



**Australian  
Competition &  
Consumer  
Commission**

# **Submission to the Senate Standing Committee on Finance and Public Administration**

*Inquiry into the Medibank Private Sale Bill 2006*

1 November 2006

## **Introduction**

1. On 19 October 2006, the Senate referred the provisions of the Medibank Private Sale Bill 2006 for inquiry and report to the Senate Standing Committee on Finance and Public Administration (SSCFPA).
2. The SSCFPA has called for submissions by 31 October 2006. The matters under consideration by the SSCFPA include:
  - the effect of the sale on current Medibank members;
  - competition and efficiency in the private health insurance sector;
  - health and insurance markets across the states and territories; and
  - the overall access and equity implications for healthcare.
3. The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to lodge a submission.

## **Background**

4. On 26 April 2006, the Commonwealth Government announced its intention to sell Medibank Private.
5. On 9 August 2006, the Commonwealth Government requested the ACCC's preliminary views on any competition issues that might arise from the sale of Medibank Private on a confidential basis. On 6 September 2006, the ACCC provided its preliminary views to the Commonwealth Government on a confidential basis.
6. On 12 September 2006, the Commonwealth Government announced that the sale of Medibank Private would be conducted by share market float in 2008.

## **Role of the ACCC**

7. The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the TPA).
8. Section 50 of the TPA prohibits acquisitions of shares or assets that would have the effect, or be likely to have the effect, of substantially lessening competition in a substantial market in Australia, including a regional market.
9. Section 50(3) specifies the following non-exhaustive list of matters – the so-called 'merger factors' – to be taken into account in determining whether an acquisition would be likely to substantially lessen competition:
  - the level of concentration in the market;
  - the height of barriers to entry to the market;

- the extent to which substitutes are available in the market or are likely to be available in the market;
- the degree of countervailing power in the market;
- the dynamic characteristics of the market, including growth, innovation and product differentiation;
- the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor;
- the nature and extent of vertical integration in the market;
- the actual and potential level of import competition in the market; and
- the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins.

#### *Informal clearance*

10. Over time, a practice has developed for parties contemplating a merger to ask the ACCC for its informal view on whether a particular proposal is likely to contravene section 50 and therefore whether the ACCC would bring proceedings in the Federal Court if the parties attempted to proceed. This has become known as seeking informal clearance from the ACCC.
11. If the ACCC denies informal clearance, and the merger parties do not agree to abandon or modify<sup>1</sup> the acquisition, the ACCC can apply to the Federal Court for an injunction, divestiture or penalties.

#### *Formal clearance*

12. When recent amendments to the TPA commence, merger parties will also be able to seek formal clearance from the ACCC. The ACCC may grant formal clearance if it is satisfied that the proposed merger will not substantially lessen competition in a market. Formal clearance provides parties with legal immunity from court action by any party for contravening section 50. ACCC formal clearance decisions will be appealable to the Australian Competition Tribunal (the Tribunal).

#### *Authorisation*

13. Merger parties may also seek authorisation, which may only be granted if the public benefits from the merger outweigh any public detriment. When recent amendments to the TPA commence, merger parties will apply directly to the Tribunal for authorisation. However, the ACCC will have a significant role in Tribunal proceedings. For example, the Tribunal will be required to consider an ACCC report on the competition implications of any proposed merger. The ACCC will also be able to call and cross-examine witnesses before the Tribunal.

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<sup>1</sup> By offering an undertaking pursuant to section 87B of the TPA.

## Private health insurance in Australia

### Regulation

14. The private health insurance industry is regulated by Commonwealth legislation.

In particular:

- health funds may only increase their prices once a year with the approval of the Commonwealth Minister for Health and Aging;
- the community rating principle prohibits health funds from charging individual members different prices on the basis of health status, age (other than as permitted under Lifetime Health Cover; see below), race, sex, etc. Health funds are however free to price premiums differently in each state or territory according to the profile of their members in each jurisdiction;
- health funds must cover certain private hospital services, while other services may not be covered;<sup>2</sup>
- there are specified maximum waiting periods before patients can claim benefits for hospital treatment;
- health fund members with hospital cover may move freely between health funds without the need to re-serve waiting periods (unless they choose a higher level of cover); and
- health funds must comply with prudential requirements.

15. The Commonwealth Government provides a rebate to health fund members covering 30 per cent of the cost of the premiums they pay.

16. Under the Lifetime Health Cover program, health funds are able to charge different premiums based on the age of each member when they first take out hospital cover with a registered health fund.<sup>3</sup>

17. In addition:

- single taxpayers who earn more than \$50,000 per annum who do not have private health insurance or who have insurance with a front-end deductible of more than \$500; and

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<sup>2</sup> The Commonwealth Minister for Health and Ageing, the Hon Tony Abbott MP, announced on 26 April 2006 that hospital cover will expand to cover outpatient and out-of-hospital services as well as chronic care management for conditions such as diabetes and asthma. Insurers will also be able to cover disease prevention measures; Media Release, *More innovation, greater choice in private health*, 26 April 2006 ABB046/06.

<sup>3</sup> The Commonwealth Minister for Health and Ageing, the Hon Tony Abbott MP, announced on 26 April 2006 that Fund members who have retained their private health insurance continuously for more than ten years will no longer be subject to Lifetime Health Cover penalties; Media Release, *More innovation, greater choice in private health*, 26 April 2006 ABB046/06.

- families or couples who earn more than \$100,000 per annum, but who do not have private health insurance, or who have insurance with a front-end deductible of more than \$1000;

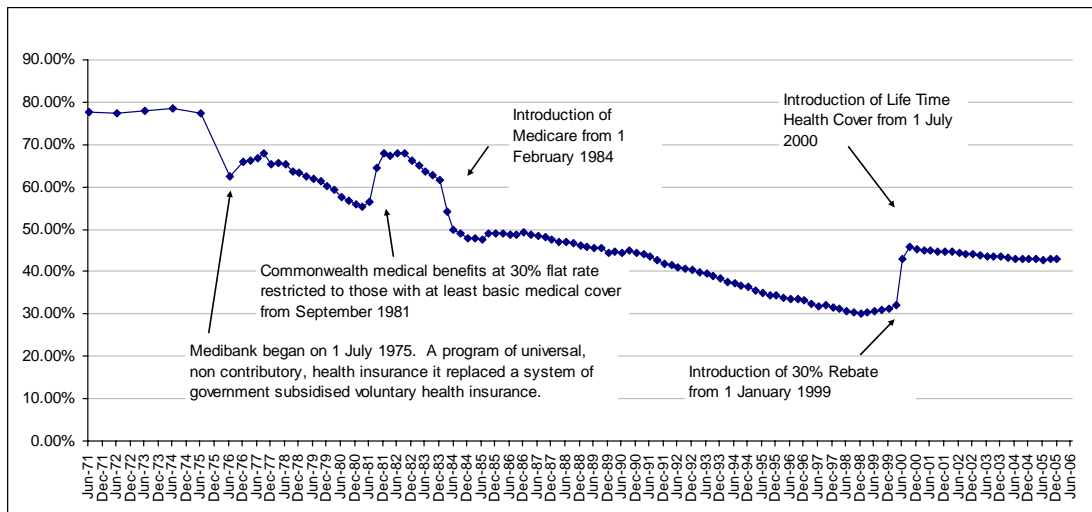
are required to pay additional Medicare Levy.

18. The regulatory framework outlined above applies to all health funds operating in Australia. It constitutes an important framework within which these health funds compete with each other for members. The ACCC is not aware of any regulation that the Commonwealth Government, as the owner of Medibank Private, has applied specifically to Medibank Private (and which therefore might not continue post any privatisation). As such, the regulatory framework applying in the private health insurance sector, and the impact of this regulation on competition in the sector, is unlikely to change if Medibank Private is sold to the private sector.

### Level of private health insurance cover

19. Figure One provides the percentage of people with private health cover since 1971.<sup>4</sup> As at 30 June 2006, approximately 43 per cent of the population was covered by private hospital insurance. The remaining population relies on Medicare.

**Figure One: Percentage of Persons with Hospital Cover – 30 June 1971 to 30 June 2006**



<sup>4</sup> Source: PHIAC, Statistical Trends Membership and Benefits Statistics, viewed 26 October 2006, <<http://www.phiac.gov.au/statistics/trends/index.htm>>.

## Health insurance funds

20. There are currently 38 registered health funds in Australia, 24 of which are open to the general public. The industry is dominated by seven funds that combined hold over 80 per cent of private health insurance policies sold nationally. There are 26 funds that each have less than one per cent of policies sold nationally and which combined comprise around seven per cent of policies.
21. Table One provides the proportion of members nationwide with each significant health fund.<sup>5</sup>

| <b>Table One: Proportion of members nationwide with health funds</b> |                         |
|--|-------------------------|
| <i>Insurer</i>   | <i>Market share (%)</i> |
| Medibank Private   | 29                      |
| MBF  | 19                      |
| BUPA   | 10                      |
| HCF  | 9                       |
| HBF  | 7                       |
| NIB  | 6                       |
| Australian Unity   | 4                       |
| Others   | 16                      |
| Total  | 100                     |

22. However, Medibank Private is the only health fund with a significant presence in each state and territory. Other larger health funds have a significant presence in certain states only. For example:
- MBF has a significant presence in Queensland, New South Wales and Tasmania only;
  - BUPA has a significant presence in Victoria and South Australia only;<sup>6</sup>
  - HBF has a significant presence in Western Australia only, where it is the largest health fund;
  - NIB and HCF have a significant presence in New South Wales only; and
  - Australian Unity has a significant presence in Victoria only.

<sup>5</sup> Source: PHIAC, Operations of the Registered Health Benefits Organisations, Annual Report 2004-05, Table 34, pp. 94-95.

<sup>6</sup> BUPA trades as HBA in Victoria and Mutual Community in South Australia.

23. Table Two provides the proportion of members with each significant health fund on a state-by-state basis.<sup>7</sup>

| <b>Table Two: Proportion of members with health funds on a state-by-state basis (%)</b> |            |                     |            |           |           |            |           |
|---|------------|---------------------|------------|-----------|-----------|------------|-----------|
| <i>Insurer</i>  | <i>VIC</i> | <i>NSW/<br/>ACT</i> | <i>QLD</i> | <i>WA</i> | <i>SA</i> | <i>TAS</i> | <i>NT</i> |
| Medibank Private  | 37.6       | 23.2                | 36.1       | 19.5      | 20.6      | 36.3       | 44.6      |
| BUPA  | 22.9       | 1.1                 | 2.5        | 1.2       | 43.6      | 1.1        | 11.9      |
| MBF   | 4.6        | 22.5                | 37.0       | 4.4       | 15.8      | 36.6       | 33.4      |
| HCF   | 3.6        | 19.5                | 3.3        | 0.5       | 2.8       | 0.8        | 1.4       |
| HBF   | 0.2        | 0.2                 | 0.2        | 63.7      | 0.2       | 0.0        | 1.5       |
| NIB   | 2.8        | 14.4                | 2.3        | 0.4       | 1.0       | 0.7        | 0.0       |
| Australian Unity  | 12.1       | 1.6                 | 1.7        | 0.6       | 2.2       | 0.4        | 0.0       |
| Others  | 16.1       | 17.5                | 17.0       | 9.8       | 13.8      | 24.0       | 7.2       |

24. The ACCC understands that these national and state market shares have been relatively stable for a significant period of time. Table Three provides the proportion of health fund members (with hospital membership) who have stayed with the same health fund for 2 years or more.<sup>8</sup>

<sup>7</sup> Source: PHIAC, Operations of the Registered Health Benefits Organisations, Annual Report 2004-05, Table 35, pp. 96-103. Columns may not add to 100 per cent because of rounding.

<sup>8</sup> Source: Private Health Insurance Ombudsman, *State of the Health Funds Report*, 2005, p. 29

| <b>Table Three: Member Retention for 2 years or more</b> |                             |
|--|-----------------------------|
| <i>Insurer</i>   | <i>Member Retention (%)</i> |
| HBF  | 92.5                        |
| NIB  | 92.2                        |
| HCF  | 90                          |
| Australian Unity   | 88.9                        |
| Medibank   | 86.8                        |
| BUPA   | 83.7                        |
| MBF  | 70.3                        |

25. The ACCC understands that the health fund branch networks tend to be concentrated in the states and territories where health funds have a significant presence. However, the introduction of national call centres and health fund websites, at least potentially, allows health funds to attract members from outside of their ‘home’ states in the future.

### **Private health insurance mergers**

#### *MBF's acquisition of NRMA Health Insurance (2003)*

26. The ACCC did not oppose MBF’s acquisition of NRMA Health Insurance in 2003.
27. The ACCC considered that the proposed acquisition was unlikely to substantially lessen competition in:
- any state or territory market for private health insurance; or
  - in any state, territory or regional market for the acquisition of private hospital services by health funds.
28. In particular, the ACCC considered that, while barriers to entry were not insignificant and barriers to expansion were not low;
- there were a number of alternative suppliers to whom customers could turn;
  - MBF customers appeared to have some countervailing power in the form of alternative sources of supply; and
  - the proposed acquisition would not have appeared to remove a vigorous and effective competitor in the relevant markets.



*Acquisition of GMF by HBF (2002)*

29. The ACCC did not oppose the acquisition of GMF by HBF.
30. In particular, the ACCC considered that the proposed acquisition would be unlikely to result in a substantial lessening of competition in the Western Australian market for the supply of private health insurance.
31. While HBF was the largest health fund in Western Australia (with around 70 per cent of the market), GMF only had around 3 per cent market share. Further, GMF had been placed into administration by the Private Health Insurance Administration Council (PHIAC) as it had breached prudential requirements.

*HCF's acquisition of IOR (2002)*

32. The ACCC did not oppose HCF's acquisition of IOR.
33. The ACCC considered that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any state or territory market for the supply of private health insurance. In New South Wales, while HCF was the third largest provider of private health insurance, IOR only had an extremely small market share at around 0.5 per cent. Excluding HCF, there were 11 other open providers of private health insurance in New South Wales with a market share greater than IOR.
34. IOR had also been placed into administration by the PHIAC for breaching prudential standards.

## **Impact of share market float of Medibank Private on competition in the private health insurance sector**

35. A share market float of Medibank Private would be unlikely to raise competition concerns if it resulted in a diversified share register (that is, a large number of small shareholders) and, in particular, if it did not result in a significant existing health fund obtaining a significant shareholding in Medibank Private.
36. However, if a significant health fund proposed to acquire a significant interest in Medibank Private at any point in the future, then competition concerns might arise under section 50 of the TPA. Post any Medibank Private acquisition, the relevant health fund may have a substantial market share in certain states and possibly nationally, and the competition implications of this would need to be considered by the ACCC. It could be expected, in practice, that a health fund would seek ACCC clearance before proceeding with any such transaction. The ACCC would carefully and comprehensively consider any such clearance application.
37. The privatisation of Medibank Private, in and of itself, would be unlikely to raise general competition concerns. As noted at paragraph 18, the regulatory framework applying to the private health insurance sector, and in particular the impact of that framework on competition, would be unaffected by the privatisation of Medibank Private.