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11 May 2012

Dr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
G.P.O. Box 3131  
Canberra, A.C.T. 2601

Dear Dr Chadwick

**Re. Application for Authorization A91295, A91296, A91297 – Lodged by St Vincent's Health Australia & Ors**

Thank you for the opportunity to submit comments with respect to the St Vincent's Health Australian (SVHA) Group application for authorisation (A91295, A91296, A91297) (**Application**), as advised in your letter of 5 April 2012 to Medibank's Group General Counsel (Ms Mei Ramsay).

This submission contains information that is confidential to Medibank. Medibank requests that this submission is excluded from the public register. Further, Medibank requests that no part of this submission should be disclosed to any other party without the express consent or permission of Medibank.

This submission is on behalf of Medibank Private Limited (**MPL**) and its wholly-owned subsidiary company Australian Health Management Group Pty Limited (**AHM**) which is separately registered as a private health insurer as 'Funding Organizations (non-medical goods and services)' in regards to the private hospitals listed in Table 1 of the Application. Except in relation to specific data (such as the bed stock share inferred from market share which is referenced later in this letter), references to "Medibank" can be read as including both MPL and AHM (subject, of course, to any alternative construction being necessary given the context of the same).

For the purposes of this submission we exclude comment on elements of the submission that relate exclusively to medical goods and services (or Suppliers as listed in Table 3 of the Submission). Nor do we wish to comment on the public hospital or aged care facilities listed in Table 1 of the Application.

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Medibank opposes the proposed authorisation. We set out the basis of our concerns, below.

**Background**

Medibank notes the perpetual authorization for St Vincents Private Hospital Sydney (SVPHS) and St Vincents & Mater Health Sydney (SVMHS) to act as a single commercial entity (A90770-A90772) since 2002. In essence, this determination permits both inner Sydney located private hospitals to operate as a single economic entity. For the purpose of Medibank business, the single entity provisions apply where a single 'bundled' negotiation process can occur for the purpose of finalising a HPPA for both campuses.

We also note the 2008 re-Authorization (A91099) where SVHA were granted representation by the Catholic Negotiation Alliance (CNA) to negotiate on behalf of Catholic affiliated (private) hospitals and hospital groups with

Funding Organizations. In addition, the authorisation permitted the sharing of information among a network of Catholic private hospital operators under the CNA appointed Revenue Negotiation Network (RNN). Medibank notes the Australian Competition and Consumer Commission's (**ACCC**) decision not to authorize a collective boycott arrangement at this time given the significant anti-competitive repercussions among market participants.

Medibank has many commercial relationships with the majority of private hospital operators across Australia to ensure that our members can access a broad and diverse range of clinical services across a network of private hospitals. Our engagement with private hospital operators uphold the principle that all commercial dealings are consistent, fair and that the agreed terms remain strictly confidential.

**Table 1 – SVHA Private Hospital HPPA profile with Medibank**

\* referenced to ACNs listed in Table 1 (page 7) of Submission  
 \*\* not referenced in Table 1 but mentioned in 2.4 of Submission

The prospect of a joint negotiation requires significant investment by the state senior executive and the CNA to broker with the appropriate internal stakeholders of SVHA Group. ~~DELETED~~

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Over the past 18 months Medibank has always ensured one central contact has been maintained for all HPPA related items among SVHA Group hospitals. ~~DELETED~~

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## RESTRICTION OF PUBLICATION OF PART CLAIMED

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It is Medibank's view that the proposed conduct should not be authorised unless the applicant specifies an acceptable, clear and transparent process as to how SVHA Group intends to co-ordinate joint negotiations (specific to each relevant Funding Organisation). The negotiation process should specify how representatives of SVHA are nominated for the purpose of negotiations and HPPA related items thereafter. As a potential negotiator with this collective group we consider that the Application should also be required to provide specific details regarding the delegations assigned to the SVHA Group representative to authorize a collective agreement in full, as well as the provision of the appropriate level of detail regarding the practical aspects of how, when and who will co-ordinate SVHA Group negotiation (with or without the involvement of the CNA).

### **Data Sharing**

Medibank does not object to sharing of (patient de-identified) information for quality, clinical and service benchmarking purposes given the public benefits this exercise may demonstrate. We also do not object to the sharing of cost data so that private hospitals are able to operate as efficiently as possible. Medibank expects that all private hospital operators, both group and non-group and for profit and not-for-profit, control expenditure and provide cost leadership ~~DELETED~~

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We do object outright to the sharing of price information specific to and among SVHA Group private hospitals. The joint negotiation proposal of SVHA Group includes the often-confused aspect of data sharing. In the Application SVHA Group seek to include prices.

Previous authorizations have been in respect of sharing aggregated data only. ~~DELETED~~

~~DELETED~~ This is a fundamental departure from the Application whereby prices are disclosed. In our view the ACCC should not authorise the sharing of pricing information and tables specified in each HPPA.

The disclosure of actual price information (or where a price can be mathematically derived by aggregated revenue data) particular to each or all of the proposed SVHA Group hospitals specific to a Funding Organisation is detrimental to the public interest. ~~DELETED~~

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Medibank and private hospitals invest a significant amount of resources to ensure the clinical services and programs specific to each facility meet rigorous quality and safety standards, the staffing and accreditation standards are of high standard and the expertise, technology and environment are documented and inspected. The fee differentials between hospitals are determined by many 'hospital specific' aspects. Therefore price customisation is a considerable part of the contracting process between a private health insurer and private hospital.

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~~DELETED~~ The anticipated result is inflationary pressure on the prices, with no operational basis for any increase paid to SVHA Group private hospitals. This, in turn, will inevitably place undue upward pressure on private health premiums, which will, in turn, result in consumer detriment.

We believe that availing of actual prices listed in SVHA associated HPPAs and sharing this information (derived from aggregated data or not) and the percentage increase afforded to SVHA Group hospitals will artificially inflate the rates afforded to SVHA Group hospitals. This would in turn place additional pressure on health insurance premiums in a climate where members may downgrade their cover or resort to the public health system should private health premiums become unaffordable.

### Collective Boycott

The proposed authorisation to collectively boycott would, in Medibank's view, result in significant public detriment.

Medibank opposes any authority the SVHA Group may be granted to collectively boycott all eight hospitals from a HPPA or similar agreement. Any proposed collective boycott has the potential to disrupt the availability of private hospitals to health fund members and result in significant unrest among private health members in the regions of Melbourne, Sydney, Brisbane and Toowoomba should an out-of-contract position eventuate. Medibank proposes that there are no public benefits in allowing SVHA Group to collectively boycott the supply of goods and services to Funding Organisations.

To illustrate the significance of a collective boycott by the SVHA Group, we have provided information of the market share of private beds that are currently held by the SVHA Group. Table 2 illustrates bed stock among acute (overnight) private hospitals in (metropolitan) Sydney, Melbourne and Brisbane and Medibank (incorporating AHM) market share by region (NSW, Victorian and Queensland). SVHA Group has a significant regional influence in each capital city listed as the type of private hospitals conduct complex and specified overnight services. ~~DELETED~~

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**Table 2 – Metropolitan SVHA bed stock and Medibank market share by state**

Measure	Sydney	Brisbane*	Melbourne	Total
SVHA bed stock	<del>DELETED</del>			
% SVHA bed stock of total overnight acute under HPPA				
Medibank Group market share (by state)				
Medibank Group occupied bed stock based on market share				

\* St Vincents Private – Toowoomba excluded as classified as regional

We believe that the ACCC should not authorise the proposed 'collective boycott' conduct on the basis that it would not result in any public benefits.

Indeed, a collective boycott of Medibank could mean significant detriment for our members. This is particularly concerning to Medibank as the SVHA Group consists mainly of acute overnight beds and services and in the defined market, SVHA comprises 11.4% of private hospital beds in this cohort. Medibank disputes the data provided in Table 8 of the authorisation which assumes SVHA private beds represents 5.5% of the market. The market share figure is based on the total national private bed count which includes sameday, psychiatric and rehabilitation and non-metropolitan private beds that are not 'core' to SVHA group hospital type. Moreover, Table 8 includes private bed numbers from non SVHA states (Tasmania, ACT, NT, SA and WA), thus diluting the SVHA market presence in the affected eastern states.

If the provision for collective boycotts is intended to allow all SVHA member hospitals to collectively boycott Funding Organisations that do not agree to terms in relation to a participating SVHA hospital then the impact of this authorisation would be extreme. For example, it may result in private health insurance consumers (whose insurer is the subject of such a boycott) being forced to pay significant out-of-pocket expenses, having reduced choice of hospital, and in some regional locations, removing the need for their hospital cover resulting in the consumer relying on the public hospital system. The detriment to the public of large numbers of (Medibank) members reverting to the public health system could be significant. In the case of St Vincents Toowoomba, there is only one regional private hospital competitor and limited regional public hospital capacity.

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~~DELETED~~ This is likely to have a significant detrimental impact on members of each Funding Organisation and the public as a whole. Funding organisations, as part of the value proposition for members to access private hospital services with little or no out-of-pocket expenses, may have to foster other agreements (HPPAs) with alternative private hospitals at perhaps above-commercial rates or enter into agreements with public facilities to in part accommodate Medibank members. The former case would lead to inflationary pressures on health insurance premiums while the latter may lead to increased pressure on the public health system as outlined earlier. In any case, higher premiums with a reduced private hospital service offering may eventuate should collective boycott be authorised and actioned and thus we believe that this will have a clear public detriment for no appreciable benefit to that same public.

### **Other Commercial Considerations**

We are also not supportive of the acquisition of some or all goods or services at one or more SVHA Group facilities being conditional on a Funding Organisation acquiring goods or services from another entity within the SVHA Group. Like all Funding Organisations, we exercise our commercial right to determine the goods and services expected by and for our members and not from any forced acquisition of potential goods and services from an entity within SVHA Group that do not meet our members service profile or expectations merely to acquire a collective HPPA with most or all of the entities comprising the SVHA Group. ~~DELETED~~

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Our position remains that the consequence to consumers of the Application being authorised will be that health insurance premiums will increase with no related services improvements or efficiencies in respect to hospital operations.

### **Term**

The Private Health Insurance (PHI) industry is highly regulated and is currently subject to a number of significant changes over the next year: these include means testing of the PHI rebate; changes to the prostheses table; public hospital funding reform while outside of the immediate industry Medibank has been requested to consider non-industry cost drivers such as carbon tax and other industry reform agendas. The combined volatility on underwriting margins and the prospect of continued reform across the private healthcare industry requires that the term of the Authorisation, should be limited to one year with a further right of appeal towards the end of the 12 month term. We strongly recommend that the renewal of the authorisation (if granted) be based on a review by the ACCC of the proposed authorised conduct on the relevant markets.

### **Summary**

We oppose the authorisation on the basis that:

- (1) ~~DELETED~~  
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- (2) the applicant has failed to demonstrate and/or quantify any efficiency gains in respect of the proposed conduct;
- (3) the applicant has failed to demonstrate public benefits associated with the proposed conduct; and
- (4) the authorisation of collective boycotts could in practice lead to significant public detriment.

## RESTRICTION OF PUBLICATION OF PART CLAIMED

Given the substantial numbers of the member hospitals the subject of this authorisation it is our view that the proposed conduct would cause public detriment at the expense of other private hospital operators in the eastern states of Australia and therefore ultimately the consumers of private hospital services.

I trust that the information outlined in this letter assists you with your considerations. Please contact Jeremy Hose <[jeremy.hose@medibank.com.au](mailto:jeremy.hose@medibank.com.au)> or (03) 8622 5310 should you have any queries in regards to our submission.

Regards

Cindy Shay  
Group Executive, Provider Relations  
Medibank Private

Cc: Mei Ramsay - Group General Counsel, Medibank Private