

**THE HIGH COURT
COMPETITION**

Record No. 2013 / 7333P

Between:

THE COMPETITION AUTHORITY

Plaintiff

and

THE IRISH MEDICAL ORGANISATION

Defendant

HEADS OF AGREEMENT

- 1.1. The Plaintiff confirms that, in relation to contracts between the Health Service Executive (the HSE) and medical doctors in general practice (GPs) concerning publicly funded GP health services, it has no objection in principle and/or from the point of view of competition law enforcement to any of the following:
- (a) The Defendant (IMO), having consulted with its members, consulting with, making representations to and/or discussing with the Minister for Health (the Minister) and/or the HSE the scope, content, resources allocated to and fees payable in respect of such contracts subject to the proviso that the Minister and/or HSE and/or the State, as the case may be, remains free to make the final decision on such matters;
 - (b) the IMO being entitled, subject as provided in paragraph 1.2 hereof, to communicate and discuss with, and express its opinions to, its members prior to and/or during and/or following such consultations, including as regards the outcome of such consultations, subject to the proviso that the IMO will not make a recommendation concerning the outcome and will advise its members that they should decide individually and not

collectively whether to participate in the provision of publicly funded GP health services on such terms as are offered from time to time by the Minister;

(c) the IMO being entitled, subject as provided in paragraph 1.2 hereof, to communicate and discuss with and express its opinions to its members regarding the decisions of the Minister/HSE (whether by regulation, decision, annual review or otherwise) upon the scope, content and resources to be allocated to such contracts and the fees payable in respect thereof, subject to the proviso that the IMO will not make a recommendation regarding the decisions and will advise its members that they should decide individually and not collectively whether to participate in the provision of publicly funded GP health services on such terms as are offered from time to time by the Minister;

(d) the Minister (and/or HSE) and the IMO agreeing a mechanism whereby a fee to be paid by the Minister and/or HSE under such contracts is recommended by a third party appointed by the Minister. (For the avoidance of doubt, nothing herein shall prevent the Plaintiff from submitting comments to the Minister and/or the HSE in relation to the competition policy implications of any such mechanism);

(e) the IMO being entitled, subject as provided in paragraph 1.2 hereof, to communicate and discuss with its members, and express its opinions to its members in respect of, the outcome of the third party fee-recommending mechanism referred to in paragraph (d) above, subject to the proviso that the IMO will not make a recommendation regarding the Minister's decisions and will advise its members that they should decide individually and not collectively whether to participate in the provision of publicly funded GP health services on such terms as are offered from time to time by the Minister.

1.2 The Plaintiff's above confirmation is subject to:

(a) the IMO, in any communication or discussion by it regarding, or the provision of its opinion in respect of, the matters referred to at paragraphs 1.1 (a), (b) (c) and (e), avoiding the promotion or facilitation of collective withdrawal of services or boycotts by GPs in respect of their participation in the provision of publicly funded GP health services;

(b) any consultation or discussion process in relation to the level of fees or allowances payable in respect of publicly funded GP health services, or the scope, content or resources allocated to such services, being conducted in a manner which avoids the inappropriate exchange between GP practices of commercially sensitive pricing or cost information. Subject to the principle in the above sentence, the foregoing shall not prevent the collection by the IMO from its members of such information as is required by it to prepare a submission to the Minister/HSE and/or any third party nominated to make recommendations in respect of fees.

1.3 It is acknowledged that the expression of an opinion as referred to in paragraph 1.1(b), 1.1(c) and 1.1(e) herein does not, in and of itself, constitute organisation, facilitation or recommendation for the purposes of this Agreement and undertakings.

2. It is agreed that the Defendant will communicate with its GP members by email, copied to the Plaintiff, within 48 hours of the date hereof, the terms of this Agreement and undertakings.

3. The Defendant undertakes to the Court as follows:

- not to organise or recommend the collective withdrawal of services or boycotts by its members (i) as a means of influencing the Minister for Health and/or the HSE and/or any third party appointed by the Minister in determining either the fees to be paid to GPs for the provision of publicly funded GP health services or the other terms and conditions under which such services are to be provided, or (ii) in response to the terms that are offered from time to time by the Minister to GPs in respect of the provision of publicly funded GP health services;
- to advise its members that they ^{SHOULD} decide individually and not collectively whether to participate in the provision of publicly funded GP health services on such terms as are offered from time to time by the Minister.

4. The Plaintiff agrees to give to the Defendant reasonable prior notice of alleged breach of the above undertakings before making application to this Honourable Court.

5. The Proceedings, being the claim and counterclaim, are to be struck out with no order as to costs.

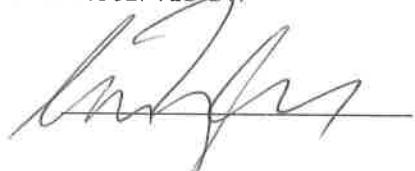


6. References to the Plaintiff and the Defendant in this Agreement and undertakings include their successors and assigns.
7. All costs orders made in the within proceedings are to be vacated.
8. The Defendant has liberty to apply, on notice to the Plaintiff, to vary the terms of, or be released from, the undertakings in the event of a material change in circumstances.
9. This Agreement will be received by, and filed with, the Court.
10. Other than is expressly addressed by this Agreement and undertakings, the parties reserve their position in relation to all matters in issue in the proceedings.

Dated this 28th day of May 2014, in Dublin, Ireland

AGREED TO AND ACCEPTED BY:

Signed:



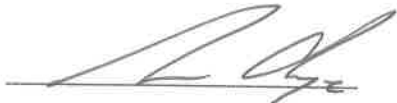
(Print Name) GERALD FITZGERALD

(Position)

MEMBER

For and on behalf of the Competition Authority

Signed:



(Print Name)

SUSAN CLYNE

(Position)

C. O. O.

For and on behalf of the Irish Medical Organisation

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HEADS OF AGREEMENT

For the Plaintiff

David McFadden Solicitor

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14 Parnell Square

Dublin 1

For the Defendant

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8 Clare Street

Dublin 2