

Submission to the Australian Competition and Consumer Commission
Exclusive Dealing Notification N95607 lodged by Cabrini Health Limited

AMA Victoria

AMA Victoria submits that it would not be in the public interest for a notification to be granted on the Cabrini Health Limited ("Cabrini Health") requirement to access pathology and medical imaging services (collectively, "the Services") of Cabrini Pathology and Cabrini Medical Imaging ("the Proposed Arrangement") Proposed Arrangement, on the basis that patients and their doctors are unduly restricted from making an informed decision on how and where to obtain pathology and or medical imaging services required for medical treatment.

The following is provided in support of our submission.

Access

1. AMA Victoria recognises on one hand, a public benefit to access by patients at Cabrini Health to the Services provided by Cabrini Pathology and Cabrini Medical Imaging.
2. Such access may save time, cost and effort for patients, medical practitioners and other health professionals in delivery and access to the Services. However given the limitation on access to other providers, costs may increase as the market is limited.

Informed Financial Consent

3. Notification 95607 from Cabrini Health dated 19 October 2011 ("the Cabrini Notification") is silent on the issue of whether the Proposed Arrangement will include informed financial consent by patients.
4. Notwithstanding whether the Proposed Arrangement is considered anti-competitive, patients should be provided with adequate information in order to provide informed financial consent at all times.
5. Particularly in this case, patients should be informed of the potential financial gain by Cabrini Health as a result of the Proposed Arrangement.

Options

6. The Cabrini Notification suggests that patients may be exempted from the Proposed Arrangement if a medical practitioner forms the view that it is in the best interests of the patient to do so.
7. Whilst this exemption is important should the notification be granted, AMA Victoria would contend that the public benefit from the Proposed Arrangement is not made.
8. AMA Victoria submits that the option of whether to access the Services at Cabrini Health via the Proposed Arrangement, or to access the Services through alternative providers, should be available to every patient, at all times.

Legal Relationship

9. Notwithstanding the submissions in paragraphs 6 and 7 above, AMA Victoria notes that Cabrini Health is a private hospital. AMA Victoria submits that generally, a medical practitioner who has private practice rights at a private hospital has a direct legal relationship with a patient, but there is limited or no direct legal relationship (through agreement or otherwise) between a medical practitioner and a private hospital.
10. To impose a requirement to use a third party when utilising Cabrini Health facilities potentially creates a defacto legal relationship between the doctor and the hospital. This could lead to an unnecessary influence on the doctor patient relationship which at the moment is the primary legal relationship. For example Cabrini Health may query the level of referral of a particular doctor with the expressed or implied threat that the doctor may be decredentialled if referrals (per patient) do not increase.
11. AMA Victoria submits that there can be sound reasons for a patient and medical practitioner to use a particular provider. This could be due to the provider using software which is compatible to the IT system used by the clinician. In the instance, where medical practitioners are compelled to refer to Services by the Proposed Arrangement treatment of the patient may be more problematic if test results are not easily transferred.
12. Further to paragraph 10 above, AMA Victoria is concerned that there is potential for Cabrini Health to exert undue influence on medical practitioners, for example by denying or limiting the scope of existing private practice rights as a result of a reluctance or failure to refer private patients to the Services via the Proposed Arrangement.

Legal Entities

13. AMA Victoria has been made aware that the corporate structures of each of Cabrini Pathology and Cabrini Medical Imaging include other service entity stakeholders such as Melbourne Pathology and/or Sonic Healthcare.
14. AMA Victoria suggests that the ACCC examine any relevant corporate structures, to ensure that there is no potential contravention of section 46 (misuse of market power) of the CCA.

Conclusion

15. On the balance of the public benefit arguments presented above, AMA Victoria submits that it would not be in the public benefit for a notification to be granted on the Proposed Arrangement, on the basis that patients are unduly restricted from making an informed decision on how and where to obtain pathology and or medical imaging services required for medical treatment.