Annex 2

Questions for market testing on the Proposed Commitments submitted by PAH

Notes

1) The terms used, unless otherwise defined, shall have the meaning ascribed to them in paragraph 2 of the proposed commitments ("**the Proposed Commitments**"), attached as **Annex 1**.

2) The questions set out below are intended to guide interested parties' responses to CCCS's public consultation. Respondents are encouraged to provide any additional comments on the Proposed Commitments.

I. Commitments relating to send-out tests ("SOTs") and service standards (paragraphs 4.2 and 4.3 of the Proposed Commitments)

Competing laboratories may not have sufficient scale currently to perform certain IVD Tests in-house upon receiving requests from customers, and therefore may have to send out such IVD Tests to third-party laboratories. These Commitments aim to ensure that competing laboratories, while building up their scale of operations, have access to SOTs supplied by the Parties, at **prices** which are fair, reasonable and non-discriminatory relative to the Parties' direct non-contracted customers,[1] as well as at **service standards** consistent with those offered by the Parties to their direct non-contracted customers. This is to allow competing laboratories to meet the range of tests that customers require, and in turn, better able to compete for customers.

Questions on Commitments relating to SOTs and Service Standards

1. *Prices*. Please confirm whether, from your observations/experience, the Parties typically offer a 50% discount off the listed price for each IVD test in its published price catalogue for all their Non-SOT Customers (i.e. direct non-contracted customers). If no, please provide details on the level of discount (in percentage terms) which the Parties currently offer to their Non-SOT Customers and whether the discount varies across different types of IVD tests. Please provide any supporting documents (e.g., invoices, receipts).

2. *Service Standards*. Do the Parties typically offer service standards as set out in paragraph 4.3.1 of the Proposed Commitments, to all its Non-SOT Customers (i.e. direct non-contracted customers)? If no, please provide

[1] This Proposed Commitment provides that the Parties will offer prices which are the same as those that they charge to their direct non-contracted customers for the same IVD test. The Proposed Commitment does not otherwise restrict the Parties' ability to adjust their prices.

details on the service standards, which the Parties currently offer to their Non-SOT Customers, in relation to each of following the indicators:

(a) Frequency of collection of IVD test samples from customers;
(b) Availability of on-demand collection outside of scheduled courier collections;
(c) Frequency and/or flexibility of delivery of consumables required for IVD tests;
(d) Frequency and/or flexibility of delivery of results/reports for IVD tests; and
(e) Turnaround Time for IVD tests.

Please indicate and explain if the service standards vary across (i) different non-contracted customers and (ii) different types of IVD tests. Please provide any supporting documents.

3. *Service Standards – Turnaround Time*. According to the Parties, "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 (as referred in paragraph 2 of the Commitments). Please indicate if this definition accords with the general industry understanding/practice in respect of turnaround time.

4. Please explain to what extent a competing laboratory's ability to purchase SOTs from the Parties (i) at a fair, reasonable and non-discriminatory price relative to the Parties' Non-SOT Customers (i.e. direct non-contracted customers), and (ii) of consistent service standards which are offered by the Parties to their Non-SOT Customers, would:

(a) Assist a competing laboratory to:

i. Offer a wider range of tests to meet the requirements of its customers, or to better market itself to its customers; and

ii. Gauge the level of available demand in the market to commercially justify performing such tests in-house instead (and hence undertake the necessary expansion to perform such tests); and

(b) Make customers more willing to consider switching to competing private independent laboratories.

II. Commitments relating to Exclusivity (paragraph 4.4 of the Proposed Commitments)

Contracts with customers with exclusivity obligations (including clauses giving rise to *de facto* exclusivity, such as loyalty-inducing retroactive rebates) may result in such customers' inability to switch to competing laboratories. This commitment intends to prevent the Parties from locking in customers on an exclusive basis going forward, and hence allow such contracted customers to switch to other suppliers should they choose to do so. Increasing customers' ability to switch away from the merged entity post-Transaction also increases the incentives for competing laboratories to expand their volume of tests supplied, and/or range of tests provided.

Questions on Commitments relating to Exclusivity

1. Would the Proposed Commitments on removing exclusivity obligations (including de facto exclusivity clauses, such as rebates that are structured retroactively[2]) in contracts/agreements be sufficient to increase customers' ability to switch to another IVD test supplier and/or multi-source the supply of IVD tests, should they choose to do so?

2. For agreements for the provision of IVD tests entered into pursuant to a Public Tender, [3] please comment on whether clinical laboratories are able to successfully request to vary the terms providing for exclusivity obligations in such agreements. Please describe and provide examples of any such variation.

III. Commitments relating to Allowing for Early Termination Without Cause (paragraph 4.5 of the Proposed Commitments)

Contracts with customers which do not provide for early termination without cause, may result in such customers' inability to readily switch to competing laboratories. This commitment is similarly intended to lower barriers for customers to switch to other suppliers, and potentially increase competing laboratories' incentives to expand their volume of tests supplied and/or range of tests provided, and in turn, increase the extent of competitive constraint on the merged entity.

Questions on Commitments relating to Allowing for Early Termination Without Cause

[2] A retroactive rebate is a rebate that applies to *all* purchases across a referenced period/range/threshold which will not be given if the qualifying conditions are not met. This is as opposed to a rebate which applies *only* to purchases exceeding certain qualifying threshold(s).

[3] "Public Tender" is defined by PAH in the Proposed Commitments to mean 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.

1. Would the Proposed Commitments providing customers the ability to terminate their contracts with the Parties early, and without cause, be sufficient to allow customers with fixed-term contracts with the Parties to switch suppliers of IVD tests more easily?

2. As considered in paragraphs 4.5.1. and 4.5.5 of the Proposed Commitments, a customer's ability to terminate its contract early and without cause is subject to a prior written notice period of ninety (90) Business Days. Is a notice period of 90 Business Days reasonable, for such written notice that customers need to give to the Parties for early termination of their contracts without cause? Is there a typical duration for a notice period for early termination of a contract without cause in this industry?

3. In relation to agreements that clinical laboratories enter into with customers who purchase IVD tests through Public Tenders, to what extent is it difficult for clinical laboratories to vary the terms of their contracts with these customers in order to allow these customers to early terminate the contracts without cause?

4. Do you agree that the capital expenditure and/or operating expenditure set out in paragraph 4.5.3 of the Proposed Commitments may be considered as Unrecoverable Expenditure, and which is reasonable for the Parties to potentially claim against a customer that terminates its contract early?

IV. 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 (paragraph 4.6 of the Proposed Commitments)

These two types of customers generally require high volumes of IVD tests and have other specific requirements which currently can only be met by the Parties. This commitment generally provides for the Parties to maintain the current terms of their contracts with these two types of customers, in order to address the risk of a price increase or a degradation of quality by the merged entity.

<u>Questions on 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</u>

1. Would the Proposed Commitments be sufficient to address the concern that the Parties may increase the prices and/or degrade the quality of services they currently offer to the private hospitals (which do not manage or operate their own in-house laboratories), and health screening companies post-Transaction?

2. In your view, is it reasonable that the Parties may adjust (i) the prices as set out in the agreements; and/or (ii) the markup, administrative fee, handling fee and marketing support fee imposed by the Parties in relation to SOTs; based on the change in the CPI annually as set out in paragraph 4.6.5 of the Proposed Commitments?

V. Duration of the Commitments (paragraph 5 of the Proposed Commitments)

PAH has proposed a Commitment Period of two years from the date of CCCS's final decision on the Transaction, during which the Commitments are in effect. PAH submitted that two years is more than sufficient for a new entrant to grow into a significant player in the relevant market, and private hospitals can switch easily from their current practice of outsourcing the operation of their in-house laboratories to self-supply with little switching costs.

Questions on Duration of the Commitments

1. In your view, is two years a sufficient timeframe for a new entrant or existing suppliers to grow into a significant player in the relevant market? Please provide supporting information, for example with reference to actual examples of such entry or growth by a laboratory providing IVD tests (and the timeframe required).

2. In your view, is two years sufficient for private hospitals to switch from their current practice of outsourcing the operation of their in-house laboratories to self-supply? If this duration is inadequate, what would be a sufficient duration? Please substantiate your response.

VI. Monitoring Trustee

In the Proposed Commitments, PAH has not proposed to appoint a Monitoring Trustee in the first instance.[4] In lieu of appointing a Monitoring Trustee, PAH has proposed to individually notify all customers affected by each of the Proposed Commitments, so that each affected customer is aware of the Parties' Commitments and the scope which affects the customer. However, CCCS reserves the right to subsequently request that PAH appoint a Monitoring Trustee, where CCCS has reasonable grounds for suspecting non-compliance with any of the Commitments by the Parties.

[4] A Monitoring Trustee is an independent third-party which is appointed to monitor a party's compliance with the conditions and obligations as set out in commitments provided by that party to the CCCS.

Questions on Monitoring Trustee

1. Is it feasible for customers and competing laboratories affected by these Proposed Commitments, to identify any potential non-compliance by the Parties with the Proposed Commitments[5]?

[5] Commitments relating to SOTs and Service Standards (paragraphs 4.2 and 4.3); Commitments relating to Exclusivity and Allowing for Early Termination Without Cause (paragraphs 4.4 and 4.5); and Commitments relating to prices offered to private hospitals which do not manage or operate their own in-house laboratories, and health screening companies (paragraph 4.6).