



Australian
Competition &
Consumer
Commission

Draft Determination

Applications for revocation of
A91144, A91145 and A91178
and the substitution of authorisations
A91441-A91443

lodged by

The Australian National University and others

in respect of

the Interview and Preference Policies
applied by the participating universities in
considering applications for admission to
their graduate-entry medical schools

Date: 29 October 2014

Authorisation numbers: A91441
A91442
A91443

Commissioners: Sims
Rickard
Cifuentes
Walker

Summary

The ACCC proposes to re-authorise the Preference Policy and Interview Policy (the Policies) of the GAMSAT Consortium relating to the admission and interviewing of applicants to study graduate-entry medicine.

The ACCC proposes to reauthorize the Policies for 10 years.

The ACCC will seek submissions in relation to this draft determination, including in relation to the proposed period of authorisation, before making its final decision.

The applications for authorisation

1. On 27 June 2014 The Australian National University, Monash University¹, University of Wollongong, Deakin University, The University of Western Australia, Griffith University, The University of Notre Dame Australia, The Flinders University of South Australia, The University of Queensland and The University of Melbourne (hereafter referred to as the 'GAMSAT Consortium') lodged an application for the revocation of authorisations (A91144, A91145 and A91178) and substitution with new authorisations A91441, A91142 and A91443 ('re-authorisation') with the Australian Competition and Consumer Commission (ACCC).
2. The current authorisations (A91144, A91145 and A91178) are due to expire on 18 December 2014.
3. The GAMSAT Consortium is seeking re-authorisation of Policies relating to the admission and interviewing of applicants to study medicine at their graduate-entry medical schools. The Policies are articulated at Attachment C of the supporting submission to the application, namely:²
 - the *Preference Policy* – all applicants submit a single application online to the Graduate Entry Medical Schools Admission System (GEMSAS), listing the medical schools to which they wish to apply in order of preference up to the maximum of six preferences. Each applicant is considered by the first preferred school for offer. If the applicant does not meet the school's selection requirements, they will be passed on to their next preferred school for consideration of offer until the sixth preferred school.
 - the *Interview Policy* – each applicant will receive no more than one offer for an interview from a GAMSAT Consortium medical school.

The interview will be conducted by the medical school for which the applicant has the highest preference and for which the applicant is ranked sufficiently highly to be offered an interview.

Applicants are selected for interview based on the 'selection for interview process' used by each school (further information about the operation of the selection processes is provided from paragraph 13). Applicants whose ranking is not high enough for them to be offered an interview at their first

¹ The ACCC is advised that Monash University will leave the GAMSAT Consortium at the end of 2015. See GAMSAT Consortium submission, 25 August 2014, page 2.

² GAMSAT Consortium, supporting submission to application for re-authorisation A911141-A91443, Attachment C, 27 June 2014, pp 26-27.

preference medical school are passed on to their next preferred medical schools.

After completion of interviews, applicants are offered places based on the 'selection for a place process' at each school.

All applicants interviewed, but not selected, are passed on to the applicant's next preferred school, including the University of Queensland (which does not include an interview in its selection processes) for consideration for offer of a place. The interview scores are standardised by the receiving school, by allocating the interview score of the equivalently ranked interviewee at that school. Applicants are then considered for offer of places based on the 'selection of a place process' for that school.

4. Upon joining the GAMSAT Consortium, a Deed of Appointment provides for a new member to be bound by the Consortium Agreement, which contains these Policies. Each member of the GAMSAT Consortium agrees to abide by these Policies to the extent possible.
5. The GAMSAT Consortium is seeking re-authorisation for 10 years. It also seeks authorisation to extend to any other university that becomes a signatory to the Consortium Agreement (that is, a member of the GAMSAT Consortium) after any new authorisation is granted by the ACCC.³

The Applicants

6. At the time of lodging the application for re-authorisation, the GAMSAT Consortium consists of 10 universities and 11 graduate-entry medical schools. The GAMSAT Consortium represents nearly all the universities currently providing graduate-entry medical courses in Australia. The University of Sydney currently provides the only other graduate-entry medical courses outside the consortium. The Australian National University is the lead university of the consortium at present. This role is rotated and involves, among other things, the Dean of the lead university sitting on the GAMSAT Consortium Board Executive.
7. Further information in relation to the operation and governance of the GAMSAT Consortium is available from the ACCC's 2009 [Determination](#).⁴
8. In 2014, the GAMSAT Consortium had approximately 1417 positions available across its graduate-entry medical schools.⁵

Table 1: Available positions at GAMSAT Universities in 2014

University	Available positions
The Australian National University	90
Deakin University	127
Flinders University	118
Griffith University	90

³ GAMSAT Consortium, submission in support of the application for re-authorisation, 27 June 2014, page 2.

⁴ ACCC Determination, 26 November 2009, in relation to applications for authorisation A91144, A91145 and A91178.

⁵ This table is compiled from the GAMSAT Consortium's submission, 25 August 2014, Annexure 1 and the GAMSAT Consortium's submission, 13 October, page 2.

Monash University	75
The University of Notre Dame:	
- Fremantle Medical School	100
- Sydney Medical School	120
The University of Melbourne	300
The University of Queensland*	167
The University of Western Australia	145
The University of Wollongong	85
TOTAL	1417

* The number of domestic positions available through GEMSAS.

Background

Studying and funding for medical education

9. Information about studying undergraduate and post-graduate medicine in Australia is available from Chapter 2 of the ACCC's 2009 [Determination](#).
10. The Australian Government makes a contribution towards the cost of medical education. In particular, medical students may occupy either:⁶
 - a Commonwealth-supported university place (CSP), where students are required to pay for only part of their degree through HECS HELP or
 - a full fee-paying place, which is funded entirely by the tuition fees paid by the student.
11. Approximately three quarters of all university places offered each year are Commonwealth supported.⁷ Twenty five per cent of CSP's are bonded places (BMP). The BMP Scheme is an Australian Government initiative to provide more doctors to areas across Australia experiencing the greatest shortage of doctors. That is, following attainment of Fellowship of a specialist college, participants agree to work in a District of Workforce Shortage of their choice for a period equal to the length of their medical degree.⁸
12. Other bonded places are offered via the Medical Rural Bonded Scholarship Scheme (MRBSS), which requires recipients to work for six continuous years in locations within rural or remote areas.⁹

⁶ Australian Government Department of Health, *Medical Training Review Panel: Seventeenth Report*, 9 April 2014, viewed on the Department of Health's website <http://www.health.gov.au/internet/publications/publishing.nsf/Content/work-pubs-mtrp-17-toc~work-pubs-mtrp-17-chapter-2~work-pubs-mtrp-17-chapter-2-medical-students> on 18 September 2014.

⁷ Ibid.

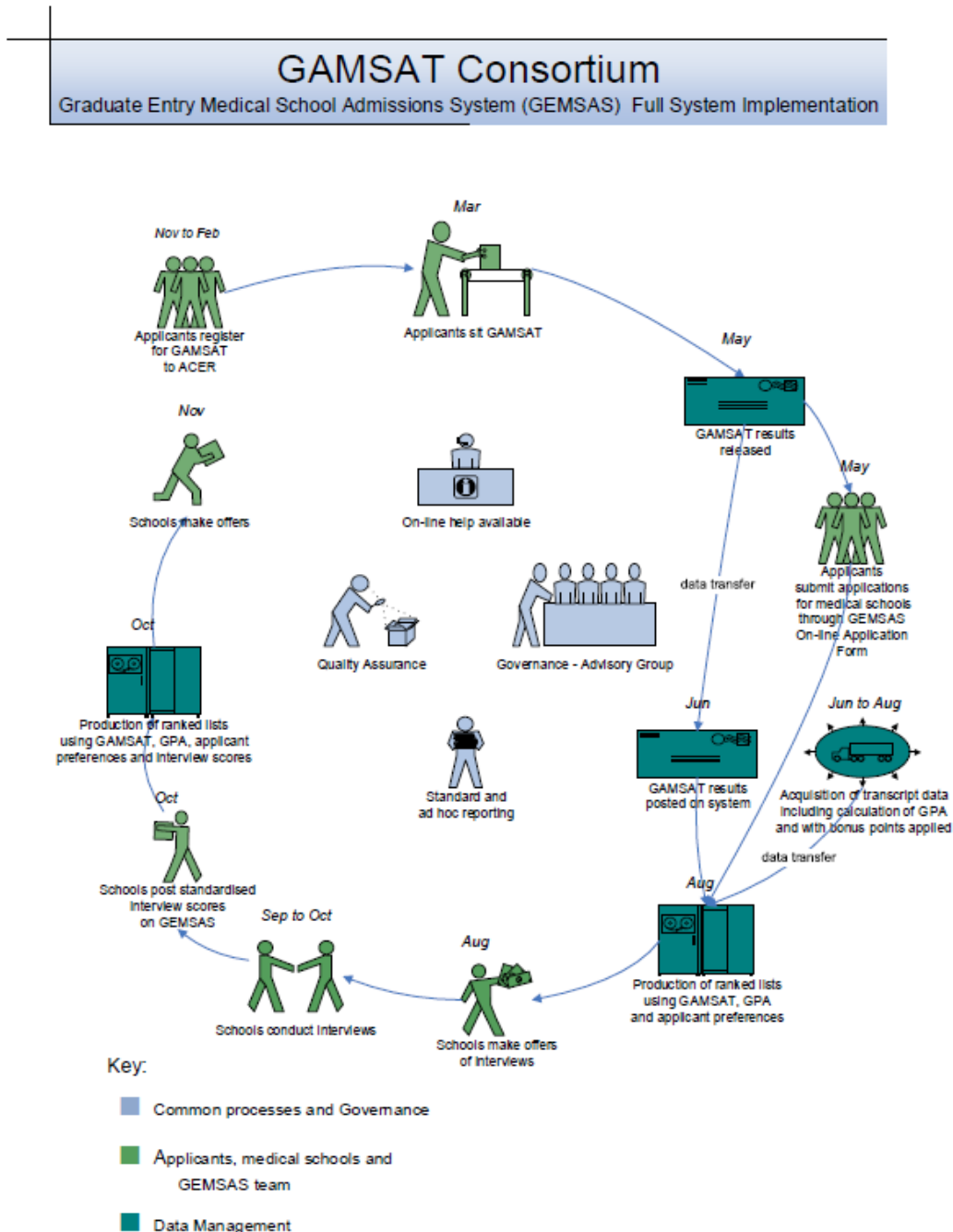
⁸ Australian Government Department of Health, *Bonded Medical Places Scheme, Information Booklet for 2015*, page 3.

⁹ Australian Government Department of Health, *Medical Training Review Panel: Seventeenth Report*, 9 April 2014, viewed on the Department of Health's website <http://www.health.gov.au/internet/publications/publishing.nsf/Content/work-pubs-mtrp-17->

GAMSAT Consortium selection processes

13. Figure 1 illustrates the steps involved in the GAMSAT Consortium's selection processes. Since the 2011/2012 admission round, selection is conducted by an online admissions system called GEMSAS.

Figure 1: GAMSAT Consortium selection processes



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14. The key stages in the GAMSAT Consortium's selection process are:

- March – applicants sit the **Graduate Australian Medical Schools Admission Test (GAMSAT)**.
- June – GAMSAT results posted on GEMSAS.
- August – production of ranked lists using GAMSAT results, Grade Point Averages and applicant preferences. Schools make offers of interviews.
- September to October – schools conduct interviews.
- October – production of ranked lists using GAMSAT results, Grade Point Averages, applicant preferences and interview scores.
- November – schools make offers of places.

Selection for interview¹⁰

15. As previously noted, under the Policies each applicant is only permitted one interview. The highest preferred medical school to which the applicant applies, and for which the applicant qualifies for an interview, interviews the applicant.

16. The medical schools use a **Selection for Interview Score** to select applicants for interview based on their academic performance:

- in the **GAMSAT** and
- during their undergraduate degree – measured by **Grade Point Averages**.

17. Each medical school calculates Grade Point Averages by different methods and each school applies different cut offs and weightings to the GAMSAT score, with some schools favouring individual sections of the three-part GAMSAT exam. All of the medical schools have admission pathways for indigenous applicants, with their own admission requirements. A number of the universities also look for specific qualities in applicants. In particular:

- some favour applicants willing to work as doctors in rural areas – for example, Notre Dame, Deakin and Wollongong medical schools
- Wollongong and Notre Dame medical schools favour applicants who can demonstrate leadership, capacity to work with others, a service contribution outside their area of employment, diversity of experience and a high level of performance in an area of human endeavour and
- The Melbourne University and Monash University will exclude applicants that have not completed pre-requisite undergraduate studies in certain medical or biomedical sciences. Further, some medical schools add bonuses – for example, bonuses are granted to applicants from a rural background at Notre Dame, Deakin and Wollongong medical schools.

¹⁰ Unless otherwise stated, the information appearing under this heading was obtained from the submission in support of the applications for re-authorisation, 27 June 2014, pages 8-10.

18. Since 2009, The University of Queensland does not interview applicants. Applicants listing The University of Queensland as their first preference are considered for offer of a place based on the University of Queensland's selection process. Applicants who are not selected are returned to GEMSAS to be considered by their second preference school.¹¹

The interview and offer of a place¹²

19. Interviewees receive a numerical score for their performance at interview which is added to the *Selection for Interview Score* to create a **Course Rank Set (CRS)**. Applicants' CRS are used to create a ranking list for offers of a place by their preferred schools.
20. If an applicant's interview score ranks too low to be offered a place by the school that conducts the interview, their application is passed on to their next-preferred school. Interviewees rejected by the second school are passed on to their next-preferred school and the process is repeated until an offer of a place is made or all preferred schools have been exhausted. As noted in Figure 1, this process of making offers of a place occurs simultaneously across the GAMSAT Consortium in November each year. This means that a proportion of offers made by GAMSAT Consortium medical schools will be made to applicants that have been interviewed by another (higher-preference) university.
21. Interviewees ranked too low to be offered a place are notified that their application has not been successful.
22. Medical schools may make contact with applicants that have been interviewed at a higher preferred school prior to making an offer in order to determine their understanding of the university, the medical school and course requirements. If the applicant is considered unsuitable for that school, they will be passed on to the next preferred school for consideration. Applicants that decline an offer of a place at this time are treated the same way as applicants that decline an offer at other phases of the selection process – that is, they exit GEMSAS and are no longer eligible for consideration of offers of a place.

The 2009 authorisation (A91144, A91145 and A91178)

23. On 26 November 2009 the ACCC granted authorisation to the GAMSAT Consortium for the Interview and Preference Policies governing the admission and interviewing of applicants to study medicine at their graduate-entry medical schools. Authorisation was granted for five years and is due to expire on 18 December 2014.

Changes since 2009 ACCC authorisation

24. Since 2009 a number of changes have occurred, including:
- under the Preference Policy applicants may now list up to six preferred medical schools in a single application (previously three)

¹¹ GAMSAT Consortium, submission in support of the applications for re-authorisation, 27 June 2014, Attachment C.

¹² The information appearing under this heading was obtained from the submission in support of the applications for re-authorisation, 27 June 2014, page 10.

- the application process is now managed via an online system (GEMSAS, outlined below) which became operational in 2011 and
 - The University of Sydney withdrew its membership from the GAMSAT Consortium, effective in 2011. Monash University intends to leave the consortium at the end of 2015.
25. The GAMSAT Consortium advises that GEMSAS is an online system to facilitate applications and selection to graduate-entry medical schools, which has allowed:¹³
- electronic retrieval of academic transcripts and online provision of calculated Grade Point Averages
 - management of applications with up to six preferences from applicants to graduate-entry medical schools and
 - provision of ranked lists for 'offers of interview' and 'offers of a place' for each participating school. Rankings are ordered on the basis of applicants' preferences and medical schools' algorithms for selection, which include GAMSAT and Grade Point Average results and standardised interview scores.
26. The GEMSAS website also provides information to applicants about GEMSAS processes, key dates, frequently asked questions and detailed information about the GAMSAT exam.

Proposed Australian Government reforms to the higher education sector

27. On 28 August 2014 the *Higher Education and Research Amendment Bill 2014* (the Bill) was introduced into the House of Representatives. Among other things, the Bill proposes to deregulate fees in the higher education sector, including the removal of the limit on the maximum amount that a Commonwealth supported student may be charged by a provider.¹⁴
28. The Bill was introduced into the Senate on 4 September 2014 and currently remains before the Senate.¹⁵

Consultation

29. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process. The ACCC invited submissions from a range of potentially interested parties including other universities, student associations, medical associations, state and federal

¹³ GAMSAT Consortium, submission in support of the applications for re-authorisation, 27 June 2014, page 17.

¹⁴ *Higher Education and Research Reform Amendment Bill 2014*, Explanatory Memorandum, page 5.

¹⁵ Viewed on Parliament of Australia website: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5325 on 29 October 2014.

government and relevant regulatory bodies, as well as individuals that provided a submission to the ACCC in 2009.¹⁶

30. The submissions by the GAMSAT Consortium and interested parties are available from the ACCC's website (www.accc.gov.au/authorisationsregister) and are considered as part of the ACCC's assessment of the applications for re-authorisation.

ACCC assessment

31. The ACCC's assessment of the conduct for which re-authorisation has been sought is in accordance with the relevant net public benefit tests¹⁷ contained in the *Competition and Consumer Act 2010* (CCA). In broad terms, the ACCC may grant authorisation if it is satisfied that the likely benefit to the public from the conduct would outweigh the likely detriment to the public, including those constituted by any lessening of competition.

Relevant area of competition

32. The GAMSAT Consortium submits the relevant market is the national market in Australia for the provision of tertiary medical training services provided to students that already hold a bachelor degree (or higher degree) in one or more disciplines. In this regard, the GAMSAT Consortium submits:
- this market encompasses twelve graduate-entry medical schools. Eleven of these schools are currently operated by the ten GAMSAT Consortium universities and one is operated by The University of Sydney (which sits outside the consortium)¹⁸
 - the market is national as medical schools are located in nearly all state and territories and compete for applicants nationally (the ACCC notes there are no graduate-entry medical schools located in the Northern Territory or Tasmania) and
 - this market is currently highly regulated, with the number of places offered by each medical school, as well as the student contribution (HECS HELP) towards the cost of their medical education, determined by the Australian Government Department of Education.¹⁹ The GAMSAT Consortium notes the potential deregulation of fees is a decision for the Australian Government and the outcome of the Senate process is currently unknown.²⁰
33. The GAMSAT Consortium submits that competition between medical schools for graduates is differentiated as they each place different emphasis and/or weighting on admissions criteria, rather than just using simple rankings on the GAMSAT exam

¹⁶ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

¹⁷ Subsections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the CCA. The relevant tests are set out in Attachment A to this draft determination.

¹⁸ The ACCC is advised that Monash University will continue to participate in the GAMSAT Consortium up until the 2016 intake of post graduate medical students.

¹⁹ GAMSAT Consortium, submission in support of the applications for re-authorisation, 27 June 2014, page 14.

²⁰ GAMSAT Consortium submission, 25 August 2014, page 1.

or Grade Point Averages. For example, some universities favour applicants willing to work in rural areas.

34. The GAMSAT Consortium submits that a small proportion (14.5 per cent) of overseas students apply each year for admission directly with GAMSAT medical schools outside GEMSAS. It also understands that a relatively small number of Australian students apply to overseas medical schools. The consortium considers the option for Australian to study overseas is marginal and cannot be considered to be a competitive constraint.²¹
35. No submissions were received from interested parties which directly commented on the ACCC's conclusion in its 2009 determination in relation to the relevant area of competition affected by the Policies or the GAMSAT Consortium's claims in the current application for re-authorisation.
36. The ACCC does not consider it is necessary to precisely identify the relevant areas of competition in assessing the current applications for re-authorisation. The ACCC notes that the Policies only apply to medical courses and not those in other disciplines, as well as graduate-entry and not undergraduate medical courses. For the purpose of assessing the current applications for re-authorisation the ACCC considers the relevant area of competition affected by the Policies is the provision of graduate-entry medical courses by universities in Australia.

Future with and without

37. To assist its assessment of the Policies against the authorisation tests, the ACCC compares the likely future with the conduct for which authorisation is sought and the likely future without the conduct the subject of the authorisation. The ACCC will compare the public benefits and detriment likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.
38. In the current application for re-authorisation, the GAMSAT Consortium maintains that without the Policies, applicants that have completed the GAMSAT exam would need to make separate applications for interviews (or selection in the case of The University of Queensland) at all of the graduate-entry medical schools they wanted to be considered by. This could be done through a single admissions centre (such as GEMSAS) or a system which requires applications to be sent directly to medical schools. In either case, each medical school would then create a ranking list for offers of interview (or, in the case of The University of Queensland, an offer of a place).²²
39. By way of example, the GAMSAT Consortium referred to the graduate-entry selection system used in the USA. In particular, the USA has a centralised admissions centre, called the American Medical College Application Service (AMCAS), where applicants only submit one set of academic transcripts and provide a list of all the medical schools they would like to apply to (but not in preference order). AMCAS then collates these academic results and forwards them, with the results of the Medical College Admission Test score, to all applicants' nominated medical schools. In turn, each American medical school makes interview offers

²¹ GAMSAT Consortium, submission in support of application for re-authorisation, 27 June 2014, page 8.

²² Ibid, page 11.

based on these scores. Offers of a place are made according to ranking lists compiled after interviews, based on each schools selection processes.²³

40. In the USA, unsuccessful applicants are not passed on to other universities. As a result, the GAMSAT Consortium submits that applicants are required to travel and attend multiple interviews, and universities are required to interview many more applicants to fill their places, as many applicants receive multiple offers.²⁴
41. The ACCC considers that in the absence of the Policies the most likely counterfactual would be a decentralised admissions system where each university manages its process for selecting applicants for admission to graduate-entry medical schools; this may include the imposition of a fee by each medical school to cover the administration of the application process. In the absence of the Policies applicants are likely to attend more than one interview in seeking a position to study graduate-entry medicine in Australia.

Public benefit

42. The CCA does not define what constitutes a public benefit and the ACCC adopts a broad approach. This is consistent with the Tribunal which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.²⁵

43. In its 2009 **Decision**, the ACCC concluded that streamlining the application and admission processes under the Policies results in benefits to the public in the form of efficiencies. In particular, the ACCC considered these efficiencies create cost savings for:

- universities – in terms of reducing the costs associated with interviewing many more applicants than there are positions available to address the risk that some applicants will accept an offer of a place at another university. These savings may be used in teaching, research and administration activities.
- applicants – in terms of travel and accommodation costs and the direct costs of lodging multiple applications.

44. The GAMSAT Consortium submits the public benefits have been realised during the period of authorisation from 2010 to 2014.

45. Having regard to the GAMSAT Consortium's submissions in support of its application for re-authorisation and interested parties, the ACCC's assessment of the likely public benefits from the 2014 Policies follows.

Costs savings

46. The GAMSAT Consortium submits that if the Policies are not retained, applicants would need to make multiple applications and attend multiple interviews. In

²³ Ibid.

²⁴ Ibid.

²⁵ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

particular, applicants would be required to cover the expense of travelling to each medical school. Under the Policies, each applicant only travels to the one medical school that invites them for an interview. This generates a potentially significant saving to applicants, particularly if it removes the need to travel interstate. In addition, the GAMSAT Consortium notes that applicants pay a single fee (currently \$180) when submitting their application through GEMSAS. Applicants are not charged an interview fee. The GAMSAT Consortium is of the view that without the Policies, medical schools would seek to recover costs by levying a fee for interviews.

47. To demonstrate cost savings to applicants as a result of the Policies, the GAMSAT Consortium notes that in 2013, 75.85 per cent of applicants listed the maximum allowable six preferences.²⁶ The GAMSAT Consortium advises that in 2013 the following interview offers (by preference) were made across its medical schools:²⁷
- first preference interview offers – 65.1 per cent
 - second preference interview offers – 15.3 per cent
 - third preference interview offers – 8.6 per cent
 - fourth preference interview offers – 4.5 per cent
 - fifth preference interview offers – 3.8 per cent and
 - sixth preference interview offers – 2.8 per cent.
48. The GAMSAT Consortium submits that just over 10 per cent of successful applicants were offered a place at their fourth, fifth or sixth preferred school. It considers that most applicants would not be able to afford the cost of being interviewed at as many as six medical schools without the Policies.²⁸
49. Regarding cost savings to universities, the GAMSAT Consortium submits that, absent the Interview and Preference Policies, its medical schools would be required to interview considerably more applicants to fill positions. The GAMSAT Consortium submits that interviews are expensive and resource intensive. Interviews also result in lost time for academic and administrative staff, who would otherwise be more productively engaged in teaching, research or administration.
50. By retaining the Policies, the GAMSAT Consortium considers that the (single) Interview Policy reduces the risk that interviewees will decline an offer of a place because they have accepted an offer at another medical school. Therefore, as a large majority of offers of a place that each medical school makes are accepted, the fewer interviews are needed to fill the places available.²⁹
51. The GAMSAT Consortium also submits that if applicants are only interviewed once, all interviews can be conducted in a week chosen to minimise the impact on applicants and staff. If applicants were interviewed at multiple sites, medical schools would be required to conduct the interviews over a longer period, so that an

²⁶ GAMSAT Consortium, submission in support of the applications for re-authorisation, 27 June 2014, page 12.

²⁷ GAMSAT Consortium, submission in support of the application for re-authorisation, 27 June 2014, page 12.

²⁸ Ibid, page 13.

²⁹ Ibid, page 15.

interview at one school would not prevent applicants from being interviewed at any other school. Also, the consortium considers that fewer interviews reduces the impost on volunteers from the profession and general public, who are invited to participate in selection interviews to ensure that the student cohort reflects community concerns and priorities.³⁰

52. Since the Policies were introduced, the GAMSAT Consortium submits that its medical schools typically interview 150 to 180 per cent of the applicants needed to fill the available places.³¹ However, the GAMSAT Consortium highlights that The University of Sydney's decision to withdraw its membership and conduct its own admission process has had a direct impact on interview numbers for some GAMSAT Consortium universities. In particular, those consortium universities that share a geographic proximity with The University of Sydney have increased the number of interviews offered in anticipation of a significant number of declines.

53. Table 2 shows the percentage of interviews conducted to fill the available places at individual GAMSAT Consortium medical schools from 2010 to 2014.

Table 2: GAMSAT Consortium: interviews conducted compared to available places (2010-2014)³²

University	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)
ANU	162.5	153.3	235.3	224.5	244.4
Deakin University	150.8	150.4	164.6	145.4	155.1
Flinders University of SA	172.6	167.3	159.5	188.4	173.7
Griffith University	197.7	165.1	162.4	144.4	153.3
Monash University	166.2	165.3	164	166.7	146.7
Notre Dame - Fremantle	162.4	161.4	168.7	164.2	170
Notre Dame - Sydney	127.7	149.1	160.7	179.2	229.2
University of Melbourne	-	142	139.4	147.8	142.7
University of WA	160	144	152.4	143.4	155.2
University of Wollongong	139.8	136.6	176.7	183.5	180
University of Queensland*	n/a	n/a	n/a	n/a	n/a
Consortium average	160	153.5	168.4	168.8	175

*No interviews conducted.

54. As shown in Table 2, the ACCC notes that the ratio of applicants interviewed compared to the number of positions available across the entire GAMSAT Consortium during the previous period of authorisation ranged from:

- 128% to 198% in 2010
- 137% to 167% in 2011
- 139% to 235% in 2012
- 143% to 225% in 2013 and
- 143% to 244% in 2014.

³⁰ Ibid.

³¹ GAMSAT Consortium, submission, 13 October 2014, page 2.

³² This table was compiled by the ACCC based on the data provided at Attachment 1 to the GAMSAT Consortium's submission, 25 August 2014.

55. The GAMSAT Consortium advises that The University of Sydney's process is conducted slightly earlier than the consortium's selection process, but that it does not make offers of a place until just before the GAMSAT Consortium starts its interviews. The GAMSAT Consortium considers this has an adverse impact when its members are offering places because some students will wait to see the outcome of both processes before making a decision to take The University of Sydney place or the GAMSAT University place.³³
56. For example, the GAMSAT Consortium advises that a proportion of applicants that receive an offer to study at The University of Sydney will then decline the offer of interview (and the rest of the process) for the GAMSAT Consortium, particularly if they receive an offer of an un-bonded position at The University of Sydney.³⁴ However, students who receive an offer of a bonded medical place at The University of Sydney (25 per cent of places) may wait to see if they receive an offer of an un-bonded place at a GAMSAT Consortium university.
57. Further, the GAMSAT Consortium submits that:
- There is also the inconvenience to applicants and additional work for universities through a prolongation of the later phases of the admissions process because of the need to make, second, third or late offers of a place to students who decline an offer from a GAMSAT Consortium university in favour of an offer from The University of Sydney.³⁵
58. As shown in the shaded sections of Table 2, the ACCC notes that since 2012 there has been a significant increase in the number of interviews conducted at those medical schools located in or near Sydney. In particular, The Australian National University went from interviewing 154 per cent of applicants needed to fill available positions in 2011 to 235 per cent of applicants in 2012, 225 per cent in 2013 and 244 per cent in 2014.
59. The GAMSAT Consortium submits that The Australian National University is not typical and that it:
- ...has 30-40 withdraws just days before the interview. For this reason, ANU makes a lot more interview offers...it is difficult to judge how many extra interview offers to make because of year to year variations, as such ANU will make 200 or so interview offers.³⁶
60. In contrast, the ACCC notes that in 2014 GAMSAT Consortium medical schools not located in or near Sydney interviewed between 143 per cent and 174 per cent of applicants needed to fill the available positions.
61. Universities Australia considers that the GAMSAT arrangements have been working well and have contributed to making the process of applying for entry to study medicine more efficient and less resource intensive for students.
62. In addition, Universities Australia is of the view that the Policies appear to streamline processes for those universities who have opted to be involved, which means resources that might otherwise be put to assessing applications can be put to other valuable activity.

³³ GAMSAT Consortium submission, 25 August 2014, page 2.

³⁴ Ibid, page 3.

³⁵ GAMSAT Consortium submission, 25 August 2014, page 3.

³⁶ GAMSAT Consortium submission, 13 October 2014, page 3.

ACCC view

63. The ACCC considers that the Policies are likely to generate savings to applicants in terms of payment of a single application fee and limiting transport, accommodation and other related costs while allowing their application to be considered by up to six medical schools via a single online application process. The ACCC also considers that, absent authorisation, applicants would assess the number and location of medical schools in preparing individual applications and would be likely to seek to manage the costs they incur.
64. The ACCC notes that The University of Sydney's decision to exit the consortium reduces the extent of savings for any student seeking to study medicine at The University of Sydney, as they would potentially be required to complete two application processes and attend two interviews. For example, these applicants would be required to pay \$180 for the submission of six preferences with the GAMSAT Consortium, as well as a \$150 Interview Booking and Administration Fee³⁷ at The University of Sydney. The ACCC considers that this reduction in cost savings needs to be balanced against the corresponding reduction in potential public detriment as a result of applicants being able to apply to study graduate-entry medicine outside the GAMSAT Consortium.
65. The ACCC accepts that without the Policies, applicants are likely to apply for admission to a number of universities and each university would separately manage their own interview processes. This would result in some universities interviewing applicants who do not intend to enrol at their medical school if they are successful in gaining a place at their preferred school. To address this risk, universities will select more applicants to interview than there are places available.
66. The ACCC considers that the Policies reduce the risk that interviewees will decline an offer of a place because they have accepted an offer at another medical school within the GAMSAT Consortium, and as such, participating universities can reduce the number of interviews needed to fill the places available. This results in cost savings for GAMSAT Consortium medical schools, which in turn could be used in teaching, research and administrative activities.
67. Where students seek admission to graduate-entry medicine at consortium and non-consortium universities, the size of potential savings to GAMSAT Consortium medical schools is likely to be reduced as certain GAMSAT Consortium medical schools may need to interview higher numbers of applicants in order to address potentially higher decline rates. Notwithstanding this, the ACCC considers that under the Policies fewer interviews are likely to be conducted across the entire consortium than would otherwise be the case.
68. The ACCC considers that the Policies are likely to result in public benefit through transaction cost savings for applicants and consortium universities.

Increased competition between universities

69. The GAMSAT Consortium submits that without the Policies, there is a barrier to interstate competition as students are likely to limit the number of interstate medical schools to which they apply because of the cost of travel and accommodation to attend multiple interviews. However, under the Policies, students are interviewed

³⁷ The University of Sydney, *Doctor of Medicine and Doctor of Dental Medicine, Admissions Guide 2015*, page 24.

only once and their results passed on. As such, applicants are more likely to apply to multiple interstate medical schools.³⁸

70. Further, the GAMSAT Consortium believes that the removal of the cost barriers associated with interstate applications under the Policies is likely to improve access to the medical profession for people from lower socio-economic backgrounds, and therefore make the medical profession more representative of the broader community.³⁹

ACCC view

71. As noted, the ACCC accepts that there are cost savings to applicants under the Policies as a result of reducing the need to travel to multiple locations for interviews. However, the ACCC is of the view that the level and nature of competition to attract students, including interstate applicants, is not likely to be substantially increased by the Policies as claimed by the GAMSAT Consortium (nor does the ACCC consider that competition for students is likely to be decreased by the Policies). The ACCC considers that the incentive for the consortium members to compete to attract the best students according to their course offering remains strong with or without the Policies.

72. The ACCC notes that the cost of attending selection interviews is only one part of the cost of obtaining medical qualifications. As such, the ACCC considers that the cost savings to applicants from only attending one interview (or possibly two interviews if an applicant is applying to both consortium and non-consortium medical schools) is unlikely, on its own, to significantly improve access to the medical profession for applicants from lower socio-economic backgrounds.

ACCC conclusion on public benefits

73. The ACCC considers that the Policies streamline the application and interview processes for selecting graduate-entry medical students. These efficiencies produce cost savings for both universities and applicants, which is a public benefit.
74. While the impact of certain medical schools leaving the GAMSAT Consortium is to potentially reduce the size of cost savings to certain applicants and universities, the ACCC considers there are still efficiencies generated by the Policies which would not occur if all Australian medical schools separately managed their own selection and interview processes.

Public detriment

75. The CCA does not define what constitutes a public detriment and the ACCC considers its meaning as essentially the opposite of public benefit. In this regard the Tribunal has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principle elements the achievement of the goal of economic efficiency.⁴⁰

³⁸ GAMSAT Consortium, submission in support of the application for re-authorisation, 27 June 2014, page 14.

³⁹ Ibid.

⁴⁰ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

76. The GAMSAT Consortium submits that the Policies do not result in any detriment from a lessening of competition. It considers the only potential public detriment from the Policies is if an applicant, who would otherwise be offered a place without the Policies, would fail to obtain a graduate-entry medical school place because the Policies are retained.⁴¹
77. Having regard to the submissions from the GAMSAT Consortium and interested parties, the ACCC's assessment of the likely public detriment from the Policies follows.

Reduced competition in the process to select applicants

78. The GAMSAT Consortium submits that under the Policies, competition occurs between the universities at the point where applicants select their preferences in their online application. It submits that without the Policies, where applicants receive multiple offers of a place from different universities, competition will occur at the point when the applicant must decide between those offers. Therefore, the GAMSAT Consortium holds the view that despite a difference in timing, the degree of competition is the same with or without the Policies.⁴²
79. The Australian Medical Council considers that under the GAMSAT Consortium's Policies, the selection requirements of each graduate-entry medical school have remained varied.
80. SA Health also submits that under the Policies individual medical schools are still able to give weighting to specific selection criteria, such as prioritisation of students from a rural background.
81. Further, SA Health notes the proposed Australian Government reforms to higher education which, if implemented, could result in each university setting their own fees to study medicine.

ACCC view

82. The ACCC notes that while the Policies may reduce the potential for competition among consortium members in terms of their admissions process, the ACCC considers there are elements of the Policies which mitigate this detriment, including:
- there is nothing in the Policies to compel participating medical schools to use interviews, adopt a particular interview form, to assign a particular value to the interview or adopt any specific method in the selection process – that is, as outlined at paragraphs 15 to 18 there is still diversity among the participating medical schools about how they use and value the results from the GAMSAT exam, the interview, previous academic performance and broader skills and experience.
 - the Policies do not reduce the nature or level of competition between the participating universities to attract applicants to study medicine at their medical schools – that is, it remains in the interest of consortium members to compete with each other to ensure that they are the first preference for applicants, and

⁴¹ GAMSAT Consortium, submission in support of the application for re-authorisation, 27 June 2014, page 15.

⁴² Ibid, page 14.

this is likely to result in medical schools improving their subject offering and quality of teaching.

83. The ACCC notes that the Australian Government currently determines the number of places to study graduate-entry medicine and sets a maximum price that universities can charge Commonwealth supported students. The ACCC notes that should universities be able to set their own course fees in the future, as proposed by Australian Government reforms, there is nothing in the Policies which would allow the participating universities to agree on course fees. The ACCC considers that applicants would consider the cost of attending each medical school when evaluating their preferences under the Policies.
84. Further, the ACCC considers that while competition to attract applicants remains strong, there are incentives for the members of the GAMSAT Consortium to assess the Policies to determine whether they continue to offer an efficient and effective method to select graduate-entry medical students.
85. Where consortium members consider the Policies are no longer achieving the desired outcome in terms of student selection, they are free to withdraw from the Consortium and individually manage their own selection and admission process. As noted above, The University of Sydney and Monash University have both decided to exit the arrangements and to manage their own selection processes.

Fairness of the process

86. The GAMSAT Consortium submits the only potential public detriment is if an applicant, who would otherwise be offered a place, would fail to obtain a place under the Policies. In this regard, the consortium believes that for applicants whose interview is a true reflection of their ability, passing on applications between preferred schools ensures that the risk of these applicants not being offered a place under the Policies is no higher than the risk of not being selected without the Policies.⁴³
87. Therefore, the GAMSAT Consortium considers that there is only potential detriment for applicants whose performance at the interview is below what they are capable of, as they do not have a chance to redeem themselves at an interview with another GAMSAT medical school. However, the GAMSAT Consortium considers that any potential detriment resulting from applicants not being able to redeem a poor interview performance is relatively minor because:⁴⁴
 - the number of applicants that will have poor interview performance (compared to what they are capable of) is likely to be a small portion of the total student cohort. In this regard, the GMAST Consortium contends that interviews are designed and undertaken with great care by panels of experienced and trained interviewers.
 - the interview score is only one component of the Course Rank Set.
88. Further, the GAMSAT Consortium submits there have been improvements to the fair and transparent administration of the Policies since the ACCC granted

⁴³ Ibid, page 16.

⁴⁴ Ibid.

authorisation in 2009. In particular, the consortium submits there have been improvements to:⁴⁵

- *transparency of processes* – GEMSAS provides a detailed website and email service for applicants to gain information about the GAMSAT Consortium's selection processes, including the GAMSAT exam.
- *standardisation of interview scores* – GEMSAS enables all interview scores to be standardised using modified z-scores. Where required, this enables applicants to be 'passed-on' from the medical school at which they were interviewed to a lower preferred school. A formal review of this methodology was conducted and presented to the GAMSAT Policy Committee in 2012, which concluded that it was a valid and equitable method and would continue to be used.
- *appeals process* – in 2011 a GAMSAT Selection Appeals Committee (Appeals Committee) was established to hear appeals from applicants against decisions made through GEMSAS. The Appeals Committee can hear appeals against decisions made by GEMSAS administrative staff, the Queensland Tertiary Admissions Centre and GEMSAS Project Officers. Appeals are permitted on procedural and equity grounds only. The Appeals Committee does not hear appeals against decisions taken by individual medical schools.⁴⁶

89. The Australian Medical Council (AMC) notes that in conducting its assessments of medical school admissions processes, its assessment team would ordinarily meet the relevant admissions committee, representative groups of students, and may also meet a sample group of interviewers and the university's admissions staff. In regards to the GAMSAT Consortium members, the AMC submits that it has not observed:

...any detriment to applicants as a result of the policies governing the application for admission and the interviewing of applicants for admission to study medicine at graduate-entry consortium medical schools.

ACCC view

90. The ACCC notes that the number of applicants for places to graduate-entry medical schools far exceeds the number of places available. The ACCC considers there will always be applicants who are not offered places, regardless of which admissions process is used.
91. The ACCC considers there are incentives for the members of the GAMSAT Consortium to select the most appropriate students for their graduate-entry medical courses, albeit according to their different measures. Having said this, the ACCC considers it is important that there are processes to ensure that the method of selecting the most appropriate students meets natural justice principals.
92. Regarding the fairness of the interview process, the ACCC considers that while allowing applicants to be interviewed only once under the Policies gives greater significance to interview performance, this is the case more generally with

⁴⁵ Unless otherwise stated, *Ibid*, pp 17-19.

⁴⁶ GAMSAT Consortium, submission in support of the applications for re-authorisation, 27 June 2014, Attachment E, *Terms of Reference for the GAMSAT Selection Appeals Committee*.

interviews. The ACCC notes that the interview score is only one component of an applicant's overall admission score (that is, Course Rank Set).

93. In addition, the ACCC notes that while interviews are a subjective process, the interviews are conducted by experienced and trained personnel. The ACCC has particular regard overall to the AMC's submission that it has not found evidence of any detriment to applicants as a result of the GAMSAT Consortium's Policies.
94. The ACCC also notes that following the decisions of individual universities to exit the consortium, applicants are now able to apply to study graduate-entry medicine at universities outside the GAMSAT Consortium. As such, the selection and admissions procedures under the Policies do not currently represent an applicants' only chance to obtain a graduate-entry medical place in any one year via a standard entry pathway.
95. Regarding transparency of the GAMSAT Consortium's processes, the ACCC notes the introduction of the GEMSAS website and email service. The ACCC considers these features would help GAMSAT Consortium medical schools circulate information to assist applicants to complete their application. In particular, the website provides a central access point to each medical school and provides information about GEMSAS processes, key dates and the GAMSAT exam. The ACCC considers this provides potential applicants with information to assist them in making an informed decision regarding the medical schools they would most likely be successful at being offered a place. The provision of such information does not appear to be compromised by the Policies.
96. Regarding rights of appeal, the ACCC notes that a new Appeals Committee has been formed to hear appeals against decisions made through GEMSAS. However, the Appeals Committee does not hear appeals against decisions taken by individual medical schools.
97. As highlighted in the ACCC's 2009 decision, part of the AMC's accreditation standards for medical education and training involves medical schools being required to implement processes for handling disagreement between interviewers over the performance of an applicant, and policies regarding the circumstances in which re-interviewing would occur (for example, where performance has been influenced by an illness or by a failing in the process itself). The AMC also requires that the interview process is monitored by the school and feedback sought to ensure that it is free of discrimination or bias. Medical schools are required to publish details of selection processes, including mechanisms for appeal.
98. The ACCC accepts there are AMC standards that the members of the GAMSAT Consortium are required to meet. In addition to the introduction of the GEMSAS Appeals Committee, individual medical schools appear to have various appeal mechanisms⁴⁷ in place via university rules or informal special consideration processes.

Number of preferences

99. In its 2009 decision, the ACCC noted that the restriction on the number of preferences that applicants could list under the Policies may result in applicants missing out on an interview at one of their preferred schools due to the relative strength and size of the pool of applicants. The ACCC considered that allowing

⁴⁷ As described at paragraph 4.74 of the ACCC's 2009 [Decision](#).

applicants to nominate more preferences could help address this risk. As noted above, applicants may now list up to six preferences under the 2014 Policies.

100. The ACCC considers that increasing the number of preferences could potentially have an impact on the cost and efficiency of the selection and interview processes. However, the ACCC maintains the view that these costs need to be balanced with the overall aim of the GAMSAT Consortium to select the most appropriate applicants for the limited number of places available.
101. The ACCC also considers there is some onus on applicants to research their options when considering which medical school to list as their preference. The ACCC considers there is information available to applicants to assist them make these choices.

ACCC conclusion on public detriments

102. While the Policies may reduce the potential for competition between members of the GAMSAT Consortium in terms of their admissions processes, the ACCC considers there are features of the Policies which mitigate this detriment – including the ability for each medical school to place different weights on the selection components and to adopt their own interview format.
103. Significantly, the ACCC considers the GAMSAT Consortium universities will continue to compete with each other for the preference of applicants to study graduate-entry medicine at their medical schools.
104. In assessing the public detriments associated with the Policies, the ACCC is also mindful that the GAMSAT Consortium as a group cannot restrict or limit the total number of places to graduate-entry medical courses. This is determined by the Australian Government.
105. Similarly, the GAMSAT Consortium cannot as a group establish the prices at which places in courses will be made available as this is also currently determined by the Australian Government. Should fees in the higher education sector be deregulated in the future, the ACCC notes that nothing in the Policies for which authorisation is sought allow the GAMSAT Consortium to reach agreement on course fees at their graduate-entry medical schools.
106. The number of applicants for places to graduate-entry medical schools far exceeds the number of places available. As such, there will always be applicants who are not offered places, regardless of the admissions process used. In any event, the ACCC notes that applicants can now apply to study graduate-entry medicine at universities outside the GAMSAT Consortium.
107. Therefore, the ACCC considers the Policies are unlikely to result in any significant public detriment.

Balance of public benefit and detriment

108. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, that proposed arrangements are likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.

109. For the reasons outlined in this draft determination the ACCC is satisfied that the Policies are likely to result in a public benefit that would outweigh the likely public detriment, including the detriment constituted by any lessening of competition that would be likely to result. The ACCC is also satisfied that the Policies are likely to result in such a benefit to the public that the Policies should be allowed to take place or given effect to.

110. Accordingly, the ACCC proposes to grant authorisation.

Length of authorisation

111. The CCA allows the ACCC to grant authorisation for a limited period of time.⁴⁸ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the public detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

112. The GAMSAT Consortium seeks re-authorisation for ten years. It believes it has provided evidence that the Policies have resulted in substantial public benefits and no public detriment since authorisation was originally granted by the ACCC in 2009.

113. No interested party submissions were received in relation to the length of authorisation sought.

114. Where arrangements have already been in place for a period of time, the ACCC may consider it appropriate to grant authorisation for a longer period of time. The ACCC notes that the Policies have been authorised since 2009 without any concerns being raised. The ACCC also notes the small number of appeals received by the GEMSAS Appeals Committee compared to the large number of applications received.⁴⁹ Participating universities also remain free to withdraw from the GAMSAT Consortium if they consider the Policies are not delivering an efficient process for student selection.

115. Further, the ACCC considers that nothing in the Policies would be inconsistent with proposed Australian Government reforms to the higher education sector.

116. For these reasons, and given the ACCC's conclusion on the balance of public benefit and public detriment, the ACCC is proposing to grant authorisation for ten years, commencing from the date the proposed authorisation takes effect. The ACCC invites feedback from interested parties regarding the proposed period of authorisation.

117. The ACCC notes that pursuant to section 91B of the CCA it is able to revoke an authorisation where there has been a material change in circumstances, among other things, since the authorisation was granted.

⁴⁸ Subsection 91(1) of the CCA.

⁴⁹ GAMSAT Consortium, submission in support of the applications for re-authorisation, 27 June 2014, page 19.

Draft determination

The applications

118. On 27 June 2014 The Australian National University and nine other universities (the 'GAMSAT Consortium') lodged an application to revoke applications A91144, A91145 and A91178 and to substitute new authorisations A91441, A91442 and A91443 (the 'application for re-authorisation').
119. The application for re-authorisation was made using Form FC, Schedule 1 of the Competition and Consumer Regulations 2010. The application was made under subsection 91C of the CCA for the GAMSAT Consortium's Interview Policy and Preference Policy (the Policies) governing the admission and interviewing of applicants to study medicine at graduate-entry medical schools.
120. Authorisation is sought as the Policies may contain a cartel provision or may have the purpose or effect of substantially lessening competition or be an exclusionary provision within the meaning of section 45 of the CCA.
121. Subsection 90A(1) of the CCA requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

122. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90(5A), 90(5B), 90(6) and 90(7) of the CCA, that in all the circumstances the Policies are likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the Policies.
123. The ACCC is also satisfied, pursuant to section 90(8) of the CCA, that the Policies are likely to result in such a benefit to the public that the Policies should be allowed to take place or given effect to.

Conduct which the ACCC proposes to authorise

124. The ACCC proposes to revoke authorisations A91144, A91145 and A91178 and grant authorisations A91441, A91442 and A91443 to an agreement between the GAMSAT Consortium to abide by the Interview Policy and Preference Policy. The Interview Policy and Preference Policy are articulated at Attachment C of the supporting submission to the application for re-authorisation.⁵⁰
125. The ACCC proposes to grant authorisations A91441-A91443 for 10 years, commencing from the date the proposed authorisation takes effect.
126. Under section 88(10) of the CCA, the ACCC proposes to extend the authorisation to any other university that may become a party to the Consortium Agreement (and therefore agree to abide by the Policies) or be bound by it.

⁵⁰ GAMSAT Consortium, supporting submission to the application for re-authorisation, 27 June 2014, Attachment C, pp 26-27.

127. Further, the proposed authorisation is in respect of the Policies as they stand at the time authorisation is granted. Any changes to the Policies during the term of the proposed authorisation would not be covered by the proposed authorisation.

128. This draft determination is made on 29 October 2014.

Conduct which the ACCC proposes not to authorise

129. The proposed authorisation does not extend to any agreements between the GAMSAT Consortium members beyond the Interview Policy and Preference Policy. In particular, the proposed authorisation does not extend to any agreement between members of the GAMSAT Consortium about course fees at their graduate-entry medical schools or the way in which members of the GAMSAT Consortium will accept student transfers from one medical school to another.

Next steps

130. The ACCC now seeks submissions in response to this draft determination. In addition, consistent with section 90A of the CCA, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Attachment A - Public benefit tests in CCA

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:
 - i. an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - ii. an authorisation under subsection 88(7) or (7A) in respect of proposed conduct; or
 - iii. an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - iv. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.