

21 July 2021



Mr Darrell Channing
Director
Competition Exemptions Branch
Australian Competition and Consumer Commission
By email: exemptions@accc.gov.au

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Dear Mr Channing

Re AA1000542 Honeysuckle Health and nib - submission

The AMA has made two submissions in relation to the above application and also appeared at the conference organised by the ACCC on 8 July 2021.

The AMA stands by its earlier submissions and nothing we have seen from the applicant or in the subsequent ACCC draft determination has assuaged our serious concerns about the detrimental impact the proposed authorisation will have on patients, the delivery of health care and smaller private health funds if it is allowed to proceed.

Given our critical concerns about this application, it is important that the AMA reiterates some of the points made at the above conference and in our earlier submissions. Fundamentally, the above application is anti-competitive and would provide Honeysuckle Health with the opportunity to achieve a substantial level of market power that would be detrimental to competition and contrary to the intent of the Competition and Consumer Act.

The ACCC may grant authorisation if it is satisfied that either:

1. the proposed conduct would not be likely to substantially lessen competition or
2. the likely public benefit from the conduct outweighs the likely public detriment.

In relation to (1) above, this is something that clearly concerned the ACCC, evidenced in its draft authorisation by the inclusion of market share caps. However, in our respectful submission, the proposed authorisation still has the potential to substantially lessen competition. The caps suggested by the ACCC are extraordinarily generous and seem well above the benchmarks of 15 to 20 percent that would be cause for concern for regulators in other jurisdictions like the United States and the European Union.

The ACCC also needs to bear in mind that the private health insurance market is dominated by a small number of private health insurers and it is likely that Honeysuckle Health would simply join this list of dominant players at the expense of smaller funds.

In relation to (2), the public benefits assessed by the ACCC are very small and, should Honeysuckle Health become the dominant or sole buying group, result in no net public benefit. In contrast, stakeholders have raised concerns about the significant public detriment arising from the degree of market power that Honeysuckle Health would possess and extent to which this would allow it to engage in anticompetitive behaviour and unilaterally dictate terms and conditions to providers. Many of these providers, including doctors, are small businesses with very little bargaining power and unable to form their own bargaining groups that could counter this.

In this context, there is real and justified concern that Honeysuckle Health would use its market power to pursue managed care arrangements. It is completely disingenuous for nib and Honeysuckle Health to continue to dismiss this widely held concern, recognising that the well-known managed care organisation, the Cigna Corporation, is part of this application and will play a fundamental role in the proposed new arrangements.

Nothing in the ACCC's proposed conditions or the broader regulatory environment can protect against this managed care agenda, bearing in mind that managed care can be introduced through a variety of means. This includes the more direct approach through contract requirements or in more subtle ways such as funding models that effectively force patients into insurer driven care arrangements.

Unless the ACCC is prepared to insert specific conditions that further limit Honeysuckle Health's potential market share and specifically preclude authorisation of any contractual, funding, or other arrangement that limits patient choice and/or seeks to interfere with clinician autonomy, the proposed authorisation cannot satisfy the two tests outlined above.

Australia has an excellent health care system that delivers world leading health outcomes at very modest cost. This application is a Trojan Horse seeking to create an environment allowing Honeysuckle Health to pursue American style health care programs that we know in the long run will limit patient choice, deny access to care and ultimately result in greater bureaucracy, administration, and cost.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Omar Khorshid', with a stylized, cursive flourish.

Dr Omar Khorshid
President