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Best Practice
An evolution in medical software

6 October 2021

Mr. Darrell Channing
Director
Competition Exemptions
23 Marcus Clarke Street
Canberra ACT 2601

Attention: Gemma Smith (exemptions@accc.gov.au)

Dear Darrell,

Re: AA1000577 – WAPHA – submission

We wish to make a submission regarding the application by WA Primary Health Alliance (WAPHA) dated 14 September 2021 for authorisation under the *Competition and Consumer Act 2010 (Cth).*

We wish to advise that the PenCAT, POLAR and Primary Sense tool are approved commercial partner products of our Best Practice Software Partner Network. We also have commercial agreements with over 100 current partners – many of whom will be directly or indirectly impacted by the WAPHA Application and may be making a submission.

Best Practice Software vigorously objects to any such authorisation being granted to the applicant WAPHA, namely:

- interim authorisation for the period from 1 September 2021 until 30 April 2022; and
- authorisation for a period of 10 years.

Background

Best Practice Software is a leading supplier of Medical Software to the Primary Healthcare Industry in Australasia, supporting over 5,000+ Medical Clinics and 20,000+ General Practitioners (GPs). Our business was established nearly twenty years ago and works closely with not only our large customer base, but other key stakeholders such as the MSIA, Australian Digital Health Agency, RACGP, AMA, Services Australia, Department of Health and over 100+ integrated commercial partners.

Our software, and that of the 100+ Partners who integrate with our software, provide software solutions to the medical industry to:

- improve health outcomes and efficiencies through technology;
- enable important government initiatives, such as My Health Record, Telehealth and ePrescriptions;
- drive innovation amongst the medical community; and
- enable quality data and reporting services, with a focus on quality improvement.

We strongly urge that the commission carefully consider the dangerous precedent and long-term market implications of allowing a government funded body to be exempt from competition rules and market forces.

Role of PHNs

The guidelines relating to PHNs are quite clear in that they are to "commission and not build services". It appears that the Applicant is seeking authorisation not only become a software developer using public funds, but to do it without the normal market constraints and competition.

Practice Incentive Payments (PIP)

In 2019 the Department of Health introduced a scheme where GPs would be paid to supply a discreet data set of ten measurements to for public health statistics, research and health service planning. PHNs were tasked with collecting this data and ensuring participating GPs were paid.

GC PHN "Primary Sense" Project

While our commercial agreement with the GC PHN has been in place since 2019, we have not had contact from either GC PHN or WAPHA regarding this new proposal to create a "Primary Sense 2". We respectfully request that the Commission does not grant an interim authorisation as we have not had the opportunity to engage with our legal advisors or seek further information from GC PHN about their activities and whether they are in breach of our agreement. The data extracted via the Primary Sense tool is far more than what is required for GPs to qualify for the PIP.

Market activity

While there may have been an urgent need for new tools prior to the introduction of the PIP scheme in 2019, there are many more options available to practices who wish to extract data from their systems. While PenCAT and POLAR are the most popular data extractors, there are many others now in market and we are aware of organisations (including our own business) who have invested in such functionality and/or has it on their road map.

GPs do not need to use a special tool to extract the data required for PIP QI. More than twelve months ago we released a new tool in our Best Practice Premier (Bp Premier) software which can complete this task in a format that can then be sent securely to PHNs for processing. This tool is freely available to every practice using Bp Premier (currently more than 20,000) so if practices do not wish to pay for or install a separate data extraction tool, they can still qualify for their PIP. Our tool only collects the data required for PIP ensuring compliance with the Australian Privacy principles and ensuring that GPs are clear about what data is being shared and for what purpose. The government has not paid us to develop or maintain this tool.

Innovation and Competition

Existing software vendors would struggle to compete with a government funded software solution, that will be able to be provided to Practices at little or no cost. A wide-spread, government funded roll out of Primary Sense 2 could quickly lead to a situation where privately funded entities with existing products in market would fail or divert their investment to other projects, leading to a stagnant market. Practices could be "forced" to use an extraction tool that was developed primarily for the convenience of PHNs but not necessarily provide the wide range of other services to practices that other mature data extraction tools deliver.

Data Integrity and Security

While some PHNs may have well developed processes and procedures, not all have the resources or experience to properly manage data security and privacy.

Referring again to the PIP QI Project, several practices raised concerns that many PHNs did not have the experience to manage data securely and were collecting more data from practices than was required to qualify for practice incentive payments. The RACGP has identified several concerns with the way PHN's extract and manage data and is seeking to have these issues resolved by the Department of Health.

Concerns include:

- unclear privacy and security policies,
- inadequate agreements between PHNs and participating Practices over the extraction process and responsibilities,
- and misinformation.

The RACGP discovered that General Practices have been "***incorrectly advised***" they need to provide all of their practice data to PHNs to be eligible for practice incentive payments.

While the additional information may be valuable to PHNs for matters other than their role to collect the PIP data, we are concerned that the individual clinicians and patients may not be aware of how much could potentially be made identifiable and how it is being used. Compliance with the Australian Privacy Principles is a serious ongoing concern as only information for the consented purpose ought to be collected. Storage and management of this information is another issue.

Ongoing development and maintenance

The applicant has not provided any detail of how ongoing development costs and maintenance of the Primary Sense 2 tool will be funded. Without an appropriate ongoing funding model for maintenance, the tool is likely to degrade over time. The applicant (or partner PHNs) would need to establish, maintain and support a skilled software development team on staff. Such activity may be outside the mandate and role of PHNs.

Urgency and COVID

We are unaware of any reason why the Applicant needs urgent approval. In our meeting last week with members of your team there was mention of the ACCC making urgent approvals in relation to COVID. Data relating to COVID, vaccination statistics, identification of patients who have yet to be vaccinated etc, is already sourced via the existing practice management systems and completed vaccinations are reported directly to the Department of Health via the Australian Immunisation Register.

Creation of an Additional National Health Data Bank

We are concerned that the proposal will create a nation-wide Health Data Bank controlled by PHNs. This appears to be a duplication of the My Health Record (MyHR) project which to date, has cost more than $2B. The confusion this could cause would set Australia's digital health agenda backwards. Furthermore, a failure by a PHN to properly manage security and privacy of their data bank would almost inevitably damage the trust by Australians in the MyHR. Managing a national health data bank seems to conflict with the stated purpose of PHNs.

Practice Consultation

The extraction and supply of sensitive medical information is a complex area, requiring significant governance, oversight, and maintenance. The requirement to provide data to PHN's for government mandated reporting activities does not necessarily mean they should have access to all of the

practice data. Practices, Clinicians and Patients have the right to choose who, how, when and what data is extracted, as it relates to sensitive practice and personal information.

If a practice is told that they can use Primary Sense 2 for free to qualify for their PIP payment, does the PHN also fully disclose to every doctor and patient that all their data is being mined and interrogated for other purposes? Does a PHN have the right to scrutinize what an individual GP is paid? Or how profitable a practice may be?

It is also important to note that the existing Data Extraction Tools being used provide practices with other business critical services, such as Clinical Decision Support, Business Intelligence and Patient Engagement Tools. It would not be appropriate for PHNs to have unlimited access to such information.

The New Zealand Experience

Primary Health Organisations (PHOs) were set up in New Zealand (NZ) in the 1990s with a similar framework and role as the Australian PHN's. PHOs are managed by the District Health Boards (DHBs). In a recent review of the NZ Health and Disability Sector, a lack of clarity in the roles and responsibilities of PHO's in the procurement and development of digital technologies was identified. Concerns were raised that the size, scope and oversight of some IT projects were a potential barrier to digital transformation, stifled competition and went beyond the mandate and scope of the PHO's. The report also identified areas of significant duplication and waste.

As a result of the review and feedback from the community, clinicians and industry, the NZ government has decided to dismantle the PHO system and combine the responsibilities of the District Health Boards to create a new centralised entity by mid-2022 called Health New Zealand.

It is hoped that this new entity will have the capacity to better manage publicly funded IT projects and prevent failures such as in the case of the Waikato PHO's failed virtual health app called Smarthealth where over $25M NZD was spent on a patient engagement app that was never launched.

SUMMARY

As a major supplier of general practice software in Australasia we wish to formally object to the WA Primary Health Alliance Application for authorisation AA1000577 and respectfully request that it is rejected.

The Applicant has not shown any reason why urgent approval of this application should be considered. The PIP scheme was introduced more than two years ago and those Practices who wish to be involved are already doing so.

There are other competitors in the market who either are providing this functionality or have it in their road maps and are investing in such technology. If a practice is using Bp Premier and does not want to purchase additional data extraction software, they can use the in-built tool (for free) to extract and transfer the PIP QI mandated data.

The granting of an interim authorisation allows PHNs to use government funding to develop and establish a product in market anywhere in Australia. If this product starts being deployed to Practices whilst under the interim order, it will become extremely confusing and potentially complicated for Practices if moving away from an existing commercial product and then moving back to that product when a final submission is subsequently rejected. Health practitioners are in one of the busiest periods in history and the less confusion and complex their infrastructure, the better.

Furthermore, we are concerned that Australian Medical Practices will eventually be forced to use PHN developed and supplied products to continue to receive business critical funding (as was the case in New Zealand), thereby making the Australian medical software market completely unviable. This would not only stifle competition and innovation but could lead to possibly inferior tools for GPs and privacy risks for consumers.

We appreciate the opportunity to make this brief submission and look forward to your response.

Regards,

Lorraine Pyefinch

Chief Relationship Officer and Director