

[REDACTED]

Submission on application for authorisation by New Zealand Gynaecologists Association

29 June 2026

Introduction

[REDACTED] makes this submission in relation to the application for authorisation by the New Zealand Gynaecologists' Association (**NZGA**) to collectively bargain with Southern Cross Health Society (**Southern Cross**) and/or hospitals (**Application**).

In doing so, [REDACTED] emphasises that it has limited insight into the proposed restructure of the contracting, funding and patient relationships that Southern Cross is making (**Proposed Restructure**).¹ However, [REDACTED] is concerned by certain aspects of the Proposed Restructure as they are described in the Application, and would be concerned if Southern Cross implemented them in relation to other types of surgery.

[REDACTED] **supports** the application for authorisation and interim authorisation insofar as it concerns negotiations with Southern Cross. However [REDACTED] **does not support** the application for either authorisation or interim authorisation insofar as it concerns negotiations with hospitals.

[REDACTED]

[REDACTED] is a private hospital. Its facilities incorporate operating theatres for surgeries requiring both general and local anaesthesia (**GA** and **LA**, respectively). The theatres are available to credentialed surgeons, across a wide range of disciplines, on a sessional basis.

[REDACTED] is an affiliated provider (**AP**) to Southern Cross. It generates revenues from theatre fees and consumables eg single use equipment such as bandages and syringes that are charged to patients

[REDACTED] has several AP contracts with Southern Cross.

1. Where surgery involves procedures that are not covered by an AP contract ('fee for service' procedures), patients seek pre-approval from Southern Cross for the procedure and submits invoices. Southern Cross then pays the surgeon, anaesthetist and hospital.²

¹ And notes that certain details are also unknown to the NZGA.

² Surgeons also have AP contracts with Southern Cross for certain (minor) LA work. These procedures are typically performed in surgeon's rooms, but if they are performed at [REDACTED] the fees are split between the hospital and the surgeon.

The above contracts have been in place for several years and updated by bilateral negotiation between Southern Cross and [REDACTED] (though [REDACTED] would note that Southern Cross is an aggressive negotiator). [REDACTED] understands that the terms of AP contracts differ between hospitals, reflecting different specialisms, hospital facilities and location-specific factors.

Southern Cross

Southern Cross Insurance provides health insurance cover to policy holders. It is the largest health insurer in New Zealand and has an approximate market share of between 60-70% of all health insurance claims.³ It is an unavoidable trading partner for the vast majority of private hospitals and surgeons, who derive significant proportions of their revenue from treating Southern Cross patients. [REDACTED]'s experience is that Southern Cross negotiates very aggressively with both hospitals and surgeons.

The Application claims that there has been a lack of meaningful engagement by Southern Cross with gynaecologists – ie key stakeholders about the Proposed Restructure.⁴ If true, this is very concerning and explains the necessity for the Application by NZGA, an industry association representing over 90% of gynaecologists.

The above is consistent with a finding that Southern Cross is able to act substantially unconstrained by competitive pressures and has a substantial degree of market power for the purposes of section 36 of the Commerce Act (**Act**).⁵

Overview of [REDACTED]'s concerns

As a hospital that provides facilities to a large number of patients that have Southern Cross health insurance, [REDACTED] is concerned by the description of the New Southern Cross Arrangements in the Application and the apparent approach of Southern Cross to proceed with insufficient clinician and hospital input. In particular, it is concerned about the allegation that Southern Cross intends to impose significant structural changes in relation to the procurement and funding of certain surgical procedures and patient relationships.⁶

If the description of these arrangements in the Application is correct, [REDACTED] is concerned that the Arrangements are likely to lead to worse outcomes for patients, gynaecologists and hospitals (and anaesthetists).

[REDACTED] is further concerned that, if permitted to proceed, the Arrangements will be extended to hospitals and surgeons in relation to other surgical procedures. As

³ Application at [5.20].

⁴ Application at [1.4].

⁵ See *Commerce Commission v Telecom Corporation of New Zealand Ltd* [2010] NZSC 111, [2011] 1 NZLR 577 at [33].

⁶ Application at [2.6].

discussed further below, in [REDACTED]'s view the Proposed Restructure, if correctly described in the Application, may give rise to prima facie competition concerns that warrant investigation under the Commerce Act in their own right.

The status quo

[REDACTED's] the current arrangements is that fees are set independently by gynaecologists, procedures are determined by clinician judgement and complexity is managed through clinician judgement and pricing and a fee for service model.⁷

Under this system, patients have choices: choices about the hospital they attend and the surgeon (and anaesthetist) that they engage. Gynaecologists (and anaesthetists) set their own prices for many procedures and there is competition on quality, and prices reflect these quality differences (including surgeon seniority and specialisms).

There is also competition among private hospitals to attract surgeons (and anaesthetists) and, therefore, to attract patients. In [REDACTED]'s experience offering other types of surgeries, this competition takes the form of price, the quality of the facilities that hospitals provide surgeons and patients eg more flexible surgeon list accessibility, shorter waiting times for patients, better nurse/patient ratios, and other points of difference.

The Proposed Restructure

Under the Proposed Restructure as described in the Application, hospitals would move from being facility providers to procurers of surgical services. Southern Cross would ultimately decide the fees to be paid for procedures and apply these across all hospitals, and hospitals would need to determine how these fees are split between themselves, surgeons and anaesthetists. There is a suggestion that prices would be standardised with no recognition of the seniority, quality or specialisms of surgeons or the particulars of a given case, and no residual price competition for the fee for service work.⁸

Concerns with the Proposed Restructure

[REDACTED] has several concerns with the Proposed Restructure as described in the Application, and these are outlined below.

1. The proposal will fundamentally change the funding model for surgery. Payment for gynaecology services will cease to be a payment pathway and become a procurement model – this is a fundamental and important change.
2. The hospital – rather than Southern Cross/the patient – would be the ‘purchaser’ of surgical services, with a set amount of money that it would need to distribute

⁷ Application at Table 1 on page 42.

⁸ Application at Figure 4 on page 25.

between itself, surgeons and anaesthetists for each procedure. This changes the nature of the relationship between hospitals and surgeons (and anaesthetists), but more importantly between patients and their surgeons. Patients no longer engage surgeons (and anaesthetists) – hospitals engage them.⁹

3. Rather than surgeons having full discretion to choose the best treatment for the patient with confidence that they will be reimbursed for the full value of their services,¹⁰ surgeons would now (according to the Application) effectively face a price cap for their services that they cannot exceed. This could result in a risk that Southern Cross policy-holders experience a reduction in the quality of care below the best and latest services and materials because the capped fee does not cover market rates for these services or materials. This could lead to Southern Cross members receiving a decreased level of care compared with people covered by other insurance companies.
4. Certain procedures may need to be performed consecutively rather than concurrently in order to be fully funded, resulting in multiple procedures rather than one.¹¹
5. If the fee payable for procedures is standardised, with no allowance for differences in surgeon experience, qualifications or skill, price and quality competition among surgeons and hospitals will be severely weakened.
6. If the Southern Cross proposal to introduce the AP regime across all gynaecological procedures is implemented, the fee for service model would be eliminated, and Southern Cross patients would be required to use this framework and only hospitals and surgeons that operate within it, or face having to fully fund procedures themselves. This would effectively force surgeons to accept terms imposed by Southern Cross if they wish to treat Southern Cross patients, and would remove patient and surgeon choice.
7. [REDACTED] is concerned that AP codes would be decided by Southern Cross with minimal clinician input. For the procedures performed at [REDACTED]'s own hospital, AP codes have been developed and updated over the course of many years, in consultation with medical experts. Replacing this model with one where Southern Cross effectively (because of its market power) decides, for all surgeons and hospitals, the level of reimbursement procedures are 'worth' is very worrying and would likely to lead to poorer outcomes. While there will always be disagreements about appropriate coding, in [REDACTED]'s experience

⁹ While [REDACTED] is party to AP contracts for certain procedures that use this model, these contracts have been negotiated between it and Southern Cross, with the direct input of surgeons. They reflect the particular circumstances of [REDACTED], its surgeons and patients rather than a 'one size fits all' approach across all hospitals.

¹⁰ Assuming Southern Cross pre-approves the surgery.

¹¹ See the example given at [11.4(b)] of the Application.

these can (and have) been worked through between Southern Cross, the hospital and clinicians. The model can be improved, but it does not need to be replaced.

8. If the Proposed Restructure proceeds as described in the Application, the administrative burden on hospitals will be increased, as they will be placed in the position of having to determine, and facilitate, payments to surgeons and anaesthetists. This will result in increased overhead costs (that will not be recoverable) being imposed on hospitals.
9. Given the above, [REDACTED] is concerned that the Proposed Restructure will set a precedent for Southern Cross to restructure funding for other types of surgery, to the detriment of competition and patient outcomes.

Putting the above into Commerce Act terms

Southern Cross has a substantial degree of market power

As noted above, Southern Cross has a substantial degree of market power for the purposes of section 36 of the Commerce Act. With a market share of between 60-70% for the provision of health insurance in New Zealand, it has the ability to act substantially unconstrained by competition. Fundamentally and significantly changing its exposure to the cost of gynaecological surgery without meaningful consultation with its key stakeholders – as alleged in the Application – is consistent with this proposition. If the Application is correct, the Proposed Restructure is expected to result in hospitals procuring gynaecological services from individual clinicians for significantly reduced compensation (up to 30-50%) at a set common price.¹²

The Proposed Restructure raises prima facie competition concerns

If accurately described by the Application (and noting that [REDACTED] has limited insight and the finer details of the Proposed Restructure are not clear), Southern Cross's conduct in implementing the Proposed Restructure could have significant negative competitive impacts.

1. The compensation of gynaecological surgeons is expected to be driven down significantly.
2. Price and quality competition among surgeons for gynaecological procedures supplied to Southern Cross patients would be materially weakened;
3. Competition among hospitals to attract surgeons – and therefore competition among hospitals themselves – would be materially weakened.

¹² Application at [2.14(c)], based on anecdotal evidence regarding a large number of the most experienced, skilled and in demand gynaecologists (Application at footnote 7).

4. Patient outcomes are likely to suffer as a result of the weakened relationship between patient and surgeon, including due to the ‘one size fits all’ approach to pricing and the perverse incentives discussed above.

As a cross-check on the severity of these impacts on competition, consider the following.

If surgeons or hospitals colluded to agree the prices that surgeons would be paid to perform for certain procedures, the Commission would (rightly) be concerned that this amounted to cartel conduct. The Proposed Restructure, as described in the Application, may have the same effect.

Or consider a proposed merger, the likely effect of which was to materially weaken price and quality competition and lead to the standardisation of prices among competitors. If faced with such a fact situation, the Commission would (again, rightly) want to take a close look at whether the merger should proceed. There is no apparent reason why the Proposed Restructure should not receive the same scrutiny.

[REDACTED] notes the Commission’s investigation into Valocity Limited’s (**Valocity**)’s property valuation platform, concerning Valocity unilaterally setting uniform prices for certain types of property valuations. The Commission considered that this, combined with end customers’ inability to reject these fees and choose their own valuer, raised competition concerns.¹³ To resolve the Commission’s concerns, Valocity agreed to modify its model to allow end consumers the ability to reject fees and request quotes from multiple valuers.¹⁴ Southern Cross’s proposal has the same hallmarks of a powerful firm dictating prices to individual contractors, removing customer choice and weakening competition.

In [REDACTED]’s view, Southern Cross’s proposal gives rise to significant prima facie competition concerns that should be investigated by Commission.

The NZGA’s application for authorisation

Given the above, [REDACTED] supports NZGA’s applications for authorisation and interim authorisation to collectively bargain with Southern Cross. There is a clear imbalance of bargaining power between Southern Cross and individual gynaecologists, and the risk of irreversible consequences (as described above) if such bargaining is delayed. Collective bargaining will assist gynaecologists to resist the exercise of market

¹³ The Commission was also concerned that end consumers were assigned a valuer and could not choose their own.

¹⁴ Commerce Commission, *Changes to property valuation platform good for competition and good for consumers*, 4 December 2024.

power by Southern Cross and prevent or minimise the potential negative impacts on competition and patient welfare.

The above said, [REDACTED] does not support the application for interim or final authorisation insofar as it pertains to collective negotiations with hospitals. The same imbalance of bargaining power between the parties does not exist, and there is no evidence that individual surgeons cannot negotiate with hospitals effectively (indeed, [REDACTED]'s experience is that they can). At present Southern Cross is the ultimate decision-maker in the areas of concern to the NZGA, and the focus of the NZGA's efforts should be on negotiations with it to overcome that position.

Confidentiality

This submission contains information that is highly confidential and commercially sensitive. Disclosure of this information would be likely to result in unreasonable commercial prejudice to [REDACTED]. [REDACTED] is providing this information to the Commission in the expectation that the Commission will treat this information in the strictest of confidence.

If the Commission receives a request under the Official Information Act 1982 (**OIA**) to which the confidential information in this submission is responsive, or otherwise intends to disclose any of the confidential information contained in this submission to any third party, including under section 99AA of the Commerce Act, [REDACTED] expects to be given notice, and a reasonable opportunity to provide comments, before the Commission makes any decision on release.