

## Form G

Commonwealth of Australia  
*Competition and Consumer Act 2010 — subsection 93 (1)*  
**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

(a) **Name of person giving notice:**

N96637

The Hospitals Contribution Fund of Australia Limited ABN 68 000 026 746 (HCF).

(b) **Short description of business carried on by that person:**

HCF is a not-for-profit supplier of private health insurance.

(c) **Address in Australia for service of documents on that person:**

Norton Rose Australia  
Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Attention: Tim Woodforde

### 2. Notified arrangement

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

HCF issues policies of insurance covering its members for liability relating to various treatments. Many of those policies include cover for treatment, other than hospital treatment, that is intended to manage or prevent a disease, injury or condition (**General Treatment**). Examples of General Treatment include dental, optical, physiotherapy, chiropractic, osteopathic and podiatric treatments. Policies covering General Treatment are often referred to as "Extras" policies (**Extras Policies**).

Under an Extras Policy, HCF will either pay a benefit to the policy holder or directly to the service provider (on behalf of the policy holder) for specified General Treatment obtained by an insured member from service providers who are recognised by HCF.

This notice relates to the supply or acquisition of the following goods or services:

1. The provision of private health insurance encompassing the payment of benefits to, or on behalf of, HCF members for qualifying chiropractic, osteopathic and podiatric treatments received by HCF members.
2. Electronic payment and claims processing hardware, software and services supplied to health service providers, including chiropractors, osteopaths and podiatrists.

(b) **Description of the conduct or proposed conduct:**

(i) **Background – proposed chiropractor, osteopath and podiatrist no-gap programs**

HCF proposes to implement the following programs on 1 April 2013:

1. "More for backs program" (**MFB Program**); and
2. "More for feet program" (**MFF Program**)

(together, the **Programs**).

HCF proposes to enter into:

1. MFB Program agreements with participating chiropractors and osteopaths; and
2. MFF Program agreements with participating podiatrists,

(together, **Program Agreements**) to give effect to each of the Programs.

Under the terms of the Program Agreements, participating chiropractors, osteopaths and podiatrists agree with HCF to charge no more than a specified amount for specified treatments provided to HCF members. HCF agrees to pay benefits for those treatments in accordance with health insurance policies issued by HCF. It is intended that the Programs will enable participating chiropractors, osteopaths and podiatrists to provide "no gap" treatments, whereby the maximum amount charged by a participating chiropractor, osteopath or podiatrist does not exceed the benefit paid by HCF.

HCF wishes to ensure that, under the Programs:

1. members do not have to make any up-front payment in respect of "no-gap" treatments, through employing a system that enables HCF to pay benefits "on the spot" direct to chiropractors, osteopaths and podiatrists; and
2. chiropractors, osteopaths and podiatrists have the capability to submit electronically to HCF for immediate processing the required diagnostic code regarding each treatment provided to HCF members (**Code Capability**), to enable HCF to identify a qualifying treatment, and determine the applicable benefit. The relevant code is known as the ICD10 AM code, an international coding standard for diagnosis, which has been previously described in HCF's Notification N95495, submitted to the Australian Competition and Consumer Commission (**ACCC**) on 8 June 2012, and in subsequent submissions by HCF in respect of that Notification.

To HCF's knowledge, the Health Industry Claims and Payments Service (**HICAPS**) and iSOFT Australia Pty Ltd, trading as CSC (**CSC**) are presently the only providers of electronic point of sale health fund claims and payment systems (**Claims Systems**) in Australia.

Both the HICAPS and CSC Claims Systems complete the payment process by linking debit and credit functions and private health insurance claims directly to a health service provider's electronic payment management systems.

As referred to above, to enable the processing of Program claims electronically, a Claims System needs to include Code Capability. The HICAPS Claims System has this functionality and is approved for use with the Programs, whilst CSC is currently developing Code Capability. When CSC completes its development, both the HICAPS and CSC Claims Systems will enable HCF to identify the eligibility of "no-gap" treatments, and assign the relevant benefit for payment "on the spot" through the use of the ICD-10-AM Code.

CSC has advised HCF that it will have implemented Code Capability for its Claims System by the time of the launch of the Programs on 1 April 2013. HCF has agreed with CSC that, upon the CSC Claims System having Code Capability, the Claims System will be automatically approved for use under each of the Programs

(see Annexure C). Hence it is expected that all known providers of Claims Systems will be included in the Programs from launch.

If other providers determine in the future to make available Claims Systems in Australia, HCF is prepared to approve those systems for use under each of the Programs to process HCF member claims where those systems offer Code Capability. The basis on which HCF proposes to approve any such additional Claims Systems is set out in HCF's submission to the ACCC dated 5 October 2012 in respect of Notification N95495 (a copy of which submission forms Annexure A to this Notification).

**(ii) Proposed conduct**

Under the Program Agreements, chiropractors, osteopaths and podiatrists who participate in the Programs will be required to have available and utilise a Claims System approved by HCF, to process claims for payment of benefits by HCF on behalf of HCF members in respect of qualifying treatments (**Condition**).

As noted above, it is expected that, as at the date of commencement of the Programs, the Claims Systems of each of HICAPS and CSC will be approved for the purposes of the Condition.

**(iii) No third line forcing**

HCF considers the better analysis to be that it is not supplying or offering to supply "goods" or "services" within the meaning of section 47(6) of the *Competition and Consumer Act 2010* to chiropractors, osteopaths or podiatrists, by entering into Program Agreements and agreeing to pay benefits to or on behalf of its members for treatments provided to the members by such chiropractors, osteopaths and podiatrists.

This is because chiropractors, osteopaths and podiatrists who participate in the Program are HCF recognised providers. HCF agrees under its health insurance policies with its members that it will pay benefits for treatments provided by recognised providers. Under the Program Agreements, HCF is merely providing payment as required by its agreements with its members, and hence there is no "service" being provided to the chiropractors, osteopaths or podiatrists.

On this analysis, there is no "good" or "service" being supplied or offered by HCF to participating chiropractors, osteopaths or podiatrists, which is conditional on the chiropractors, osteopaths and podiatrists using an approved Claims System, and therefore there can be no third line forcing conduct by HCF.

However, as there may be an argument that participation in the Program and entry into the Program Agreement confers on chiropractors, osteopaths and podiatrists benefits that bring the arrangement within section 47(6) of the Act, for abundant caution HCF submits this notification in order to ensure immunity in respect of the proposed conduct.

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

Recognised providers of chiropractic, osteopathic and podiatric treatments and their HCF member customers.

**(b) Number of those persons:**

**(i) At present time:**

The total number of chiropractic providers currently recognised by HCF is a maximum of 6,757. The precise number is not presently known.

The total number of osteopathic providers currently recognised by HCF is a maximum of 2,525. The precise number is not presently known.

The total number of podiatric providers currently recognised by HCF is a maximum of 5,150. The precise number is not presently known.

**(ii) Estimated within the next year:**

Not known.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

N/A.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

**(i) No up-front payments by HCF members**

The Condition will result in significant benefits for HCF members. Under each of the Programs, as a result of the Condition, HCF members will be able to claim and procure immediate payment by HCF direct to participating chiropractors, osteopaths and podiatrists, of the applicable benefit in respect of treatments, at the time of consultation (i.e. "on the spot"). The Member will not be required to make any payment in respect of "no-gap" qualifying treatments.

Code Capability is required by HCF to assist it to identify whether or not a member must make a gap payment. Without the Claims System transmitting the relevant ICD 10-AM Code, HCF cannot easily verify that a "no gap" payment can be made for a claim. Accordingly, Code Capability is a necessary condition for electronic claims processing of "no gap" payments to occur.

Absent the Condition, HCF members may be required to make up-front payments to treating chiropractors, osteopaths and podiatrists for each treatment, including "no-gap" qualifying treatments, and subsequently seek manual reimbursement from HCF. Consequently, absent the Condition, HCF members may be subject to significant out-of-pocket expenses, and the inconvenience and delay of having to make manual reimbursement claims to HCF.

**(ii) Improved health outcomes for consumers and lower health treatment costs from timely treatment**

By eliminating or reducing up-front costs to consumers, the notified conduct removes a potential cost barrier to consumers seeking timely access to medical treatment. Consultation by HCF members of chiropractors, osteopaths and podiatrists at an earlier stage will contribute to improved health and well-being. Earlier consultation may reduce overall health treatment costs by enabling earlier steps to resolve health issues.

**(iii) Improved HCF member products and services leading to improved health outcomes**

The ICD 10-AM Code provides important diagnostic and treatment information. Conveying such information electronically via an approved Claims System, through Code Capability, will allow HCF to obtain a better and more detailed understanding of the treatments its customers seek from chiropractors, osteopaths and podiatrists. This information will be used by HCF to provide more tailored health insurance policies and ancillary services that are more suited to the actual treatment needs of its members.

For example, HCF may use the information to identify and encourage members to participate in chronic disease management programs. Through such programs HCF is able to reduce overall health costs for consumers and the fund. HCF refers to the more detailed information in this respect contained in its submission to the ACCC on Notification N95495, dated 3 December 2012, a copy of which forms Annexure B to this submission.

**(iv) Greater efficiencies in claims processing and lower administrative costs for HCF**

The Condition will allow HCF to more efficiently and effectively manage:

- the processing of claims by or on behalf of members for benefits for treatments by participating chiropractors, osteopaths and podiatrists; and
- management of the Programs generally and the participation in the Programs by chiropractors, osteopaths and podiatrists.

Claims for benefits will be dealt with uniformly and in a more timely manner.

HCF administrative costs will accordingly be lower, which may be reflected in lower premiums and/or higher benefits being paid. HCF submits in this respect that, as HCF operates on a not-for-profit basis, lower costs are more likely to be passed through for the direct benefit of HCF members.

**(v) Greater efficiencies in claims processing and lower administrative costs for chiropractors, osteopaths and podiatrists**

The Condition will allow participating chiropractors, osteopaths and podiatrists to more efficiently and effectively process claims by or on behalf of HCF members for benefits for treatments. Participating providers will receive guaranteed payment "on the spot", with minimal transaction costs.

Absent the Condition, participating providers may be required to bill each individual member directly. This creates inefficiencies and significant administrative costs associated with multiple debtors and payment methods, and attendant risks of non-payment and debt collection.

**(b) Facts and evidence relied upon in support of these claims:**

Please refer to the facts described in items 2(b) and 4(a) above.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions): (Refer to direction 8)**

Market(s) in which the goods or services described at 2 (a) are supplied or acquired:

**(1) The market for the supply of private health insurance to consumers.**

There are a large number of suppliers of private health insurance in Australia. The most significant suppliers include:

|                            |
|----------------------------|
| Medibank Private Limited   |
| BUPA Australia Pty Limited |
| HCF                        |
| HBF Health Limited         |
| NIB Health Funds Limited   |

Acquirers of health insurance are most commonly individual members of the general public.

The supply of private health insurance is principally regulated under the *Private Health Insurance Act 2007* (Cth) (**PHI Act**). Only entities which are registered under the PHI Act may carry on a health insurance business. The PHI Act sets out requirements for private health insurance products, and imposes obligations on private health insurers regarding the conduct of their business. Binding Private Health Insurance Rules may be made under the PHI Act by the Minister and the Private Health Insurance Administration Council.

**(2) The market for the supply of electronic claims and payment systems.**

We do not here express a concluded view regarding the exact product scope of the relevant market. The market may be the market for supply of electronic funds transfer at point of sale (**EFTPOS**) payment systems generally, or it may be a narrower market for the supply of electronic claims and payment systems to health service providers, depending on the level of demand and supply-side substitutability.

It is arguable that EFTPOS payment systems are substitutable for more specialised electronic claims and payment systems supplied to health service providers, which have specific functionality relating to claims processing in addition to EFTPOS functionality.

There are a number of suppliers of EFTPOS payment systems in Australia, including each of the major Australian banks, and there are two known specialty providers to health service businesses, described below.

If the relevant market is the narrower market for the supply of electronic claims and payment systems to health service providers, the two known suppliers in the Australian market are:

|        |
|--------|
| HICAPS |
| CSC    |

Relevant acquirers of electronic claims and payment systems are health service providers on the one hand (i.e. acquirers of terminals and transaction services), and health insurers on the other (i.e. acquirers of transaction services).

In the broader market for EFTPOS systems generally, acquirers are retail businesses broadly (i.e. acquirers of terminals and transaction services).

**(3) The markets for the supply of chiropractic, osteopathic and podiatric treatment services.**

There are a large number of suppliers of chiropractic, osteopathic and podiatric treatment services in Australia (see paragraph 3(b)(i) above for numbers of HCF recognised providers of these services).

Acquirers of these services are most commonly individual members of the general public.

**6. Public detriments**

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

There are no known public detriments arising from the notified conduct.

**(i) No lessening of competition**

The notified conduct does not have the purpose, and will not have, or be likely to have, the effect of lessening competition in any market.

**A. Market for electronic claims and payment systems**

The notified conduct will have no impact on competition in the market for electronic claims and payment systems or EFTPOS payment systems, for reasons including the following.

- As described in more detail in paragraph 2(b)(i) above, it is expected that all current providers of Claims Systems in the Australian market, namely HICAPS and CSC, will be approved providers under the Program Agreements as at the date of commencement of the Programs on 1 April 2013. Consequently the Condition will not restrict the choice of providers available to Program participants for use in connection with the Programs.
- In the event that another provider determines to offer a Claims System in the future, HCF will approve that system for use in connection with the Programs, provided the system offers Code Capability and satisfies the other basic requirements as set out in HCF's submission to the ACCC dated 5 October 2012 in respect of Notification N95495 (a copy of which submission forms Annexure A to this Notification). HCF submits those requirements are easily satisfied by any potential new entrant.
- HCF notes in this respect that:
  - HCF has actively worked with CSC to develop the Code Capability for use in respect of the "More for muscles" program the subject of Notification N95495, and in time for the launch of the Programs;
  - CSC has agreed to provide the Code Capability at no cost to HCF; and
  - CSC has advised that only a short time (approximately 6 weeks) is required for CSC to implement the Code Capability from the point at which the functionality was agreed by CSC and HCF.
- HCF, as an acquirer of transaction services from Claims System providers in connection with the Programs, encourages any new provider of Claims Systems to provide a competing offering that can be used in the Programs.

**B. Market for private health insurance**

The notified conduct will not lessen competition in the market for the provision of private health insurance. As noted at paragraph 4(a)(iii) above, the notified conduct will give rise to greater efficiencies in claims processing and lower administrative costs for HCF, which may flow through to lower premiums and/or greater benefits for HCF members, fostering greater competition amongst health insurers for lower-priced and/or higher quality health insurance offerings. The notified conduct may also promote competition between private health insurers to offer beneficial "no-gap" treatment programs and on-the-spot claims reimbursement.

HCF notes that all major competitors offer a range of participating provider or 'preferred provider' schemes (the distinction being the latter restricts the number of participating health service providers in a given geographical area). Through the launch the Programs, HCF is better placed to compete with other health insurers and thus increasing competition in this market.

### **C. Markets for chiropractic, osteopathic and podiatric treatment services**

The notified conduct will not lessen competition in any of the markets for the provision of chiropractic, osteopathic or podiatric treatment services, for reasons including the following.

- Compliance with the Condition will not provide any significant impediment to chiropractors, osteopaths or podiatrists seeking to participate in the Programs. The HICAPS and CSC Claims Systems are already presently employed by a majority of ancillary health service providers, including chiropractors, osteopaths and podiatrists. Over 70% of active chiropractor, osteopath and podiatrist provider numbers (i.e. for which HCF has received a claim in the past 12 months) are linked to electronic claiming. Such providers will already be in compliance with the Condition and hence will not be affected. For those providers who do not presently have a HICAPS or CSC system, they may readily be obtained at moderate cost. Accordingly, Program participation is readily available to all chiropractors, osteopaths and podiatrists. HCF notes in this respect that any chiropractor, osteopath or podiatrist who does not presently have in place a HICAPs or CSC system, and acquires one to comply with the Condition, is likely to benefit from increased efficiencies in claims processing and lower administrative costs, as further described in paragraph 4(a)(iv) above.
- Additionally, chiropractors, osteopaths and podiatrists are not precluded from being recognised by HCF as providers of qualifying treatments if they choose not to participate in the Programs. Hence chiropractors, osteopaths or podiatrists who do not wish to participate in the Programs may continue to provide services to HCF members in competition with Program participants, and HCF will continue to pay standard benefits on behalf of its members for qualifying treatments.
- HCF also notes that the large numbers of chiropractors, osteopaths and podiatrists means that competition is presently vigorous, and will continue to be vigorous following implementation of the notified conduct.

HCF refers more generally to its submissions in respect of Notification N95495, which are also relevant to the conduct the subject of this notification.

#### **(ii) No increase in prices**

There will be no increase in prices in the market for the supply of private health insurance. As noted in paragraph 4(a)(iii) above, the notified conduct enables HCF to realise efficiencies in claims processing and administration, which lower HCF's costs. This may potentially be reflected in lower premiums and/or higher benefits for members. HCF submits in this respect that, as HCF operates on a not-for-profit basis, lower costs are more likely to be passed through and reflected in lower premiums and/or higher benefits for members.

There will be no increase in prices in the market for the supply of chiropractic, osteopathic or podiatric treatment services. Competition in those markets is and will remain vigorous, and most providers already have in place a HICAPS or CSC system. Additionally, as described further in paragraph 4(a)(iv) above, the use of a Claims System reduces the claims processing and administrative costs of providers.

There will be no increase in prices in the market for the supply of Claims Systems or EFTPOS payment systems, either generally or specifically to health service providers. HICAPS and CSC's systems (being to HCF's knowledge all available Claims Systems in the market) will already contain the required functionality by the



time of commencement of the Programs, and both systems will be available for use by Program participants in connection with the Program.

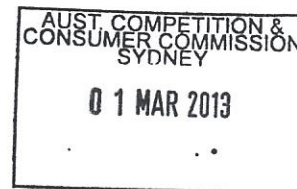
**(b) Facts and evidence relevant to these detriments:**

Please refer to facts described above in paragraph 6(a).

**7. Further information**

**(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Norton Rose Australia  
Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Attention: Tim Woodforde  
Ph: (02) 9330 8303



Dated..... 1 March 2013 .....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

**Annexure A**

5 October 2012

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Ms Imogen Hartcher-O'Brien  
Director  
Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

cc. Mr Mark Basile

Dear Ms Hartcher-O'Brien

**The Hospitals Contribution Fund of Australia Limited (HCF) exclusive dealing notification N95495 – follow-up submission**

We refer to the notification made by HCF on 8 June 2012 (**Notification**) and the supporting submission made by HCF on 17 August 2012 (**Submission**).

The Australian Competition and Consumer Commission (**ACCC**) has requested that HCF provide further information regarding the following matters:

- (1) the criteria and process that HCF is applying for approval of additional electronic claims and payment systems (**EPS**) for use in the Program under clauses 2.5 and 5.1 of the Program Agreement; and
- (2) the process HCF is employing for notifying physiotherapists of an additional approved EPS for use in the Program.

This material in this letter is for information purposes only and is correct as at the date of this letter. The letter adopts the terminology defined in the Notification and Submission, unless otherwise specified.

**1 Criteria and process for approving electronics claims and payments systems**

1.1 The criteria for approving additional EPSs for use in the Program under clauses 2.5 and 5.1 are as follows:

- (1) the EPS must have Code Capability, consisting of the following:
  - (a) the EPS must have the capability to receive and transmit to HCF the ICD-10 AM Code (**Code**) in a field which is capable of accepting up to 12 characters (the first being an alpha and the remaining numeric); and
  - (b) the EPS terminal must either prompt the user to input or have capacity for the user to trigger the system to capture the Code, when a claim is made in respect of a qualifying treatment under the Program;
- (2) the EPS must provide base functionality necessary to process member claims and payments. This base functionality is described in Annexure A to this letter;
- (3) the EPS must be technically compatible with HCF's systems. The requirements for technical compatibility are described in Annexure B to this letter. If modifications to HCF's systems are required for reasons of technical compatibility with the EPS, the cost to HCF of undertaking such modifications must be reasonable;



- (4) the fees charged to HCF for provision of the EPS with Code Capability and for transaction processing must be reasonable and competitive, having regard to the costs of alternative systems and methods of processing transactions; and
- (5) the terms and conditions on which the EPS provider agrees to supply the EPS to HCF are reasonable. The terms and conditions proposed may vary from provider to provider.

HCF is applying the same criteria to any provider of an EPS who wishes to have the EPS approved for the purposes of clauses 2.5 and 5.1 of the Program. Please note the technical criteria described in this letter are of necessity high level in nature, as they are not described by reference to a particular EPS solution, which vary between providers.

1.2 The typical high level process for approving and implementing additional EPSs is as follows:

- (1) the EPS provider contacts HCF with the proposal;
- (2) HCF reviews the proposal and undertakes a system impact analysis;
- (3) if the requisite changes to accommodate the proposal are unreasonable (see criteria at 1.1(3) above), HCF will contact the EPS provider to explore further options. This may involve a face-to-face meeting or teleconference;
- (4) if no changes are required or any changes are reasonable, once terms are agreed with the EPS provider, HCF will proceed through its internal project processes to have IT resources allocated;
- (5) once resources have been allocated, HCF will contact the EPS provider to establish availability of resources on their part to develop/modify their system and to assist in the testing of any changes;
- (6) work is undertaken on both sides;
- (7) system integration and user acceptance testing are completed;
- (8) any bugs or issues are resolved between HCF and the EPS provider;
- (9) a go-live date is established; and
- (10) HCF organises for the various communication pieces to be created/updated (see section 2 of this letter below).

## **2 Process for notifying physiotherapists of an additional approved EPS**

2.1 The process for notifying physiotherapists of additional approved EPSs for use in processing Program claims is as follows:

- (1) including references to the alternative EPS in the Program materials (such as instructional documents/flyers etc). Updating the Program materials is expected to occur within 4 – 6 weeks from implementation of the new EPS, and updating the standard Program contract is expected to take approximately 1 week;
- (2) informing participating physiotherapists through routine communication channels including routine mailings and through the HCF website provider portal. This notification is expected to occur within 1 – 2 weeks from implementation of the new EPS; and

# HCF

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The Hospitals Contribution Fund of Australia Limited. ABN 68 000 026 746. HCF House, 403 George Street, Sydney 2000. Post: GPO Box 4242, NSW 2001.  
Telephone: Business (61 2) 9290 0444, Information 13 13 34. Facsimile: (61 2) 9279 3549. E-mail: [service@hcf.com.au](mailto:service@hcf.com.au) Internet: [www.hcf.com.au](http://www.hcf.com.au)

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- (3) specifically inviting HCF recognised physiotherapists already using the alternative EPS to join the Program. This notification is expected to occur within 2 weeks from implementation of the new EPS.

I trust that this additional information is of assistance to the ACCC. Please do not hesitate to contact me should you wish to discuss any matter.

Yours sincerely



**Dr Christopher Wallace**  
General Manager, Benefits Management  
HCF  
403 George Street, Sydney, NSW, 2000



## Annexure A EPS base functionality

- A. The EPS requires a terminal through which the operator can swipe the HCF membership card
- B. It must be able to read and interpret that information.
- C. It must have, at a minimum, a keypad that prompts the user to input data such as:
  - 1. Date of the service
  - 2. Provider who administered the treatment
  - 3. The patient identifier to whom the service relates (this is listed on the front of the card in the form of a two digit number)
  - 4. Item code for the service
  - 5. Body part identifier (only relevant to certain treatment types)
  - 6. Cost of the service
- D. The EPS must have the capacity to enter multiple claim lines (up to the maximum allowable – see H. in Annexure B)
- E. The EPS must not allow a 'card not present' transaction. An electronic claim may only be allowed if the member presents their card.
- F. It is preferable that the EPS also have capability to integrate with electronic practice management systems in the clinic
- G. It is preferable the EPS have capacity to store multiple providers in the terminal (for clinics with two or more providers using the same terminal)
- H. The EPS must have standard functions such as 'cancel' and 'send'
- I. The EPS terminal must produce two copies of the receipt detailing the claim data (see C. above) along with the benefit paid by HCF (if any) and the response codes. The first copy of the receipt must have the industry agreed declaration on it which the provider is to retain after having the patient sign.
- J. The EPS is to be available at least 98% of the time during the agreed hours of operation
- K. The EPS must have IT help desk staff available during the agreed hours of operation in case of an outage or break in the communication link.

## Annexure B EPS technical compatibility

- A. The EPS must establish a TCP/IP connection with HCF
- B. The EPS must have functionality to logon and logoff with the HCF system (to ensure both systems are live before sending transactions and to realise when a connection has been broken)
- C. The data packet must include a message type to indicate to the HCF system what is required (e.g. claim, cancellation, timeout transaction etc) and be capable of accepting and interpreting HCF response codes.
- D. The data packet must include requisite fields and be in the agreed format and layout (this would include fields such as the provider number, terminal ID, item number, card number, patient ID, charge and body part identifier when relevant). This would also include an additional data field to capture the Code in relation to Program claims.
- E. The time taken to send the data from the EPS terminal via the host system to HCF must not exceed an average of 6 seconds per transaction.
- F. The EPS must be capable of declining the transaction when the terminal has not received a response from HCF within the agreed EFTPOS industry standard timeframe (currently 30 seconds).
- G. The EPS must have the capability to queue any void or cancellation requests where the link is broken or inoperable.
- H. The terminal must not accept any more than an agreed number of claim lines in any one transaction. This varies between claim types depending on the data to be communicated and is important to ensure the data packet does not become too large.



Not for profit. More for members.

STRICTLY CONFIDENTIAL

Annexure C

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**HCF**

**Annexure B**

3 December 2012

**Attention:** Mr Mark Basile

**Copy to:** Ms Imogen Hartcher-O'Brien  
Director, Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Mr Basile

**The Hospitals Contribution Fund of Australia Limited (HCF) exclusive dealing notification  
N95495 - submission**

We refer to the third line forcing notification by HCF of 8 June 2012 (**Notification**) and our subsequent correspondence, including our letters of 17 August 2012 (**August letter**) and 5 October 2012 (**October letter**).

HCF is confident that the notified conduct will facilitate payment of no-gap benefits and improve customer convenience and cost. HCF wishes to achieve important efficiencies from electronic processing while ensuring that sufficient information is provided to enable HCF to appropriately and efficiently manage claims in the best interests of its members.

HCF is concerned by the content of CSC's letter dated 8 November 2012, particularly as it makes a series of public allegations against HCF. As with their earlier letter dated 29 June 2012, CSC's letter contains a number of factual inaccuracies and fundamentally mischaracterises HCF's commercial interest, which is to ensure that CSC provides a competitive solution to HICAPS. The following is a brief response to CSC's letter:

1. HCF reiterates that the Notification was submitted on the basis that participation in the HCF "More for Muscles" program requires an Electronic Payment System (**EPS**). Importantly, HCF is not intending to deal exclusively with HICAPS and the contract includes a mechanism for additional EPS providers to be approved once they have the requisite Code Capability. If CSC had the Code Capability at the launch of the program, HCF would have submitted the Notification referring to both HICAPS and CSC.
2. HICAPS was not provided with an advanced brief for development of the Code Capability and has not been afforded favourable treatment. HICAPS already had available the base functionality that was adapted to enable the Code Capability. As CSC did not possess the necessary capability, HCF encouraged CSC to develop the necessary capability and continues to engage with CSC.
3. Fundamentally, HCF desires that CSC offers a product that is competitive to HICAPS and that meets HCF's business requirements. HCF desires a choice of supplier to ensure price competition and to drive innovation in EPS offerings over time.
4. HCF is currently in confidential commercial negotiations to acquire services from CSC that are competitive with HICAPS. CSC's apparent attempt to use a notification process to influence those commercial negotiations is highly inappropriate.
5. HCF has taken active steps to assist CSC to participate in the Program.

**Confidential**



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6. The recitation by CSC of the course of commercial correspondence over recent months is both irrelevant and inaccurate. HCF has not delayed negotiations and has been seeking to accommodate CSC's concerns. For absolute clarity, HCF refutes the assertion it "withheld" or "unreasonably" and "substantially" delayed CSC's ability to provide the Code Capability.
7. CSC has not yet provided to HCF a proposal that would enable HCF to assess the reasonableness of CSC's commercial terms for developing and maintaining the Code Capability. HCF will continue to work with CSC to finalise the business requirements so that a full proposal can be assessed and commercial terms can be agreed to.
8. The HCF 'More for Muscles' program is structured so that a "no-gap" benefit is payable for Initial Consultations when the patient presents for a new episode of care. HCF defines a new episode of care as a new health condition or an acute flare up of an existing condition. This structure therefore requires the provider to submit their provisional diagnosis, as well as the item number for an initial consultation, so that claims can be managed. HCF accepts that this may be different to the structure of other "no-gap" programs but submits that there are clear and tangible public benefits associated with this structure.
9. HCF is implementing the Code Capability through EPS to achieve important efficiencies from electronic processing, rather than continuing with manual claims. As part of that electronic processing solution, HCF requires that sufficient information is provided to enable HCF to appropriately and efficiently manage claims.

HCF is a not-for-profit health fund with a vested interest in the health of our members and expansion of no-gap networks. As the ACCC will appreciate, HCF has every commercial incentive to ensure CSC's timely participation in the Program.

To assist consideration of the matter, HCF has identified in the **Attachment** the key public benefits arising from the requirement for the EPS to have the requisite Code Capability. These benefits supplement the benefits that HCF has previously identified in its submissions relating to the more general issue of use of an EPS system and the nature of the 'More for Muscles' program.

Yours sincerely



**Dr Christopher Wallace**  
General Manager, Benefits Management  
HCF  
403 George Street, Sydney, NSW, 2000

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## Attachment – Public Benefits

| Public Benefit   | Explanation  |
|--|--|
| 1. <b>Reduced transactions costs</b>                         | HCF is seeking to migrate from manual processing to electronic processing to reduce costs and provide members with improved service levels.  |
| 2. <b>Increased convenience for consumers and physicians</b> | The key benefits arising from immediate claims through electronic processing are: <ul style="list-style-type: none"> <li>reduced manual processing costs for HCF, resulting in more efficient provision of services and reduced transaction costs;</li> </ul>  |
| 3. <b>Reduced 'out of pocket' costs to consumers</b>         | <ul style="list-style-type: none"> <li>increased convenience for consumers and physicians, providing a service that better meets their respective desire for immediate processing of claims at the 'point of sale'; and</li> </ul>   |
| 4. <b>Reduced overall health costs</b>                       | <ul style="list-style-type: none"> <li>reduced costs to consumers, given consumers will no longer have temporary 'out-of-pocket' expenses while they wait for a claim to be processed.</li> </ul> <p>In turn, reduced costs to consumers will remove a potential barrier to consumers seeking access to medical treatment. As such, members consulting a physiotherapist at an earlier stage will contribute to their improved health and well-being. Earlier consultation may reduce overall costs by enabling earlier steps to be taken to resolve health issues.</p> <p>An EPS with the requisite Code Capability permits electronic processing of claims on an immediate basis at the 'point of sale'.</p> <p>Code Capability (including the ICD-10AM Code) is required by HCF to assist it to identify whether or not a member must make a gap payment. Without the EPS transmitting the relevant Code, HCF cannot easily verify that a 'no gap' payment can be made for a claim. Accordingly, Code Capability is a necessary condition for electronic processing to occur.</p> |
| 5. <b>Greater understanding of diagnosis and treatment</b>   | The ICD-10-AM Code is required to assist HCF to understand the particular type of diagnosis and treatment provided by physiotherapists to its members.   |
| 6. <b>Better tailored health offerings</b>                   | HCF is able to use that information to better tailor its offerings to meet consumer needs (for example encouraging members with chronic conditions to participate in relevant Chronic Disease Management Programs).  |
| 7. <b>Better management of healthcare costs</b>              | Through Chronic Disease Management Programs HCF is able to reduce overall health costs for consumers and the fund.   |
| 8. <b>Reduced overall health costs</b>                       | Specifically: <ul style="list-style-type: none"> <li>In addition to allowing HCF to identify members who may benefit from such programs, the ICD-10-AM code allows HCF to better understand member's health needs when designing future initiatives to address chronic health conditions. (Existing physiotherapy item numbers only refer to the type of consultation provided; they do not include information about the patient's diagnosis.)</li> </ul>   |
| 9. <b>Greater alignment with international standards</b>     |  |

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| Public Benefit  | Explanation  |
|---|--|
| <p><b>10. Providing a service that better meets the needs of practitioners</b></p> <p><b>11. Ultimately, providing better health outcomes for consumers</b></p> | <ul style="list-style-type: none"><li>• HCF is a market leader in its delivery of Chronic Disease Management programs. Under HCF's <i>My Health Guardian</i>, telephone support is provided by registered nurses to members to help them understand and manage their chronic condition. My Health Guardian has demonstrated that participants are less likely to require hospital admissions. Aside from the cost savings that result from reduced hospital admissions, this approach leads to more efficient health outcomes for our members.</li><li>• International Classification of Disease (ICD) codes are the gold standard of disease classification and notably originate from the World Health Organisation. (Our inclusion of the Codes within the Program required dispensation from the Australian Government.)</li><li>• HCF has received positive feedback from physiotherapists who are, for the first time in private practice, using an internationally accepted standard to record and communicate their diagnoses. This reinforces their role as a primary contact practitioner responsible for diagnosing a condition.</li></ul> <p>This approach and Program aligns with HCF's stated vision of <i>'achieving better health outcomes for members'</i>.</p> |

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## Annexure C

**Annexure C has not been provided as confidentiality has been  
claimed over this annexure.**