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Commissioner Peter Kell
(For Attention: Ms Erin Donohue, Adjudication)
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601
(By email to adjudication@acc.gov.au)

Dear Commissioner Kell,

Application for Authorisation by Vision Group Holdings Limited (A91217)

Reference: A. ASO letter of 25 June 2010.
B. Your email of 29 July 2010 (with attachments of meeting record of pre-decision conference held on 22 July 2010.)

Introduction

Thank you for welcoming the Australian Society of Ophthalmologists (ASO), together with The Royal Australian and New Zealand College of Ophthalmologists (RANZCO) to submit a formal response on behalf of all ophthalmologists in Australia, in relation to the ACCC's Draft Determination on the subject 'Application for Authorisation' (A91217).

The ASO's concerns were raised first at Reference A, immediately after discovering that the Application for Authorisation had been lodged and investigated. Vision Group Holdings Limited lodged the Application for Authorisation in respect of agreement on the fees charged to patients for ophthalmology services supplied at Vision Group clinics and the ACCC Draft Determination was issued on 9 June 2010 (the Draft Determination). As a result of the ASO's request at Reference A, subsequent discussions were held, involving all interested parties, at the Pre-Decision Conference to the Draft Determination on the 'Application for Authorisation', in Sydney on 22 July 2010.

The Draft Determination proposes to grant authorisation to discuss and agree to the fees to be charged to patients for ophthalmology services suppliers at Vision Group clinics, for example an intra and inter-practice agreement in respect of the fees to be charged to a patient or group of patients, and intra and inter-practice agreements to apply consistent pricing either within a clinic or between clinics (proposed conduct). The original application submits that without such determination, sharing of pricing information at such clinics gives rise to the risk of breaching the Trade Practices Act 1974.

The following reasons were provided by Vision Group, which, as the ASO understands it, the Draft Determination accepts as reasons for granting the authorisation. In brief it is the position of both the ASO and RANZCO that these reasons also extend and are equally applicable to, all other private

ophthalmology practices operating under similar arrangements, circumstances and contractual obligations.

Vision Group Holdings Limited Application and ACCC Draft Determination

In the Vision Group Application for Authorisation and in their statements at the Pre-Decision Conference outlined the reasons why ‘Authorisation’ should be granted. These were:

Efficiencies

Vision Group submits that their proposed conduct will result in efficiencies in administration, which could be passed on to patients via price reductions, increasing or improving the range of services available and enabling it to compete more effectively. Examples of efficiencies referred to are, administration staff frequently receiving calls from potential patients with queries on price differences between ophthalmologists at the clinic.

In response, the Draft Determination outlines that the ACCC accepts that Vision Group may experience some minor administrative and overhead cost savings from adopting uniform prices.

Less Confusion for Patients

Vision Group considers that differing fee structures may inconvenience and confuse patients, interrupt patient care and compromise equitable health outcomes among patients who are disadvantaged either socially, financially, linguistically or culturally.

The ACCC determines that the proposed conduct is likely to result in benefit to the public from providing consistent and predictable pricing for patients.

Quality in Patient Care

Vision Group claims that consistency in fees will improve the quality of patient care for example through facilitating the team approach and a shared responsibility for patient outcomes, facilitating cross referrals within or between Vision Group clinics and increased availability of ophthalmologists.

The ACCC notes that whether ophthalmologists working at Vision Group clinics are employees or contractors, they work in a team environment where they share facilities.

For example:

- a reception area
- fee collection and bank accounts
- a trading name
- medical records
- policies and procedures.

ACCC determines that any detriment from adopting such uniform prices is likely to be limited. Vision Group operates as a shared services structure where ophthalmologists work as a team, share patient records, have common facilities, policies and procedures and as such the level of competition between the clinics is limited. Also that Vision will continue to compete with other clinics and therefore individual ophthalmologists are able to individually price and discount their services.

Overall the ACCC decision reflects that **the benefits to the public will outweigh any public detriment.**

ASO and RANZCO Discussions at the Pre-Decision Conference

At the Pre-Decision Conference held on 22 July 2010, both the ASO and RANZCO, represented by the President ASO Dr. Bradley Horsburgh and the CEO RANZCO Ms. Susi Tegen, presented the view that the principles of the Draft Determination are applicable across ophthalmology and should extend to ophthalmology practices operating under similar circumstances to the Vision Group practices. Clearly these types of practices face the same difficulties also as those outlined by the Vision Group and upheld in the ACCC draft Determination.

As the minutes of the Pre-Determination record,

Dr. Bradley Horsburgh on behalf of the ASO made a prepared statement, which was presented to the Conference and in which he outlined:

- 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, which he is aware of, ever given to arrangements of this kind. Similar arrangements considered by the ACCC have been granted Authorisation for one or two 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 that 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 of other ophthalmology clinics where similar conditions apply.

Ms. Susi Tegen on behalf of RANZCO outlined:

- RANZCO, with more than a 1000 ophthalmologist members, 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 had time for further consultations, been more involved in the Authorisation process and many other ophthalmologists may well have attended the Pre-Determination Conference.
- RANZCO is concerned about the effect the Authorisation may have in rural and remote areas where there is already a workforce shortage and any further barrier making it more difficult to keep and recruit ophthalmologists.
- The health of the patient must always come first.

Conclusion

The inefficiencies of dealing with patient queries relating to price differentiation is also experienced in other private ophthalmology practices as different specialists charge different fees bases on their degree of specialisation. Patients are also susceptible to confusion and interruption of care due to differences in fees charged, particularly within multiple doctor practices, and they too should benefit from consistent and predictable pricing.

The shared services structure, where ophthalmologists work as a team, share patient records and have common facilities, policies and procedures prevails in many other private ophthalmology practices and the same advantages and limitation of competition would apply if the Authorisation was granted leading to minimal detriment to patients and an overall benefit to the consumer (patients).

If the proposed conduct for which Authorisation is being sought here, is claimed to improve the quality, continuity, availability, certainty and predictability of ophthalmic care for patients, the ASO does not ask that Application for Authorisation not be granted just for Vision Group, but rather asks, that this same Authorisation be granted to other ophthalmology practices operating under similar arrangements.

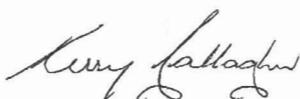
The ASO does ask however that the Application for Authorisation be granted for a shorter time than the currently planned five years, so that a review as to the effect on the consumer, can be considered after say, three years.

In addition, while the ASO and RANZCO understand that the ACCC does not proactively seek out parties to extend their determinations to, the ASO wishes to indicate its intention now, to apply for such Draft Determination to be amended in such a way that other practices operating under similar circumstances are granted Authorisation to discuss and agree upon the fees charged to patients for ophthalmology services.

The ASO and RANZCO look forward to the decision of the ACCC on this important issue.

Thank you for your consideration.

Yours sincerely,



Mr Kerry Gallagher

CEO ASO

13 August 2010