



MEDIA RELEASE

21 June 2019

CCCS Consults on Proposed Commitments in Private Clinical Laboratories Merger

1. The Competition and Consumer Commission of Singapore (“**CCCS**”) is inviting public feedback from 21 June to 5 July 2019 on commitments proposed by Pathology Asia Holdings Pte. Ltd. (“**PAH**”) to address competition concerns identified by CCCS in relation to PAH’s acquisition of Innovative Diagnostics Private Limited (“**Innovative**”) and Quest Laboratories Pte. Ltd. (“**Quest**”) (each a “**Party**” and collectively, the “**Parties**”) and the intended integration of the businesses of Innovative and Quest (the “**Transaction**”).¹

Background

2. Both Innovative and Quest provide in-vitro diagnostic (“**IVD**”) tests in Singapore, which can be used to detect diseases or other conditions, as well as monitor a person’s health.² PAH is part of TPG Capital, a global private investment firm founded in 1992.

3. Based on information furnished by PAH and third-party feedback from customers³ and other competitors, CCCS was unable to clear the merger at the end of the Phase 1 review.

4. CCCS proceeded to an in-depth Phase 2 review on 9 November 2018. Further information received by CCCS revealed that Innovative and Quest are generally perceived by customers as the closest competitors to each other pre-Transaction, being two major providers of IVD tests or clinical laboratory services⁴ by private independent clinical laboratories in Singapore. Third-party feedback reiterated concerns about the extent to which alternative providers (e.g. private hospital clinical laboratories and other private

¹ On 7 September 2018, CCCS received an application from PAH for a decision on whether the Transaction infringes the prohibition in the Competition Act (Cap. 50B) (the “**Act**”) against anticompetitive mergers. Section 54 of the Act prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore.

² According to PAH, IVD tests are diagnostic tests done on samples such as blood or tissue that have been taken from the human body. IVD tests can detect diseases or other conditions, and can be used to monitor a person’s overall health to help cure, treat, or prevent diseases, amongst other uses.

³ The types of customers whom the Parties generally serve include general practitioners, clinics, medical centres, hospitals, dialysis centres, not-for-profit organisations and third-party payers.

⁴ According to PAH, “clinical laboratory services” includes the performance of IVD tests, along with other ancillary services such as pre and post analytical services like phlebotomy, the collection of samples, delivery of test reports and delivery of consumables. The analytical services provided by laboratories include analysing patient samples, performing quality control checks, participating in external quality control programs, attaining international quality accreditation standards etc.

independent clinical laboratories) are able to exert sufficient competitive constraint on the merged entity, especially for customers such as private hospitals which do not manage their in-house laboratories, and health screening companies.⁵

5. To address the competition concerns raised by CCCS, PAH submitted the following commitments ("**Proposed Commitments**"):

- a. **Commitments relating to Third-Party IVD Testing (i.e. Send-Out Tests ("SOTs"))⁶ and Service Standards.** 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 third-party IVD testing services (i.e. SOTs) supplied by the Parties, at prices which are fair, reasonable and non-discriminatory,⁷ as well as at service standards consistent with those offered by the Parties to their 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.
- b. **Commitments relating to Exclusivity.** Contracts with customers with exclusivity obligations (including *de facto* exclusivity)⁸ 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 also increases the incentives for competing laboratories to expand their volume of tests supplied, and/or range of tests provided.
- c. **Commitments relating to Allowing for Early Termination without Cause.** 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, and in turn, increase the extent of competitive constraint on the merged entity.
- d. **Commitments relating to prices offered to private hospitals which do not manage or operate their in-house laboratories, and health screening companies.** These two types of customers generally require high volumes of IVD tests and have other specific requirements which currently can only be

⁵ For more information on the Transaction and CCCS's Phase 1 review, please refer to the media releases dated 11 September 2018, 29 October 2018 and 16 November 2018 at www.cccs.gov.sg.

⁶ Send-out test, or SOT, refers to an IVD test that is not performed by the laboratory receiving the request for such IVD test from customers, but is sent out to and performed by third-party laboratories.

⁷ 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.

⁸ Exclusivity obligations refer to situations where customers purchase IVD tests or services exclusively from a certain supplier. This includes clauses giving rise to *de facto* exclusivity, such as loyalty-inducing retroactive rebates.

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.

6. 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. In lieu of appointing a Monitoring Trustee to monitor the Parties' compliance with the Commitments in the first instance, 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 said 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.

Public Consultation

7. CCCS is inviting feedback on the Proposed Commitments at **Annex 1** to assist its assessment of whether the Proposed Commitments will sufficiently address the competition concerns arising from the Transaction. A detailed set of questions in relation to the Proposed Commitments can be found in **Annex 2**. The closing date for submissions is **12.00pm on 5 July 2019**. If the submission/correspondence contains confidential information, please also provide CCCS with a non-confidential version of the submission or correspondence. CCCS will issue its decision relating to the Transaction, alongside with its decision on the Proposed Commitments, following the public consultation.

8. More information on the Transaction can be accessed from the CCCS website at www.cccs.gov.sg under the section "[Public Register and Consultation](#)".

9. For more information on the merger review process in Singapore, please refer to **Annex 3**.

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About The Competition and Consumer Commission of Singapore

The Competition and Consumer Commission of Singapore (“**CCCS**”) is a statutory board of the Ministry of Trade and Industry. CCCS administers and enforces the Competition Act (Cap. 50B) which empowers CCCS to investigate and adjudicate anti-competitive activities, issue directions to stop and/or prevent anti-competitive activities and impose financial penalties. CCCS is also the administering agency of the Consumer Protection (Fair Trading) Act (Cap. 52A) or CPFTA which protects consumers against unfair trade practices in Singapore. Our mission is to make markets work well to create opportunities and choices for business and consumers in Singapore.

For more information, please visit www.cccs.gov.sg.

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Annex 3

About the Section 54 Prohibition under the Competition Act & Merger Procedures

Section 54 of the Act prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition in Singapore.

CCCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

- The merged entity has/will have a market share of 40% or more; or
- The merged entity has/will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms is 70% or more.

Merging entities are not required to notify CCCS of their merger but they should conduct a self-assessment to ascertain if a notification to CCCS is necessary. If they are concerned that the merger has infringed, or is likely to infringe, the Act, they should notify their merger to CCCS. In such cases, CCCS will assess the effect of the merger on competition and decide if the merger has resulted, or is likely to result, in a substantial lessening of competition (“**SLC**”) in Singapore.

Separately, CCCS has the ability to conduct an investigation into an un-notified merger if there are reasonable grounds for suspecting that the merger infringes section 54 of the Act. In the event CCCS finds that a merger situation has resulted or is expected to result in an SLC, CCCS has powers to give directions to remedy the SLC. For example, CCCS can require the merger to be unwound or modified to address or prevent the SLC, as the case may be. CCCS may also consider issuing interim measures prior to the final determination of the investigation.

Phase 1 and Phase 2 Merger Review

A Phase 1 review entails a quick review and allows merger situations which do not raise competition concerns under the section 54 prohibition to proceed. CCCS expects to complete a Phase 1 review within 30 business days. By the end of this period, CCCS will determine whether to issue a favourable decision and allow the merger situation to proceed. If CCCS is unable, at the end of the 30-day period, to conclude that the merger situation will not result in a substantial lessening of competition, CCCS will inform the merger parties and the merger parties may file Form M2. Upon receipt of Form M2, CCCS will proceed to a Phase 2 review.

A Phase 2 review entails a more detailed and extensive examination of the merger situation. While the principles of substantive assessment are the same, CCCS will require access to more extensive and detailed information regarding the merger parties and the markets in question.

As the Phase 2 review is more complex, CCCS will endeavour to complete a Phase 2 review within 120 business days.

Commitments

Section 60A of the Act states that CCCS may, at any time before making a decision as to whether the section 54 prohibition has been or will be infringed, accept commitments that remedy, mitigate or prevent the substantial lessening of competition or any adverse effect arising from the merger situation. Where CCCS has accepted a commitment, CCCS will make a favourable decision.

Further details can be found in the *CCCS Guidelines on Merger Procedures 2012*.

For more information, please visit www.cccs.gov.sg