



17th August 2015

Dr Richard Chadwick
General Manager
Adjudication
ACCC

By email to: adjudication@acc.gov.au

Dear Dr Chadwick,

Thank you for sending me the ACCC's Draft Determination in relation to Job Futures' (trading as CoAct) collective tendering arrangements.

As I indicated in our pre-adjudication submission, Jobs Australia is very supportive of the collective tendering arrangements in employment services and we believe that Job Futures substantially increases competition in the current employment services market.

The draft adjudication refers to some points made by a Job Futures member, Marillac, which I think warrant some additional comments.

Marillac has raised an important issue. There is, right now, a significant re-shaping occurring in the disability services landscape. Disability services which have previously been provided via State and Territory Governments are now being rolled into the National Disability Insurance Scheme. That Scheme is yet to be fully rolled out.

Like the "market" for employment services, the market for disability services is a market for outsourced public services and does not function like an ordinary market. Markets for public services are often referred to as quasi-markets, because they only have some features of markets and the nature and extent of their market-like features is entirely up to government.

Unlike the "market" for employment services, the extent to which market-like features will be allowed to operate in disability services is not yet settled. At this point, it appears that the disability services market will be relatively more market-like than the employment services market. For example:

- In employment services, the Federal Government sets the contract areas, number of market participants in each area, the market share of each participant and (effectively) the price. Competition between providers is based entirely on quality, as determined by measures set by Government. A key feature is very large contract areas that demand a certain scale of operations, which for some providers can only be achieved through joint-tendering arrangements.

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- By contrast, under current arrangements the NDIS, clients control their own funding packages and the success or otherwise of providers will depend on aggregate demand for their services. Many of the features that are fixed by the Government in employment services are, at this stage, not fixed in the NDIS. Providers can compete on price as well as on quality, and the 'rules of the game' allow small organisations (and even sole operators) to participate in the market. There is no requirement for scale. At this point, it is also not clear whether eligibility to deliver services will be determined through a tender or through some other arrangement (eg: licensing or registration).

It is worth noting that the Federal Government has also begun a process to reform Disability Employment Services (DES) and it appears likely that DES will, in future, operate more like the NDIS with at least a component of individualised funding controlled by the client. It is not yet clear whether in such a system contract areas will be larger, smaller, or whether there will continue to be contract areas at all.

With the 'rules of the game' in disability yet to be settled, it is not yet clear whether a Job Futures model would offer the same benefits that it does in employment services, because the same drivers for scale may simply not be there.

The new clauses in the Job Futures charter, however, seem designed to ensure that Job Futures members have a strong incentive to work with the Job Futures model for future contracts in other markets. Should Job Futures choose to enter a second market in which a member already operates, the member is free to compete with Job Futures, but in all the circumstances would be unlikely to do so. The arrangements could therefore affect the way in which other markets for government services (such as the disability services market) evolve.

The draft determination noted the concerns of Marillac and discussed the changes to the non-compete clauses in the charter, but seemed to assume that the Job Futures model would be similarly beneficial in any other market. We think that there is some potential for the Job Futures model to operate differently in different markets, with different public interest considerations coming into play, and that a public benefit cannot always be assumed.

Without disagreeing with the ACCC's ultimate finding in favour of authorisation, we feel that the issues raised by Marillac warrant closer attention.

Yours sincerely,



David Thompson AM
CEO