



Australian
Competition &
Consumer
Commission

Contact Officer: Priya Viswanathan
Contact Phone: (02) 6243 1357

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

8 November 2006

Dear Sir/ Madam,

Healthe Care Australia Pty Ltd – proposed acquisition of Brisbane Waters private hospital from Healthscope Limited

The Australian Competition and Consumer Commission (the ACCC) has released a Statement of Issues regarding the proposed acquisition by Healthe Care Australia Pty Ltd (Healthe) of Brisbane Waters private hospital (Brisbane Waters) from Healthscope Limited (Healthscope).

The ACCC is currently considering the proposed acquisition under section 50 of the *Trade Practices Act 1974* (the Act). Section 50 of the Act prohibits mergers and acquisitions that substantially lessen competition in a market, or are likely to do so.

The Statement of Issues seeks further information regarding the countervailing power of health funds and the Repatriation Commission when negotiating Hospital Purchaser Provider Agreements (HPPAs) with Healthe and on the position of self-funded patients, should the acquisition proceed. A copy of the Statement of Issues is attached. This document is available on the ACCC website at www.accc.gov.au.

The ACCC would welcome any comments that you have focusing on the topics outlined in the Statement of Issues. If the information and views provided are of a confidential nature, the details provided will be treated confidentially.

The ACCC anticipates making a final decision on the proposed acquisition by 6 December 2006.

We would be grateful for your response no later than **close of business 22 November 2006**. Responses can be mailed to Priya Viswanathan at the above address, faxed to (02) 6243 1212 or emailed (preferably in PDF format) to mergers@accc.gov.au with the title: 'Submission on Healthe/Healthscope - Statement of Issues'.



If you have any queries in relation to this letter or would like to discuss a response over the telephone, please contact Priya Viswanathan on (02) 6243 1357 or myself on (02) 6243 1220.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brenton Philp', with a stylized flourish at the end.

Brenton Philp
Director
Mergers & Asset Sales Branch



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Statement of Issues — Healthe Care Australia Pty Ltd's proposed acquisition of Brisbane Waters private hospital from Healthscope Limited

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of Brisbane Waters Private Hospital (**Brisbane Waters**) from Healthscope Limited (**Healthscope**) by Healthe Care Australia Pty Ltd (**Healthe**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 22 November 2006 and anticipates making a final decision on 6 December 2006. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

5. The ACCC commenced its informal review of Healthe's proposed acquisition of five hospitals from Healthscope Limited on 28 September 2006.

The transaction

6. On 28 September 2006, Healthscope notified the Australian Stock Exchange (**ASX**) that it had entered into a sales agreement with Healthe to sell Healthe five of its hospitals, including Brisbane Waters located in Woy Woy, New South Wales.
7. The sale of the hospitals is conditional on relevant government approvals including ACCC approval.
8. This Statement of Issues is in relation to Healthe's proposed acquisition of Brisbane Waters from Healthscope (**proposed acquisition**).

Healthe Care Australia Pty Ltd

9. Healthe is a recent entrant into the private hospital services markets in Australia. Healthe entered the private hospital services markets in Australia when it purchased five private hospitals from Ramsay Health Care Limited's (**Ramsay**) in 2005. Healthe currently operates these five private hospitals in the following locations:
 - The Valley Private Hospital, south eastern Melbourne;
 - South Eastern Private Hospital, south eastern Melbourne;
 - Lingard Private Hospital, Newcastle, New South Wales;
 - North Gosford Private, Gosford, New South Wales; and
 - Belmont Private Hospital, Brisbane.

Healthscope Limited

10. Established in 1985, Healthscope is the second largest 'for profit' private hospital services provider in Australia with 47 private hospitals that provide psychiatric, medical/surgical and rehabilitation services. Healthscope also has a pathology business which operates in Australia, New Zealand, Singapore and Malaysia. Healthscope was listed on the ASX in 1994.

Market inquiries

11. On 28 September 2006 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses and the ACCC notes that a number of market participants expressed concerns over Healthe's proposed acquisition of Brisbane Waters.
12. As a result of market inquiries, the ACCC has identified a number of areas on which it requires more information to complete its competition assessment of Healthe's proposed acquisition of Brisbane Waters.

Overview of competition issues

13. The ACCC considers that the relevant market in its assessment of Healthe's proposed acquisition of Brisbane Waters is likely to be the Gosford market for the supply to health funds (and entities performing similar functions – for example, the Repatriation Commission) of the right for their members to be supplied with general overnight hospital services at specified rates (in practice, often there is no charge to health fund members).
14. Brisbane Waters is located in this market along with two other private hospitals: Berkley Vale (currently owned by Ramsay) and North Gosford (currently owned by Healthe). Consequently, Healthe's proposed acquisition of Brisbane Waters would result in Healthe owning the two largest private hospitals in Gosford.
15. The ACCC now invites comment by market participants (preferably supported by examples) on the specific concerns identified in relation to the Gosford market for private hospital services which are set out in this Statement of Issues and any other issue which may be relevant to ACCC's assessment of Healthe's proposed acquisition of Brisbane Waters.
16. The key issue is whether the addition of Brisbane Waters to the Healthe hospital group would be likely to enable Healthe to exercise market power, particularly with regard to Healthe's Gosford hospitals, by either:
 - imposing a price increase on health funds and the Repatriation Commission; or
 - reducing the quality of services Healthe offers patients in the Gosford area either:
 - without commensurately reducing the prices it charges health funds (or accepting a lower increase in prices); or
 - even if it did accept lower prices from health funds, in a manner unacceptable to health funds, doctors and/ or patients. For example, health funds may object to a reduction in the quality of services because Gosford health fund members would be worse off, and therefore less likely to maintain their health insurance cover. The ACCC notes that lower payments to Healthe's Gosford hospitals would seem unlikely to materially affect premiums paid by health fund members.
17. In practice, a competition concern could arise post-acquisition if contractual disputes arose during Hospital Purchaser Provider Agreement (HPPA) negotiations between Healthe and health funds and were resolved in favour of Healthe.
18. Consequently, the ACCC seeks detailed information on why health funds may or may not be able to resist, for example, a demand for higher payments from Healthe in Gosford. In particular:

- To what extent might any lack of bargaining power of Healthe in the other regional hospital markets in which it owns hospitals be used to minimise its ability to exercise market power in Gosford? Post-acquisition, Healthe would operate hospitals in Melbourne, Brisbane, Gold Coast, Burnie, Dubbo and Newcastle.

As part of this, the ACCC would appreciate information on whether private hospitals are able to obtain higher payments from health funds where they are the only private hospital in regional town or area (for example, Dubbo and Burnie). The ACCC would also appreciate information on the level of bargaining power generally held by psychiatric hospitals (e.g Belmont or Brisbane).

- To what extent could health funds and the Repatriation Commission resist Healthe demands by relying on the remaining hospital in the Gosford area or, possibly, relying on nearby hospitals, for example, in northern Sydney, even temporarily?

Self-funded patients

19. The ACCC understands self-funded patients to be those patients who pay for their private hospital treatment themselves and are not currently members of health funds or have their treatment paid for in some other way, for example by the Repatriation Commission. The ACCC understands that self-funded patients may comprise up to ten per cent of private hospital patients.
20. The ACCC invites comment on the extent to which self-funded patients will be able to switch to alternative private hospital services in nearby areas and/or day surgeries should the price for private hospital services increase in Healthe's Gosford hospitals.

Healthe's other acquisitions

21. Healthe's sales agreement with Healthscope also covers the following hospitals:
 - Dubbo Private Hospital (Dubbo Hospital), Dubbo, New South Wales;
 - North West Private Hospital (North West), Burnie, Tasmania;
 - The Palm Beach Clinic (Palm Beach), Gold Coast, Queensland; and
 - La Trobe Private Hospital (**La Trobe**), Bundoora, Victoria
22. At this stage, it appears unlikely that Healthe's acquisition of these hospitals from Healthscope would raise competition concerns for the following reasons:
 - Dubbo Hospital and North West operate in single private hospital services markets. Hence, Healthscope's sale of Dubbo Hospital and North West to Healthe is a bare transfer of market shares in the relevant markets.

- Palm Beach operates in a single private psychiatric services market. Hence, Healthscope's sale of Palm Beach to Healthe is a bare transfer of market share in the relevant market.
- La Trobe appears to be situated in a regional market (encompassing north eastern and possibly central Melbourne) for private hospital services. Healthe does not own any other private hospitals in the relevant market. Hence, Healthscope's sale of La Trobe is a bare transfer of market share in the relevant market.

ACCC's future steps

23. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
24. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
25. Submissions are to be received by the ACCC no later than **22 November 2006**. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view as to the appropriate course of action to take to resolve any competition concerns that remain.
26. The ACCC intends to publicly announce its final view by **6 December 2006**. However the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.