

18 June 2019

---

**BEHAVIOURAL COMMITMENTS TO THE COMPETITION AND CONSUMER  
COMMISSION OF SINGAPORE**

---

**RAJAH & TANN SINGAPORE LLP**

9 BATTERY ROAD, #25-01  
MYP CENTRE  
SINGAPORE 049910

**TABLE OF CONTENTS**

1. Introduction.....	3
2. Definitions.....	3
3. Effective Date .....	5
4. Commitments .....	5
4.2. Commitments Relating to SOTs.....	5
4.3. Commitments Relating to Service Standards .....	6
4.4. Commitments Relating to Exclusivity .....	7
4.5. Commitments Relating to Allowing for Early Termination Without Cause .....	8
4.6. Commitments Relating to Prices Offered to Private Hospitals Which Do Not Manage or Operate Their Own In-House Laboratories and Health Screening Companies for IVD Tests .....	9
4.7. Cooperation with the CCCS .....	10
5. Term and Termination .....	11
6. Governing Law .....	11

## Behavioural Commitments to the Competition and Consumer Commission of Singapore

### 1. Introduction

- 1.1. Pursuant to paragraph 6.8 of the CCCS Guidelines on Merger Procedures 2012, Pathology Asia Holdings Pte. Ltd. (“**PAH**”) hereby proposes and agrees to the commitments set out at paragraph 4 below (“**Commitments**”) following discussions with the Competition and Consumer Commission of Singapore (“**CCCS**”) with the aim of enabling CCCS at arriving at a decision, pursuant to Section 60A of the Competition Act (Cap. 50B) (“**Act**”), that the acquisition by PAH of Innovative Diagnostics Private Limited (“**Innovative**”) and Quest Laboratories Pte Ltd (“**Quest**”) (collectively the “**Parties**”) and the intended integration of the businesses of Innovative and Quest (the “**Transaction**”) has not infringed Section 54 of the Act.
- 1.2. PAH enters into these Commitments with the CCCS, although it disagrees with the concerns identified by the CCCS, given that it sincerely believes, and with the objective of assuring the CCCS, that the Transaction does not result in any substantial lessening of competition in any market in Singapore.
- 1.3. PAH shall use all reasonable efforts to ensure compliance with the Commitments, provided that if this requires PAH to take such action which would, or would be likely to, have a detrimental effect on the current or future development of PAH, Innovative, Quest, and/or their respective related entities, PAH reserves the right, at any time during the Commitment Period, to make an application to the CCCS to vary, substitute, or release PAH from any of the Commitments.

### 2. Definitions

#### 2.1. In these Commitments, unless the context otherwise requires:

“**Act**” means the Competition Act (Cap. 50B) of Singapore;

“**Business Day**” means any day on which the banks in Singapore are open for business, excluding Saturdays, Sundays and public holidays;

“**CCCS**” means the Competition and Consumer Commission of Singapore;

“**Commitments**” shall have the meaning ascribed to it at paragraph 1.1 above;

“**Commitment Period**” means a period of 2 years starting from the Effective Date, during which the Commitments are in effect, unless the Commitments are terminated in accordance with the terms herein;

“**CPI**” means the annual all items Singapore Consumer Price Index published from time to time by the Department of Statistics Singapore;

“**Customers**” means, collectively, Existing Customers and New Customers;

“**Effective Date**” means the date on which the CCCS issues a favourable decision that the Transaction has not infringed Section 54 of the Act based on the Commitments provided by the Parties and accepted by the CCCS;

**“Existing Agreements”** means written agreements between Innovative and/or Quest and their respective Customers for the provision of the Services, that are in effect and have not been terminated or expired on or before 4 March 2019, and does not include New Agreements;

**“Existing Customers”** means customers with Existing Agreements;

**“Innovative”** means Innovative Diagnostics Private Limited, and includes its successors and permitted assigns;

**“IVD Tests”** means in-vitro diagnostic tests;

**“Merged Entity”** means the entity through which the businesses of Innovative and Quest are integrated pursuant to the Transaction and includes its successors and permitted assigns;

**“Monitoring Trustee”** means one or more natural or legal person, independent from PAH, Innovative, Quest and/or the Merged Entity, approved by CCCS and appointed by PAH, and who has the duty to, upon appointment pursuant to paragraph 4.7.3, monitor PAH’s compliance with the conditions and obligations as set out in the Commitments;

**“New Agreements”** means written agreements entered into between Innovative, Quest and/or the Merged Entity and their respective Customers for the provision of the Services after 4 March 2019;

**“New Laboratory”** means any new pathology laboratory set up by Innovative, Quest and/or the Merged Entity pursuant to an Existing Agreement or a New Agreement, as the case may be, with a Customer;

**“New Customers”** means customers with New Agreements;

**“PAH”** means Pathology Asia Holdings Pte. Ltd., and includes its successors and permitted assigns;

**“Parties”** shall have the meaning ascribed to it in paragraph 1.1 above;

**“Public Tender”** means any tender issued by any public or private entity, which is open to bidding by any person, subject to such person meeting the requisite criteria stipulated by the entity issuing such tender, and includes any tender published on the GeBIZ website (at <https://www.gebiz.gov.sg/>), and/or any media regardless of form and whether electronic or otherwise which is accessible by any person at all times;

**“Quest”** means Quest Laboratories Pte Ltd, and includes its successors and permitted assigns;

**“Services”** means the supply of all IVD Tests and other services in connection therewith provided by Innovative, Quest and/or the Merged Entity to their respective Customers;

**“Service Standards”** shall have the meaning ascribed to it in paragraph 4.3.1 below;

**“SOT”** means a send-out test, which is an IVD Test that is not performed in-house by the clinical laboratory receiving the request for such IVD Test, but is sent out to and performed by third party laboratories;

**“SOT Customers”** means clinical laboratories in Singapore which request Innovative, Quest and/or the Merged Entity, as the case may be, to perform SOTs; whilst **“Non-SOT Customers”** means all other businesses, apart from Customers as defined, which request Innovative, Quest and/or the Merged Entity, as the case may be, to perform IVD Tests;

**“Transaction”** shall have the meaning ascribed to it in paragraph 1.1 above;

**“Turnaround Time”** refers to the total time from the time that a specimen is registered in the laboratory information system of the laboratory to the time that the result is available to the referrer; and

**“Unrecoverable Expenditure”** means costs which cannot be recovered through the redeployment, sale and/or return of the employees, equipment and reagents, and shall include costs which were incurred, in relation to a New Laboratory, the fitting out of that New Laboratory, costs incurred in relation to IT systems, and costs which are necessary to reinstate the premises as well as IT systems when the contract is terminated.

### **3. Effective Date**

- 3.1. These Commitments shall commence on the Effective Date and shall have effect throughout the Commitment Period, unless terminated earlier in accordance with the terms herein.

### **4. Commitments**

- 4.1. To address the concerns arising from the Transaction identified by the CCCS, PAH hereby enters into the following Commitments from the Effective Date.

#### **4.2. Commitments Relating to SOTs**

- 4.2.1. The commitments in this paragraph 4.2 shall only apply to SOTs which a SOT Customer does not offer in its own in-house laboratory(ies) at the time of the SOT request, and which such SOT Customer requests to send to Innovative, Quest and/or the Merged Entity to perform in-house.
- 4.2.2. PAH undertakes that, during the Commitment Period, Innovative, Quest and/or the Merged Entity, as the case may be, shall supply SOTs to SOT Customers and such supply shall be at prices and on terms and conditions which are fair, reasonable and non-discriminatory.
- 4.2.3. As a benchmark for what is a fair, reasonable and non-discriminatory price for any specific SOT for a particular service level it offers, Innovative, Quest, and/or the Merged Entity, as the case may be, will offer prices which are the same as those that it charges to its Non-SOT Customers for the same IVD Test.
- 4.2.4. Innovative, Quest and/or the Merged Entity, as the case may be, will use the same formula to determine the prices that it charges to SOT Customers for the SOTs requested for by such SOT Customers as that which is used to determine the prices that it charges to Non-SOT Customers for the same IVD Tests, as follows:

For all in-house IVD Tests:  $P = P_L \times (100 - D)\%$

where

- (a) P<sub>L</sub> refers to the list price of the IVD Test in the published price catalogue of Innovative, Quest and/or the Merged Entity, as the case may be, at any given point in time. P<sub>L</sub> is typically only adjusted once a year; and
- (b) D refers to the percentage discount applied to the listed price, which is a value set at 50%, subject to D being adjusted based on any pre-existing reciprocal relationship extended by the SOT Customer to Innovative, Quest and/or the Merged Entity for SOTs purchased by Innovative, Quest and/or the Merged Entity from the SOT Customer. For example, if the SOT Customer gives a higher discount than the industry standard of 50% to Innovative, Quest and/or the Merged Entity, as the case may be, Innovative, Quest and/or the Merged Entity, as the case may be, will reciprocate. If the SOT Customer gives a lesser discount to Innovative, Quest and/or the Merged Entity, as the case may be, Innovative, Quest and/or the Merged Entity, as the case may be, will similarly reciprocate.

4.2.5. The prevailing P<sub>L</sub> and D and any changes thereto made by Innovative, Quest and/or the Merged Entity, as the case may be, for any IVD Test will be made public on the website of Innovative, Quest and/or the Merged Entity, as the case may be.

#### 4.3. Commitments Relating to Service Standards

4.3.1. PAH undertakes that, during the Commitment Period, Innovative, Quest and/or the Merged Entity, as the case may be, shall apply consistent service standards which are offered to Non-SOT Customers to all SOT Customers for all SOTs, as set out in the table below (“**Service Standards**”), subject to paragraphs 4.3.2 and 4.3.3 below, and where the SOT Customer requires that an IVD Test be performed outside of the Service Standards:

S/N	Service Type	Service Standards
1	Frequency of the scheduled collection of IVD test samples collected from a Customer, i.e. number of scheduled courier visits within a day.	Up to 2 times a day on weekdays. 1 time a day on Saturdays. None on Sundays and public holidays.
2	Availability of on-demand collection outside of scheduled courier collections	An on demand (i.e. unscheduled) collection of test samples outside of scheduled rounds will be made available during normal operating hours on Business Days within stipulated existing cut-off times. Additional Charges may apply for an urgent on demand collection.
3	Frequency and/or flexibility of delivery of consumables required for IVD tests	For 90% of the requests, consumables will be replenished within 3 Business Days from the request date.
4	Frequency and/or flexibility of delivery of the results/reports for IVD tests	Customers can assess their patients’ test reports from Innovative, Quest and/or the Merged Entity’s online portal. Innovative, Quest and/or the Merged Entity will also provide a hard copy report should the customer request it.
5	Turnaround Time for IVD tests	For 90% of cases, this will be between 2 hours to the next Business Day (for

		basic and routine IVD tests that are conducted on a daily basis) to a few months (for scheduled tests, SOTs and tests requiring a long analytical period due to the nature of the methodology of the test).
--	--	---

- 4.3.2. Innovative, Quest and/or the Merged Entity shall retain the discretion to vary the Service Standards to comply with best practices, changes in technology and/or any regulatory requirements imposed by any applicable laws and regulations, or by any regulatory authority and accreditation body including but not limited to the Ministry of Health, Enterprise Singapore and the College of American Pathologists.
- 4.3.3. Innovative, Quest and/or the Merged Entity, as the case may be, shall publish the latest copy of the Service Standards, as may be amended from time to time pursuant to paragraph 4.3.2, on its website.
- 4.3.4. It shall not be a breach of the commitments set out in this paragraph 4.3 should Innovative, Quest and/or the Merged Entity fail to meet the Service Standards as a result of factors which are not within its reasonable control, including but not limited to delays by its suppliers, changes in regulation, non-compliance by SOT Customers to Innovative's, Quest's or the Merged Entity's standard operating procedures as required by regulatory bodies and/or accreditation bodies, pandemics, epidemics, fire, natural disasters, rebellion, insurrection, riots, acts of terrorists, wars, acts of governments or acts of God.

4.4. **Commitments Relating to Exclusivity**

- 4.4.1. PAH undertakes that, during the Commitment Period, Innovative, Quest and/or the Merged Entity shall not include any exclusivity obligation (including de facto exclusivity clauses) in any New Agreement, or any Existing Agreement which is renewed, extended or rolled over after 4 March 2019, and shall remove without conditions any exclusivity obligation (including de facto exclusivity clauses) contained in any such New Agreement or any such Existing Agreement, as the case may be, except where such New Agreement or such Existing Agreement is entered into pursuant to a Public Tender.
- 4.4.2. Notwithstanding paragraph 4.4.1 above, PAH undertakes not to [CONFIDENTIAL INFORMATION].
- 4.4.3. PAH undertakes to notify all Customers affected by the commitment set out in this paragraph 4.4, as set out in **Schedule 1** to these Commitments (which shall be updated as New Agreements are entered into), within fourteen (14) Business Days from the Effective Date or, in the case of a New Agreement entered into by Innovative, Quest and/or the Merged Entity which comes into force after the Effective Date, within fourteen (14) Business Days after the date of such New Agreement coming into force. The notification shall be a standard notification and shall be in such form and manner to be approved by the CCCS. Innovative, Quest and/or the Merged Entity, as the case may be, shall provide copies of such notifications to the CCCS within five (5) Business Days from the dates on which such notifications are made.

**4.5. Commitments Relating to Allowing for Early Termination Without Cause**

- 4.5.1. PAH undertakes that, during the Commitment Period, Innovative, Quest and/or the Merged Entity shall allow any Existing Customer or any New Customer, if they so request, to terminate their fixed term contracts prior to the respective termination or expiry dates of such contracts without cause, subject to a prior written notice period of ninety (90) Business Days, and without imposing any penalty on or seeking any other form of remedy or relief from such Existing Customer or New Customer for such early termination without cause (save only for the circumstance described in paragraph 4.5.2), as the case may be, except where such New Agreement is entered into pursuant to a Public Tender. For the avoidance of doubt, the termination without cause as referred in this paragraph will operate regardless of whether Innovative, Quest and/or the Merged Entity intends to claim for Unrecoverable Expenditure in the terms described in paragraph 4.5.2.
- 4.5.2. The circumstance referred to in paragraph 4.5.1 above is where Innovative, Quest and/or the Merged Entity has incurred or is required to incur incremental capital expenditure and/or incremental operating expenditure which directly result from a request made by an Existing Customer or a New Customer in connection with an Existing Agreement or a New Agreement, as the case may be, which would otherwise not have been incurred if not for the entry into the New Agreement or Existing Agreement here referred to, and which constitutes Unrecoverable Expenditure by Innovative, Quest and/or the Merged Entity, as the case may be, having used its best endeavours to recover or redeploy such incremental capital expenditure and/or incremental operating expenditure. In such a case, and without prejudice to any other remedies available to Innovative, Quest and/or the Merged Entity under law or in equity, Innovative, Quest and/or the Merged Entity, as the case may be, shall be entitled to recover such Unrecoverable Expenditure incurred which is unrecovered as a result of early termination without cause by the Existing Customer or the New Customer. In the case where Innovative, Quest and/or the Merged Entity intends to claim for Unrecoverable Expenditure, PAH undertakes to notify the Customer of such intention within thirty (30) business days from the date when such Customer gives the written notice referred to in paragraph 4.5.1. For the avoidance of doubt, PAH is not required to have assessed and set out specific claims in the notice of intent referred to in this paragraph, which will be separately notified to such Customer at a later date.
- 4.5.3. The following capital expenditure and/or operating expenditure may be considered Unrecoverable Expenditure within the meaning of paragraph 4.5.2 above, with the burden of proof on a balance of probabilities being on PAH:
- (a) all remaining rental payments under the lease for the premises used to set up a New Laboratory, as lease agreements tend to be for fixed periods;
  - (b) costs of renovating and fitting out the premises for a New Laboratory, which are sunk costs and are simply not recoverable;
  - (c) costs of obtaining certification or other approvals required for the operation of the New Laboratory, which is tied to the location of the laboratory, and which are sunk costs;
  - (d) manpower costs for employees who are hired to manage the New Laboratory, including any costs incurred for the redeployment and/or termination of such employees;
  - (e) costs incurred in purchasing or leasing any new equipment for a New Laboratory, which cannot be diverted or redeployed for the use of other customers or sold to other parties within a reasonable period of time;



- (f) costs of integration and disintegration of the IT systems of Innovative, Quest and/or the Merged Entity, as the case may be, and that of a customer; and
  - (g) any penalties imposed by supplier(s) for early termination of any agreement for reagent rentals or rentals of any other equipment not here caught by the above paragraphs for a New Laboratory.
- 4.5.4. Notwithstanding paragraph 4.5.1 above, PAH undertakes, in relation to a New Agreement entered into from 4 March 2019, [CONFIDENTIAL INFORMATION], that it shall, during the Commitment Period [CONFIDENTIAL INFORMATION].
- 4.5.5. PAH further undertakes to ensure that Innovative, Quest, and/or the Merged Entity, as the case may be, includes a clause into all New Agreements, other than New Agreements entered into pursuant to Public Tenders, stating that the New Customers with whom such New Agreements are entered into may, for the duration of the Commitment Period, terminate such New Agreements without cause, subject to a prior written notice period of ninety (90) Business Days, and without being subject to any penalty for such early termination without cause, subject to Innovative's, Quest's and/or the Merged Entity's rights as stated in this paragraph 4.5.
- 4.5.6. PAH undertakes to notify all Customers affected by the commitment set out in this paragraph 4.5, as set out in **Schedule 2** to these Commitments (which shall be updated as New Agreements are entered into), within fourteen (14) Business Days from the Effective Date or, in the case of a New Agreement entered into by Innovative, Quest and/or the Merged Entity which comes into force after the Effective Date, within fourteen (14) Business Days after the date of such New Agreement coming into force, in such form and manner to be approved by the CCCS, and to provide copies of such notifications to the CCCS within five (5) Business Days from the dates on which such notifications were made.
- 4.6. **Commitments Relating to Prices Offered to Private Hospitals Which Do Not Manage or Operate Their Own In-House Laboratories and Health Screening Companies for IVD Tests**
- 4.6.1. PAH undertakes that, during the Commitment Period, Innovative, Quest and/or the Merged Entity, as the case may be, shall not increase its prices and shall maintain the same terms and conditions in relation to IVD Tests and Services set out in the Existing Agreements with private hospitals which do not manage or operate their own in-house laboratories and health screening companies. Such prices and terms and conditions shall be maintained in any Existing Agreements or New Agreements entered into with such customers for as long as such Existing Agreements or such New Agreements remain in effect during the Commitment Period. This excludes SOTs which are provided for under such Existing Agreements or such New Agreements, and which cannot be performed in-house by Innovative, Quest and/or the Merged Entity and are sent out by Innovative, Quest and/or the Merged Entity to third party laboratories either locally or overseas.
- 4.6.2. In the case of SOTs provided for under any Existing Agreements or New Agreements entered into between Innovative, Quest and/or the Merged Entity, as the case may be, and private hospitals which do not manage or operate their own in-house laboratories and/or health screening companies, as the case may be, and which cannot be performed in-house by Innovative, Quest and/or the Merged Entity in their own laboratories and are sent out by them to third-party laboratories, PAH undertakes that, during the Commitment Period, Innovative, Quest and/or the Merged Entity, as the case may be, shall not increase its pre-4 March 2019 markup, administrative fee, handling fee and marketing support fee, [CONFIDENTIAL INFORMATION], where these are imposed by Innovative, Quest and/or the Merged Entity, as

the case may be, and, subject to paragraph 4.6.3 below, shall not impose any other fees or charges on the said customers.

- 4.6.3. Notwithstanding paragraph 4.6.2 above, Innovative, Quest and/or the Merged Entity shall be entitled to pass through, without any markup, all third-party costs incurred directly for the supply of SOTs under any Existing Agreements or New Agreements with private hospitals which do not manage or operate their own in-house laboratories and/or health screening companies, as the case may be.
- 4.6.4. In the case of SOTs provided for under any Existing Agreements or New Agreements, PAH will provide to any Customer affected by this Commitment [CONFIDENTIAL INFORMATION].
- 4.6.5. The Commitments specified in this paragraph 4.6 is subject to the ability of Innovative, Quest and/or the Merged Entity, as the case may be, to make adjustments to the prices as set out in Existing Agreements or New Agreements for IVD Tests or to the markup, administrative fee, handling fee and marketing support fee referred to in paragraph 4.6.2 during the Commitment Period. Where there is any change in the CPI during the Commitment Period, an annual adjustment by a value equal to the change in such CPI expressed in terms of a percentage may be made in the month immediately following the public release of the CPI data in January of that year.
- 4.6.6. PAH undertakes to notify all Customers affected by the commitment set out in this paragraph 4.6, as set out in **Schedule 4** to these Commitments, within fourteen (14) Business Days from the Effective Date, in such form and manner to be approved by the CCCS, and to provide copies of such notifications to the CCCS within five (5) Business Days from the dates on which such notifications were made.
- 4.6.7. For avoidance of doubt, the commitments as set out in paragraphs 4.4. and 4.5 above apply equally to the private hospitals which do not manage or operate their own in-house laboratories and health screening companies with Existing Agreements, to the extent applicable and the effects of the commitment as set out in this paragraph 4.6 shall not supersede the commitments as set out in paragraphs 4.4 and 4.5 above.

#### 4.7. **Cooperation with the CCCS**

- 4.7.1. PAH shall provide the CCCS with all such cooperation, assistance and information as the CCCS may reasonably require to ensure compliance by PAH with these Commitments, provided that any confidential information disclosed to the CCCS will not be made available to any third parties without the prior written consent of the Party(ies) concerned.
- 4.7.2. Within thirty (30) Business Days or such longer period as the CCCS considers reasonable and practicable from the end of every twelve (12) calendar month cycle, commencing from the Effective Date to the end of the Commitment Period, PAH shall submit to CCCS an internal audit report, signed off by PAH's management, on the compliance by PAH, Innovative, Quest and/or the merged entity, as the case may be, with these Commitments. The internal audit shall be carried out by PAH in accordance with an audit plan to be approved by CCCS, which in any event, shall be reasonable and not onerous so as to incur unreasonable costs in undertaking the audit. PAH shall submit a draft audit plan within six (6) calendar months from the Effective Date for CCCS' approval.

4.7.3. Where the CCCS has reasonable grounds<sup>1</sup> for suspecting non-compliance with any of the Commitments by PAH, Innovative, Quest and/or the Merged Entity, the CCCS reserves the right to request that PAH appoints, and PAH shall appoint, a Monitoring Trustee on terms and conditions approved by the CCCS. Prior to the CCCS requesting the appointment of the Monitoring Trustee by PAH, the CCCS shall, subject to any confidentiality obligations that the CCCS has, give PAH reasonably detailed information on the alleged non-compliance and an opportunity to respond and provide an explanation on the alleged non-compliance. The CCCS shall have the discretion to approve or reject PAH's proposed Monitoring Trustee. The Monitoring Trustee shall be remunerated by PAH, Innovative, Quest and/or the Merged Entity in a way that does not impede the independent and effective fulfilment of its mandate. The CCCS may, on its own initiative or at the request of the Monitoring Trustee or PAH, give any order or instruction to the Monitoring Trustee in order to ensure compliance of PAH with the Commitments.

## **5. Term and Termination**

5.1. Subject to paragraph 5.2 below, PAH shall comply with the Commitments for the Commitment Period.

5.2. The CCCS may, at any time during the Commitment Period, in accordance with paragraphs 6.14 to 6.16 of the CCCS Guidelines on Merger Procedures 2012, vary, substitute or release PAH from one or more of the Commitments pursuant to Sections 60A(3) and (4) of the Act, pursuant to an application by PAH supported by reasons, including but not limited to:

- (a) any material changes in market and competitive conditions; or
- (b) circumstances where compliance with any of the Commitments exceeds the objective set out in paragraph 1.2 above or has such a detrimental effect on the current or future development of the Parties and/or their respective related entities.

## **6. Governing Law**

6.1. These Commitments shall be governed by and construed in accordance with the laws of Singapore.

---

<sup>1</sup> An example of such reasonable grounds for CCCS to suspect non-compliance with any of the Commitments may be if CCCS receives one or more substantiated complaints or consistent complaints of purported non-compliance from multiple credible sources.

**SCHEDULE 1**

[CONFIDENTIAL INFORMATION]

**SCHEDULE 2**

[CONFIDENTIAL INFORMATION]

### SCHEDULE 3

#### Definitions

1. **“SOT Price”** means the price of SOTs referred to in paragraph 4.6.2 of the Commitments which cannot be performed in-house by Innovative in its own laboratories and are sent out to third-party laboratories. [CONFIDENTIAL INFORMATION].
2. **“Cost Price”** means the price of the SOT charged by third-party laboratories to Innovative.

[CONFIDENTIAL INFORMATION]

**SCHEDULE 4**

[CONFIDENTIAL INFORMATION]