DOCTORS' ARRANGEMENTS UNDER THE MICROSCOPE

MEDICAL PRACTICES, LIKE MANY OTHER BUSINESSES, OFTEN HAVE VERY STRONG LINKS TO THEIR LOCAL COMMUNITIES, PROVIDING ESSENTIAL SERVICES AND GENERALLY DRAWING MOST OF THEIR PATIENTS FROM NEARBY.

WHERE A CHOICE of doctors is available patients often choose a practice which is convenient for them and does not include lengthy travel to attend appointments.

But for any number of reasons, such as moving house or having a particular specialist recommended to them, some patients choose to seek medical services further afield.

This can present a dilemma for some doctors, concerned they may be seen as poaching from another practice or having their business undermined by an outsider who has no right to accept patients from another region.

But several recent cases before the Federal Court have delivered a reminder to the medical community that, while professional colleagues, they are still business competitors and must therefore abide by Australia's competition laws.

In December the Federal Court found three Tasmanian orthodontists had breached the Trade Practices Act by fixing prices and agreeing not to take on new patients when one orthodontist had more patients than the others.

The orthodontists were sharing premises in Launceston, Devonport and Burnie. Because of poor legal advice, the three entered into co-location arrangements comprising certain agreements which contained anti-competitive aspects, therefore putting them in breach of the Act.

Co-location arrangements are relatively common in the medical sphere, and when they comply with all relevant state, territory or federal legislation, are perfectly acceptable. But just because doctors work out of the same premises does not mean they can stop competing with each other.

Unfortunately the orthodontists concerned were given poor legal advice. As a result the Australian Competition and Consumer Commission took the unusual step of not seeking financial penalties from the court.

In another case in South Australia the Federal Court handed penalties totalling $110 000 to two cardiothoracic surgeons for attempting to block competition from other surgeons in Adelaide.

The court found that surgeons John Knight and Iain Ross had agreed to prevent a newly qualified surgeon from entering the local market until he had undertaken further training, although the surgeon was legally qualified to begin treating patients. Like every other business operating in Australia, medical practices need to adhere to provisions of the Act which prohibit anti-competitive agreements. Patients have the right to see doctors outside their immediate area if they choose, and moves to stifle competition deny them greater access to services and also mean they miss out on the benefits that competition provides.

The ACCC has a range of information available to help doctors and other professionals meet these obligations. ●

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HIGH-SPEED JUSTICE

JUSTICE DELAYED IS JUSTICE DENIED, OR SO THE SAYING GOES. WHILE IT IS NOT ALWAYS POSSIBLE TO BRING LEGAL PROCEEDINGS TO A SPEEDY CONCLUSION, THE ACCC IS TAPPING INTO AN INNOVATIVE NEW SYSTEM THAT HAS DRAMATICALLY REDUCED THE TIME REQUIRED TO REACH OUTCOMES IN MANY IMPORTANT COURT CASES.

The ACCC will continue to support innovation that allows quicker resolution of matters ...

INTRODUCED IN the Melbourne Registry of the Federal Court of Australia in April last year, the fast-track list imposes strict timeframes on parties filing proceedings, putting a stop to some of the usual delays that can see matters drag on unnecessarily.

The ACCC is an innovator in its use of the list, having filed around a quarter of all listed matters since the system was introduced

When presenting matters to the fast-track list, defences need to be returned within 30 days of the application being filed, bringing the key issues to the fore early on. A case scheduling conference is held within 45 days of filing, so respondents need to consider the issues and what they intend to contest within the first 30 days.

The ACCC has already taken a diverse range of matters forward for consideration under the fast-track list—from resale price maintenance allegations to product safety breaches and misleading and deceptive conduct claims.

Every ACCC matter has been resolved in fewer than three months, not accounting for appeals.

While the system obviously provides a quicker, lower cost outcome and certainty for defendants, it also has significant advantages for the regulator and the public it serves.

Speedier outcomes mean a better chance to educate the community about a concern, while corrective orders are also likely to make much more sense if they are made closer to the time of the alleged breach of the law rather than many months later.

Most importantly, the fast-track system delivers a much quicker outcome for members of the public who may have suffered because of unlawful behaviour by a trader or individual.

The fast-track list has proven so effective that the ACCC has even lodged a Darwin-based matter with the court in Melbourne to take advantage of the faster option. In this instance the trader was a national retailer so it was possible to file in Melbourne.

The ACCC will continue to support innovation that allows quicker resolution of matters affecting the community and encourages others in a position to take advantage of such options to consider their benefits. ●