Australian Health Service Alliance

20 April 2021

Mr M Pappa
Competition Exemptions Branch
Australian Competition and Consumer Commission
By email: exemptions@accc.gov.au

Dear Michael

Honeysuckle Health and nib application for Authorisation AA1000542 – voluntary response

1. We refer to your email of 6 April 2021 inviting AHSA to provide its views on the following issues raised by Honeysuckle Health's application for authorisation:
    a. the differences between the conduct proposed in the Authorisation and the conduct in which AHSA currently engages (**Issue 1**);
    b. the differences between the effect that AHSA has had upon competition, and the effect that the conduct proposed in the Authorisation is likely to have upon competition (**Issue 2**); and
    c. the basis on which AHSA does not require authorisation to ensure compliance with the CCA, and whether this basis would or could apply (in whole or in part to the conduct proposed in the Authorisation (**Issue 3**).
2. We also note your email of 12 April 2021 inviting AHSA to comment on Honeysuckle Health's response regarding the rules for participation in the AHSA buying group (**Issue 4**).
3. Our responses are set out below.

Issue 1: AHSA is able to provide truly independent services to health insurers because it does not compete with them

4. As we explained in paragraph 5 of our submission dated 12 February 2021 (**our submission**), it is difficult to assess the precise scope of the conduct Honeysuckle Health is proposing. Notwithstanding the complaints made by AHSA and many other interested parties to the ACCC about the lack of detail of the 'conduct', Honeysuckle Health has still not provided sufficient detail to permit the ACCC and interested parties to meaningfully assess the effects of the conduct.
5. Prima facie at a very high and general level the conduct sought to be authorised is similar to the functions of AHSA. However, as Honeysuckle Health is not independent of its alter ego, nib, then exactly how the conduct is given effect to is unknown and a cause for concern.
6. However, what is clear is that Honeysuckle Health is proposing to offer healthcare buying services to nib's competitors, notwithstanding that nib is a 50 per cent owner of Honeysuckle Health. This ownership structure means there is a fundamental distinction between the conduct proposed in the authorisation and the conduct in which AHSA currently engages:

b. In contrast, nib is a 50 per cent owner of Honeysuckle Health. This means half of Honeysuckle Health's ownership competes with Honeysuckle Health's *own* customers in the markets for the supply of private insurance and the acquisition of healthcare buying services. nib is required by law to work in the best interests of its shareholders, but Honeysuckle Health and nib share a managing director and board members. This creates a conflict of duty that means that Honeysuckle Health member funds could never truly be certain that Honeysuckle Health would not preference nib's interests over those of other customers when it negotiates agreements with service providers. For example, nib (through Honeysuckle Health) could structure the pricing and payment provisions of hospital contracts in a way that gives nib lower pricing differentials to other funds. nib has a younger membership base than other healthcare funds and is exposed to different risks for the type and volume of hospital episodes under contract. A contract structure that favours nib would disadvantage other Honeysuckle Health customers, which have different customer demographics and contracting risk profiles with a likely predominance of older age cohorts and associated hospital episodes. These demographic differences could influence Honeysuckle Health's decision making when determining the rates paid for specific hospital episodes as defined payment amounts in contracts with hospitals, in that it could seek lower rates for hospital episodes more often associated with nib's demographic and offsetting higher rates for hospital episodes more often associated with other fund member demographics.

7. Honeysuckle Health's incentives to preference nib's interests mean that the services it proposes are qualitatively different to those provided by AHSA. Unlike AHSA, Honeysuckle Health's ownership structure precludes any credible suggestion that it could act as a genuine agent for its member funds.

Issue 2: Authorisation would reduce competition in the private health market and cause significant consumer harm

8. Authorisation would allow Honeysuckle Health and, by extension, nib to access the commercially sensitive information of other health insurers. This would jeopardise competition in the private health market.

9. If authorisation is granted, nib, through its ownership interest, will have direct knowledge of the commercially sensitive contracting and strategic information of every one of its competitors who join Honeysuckle Health. As the amended authorisation application states in paragraph 2.28, Honeysuckle Health "will negotiate new HPPAs and MPPAs on behalf of nib and all [member funds]" and "will negotiate one set of terms and conditions including price schedules, business rules for payment of benefits and quality and performance targets for all [member funds] for each HPPA or MPPA with a Provider." Approximately 90 per cent of health funds' costs are paid to healthcare providers. nib, through its 50 per cent shareholding and common board membership of Honeysuckle Health, will have the details of competitor funds' costs through its knowledge of their contracting arrangements with providers.

10. Accordingly, because nib has a 50 per cent ownership interest, for competition law purposes the authorisation must be assessed as if Honeysuckle is nib.

11. Accordingly nib will have access to competitively sensitive information of its competitors. In addition nib has the ability to negotiate agreements with hospital and medical professionals that are advantageous to nib and potentially disadvantageous to the other funds which use the nib contract negotiated by Honeysuckle Health.

12. Access to this information will make it easier for nib to acquire smaller funds and reduce competition. Even if nib never obtained details of funds' membership bases, the contracting information alone would be sufficient information due to the proportion these contracts comprise of funds' cost bases. Any small to medium fund that joins Honeysuckle Health will be immediately be more vulnerable to being a takeover target for nib, creating a real risk of further consolidation of the private healthcare industry to the detriment of healthy competition.

13. A reduction in the number of healthcare funds has the potential based on Nib's present gap scheme statistics to increase the gap fees paid by consumers and allow Honeysuckle Health to use its size to dictate terms to private hospitals (to nib's advantage alone, rather than any small and independent member funds). We refer to paragraph 52 of our submission, which demonstrates nib's poor performance when it comes to reducing gap fees for consumers. A reduction in private health consumer welfare and detrimental effects on healthcare providers (including doctors and hospitals) are such significant public harms that they are not worth risking.

14. Put simply, nib is a wolf in sheep's clothing trying to gain an anti-competitive advantage for itself through the vehicle of Honeysuckle Health.

15. For the reasons noted in our response to Issue 1, these competition risks do not arise from AHSA's conduct because AHSA is not in competition with its member funds nor is it controlled by any one member fund. Further, all competitively sensitive information obtained by AHSA is ring fenced from AHSA's competitor members.

Issue 3: There are no competition risks from AHSA's conduct

Issue 4: AHSA's membership rules are commercially necessary

21. AHSA agrees with Honeysuckle Health's conclusion that, as a matter of commercial reality, current members of AHSA or ARHG would not be able to split their contracting services across buying groups. However, this is because it would be inefficient for member funds to split their contracting services. It is not because of what Honeysuckle Health erroneously claims are "stringent" AHSA membership requirements.

22. Honeysuckle Health's statements demonstrate a fundamental misunderstanding of AHSA's contracts with its member funds, and the commercial necessity of its agency clause.

Correction of misleading statements made by Honeysuckle Health

29. Finally, AHSA wishes to respond to statements made by Honeysuckle Health in paragraphs 1.9 and 1.10 of their submission of 9 March 2021, in relation to public comments made by a member of AHSA's senior management about value based contracting. When heard in context, it is plain that the speaker was:

    a. explaining that some methods of value based contracting are more effective than others; and

    b. expressing the view that obtaining accurate and meaningful data on outcomes is the most challenging aspect of value based contracting.

30. Neither of these propositions contradict our submission (which we maintain) that AHSA is already achieving meaningful and effective value based contracting outcomes.

31. AHSA is more than happy to provide the ACCC a recording of the conference discussion so that the comments can be heard in their proper context.

Thank you for the opportunity to comment on these issues. Please don't hesitate to contact me if you require any further information.

Yours sincerely

Andrew Sando
Chief Executive Officer