AUSTRALIAN DENTAL ASSOCIATION

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Mr Darrell Channing
Director
Competition Exemptions Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 1111

By email: exemptions@accc.gov.au

Dear Mr Channing

Thank you for providing the Australian Dental Association (ADA) with the opportunity to provide a submission to the Honeysuckle Health and nib (the Applicants) application for Authorisation AA1000542.

The ADA is the peak body representing dentistry in Australia. It has over 16,000 members working across public and private sectors operating more than 7,500 small business across Australia.

We understand that the Applicants are seeking authorisation for ten years to form and operate a buying group to collectively negotiate and administer contracts with healthcare providers including dentists. The ADA is concerned about this application for the myriad of reasons that have previously been submitted to the ACCC in response to similar applications by health funds and outlined in detail in our many submissions to the ACCC's consultations in preparation for its annual report to the Senate on 'any anti-competitive or other practices by health funds. In the interests of brevity, we will not repeat them here, but we do suggest you review those submissions and take the comments within them into consideration while reviewing this application.

The ADA does not support this application.

The proposed authorisation specifically refers to the four largest health insurers and states "the most likely Participants are private health insurers". It further suggests that no boycott will occur as a result.

Health insurers currently individually boycott service providers unwilling to accept "take it or leave it" contracts from health insurance companies. For example, BUPA recently wrote to all dentists in Australia (and possibly all primary health care providers) indicating that the mere provision of a service to a person who had purchased a BUPA insurance product is an acceptance of contract terms determined by BUPA. BUPA explicitly stated that if those terms are not accepted, a practitioner is to notify BUPA and that practice will be 'de-recognised', upon which BUPA will not pay any claim by the patient under the patient's policy for treatment by that provider. This authorisation would have the effect of significantly impacting many of the small business' represented by the ADA if a buying group of large health insurers (BUPA, Medibank, HCF and NIB) were to pose the same conditions as is currently being applied by BUPA.

Adding to the concern, the authorisation to include ability for the provision of services under existing government schemes which are open to both public and private dental services may result in small businesses being completely locked out and service delivery restricted for patients.

While there has been a reticence in the regulatory space to acknowledge the impact of the very material power imbalance between large corporations and small healthcare businesses, each new contract results in incremental changes that over time have had a detrimental impact on patient choice and business viability. Importantly, each new contract extends the reach of insurers in relation to clinical matters and audit powers to seek to claw back from the small business funds properly earned through the provision of a legitimate service to a patient. That being that a dentist and a patient agree on a course of treatment and then a health insurance company later decides that they have concluded with no genuine right of appeal and without discussion with the patient, that the service doesn't meet the company's self-determined (and usually opaque) business rules Any attempt to debate the merits may be met with 'de-recognition'; derecognition results in the patient receiving no rebates for any services provided by that health care practitioner. Even a legitimate action to recover the difference from the patient who entered the contract is met with a vehement response by some health insurers who may join this buying group.

Examples from the recent BUPA terms include clinical documentation requirements beyond the requirements of the Dental Board of Australia (thus opening the door for 'recoveries' should a practitioner practice competently but not in accordance with BUPAs terms) and inserts the ability for BUPA to share data collected from a small business with other BUPA entities, a remarkable condition given BUPA own the global BUPA dental business, the largest dental provider on the planet. BUPA in their latest terms even requires the use of secure messaging schemes - technology not yet generally available to our members. The long-held argument to temper the concerns of our small business owners has been that they can focus on patients with a broad spectrum of health insurance products from a range of companies. Under this proposal, that ability would end with a ten-year window for health insurers to exploit it.

While we appreciate that health insurers are keen to ensure an appropriate balance in market share between them and large prosthesis manufacturers or large hospital groups, they have cast a very wide net that captures a significant number of small businesses. There is already a marked imbalance of market power between health insurers and small community-based health practices. Extending the ability for health insurers to collectively use (or misuse) this very significant imbalance of market power is unconscionable.

Do not hesitate to get in touch with our CEO, Mr Damian Mitsch if you would like to discuss this matter further on [redacted] or by email to [redacted]

Yours sincerely

[redacted]

Dr R. Mark Hutton
Federal President