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Newcastle

Level 7  
Sparke Helmore Building  
28 Honeysuckle Drive  
Newcastle NSW 2300

PO Box 812  
Newcastle NSW 2300

p » +61 2 4924 7200  
f » +61 2 4924 7299  
DX 7829 Newcastle

Our ref: ATH:SPE006/2  
Your ref:

23 December 2009

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

[www.sparke.com.au](http://www.sparke.com.au)

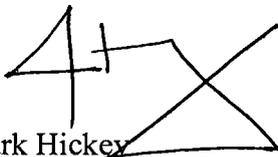
Dear Sirs

**Specialist Oncology Property Limited**  
**Form G - Exclusive Dealing Notification**

We refer to our letter dated 22 December 2009 forwarded by email (copy enclosed) and now **enclose** the following:

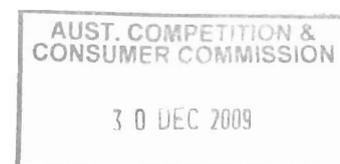
1. Form G - Notification of Exclusive Dealing pursuant to section 93(1) of the Trade Practices Act 1974 (Cth); and
2. Cheque in favour of the Australian Competition and Consumer Commission in the sum of \$100.00 in payment of the lodgement fee.

Yours faithfully



Mark Hickey  
Partner  
Accredited Specialist  
Business Law  
+61 2 4924 7623  
[mark.hickey@sparke.com.au](mailto:mark.hickey@sparke.com.au)

**Encl.**



Our ref: ATH:SPE006/2

Your ref:

22 December 2009

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

[www.sparke.com.au](http://www.sparke.com.au)

**By email [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)**

Dear Sirs

**Specialist Oncology Property Limited  
Form G - Exclusive Dealing Notification**

We act for Specialist Oncology Property Limited.

**Enclosed** is a Form G - Notification of Exclusive Dealing pursuant to section 93(1) of the Trade Practices Act 1974 (Cth).

We confirm a cheque in payment of the \$100.00 lodgment fee will be forwarded to your offices under separate cover.

Yours faithfully



Mark Hickey  
Partner  
Accredited Specialist  
Business Law

**Encl.**

## Form G

### Commonwealth of Australia

#### Trade Practices Act 1974 – Sub-section 93(1)

#### NOTIFICATION OF EXCLUSIVE DEALING

#### To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(7) and 47(8) of that Act in which the person giving the notice engages or proposes to engage.

#### 1 Applicant

(a) **Name of person giving notice:**

N94403 Specialist Oncology Property Ltd ACN 082 577 615 (SOP).

(b) **Short description of the business carried on by that person:**

SOP is the owner of medical premises, including a chemotherapy unit located in the medical centre strata suites adjacent to Norwest Private Hospital (**Unit**), that it leases to third parties for the operation of medical practices relating to the provision of oncology services.

Specialist Oncology Services Pty Ltd ACN 080 625 725 (**Specialist Services**), a related entity of SOP, occupies a part of the Unit for the purpose of the operation of a specialist medical practice.

(c) **Address in Australia for service of documents on that person:**

Specialist Oncology Property Ltd  
Suite 13, 1a Ashley Lane  
WESTMEAD NSW 2148

#### 2 Notified Arrangement

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**

McBeaths Pharmacy Westmead ACN 674 794 670 (**McBeaths**) will be exclusively supplying pharmaceutical services, in particular chemotherapy drugs, to the Unit to be operated in the medical centre strata suites adjacent to Norwest Private Hospital. As stated above, the Unit is owned by SOP, part of the Unit is occupied by Specialist Services, a related entity of

SOP and the balance is leased to Healthscope Limited ACN 006 640 152 (**Healthscope**) who provide services to inpatients at the Unit for the administration of chemotherapy.

**(b) Description of the conduct or proposed conduct:**

SOP has entered into an agreement with McBeaths pursuant to which McBeaths is appointed as the exclusive supplier of chemotherapy drugs to the Unit (**Agreement**). It is a condition of the lease from SOP to Healthscope that all chemotherapy drugs administered by Healthscope at the Unit be obtained exclusively from McBeaths and that Healthscope enter into a licence agreement providing for McBeaths to occupy an area within the leased premises. This Agreement has been procured by SOP directly with McBeaths. The term of the Agreement is 5 years with an option for renewal for a further period of 5 years.

Prescriptions for outpatient medications are not covered by the Agreement, accordingly patients retain their right to choose their own pharmacist to fill their prescriptions.

The exclusive rights were granted to McBeaths by SOP following a competitive tender process with the other major hospital supplier of chemotherapy drugs being invited to put forward a proposal. There is no contractual procurement arrangement for the McBeaths pharmacy provider between McBeaths and Healthscope.

**3 Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

- Members of the public who are from time to time inpatients in the Unit;
- Healthscope; and
- Other pharmaceutical suppliers of chemotherapy drugs within the Sydney and wider NSW and Australian market.

**(b) Number of those persons:**

**(i) At the present time:**

- Once operating the Unit will have the capacity to treat approximately 400 patients per month assuming standard hours of operation. For the first year of operation it is expected that 200 patients per month will be treated.

- The other major suppliers of chemotherapy drugs in Australia are HPS Pharmacies, Pharmatel Fresenius Kabi Oncology Dispensary, APHS Pharmacies, Slade Pharmacies, Capital Pharmacy Group and The Wesley Pharmacy. Minor suppliers include Westmead Private Pharmacy, North Shore Private Hospital Pharmacy and Constance Pharmacy.
- Of the major providers above, HPS Pharmacies, Pharmatel Fresenius Kabi Oncology Dispensary, APHS Pharmacies and Slade Pharmacies operate in the NSW marketplace. All minor providers operate in NSW.

(ii) **Estimated within the next year:**

- As stated at point 3(b)(i) above, the Unit is estimated to have the capacity to treat 400 patients per month which equates to 4800 treatments per year.
- Given the nature of the supply of chemotherapy drugs this area of pharmaceutical practice is very specialised requiring expert knowledge and equipment. Further, providers must be approved under the *National Health Act 1953*. For these reasons, SOP does not anticipate the suppliers in the marketplace to significantly change within the next year.

(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

Not applicable.

**4 Public benefit claims:**

(a) **Arguments in support of notification:**

The production, prescription and administration of chemotherapy is rapidly increasing in complexity meaning that there are only a few providers in the market who are able to efficiently provide the required services. Although McBeaths are not the largest supplier of chemotherapy drugs in the market, they have been selected by SOP through a selective tender process because of the quality of their services and their success in providing an alternative provider of chemotherapy drugs.

McBeaths are commissioning a plant for production of chemotherapy drugs to be located within the same suburb as the

Unit which will assist in ensuring an efficient, consistent and ongoing supply of chemotherapy drugs to the Unit. Their main administration and clinical support services are also in the vicinity allowing easy access to management and McBeaths' oncology team which has over twenty five pharmacists, technicians and assistants.

It is a term of the Agreement that McBeaths must provide a full time oncology trained pharmacist to be based on-site at the Unit to supervise the administration of chemotherapy drugs and to ensure the highest level of staff education and patient information is made available.

McBeaths have supplied chemotherapy drugs to Westmead Public Hospital since 2000. The Cancer Specialists who will refer patients to this oncology unit have a strong working relationship with McBeaths and their senior staff. This is a relationship that has developed over this time and the selection of McBeaths has increased the confidence of the Cancer Specialists in the quality of the service their patients will receive at this Unit.

It is also a condition of the Agreement and the lease to Healthscope that the Unit will operate as a clinical research facility assisting the oncologists practicing within the Unit to stay at the forefront of this area of medical practice. The on-site pharmacist provided by McBeaths will assist with running trials, collecting information and preparing scientific papers relating to this work. The operation of clinical trials will provide benefits to both patients of the Unit and the wider community through research and development.

The patients of the Unit will gain the benefit of the experience, skill and expertise of McBeaths who have been actively involved in dispensing chemotherapy and providing a clinical service for chemotherapy since April 1996. McBeath's currently coordinates the reconstitution and supply of approximately 6,700 reconstituted cytotoxic items across oncology clinics each month. These oncology clinics have a variety of service models as each service arrangement was specifically designed with McBeaths' experience to complement the current workflow of each clinic and hospital. This is possible due to experience and a comprehensive understanding of the operation of oncology treatments and clinic management. McBeath's oncology team currently has over twenty five pharmacists, technicians and assistants.

List of clinics currently serviced by McBeaths:

- Sydney South West Area Health Service Clinics – Royal Prince Alfred, Concord, Bankstown, Liverpool & Campbelltown
- Greater West Area Health Service Clinics – Bathurst, Orange, Dubbo & Broken Hill
- South East Sydney Illawarra Area Health Service Clinics – Wollongong & Shoalhaven (2006), St George Hospital
- Sydney West Area Health Service Clinics – Westmead, Nepean, Blacktown
- Riverina Cancer Care Centre (Wagga Wagga)
- Manly Hospital Clinic

**(b) Facts and evidence relied upon in support of these claims:**

The Agreement will not result in any change to the costs of chemotherapy drugs payable by patients, the hospital or health system because:

- the prices payable by the Government for chemotherapy agents are fixed and apply to all pharmacy providers;
- the Government fixes the prescription fees that may be charged by pharmacy providers, including McBeaths; and
- under Commonwealth legislation pharmacy providers cannot charge patients a margin on the drugs, cannot increase prescription fees or charge patients any other fees for the supply of medication.

The Agreement with McBeath's for the supply of chemotherapy drugs to the Unit and the presence of a full time on-site oncology pharmacist will deliver the following additional benefits:

- minimised medication errors;
- improved education of staff and doctors at the Unit;
- improved patient education by increasing accessibility to specialist pharmacist;
- provision of a valuable on-site resource for information regarding oncology drugs; and
- assistance in establishment and conduct of clinical trials in oncology.

## 5 Market definition

**Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods and services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

The market is the supply of oncology drugs for chemotherapy to clinics in Australia. The market nationally for the supply of oncology drugs to chemotherapy units comprises over 305,000 treatments per annum from 10 suppliers of chemotherapy drug composition and supply. McBeath's are not the largest supplier of oncology drugs and the Unit is for only one outlet in the medical strata suits adjacent to Norwest Private Hospital there is very little impact by virtue of the Agreement on the market. Accordingly, we do not believe that entry into the Agreement will adversely impact upon competition in the marketplace for supply of these specialised drugs.

Given the specialist nature of the manufacture, supply and administration of chemotherapy drugs, the number of competitors in the market is limited. Furthermore McBeaths are not the largest supplier of chemotherapy drugs in the market. Other barriers to entry are the specialised nature of the equipment and staff required and the requirement for approval under sections 90 or 94 of the *National Health Act 1953* which regulates the pharmaceutical benefits scheme and requires pharmacy providers to meet the obligations of the legislation to access the scheme.

## 6 Public detriments

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of goods or services described at 2(a) above and the prices of goods or services in other affected markets:**

SOP cannot see any potential detriment to the public as a consequence of entry into the Agreement. As noted above the prices that can be charged for the supply of chemotherapy drugs are fixed by the Government and entry into the Agreement will therefore not impact upon the prices payable by members of the public.

Competition in the market is limited by the specialised nature of pharmaceutical practice and in particular the requirement for technical equipment and staff expertise. Further hospital pharmacy providers must have approval under sections 90 or 94 of the *National Health Act 1953* and meet its legislative requirements in order to access to the pharmaceutical benefits scheme.

Patients of the Unit will retain have the right to fill prescriptions for any outpatient treatment to any community pharmacy for supply.

McBeath's are not the largest supplier of oncology drugs in the national market and the Unit where the arrangement takes effect is one location only. This will not have a significant detrimental impact on the market.

**(b) Facts and evidence relevant to these detriments:**

SOP does not believe the Agreement will have the effect of substantially lessening competition in the market. Whilst McBeaths market share will be increased by entry into the Agreement, McBeaths is not the largest supplier of chemotherapy drugs in the relevant market and entry into the Agreement will not change that position. The existing providers will continue to operate in the market.

As stated above, it is anticipated the Unit will have a capacity of 4,800 treatments per year. In the Australian Institute of Health and Welfare statistics there were 304,102 chemotherapy treatments in the 2006/2007 year with an annual average increase over the last 5 years of 12,318 per annum. Accordingly, the number of treatments the subject of this Agreement is a small percentage of the total market.

The Agreement has the following advantages:

- ensuring an efficient reliable supply of chemotherapy drugs to inpatients at the Unit from an experienced provider;
- provision of an on-site specialist trained pharmacist at the Unit to ensure the highest levels of staff and patient education and to assist in operation of clinical trials;
- no impact upon prices paid for the supply of chemotherapy drugs as these are fixed at a government level; and
- provision of drugs from a supplier who has over a period of 9 years earned the trust of the doctors who are prescribing the medications.

On the basis of the above SOP is of the opinion the public benefits of the Agreement far outweigh any impact upon competition in the market which will be minimal at most.

7 Further information:

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Dr Duncan Guy  
Suite 13, 1a Ashley Lane  
WESTMEAD NSW 2148  
Phone: 0413 998 170

Dated: 21.12.09.

Signed by/on behalf of the applicant



(Signature)

MARK HICKEY.

(Full Name)

SPARKE HELMORE LAWYERS.

(Organisation)

PARTNER.

(Position in Organisation)