an alternative due date.

Should you have any queries or if you wish to discuss any aspect of the application please contact Jacqueline Brown on (02) 6243 1247 or jacqueline.brown@accc.gov.au.

A copy of this letter will be placed on the public register.

Yours sincerely

Paul Palisi
Director
Mergers & Asset Sales Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

QUESTIONS FOR INTERESTED PARTIES

1. Self-paying patients

The Productivity Commission reported in 1999 that nine per cent of private patients paid for their treatment themselves – that is, their treatment was not funded by, for example, health insurance or the Repatriation Commission.¹

1.1 Do you consider that a significant number of these self-funded private patients would choose to be treated in the following facilities if the merged hospital raised its prices?

- Launceston General Hospital (as a *private* patient), the Eye Hospital or the Gynaecological Clinic; or

- in Hobart, North Western Tasmania or Melbourne.

1.2 Do you consider that a significant number of these self-funded private patients would choose to be treated in Launceston General Hospital as a *public* patient if the merged hospital raised its prices?

2. Patients whose treatment is paid for (fully or substantially) by health funds, the Repatriation Commission or another entity

2.1 Currently, who has greater bargaining power in Hospital Purchaser-Provider Agreement (HPPA) negotiations – the health funds and the Repatriation Commission or St Vincent's and St Luke's?

2.2 To what extent would this change if the proposed merger proceeded? Would St Luke's and St Vincent's be able to obtain significantly higher reimbursements from health funds? If so, why?

2.3 Could health funds credibly threaten to enter into an HPPA with the Eye Hospital or the Gynaecological Clinic in Launceston, or private hospitals in Hobart, Melbourne or North-Western Tasmania in place of an HPPA with the merged entity?

2.4 Is it possible to enter into a HPPA with Launceston General Hospital? If not, how are reimbursement rates determined for private patients treated at this hospital?

3. If authorisation is not granted

3.1 Are two private hospitals sustainable in Launceston? If not, and if authorisation is not granted, which hospital is more likely to close? Broadly, when might this happen?

3.2 If two private hospitals are sustainable in Launceston, would any of the public benefits identified by the applicant (see below) be likely to arise if both hospitals continued to exist as competitors? Alternatively, would the quality of service stay about the same or even fall over time?

¹ Productivity Commission 1999, *Private Hospitals in Australia*, Commission Research Paper, AusInfo, Canberra, p22.

4. Public benefits

Generally, LCMHC submits that:

A single health care provider will be able to deliver its services more efficiently, with less duplication of resources (for example, equipment and professional skills), and with the opportunity to consolidate clinical and administrative services on one site or the other. These cost savings, which the parties consider to be significant, will facilitate a higher quality service, and an expansion in clinical services offered. As a consequence, the provider will be in a stronger position to meet the future health care needs of Northern Tasmanians (submission page 31 – 32).

In particular, LCMHC submits that the merged hospital will be able to offer:

- new and expanded services (page 32);
- improvements in quality (page 33);
- a reduction in demand to increase prices by health funds for hospitals (page 36);
- benefits to health funds (page 36);
- reduced waiting lists (page 36);
- reduced need for patients to travel to Hobart or Melbourne (page 36);
- improve recruitment and retention of health care professionals in Launceston (page 37); and
- benefits to doctors (page 37). In particular, LCMHC submits that doctors have responded extremely positively to the announcement of the Acquisition (page 38).

LCMHC submits that these public benefits will flow from efficiencies generated by:

- clinical service rationalisation (page 39);
- capital equipment replacement (page 39);
- human resources (page 40);
- purchasing (page 41); and
- administrative and non-clinical synergies (page 35, 42).

Do you think that the public benefits listed above are likely to arise as a result of the authorised merger?

5. General

Did a similar acquisition by Calvary Health Care Tasmania of St John's Hospital generate benefits for the community? (page 34-35)

INTERESTED PARTIES LIST

Medical Benefits Fund of Australia Ltd
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Medibank Private Ltd

St Luke's Health

Department of Veterans' Affairs

Australian Health Service Alliance

HACSU

Australian Medical Association Tasmanian Branch

Launceston General Hospital

St Luke's Campus, Calvary Health Care Tasmania
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St Vincent's Hospital Launceston

Tasmanian Department of Health and Human Services

Australian Government Department of Health and Ageing

Australian Regional Health Group Ltd

Gynaecology Centres Australia

The Eye Hospital
