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5 August 2024

Hannah Craig
Analyst
Mergers, Exemptions & Digital Division
Australian Competition & Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

BY EMAIL

Dear Ms Craig

Re: Catholic Health Australia Reauthorisation Application AA1000677-1

We act for Catholic Health Australia Limited (**CHA**) (**the Applicant**).

We refer to our reauthorisation application dated 25 July 2024 (**Application**) and your email dated 1 August 2024 requesting further details relating to our interim authorisation request (**Information Request**). Capitalised terms are as defined in the Application unless otherwise stated.

Our response to the Information Request is as follows:

1. The urgency of the need for interim authorisation

The Application comprises of eight different not-for-profit private hospital operators with diverse organisational structures, in addition to CHA. This is a relatively large number of entities (all of whom are operating under challenging financial circumstances) which raises competing demands on each applicant's time. While the applicants undertook their best endeavours to prioritise the application, it nonetheless took longer than expected for all the applicants to be able to effectively and meaningfully engage with the draft application before it was in a form ready for lodgement.

We also note that:

- (i) the COVID-19 pandemic and its aftermath significantly affected the applicants' resources. This included high staff turnover, which also affected key personnel involved in the 2014 authorisation A91400 (**2014 Authorisation**) that is currently on foot – which necessitated more time spent on information gathering and review;
- (ii) the applicants' operations have been under well-publicised strain (as is much of the national health system), which further limited the resources which was able to be dedicated to the application;
- (iii) concurrent with the applicants' navigating extremely challenging financial circumstances, the applicants have also had to dedicate significant resources and time to engage extensively (more than usual) with Government and the sector over the last 18 months, including:

- engagement with the Commonwealth Government throughout 2022-23 and leading up to March 2024 around the Prostheses Reforms which have significant financial implications for the sector;
- ongoing engagement with the Commonwealth Government and the sector around private hospital viability (including the Government's current review into the sector as has been publicised in media and has required significant internal resourcing from each Member); and
- ongoing engagement with the Commonwealth Government and the sector around the new Aged Care Act and Taskforce.

(iv) Notwithstanding the above challenges, the applicants commenced pre-lodgement discussions with the ACCC in May 2024, demonstrating the applicants' good faith efforts to work with the ACCC despite the sector's material capacity constraints.

2. The extent to which the relevant market will change if interim authorisation is granted

We note that the current authorisation expires on 5 September 2024 and the ACCC has noted it will not have concluded its assessment of the substantive application for re-authorisation by that date. A grant of interim authorisation will support a maintenance of status quo (and do no more) between the expiry of the 2014 Authorisation and the conclusion of the ACCC's decision-making processes relating to the substantive reauthorisation application.

In particular, if granted, the interim authorisation will enable the maintenance of the current status quo in both the Health Services Market and the Joint Purchasing Markets and enable the applicants to operate on a 'business as usual' basis. The status quo has existed in its current form (or in a substantively similar form) for the past 20 years. The applicants have requested interim authorisation for the same conduct that is currently authorised under the 2014 Authorisation. The applicants have not sought interim authorisation for any variation.

3. the possible harm, if any, to the applicant if a grant of interim authorisation is denied

If a grant of interim authorisation is denied, it would likely introduce a degree of (short term) significant uncertainty and disruption that would be costly for the applicants and all third parties and potentially also unnecessary (in the event the ACCC decides to allow the Proposed Conduct via final determination). This avoidable uncertainty and disruption is highly detrimental to the applicants at a time where the applicants are operating in challenging financial circumstances.

We also note that:

- (i) as set out in the Application, there are existing contractual arrangements that would have to be unwound, and current collective negotiations ceased, at unclear but likely significant expense and time for the applicants;
- (ii) there are other ongoing projects that are currently undertaken pursuant to the 2014 Authorisation that would be immediately suspended at unclear but likely significant expense, including:





4. the possible harm to other parties (such as customers and competitors) if a request for interim authorisation is granted or denied

If a request for interim authorisation is denied, given the extended period of time under which the relevant markets have operated (which includes the conduct subject to the interim authorisation request), a significant number of suppliers, health insurers and other Funding Organisations would need to be educated and informed about any material change and adjust their systems and processes within a relatively short period of time.

It is possible that suppliers will face higher short-term costs, in the event that the applicants lose the ability to operate collectively, due to the sudden and disorderly re-arrangements and resulting increases in transaction processes and costs.

5. any possible public benefits or detriments that the ACCC can assess at the time of considering the request for interim authorisation.

The ACCC has previously concluded that the conduct would result in net public benefits as set out in paragraphs 118 – 121 of its 2014 Authorisation final determination, including that the conduct will:

- (i) result in transaction cost savings and efficiencies (including rationalisation of negotiations);
- (ii) address information asymmetries; and
- (iii) enable hospitals to identify and benchmark best practices to improve clinical quality and safety.

The ACCC also noted in its 2014 Authorisation that the applicants are not-for-profit operators and provide “*valued charitable services*” and accepted that the above efficiencies and savings will enable the applicants to engage in “*greater provision of these services*.”

We consider that these public benefits are continuing, clear and material and will no longer be realised absent the grant of an interim authorisation.

Please do not hesitate to contact Aldo Nicotra on [REDACTED] or Mei Gong on [REDACTED] if you would like to discuss this letter and/or the reauthorisation application.

Yours faithfully

