



Department of Human Services

Incorporating: Health, Community Services, Mental Health, Senior Victorians and Housing

50 Lonsdale St
GPO Box 4057
Melbourne Victoria 3001
DX210081
www.dhs.vic.gov.au
Telephone: 1300 650 172
Facsimile: 1300 785 859

ADD/07/28574

Ms Isabelle Arnaud
Director, Adjudication
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By Facsimile: (02) 6243 1211

Dear Ms Arnaud

Collective bargaining notification CB00004 lodged by the Australian Medical Association (Vic) Pty Ltd on 17 September 2007 - interested party consultation

I refer to the submission of the Australian Medical Association of Victoria (**AMA**) dated 2 October 2007 (**AMA's Further Submission**) regarding the collective bargaining notice (**Notice**) lodged by AMA. AMA's Further Submission responds to submissions from interested parties, including in particular the Department of Human Services (**DHS**), in relation to the Notice.

By way of response to AMA's Further Submission, DHS wishes to draw the following 4 brief points to the Commission's attention:

- 1 AMA's Further Submission fails to remedy the lack of information regarding the way in which the AMA proposes to collectively negotiate pricing for the different craft groups. DHS observes that the ACCC asked the AMA for further information of this kind by email dated 20 September 2007 and DHS likewise noted the lack of this information in its submission of 28 September 2007. Yet, neither the AMA's letter of response dated 27 September 2007 nor the AMA's Further Submission provide any explanation of how the collective negotiation, involving a number of craft groups, is to be conducted. DHS submits that immunity should not be conferred on the proposed conduct in circumstances where the AMA has failed to adequately articulate that proposed conduct.

- 2 In AMA's Further Submission, the AMA contends that DHS' assertion that the collective negotiations will eliminate the competitive tension existing between medical practitioners within a craft group is incorrect. The AMA reasons that there is no competitive tension because of the supply shortage of medical practitioners in the region in which the Latrobe Regional Hospital is located. It further argues that the uniformity of price between medical practitioners within a craft group is 'proof' of the lack of any competitive tension between medical practitioners. By way of response, DHS observes that:
- 2.1 While a supply shortage may result in a higher market clearing price, the existence of a supply shortage does not suffice to demonstrate an absence of any competition between suppliers. The existence of a number of suppliers, in this case medical practitioners within a craft group, will continue to deliver competition in the presence of a supply shortage, so ensuring that the price for their services is confined to the market clearing price that would prevail in a competitive market and that those practitioners are not able to withhold supply to further raise price. It is this competitive tension, between medical practitioners in those craft groups comprised of a number of medical practitioners, that DHS contends will be eliminated by the proposed collective negotiations.
- 2.2 As the Commission would be aware, uniform pricing of a service is consistent with the existence of price competition between suppliers of that service and does not suffice to demonstrate a lack of competitive tension between suppliers.
- 3 The AMA further argues that DHS' assertion that the substitution that currently exists between certain craft groups will be lost through the proposed collective negotiations is incorrect. The AMA reasons that this substitution will not be lost because the outcome of the collective negotiations will be formalised through individual agreements, rather than a collective agreement, with the result that pricing may differ between medical practitioners and craft groups. By way of response, DHS observes that:
- 3.1 Whether the outcome of the collective negotiations is formalised through a number of individual agreements or a single collective agreement is irrelevant to whether that outcome reflects the elimination of substitution between certain craft groups.
- 3.2 Pricing across the craft groups may reflect enhanced market power even though that pricing differs across those groups.
- 4 The AMA's Further Submission does not purport to address DHS' contention that the collective negotiation would, if conducted collectively for all craft groups, facilitate the leveraging of market power by those craft groups possessing it for the benefit of those craft groups that do not possess market power.

Please contact me if you would like to discuss any aspect of this letter, or DHS' views on the Notice more generally, further.

Yours sincerely



DR C W BROOK
Executive Director
Rural and Regional Health and Aged Care Services