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L A W Y E R S

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31 May 2012

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

Public Register Version

Dear Ms Giannakos and Ms Dalins

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

We refer to your letter dated 24 May 2012.

All capitalised terms and acronyms in this letter are defined in our clients' submission in support of its applications for authorisation.

Exclusive dealing conduct

In its applications for authorisation lodged on 23 March 2012, the applicants sought authorisation under s 88 of the CCA to operate all entities within the SVHA Group as if they were a single economic entity or effectively merged. In respect of exclusive dealing, the proposed conduct in respect of which authorisation was sought included the tying or bundling of goods or services in such a way that the supply of goods or services at one entity (such as SVPHS) may be conditional on a third person's acquiring goods or services from another entity in the SVHA Group, where the third party is a patient, a doctor or a Funding Organisation.

The applicants' primary aim in making this application was to have authorised proposed exclusive dealing conduct where the third party is a Funding Organisation. Since making the application, it has become apparent to the applicants that some parties have concerns about the potential for restriction of choice for SVPHS patients and medical practitioners with respect to pathology, imaging and other ancillary services.

It was never the intention of the applicants to restrict choice of service provider for patients or medical practitioners at SVPHS for imaging, pathology or other ancillary services. Although

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the SVHA Group would not have used the authorisation, if granted, in this manner; in light of the concerns raised, the applicants clarify that their applications for authorisation in respect of exclusive dealing conduct relate to the tying or bundling of goods or services in such a way that the supply of goods or services at one entity (such as SVPHS) may be conditional on a third person's acquiring goods or services from another entity in the SVHA Group, where the third party is a Funding Organisation.

We trust that this amendment alleviates the need for the applicants to provide responses to questions 1 to 5 and question 7 in your letter.

SVHA Group negotiations

Following the move to a single governance structure from 1 October 2010, SVHA has been moving to a national, more centralised approach in health funding negotiations for its wholly owned subsidiaries and related bodies corporate. As part of this approach, funding parameters are endorsed by a single fiduciary board, all deals are approved by the SVHA chief executive officer, negotiations are co-ordinated by a group health fund team and there is a one group negotiation representative for each funder.

A key component of the centralisation is the alignment of contract dates with each funder for SVHA's wholly owned subsidiaries and related bodies corporate. Whilst the SVHA Group entities contracted with each funder remain unchanged, SVHA is implementing a two-stage process to transition to group negotiations:

- Stage 1: alignment of corporate contract renewal dates with each funder for SVHA's wholly owned subsidiaries and related bodies corporate; and
- Stage 2: commencement of national group negotiations from 1 November 2012.

The proposed conduct in the applications for authorisation seeks to bring SVPHS into the centralised approach to health funding negotiations adopted by the remainder of the SVHA Group.

[RESTRICTION OF PUBLICATION OF PART CLAIMED]

In relation to medical supplies procurement, SVHA is also moving to centralised negotiations. Attached is a flyer circulated to vendors in the past week about SVHA's Group procurement services (**Annexure**) which demonstrates that SVHA is proactively seeking to engage with vendors about changes in SVHA's governance, the formation of a new Group Procurement Office, SVHA's adoption of the National E-Health Transition Authority National Product Catalogue and GS1 International Standards.

Finally, in the applicants' submission, the concerns raised by Medibank Private Limited about collective boycotts are misconceived. We reiterate that all members of the SVHA Group 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. The proposed conduct would simply involve all members of the SVHA Group (including SVPHS) being able to lawfully act as a single economic entity in circumstances where SVPHS, in substance, functions as part of the same economic entity already.

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

Yours faithfully

Johnson Winter & Slattery

Vendor Briefing Series



St Vincent's Health
Australia

Information about our group approach to Procurement

Following the implementation of a new governance structure in October 2010, St Vincent's Health Australia (SVHA) has expanded its Group Office team, enabling a collaborative approach to services across all regions and delivering greater efficiencies to the group.

The Service Integration portfolio was established to coordinate group procurement negotiations; the development of a strategy to support information, communications and technology; environmental sustainability; and shared services.

The new **Group Procurement Office (GPO)** has begun a review of St Vincent's Health Australia's sourcing requirements for the future. This presents a good opportunity for SVHA to meet with its suppliers and outline the changes involved and identify our immediate future goals.

Accordingly SVHA invites its current Supply Partners and their Representatives to attend one of three **Vendor Briefing Sessions** to be held in Sydney 5 June, Melbourne 21 June and Brisbane TBA.

As seating and resource materials will be limited, please register your interest to attend and preferred contact details by completing the attached form.

Sydney Briefing

Venue	St Vincent's Clinic, 438 Victoria Street Darlinghurst NSW 2010
Room	Level 4 Function Room
Date	Tuesday, 5 th June 2012
Time	12:30pm to 3:30pm
Register	craig.doyle@svha.org.au
Contact	Craig Doyle (07) 3326 3729

Who should attend:

- Incumbent Suppliers to any SVHA Group facility/entity
- National and State Sales Managers
- Regional Vendor Representatives
- Local Vendor Representatives

2012 Vendor Briefing Series | REGISTRATION OF INTEREST



I am interested in attending the SVHA Briefing Series in:

- ☐ **Sydney Tues 5 June**
- ☐ **Melbourne Thurs 21 June**
- ☐ **Brisbane Date tba**

Thank you for registering to attend the St Vincent's Health Australia *Vendor Briefing Series*. We want to make the process as easy as possible. **You need to complete a separate registration form for each individual attending.** If you have any questions about registration, please call (07) 3326 3729.

First Name	
Surname	
Company	
Product Type/Category	
Position/Title	
Email	
Website Address	
Office Phone	
Mobile Phone	
Address Line 1	
Address Line 2	
City/Suburb	
Postcode	