Healthscope

5 February 2021

Darryl Channing
Director
Competition Exemptions Branch
Australian Competition and Consumer Commission

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By email exemptions@accc.gov.au

Dear Mr Channing and Mr Pappa

AA1000542 – Honeysuckle Health and nib – Submission

Healthscope appreciates the opportunity to provide its views on the application by Honeysuckle Health Ltd (***Honeysuckle***) and nib health funds limited (***nib***) (together, the ***Applicants***) for authorisation of a new buying group for healthcare payers (***HH Buying Group***).

Healthscope is a leading provider of healthcare services in Australia, and employs over 18,000 staff and 17,500 accredited medical practitioners at 43 hospitals across Australia.

Healthscope has serious concerns with the application as it is currently framed, particularly in relation to the scope of the proposed conduct which has the clear potential for significant public detriment. In particular, the proposed authorisation:

- permits the creation of a buying group with up to 100% market share, creating a major imbalance in bargaining power between the HH Buying Group and health care providers;
- by creating such imbalances in bargaining power:
  - pushes contractual negotiations to a firmly payer-centric position, rather than allowing an appropriate allocation of risk and reward between insurers and health care providers, enabling both parties to make efficient investment decisions; and
  - distorts the allocation of funding to favour lower cost treatments, reducing the resources available for continued investment in high-cost infrastructure and training; and
- allows competing insurers to see the contractual terms negotiated by the HH Buying Group and then opt-out and negotiate separately, having seen the contractual terms and prices of its competitor.

Healthscope also has material reservations about the likelihood of the claimed public benefits being realised, especially compared to a counterfactual which includes the two existing and operational buying groups, the Australian Health Services Alliance (***AHSA***) and the Australian Regional Health Group (***ARHG***).

Healthscope would be happy to provide further information to the ACCC in relation to its concerns with the application that are outlined below.

1 Background – contextual matters

The application includes a number of claims about the private healthcare industry which are not correct, and which Healthscope considers are important to address to ensure that the proposed conduct is assessed in an appropriate contextual framework. In particular:

- **Healthcare providers do not charge supra-competitive prices.** The Applicants claim that private hospitals have bargaining power which enables them to charge supra-competitive prices. The Applicants offer no evidence supporting their claim, and Healthscope rejects any assertion that its prices are inefficient or exceed competitive levels. If private hospitals were able to charge supra-competitive prices, one would expect the amounts paid by insurers to hospitals to greatly exceed the costs incurred by hospitals. In reality, the growth rate of costs incurred by hospitals - particularly labour costs, which account for 60-70% of Healthscope's total costs - have consistently exceeded the growth rate in the amounts health insurers pay to hospitals.
- **The private health insurance sector is more concentrated than the private hospital sector.** In support of their assertions concerning the hospitals' bargaining power, the Applicants note that the five largest hospital provider groups account for over 50% of the market. However, it is relevant that only one hospital provider group (Ramsay) is noted as holding a market share of more than 14%. Further, in contrast to hospitals, the five largest health insurers have a combined market share of almost 80%, based on hospital policies.[1]
- **The significance of minimum benefit amounts should not be overstated.** Although insurers may be required to pay a minimum benefit amount to a hospital provider in the absence of a Hospital Purchaser Provider Agreement (***HPPAs***), a potential 15% decrease in revenue is significant to hospital providers. In addition to the direct financial implications, there can be interpersonal and reputational effects. Higher out-of-pocket expenses can negatively affect patients' perception of their healthcare experience and result in them selecting a competing hospital. It can also raise concerns among doctors, on whom hospitals rely for referrals. Whether or not to proceed without an HPPA with an insurer does, therefore, raise serious considerations for a private healthcare provider.

2 Likely detriment due to application scope

Healthscope recognises that buying groups which enable smaller players to combine their bargaining power will often generate public benefits. However, the Applicants have submitted an authorisation application of extraordinary scope, which raises considerable risk of public detriments.

In the absence of any limits on the types of insurers eligible to join the HH Buying Group or the total size of the HH Buying Group, Healthscope submits that authorisation ought not be granted.

2.1 Industry-wide scope of application

The scope of the proposed conduct goes beyond what is reasonable to remedy any potential imbalance of bargaining power between healthcare providers and small insurers. If granted, the authorisation would allow every healthcare payer to coordinate and collectively bargain with providers, including the major insurers, and would enable the HH Buying Group to represent up to 100% of the market.

Although the Applicants state that the major healthcare insurers are unlikely to join the buying group, authorisation of the proposed conduct would enable every payer to collectively bargain, and that is the basis upon which the public benefits and detriments should be assessed.

[1] APRA, Statistics (3 November 2020) <https://www.apra.gov.au/operations-of-private-health-insurers-annual-report>, table 3.

In any event, the application indicates an expectation that major insurers may acquire at least part of the contracting services to be provided by Honeysuckle. The application therefore anticipates at least some degree of coordination that involves the major insurers. For example, the major insurers might be involved in coordination in relation to data sharing and analytics, which could involve the establishment of benchmarks for contract negotiations. Even in the absence of full participation in the buying group, the major insurers may still be involved in coordinated conduct that has a material effect on competition.

It is self-evident that negotiations between a healthcare provider with even 21.6% market share (the market share of the largest provider, Ramsay) and a buying group with up to 100% market share would not produce competitive or efficient outcomes.

2.2 Potential detriments due to scope of application

An imbalance in bargaining power to the advantage of healthcare payers would do more than reduce the revenue earned by hospital operators pursuant to collectively bargained HPPAs. An economically inefficient reduction in revenue would likely reduce the ability of hospitals to invest in new technology and equipment, to maintain their wards, theatres and other facilities, to employ and retain staff and to otherwise engage in innovation.

In addition, in competitive negotiations, the scope of treatments funded and prices of those treatments would reflect an efficient allocation of risk and reward: treatments involving higher costs and higher risk would attract a correspondingly sufficient level of funding. However, if insurers bargain in a buying group of up to 100% market share, the level of funding directed at cost-intensive procedures could be substantially driven down. From Healthscope's experience, insurers prefer to fund lower cost procedures. A buying group with up to 100% would have much greater capacity to distort the allocation of funding to favour lower cost treatments, reducing the resources available for continued investment in high-cost infrastructure and training. Other potential effects could include a reduction in the availability of cost-intensive procedures for patients or increases in out of pocket expenses due to insufficient funding of treatments by insurers.

There is, therefore, a risk of material financial and clinical detriment to the public due to the scope of collective bargaining that would be authorised pursuant to the application.

3 Claimed public benefits

Healthscope also has material reservations about the claimed public benefits referred to in the application. In particular, for the reasons discussed in section 1, Healthscope disputes the claim that the proposed conduct would have the benefit of countervailing the bargaining power of healthcare providers and thereby leading to more efficient pricing. Further, Healthscope queries the extent to which the proposed conduct would generate a net additional benefit in respect of transaction cost efficiencies and value-based contracting.

3.1 The authorisation is unlikely to result in transaction cost savings and increased efficiencies

As currently drafted, the proposed conduct would likely add to (rather than streamline) the complexity of negotiations. For example a larger insurer like Medibank or Bupa could appoint Honeysuckle to negotiate on their behalf as part of the HH Buying Group, assess the negotiated terms, and opt out of the negotiated agreement; instead 'cherry picking' favourable terms from the negotiated agreement and then using their existing market power to drive down healthcare providers' prices further in individual negotiations. This raises a number of issues.

- There would be considerable uncertainty as to the application of any negotiated agreement with Honeysuckle. Healthcare providers would not know how many insurers they are dealing with when they negotiate through Honeysuckle, nor who those insurers are. When negotiating contractual terms and prices, the volume of demand represented by the relevant payer or buying group is relevant. Otherwise, the healthcare provider is operating in an information vacuum, unable to assess the value of the costs and benefits that can be attributed to any terms under negotiation.

- There would be a risk of duplicating negotiation processes, particularly in relation to larger private health insurers. The opt-in/opt-out nature of the HH Buying Group significantly diminishes the likelihood of transaction cost efficiencies.
- It would be anti-competitive for an insurer to see the contractual terms negotiated by the HH Buying Group and then opt-out of that buying group. That insurer would have seen the contractual terms and prices of its competitor.

Further, in order to present greater efficiencies than the AHSA buying group, the HH Buying Group would need to capture more market share than the 20% already represented by AHSA. This would involve obtaining well over half of AHSA members. Yet the Applicants have stated it would be an 'unlikely event' for them to capture all of AHSA's members and that the major insurers are unlikely to join the HH Buying Group.

3.2 The authorisation is unnecessary to enable value-based contracting and pricing

The Applicants claim that the proposed authorisation will enable healthcare insurers to engage in value-based contracting. There are three reasons why any public benefit flowing from the creation of the HH Buying Group would have limited public benefit in relation to value-based contracting.

- **The industry is already moving to value-based contracting and pricing.** It is unclear why a new buying group is needed to empower insurers to successfully adopt this approach, when the industry is already moving to a value-based approach.
- **Value-based contracting does not require coordination of the scope sought.** The Applicants claim that the HH Buying Group is necessary for value-based contracting because, otherwise, smaller healthcare insurers 'will not have access to the type and scale of data required'. It is not correct that value-based contracting requires coordination and sharing of data to the extent that would be encompassed by the proposed conduct if authorisation is granted in the terms sought (i.e. a buying group comprising up to 100% of payers). The existing buying group AHSA would already have access to a broad range of historical data, providing sufficient depth and breadth of information so as to ground value-based pricing analysis.
- **The scope of the proposed conduct would still likely result in inefficient pricing.** A dominant buying group comprising up to 100% of payers would push contractual consideration of value to a firmly payer-centric position, rather than facilitating settlement on a middle ground that both appropriately allocates risk and reward and allows the parties to make efficient business decisions. That is, inefficient pricing and its associated detriments would remain likely with a dominant buying group whether a 'value based' or 'fee for service' model is adopted.

4 Term of the Proposed Authorisation

Healthscope submits that the ACCC should not grant the authorisation without imposing conditions that limit its scope to ensure that the HH Buying Group does not exceed an appropriate market share and has a membership limited to smaller insurers and other payers. In addition, in circumstances where there are already two other established buying groups for insurers, any authorisation should be for a significantly shorter period to allow the ACCC to assess whether any of the claimed public benefits have in fact materialised. A ten year term is not necessary or appropriate for such an assessment to be undertaken.

In light of the above matters, Healthscope submits that Honeysuckle and nib's application for authorisation raises significant competition concerns, without sufficiently compelling public benefits. Healthscope submits that the claimed net public benefit should be scrutinised closely by the ACCC, and that authorisation of the proposed conduct is not appropriate in its current form.

Healthscope would be pleased to meet with the ACCC to discuss these issues and provide further information; some of which may need to be subject to confidentiality protections.

Please do not hesitate to contact me if you would like to discuss this letter in any more detail.

Yours sincerely

Richard Holbeach
General Counsel and Company Secretary
Healthscope Operations Pty Ltd