29 October 2021

Mr Daryl Channing
Director, Competition Exemptions
ACCC
23 Marcus Clarke Street
CANBERRA, ACT 2601

Objection to WA Primary Health Alliance (WAPHA) application AA1000577 – Full authorisation

Dear Daryl,

The MediSecure response to WAPHA application AA1000577 for Authorisation follows. Except for the specific arguments against urgency articulated in our letter of 01 October 2021, the same basic themes regarding public interest and harm to the market apply.

We will address specific sections of the application in re-prosecuting those themes in sequential order. However, having re-evaluated the application, our interim conclusion is reinforced:

WAPHA, on behalf of the organisations responsible for the Primary Health Networks (PHNs) intending to become part of the proposed conduct, seek approval to act in a concerted manner to gain presence in an established market that:

- Will substantially lessen competition by providing a direct benefit to one of the current market incumbents (Primary Care Gold Coast Limited), that, as part of this submission, "has assigned its intellectual property rights ... to the Participating PHNs"[1] that would otherwise be required to expand its market share by offering its services in competition with the other incumbents defined in this submission.
- Will acquire market share for WAPHA et al. at the expense of the other incumbents defined in this submission by offering Primary Sense 2 to GP clinics under a "no cost licence"[2] that would replace the current no-cost license under which GP clinics access the current market offerings.
- Has the expressed intent of "Decreasing the costs incurred by the Participating PHNs for the use of data extraction tools".

Further, WAPHA et al. include in their submission the expressed intent to disrupt other established clinical software markets, specifically the market for clinical decision support software (CDSS)[3]. MediSecure is concerned that this submission may constitute the first of a series of attempts to fly under the radar of established competition protocols to create an alternative medical software market. This alternative market would be owned and operated by government-funded entities that ultimately commission services from or on behalf of the users of that market's products.

We, therefore, request that the Commission consider the precedent set by this application and accordingly reject it.

[1] Paragraph 2.1.8
[2] Paragraph 2.1.17
[3] Paragraph 4.1.4

1.3 Business Activities

The Department of Health describes the three primary roles of PHNs by stating, "They:

- Commission health services to meet the needs of people in their regions and address gaps in primary health care
- Work closely with general practitioners (GPs) and other health professionals to build the capacity of the health workforce capacity to deliver high-quality care.
- Integrate health services at the local level to create a better experience for people, encourage better use of health resources, and eliminate service duplication."[4]

Further, the Department states, "PHNs do not provide health services themselves. Instead they commission them and support services to improve efficiency".[4]

In seeking to develop a competing data extraction tool and service, WAPHA et al. directly conflict with the first of their three primary roles.

Further, in seeking to expand and disrupt an established market, they have failed to make the case does not prevent them from fulfilling their mission, the applicants are creating service duplication in the data extraction space, directly contradicting their third role.

1.3.13 – 1.3.15 Primary Health Insights

As described in the submission, Primary Health Insights is an established data aggregation vehicle from which the principle benefits for PHNs and the Public can be derived.

Assuming this data repository and analytics platform is populated with the data extracted by the incumbents of the data extraction market (it would have no discernable value were this not the case), WAPHA et al. do not need to disrupt and enter the current market.

Their core data requirements appear to be currently fulfilled and any improvements in responsiveness and outcomes can be addressed as appropriate through either:

- Management of service level agreements with the incumbents; or
- Execution of performance improvements within Primary Health Insights itself.

2.1.19 Impeding the ability of GP clinics to use other data extraction tools

The applicants state that "Primary Sense 2 will not impede the ability of a GP clinic to also use POLAR or CAT Plus (or any other data extraction tool) from a technical or information technology perspective".

While factually accurate, WAPHA et al. omit the principal competitive impact. By offering Primary Sense 2 under a "no cost license"[2] GP clinics wishing to use POLAR or CAT Plus will be required to enter a commercial 'for fee' contract for access to tools that will have been provided under the "no cost license" arrangements to be assumed by Primary Sense 2.

Incurring a new cost clearly represents an absolute impediment to using other data extraction tools.

2.3.1 Reasons for the proposed conduct

The applicants argue that the proposed conduct is required to enable PHNs to deliver on their objectives.

However, the current data extraction regimes, the use of that data by PHNs today, the establishment of Primary Health Insights and the fact that all 31 PHNs undertake their commissioning cycle[4] responsibilities on an annual basis refutes the implication that they are failing to meet their objectives.

[4] https://www.health.gov.au/initiatives-and-programs/phn/what-phns-do

The applicants also suggest that the proposed conduct will provide “an ability to determine data mapping standards, rules and approaches”. However, in their description of Primary Health Insights (paragraphs 1.3.13 – 1.3.15), WAPHA et al. describe a “national data storage and analytics solution platform … which is secure, powerful and robust that assures data integrity and easy to use reporting and analytics”.

To achieve these outcomes, Primary Health Insights must already have addressed the suggested reasons for the proposed conduct relating to data mapping standards, rules and approaches across the current data extraction tool outputs. Such a reason for the proposed conduct must therefore be considered questionable.

This submission section also suggests that the real-time or near real-time envisaged by the proposed conduct will materially improve service design and the commissioning of primary health services that respond to population needs.

However, in addition to our comments above about how responsiveness and outcomes improvement can be improved without resorting to manipulation of an established market, this use case does not align with the commissioning cycle they undertake on behalf of the Department of Health and their geographic population. PHNs commission services on an annual basis; public health service commissioning is not a real-time activity.

Finally under this section, WAPHA et al. infer a data security risk and inappropriate commercialisation of health care data. There is no evidence in the submission to substantiate such an inference, nor will the disruption of the current market change the privacy risk inherent in transmitting data between GP and PHN systems.

3.1.9 ‘Buy-back’ of licenses

Lastly, the proposed ‘buy-back’ of licenses suggested by the applicants undermines the cost savings for PHNs argument raised under paragraph 2.3.1 (b).

The submission builds a case for delivering services outside the scope of the PHN remit, argues cost saving as one principal benefit of the proposed conduct, suggests the benefits already in place from Primary Health Insights will be accrued again and attempts to use its postulated cost savings to ‘buy back’ licenses from the incumbents it seeks to displace.

It is flawed, inaccurate and will deliver market dominance for a joint venture owned by not-for-profit businesses that exist as an extension of government policy in primary care. If PHNs are disbanded in the future due to policy shifts, as their Medicare Local predecessors were, a market will have been disrupted by the concerted practice of entities that will cease to exist but have the opportunity to morph into a private, virtual monopoly business.

Ultimately the proposal harms the market for no public benefit and has significant potential for downstream public harm. It should be rejected.

Yours Sincerely,

Paul Frosdick

Chief Executive Officer