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Attn: Anna Giannakos and Gavin Jones
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Dear Ms Giannakos and Mr Jones

St Vincent's Health Australia & Ors
Applications for Authorisation (A91295, A91296, A91297)

We refer to our meeting with you on 17 July 2012.

The purpose of this letter is to set out in writing the answers we provided to you in our meeting in relation to your question about how the current application sits side-by-side with the 2009 Authorisation.

All capitalised terms and acronyms in this letter are defined in the applicants' submission in support of its applications for authorisation (the **Submission**).

Current applications

- 1 As outlined in the Submission, the commercial rationale for the present applications is to enable the SVHA Group to operate as effectively and efficiently as possible. This involves ensuring that the SVHA Group hospitals (who are in substance and economic terms already a single entity) feel secure in fully coordinating with each other as well as SVPHS in order to access efficiencies equivalent to those able to be achieved in the 'for profit' health sector.
- 2 In 2010, the board of SVHA approved a new governance arrangement to bring its existing private, public and aged care health services into greater alignment under the direction of a strengthened group office and the governance of one single national board. The integration enables the SVHA Group to adopt a genuine group approach to negotiations with Funding Organisations and joint purchasing activity.
- 3 Presently, all SVHA Group entities, with the exception of SVPHS, can lawfully act as a single economic entity, including engaging in collective negotiations with Funding Organisations and joint purchasing activity.

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- 4 The present application, if granted, will enable all SVHA Group entities (including SVPHS) to engage in the proposed conduct in all circumstances as if they were a single economic entity.

The 2009 Authorisation

- 5 The 2009 Authorisation, on the other hand, relates to narrower conduct — joint negotiations with Funding Organisations, including carefully demarcated information exchange in relation thereto, and joint procurement — for a network of Catholic private hospitals.
- 6 In practice, the 2009 Authorisation has primarily been used by the relevant CNA member hospitals for information sharing for the purpose of benchmarking in relation to private hospitals.
- 7 It has proved difficult to make use of the authorised arrangements for joint procurement and joint negotiations:
- (a) because of the difficulties of having multiple different boards and executives approve contract terms (for example, the boards and executives of SVHA, St John of God Health Care Inc and Little Company of Mary Health Care Limited may all be required to approve contract terms); and
 - (b) because the 2009 Authorisation arrangements are voluntary for suppliers who can choose whether to deal with members of the RNN and JPN as a group or on an individual basis.
- 8 Furthermore, the 2009 Authorisation is not used for:
- (a) information sharing for the purpose of benchmarking for public hospitals and aged care facilities; and
 - (b) joint procurement between SVPHS and other members of the SVHA Group that are public hospitals and aged care providers and are not covered in the 2009 Authorisation — the practical example we provided in our meeting with you related to tenders for fire extinguishers at SVHA Group entities in Darlinghurst, NSW. The SVHA Group currently undertakes two separate tender processes — one for SVPHS and another for the other members of the SVHA Group at this location. Further examples are provided in section 8.2 of the Submission in relation to underwater seal drains and infusion pumps and giving sets.

Please do not hesitate to contact Aldo Nicotra or Johanna Croser if you require further information.

Yours faithfully

Johnson Winter & Slattery