

11 June 2021

Darryl Channing
Director
Competition Exemptions Branch
Australian Competition and Consumer
Commission

Michael Pappa
Analyst
Competition Exemptions Branch
Australian Competition and Consumer
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By email exemptions@acc.gov.au

Dear Mr Channing and Mr Pappa

AA1000542 – Honeysuckle Health and nib – Submission in response to Draft Determination

Healthscope makes this submission in response to the ACCC's Draft Determination 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 strongly supports the ACCC's conclusion that, without significant restrictions, the authorisation of the HH Buying Group would likely result in public detriment. Healthscope also supports the shortened term of five years.

As expressed in Healthscope's submissions dated 5 February 2021 and 10 March 2021, Healthscope had serious concerns about the creation of a buying group with up to 100% market share (which the Applicant's recognised in their amended application), the practicalities of the proposed information sharing regime, and the claimed public benefits being realised by the existence of the HH Buying Group. Although some have been addressed, Healthscope has three continuing concerns:

- The 40% cap in respect of the Broad Clinical Partners Program (**BCPP**) only applies to private health insurers (**PHIs**), which means the HH Buying Group could actually constitute a market share of well over 40%.
- The involvement in the BCPP of Medibank Private Limited (**Medibank**), Bupa HI Pty Limited (**Bupa**), the Hospitals Contribution Fund of Australia Limited (**HCF**) or HBF Health Limited (**HBF**) in relation to its contractual arrangements with healthcare providers in Western Australia (**HBF WA**) (each a **Major PHI**) could have implications for hospital contracting.
- The uncertainty and complexity of the HH Buying Group, and the potential for anti-competitive information sharing undermine the claimed public benefits.

Further, Healthscope reiterates its rejection of the Applicants' claims that healthcare providers apply supra-competitive pricing or are sufficiently protected by statutorily required minimum payments, as well as the claim that the proposed HH Buying Group's value-based contracting approach constitutes a public benefit.

Healthscope would be pleased to provide further information to the ACCC in relation to its concerns outlined below.

1 Broad Clinical Partners Program (BCPP)

Healthscope considers that the ACCC's Final Determination should:

- include stricter parameters in relation to the ACCC's proposed 40% cap; or
- alternatively, exclude the involvement of the Major PHIs from the BCPP.

Healthscope accepts that a cap of 40% market share would mitigate much of the public detriment associated with the BCPP. However, in its current form, the cap allows for a greater proportion of health payers to engage the HH Buying Group's services as part of the BCPP. This is because the cap only applies to the market for PHIs, not all health payers. Based on the application for authorisation, PHIs account for approximately 68% of revenue received by private hospital operators, or 78% of revenue excluding individuals.¹ If the HH Buying Group represented 40% of the policies in the PHI market, as well as all other health payers (other than individuals), the total market share of the group with respect to the BCPP could reach 53%. If individuals were included in the calculations, this figure would be approximately 60%.

Healthscope proposes three potential ways to resolve this issue.

- **Apply the 40% cap to all healthcare payers eligible to join the HH Buying Group.** As defined in the application for authorisation, this would include international medical and travel insurance companies, government and semi-government payers of healthcare services (including the Department of Veterans Affairs scheme (*DVA*)) and any other payer of health services as notified by HH to the ACCC.
- **Reduce the cap to 30% market share of all PHIs in the relevant State or Territory.** Based on the revenue split mentioned above, if the cap on access to the HH Buying Group's services is 30% instead of 40%, the total potential market share by number of policies of the HH Buying Group would be 45%. This avoids the HH Buying Group having a majority of market share. Further, a 30% cap on the HH Buying Group is still sufficient to ensure that all non-Major PHIs can access the scheme.
- **Exclude Major PHIs from the BCPP.** Excluding Major PHIs from accessing services from the HH Buying Group in respect of the BCPP would address Healthscope's concern in respect of the cap, as explained below.

Healthscope agrees there is a need to exclude Major PHIs from the HH Buying Group. This is recognised in the Applicants' amended application. However, Healthscope considers there should be symmetry between hospital and medical specialist contracting. In addition to the increased market power that the HH Buying Group would have, allowing a Major PHI to participate in the HH Buying Group with respect to the BCPP could give rise to unforeseen consequences in their negotiations with hospitals. Major PHIs would have the incentive to demand certain conditions from hospitals which aligned with the terms reached as part of the BCPP. This could include a Major PHI reducing the amount it will pay to hospital operators for charges such as accommodation or operating theatre fees to offset any higher payments it has agreed to pay specialists for particular procedures as part of the BCPP (for example, short stay joint replacement procedures).

Excluding the involvement of Major PHIs avoids this scenario from arising and also addresses Healthscope's concern as to the 40% cap. This is because the total market share by number of policies of all PHIs (excluding Medibank, HBF, HCF and Bupa) comes to 28.7%.² The exclusion of Major PHIs would, in effect, have the same impact as reducing the cap to 30% market share by number of PHI policies but would be a much simpler condition for the ACCC to monitor and enforce.

¹ Further amended application for authorisation, 6 May 2021, paragraph 3.8.

² APRA, Statistics (3 November 2020) <<https://www.apra.gov.au/operations-of-private-health-insurers-annual-report>>, table 3.

2 The proposed conduct remains complex and involves potentially anti-competitive information sharing

Even with a narrower scope of HH Buyer Group members, the proposed conduct will still involve complexity and anti-competitive information sharing that undermines the claimed transaction cost savings and efficiencies.

- **There would be still be considerable complexity and uncertainty as to the application of any negotiated agreement with Honeysuckle.** As previously submitted, healthcare providers would not know how many insurers they are dealing with when they negotiate through Honeysuckle, nor who those insurers are. As participants can choose to take only some services from the HH Buying Group, there may be different cohorts of participants in each of the BCPP, hospital contracting, medical gap schemes and general treatment networks. This uncertainty and complexity affects the claimed benefits as healthcare providers will be unable to assess the value of the costs and benefits that can be attributed to any terms under negotiation. This may also involve duplication of negotiation processes.
- **There will be an increased ability of insurers to see the contractual terms and prices negotiated by their competitors.** The introduction of the HH Buyer Group, including the complexity associated with the different participants in different aspects of the proposed conduct and the ability of payers to be involved in multiple buying groups, still raises the risk of participants obtaining and sharing information about the terms and prices negotiated by their competitors.
- **The potential for the HH Buying Group to share with participants information that is factually incorrect or in dispute.** The ACCC states that the HH Buying Group could be sharing information 'such as contract breaches by a Provider, or the discovery of fraudulent claims made by a Provider'. Healthscope agrees that there is a public benefit associated with the ability of insurers to make informed choices as to their negotiations with healthcare providers on the basis of factually correct information on quality, efficiency, access and reliability. However, this public benefit does not arise if the information shared is either factually incorrect or in dispute. For example, while the HH Buying Group may believe that the healthcare provider has breached a contract or fraudulently made claims, this allegation may be disputed (and successfully so) by the healthcare provider. It would be problematic and counterproductive if the discovery of apparent breaches or fraud were shared with participants prior to those breaches or fraud being proven or agreed.

Accordingly, Healthscope requests that the Final Determination include a condition requiring all information sharing and data analytics engaged in by the HH Buying Group to exclude disputed or unproven data. Alternatively, and at the very least, the Applicant should be required to disclose to participants which data relied upon has been disputed by the relevant healthcare provider.

3 Other contextual matters relevant to claimed public benefits by the Applicants

Healthscope reiterates its position in its February and March submissions. Further to those submissions:

- **The HH Buying Group is not likely to result in more efficient hospital pricing.** The ACCC was correct to decline to accept the claim that the HH Buying Group would result in more efficient hospital pricing, which was based on the false premise that private hospitals have bargaining power which enables them to charge supra-competitive prices. Healthscope again rejects any assertion that its prices are inefficient or exceed competitive levels and as stated in Healthscope's 5 February 2021 submission, the Applicants offer no evidence

supporting this claim. Healthscope agrees with the ACCC's skepticism on this claimed public benefit and considers that the ACCC should maintain this position in its Final Determination.

- **The significance of minimum benefit amounts should not be overstated.** The Draft Determination makes reference to the Applicants' claim that potential public detriments relating to reduced competition between PHIs 'would be minimal [because] the Providers have statutory rights (assigned from members) to be paid benefits from insurers and Medicare and do not rely wholly on agreements with health insurers.' As submitted by Healthscope on 5 February 2021, a potential 15% decrease in revenue caused by a lack of Hospital Purchaser Provider Agreement (**HPPA**) is still very significant to hospital providers. In addition to the direct financial implications, there are also potential reputational effects, both in relation in patients' perception of the provider and doctors' concerns.
- **It is unclear what the Applicants mean by their 'value-based' approach to contracting.** As stated in the Draft Determination, it is unclear how different the HH Buying Group's 'value-based contracting' approach will be to methods currently used. Healthscope reiterates its previous submission that authorisation is unnecessary to enable value-based contracting and pricing, because the industry is already moving in this direction, but also notes the uncertainty about what this concept involves. As such, Healthscope agrees with the ACCC's scepticism as to any net public benefit created by the proposed contracting approach of the HH Buying Group, and submits that the proposed contracting approach of the HH Buying Group not be considered as producing a public benefit for the purposes of the ACCC's review.

Again, Healthscope would be pleased to meet with the ACCC to discuss these issues and provide further information; including confidential internal data supporting the above points.

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

Yours sincerely



Richard Holbeach
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Healthscope Operations Pty Ltd