DILLON EUSTACE

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Submission to the Health Insurance Authority on Risk Equalisation in the Irish Private Health Insurance Market

August 2010

Introduction

Dillon Eustace welcomes the opportunity to participate in the Health Insurance Authority's Consultation Process on Risk Equalisation in the Irish Private Health Insurance Market.

Dillon Eustace is of the view that any framework which supports and enhances consumer benefits, competition and promotes a level playing field within the Irish private health insurance market should be supported.

The regulatory framework which currently operates in the Irish private health insurance market is based on the key principles of community rating, open enrolment, lifetime cover and minimum benefit. The Government announced on 27 May 2010 that it intends to implement a new risk equalisation scheme in large part to support the principle of community rating.

Dillon Eustace is of the opinion that a risk equalisation scheme may be required within a community rated health insurance market to ensure long term stability, but prior to the introduction of a risk equalisation scheme, significant legal and regulatory amendments must be implemented within the Irish private health insurance market.

Two Tier Regulatory Framework

The Voluntary Health Insurance Board (the "VHI") must be subject to the prudential regulation by the Financial Regulator on a comparable basis to all other insurance undertakings operating in the Irish private health insurance market.

Currently, the VHI is subject only to the regulatory supervision of the Health Insurance Authority under the Health Insurance Act, 1994. All other insurance undertakings operating in the Irish private health insurance market must comply with the regulatory requirements of both the Financial Regulator and the Health Insurance Authority.

As a result, the VHI's competitors must maintain solvency margins as insurance undertakings operating in the Irish private health insurance market, meanwhile the VHI is not required to maintain solvency margins.

As a result of this two tier regulatory framework, the VHI's competitors and all potential newcomers to the Irish private health insurance market have to surmount greater regulatory barriers to entry than those experienced by the VHI.

As outlined by the Health Insurance Authority in its report, risk equalisation is a process that aims to equitably neutralise differences in insurers' claim costs that arise due to variations in the health status of their members. Where it applies, risk equalisation involves transfer payments between health insurers to spread some of the claims costs of high-risk members amongst all the private health insurers in the market in proportion to their market share.

Dillon Eustace would respectfully proffer the view that the introduction of a risk equalisation scheme should not take place until the dual regulatory system which currently exists between the VHI and its competitors is changed to ensure that a fair regulatory framework operates equally between all undertakings in the Irish private health insurance market.

The Size and Dominance of the VHI

As of March 2010, the VHI held a 62% market share in the Irish private health insurance market. The VHI is dominant in that market for the purposes of EU and Irish competition laws and satisfies the legal test for dominance laid down by the European Court of Justice in *United Brands v Commission*. The VHI enjoys a position of economic strength “which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers”.

Due to the fact that the VHI held a *de jure* monopoly position and was insulated from all competition in the Irish private health insurance market until the liberalisation of that market on 1 July 1994 and a *de facto* monopoly position until 1 January 1997 when BUPA Ireland entered the Irish market as the only competitor to the VHI, the VHI in 2010 with a 62% market share holds a deep rooted incumbent status in the Irish private health insurance market.

The introduction of any risk equalisation scheme to the Irish private health insurance market would be inappropriate until the size and dominance of the VHI have been addressed by the Irish State through legal and regulatory changes to the market. Requiring the VHI’s competitors to make payments to an incumbent operator with a dominant market share would harm competition by discouraging the entry of new entrants to the market and threaten the long term stability of the Irish private health insurance market.

Conclusion

In the interests of competition in the Irish private health insurance market it would be unfair to introduce a risk equalisation scheme which effectively supports and fosters the dominant position of the VHI.

While a risk equalisation scheme may be necessary within a community rated market, the implementation of such a scheme should not be introduced until the two tier regulatory framework between the VHI and its competitors has been addressed by requiring the VHI to be regulated and authorised by the Financial Regulator and the size and dominance of the VHI has also been adjusted through legal and regulatory measures.