



## ***Public Competition Assessment***

*22 January 2007*

### ***Health Care Australia Pty Ltd - proposed acquisition of Brisbane Waters private hospital from Healthscope Limited***

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#### **Introduction**

1. On 13 December 2006, the Australian Competition and Consumer Commission (ACCC) announced its decision to oppose the proposed acquisition of Brisbane Waters Private Hospital from Healthscope Limited by Health Care Australia Pty Ltd (**proposed acquisition**). The ACCC was of the view that the proposed acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the Gosford market for the supply of private hospital services to patients, in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).
2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines, subject to confidentiality considerations, the basis on which the ACCC formed its decision on the proposed transaction.

#### **Public Competition Assessment**

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
  - a merger is rejected;
  - a merger is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a merger is approved but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because the ACCC formed the view that Health Care Australia Pty Ltd's proposed acquisition would be likely to contravene the Act.
5. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets

and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

### **The parties**

#### *The acquirer: Health Care Australia Pty Ltd*

8. Health Care Australia Pty Ltd (**Healthe**) is a recent entrant into private hospital markets in Australia. Healthe became an operator of private hospitals when it entered a sales agreement with Ramsay Health Care Ltd (**Ramsay**) in late 2005 to acquire five private hospitals. Healthe operates those five hospitals in the following locations:
  - The Valley Private Hospital, south eastern Melbourne, Victoria;
  - South Eastern Private Hospital, south eastern Melbourne, Victoria;
  - Lingard Private Hospital, Newcastle, New South Wales;
  - North Gosford Private, Gosford, New South Wales; and
  - Belmont Private Hospital, Brisbane, Queensland.

#### *The target –Brisbane Waters Private Hospital owned by Healthscope Limited*

9. Healthscope Limited (**Healthscope**) owns or manages 48 medical/ surgical, rehabilitation and psychiatric hospitals and is the second largest private hospital provider in Australia. In addition, Healthscope operates a pathology business with facilities in Australia, New Zealand, Singapore and Malaysia. Healthscope was established in 1985 and listed on the ASX in 1994.

10. Brisbane Waters Private Hospital (**Brisbane Waters**) is a 95 bed private hospital owned by Healthscope and is located in Woy Woy, Gosford. Brisbane Waters provides specialist cardiology services and general medical and surgical services to patients.

### Market background

11. Brisbane Waters' competitors in the Gosford market are North Gosford Private (owned by Healthe) and Berkeley Vale (owned by Ramsay). Healthe's proposed acquisition of Brisbane Waters would result in Healthe owning the two largest private hospitals in Gosford.

### The proposed transaction

12. 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 private hospitals. The five hospitals were:
- Brisbane Waters (New South Wales);
  - Dubbo Private Hospital (**Dubbo Hospital**) (New South Wales);
  - La Trobe Private Hospital (**La Trobe**) (Victoria);
  - North West Private Hospital (**North West**) (Tasmania); and
  - The Palm Beach Clinic (**Palm Beach**) (Queensland).
13. The sale of the hospitals was conditional on relevant government regulatory approvals including ACCC approval.

### Timing

14. The following table outlines the timeline of key events in this matter.

Date	Event
28-Sep-2006	ACCC commenced review under the Merger Review Process Guidelines. Market inquiries commenced.
19-Oct-2006	Closing date for submissions from interested parties.
08-Nov-2006	Proposed date for announcement of ACCC's findings.
08-Nov-2006	ACCC published a Statement of Issues outlining preliminary competition concerns in relation to Health Care Australia Pty Ltd's proposed acquisition of Brisbane Waters Private from Healthscope Limited.
08-Nov-2006	The ACCC announced its decision not to oppose Health Care Australia Pty Ltd's proposed acquisitions of the Palm Beach Clinic, Dubbo Private Hospital, La Trobe Private Hospital and North West Private Hospital from Healthscope Limited.

22-Nov-2006	Closing date for submissions from interested parties on the Statement of Issues.
06-Dec-2006	Proposed date for announcement of ACCC's outstanding findings in relation to Health Care Australia Pty Ltd's proposed acquisition of Brisbane Waters Private Hospital from Healthscope Limited extended for further consideration of information provided by the merger parties.
13-Dec-2006	ACCC announced its decision to oppose Health Care Australia Pty Ltd's proposed acquisition of Brisbane Waters Private Hospital from Healthscope Limited.

### **Areas of overlap**

15. North Gosford Private (North Gosford), currently owned by Health Care, and Brisbane Waters are both located in Gosford, New South Wales.
16. Both North Gosford and Brisbane Waters provide high-acuity services. For the purposes of this public competition assessment, high-acuity services are taken to be hospital services which are generally more complex clinical procedures and typically require a substantial investment on the part of the hospital.
17. North Gosford and Brisbane Waters offer many of the same hospital services and a range of complementary hospital services. However, the two hospitals' case mixes indicate that the hospitals' revenue streams vary, with different specialities accounting for different proportions of total revenue at each of the two hospitals. For example, North Gosford specialises in obstetrics whereas Brisbane Waters specialises in cardiology.

### **Market inquiries**

18. The ACCC conducted market inquiries with a range of industry participants, including doctors ranging from general practitioners through to surgeons and other specialists, health funds, competitors, potential competitors, other regulatory agencies and other interested parties. Submissions were sought in relation to the competition issues raised in the Statement of Issues and any other issues that market participants considered relevant to the ACCC's assessment of the proposed acquisition.

### **Statement of Issues**

19. The ACCC published a Statement of Issues (**SOI**) on 8 November 2006 identifying a number of competition issues. In the SOI, the ACCC invited further information and comment on whether the proposed acquisition would be likely to lead to a substantial lessening of competition in the Gosford market for the supply to health funds (and entities undertaking 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 the SOI, the ACCC also noted that Health Care's proposed acquisition of the other four hospitals which were the subject of the sales agreement between Healthscope and Health Care, namely

Dubbo Hospital, North West, Palm Beach and La Trobe, was unlikely to raise competition concerns under section 50 of the Act.

20. The SOI explored whether the proposed acquisition would be likely to enable Healthe to exercise market power, particularly in regards 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.
21. In the SOI, the ACCC noted that 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 as a result of the reduction in competition. Consequently, the ACCC sought information on whether health funds and the Repatriation Commission would be able to resist, for example, a demand for higher payments from Healthe in Gosford.
22. In particular, the ACCC sought detailed information on whether Healthe's ability to exercise market power in the Gosford market post-acquisition would be limited by its relatively lower level of bargaining power in other regional hospital markets in which it owns private hospitals.
23. The SOI identified self-funded patients as patients who paid for their private hospital treatment themselves and were not currently members of health funds and did not have their treatment paid for in some other way, for example by the Repatriation Commission. The ACCC sought comment on the extent to which self-funded patients would be able to switch to alternative private hospital services in nearby areas and/ or day surgeries should the price for private hospital services in Healthe's Gosford hospitals increase post-acquisition.
24. The ACCC sought submissions from market participants on the issues that were raised in the SOI and any other issues that participants considered relevant to the ACCC's assessment of the matter.

## **Market One – Gosford market for the supply of private hospital services to health funds and the Repatriation Commission**

### *Market definition*

#### Product market

25. In defining relevant markets, the ACCC adopts a purposive approach. The ACCC formed the view that one relevant market was the Gosford market for the supply of private hospital services to health funds and the Repatriation Commission. This was consistent with the ACCC's previous considerations of Little Company of Mary Health Care Ltd's acquisition of The John James Memorial Hospital Ltd (August 2006) and Ramsay Health Care Ltd's acquisition of Affinity Health Ltd (August 2005).

#### Geographic market

26. Market inquiries did not support the inclusion of northern Sydney private hospitals in the relevant geographic dimension of the Gosford market for the supply of private hospital services to health funds and the Repatriation Commission. Submissions indicated that privately insured residents within a regional area expected access to private hospitals within that region for the majority of private hospital services. Market participants submitted that patient leakage to metropolitan private hospitals, in this instance to northern Sydney from Gosford, was mostly attributable to those patients who required services which were not provided in regional private hospitals.
27. For the purposes of competition analysis, the ACCC defined the relevant geographic dimensions of the Gosford market for the supply of private hospital services to health funds and the Repatriation Commission to include North Gosford, Brisbane Waters and Berkeley Vale Private Hospital (**Berkeley Vale**). This was in accordance with the regional approach to geographic dimensions for the Gosford region adopted by the ACCC in relation to Ramsay Health Care Ltd's acquisition of Affinity Health Ltd.

#### Conclusion

28. The ACCC was therefore of the view that one relevant market was the Gosford market for the supply of private hospital services to health funds and the Repatriation Commission.

### *Competition analysis*

#### Bargaining power

29. Market inquiries indicated that post-acquisition, Healthe would have had a portfolio of hospitals that would include a monopolistic or dominant position in certain New South Wales regional markets that might have impacted on some health funds' bargaining power when negotiating with Healthe post-acquisition.

30. Whilst Healthe's niche portfolio might have given Healthe an opportunity to leverage its dominance in certain markets, market inquiries confirmed that there would be no significant detrimental impact on the prices health funds and the Repatriation Commission pay to Healthe as purchasers of private hospital services from private hospital providers in Gosford. Submissions provided indicated that health funds and the Repatriation Commission would continue to possess sufficient bargaining power when negotiating with Healthe post-acquisition to offset any advantages that might accrue to Healthe due to the acquisition.
31. The ACCC considered that the proposed acquisition would be unlikely to provide Healthe with the ability to exert its bargaining power post-acquisition when negotiating payments for private hospital services from health funds and the Repatriation Commission in a way that may cause concerns under section 50 of the Act.

### **Market Two – Gosford market for the supply of private hospital services to patients**

#### *Market definition*

32. Market inquiries supported the delineation of a market for the supply of private hospital services to patients. The adoption of this market definition allowed for qualitative analysis of the competitive effects of the proposed acquisition by the ACCC.
33. The ACCC formed the view that the other relevant market in this matter was the Gosford market for the supply of private hospital services to patients.

#### Product market

34. Market inquiries indicated that doctors acted as agents for patients in obtaining a range of quality services for patients. Private hospitals, through the provision of requisite facilities and support staff for specialised treatments, compete for specialists which, in turn guarantees referrals of patients to the private hospitals. This competition between private hospitals is manifested, amongst other things, through the provision of state-of-the-art equipment, maintenance of the facility and provision of trained, quality support staff such as nursing staff.
35. Submissions supported the view that whilst there would be a direct effect on the acquisition of services from private hospitals in Gosford post-acquisition, the doctors were not, in the vast majority of cases, the ultimate consumers. Rather, it was the patients who were the end-consumers of the services provided, with the doctor providing a proxy for the service provision to the patient. The competition effects which doctors may have experienced post-acquisition could be accounted for through analysing the competition effects in the Gosford market for the provision of private hospital services to patients.

### Geographic market

36. Market inquiries did not support the inclusion of northern Sydney private hospitals in the relevant geographic dimension of the Gosford market for the supply of private hospital services to patients. Submissions indicated that patient leakage to Sydney from Gosford was, in most cases, attributable to the services not being offered by any private hospital in Gosford due to the high cost of specialisation and provision of such services which rendered offering them in regional areas unfeasible due to insufficient patient numbers. Submissions supported the view that services which were required more often within a population, such as orthopaedics, were offered in regional private hospitals and patients who resided within those regions expected such services to be provided by their local, regional private hospitals.
37. Furthermore, submissions indicated that some patient leakage to northern Sydney from Gosford could be attributed to familial reasons.
38. For the purposes of competition analysis, the ACCC defined the relevant geographic dimensions of the Gosford market for the supply of private hospital services to patients to include North Gosford, Brisbane Waters and Berkeley Vale. This was in accordance with the regional approach to geographic dimensions for the Gosford region adopted by the ACCC in relation to Ramsay Health Care Ltd's acquisition of Affinity Health Ltd.

### Conclusion

39. The ACCC was therefore of the view that one relevant market was the Gosford market for the supply of private hospital services to patients.

### *Competition analysis*

40. Market inquiries indicated that the influence of health funds, the Repatriation Commission, industry codes and relevant government regulations ensure that services meet at least a certain standard. Private hospitals have to operate at or above this standard in order to be accredited as a private hospital and receive payments from health funds and the Repatriation Commission.
41. Market inquiries revealed that the incentive to offer services above this standard is influenced by the competition between private hospital providers for patients, as provided by doctors.



Berkeley Vale – constraint on North Gosford and Brisbane Waters

42. Submissions suggested that Berkeley Vale is unlikely to be sufficient to constrain North Gosford and Brisbane Waters if they were owned by Healthe.

Extent to which North Gosford and Brisbane Waters compete and the role of doctors in using this competition to facilitate higher service levels in the hospitals

43. Submissions received indicated that Brisbane Waters and North Gosford compete in the provision of new and existing services in order to attract doctors. Doctors in this capacity act as the service quality proxy for the patient, with the competitive dynamic between Brisbane Waters and North Gosford allowing doctors to facilitate optimal service provision to patients at the two hospitals. The ACCC considered that post-acquisition, the competitive tensions currently at play between the two hospitals would be likely to cease, leading to a reduction in the quality of services. Post-acquisition, there would be a reduced incentive on the part of Healthe to provide, amongst other things, innovative services or an optimal number of support staff at the hospitals—this is in contrast to the incentives provided by the current state of competition between Brisbane Waters and North Gosford.
44. Market inquiries also revealed that the competitive dynamic that currently exists between Brisbane Waters and North Gosford facilitates the provision of a broader range of private hospital services in Gosford. This is because there is an incentive for the two hospitals to differentiate themselves through specialisation, which in turn attracts doctors and increases the services available to patients. Submissions confirmed that the two hospitals compete in both the provision of existing services, for example, by upgrading equipment, and compete in the provision of new services, for example, by investing in requisite equipment and hiring additional support staff. This competition facilitates the differing case mixes of Brisbane Waters and North Gosford with each hospital providing services in variance to the other hospital in order to maximise patient flow.

Rationalisation post-acquisition and its effect on the quantity and range of services provided in Gosford

45. The ACCC noted that rationalisation may have occurred at Brisbane Waters and/ or North Gosford regardless of whether the proposed acquisition took place. However, the ACCC's concerns were that whilst independent rationalisation may occur in the absence of the acquisition, Brisbane Waters, for example, would necessarily be concerned during that process with maintaining its free-standing existence. Therefore its choices about rationalisation would more likely take into account the competitive tensions that currently exist between itself and North Gosford. This could be contrasted with the likely competitive environment post-acquisition, where Healthe would only need to take into consideration its own financial incentives when making choices about rationalisation in Brisbane Waters and North Gosford.

46. Submissions received indicated that rationalisation made possible by the proposed acquisition would be likely to result in a reduction in the range and quantity of services currently offered by North Gosford and Brisbane Waters.

**Conclusion**

47. On the basis of the above, the ACCC formed the view that the proposed acquisition of Healthscope Limited's Brisbane Waters Private Hospital by Health Care Australia Pty Ltd was likely to result in a substantial lessening of competition in the Gosford market for the provision of private hospital services to patients in contravention of section 50 of the Act.
48. As a result of the ACCC's decision to oppose Health's proposed acquisition of Brisbane Waters Private Hospital, Healthscope sold the other four hospitals subject to the sales agreement to Health and retained Brisbane Waters in its private hospitals portfolio. Healthscope notified the ASX of the amended sales transaction on 13 December 2006.