

23 July 2021

Darryl Channing
Director
Competition Exemptions Branch
Australian Competition and Consumer
Commission
By email exemptions@acc.gov.au

Michael Pappa
Analyst
Competition Exemptions Branch
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Dear Mr Channing and Mr Pappa

AA1000542 – Honeysuckle Health and nib – Further submission in response to Draft Determination

Healthscope makes this further submission following the pre-decision conference, held on 8 July 2021, in relation to the application by Honeysuckle Health Ltd and nib health funds limited (together, the **Applicants**) for authorisation of a new buying group for healthcare payers (**HH Buying Group**).

Healthscope makes this submission having regard to the matters discussed at the pre-decision conference, including the ACCC's indication at the conclusion of the pre-decision conference that further written submissions on its proposed condition (among other things) would be useful. Healthscope also considers it important to address the matters raised in relation to the ACCC's proposed condition in the Applicants' further submission dated 30 June 2021.

Healthscope has outlined its concerns relating to the authorisation sought by the Applicants in submissions dated 5 February 2021, 10 March 2021 and 11 June 2021. As stated in our submission of 11 June 2021, Healthscope acknowledges that some of its initial concerns have been addressed but that concerns remain in relation to the following matters:

- The sufficiency of the ACCC's proposed condition which would impose a 40% market share cap in respect of the Broad Clinical Partners Program (**BCPP**).
- The uncertainty and complexity of the HH Buying Group, and the potential for anti-competitive information sharing to undermine the claimed public benefits.
- A number of other contextual matters and claims relied on in the application, which Healthscope disputes.

1 Condition relating to the BCPP

Healthscope maintains that the conditions imposed by the ACCC ought to include stricter parameters in relation to the ACCC's proposed 40% cap or, alternatively, exclude the involvement of the major private health insurers (**PHIs**) from the BCPP (Medibank, Bupa, HCF or HBF WA (the **Major PHIs**)).

Given that the proposed 40% cap in respect of the BCPP would only apply to PHIs, the HH Buying Group could still represent over 50% of payers in the market, and could include the Major PHIs. Such an outcome would still provide the HH Buying Group with a significant degree of market power, and create a significant imbalance in bargaining power in

negotiations with medical specialists and other public detriments of the kind recognised by the ACCC in its draft determination.¹

In addition, 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. For example, as discussed in our 11 June 2021 submission, Major PHIs would have the incentive to demand certain conditions from hospitals which aligned with the terms reached as part of the BCPP including the reduction of amounts paid to hospital operators for charges such as accommodation or operating theatre fees.

The Applicants, in their submission dated 30 June 2021, submit that the proposed 40% market share cap relating to the BCPP be increased to 60%. The Applicants seek this increase in order to ensure that at least one large insurer can join the HH Buying Group in respect of the BCPP at a national level. Healthscope strongly opposes such an increase to the market share cap as it would only serve to exacerbate its concerns about a 40% cap by providing even greater market power to the buying group and further disparity in bargaining power. Based on the PHIs accounting for approximately 78% of private hospital revenue excluding individuals,² with a 60% market share cap in relation to PHI policies, the total market share of the group with respect to the BCPP could reach 69% (excluding individuals). Accordingly, Healthscope submits that the ACCC should not adopt such a change to its proposed condition of authorisation.

Healthscope maintains that, to appropriately mitigate the risks of public detriment, there should be symmetry in the potential composition of the HH Buying Group relating to hospital and specialist contracting (including the BCPP). As outlined in our submission dated 11 June 2021, a condition which excludes the Major PHIs from the BCPP would be the simplest option for the ACCC to monitor and enforce, however potential alternatives to mitigate the risk of public detriment may be to:

- apply the 40% cap to all healthcare payers eligible to join the HH Buying Group; or
- reduce the cap to a 30% market share of all PHI policies in each State or Territory.

2 Complexity, uncertainty and information sharing

As outlined in our submission of 11 June 2021, 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 still be considerable complexity and uncertainty as to the application of any negotiated agreement with Honeysuckle. Healthcare providers would not know how many insurers they are dealing with when negotiating through Honeysuckle, nor who those insurers are, including because insurers can also opt out of the HH Buying Group or a negotiated agreement. These features of the proposed conduct involve consequential uncertainty about the value of costs and benefits attributable to the terms under negotiation and likely duplication in negotiations.
- There will be an increased ability of insurers to see the contractual terms and prices negotiated by their competitors. This may arise as a result of the ability of insurers participating in but then opting out of the HH Buying Group, or otherwise sharing information about terms and prices in circumstances where different insurers may participate in different aspects of the proposed conduct or be involved in multiple buying groups.

¹ ACCC draft determination dated 21 May 2021 in relation to application AA1000542, paragraphs 4.103-4.107.

² Further amended application for authorisation, 6 May 2021, paragraph 3.8.

- There is also a risk that the HH Buying Group would share with participants, or undertaking data analytics based on, information that is factually incorrect or in dispute (including in relation to contractual breaches or fraudulent claims), and the difficulties that a healthcare provider would face in challenging the HH Buying Group's reliance on disputed data was raised by a number of participants at the pre-decision conference. This affects the magnitude of the claimed public benefits associated with improved information and access to data analytics. Accordingly, Healthscope reiterates its submission that:
 - The ACCC impose 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

Healthscope maintains the position stated in its February and June submissions in relation to background and contextual matters. In particular, Healthscope reiterates that:

- The HH Buying Group is not likely to result in more efficient hospital pricing and the applicants have offered no evidence to support their claim that private hospitals have bargaining power which enables them to charge supra-competitive prices.
- The significance of minimum benefit amounts should not be overstated when assessing the potential public detriments relating to reduced competition between PHIs.
- There remains uncertainty about what is meant by the Applicant's 'value-based' approach to contracting and it is unclear how different it will be to methods currently used. Accordingly, Healthscope considers that the Applicants' proposed contracting approach should not be considered to result in a likely public benefit for the purposes of the ACCC's current assessment of the proposed conduct.

As stated in previous submissions, Healthscope would be pleased to meet with the ACCC to discuss these issues and provide further information the ACCC considers would be beneficial to its assessment of the proposed conduct.

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