

7 May 2024

Anthony Hilton
Director, Competition Exemptions
Rebecca Ryan
Assistant Director, Competition Exemptions
Australian Competition & Consumer Commission
by email

Dear Mr Hilton and Ms Ryan

**Authorisation Application AA1000669
Request for interim authorisation prior to expiry of Authorisation AA1000638**

On 26 April 2024, the ADA lodged an application for revocation of authorisation AA1000638 and substitution of a new authorisation presently being considered by the ACCC (AA1000669) relating to intra-practice price setting by 'shared practices'.

The current authorisation (AA1000638) is due to expire on 16 June 2024.

In light of the proposed timetable for consideration of the application (AA1000669), the ADA requests that the ACCC suspend the current authorisation prior to 16 June 2024 and grant an interim authorisation to allow 'shared practices' to continue to engage in the conduct covered by the current authorisation while due consideration is given to the application under the proposed timetable.

The ADA is requesting interim authorisation given the following background context to the application.

Authorisation for intra-practice price setting by 'shared practices' has been in place continuously since 2008 (Authorisations A91094 and A91095 in 2008, Authorisations A91340 and A91342 in 2013, and Authorisation AA1000638 in 2023).

The 10 year authorisations granted in 2013 were due to expire on 18 April 2023. In the period leading up to this expiry, developments in the application of payroll tax by State Revenue Offices (SRO's) had raised questions of inconsistency and unfairness in how 'shared practices' were treated for competition law and payroll tax. Those developments were explained in the current authorisation and are also explained in the application.

The current authorisation was sought in 2023 as a short-term authorisation in light of the expiry of the 2013 authorisations to preserve the status quo for existing 'shared practices' while the ADA completed a review of the definition of 'shared practice' given those payroll tax developments.

At the time of seeking the current authorisation, the ADA had hoped that forthcoming clarification from the SROs during the course of 2023 would have made it possible to define genuine 'shared practices' in a new way that would allow consistent and fair treatment for the purposes of both payroll tax and competition law. In terms of timing, the ADA was anticipating that there would be sufficient clarity on this from the SROs to enable the ADA to submit an application for a further 10 year authorisation around October 2023 (hence the expiry date of the current authorisation).

However, the relevant SRO rulings (which are attached to the application) were not in place until late November and, in terms of substance, further complicated the position (as explained in the application).

Following analysis of the relevant SRO rulings, the ADA formed the view that it was unlikely a position of greater clarity would emerge prior to the expiry of the current authorisation, and that the appropriate course of action would be to update the existing definition of 'shared practice' to make it suitable for a 5 year authorisation, in particular to ensure there is precision on how to differentiate genuine intra-practice price setting in the shared practice context from agreements on price between practices (see further detail in paragraphs 4.4 and 4.5 of the application).

Accordingly, the ADA engaged in pre-lodgement consultation with the ACCC to ensure that the application contained sufficient information and explanation as to this context and the aspects of the definition of 'shared practice' where greater precision would assist that fundamental differentiation to enable the ACCC to assess a 5 year authorisation.

In addition to this, there was a further last minute delay in submitting the application due to the departure of the CEO of the ADA before the finalised application was signed, and the appointment of the interim CEO who could then sign the application.

The ADA believes that interim authorisation would be appropriate in the circumstances having regard to:

- the context for the expiry date of the current authorisation and the timing of the application as summarised above;
- the benefit of maintaining the status quo for dental practitioners in 'shared practices' and their patients given the nature of the public benefits recognised in the current authorisation (and previous authorisations), in particular the benefits to patients due to dental practitioners in 'shared practices' being able to work together as a team;
- the low risk of any detriment recognised in the current authorisation (and previous authorisations) given that the authorised conduct is limited to price setting within and not between practices; and
- the limited time period for which the interim authorisation would apply, given the proposed timetable for the application (draft determination in June/July and final determination in September 2024).

Yours sincerely,



Eithne Irving
Chief Executive Officer (Interim)