



16 July 2008

Statement of Issues – Medibank Private – proposed acquisition of Australian Health Management Group

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition (**proposed acquisition**) of Australian Health Management Group Limited (AHM) by Medibank Private Limited (**Medibank**).
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 accordance with the ACCC's Merger Review Process Guidelines¹, the ACCC has established a secondary timeline for further consideration of the competition issues arising from the proposed acquisition. The ACCC anticipates completing further market inquiries by **30 July 2008** with a proposed date for announcement of the ACCC's decision of **13 August 2008**. 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, suppliers 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. On 13 June 2008, the ACCC became aware of the public announcement of the proposed acquisition and commenced an informal merger review in accordance with the ACCC's Merger Review Process Guidelines.

¹ The ACCC's *Merger Review Process Guidelines* are available on the ACCC's website at www.accc.gov.au

Relevant parties

Medibank

6. Medibank is a Government Business Enterprise, being Australia's largest not-for-profit provider of private health insurance (**PHI**), covering nearly 3 million Australians. Medibank has a presence in each Australian state and territory, with approximately 100 retail centres Australia-wide.
7. Medibank also provides health management services to its members through a third party health management services provider.

AHM

8. AHM is a not-for-profit PHI provider based in Wollongong operating under a number of business names including *AHM, Australian Country Health, Country Health, Government Employees, Illawarra Health Fund* and *Mutual Health*. AHM does not have any retail centres but it does operate three dental and optical practices in NSW.
9. Although AHM's core business is the supply of PHI, it also operates 'Total Health' which is an online business offering health management services. Such services include disease management, assisted hospital discharge, health assessments, health coaching and pregnancy support. AHM provides health management services to its PHI consumers directly as well as to third parties including corporates, government and rival PHI providers.

Market inquiries

10. On 13 June 2008 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including PHI providers, health management service providers, government agencies and private hospitals.

Industry background

11. The main participants in the PHI industry are PHI providers, hospital operators, doctors and consumers (PHI customers and patients). The PHI industry is different from most industries in that although patients use the hospital service, it is generally the doctors who determine where they will be treated and their PHI provider pays for most, if not all, of the in-hospital services. PHI providers directly negotiate with private hospitals for the provision of services to their members when and if they are required.
12. Providers of PHI offer consumers insurance cover for hospital services (**Hospital Cover**) and ancillary services (**Ancillary Cover**). Consumers can choose to purchase Hospital Cover and Ancillary Cover separately or together and can hold Hospital Cover and Ancillary Cover with different PHI providers.
13. In addition, PHI providers are increasingly offering health management services which aim to prevent or manage chronic disease.² At present most PHI

² In part, this is due to the stated desire of the new Federal Government to have PHI providers more proactively involved in health management initiatives.

providers offer information-based health management services but there is a gradual movement towards active intervention services.

14. PHI providers typically offer different levels of cover to meet the needs of different consumers. The range of PHI products which a PHI provider may offer to consumers (including specific features of PHI products) is subject to regulation. Changes to PHI premiums can only be made annually and are subject to approval by the Federal Minister for Health and Ageing.
15. Additionally, the regulatory principle of Community Rating requires that each customer who holds a particular policy type will, in each state, pay the same premium.³
16. A PHI provider must be registered in accordance with the *Private Health Insurance Act 2007* to supply PHI products to Australian consumers. There are currently 38 registered PHI providers in Australia, 25 of which are open to the general public and 13 of which operate on a restricted membership basis. The PHI industry is generally concentrated with the two largest PHI providers having a large share of PHI policies nationally. Medibank and AHM are open membership funds.

Statement of Issues

17. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, 'issues that may give rise to concerns' and 'issues unlikely to pose concerns'. The ACCC is inviting information from interested parties in relation to all issues.

Issues that may give rise to concerns

Health management services

18. Market inquiries indicated that the proposed acquisition may provide Medibank with an increased ability and incentive to foreclose competition in PHI consumer markets by restricting or limiting the supply of health management services.
19. In particular, interested parties indicated that:
 - health management services enable PHI providers to better manage their costs by assisting to reduce the extent to which PHI consumers make claims and are increasingly being used by PHI providers to underpin their competitiveness;
 - AHM is a significant provider of third party health management services to small to medium PHI providers and there are limited alternatives for the services provided by AHM, including due to some health management services providers having exclusive arrangements with PHI providers; and

³ The policy objective of Community Rating is to prevent PHI providers from price discriminating on the basis of age, health status, etc. Exceptions apply for loadings for Lifetime Health Cover and the limited range of permitted discounting measures.

- the potential for the merged entity to cease providing third party health management services to rival small to medium PHI providers would be likely to reduce the ability of small to medium PHI providers to effectively compete in PHI markets.
20. The ACCC invites further information and views as to:
- the significance of third party health management services in underpinning the competitiveness of small to medium PHI providers;
 - the significance of small to medium PHI providers in providing a competitive constraint on the merged entity;
 - the extent to which substitutes may be available post-acquisition for the third party health management services currently provided by AHM, including from smaller regional health management services providers;
 - the extent to which exclusive arrangements with respect to health management services may limit the ability of small to medium PHI providers to obtain third party health management services; and
 - the extent of barriers to entry and expansion in the supply of health management services including by:
 - major PHI providers
 - small to medium PHI providers, either individually or collectively;
 - existing smaller regional health management services providers; and
 - established health management services providers operating in other markets.

PHI distribution intermediaries

21. Market inquiries indicated that there is the potential for AHM to cease using PHI distribution intermediaries post-acquisition. The ACCC is considering whether this could impact on other PHI providers using PHI distribution intermediaries and have the effect of substantially lessening competition.
22. Market inquiries indicated that PHI distribution intermediaries have played a significant role in PHI consumer markets, particularly in the provision of marketing services. However, interested parties also indicated there are a number of distribution channels available to PHI providers such that the operation of PHI distribution intermediaries may not be determinative of the structure of competition post-acquisition.
23. The ACCC invites any comments on the extent to which the impact of the proposed acquisition on PHI distribution intermediaries may raise competition concerns.

Private hospital services buying groups

24. Market inquiries indicated that private hospital buying groups have a very important role in PHI consumer markets, in particular, through the acquisition of private hospital services on behalf of small to medium PHI providers.
25. Interested parties indicated that there is the potential for AHM to cease participating in private hospital buying groups post-acquisition. The ACCC considered whether this could impact on PHI providers participating in private hospital buying groups post-acquisition and have the effect of substantially lessening competition.
26. However, interested parties also indicated that AHM is one of a number of current and potential participants in private hospital buying groups such that the ability of private hospital buying groups to provide services to members and the competitive constraint imposed by small to medium PHI providers may not be reduced to the substantial detriment of competition.
27. The ACCC invites any comments on the extent to which the impact of the proposed acquisition on private hospital buying groups may raise competition concerns.

Issues unlikely to pose concerns

28. Market inquiries indicated the proposed acquisition is unlikely to raise competition concerns in relation to the supply of PHI to consumers or in relation to the acquisition of services from private hospitals as a result of the combination of Medibank and AHM's PHI membership base.
29. The ACCC will accept further submissions from industry participants and will further consider these issues if it considers that such an assessment is warranted.

ACCC's future steps

30. The ACCC now seeks submissions from interested parties 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. Submissions are to be received by the ACCC no later than **30 July 2008**.
31. The ACCC will consider submissions received from interested parties, Medibank and AHM in light of the issues identified above and will, in conjunction with information and submissions already provided by Medibank, come to a final view as to the appropriate course of action to take to resolve any competition concerns that remain.
32. The ACCC intends to publicly announce its decision in relation to the proposed acquisition by **13 August 2008**. 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.