

**Australian Competition  
&  
Consumer Commission**

**PRE-DECISION CONFERENCE**

**Minutes**

**Authorisation A91217  
lodged by Vision Group Holdings Limited**

**22 July 2010**

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Pre-Decision Conference: Authorisation A91217 lodged by  
Vision Group Holdings Limited**

**22 July 2010**

**ACCC's Sydney office (via video conference with ACCC's Canberra Office)**

**Attendees:**

*Australian Competition & Consumer Commission*

Peter Kell (Chair), Commissioner  
Richard Chadwick, General Manager - Adjudication  
Joanne Palisi, Director - Adjudication (in Canberra)  
Erin Donohue, Project Officer - Adjudication

*Vision Group Holdings Limited*

Mr Geoff Thompson, Chief Executive Officer  
Ms Amanda Cranage, National Operations Manager  
Ms Kirsten Webb, Clayton Utz

*Gordon Eye Surgery*

Dr Geoffrey Painter, Ophthalmologist

*The Australian Society of Ophthalmologists*

Mr Kerry Gallenger, Chief Executive Officer  
Dr Bradley Horsburgh, President

*The Department of Health*

Ms Jenny Reed (in Canberra)

*The Royal Australian and New Zealand College of Ophthalmologists*

Ms Susi Tegen, Chief Executive Officer

**Conference commenced:** 10:40am

*Introduction*

**Deputy Chair Peter Kell** welcomed attendees, made some introductory remarks outlining the purpose of the conference and declared the pre-decision conference open.

**Deputy Chair Peter Kell** invited the parties that called the conference, Dr Geoffrey Painter, on behalf of the Gordon Eye Institute and Mr Kerry Gallenger, on behalf of the Australian Society of Ophthalmologists to make an opening statement.

**Dr Geoffrey Painter**, on behalf of the Gordon Eye Surgery, made the following introductory and general statements throughout the conference:

- The Gordon Eye Surgery received limited time to respond to the draft determination and was not consulted before the draft determination. If they had more time to consider the application and draft determination they may have been able to seek legal advice, and put in a more detailed submission.
- The Gordon Eye Surgery does not object to the authorisation and agrees with the efficiency arguments put forward by Vision Group and considers that these efficiency savings to be passed on to patients.
- The Gordon Eye Surgery operates in direct competition with Vision Group.
- The Gordon Eye Surgery has 13 ophthalmologists who are a mixture of partners and associates. They work in a team environment and share patient records and facilities and they have operated within the requirements of the *Trade Practices Act 1974* and have set their fees independently.
- If the ACCC authorises Vision Group to discuss prices and set a common fee, then other providers of ophthalmic services with a similar practice structure should also be able to gain immunity from the *Trade Practices Act 1974*. It may also open the door for other medical specialities to seek authorisation for similar arrangements.
- Enabling Vision Group to set a common fee may be potentially detrimental to the public as it is a large provider of ophthalmic services. It is likely that prices will be increased and not dropped to have a lower consistent fee.

**Dr Bradley Horsburgh**, on behalf of ASO, made the following introductory and general statements throughout the conference:

- The ASO represents 580 ophthalmologists.
- The authorisation should extend to all ophthalmologists who operate under a similar structure to Vision Group.
- The proposed five year authorisation is excessive and is the longest time frame given to arrangements of this kind. Similar arrangements considered by the ACCC have been granted authorisation for four years.
- The proposed conduct is unlikely to have a significant impact on the provision of ophthalmology services in Sydney, Melbourne or Brisbane, however in small regional markets there is potential for anti-competitive detriment. For example, Vision Group may be able to subsidise its regional operations from the city clinics which may be able to charge higher fees.
- The ASO accepts that the arrangements may result in efficiency savings and consistencies in patient care. These savings should be passed on to patients.

**Mr Geoff Thompson**, Chief Executive Officer of Vision Group made the following introductory and general statements throughout the conference:

- Vision Group ophthalmologists are still able to individually charge what they like for their ophthalmic services. The proposed conduct is voluntary. The objective of the conduct is to enable price information to be shared. This information will be one of the factors considered when setting fees for each clinic or individually.
- The prices charged at each Vision Group clinic are influenced by individual factors like competition in the relevant area, the reputation of the ophthalmologists, patient demographics and staffing levels. Vision Group does not anticipate that the authorisation would result in clinics in cities and clinics in regional areas setting the same fees.
- Vision Group clinics are not cross subsidised. Each clinic is required to operate cost effectively on its own merits. Vision Group clinics, including those in rural areas face their own operating costs, plus corporate and overhead costs which apply across all Vision Group clinics.
- Contractors and employees engaged by Vision Group do not often know who is an employee and who is a contractor.
- Vision Group considers the public benefits of the proposed conduct are significant and the anti-competitive detriment is minimal. The common fee will have no relevance to ophthalmology providers outside Vision Group.
- Patients are able to go to alternative providers of ophthalmic services.
- Vision Group has no objection to other providers of ophthalmic services lodging their own applications for authorisation if their situation is similar to that of Vision Group. Vision Group would support this type of authorisation.
- A five year authorisation is appropriate. There are significant costs involved in lodging an application for authorisation for the applicant. There will be little impact on competition and five years is not an unusual period of authorisation and is noted in the ACCC's publication 'Guide to authorisation'. The ACCC is able to revoke an authorisation if circumstances change during the period of immunity and the ACCC is able to review the arrangements again when Vision Group comes in for re-authorisation at the end of the period.
- There are currently instances in Vision Group clinics where employees charge different fees, even though they can set the same fees.
- Vision Group advised that Townsville and Mackay are the only regional practices as clinics in Rockhampton, Gladstone and Harvey Bay have recently closed.

**Ms Amanda Cranage**, National Operations Manager of Vision Group noted that the relationship with patients is an important aspect of the Vision Group business.

**Ms Susi Tegen**, Chief Executive Officer of the Australian and New Zealand College of Ophthalmologists (RANZCO) made the following comments throughout the conference:

- RANZCO did not receive correspondence from the ACCC in the initial stages of Vision Group's application for authorisation and only received the draft determination two days before submissions were due. Had RANZCO been informed earlier in the process, then they would have been more involved in the authorisation and many other ophthalmologists would have attended the conference.
- RANZCO is concerned about the effect the authorisation may have in rural areas where there is a shortage of ophthalmologists.
- The health of the patient should come first.

**Richard Chadwick**, General Manager of the Adjudication Branch explained that the ACCC has a six-month time limit for the consideration of applications for authorisation. Within this six-month time frame the ACCC must issue a draft determination, seek submissions from interested parties, provide an opportunity to hold a conference and issue a final decision. This means there is limited time to consult with stakeholders before issuing a draft determination. Importantly, however, the process does provide a number of opportunities for stakeholders to put their views before a final decision is made by the ACCC.

**Deputy Chair Peter Kell** made the following comments and asked the following questions throughout the conference:

- One of the issues raised in interested party submissions has been the consultation process regarding Vision Group's application for authorisation. When the application was received the ACCC wrote to a selection of government departments, industry bodies and some providers of ophthalmic services. The ACCC wrote to the Royal Australian and New Zealand College of Ophthalmologists and the Neuro-Ophthalmology Society of Australia seeking their views.
- The ACCC often relies on industry bodies to consult with and respond on behalf of members or associated organisations. The ACCC did not however consult with the Australian Society of Ophthalmologists at the initial consultation stage which was an oversight.
- Any authorisation granted to Vision Group can not be extended to other parties. However, other parties are able to lodge their own application for authorisation.
- Each application for authorisation is assessed on a case by case basis.
- Authorisations for similar arrangements to Vision Group's have been granted in the past, for example in respect of applications lodged by the Royal Australian College of General Practitioners and the Australian Dental Association.

- Should Vision Group come in for re-authorisation, the ACCC would be interested in having information on the trend in fees set by Vision Group clinics during the term of authorisation. Vision Group was invited to respond to this issue after the conference.

**Deputy Chair Peter Kell** closed the conference by noting that there is now a further opportunity for parties to make written submissions in respect of the draft determination. Submissions should be provided by **6 August 2010**. The ACCC will send parties who attended with a record of the conference which will be placed on the ACCC's public register.

**Conference closed:** 12:30pm