
1 October 2021

URGENT

Mr Darrell Channing
Director
Competition Exemptions
23 Marcus Clarke Street Canberra ACT 2601 GPO Box 3131
Canberra ACT 2601

Attention: Gemma Smith

Dear Darrell

[Objection to WA Primary Health Alliance \(WAPHA\) application for authorisation AA1000577 – interested party consultation](#)

We have just received a copy of notice dated 21 September 2021 by the ACCC. It relates to an application by WAPHA dated 14 September for interim exemption under *Competition and Consumer Act 2010* (Cth). Our Association vigorously objects to any such exemption being granted pursuant to the interim application and exemption for any longer period, namely the decade sought by the Applicant WAPHA.

The [Medical Software Industry Association Ltd](#) (“MSIA”) is the peak body for medical software companies in Australia. It was established over 20 years ago and works closely with over 85 health stakeholders including the Department of Health, Services Australia, RACGP, AMA, Pharmacy Guild, PSA, Australian Digital Health Agency and many other private and public organisations. Our industry exists to:

- improve health outcomes and efficiencies through technology;
- ensure that competition thrives to increase innovation and productivity, and to
- grow Australia’s digital health industry and digital economy.

The MSIA and many of its members have worked with various PHNs and their predecessors over many years and are supportive of the work which they were created to perform, namely strengthening of primary health communities and commissioning services for their local health services.

However, the proposal by the Applicant WAPHA would severely impact all these initiatives by our industry, which has been praised by the Minister of Health for its positive response to recent crises in Australia including the 2019 Bushfires and the ongoing COVID-19 response.

We note with great concern a number of aspects of the application including:

1. **Lack of Notice to Relevant parties** - The Applicant’s erroneous or deliberate omission in Section 6 of the Application to advise the ACCC that the MSIA would be an interested party or market participant. The Applicant WAPHA is well aware of the MSIA and such an omission we hope was an error and not intended to avoid the appropriate transparency.
2. **Lack of Appropriate Broad Consultation** - Likewise, a number of other entities like the University of Melbourne GRAHNITE team would be affected but are not listed. Large

organisations like Quantum, which are contracted to do extraction work by our members and the Government are not listed as impacted. Yet another example of major gaps in the consultation.

3. **Lack of Transparency** - Health data extraction is one of the areas of key interest to a number of not for profits, commercial and government entities. All of these should be given a reasonable time, at least one (1) month, to review all and any documentation following an appropriate circulation to all interested parties. The lack of transparency is of the greatest concern in this instance when public funds are being expended by the Applicant WAPHA for the purposes of the Application.
4. **Impact on Industry** - The MSIA has almost 150 company members and other collaborators. All of these organisations may be impacted by this application both specifically or indirectly. To date, only 2 have been notified.
5. **Purpose of PHNs to Commission** - The Application by WAPHA requires detailed examination and testing of its assertions. For example, in Section 1.3 it states its purpose, but omits one of the prime reasons for PHNs to exist. A key purpose of the PHNs is to commission and not build services. The proposed application is demonstrative of a blatant disregard of this primary purpose. The Applicant is seeking authorisation not only to develop commercial software but to do it without the normal market constraints.
6. **Innovation and Competition** - Decades of investment and sunk costs into innovation have been expended in software development. If an application such as the one by the Applicant - (an entity funded by Government to commission) - was to succeed, the level of future investment would be impacted to the detriment of the digital economy, competition and innovation.
7. **The Australian Digital Health Agency** - The vision of the Australian Digital Health Agency ("ADHA") is to have a vibrant innovative digital health industry. This is not possible if Government funded parties ignore the purpose and attempt to avoid the transparency and equity of a fair playing field. The Australian Digital Health Agency needs the opportunity for consultation on this area which affects the most personal information of Australians and how it is managed.

The robust data management of the My Health Record is an exemplar but could be severely impacted if the work by the Applicant WAPHA proceeds without forensic examination. The broader community needs to have confidence in what the Applicant WAPHA is doing, how it manages data and why it is competing with the existing software market in Australia and seeking to do so without appropriate regulation

MSIA SUBMISSIONS:

1. The Application by Applicant WAPHA requires a full consultation by the industry peak body, the MSIA. In addition, there needs to be extensive communication about this Application to ensure all other affected parties are aware of the Application and its very serious and unintended consequences;
2. The MSIA requires at least one month for all of its member companies and stakeholders to consider the Application and make appropriate submissions in response, and
3. The Department of Health, Department of Finance, Services Australia, the Productivity Commission and other Agencies require briefing on the impact that such an Application would have on healthcare in Australia. The MSIA is willing to work with the ACCC to effect this as it will have deep and permanent ramifications if it is not

considered in depth by all these entities, particularly for the PM&C and the work it is currently undertaking to ignite Australia's Digital Economy.

We appreciate the opportunity to make this brief submission and look forward to your response for a meeting to discuss further.

Yours Sincerely



Emma Hossack
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CEO