

Form G

Commonwealth of Australia

Competition and Consumer Act 2010 - sub-section 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 in 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 AT THE END OF THIS FORM

1. Applicant

- (a) Name of person giving notice:

APHS Packaging Pty Ltd (APHS Packaging)

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

APHS Packaging is a supplier of dose administration aids (DAAs) and associated services to community pharmacies.

DAAs are pre-packed sachets or blister packs containing pharmaceuticals that have been divided into individual doses and arranged by date and time. DAAs give community pharmacies and their patients a safe, simple and cost-effective way to dispense and administer medicines, particularly where multiple medicines are prescribed.

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

*C/- Mark McCowan
Partner, Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000*

2. Notified arrangement

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

This notice relates to the supply of:

- (i) DAAs and associated services by APHS Packaging to community pharmacies; and*
- (ii) software and associated services that enable communication between the respective IT systems of APHS Packaging and community pharmacies to facilitate the ordering and supply of DAAs.*

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

The proposed conduct could be characterised as APHS Packaging:

- (i) supplying DAAs and/or associated services to community pharmacies on the condition that the community pharmacies acquire software and associated services from Fred IT Group Pty Ltd; and*
- (ii) refusing to supply DAAs and/or associated services to community pharmacies for the reason that they have not, or have not agreed to, acquire software and associated services from Fred IT Group Pty Ltd.*

For further details of the proposed conduct, please refer to Annexure A.

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:

Community pharmacies that acquire DAAs from APHS Packaging.

- (b) Number of those persons:

- (i) At present time:

Please refer to Annexure A.

- (ii) Estimated within the next year:

Unknown.

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

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:

The notified conduct will generate a number of public benefits. Please refer to Annexure A.

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

Please refer to Annexure A.

5. Market definition

- (a) 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):

Please refer to Annexure A.

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:

The notified conduct will not cause any identifiable detriment to the public. Please refer to Annexure A.

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

Please refer to Annexure 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:

*Mark McCowan
Partner, Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000
Tel: (03) 9672 3335*

DATED this 24~~th~~ day of June, 2014

Signed by/on behalf of the applicant, APHS Packaging Pty Ltd



Mark McCowan
Partner, Corrs Chambers Westgarth

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 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.

- 1.6 DAA solutions come in a range of forms. Some (like those offered by APHS Packaging and its competitor MPS Australia Limited (**MPS**)) are prepared at a centralised facility where they are filled with pharmaceuticals and then delivered to customers on a regular basis. Others (such as those offered by Manrex Pty Ltd, trading as **Webstercare**) involve pharmacists preparing DAAs “in-house” at their site(s) using technology and equipment sourced from a solutions provider.
- 1.7 The DAAs manufactured and distributed by APHS Packaging are pre-packed sachets containing the patient’s medication and printed with the patient’s name, relevant dates and dose times, and the name, physical description and quantity of each tablet. The sachets are rolled together in chronological order and feature easy-tear packaging.
- 1.8 From the perspective of patients, DAAs present a user-friendly packaging solution that improves medicine management, promotes adherence to pharmaceutical regimes and helps to avoid adverse events (for example, from missed or incorrectly timed doses). DAAs also maximise patients’ ability to control their medication independently. These all contribute positively to health outcomes.
- 1.9 From the perspective of community pharmacies and facilities supplied by community pharmacies, DAAs provide improved packaging efficiencies, reduced error rates and the potential to serve a greater number of patients.
- 1.10 The Commonwealth Government has recognised that DAAs are an important tool for effectively and efficiently dispensing pharmaceuticals. Under the Fifth Community Pharmacy Agreement between the Commonwealth Government and the Pharmacy Guild, Medicare Australia pays incentives to accredited community pharmacies to support their use of DAAs. The payment of these incentives is intended to align pharmacy practice with Australia’s national strategy for the quality use of medicines (an element of the broader National Medicines Policy), which dictates that all medicines should be used judiciously, appropriately, safely and efficaciously.

Fred IT Group

- 1.11 Fred IT Group Pty Ltd (**Fred IT Group**) supplies software applications that interface with APHS Packaging’s computer systems in order to facilitate the packaging of DAAs and the fulfilment of pharmacy orders for DAAs (**Fred Software**). Fred Software enables community pharmacies to place orders for DAAs and enter patient details and medication requirements (such as the number of days of medication to be packed and the frequency at which the medication is to be taken). This information is used by APHS Packaging in packing and labelling DAAs. Fred Software also enables pharmacies to view patients’ histories, prescriptions and orders.

2. Notified conduct

- 2.1 APHS Packaging utilises a software system for receiving, filling and dispatching orders for DAAs. APHS Packaging proposes to require community pharmacies which order DAAs from APHS Packaging to acquire and utilise Fred Software for placing DAA orders and communicating other information to APHS Packaging. Other information that is communicated by community pharmacies to APHS Packaging via Fred Software includes patient details and dose information.
- 2.2 The proposed conduct could be characterised as APHS Packaging:
- (a) supplying DAAs and/or associated services to community pharmacies on the condition that the community pharmacies acquire software and associated services from Fred IT Group; and
 - (b) refusing to supply DAAs and/or associated services to community pharmacies for the reason that they have not, or have not agreed to, acquire software and associated services from Fred IT Group.

3. Competition issues

Market definition

- 3.1 APHS Packaging has not formed a concluded view on market definition. However, APHS Packaging considers that the relevant market is likely to be defined at least as broadly as the national market for the supply of software systems and related goods and services to assist with ordering and dispensing pharmaceuticals to patients (**retail pharmacy software market**). Another potentially relevant market may be the market for the supply of DAAs and associated services (**DAA market**).

Effect on competition

- 3.2 APHS Packaging submits that the notified conduct will not materially affect competition in any relevant market.

Retail pharmacy software market

- 3.3 Strong competition exists in the retail pharmacy software market. There are a number of alternative providers of software to assist pharmacies with ordering and dispensing pharmaceuticals, and many pharmacies obtain their medication management software from other providers.
- 3.4 The proposed conduct affects only a small proportion of the overall retail pharmacy software market. APHS Packaging estimates that it supplies DAAs and associated services to approximately [REDACTED] of the approximately 5,000 community pharmacies in Australia. As a result, the

impact of the proposed conduct on the retail pharmacy software market will be negligible.

DAA markets

- 3.5 Strong competition exists in relation to the supply of DAAs and associated services, including between:
- (a) APHS Packaging;
 - (b) MPS;
 - (c) Webstercare; and
 - (d) pharmacies who operate their own packaging machines.
- 3.6 APHS Packaging estimates that approximately 300,000 patients currently use DAAs. Of these, APHS estimates that approximately half (150,000 patients) are supplied with DAAs by, or using technology supplied by, Webstercare. APHS estimates that approximately 25,000 patients are supplied by MPS. APHS Packaging supplies DAAs and associated services to approximately [REDACTED]. Any pharmacy that would prefer to use an alternative software system is easily able to acquire DAAs from another provider.
- 3.7 Individual pharmacies are also able to manually pack DAAs on behalf of their patients. APHS Packaging estimates that approximately 4,200 pharmacies regularly pack DAAs manually “in-house”. APHS Packaging estimates that approximately 20,000 patients are supplied by pharmacies that operate their own packaging machines. Consequently, pharmacies that do not wish to use Fred Software may choose to manually pack DAAs in-house.

Public benefit claims

- 3.8 APHS Packaging submits that the notified conduct will have considerable public benefits, including the following:
- (a) efficiencies associated with the use of a single software system;
 - (b) transaction cost savings for pharmacies; and
 - (c) enhanced promotion of DAAs.

Efficiencies associated with use of a single software system

- 3.9 The following efficiency benefits will be achieved by using a single software system to interface between APHS Packaging and pharmacy customers:

- APHS Packaging and community pharmacies will be able to more easily and efficiently access information regarding DAA orders, and patient details and doses;
- the use of a single system as opposed to multiple systems for managing orders and preparing DAAs streamlines processes, reduces the likelihood of error and provides the potential to serve a greater number of patients with complex medication adherence requirements;
- lower costs to APHS Packaging as a result of reduced duplication and technical compatibility issues that are likely to arise from working with multiple software systems. In the competitive markets in which APHS Packaging and community pharmacies operate, some or all of these cost savings are likely to be passed through to patients.

Transaction cost savings for pharmacies

- 3.10 The notified conduct will reduce the time and search cost incurred by community pharmacies in obtaining quotes from different software providers, assessing the quality and value of proposed arrangements, and negotiating supply terms. Community pharmacies can be confident that APHS Packaging considers that Fred Software is a reliable and effective software system suitable for managing patients' complex medication requirements.

Enhanced promotion of DAAs

- 3.11 The cost savings and efficiency improvements described above will enhance the attractiveness of DAA solutions offered by APHS Packaging and will improve the penetration of DAAs in relevant markets. This will assist to align community pharmacy practice with the Australian Government's goal of ensuring that all medicines are used judiciously, appropriately, safely and efficaciously (in line with its national strategy for the quality use of medicines).

Public Detriment

- 3.12 APHS Packaging submits that the notified conduct does not result in any public detriment. APHS Packaging's agreements with community pharmacies for the supply of DAAs and/or associated services will contain full disclosure of the requirement for the community pharmacy to utilise Fred Software.
- 3.13 As described above, there are a number of alternative providers of pharmaceutical software systems, as well as a number of different suppliers of DAAs to pharmacies. Pharmacies are therefore free to obtain their requirements from suppliers of DAAs which utilise alternative software systems. Pharmacies are also free to manage the packaging and dispensing of DAAs in-house.

4. Conclusion

- 4.1 For the reasons set out above, APHS Packaging submits that the Commission should not serve a notice under section 93(3A) of the *Competition and Consumer Act 2010* (Cth) in respect of the attached notification. The notified conduct will generate substantial public benefits and cause no identifiable detriment.

Form G

Commonwealth of Australia

Competition and Consumer Act 2010 - sub-section 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 in 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.

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1. Applicant

- (a) Name of person giving notice:

APHS Packaging Pty Ltd (APHS Packaging)

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

APHS Packaging is a supplier of dose administration aids (DAAs) and associated services to community pharmacies.

DAAs are pre-packed sachets or blister packs containing pharmaceuticals that have been divided into individual doses and arranged by date and time. DAAs give community pharmacies and their patients (including patients at aged care facilities) a safe, simple and cost-effective way to dispense and administer medicines, particularly where multiple medicines are prescribed.

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

*C/- Mark McCowan
Partner, Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000*

2. Notified arrangement

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

This notice relates to the supply of:

- (i) *DAA's and associated services by APHS Packaging to community pharmacies that dispense DAAs to patients at aged care facilities; and*
- (ii) *software and associated services that enable communication between the respective IT systems of APHS Packaging and community pharmacies to facilitate the ordering and supply of DAAs to be dispensed to patients at aged care facilities.*

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

The proposed conduct could be characterised as APHS Packaging:

- (i) *supplying DAAs and/or associated services to community pharmacies to enable community pharmacies to dispense DAAs to patients at aged care facilities on the condition that the community pharmacies acquire software and associated services from iCareHealth Pty Ltd; and*
- (ii) *refusing to supply DAAs and/or associated services to community pharmacies to enable community pharmacies to dispense DAAs to patients at aged care facilities for the reason that they have not, or have not agreed to, acquire software and associated services from iCareHealth Pty Ltd.*

For further details of the proposed conduct, please refer to Annexure A.

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:

Community pharmacies that acquire DAAs from APHS Packaging for dispensing to patients at aged care facilities.

- (b) Number of those persons:

- (i) At present time:

Please refer to Annexure A.

- (ii) Estimated within the next year:

Unknown.

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

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:

The notified conduct will generate a number of public benefits. Please refer to Annexure A.

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

Please refer to Annexure A.

5. Market definition

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Please refer to Annexure A.

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:

The notified conduct will not cause any identifiable detriment to the public. Please refer to Annexure A.

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

Please refer to Annexure 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:

*Mark McCowan
Partner, Corrs Chambers Westgarth
Level 36, 600 Bourke Street
Melbourne VIC 3000
Tel: (03) 9672 3335*

DATED this 24th day of June, 2014

Signed by/on behalf of the applicant, APHS Packaging Pty Ltd



Mark McCowan
Partner, Corrs Chambers Westgarth

DIRECTIONS

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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.