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Optometry Australia

Submission into the Federal Government's Competition Policy Review

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Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Introduction

Optometry Australia (formerly Optometrists Association Australia) welcomes the opportunity to provide comment into the Federal Government's timely review of competition policy and law in Australia.

Optometry Australia is the national peak body for the optometry profession, comprising a membership base of over 90% of all optometrists within Australia. The optometry profession consists of a workforce of approx. 4,500 nationally registered optometrists from over 2,900 practices nationally, the majority which are individual small business entities. As the cornerstone of primary eye care in Australia, optometry plays a key role in the prevention, early detection and management of eye disease and vision loss.

Most optometry practices provide a complementary mix of clinical services and retail of optical appliances, both which are important for optimal patient outcomes and practice sustainability. Optometry Australia believes competition policy, particularly relating to optometry practices, which are subject to highly competitive market forces of supply and demand, should be underpinned by the principle of fairness. Fair and robust competition is vital for the efficient and sustainable delivery of primary eye care and the achievement of quality patient outcomes for the community.

Although many aspects of competition policy are relevant to optometry, the focus of this submission is centred on preferred provider scheme (PPS) arrangements between private health funds and optometrists and online selling of prescription optical appliances. These are both key areas where Optometry Australia believes more focused policy could better support fairer competition in the interests of consumers.

Preferred Provider Scheme Arrangements

Most private health funds participate in PPS arrangements with private healthcare providers and optometry is no exception. A PPS arrangement between a Private Health Fund and an optometry practice or optical dispenser, typically sees the practice promoted to the fund's members as a preferred provider, and in some instances as the provider of other particular benefits to policy holders, in exchange for them agreeing to particular terms and conditions, such as the provision of particular product lines, or 'no gap' products. Commonly, policy holders are offered benefits for attending preferred providers, which may include higher rebates for certain optical appliances.

In principle, Optometry Australia supports arrangements between patients, health funds and optometrists where they:¹

- Ensure patients can easily understand the health fund product, including details of their entitlements for the optical component;
- Allow patients to make an informed choice of provider based upon a range of factors including the provision of quality care;
- Allow patients to easily claim health fund benefits in a clear and consistent manner; and
- Encourage the use of evidence-based technology.

Based on equitable access to quality primary eye care and consumer choice, Optometry Australia is opposed to PPS arrangements which provide patients with different rebates for the same type of service or product, solely on the basis of membership of a PPS.

Optometry Australia has previously raised concerns regarding PPS arrangements which distort competition and subsequently contribute to failure of the market. As noted in the issues paper, competition can be affected by arrangements which are not intended for competition purposes and Optometry Australia is concerned with PPS arrangements which:

- Provide incorrect and/or misleading information to policy holders;
- Exclude some smaller optometry practice entities from entering into a PPS arrangement; and
- Compel policy holders to attend preferred providers, thereby potentially breaching section 47 of the Competition and Consumer Act (CCA) through third line forcing.

Information symmetry and consumer protection

Informed consumer choice is a necessary characteristic of fair competition. Optometry Australia is aware of instances where policy holders have been given information by health funds which could be construed as misleading, in that they encourage the fund holder to believe they may attend only preferred providers in order to receive benefits for optical appliances and/or specific eye health services. For example, Optometry Australia often receives anecdotal accounts of health funds promoting 'exclusive' preferred provider services to their policy holders (e.g. certain types of eye testing), giving the inference that policy holders can only access these tests from preferred providers. Optometry Australia considers this to potentially mislead policyholders, as many different types of optometric services are widely accessible through optometrists who participate and do not participate in PPS arrangements. First and foremost, the mix of clinical care provided should be based upon the eye care needs of each individual patient and not the nature of a relationship between a health fund and provider.

Optometry Australia also receives reports from members regarding patients who have been provided incorrect or misleading information by their health fund regarding the rebates they are

¹ OAA Position Statement: Health Funds. 2012.

eligible to claim, for some optical appliances, such as 'no-gap' clauses for certain frames and lenses. These situations can leave patients disappointed and place unnecessary pressure on some optometrists to cover the 'gap' in order to maintain business.

In the absence of transparency and information symmetry between health funds and policy holders, preferred provider arrangements have the capability to diminish consumer choice, consumer protection and distort fair competition of the optometry market.

In order to remedy the potential for misleading information, Optometry Australia encourages the Government and/or the ACCC to develop best practice guidelines for Private Health Insurers to follow when providing advice to policyholders with respect to PPS.

Disadvantaging smaller practice entities

Optometry Australia believes all optometric practices should be able to compete on an even playing field, in accordance with the quality of patient care and services provided to patients. PPS arrangements can undermine this even playing field. Although the health fund itself is not directly within the optometric market, it can exhibit control over the market through PPS arrangements which by their nature disadvantage smaller practices, including those in rural areas, independent of their patient care and service quality.

For example, health funds appear to favour larger entities as preferred providers based on ease of marketing for the health fund, and not necessarily on service quality of the provider. It is much simpler for health funds to develop and disseminate promotional material which guides policy holders to a preferred provider with a national network, as opposed to a number of smaller individual practices operating as separate entities. In this way, PPS arrangements could be considered discriminatory in that other providers who are prepared to offer the same level of service and benefit are excluded if they are not part of a larger network of practices, they are not able to apply to become a PPS member. This anomaly has the potential to weaken competition by driving patients away from smaller entities towards larger entities with PPS arrangements in place. Further, this undermines opportunity for equitable access to similar levels of patient care for those patients not located within the vicinity of a preferred provider.

Optometry Australia therefore encourages the Government and/or the ACCC to request private health insurers accept membership applications from any practice, and not exclude consideration based on the business footprint of the entity.

Exclusive dealing through third line forcing

According to the Australian Competition and Consumer Commission (ACCC), third line forcing exists when a business provides purchasing benefits (e.g. discounts) on the condition the consumer purchases goods and services from a designated third party. Third line forcing resulting from PPS

arrangements significantly weakens competition within the optometry market by re-directing patient demand and unfairly disadvantaging non-preferred optometric providers. Third line forcing is prohibited under section 47 of the Competition and Consumer Act 2010.

Optometry Australia has previously outlined its concerns to the ACCC regarding PPS arrangements and potential third line forcing.² Under PPS arrangements, policy holders are encouraged to attend preferred providers to receive higher health insurance rebates for optical appliances, independent of any existing provider-patient relationship with a non-preferred provider. This arrangement has the potential to impose restrictions on the policy holders' choice to seek optometric care, a characteristic of 'exclusive dealing.' Optometry Australia considers these circumstances as a potential breach of the Competition and Consumer Act (2010) through third line forcing and therefore warrants closer scrutiny by the ACCC.

To ensure optometry practices can compete fairly, Optometry Australia recommends stricter monitoring of PPS arrangements more broadly by the ACCC in relation to:

- Transparency, accuracy and relevance of information provided to policy holders by health funds, including the use of PPS arrangements to promote optometric services and benefits considered outside of the PPS agreement;
- Ensuring smaller practice entities have the same opportunity as larger entities to apply for entry into PPS agreements; and
- Ensuring health funds do not use PPS arrangements to foster exclusive dealing which weakens competition and breaches the Competition and Consumer Act 2010.

Online selling of optical appliances

Are the current competition laws working effectively to promote competitive markets, given increasing globalisation, changing market and social structures, and technological change?

Optometry Australia is concerned about the regulation and monitoring of the rapidly expanding online market for optical appliances and its impact on the Australian optometry profession and patient care. Exclusive online vendors are increasingly entering the Australian market for optical appliances, many who have no known links to a practicing optometrist and/or are based overseas. This raises significant concerns regarding quality and safety of prescription optical appliances.

The supply of an optical appliance can only be performed with the issuing of a prescription after an eye examination by an eye care professional such as an optometrist, as outlined by the Health Practitioner Regulation National Law (2009). Optical appliances (prescription glasses and contact lenses) are classified as custom-made medical devices as per the Therapeutic Goods (Medical Devices) Regulations 2002, and subsequently must be included on the Australian Register of

² Optometry Australia submission to the ACCC for the senate inquiry on private health insurance. 2013.

Therapeutic Goods (ARTG) prior to selling in Australia.³ All prescription lenses and frames sold in Australia must comply with the relevant Australian and New Zealand standards for safety, quality and performance, along with other minimum requirements as required by the TGA.^{4, 5, 6} Prescription lenses which do not meet the patient's clinical needs can result in impaired vision and associated symptoms such as headache and nausea.

Given the nature of online selling, Optometry Australia is concerned about the lack of pre and post-market surveillance to ensure online vendors of optical appliances are meeting these safety and quality requirements. Anecdotal reports suggest the selling of optical appliances without the relevant prior TGA approval (listing on the ARTG) is a growing problem, particularly by exclusive online vendors.⁷ Further, ambiguous online ordering procedures, where order options are unclear, can confuse consumers and result in ordering errors.

Evidence from the United States shows online selling of optical appliances often does not meet the required safety and quality standards.⁸ In a 2011 study conducted by the American Optometric Association, nearly half of all optical appliances provided by online vendors failed the necessary and legislative requirements for patient safety. This included both clinical specifications and physical requirements of the product.

As a starting point, Optometry Australia recommends research is undertaken to better understand the Australian context of the sale of optical appliances by online vendors and compliance with:

- Requirements for selling of a medical device as per Australian regulations; and
- National standards for safety, quality and performance.

Optometry Australia welcomes further opportunity to contribute to this review.

³ Therapeutic Goods (Medical Devices) Regulations 2002. Cited at: <http://www.tga.gov.au/industry/devices-basics-fs-custom-made.htm>

⁴ AS/NZS ISO 8980.1: 2011. Australia/New Zealand Standard. Ophthalmic optics – Uncut finished spectacles – Specifications for single vision and multifocal lenses.

⁵ AS/NZS ISO 21987: 2011. Australia/New Zealand Standard. Ophthalmic optics – Mounted spectacle lenses.

⁶ AS/NZS ISO 12870: 2012. Australia/New Zealand Standard. Ophthalmic optics – Spectacle frames – Requirements and test methods.

⁷ Mivision. 27 May 2013. TGA Registration: Non-Approved Lens Importers Risk Prosecution.

⁸ K Citek, D Torgersen, J Endres, et al. Safety and compliance of prescription spectacles ordered by the public via the Internet. *Optometry* (2011), 82, 549-555.