

Our ref: ATH:SPE006/2  
Your ref: C2010/42

3 March 2010

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Dear Sharon

**Specialist Oncology Property Limited - Exclusive dealing notification N94403**

We refer to the above notification and your email dated 22 February 2010.

We are instructed to respond to the following parts of the Fresenius Kabi Australia Pty Limited (FKA) response using their numbering as follows:

3.1 – As Specialist Oncology Property Limited (SOP) have done.

3.2 – FKA was not invited to tender for this contract as SOP made the erroneous assumption that they were a wholesale entity like Baxter and did not realise that they were unique in the industry in having a corporate retail arm.

3.3 – As SOP have done.

3.4 – Our client acknowledges that this arrangement is somewhat unique, however by structuring the agreement in this fashion SOP have been able to insulate the hospital and the patients from excessive charges from the chemotherapy supplier. In the past, and in many cases currently, it is common practice for suppliers of chemotherapy to charge significant amounts to both hospitals and patients, and given SOP is committed to delivering affordable multidisciplinary healthcare to patients this is against SOP's philosophy.

3.5 – Specialist Oncology Property Limited is a public unlisted company and has many shareholders who are not doctors. In its agreements with doctors who choose to use SOP's services to manage their practice, it explicitly states that the doctors are not employees, partners, nor associates or in any way linked to the company other than owning shares in the company. The average shareholding of any given doctor is < 1% of issued shares. The Medical Board of NSW states that if a doctor owns >5% of a company from which the doctor may benefit financially this relationship is to be disclosed to patients referred to that service. Our client therefore believes they are not

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in breach of any Act and in any event the issue raised is of minimal relevance to the third line forcing issue at hand. Shareholding in SOP arguably has the same impact on a doctor's choices as it would in owning shares in Woolworth's – there is no compulsion to shop there.

3.6 - SOP was formed by an Oncologist, two surgeons and an Endocrinologist. It now has 75 doctors who use its services to manage their practices. Oncologists are in the minority. On the board there is a Banker, Surgeon, Oncologist, Obstetrician and a Gastroenterologist. The CEO is a Cardiologist. Our client therefore does not see any issue with breach of any Act in this regard.

3.7 – Our client agrees – that is why SOP has structured the agreement to protect the public from excessive charges from the chemotherapy supplier. The exact arrangement is commercially sensitive, but will be disclosed on a strictly confidential basis if required to assist in the ACCC's assessment.

3.8 – This was done to minimise administrative load. It means that the supply agreement is in place for long enough for all parties to work to ensure it is a success. The agreement is structured so that at the end of the 5 years SOP will assess whether the KPI's have been consistently met, and only if this is the case is the trigger initiated to ask McBeaths if they wish to exercise the option for extension.

4.2 – This was a factor determined to be important by the Oncologists our client consulted. In 4.6 it seems that FKA to some extent agree that proximity is important. It is to be noted that there are occasions that occur regularly where a patient with a very aggressive cancer may require treatment on the same day they are initially seen by the Oncologist due to life threatening issues such as superior vena caval obstruction and as such there is an emergency nature to the supply of these treatments.

4.3 – SOP strongly disagrees, and hence included a full time pharmacist on site at the unit as part of their requirements. This will maximize the education of patients and foster a multidisciplinary approach to patient management. Our client did not want the presence or absence of a pharmacist to be at the discretion of a multinational company where there may in the future arise a fiscal imperative for minimizing such support.

4.5 – SOP agree, and in fact McBeath's use FKA and Baxter for supply of such drugs.

We trust this information will be of assistance in the assessment of the notification. Please do not hesitate to contact us should you have any further questions.

Yours faithfully



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