



**Catholic Health Australia Limited and Ors–  
Application for revocation of A91400 and the substitution of  
authorisation AA1000677  
Interim authorisation decision  
28 August 2024**

**Overview**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to grant interim authorisation to Catholic Health Australia Limited (**Catholic Health**) for the Interim Authorisation Conduct described in paragraph 5 below.
2. Interim authorisation is granted only to authorise Catholic Health’s members to continue to engage in substantially the same conduct which was authorised in authorisation A91400 in 2014, namely to:
  - collectively negotiate with suppliers of medical goods and services, including sharing of data between members, and for a limited collective boycott of large suppliers in certain circumstances
  - collectively negotiate hospital and healthcare related funding arrangements with Funding Organisations, including health insurers
  - exchange data for benchmarking purposes.
3. In its current application, Catholic Health is also seeking authorisation for its members to engage in a further limited collective boycott of the 5 largest health insurers. However, Catholic Health did not seek interim authorisation for this aspect of the proposed conduct. The ACCC will consider this proposed boycott, and all other aspects of the proposed conduct, before issuing a draft determination.

**Decision**

4. The ACCC has decided to suspend the operation of authorisation A91400 and grant interim authorisation in respect of the application for authorisation AA1000677 in substitution for the authorisation suspended. Application for revocation of authorisation A91400 and substitution of authorisation AA1000677 was lodged by Catholic Health on 25 July 2024.
5. The ACCC grants interim authorisation to Catholic Health Australia Limited (**Catholic Health**) to authorise:
  - members of the Catholic Negotiating Alliance<sup>1</sup> (including their related bodies corporate) to exchange data, including revenue, activity, costs and efficiency data, for the purpose of benchmarking across all members of the Catholic Negotiating Alliance.

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<sup>1</sup> A group within Catholic Health whose purpose is to facilitate collective bargaining among a group of Catholic health, aged and community care service providers.

- members of the Revenue Negotiation Network<sup>2</sup> (including their related bodies corporate) to:
  - collectively negotiate hospital and healthcare related funding arrangements by any or all of the Revenue Negotiation Network members with health and aged care funders, the Repatriation Commission, other government entities and third-party payers/compensable organisations (**Funding Organisations**). This will include sharing data among the Revenue Negotiation Network members (such as cost or price information) at any time, and reaching arrangements or understandings on the terms and conditions (including prices) for the supply of goods or services by any or all of these hospitals; and
  
- members of the Joint Purchasing Network<sup>3</sup> (including their related bodies corporate) to:
  - conduct joint negotiations by any or all of the Joint Purchasing Network members with suppliers of goods or services. This will include sharing data among the Joint Purchasing Network members (such as cost or price information) at any time, and reaching arrangements or understandings on the terms and conditions (including prices) for the acquisition of goods or services by any or all of these healthcare facility operators; and
  - agree not to individually negotiate for, or acquire goods or services from, certain suppliers while collective negotiations are on foot (limited collective boycott). That is, the negotiation of these acquisitions take place through the Joint Purchasing Network upon the following terms set out below. The terms apply once a supplier has agreed to participate in a joint negotiation with any or all of the Joint Purchasing Network members. Additionally, participating Joint Purchasing Network members will not individually acquire goods or services from the nominated supplier for the duration of the joint negotiation.

Any such agreements:

- will be for an initial specified period that is agreed by the participating Joint Purchasing Network members and can be extended by the Joint Purchasing Network members, depending upon the progress of the joint negotiation
- can only apply to suppliers with an annual Australian turnover of more than \$5 million or an annual global turnover of more than \$10 million
- can only relate to the specified product category (or categories) that are the subject of the attempted joint negotiation; and
- will not apply to the operation of pre-existing supply arrangements (if any) between individual Joint Purchasing Network members and the nominated supplier.

**(the Interim Authorisation Conduct).**

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<sup>2</sup> A subgroup of the Catholic Negotiating Alliance comprising a network of Catholic hospital operators who collectively negotiate hospital and healthcare related funding arrangements with funding organisations.

<sup>3</sup> A subgroup of the Catholic Negotiating Alliance comprising a network of Catholic healthcare facility operators who collectively negotiate with suppliers.

6. The ACCC grants interim authorisation in relation to Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and sections 45 and 47 of the Act.
7. Interim authorisation commences immediately and remains in place until it is revoked, the application for revocation and substitution is withdrawn, or the date the ACCC's final determination comes into effect.

### **The application for authorisation**

8. Application for revocation of authorisation A91400 and substitution of authorisation AA1000677, was lodged by Catholic Health on 25 July 2024 on behalf of itself and the following parties:
  - St Vincent's Health Australia Limited
  - Mater Misericordiae Limited
  - Cabrini Health Limited
  - St John of God Health Care Inc
  - Little Company of Mary Health Care Ltd (trading as Calvary Health Care)
  - Ozcare
  - Trustees of the Roman Catholic Church Diocese of Lismore
  - The Uniting Church in Australia Property Trust (Q) represented by UnitingCare Queensland Ltd (trading as UnitingCare Queensland)<sup>4</sup>.

(the **Applicants**).

9. The Applicants seek authorisation for conduct comprising the Interim Authorisation Conduct as well as the following additional limited collective boycott conduct for members of the Revenue Negotiation Network to:
  - potentially agree not to individually negotiate hospital and healthcare related funding arrangements with certain private health insurers while collective negotiations are on foot. That is, from time to time, under the following circumstances, the negotiation of these arrangements take place only through the Revenue Negotiation Network upon the following terms set out below. The terms apply once the private health insurer has agreed to participate in a joint negotiation with any or all of the Revenue Negotiation Network members. Additionally, participating Revenue Negotiation Network members will not individually enter into hospital and healthcare related funding arrangements with the private health insurer for the duration of the joint negotiation.

Any such agreements:

- will be for an initial specified period that is agreed by the participating Revenue Negotiation Network members and can be extended by the Revenue Negotiation Network members, depending upon the progress of the joint negotiation
- can only apply to the five largest private health insurers in Australia (by national market share), which is currently Medibank, Bupa, HCF, nib and HBF
- can only relate to the specified funding arrangement that is the subject of the attempted joint negotiation; and

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<sup>4</sup> UnitingCare Queensland is a proposed new member of Catholic Health.

- will not apply to the operation of pre-existing supply arrangements (if any) between individual Revenue Negotiation Network members and the funding organisation.

10. Catholic Health seeks authorisation for 10 years.

11. Catholic Health did not seek interim authorisation for the limited collective boycott conduct for the Revenue Negotiation Network.

### **The authorisation process**

12. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

13. Under section 91 of the Act the ACCC may, where it considers it appropriate to do so for the purpose of enabling due consideration to be given to an application for the revocation of an authorisation and the substitution of a new one, or for any other reason, suspend the operation of the authorisation sought to be revoked and grant interim authorisation in substitution. This allows the parties to engage in the Interim Authorisation Conduct while the ACCC is considering the substantive application.

14. The Applicants requested interim authorisation on the basis that:

- The ACCC is unlikely to have completed its assessment of the substantive application prior to the expiration of existing authorisation A91400 on 5 September 2024.
- Sharing of data among Catholic Negotiating Alliance members is necessary to ensure continued improvement of clinical procedure outcomes.
- Revenue Negotiation Network members need to be able to continue collective bargaining of hospital and healthcare funding arrangements with funding organisations while the ACCC considers the substantive application.
- Joint Purchasing Network members need to be able to continue collective bargaining negotiations with suppliers, and limited collective boycott where appropriate, while the ACCC considers the substantive application.
- If interim authorisation was not granted, the Applicants would face harm including:
  - uncertainty and disruption to their operations
  - incurring considerable expense in unwinding existing contractual arrangements and ceasing ongoing projects already underway.
- If interim authorisation was not granted, the Applicants, suppliers, health insurers and funding organisations would need to adapt their processes to move away from collective negotiations in a short period of time, creating disruption and causing increased costs to those parties.
- Interim authorisation will maintain the status quo, with variations of the conduct having been authorised since 2004 and the conduct for which the Applicants seek interim authorisation having been authorised since 2014, while the ACCC considers the substantive application.

## Consultation

15. The ACCC invited submissions from a range of potentially interested parties including major suppliers, private health insurers, relevant industry associations, state and federal government and relevant regulatory bodies.
16. The ACCC did not receive any submissions in relation to Catholic Health's request for interim authorisation.
17. With respect to the substantive application, several interested parties have raised concerns about aspects of the proposed conduct, in most cases the proposed boycott arrangements for the Revenue Negotiation Network members. The ACCC will consider all issues raised by interested parties in detail in its draft determination.
18. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the [ACCC's authorisations public register](#).

## Reasons for decision

19. In granting interim authorisation, the ACCC considers that:
  - The current authorisation A91400 is due to expire on 5 September 2024. Interim authorisation will enable the ACCC to give due consideration to the substantive application for revocation and substitution in circumstances where the ACCC's final determination in this matter is unlikely to come into effect before the existing authorisation expires.
  - Granting interim authorisation will maintain the status quo where the collective bargaining and data sharing conduct has been authorised since 2004, with the limited collective boycott conduct for the Joint Purchasing Network authorised since 2014.
  - Without interim authorisation, the operations of the Applicants may be disrupted, with ongoing projects commenced during the period of the current authorisation having to cease.
  - The denial of interim authorisation is likely to cause harm to the Applicants, suppliers, health insurers and other funding organisations who will incur additional costs associated with unwinding existing contractual arrangements, ceasing collective negotiations and changing processes following expiry of the existing authorisation.

## Reconsideration of interim authorisation

20. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.