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Email

19 July 2010

Dr Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition and Consumer  
Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

**Attention - Erin Donohue**

Our ref 217/14538/80074761

Dear Dr Chadwick

## **Vision Group Holdings Ltd application for authorisation A91217 - Pre-decision conference**

We refer to your letter dated 30 June 2010, in which you informed us that the Australian Competition and Consumer Commission (**Commission**) has, in response to requests by interested parties, scheduled a pre-decision conference on 22 June 2010 in relation to the draft determination issued by the Commission on 9 June 2010 proposing to grant an authorisation to Vision Group Holdings Limited.

We also refer to the letters provided to the Commission by Gordon Eye Surgery on 24 June 2010 and the Australian Society of Ophthalmologists (**ASO**) on 25 June 2010. We provide this submission in response to the issues raised by those parties and in preparation for discussions at the pre-decision conference.

### **1. The Scope of the Authorisation**

The ASO raised in its letter concerns that the conduct, if authorised, would allow all similar style ophthalmology practices to engage in the authorised conduct. In contrast, Gordon Eye Surgery raised concerns in its letter that it could not also undertake the conduct, if authorisation is granted to Vision Group, despite having a similar structure to Vision Group.

We note that the ACCC will only grant authorisation to Vision Group if it considers that the proposed conduct is likely to result in benefits to the public and those benefits are likely to outweigh any public detriment resulting from the conduct (the public benefits test). Before granting an authorisation, the ACCC undertakes a rigorous review in order to satisfy itself that the public benefits test is met. Vision Group supports the Commission's draft determination dated 9 June 2010, in which the Commission states that it proposes to grant authorisation to enable Vision Group, its employees and ophthalmologists engaged as consultants at Vision Group clinics to discuss and, if relevant, agree and implement fees to be charged to patients for ophthalmology services supplied at Vision Group clinics. The Commission stated in its draft determination that it has, at this stage, determined that the public benefits test is satisfied, on the basis that the conduct is likely to generate a number of public benefits and that it will have very little, if any, impact on competition.

The authorisation, if granted to Vision Group, will not automatically allow other ophthalmology practices, including practices with the same structure as Vision Group, to undertake the proposed conduct. If the ACCC does grant authorisation, the authorisation would apply only to Vision Group and only for the specific conduct outlined in the Commission's final determination.

However, any party is free to apply to the Commission for authorisation of proposed conduct. The Commission will grant authorisation for that conduct if, after a thorough review process, it is satisfied that the public benefits test is met. If Gordon Eye Surgery has a similar structure to Vision Group, we believe that many of the public benefits we have raised in our application would also be applicable in an application for authorisation by Gordon Eye Surgery. Subject to reviewing the specific details of the authorisation, we would support such an authorisation being granted to other ophthalmology practices with the same structure as Vision Group.

## 2. **The Term of Authorisation**

The ASO raised concerns in its letter about the length of the proposed five-year period of authorisation.

The Commission's draft determination states that the Commission proposes to grant the authorisation for a period of five years. Vision Group supports this proposal and believes that five years is a reasonable term for the authorisation for the following reasons:

- (a) An authorisation application involves costs for the applicant and should be granted for a reasonable period having regard to the nature and likely effect of the conduct. Vision Group believes that a five-year period is reasonable;
- (b) As the Commission has set out in its draft determination, and consistent with Vision Group's submission in support of its application for authorisation, the proposed conduct will have very little, if any, impact on competition and that position is unlikely to change during the proposed five-year period of the authorisation;
- (c) Authorisation for a period of five years is not unusual and not excessive in the circumstances of the markets relevant to the authorisation application. For example, the Commission states at paragraph 6.105 of its *Guide to Authorisation* that it may grant authorisations for short period if technological and other changes are constantly having an effect on aspects of the relevant market. This is not the case in relation to the markets relevant to this proposed authorisation;
- (d) At the end of the five-year period, Vision Group will need to apply to the ACCC for a new authorisation in order to continue to engage in the conduct and the ACCC would consider afresh whether the public benefits test is satisfied in light of the market conditions at that time and in light of an assessment of whether some or all of the public benefits which were expected to flow from the conduct when authorisation was originally granted actually did arise and whether they were of the magnitude expected. The ACCC would also seek the views of interested parties in making its assessment;
- (e) The ACCC may also revoke the authorisation during the term if it is satisfied that:
  - (i) the authorisation was granted on evidence or information that was materially false or misleading;

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- (ii) a condition of authorisation is not being complied with; or
- (iii) there has been a material change of circumstances since the authorisation was granted. A 'material' change of circumstances is one that has an 'an impact or likely impact upon public benefit and/or detriment'.<sup>1</sup>

While we do not envision that revocation will be necessary in relation to an authorisation granted to Vision Group, we do note that the Commission retains this power of oversight during the term of the authorisation.

### 3. Attendees

We advise the Commission that the following persons will be attending the pre-decision conference on 22 July 2010 on behalf of Vision Group:

- (a) Geoff Thompson, Chief Executive Officer of Vision Group;
- (b) Amanda Cranage, National Operations Manager of Vision Group; and
- (c) Kirsten Webb of Clayton Utz.

Geoff Thompson will be the principal spokesperson for Vision Group at the conference.

Yours sincerely



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<sup>1</sup> ACCC Guide to Authorisation (March 2007) paragraphs 7.28 - 7.36; Re AGL Cooper Basin Natural Gas Supply Arrangements (1997) ATPR 41-593 at 44,212.