

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:

N98924 *DoseAid Pty Ltd (**DoseAid**) (formerly known as APHS Packaging Pty Ltd).*

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

*DoseAid is a supplier of dose administration aids (DAAs) and associated services to hospital and community pharmacies (together, **pharmacies**).*

DAAs are pre-packed sachets or blister packs containing one ("unit-dose") or more pharmaceuticals that have been divided and/or arranged by date and time. DAAs give 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 22, 567 Collins 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) *DAAAs and associated services by DoseAid to pharmacies; and*
- (ii) *software and associated services that enable communication between the respective IT systems of DoseAid and pharmacies to facilitate the ordering and supply of DAAAs.*

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

The proposed conduct could be characterised as DoseAid:

- (i) *supplying DAAAs and/or associated services to pharmacies on the condition that the pharmacies acquire software and associated services from Practi Health Pty Ltd (**Practicare**) and/or other software suppliers nominated by DoseAid from time to time; and*
- (ii) *refusing to supply DAAAs and/or associated services to pharmacies for the reason that they have not, or have not agreed to, acquire software and associated services from Practicare and/or other software suppliers nominated by DoseAid from time to time.*

Exclusive dealing notifications in respect of similar conduct by DoseAid were lodged with the ACCC on 26 June 2014 and allowed to stand. Those notifications concerned software and associated services supplied by FRED IT Group Pty Ltd and iCareHealth Pty Ltd respectively.

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:

Pharmacies that acquire DAAAs from DoseAid.

- (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 22, 567 Collins Street
Melbourne VIC 3000
Tel: (03) 9672 3335*

DATED this 18th day of February, 2016

Signed by/on behalf of the applicant, DoseAid 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.

ANNEXURE A

1. Background

DoseAid

- 1.1 DoseAid Pty Ltd (**DoseAid**) is a supplier of dose administration aids (**DAAs**) and associated services to hospital and community pharmacies (together, **pharmacies**). DoseAid is a wholly-owned subsidiary of Symbion Pty Ltd (**Symbion**), a member of EBOS Group Limited (**EBOS Group**).
- 1.2 DoseAid operates a facility in Brisbane at which it manufactures DAAs for supply to pharmacies.

Pharmaceuticals supply chain

- 1.3 Broadly speaking, the pharmaceutical supply chain in which DoseAid participates involves the following:
- (a) manufacturers of branded and generic pharmaceuticals, whose prices to pharmacies (in respect of most products) are set by the Commonwealth Government under the Pharmaceutical Benefits Scheme (**PBS**);
 - (b) suppliers of DAAs and DAA-related products and services such as DoseAid, which acquire pharmaceuticals from pharmaceutical manufacturers and wholesalers, package them into DAAs and sell them to pharmacies; and
 - (c) pharmacies, which purchase DAAs and dispense them to patients.
- 1.4 In relation to generic pharmaceuticals and off-patent branded pharmaceuticals, pharmacies often negotiate supply arrangements directly with pharmaceutical manufacturers which provide discounts and/or rebates below the PBS prices that are paid directly by pharmaceutical manufacturers.

DAAs

- 1.5 DAAs are pre-packed sachets or blister packs containing one (“unit-dose”) or more pharmaceuticals that have been divided and/or arranged by date and time. DAAs give pharmacies and their patients a safe, simple and cost-effective way to dispense and administer medicines, particularly where multiple medicines are prescribed.
- 1.6 DAA solutions come in a range of forms. DAAs offered by DoseAid 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 software and/or equipment sourced from a solutions provider.

- 1.7 The DAAs manufactured and distributed by DoseAid 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. DoseAid utilises a software system for receiving, filling and dispatching orders for DAAs.
- 1.8 From the perspective of patients, DAAs present a user-friendly packaging solution that improves medicine management, particularly by promoting adherence to pharmaceutical regimes. DAAs also help to avoid adverse events (for example, from missed or incorrectly timed doses). Finally, DAAs maximise patients’ ability to control their medication independently. These all contribute positively to health outcomes.
- 1.9 From the perspective of pharmacies and facilities supplied by pharmacies (for example, aged care facilities), 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 increasingly important tool for effectively and efficiently dispensing pharmaceuticals. Under the Sixth 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. These incentives (which, in recognition of DAAs’ increasing importance, have been significantly increased from the previous Community Pharmacy Agreement) are 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.

Practicare

- 1.11 Practi Health Pty Ltd (trading as **Practicare**) is a supplier of DAAs and associated software and services to pharmacies. Practicare’s PractiPakPlus software facilitates the packaging of, and fulfilment of pharmacy orders for, DAAs (in this Annexure, such software is referred to as **DAA software**).
- 1.12 The PractiPakPlus software is used in conjunction with pharmacy point-of-sale (**POS**) and pharmaceutical dispensing software systems. For example, PractiPakPlus can be used with the Fred Dispense software supplied by Fred

IT Group Pty Ltd (**Fred IT**) and the LOTS ONE software supplied by Corum Group Pty Ltd.

1.13 Existing functions of the PractiPakPlus software include:

- (a) the management of patient medication profiles using data that is automatically “pulled” from dispensing systems with which PractiPakPlus has been developed to integrate; and
- (b) the generation of packing instructions so that pharmacy staff can prepare DAAs “in-house”.

1.14 It is proposed that Practicare will develop, in consultation with DoseAid, enhancements to the PractiPakPlus software to allow it to integrate with a wider variety of dispensing systems and generate electronic instructions for the packing of DAAs that can be sent to DoseAid for fulfilment.

2. Notified conduct

- 2.1 DoseAid proposes to require certain pharmacies that order DAAs from DoseAid to acquire and utilise the PractiPakPlus software for placing DAA orders and communicating other information (including patient details and dose information) to DoseAid’s software system.
- 2.2 Exclusive dealing notifications in respect of similar (and continuing) conduct by DoseAid were lodged with the ACCC on 26 June 2014 and allowed to stand. Those notifications concern DoseAid (then known as APHS Packaging Pty Ltd) requirements for DAA software and associated services to be acquired from Fred IT and iCareHealth Pty Ltd (**iCare**) respectively.
- 2.3 In the case of current pharmacy customers of DoseAid, it is proposed that they will, at least initially, have the choice of: (1) continuing to use the Fred IT or iCare DAA software previously required to be used (as notified to the ACCC in 2014), with no obligation to use the PractiPakPlus software; or (2) use the PractiPakPlus software. Current DoseAid customers may ultimately be required to use PractiPakPlus.
- 2.4 In the case of new pharmacy customers of DoseAid, it is proposed that they may be required to use PractiPakPlus immediately.
- 2.5 Finally, it is proposed that DoseAid may also require its customers to acquire pharmacy software that is substitutable for, or complementary with, the software supplied by Fred IT, iCare or Practicare. For instance, DoseAid may require the acquisition of other software in the event that it identifies functionality that the respective software systems of Fred IT, iCare and Practicare do not provide.

- 2.6 The proposed conduct could be characterised as DoseAid:
- (a) supplying DAAs and/or associated services to pharmacies on the condition that the pharmacies acquire software and associated services from Practicare or other software suppliers nominated by DoseAid from time to time; and
 - (b) refusing to supply DAAs and/or associated services to pharmacies for the reason that they have not, or have not agreed to, acquire software and associated services from Practicare or other software suppliers nominated by DoseAid from time to time.

3. Competition issues

Market definition

- 3.1 DoseAid has not formed a concluded view on market definition. However, DoseAid 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 DoseAid 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 DAA and dispensing software to assist pharmacies with ordering and dispensing pharmaceuticals, and many pharmacies obtain their medication management software from other providers. In addition to Practicare, Fred IT and iCare, suppliers of DAA software include Webstercare, Presocare and easyBLIST (which markets itself as “Australia’s fastest growing DAA software solution...”). Existing suppliers of pharmacy dispensing and POS software – such as Corum and Z Software – would also be capable of developing and supplying DAA software.
- 3.4 The proposed conduct affects only a small proportion of the overall retail pharmacy software market. DoseAid estimates that it supplies DAAs and associated services to approximately [REDACTED] of the approximately 6,600 community and hospital 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) DoseAid;
 - (b) MPS;
 - (c) Webstercare; and
 - (d) pharmacies that operate their own packaging machines, sometimes in conjunction with DAA software from providers such as easyBLIST.
- 3.6 DoseAid estimates that approximately 370,000 patients currently use DAAs. Of these, DoseAid estimates that approximately 200,000 patients are supplied with DAAs by, or using technology supplied by, Webstercare. DoseAid estimates that approximately 30,000 patients are supplied by MPS. DoseAid 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. DoseAid estimates that approximately 4,200 community pharmacies (over 75% of the total number of community pharmacies) are registered to supply DAAs and DoseAid estimates that approximately 20,000 patients are supplied by pharmacies that pack DAAs in-house.

Public benefit claims

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

Cost and efficiency benefits associated with the use of software nominated by DoseAid

- 3.9 The following cost and efficiency benefits will be achieved by using software nominated by DoseAid to interface between DoseAid and pharmacy customers:

- DoseAid and pharmacies will be able to more easily and efficiently access information regarding DAA orders, and patient details and doses (for example, it is anticipated that the enhanced version of the PractiPakPlus software will enable more efficient creation and manipulation of patient medication profiles and improved data interfaces with dispensing systems);
 - the use of a limited number of DoseAid-nominated software systems will streamline processes, reduce the likelihood of error and provide the potential to serve a greater number of patients with complex medication adherence requirements; and
 - lower costs to DoseAid as a result of reduced duplication and technical compatibility issues that are likely to arise from working with a larger number of software systems.
- 3.10 In the competitive markets in which DoseAid and pharmacies operate, some or all of these cost and efficiency benefits are likely to be passed through to patients.

Transaction cost savings for pharmacies

- 3.11 The notified conduct will reduce the time and search costs incurred by pharmacies in obtaining quotes from different software providers, assessing the quality and value of proposed arrangements, negotiating supply terms and ensuring that software is fully compatible with DoseAid's systems. Pharmacies can be confident that DoseAid considers that nominated software is reliable, effective and suitable for interfacing with DoseAid's systems and managing patients' complex medication requirements.

Enhanced promotion of DAAs

- 3.12 The cost savings and efficiency improvements described above will enhance the attractiveness of DAA solutions offered by DoseAid and will improve the penetration of DAAs in relevant markets. This will assist to align 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). In turn, that will assist in reducing avoidable health care system costs associated with patients' non-adherence to their medication regimes.

Public Detriment

- 3.13 DoseAid submits that the notified conduct will not result in any public detriment. DoseAid's agreements with pharmacies for the supply of DAAs and/or associated services will contain full disclosure of any requirement for the pharmacy to utilise the PractiPakPlus or other software nominated by DoseAid.

- 3.14 As described above, there are a number of alternative providers of DAA and dispensing 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 that utilise alternative software systems. Pharmacies are also free to manage the packaging and dispensing of DAAs wholly “in-house”.

4. Conclusion

- 4.1 For the reasons set out above, DoseAid 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.