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12 April 2023

Dear Interested Party

Re: Request for submissions: Australian Clinical Labs Limited's proposed acquisition of Healius Limited

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of Healius Limited (**Healius**) by Australian Clinical Labs Limited (**ACL**) (the **proposed acquisition**).

ACL and Healius provide human pathology services to out-patients, in-patients (at public and private hospitals), and commercial and government customers, as well as veterinary pathology services. Healius also provides diagnostic imaging services. Further details are provided at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- how closely ACL and Healius compete in the supply of pathology services;
- the impact of the proposed acquisition on price (including bulk-billing policies), quality or service levels (including convenience), in the context of already high levels of concentration in pathology services in Australia; and
- whether new entry or expansion in the supply of pathology services would constrain a combined ACL/Healius from altering its pricing (including bulk-billing policies) or service levels.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by **3 May 2023** via email with the title: *Submission re: ACL/*

Healius - attention Claudia Gulbransen-Diaz/ Lucia Moschis. If you require more time to respond, please let us know.

If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Claudia Gulbransen-Diaz on (02) 9230 9125 or Lucia Moschis on (08) 8456 3549.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the Competition and Consumer Act 2010. Where the ACCC is required to disclose confidential information, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Daniel McCracken-Hewson
General Manager
Merger Investigations

Attachment A

Proposed acquisition

On 20 March 2023, ACL announced its intention to acquire Healius by way of an unsolicited takeover offer to acquire all fully paid ordinary shares in Healius.

ACL

ACL is an ASX-listed Australian provider of pathology services (ASX:ACL). ACL provides human pathology services to out-patients, in-patients (of public and private hospitals), and commercial and government customers.

ACL provides human pathology services through its wholly owned subsidiary Clinical Laboratories Pty Ltd. As at March 2023, ACL operated Approved Collection Centres (**ACCs**) and National Association of Testing Authorities (**NATA**) accredited laboratories Australia-wide (except Tasmania):

- 444 ACCs and 11 NATA accredited laboratories in NSW and ACT
- 470 ACCs and 28 NATA accredited laboratories in Victoria
- 72 ACCs and 2 NATA accredited laboratories in Queensland
- 155 ACCs and 26 NATA accredited laboratories in South Australia
- 172 ACCs and 7 NATA accredited laboratories in Western Australia
- 13 ACCs and 1 NATA accredited laboratory in the Northern Territory.

ACL also provides veterinary pathology services in South Australia and Victoria through its Gribbles Veterinary brand.

ACL operates 31 SunDoctors skin cancer clinics in NSW, Queensland, Victoria and South Australia through Southern Sun Clinics Pty Ltd.

Healius

Healius is an ASX-listed Australian provider of pathology services and diagnostic imaging services (ASX:HLS). Healius provides pathology services to out-patients and in-patients (of private and public hospitals), and commercial and government customers.

As at March 2023, Healius provided human pathology services through Specialist Diagnostic Services Pty Ltd operating under various brands in all Australian states and territories:

- 543 ACCs and 26 NATA accredited laboratories in Queensland through QML Pathology
- 732 ACCs and 26 NATA accredited laboratories in NSW and ACT through Lavery Pathology
- 534 ACCs and 29 NATA accredited laboratories in Victoria through Dorevitch Pathology
- 33 ACCs and 1 NATA accredited laboratory in South Australia through Abbott Pathology
- 223 ACCs and 12 NATA accredited laboratories in Western Australia and the Northern Territory through Western Diagnostic Pathology
- 22 ACCs and 2 NATA accredited laboratories in Tasmania through TML Pathology

Healius also provides veterinary pathology services through its Vetpath (Western Australia and Northern Territory), Vetnostics (NSW and ACT), QML Vetnostics (Queensland), TML Vetnostics (Tasmania) and Australian Specialised Animal Pathology Laboratory (South Australia and Victoria) brands.

On 8 December 2022, Healius announced it had entered into a binding agreement to sell its day hospital business (Montserrat Day Hospitals) to Nexus Hospitals.

Attachment B

1. Describe your business or organisation and explain your interest in the proposed acquisition, including any commercial relationship(s) with ACL or Healius.

Community pathology services

Relevant market(s)

2. When reviewing mergers in the pathology sector, the ACCC has previously considered the likely competitive effects in state-based markets for the supply of community pathology services (including services to out-patients and private in-patients).

Comment on the appropriateness of this market definition, including with respect to:

- a. state-based geographic scope; and
- b. whether out-patient and private in-patient pathology services should be considered together, including the extent to which participation in tender processes should be distinct from out-patient services.

Competition between ACL and Healius

3. Describe how closely ACL and Healius compete in the supply of pathology services (including with respect to price or bulk-billing practices, type and quality of service, convenience and/or participation in tender processes).

Competing suppliers

4. Identify suppliers of community pathology services that compete with ACL and/or Healius in each state or territory and describe whether each is a strong, moderate or weak competitor and why.
5. Provide market share estimates for the supply of community pathology services in each state or territory.
6. To what extent would competing suppliers of community pathology services constrain the merged entity from introducing co-payments and/or decreasing service levels.
7. Discuss the impact of government regulation (including, for example, Medicare subsidies and quality standards) on competitive dynamics in this industry.

Entry or expansion

8. Identify competitors which have entered or expanded in these markets in the last 3 years.
9. Describe the extent to which these new or expanded competitors have provided a competitive constraint on ACL and Healius.
10. Identify potential future new entrants to the supply of community pathology services in each state or territory.

11. Discuss the likelihood that these potential entrants, or existing competitors, could establish a sufficient presence to deter any attempt to reduce bulk-billing levels, increase co-payments or reduce service levels.

In your response, outline the likely timeframe for market entry and provide details on barriers to entry, such as:

- a. economies of scale and the minimum efficient scale of market entry;
- b. referral pathways;
- c. availability of desirable locations for collection centres;
- d. regulatory barriers, such as collection centre approvals;
- e. costs of market entry, and the extent to which these costs would be recoverable on market exit;
- f. prevailing levels of trust in, or loyalty to, existing pathology providers;
- g. access to qualified and sufficiently skilled pathologists; and
- h. trends in market growth/decline.

Public hospital pathology services

12. Discuss the extent to which ACL and Healius compete with one another, and other companies, in the supply of pathology services to public hospitals.
13. Discuss whether, and to what extent, public hospitals can self-supply pathology services or sponsor new entry sufficient for their requirements.

Vet pathology services

14. Discuss the extent to which ACL and Healius compete with one another, and other companies, in the supply of vet pathology services.

Other information and competition issues

15. Describe any trends or changes you see as impacting the competitive landscape of the pathology industry. In your response, consider issues such as:
- a. increased bulk-billing rates;
 - b. the impact of COVID-19, including the rise and decline in testing rates; and
 - c. any recent technological developments.
16. Provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of the proposed acquisition under section 50 of the Act.