



## Statement of Issues

27 March 2014

### Healthscope Limited – proposed acquisition of the Brunswick Private Hospital

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#### Introduction

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) on the proposed acquisition of the Brunswick Private Hospital by Healthscope Limited from Healthe Care Pty Ltd (**proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's Informal Merger Review Process Guidelines (at [www.accc.gov.au/processguidelines](http://www.accc.gov.au/processguidelines)) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 10 April 2014 and anticipates making a final decision on 8 May 2014. However, the anticipated timeline can change in line with the Merger Review Process Guidelines. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

#### Background

5. Healthscope Limited (**Healthscope**) proposes to acquire the Brunswick Private Hospital from Healthe Care Pty Ltd (**Healthe**).
6. After making some preliminary targeted inquiries the ACCC decided to commence a public review on 22 January 2014.

## The parties

### Healthscope Limited

7. Healthscope was formed in 1985 and provides private hospital, medical centre and pathology services across Australia. It has a portfolio of 44 private hospitals nationwide which includes three hospitals operated on behalf of the Adelaide Community Healthcare Alliance.
8. Healthscope was listed on the Australian Securities Exchange (ASX) in 1994. In October 2010, Healthscope Limited was acquired by a consortium comprising funds advised and managed by private equity firms The Carlyle Group and TPG, and was subsequently de-listed from the ASX.
9. Healthscope operates several hospitals in the Melbourne area including:
  - John Fawkner Private Hospital in Coburg, a 147 bed major surgical, medical and emergency hospital;
  - Melbourne Private Hospital in Parkville, a 124 bed hospital offering various general medical and surgical services;
  - Northpark Private Hospital in Bundoora, a 153 bed hospital providing surgical, medical, mental health, maternity and nursery services;
  - Cotham Private Hospital in Kew, a 60 bed hospital providing surgical, general medical and rehabilitation services;
  - Dorset Rehabilitation Centre in Pascoe Vale, a 30 bed rehabilitation facility;
  - North Eastern Rehabilitation Centre in Ivanhoe, a 46 bed rehabilitation facility; and
  - The Victorian Rehabilitation Centre in Glen Waverley, a 143 bed rehabilitation facility providing an extensive range of inpatient and outpatient services including an acquired brain injury unit.

### Healthe Care Pty Ltd

10. Healthe was formed in 2005 and it employs approximately 4,000 people across a portfolio of 14 hospitals in Queensland, New South Wales, Victoria and Tasmania.
11. In Melbourne, Healthe operates the Brunswick Private Hospital, La Trobe Private Hospital, the Valley Private Hospital, and South Eastern Private Hospital.

#### *Brunswick Private*

12. Brunswick Private Hospital (**Brunswick Private**) is a 128 bed hospital located in Brunswick, a suburb in northern Melbourne. Brunswick Private offers rehabilitation services and general medical services. Currently, 98 beds are allocated to rehabilitation services and 30 beds are allocated to general medical services.

13. Brunswick Private's general medical service offering provides accommodation and services for patients being treated by doctors and specialists in the following areas:

- General practice
- Cardiology
- Psychiatry
- Respiratory
- Rheumatology

14. The rehabilitation services offered at Brunswick Private consist of both inpatient and outpatient facilities and include treatment from rehabilitation physicians and specialist rehabilitation nurses, as well as allied health professionals. The specialist staff include:

- Occupational therapists
- Social workers
- Speech therapists
- Physiotherapists
- Exercise physiologists
- Allied Health assistants
- Stomal therapist
- Diabetes educator
- Psychologists
- Podiatrists
- Dieticians

## **Other industry participants**

15. The following private hospital groups also provide private general medical, surgical and/or rehabilitation services in Melbourne:

- Epworth
- Cabrini Health
- St Vincent's Private Hospital
- Ramsay Health

## **Market inquiries**

16. On 22 January 2014 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including private hospitals, medical specialists, rehabilitation professionals and private health insurance funds.

## **Future with and without the acquisition**

17. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC

considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

18. The ACCC’s preliminary view is that absent the proposed acquisition, Healthe is likely to continue to operate Brunswick Private as an independent competitor in the relevant markets. The ACCC is continuing to assess the information available to it regarding the likely future competitive environment without the proposed acquisition.

## Industry Background

### *Competition to attract doctors and patients*

19. Private hospitals provide a range of services to patients, with much of the demand for services generated by doctors on behalf of their patients. Hospitals therefore endeavour to provide an environment in which doctors are willing to refer or treat their patients. Accordingly, competition between hospitals to attract doctors is often viewed as a proxy for competition to attract patients.
20. The activities that hospital owners engage in to attract doctors (and hence encourage referrals of patients) often involves investment in facilities, equipment, medical professionals (including doctors, nurses and allied health professionals) and support staff. In addition, hospital owners and managers may provide for and respond to the input of medical professionals with regard to programs offered for the clinical care of patients by making the necessary resources available.

### *Private health insurance funds*

21. The vast majority of patients attending private health facilities finance the medical services they receive by means of health insurance through a private health insurance fund (**health fund**). Private health insurance premiums are regulated by the federal government.
22. Payments from health funds make up the vast majority of most private hospitals’ revenue. Most private hospitals and health funds have agreements known as Hospital Purchaser Provider Agreements (**HPPAs**). Private hospitals have equivalent agreements with the Repatriation Commission on behalf of the Commonwealth Department of Veterans’ Affairs.
23. A HPPA is an agreement under which a health fund agrees with a private hospital operator that, if and when a member of the health fund presents for treatment at the private hospital, the hospital’s operator will provide services to the member to a specified standard and for a specified fee, and the operator can bill the health fund for the service (rather than billing the member).
24. HPPAs help to minimise ‘gap’ or ‘out of pocket’ payments for a fund’s members. If a patient attends a private hospital which has an HPPA with the patient’s health fund, the patient will ordinarily not be required to make any payments for their hospital accommodation (except for any excess or co-payment that the patient is liable to pay under their health insurance plan). If a patient has private health insurance but is treated at a hospital that does not have an HPPA with the patient’s fund, the fund is required by legislation to pay at least ‘second tier’ benefits, provided that the hospital is appropriately registered. Lower minimum

default benefits are payable if the hospital is not registered for second tier benefits. The patient may then, at the discretion of the private hospital, be required to pay the difference between the benefit paid by their fund and the hospital's charges.

25. An HPPA generally covers all the services provided by a hospital operator which the health fund has agreed to fund. HPPAs between a hospital operator and health fund are most commonly made on an 'all-in' or 'all-out' basis (i.e. either all of Healthscope's hospitals are included in a HPPA with the health fund or none are). Therefore hospital operators with hospitals in multiple states tend to negotiate HPPAs with health funds on a national basis.
26. The rates and other terms agreed in an HPPA are the result of negotiations between a hospital operator and a health fund, and therefore reflect the balance of bargaining power between the two parties.
27. Most acute medical procedures (such as surgery) are charged as a fixed amount per procedure (known as a 'case payment') which is generally calculated with regard to the cost of the procedure and the average length of hospital stay associated with that procedure. Rehabilitation services (and psychiatric care services) are typically charged on a 'per diem' (daily) basis as the duration of care required is highly variable. However, in some cases the case payment charged by a hospital to a health fund for an acute procedure will include a component for a period of rehabilitation which the patient is expected to require following the acute procedure.

## **Areas of overlap and market definition**

28. Healthscope and Brunswick Private currently overlap in the provision of private general medical services and private rehabilitation services in the northern suburbs of Melbourne. In the absence of the proposed acquisition, the ACCC considers that there is potential for Healthscope to expand Brunswick Private and begin providing surgical services at that hospital. In that event, Healthscope and Brunswick Private would also overlap in the provision of private surgical services.
29. Consistent with the approach taken in previous matters, the ACCC considers that there are separate markets for the supply of these relevant categories of private hospital services to each of:
  - patients; and
  - health funds.
30. Patient markets are generally local in their geographic scope (at least in metropolitan areas) as patients do not typically travel long distances to access private hospital services (except perhaps for highly specialised services). The geographic dimensions of the relevant markets for the supply of private hospital services to patients are discussed further below.
31. The relevant health fund markets are likely to be broader in their geographic scope. Industry participants submitted that because HPPAs between private hospitals and health funds are predominately negotiated on a national basis (for private hospital operators with a multi-state presence), competition between hospital groups on a national and state/territory level is most relevant to the competitive dynamic for determining HPPA rate increases. However, some

industry participants considered that local competition between private hospital operators is also a significant influence on HPPA rates. This is because, if a private hospital operator has a particularly strong position in a local area, a health fund that wishes to provide services to members in that area may have no choice other than to deal with that hospital operator. The ACCC considers that national, state and local dimensions are likely to be relevant to the analysis of competition for the supply of private hospital services to health funds by Healthscope, the second largest private hospital operator in Australia.

## **Supply of general medical and surgical services**

### ***Product dimension***

32. The term 'general medical services' covers all non-surgery, non-maternity, non-rehabilitation and non-psychiatric medical services. It includes treatment for pneumonia, asthma, diabetes, mild cardiac problems and gastroenterology, as well as pathology services and pharmacy. General medical services are low acuity and as such, do not require the facilities or equipment required to deal with high acuity cases, such as operating theatres, intensive care units, coronary care units and high staff-to-patient ratios.
33. The ACCC has not previously considered day surgeries and public health care facilities to provide a significant competitive constraint to private hospitals, and market inquiries indicated that industry participants do not consider public hospitals or day care facilities to be significant competitive constraints.
34. Industry participants commonly submitted that public hospitals were not close substitutes for private hospitals, with a relatively small percentage of people with private health insurance seeking health services from a public hospital. Industry participants also identified waiting times at public hospitals and different perceived quality of care as being other factors which differentiated public and private hospitals. Industry participants also did not consider the public hospital system to have a material influence on the rates negotiated between a health fund and a private hospital operator.
35. Given the potential overlap between Brunswick Private and Healthscope in the future without the proposed acquisition, the ACCC's preliminary view is that it is also relevant to consider the effects of the proposed acquisition on the supply of private surgical services.

### ***Preliminary view on product dimension – services to patients***

36. The ACCC's preliminary view is that, for the purpose of analysing the proposed acquisition, it is not necessary to precisely define whether the relevant product dimension encompasses the supply of both private general medical and private surgical services to patients, or whether these should be considered as separate product dimensions.
37. Therefore, for the purposes of this Statement of Issues, the ACCC's competition analysis proceeds on the basis of a combined product dimension, that is, a market for the supply of private hospital services to patients (encompassing the supply of private general medical services and private surgical services to patients).

***Geographic dimension (supply to patients)***

38. The ACCC has previously considered the geographic scope of competition for the supply of private hospital services to patients to be local in metropolitan areas<sup>1</sup>. In considering the Epworth's proposed acquisition of Cliveden Hill Private Hospital (December 2005) the ACCC defined a local market for the supply of general overnight private hospital services in 'inner Melbourne' (which included St Vincent's hospitals in Fitzroy, John Fawcner Private in Coburg and Cabrini in Malvern).
39. Market inquiries in this matter indicated that while convenience of location was an important factor for patients seeking private hospital services, a significant number of patients may be willing to cross the Melbourne CBD in order to seek consultation or treatment from a general medical or surgical practitioner on the basis of the expertise and reputation of the medical practitioner or the private health facility they practice from.
40. The ACCC's preliminary view is that it is appropriate to consider the proposed acquisition in the context of the supply of general medical and surgical services to patients in the inner and northern suburbs of Melbourne. This geographic area includes private hospitals to the north of the Melbourne CBD, to the east as far as Heidelberg and Bundoora and the inner suburbs to the east and south of the CBD including Richmond.

**Private rehabilitation services to patients**

***Product dimension***

41. The relevant area of overlap between the parties is the provision of specialist rehabilitation services. Specialist rehabilitation services are provided by a multi-disciplinary team of medical practitioners, allied health professionals (e.g. physiotherapists) and nurses. These services can be offered as:
  - **inpatient services:** e.g. a 10-15 day stay in order to recover from a hip replacement surgery; or
  - **outpatient services** e.g. a patient may attend the hospital for a 3-4 hour period on a certain day to see a variety of specialists to assist in the recovery from an injury or surgery.
42. Rehabilitation facilities such as Brunswick Private, Dorset Rehabilitation Centre and North Eastern Rehabilitation Centre all provide both inpatient and outpatient services. The ACCC understands that the staff and facilities necessary to provide inpatient and outpatient services are essentially the same, except for the overnight accommodation aspect of the service, which outpatients do not require.
43. Inpatient services can also be categorised as:
  - **fast-stream:** a short stay of e.g. 10-15 days for post-operative or post-trauma recovery; and

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<sup>1</sup> Healthscope Limited proposed acquisition of 14 hospitals from Ramsay Health Care (28 September 2005) and Epworth proposed acquisition of Cliveden Hill Hospital (13 December 2005).

- **slow-stream:** a stay that may last as long as 3-6 months, for example, to recover from a serious car accident, or an elderly person who may take longer to recover from a hip replacement due to failing health or a pre-existing condition).
44. The ACCC understands that providing rehabilitation services to slow-stream inpatients does not require different staff or facilities from those required for fast-stream patients (although single bed rooms are generally considered preferable). The ACCC understands that the private rehabilitation hospitals in northern Melbourne each accept a mix of slow-stream and fast-stream patients. However, market inquiries have indicated that Brunswick Private recently has competed by admitting greater numbers of slow-stream patients than Healthscope's rehabilitation facilities.
45. There appears to be some overlap between private rehabilitation services and those provided by the public system. For example, the ACCC understands that the Royal Melbourne Hospital's Royal Park rehabilitation facility provides both inpatient and outpatient services which can be accessed by patients with private health insurance. The ACCC understands that a significant proportion of patients with private health insurance receive rehabilitation services from public providers, and that these may particularly be elderly patients and those with more complex rehabilitation needs. In addition, there are both public and private providers of community rehabilitation services, such as St Vincent's Community Rehabilitation Centre in Northcote.
46. However, the ACCC considers that most patients with private health insurance who require specialist rehabilitation services would seek to be treated by a private rehabilitation provider. Issues with funding and capacity constraints are likely to limit the degree of competition provided by the public sector.
47. Accordingly, the ACCC's preliminary view is that the product dimension of the relevant market is the supply of private rehabilitation services to patients, including inpatient and outpatient and slow-stream and fast-stream services. However, the ACCC will further explore the issues raised above in relation to product market definition before reaching its final decision.

### ***Geographic dimension***

48. The ACCC has previously defined local markets for the supply of private rehabilitation services in southern and eastern Melbourne<sup>2</sup>.
49. Market inquiries with doctors and private hospitals indicated that the location where a patient or a patient's family resides is a key factor in choosing a rehabilitation facility. Industry participants noted that the patients receiving inpatient rehabilitation services could spend a number of weeks or even months being admitted at a rehabilitation facility so being a convenient distance from family was important. Similarly for ongoing outpatient rehabilitation, patients would prefer to attend a rehabilitation facility close to their home in order to minimise travel time for the ongoing visits to the rehabilitation facility. Industry participants further noted that it was not uncommon for patients from the northern suburbs of Melbourne to have a surgical procedure undertaken at a private hospital to the east or south of the CBD (e.g. Richmond or East Melbourne). However, these patients would still generally be referred to a rehabilitation facility on the northern side of the CBD for the reasons outlined above.

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<sup>2</sup> Epworth proposed acquisition of Cedar Court Private Hospital, September 2006.



50. On this basis, most industry participants considered that rehabilitation facilities south and east of the Melbourne CBD, such as Epworth in Richmond, Cabrini in Elsternwick and Ramsay's rehabilitation facility in Donvale, are unlikely to be considered close substitutes to Brunswick Private. In forming a preliminary view on the appropriate geographic scope of competition for the supply of private rehabilitation services, the ACCC has examined data on the residential location of patients attending various rehabilitation hospitals. These data are consistent with patients from the northern suburbs exhibiting a preference for treatment in rehabilitation hospitals in this region.
51. On the basis of the above information, the ACCC's preliminary view is that it is appropriate to consider the proposed acquisition in the context of the supply of private rehabilitation services to patients in the northern suburbs of Melbourne. This geographic area includes private hospitals to the north of the Melbourne CBD, but does not include hospitals to the east or south of the Melbourne CBD such as Richmond. However, the ACCC will further consider the proportion of patients travelling outside northern Melbourne to access private rehabilitation services and the reasons for this.

## **Conclusion**

52. The ACCC's preliminary view is that the following markets are likely to be relevant in assessing the proposed acquisition:
  - a. The supply of private hospital services (encompassing general medical and surgical services) to patients in the inner and northern suburbs of Melbourne
  - b. The supply of private hospital services (encompassing general medical and surgical services) to health funds. As discussed above, the ACCC considers that there are national, state-based and local elements to competition in this market
  - b. The supply of private rehabilitation services to patients in the northern suburbs of Melbourne
  - c. The supply of private rehabilitation services to health funds. As with private hospital services, the ACCC considers that there are national, state-based and local elements to competition in this market

The ACCC invites comments from market participants on its proposed definition of the relevant markets, including whether:

- it is relevant to consider competition for the supply of general medical services together with the supply of general surgical services
- competitive conditions in relation to the supply of inpatient rehabilitation services are different from competitive conditions in relation to the supply of outpatient services
- public rehabilitation services, and community rehabilitation services (such as St Vincent's Community Rehabilitation Centre in Northcote) provide a significant degree of competitive constraint on private rehabilitation providers

- in the event of a deterioration in the private rehabilitation services offered at hospitals in Melbourne's north, patients would be likely to travel to hospitals outside the northern region, such as St Vincent's Private and Epworth's Richmond and Freemasons (East Melbourne) rehabilitation hospitals

## Statement of issues

53. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, 'issues of concern' and 'issues unlikely to raise concerns'.

### Issues of concern

#### ***Market for the supply of private rehabilitation services to patients in northern Melbourne***

54. The ACCC is concerned that the proposed acquisition is likely to result in a substantial lessening of competition in the market for the supply of private rehabilitation services to patients in northern Melbourne. Currently there are three private hospitals providing rehabilitation services to patients in northern Melbourne:
- Brunswick Private (owned by Healthe Care);
  - Dorset Rehabilitation Centre (owned by Healthscope); and
  - North Eastern Rehabilitation Centre (owned by Healthscope).
55. The proposed acquisition would result in the removal of Healthscope's closest and only competitor in this market. The ACCC is therefore concerned that proposed acquisition is likely to reduce competition, for example by substantially reducing the incentives for Healthscope to invest in staff, specialists, facilities and rehabilitation programs for the supply of rehabilitation services to patients in northern Melbourne.
56. Some industry participants identified Brunswick Private as a vigorous and effective competitor for the supply of private rehabilitation services in northern Melbourne, noting the substantial investments in Brunswick Private by its current owner Healthe Care, to expand the size and quality of the rehabilitation offering to attract more patient referrals from private hospitals. The ACCC notes that some of this investment may have been necessary to bring the hospital into line with the standard of other hospitals in the Healthe Care group, after Healthe Care acquired Brunswick Private in 2009.
57. Market inquiries also suggested that Brunswick Private has focussed on providing services to slow-stream patients (in contrast to other private rehabilitation hospitals in the area which accept mainly fast-stream patients) and has developed a rehabilitation model that is particularly suited to these patients. The ACCC understands that slow-stream patients can be less attractive to private rehabilitation hospitals because they require longer periods of rehabilitation and the per diem payments that private hospitals receive from health funds generally reduce over the length of the patient's stay. The ACCC's investigation has also indicated that Healthscope may have responded to competition from Brunswick Private by competing more vigorously for slow-stream patients.

58. If the proposed acquisition proceeds, Healthscope may have less incentive to accept slow-stream rehabilitation patients and may adjust its rehabilitation model accordingly.
59. The ACCC notes that the geographic boundaries of the defined market do not include the rehabilitation facilities at St Vincent's in East Melbourne or Epworth Richmond. However the ACCC considers that, even if these hospitals were to be included in the market, each has a substantially smaller number of rehabilitation beds and may not constrain Healthscope given the approximately 174 rehabilitation beds (in total) Healthscope would have in northern Melbourne post-acquisition.
60. The ACCC also considers that as Healthscope has a number of private hospitals offering acute surgical procedures in the northern suburbs of Melbourne (John Fawcner Private, Melbourne Private Hospital and Northpark Private Hospital), in the absence of the proposed acquisition, Healthscope would have a greater incentive to expand its other private rehabilitation facilities in northern Melbourne in order to facilitate the transfer of patients out of its acute hospitals.
61. The ACCC is therefore concerned that the proposed acquisition is likely to result in reduced competition in the supply of private rehabilitation services to patients in northern Melbourne, particularly slow-stream patients, and that this may lead to reduced quality of the rehabilitation services offered.

The ACCC invites comments from market participants on its preliminary findings regarding the likely competitive effects of the proposed acquisition on the supply of rehabilitation services to patients in northern Melbourne, including:

- whether and how Brunswick Private's private rehabilitation offering is different from that offered by Healthscope in its northern Melbourne hospitals, in particular whether Brunswick Private offers a model that is more beneficial to slow-stream patients
- whether and how the rehabilitation services provided at Brunswick Private would be likely to change if the proposed acquisition proceeds
- whether, in the absence of the proposed acquisition, Healthscope would be likely to expand its rehabilitation offering in northern Melbourne.

#### *Barriers to Entry*

62. The ACCC's preliminary view is that there are barriers to entry in supplying private rehabilitation services in northern Melbourne which may prevent entry in the foreseeable future.
63. Industry participants submitted that barriers to commence providing rehabilitation services are generally lower relative to barriers relating to the supply of some other services such as high-acuity surgical procedures, as the costs associated with establishing a facility for rehabilitation services are lower and attracting and retaining qualified and quality rehabilitation staff is not as difficult as attracting surgeons to a new private facility.
64. However, industry participants noted the long lead times associated with expansions or greenfield entry generally, including seeking board and council approval for a development and then constructing and outfitting the new facility. Industry participants submitted that the process for planning, developing and

commence operating a new private health facility would commonly take a minimum of three years and often take up to five years.

65. The ACCC understands that many rehabilitation specialists work on a part-time basis at several different rehabilitation hospitals. This may make it relatively easy for a new rehabilitation facility to attract specialists. On the other hand, market inquiries also suggested that it is more difficult to attract rehabilitation specialists to hospitals in the northern suburbs of Melbourne than to the eastern and southern suburbs.
66. Industry participants also submitted that obtaining a new HPPA from health funds (which would be required on a greenfield development) could be particularly challenging in relation to private rehabilitation services which some health funds have been reluctant to include in HPPAs. Industry participants identified some major national health funds which had refused requests for HPPAs in relation to rehabilitation services in recent years.
67. Industry participants identified some brownfields expansions plans by private hospital operators in other areas of Melbourne which included the addition of rehabilitation beds. However, the ACCC was not informed of any current proposals for a private hospital provider to commence providing rehabilitation services in northern Melbourne.
68. On the basis of the above information, the ACCC's preliminary view is that barriers to entry for the supply of private rehabilitation services in northern Melbourne are such that Healthscope is unlikely to be competitively constrained by the threat of entry in the foreseeable future following the proposed acquisition.

The ACCC invites comments from industry participants on the nature and extent of barriers to entry in the supply of private rehabilitation services to patients in the northern suburbs of Melbourne, including:

- How difficult it would be to secure suitable land in Melbourne's north for a new rehabilitation hospital
- The likely cost of building a new rehabilitation facility
- How difficult it would be to attract rehabilitation specialists and other necessary staff
- How difficult it would be to attract a sufficient number of patient referrals
- The willingness of health funds to vary their HPPAs to include a new private rehabilitation hospital in Melbourne's north
- Any other barriers to entry or expansion and the extent to which these barriers would prevent timely entry or expansion in relation to the supply of the relevant services following the proposed acquisition.

## **Issues unlikely to raise concerns**

### ***Market for the supply of private rehabilitation services to health funds***

69. The ACCC's preliminary view is that the proposed acquisition is unlikely to result in a substantial lessening of competition in the market for the supply of private rehabilitation services to health funds. Notwithstanding the concern that the

proposed acquisition may provide Healthscope with a substantial increase in market power in relation to the supply of private rehabilitation services to patients in northern Melbourne, the ACCC considers it unlikely that this would result in Healthscope having a substantially stronger bargaining position in its negotiation of HPPAs with health funds.

70. On a national scale, the addition of Brunswick Private Hospital would result in a relatively incremental increase in Healthscope's hospital portfolio to 45 hospitals from 44 hospitals.
71. On a local basis, the proposed acquisition may result in a loss of options for private health fund members in northern Melbourne who are in need of rehabilitation services, however the ACCC's preliminary view is that Healthscope is unlikely to be able to leverage its position in the northern Melbourne private rehabilitation market to negotiate higher HPPA rates with health funds.
72. A number of industry participants submitted that it has become increasingly difficult to negotiate rate increases for the supply of rehabilitation services in HPPAs with health funds and that rate increases for rehabilitation services were commonly substantially lower than for acute surgical procedures. A number of industry participants also provided examples of a major health fund being unwilling to enter into a HPPA with a rehabilitation facility at all.
73. Many industry participants who made submissions to the ACCC, including a number of large health funds, considered that Healthscope was unlikely to obtain higher HPPA rates from health funds as a result of the proposed acquisition.
74. On the basis of the above information, the ACCC's preliminary view is that the proposed acquisition is unlikely to result in a substantial lessening of competition for the supply of private rehabilitation services to health funds.

The ACCC invites comments from market participants on the ACCC's preliminary findings regarding the likely effects of the proposed acquisition on the supply of rehabilitation services to health funds.

***Market(s) for the supply of private hospital (general medical and surgical) services to patients***

75. The ACCC's preliminary view is that the proposed acquisition is unlikely to result in a substantial lessening of competition in markets for the supply of private general medical services to patients in northern and inner Melbourne.
76. Although Healthscope's John Fawcner Private Hospital is located in close proximity to Brunswick Private, the ACCC's preliminary view is that the relevant geographic scope of the market is likely to include the Warringal Private Hospital in Heidelberg, the Epworth Freemasons and Epworth in Richmond and St Vincent's in Fitzroy, East Melbourne and Kew.
77. The ACCC considers that post-acquisition Healthscope would likely be constrained by the remaining private hospitals in the relevant market. Industry participants in particular identified Epworth and St Vincent's as large and highly regarded providers of general medical services.
78. Due to the presence of the Epworth and St Vincent's (which are also large and highly regarded providers of private surgical services), the ACCC's preliminary view is that the loss of Brunswick Private as a potential entrant into the supply of private surgical services would not amount to a substantial lessening of competition.

79. Industry participants did not raise concerns regarding the supply of general medical or surgical services in relation to the proposed acquisition.

The ACCC invites comments from market participants on the ACCC's preliminary views regarding the likely competitive effects of the proposed acquisition on the supply of general medical and surgical services to patients.

***Market(s) for the supply of private hospital (general medical and surgical) services to health funds***

80. The ACCC's preliminary view is that the proposed acquisition is unlikely to result in a substantial lessening of competition for the supply of general medical and surgical services to health funds.
81. As noted above, the addition of Brunswick Private Hospital would result in a relatively incremental increase in Healthscope's hospital portfolio to 45 hospitals from 44 hospitals.
82. While local competition between hospitals is also relevant, the ACCC considers that the competition provided by alternative private hospitals in the relevant market is likely to constrain Healthscope such that it is unlikely to be able to negotiate higher rates in its HPPAs with health funds as a result of the proposed acquisition.

The ACCC invites comments from market participants on the ACCC's preliminary views regarding the likely competitive effects of the proposed acquisition on the supply of general medical and surgical services to health funds.

**ACCC's future steps**

83. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
84. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issues that may be relevant to the ACCC's assessment of this matter.
85. Submissions are to be received by the ACCC no later than 10 April 2014. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.
86. The ACCC intends to publicly announce its final view by 8 May 2014. However the anticipated timeline may change in line with the Merger Review Process Guidelines. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.