

# Pre-Decision Conference: Authorisation A91491 lodged by Vision Eye Institute Limited

20 August 2015

ACCC Sydney office via video conference with ACCC's Brisbane office

## Attendees:

### *Australian Competition and Consumer Commission*

Jill Walker (Chair), Commissioner  
Richard Chadwick, General Manager – Adjudication  
David Hatfield, Director – Adjudication  
Gina D'Ettorre, Assistant Director – Adjudication  
Linley Johnson, Principal Economist – Competition and Consumer Economic Unit  
Jana Kacir, Senior Lawyer, Trung Tang, Project Officer, Brisbane

### *Vision Eye Institute Limited*

Chris Rogers  
Anne McGrath, Chief Financial Officer  
Amanda Cranage, Doctor and Recruitment Manager  
Rowan McMonnies, Partner, Baker & McKenzie

### *The Australian Society of Ophthalmologists*

Kerry Gallagher, Chief Executive Officer

Conference commenced: 10.30 am

### *Introduction*

**Commissioner Jill Walker** welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, Kerry Gallagher, on behalf of the Australian Society of Ophthalmologists (ASO), to make an opening statement.

### *Opening Statements*

**Kerry Gallagher**, CEO, ASO, briefly outlined the ASO's role and stated:

- the ASO does not object to the draft determination per se, rather, the ASO objects to the authorisation only extending to Vision ophthalmologists
- this gives Vision an unreasonable advantage in competing with other shared practices
- it would be equally appropriate and beneficial for the public to access other shared practices on the basis that they can agree common fees
- application for authorisation by each separate shared practice of ophthalmologists is impractical and onerously expensive, so the ASO wishes to flag its desire to discuss

how it might best seek authorisation for a potentially large number of its members' shared practices.

**Commissioner Jill Walker** clarified that authorisation applications do not necessarily have to be made by individual group practices but an application could be made by/on behalf of a sub-group.

There was discussion about whether an application for a sub-group could be made by the ASO on behalf of a sub-group of its members.

**David Hatfield** noted that to address the concerns previously identified by the ACCC [in relation to ASO's previous authorisation applications] the parties lodging an application would need to show that there is competition from other ophthalmologists for each sub-group. In the ASO's previous application not enough information had been provided.

**Commissioner Jill Walker** noted that the ACCC must be satisfied that the public benefits of the relevant conduct outweigh the public detriments. The ACCC was not able to be so satisfied in relation to the ASO's application because it covered many locations where the extent of anti-competitive detriment was unknown and in some cases likely to be significant. On that basis the ACCC was unable to be satisfied that the extensive conduct proposed by the ASO at that time met the statutory test for authorisation.

**Commissioner Jill Walker** asked if a Vision representative wished to address the conference.

**Rowan McMonnies**, Partner, Baker & McKenzie, asked to speak on behalf of Vision.

**Commissioner Jill Walker** noted that lawyers are not entitled to speak at pre-decision conferences and therefore sought and obtained agreement from Mr Gallagher that Mr McMonnies could speak on behalf of Vision.

**Mr McMonnies** stated that he only wished to make some introductory comments to frame the discussion and noted that:

- Vision had provided specific and confidential information, which the ACCC had tested and recognised the public benefits put forward by Vision
- Vision does not agree with the ASO's claim that the arrangement provides Vision with an unreasonable competitive advantage
- there are benefits to operating in this way and it may assist businesses and give them the ability to compete but does not give them a significant anti-competitive advantage
- Vision has no view about whether it is practical for any other party to apply for authorisation.

**Mr Gallagher** stated:

- he could provide examples of the advantages of common fee setting
- he disagrees with Vision's view that other non-Vision ophthalmologists are not disadvantaged by the arrangements
- the principle advantage of the conduct occurs for consumers with the consistency of pricing, especially in an after-hours situation.

**Commissioner Jill Walker** then confirmed she understood the ASO's position before calling for any further comments. No further comments were made. Commissioner Jill Walker closed the conference by noting that the ACCC would be providing a further opportunity for parties to make written submissions in respect of its draft determination and that the ACCC would be writing to those who attended the conference to provide details of how such submissions could be made, as well as to provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 10.49 am