Public Competition Assessment

16 December 2025

Australian Clinical Labs – proposed acquisition of Healius

The ACCC's decision

1. On 15 December 2023, the Australian Competition and Consumer Commission (**ACCC**) announced its decision to oppose the proposed acquisition by Australian Clinical Labs Limited (**ACL**) of Healius Limited (**Healius**) (the **proposed acquisition**).

2. The ACCC considered that the proposed acquisition was likely to contravene section 50 of the *Competition and Consumer Act 2010* (the **Act**). Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

3. The ACCC considered the competitive effects of the proposed acquisition in the markets for:

   - the supply of pathology services to out-patients in local, regional and/or state areas in Australia
   - the supply of pathology services to private hospital in-patients in state areas and/or across Australia
   - the supply of pathology services to commercial and government customers across Australia
   - the supply of pathology services to public hospitals in Victoria
   - the supply of veterinary pathology services in Victoria and South Australia.

4. The ACCC considered that the proposed acquisition would be likely to result in a substantial lessening of competition as it would combine two of the three largest providers of pathology services in Australia, further consolidating already-concentrated markets for the supply of pathology services to out-patients, private hospital in-patients, and commercial and government customers.

5. While the ACCC also considered the effect of the proposed acquisition in the markets for the supply of pathology services to public hospitals in Victoria, and

veterinary pathology services in Victoria and South Australia, the ACCC did not arrive at a concluded view as to whether the proposed acquisition would substantially lessen competition in these markets.

6. Please note that this and other public competition assessments are subject to the following qualifications:

   - The ACCC considers each transaction on a case-by-case basis and so the analysis and decision outlined in one assessment will not necessarily reflect the ACCC's view of another transaction.

   - As assessments are relatively brief and do not refer to confidential information, assessments do not necessarily set out all of the issues and information considered by the ACCC.

   - The ACCC's findings and conclusions set out in this public competition assessment reflect information available to the ACCC at the time of its decision and do not reflect developments in the industry subsequent to the ACCC's decision.

The parties and the transaction

The acquirer: Australian Clinical Labs Limited

7. 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.

8. At the time of the ACCC's consideration, ACL provided human pathology services through its wholly owned subsidiary Clinical Labs Pty Ltd. ACL operated Approved Collection Centres and National Association of Testing Authorities (**NATA**) accredited laboratories Australia-wide except in Tasmania.

9. ACL provided veterinary pathology services in South Australia and Victoria through its Gribbles Veterinary brand.

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

The target: Healius Limited

11. Healius (ASX:HLS), which traded as Primary Health Care Limited until November 2018, is an ASX-listed Australian provider of pathology services to out-patients and in-patients (of private and public hospitals), and commercial and government customers.

12. At the time of the ACCC's consideration, Healius provided human pathology services through Specialist Diagnostic Services Pty Ltd operating under various brands in all Australian states and territories. Its brands included Laverty Pathology (NSW/ACT), Dorevitch Pathology (Victoria), QML Pathology (Queensland), Abbott Pathology (South Australia), Western Diagnostic Pathology (Western Australia and Northern Territory) and TML Pathology (Tasmania).

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

The transaction

14. On 20 March 2023, ACL announced that it was seeking to acquire all the fully paid ordinary shares in Healius by way of an off-market takeover offer.

15. On 22 December 2023, following the ACCC's decision to oppose the proposed acquisition, ACL announced that it had withdrawn its takeover offer.

Market inquiries

16. The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers, industry bodies, other regulatory agencies and other interested parties.

Industry background

Pathology testing

17. The supply of pathology testing services involves the analysis of medical samples collected from patients such as blood tests. Pathology testing can be divided into the following four broad categories and relevant sub-specialties:

    - biochemistry (chemical pathology, immunology, infertility and pregnancy tests)
    - haematology
    - microbiology
    - histopathology and cytopathology (sometimes referred to as histology and cytology).

18. Testing for different sub-specialities is automated to varying degrees. Biochemistry and haematology tend to be more highly automated and generate the highest pathology test volumes. Consequently, there are significant economies of scale associated with the supply of these tests. Histology, cytology and microbiology tend to require greater manual preparation of samples, analysis, and interpretation of test results.

Pathology collection

19. Pathology samples are collected from patients via various channels, including at:

    - Approved Collection Centres or pathology collection centres staffed by a pathology provider

- collection bins in medical practices, specialist practices or other allied health facilities such as aged care and nursing homes, where a pathology provider can collect referred samples

- public and private hospitals and clinics.

20. The ACCC is not aware of any full-service providers solely collecting samples by using collection bins. Approved Collection Centres can be 'co-located' at medical practices (by sub-leasing part of a medical practice) or 'standalone' at an independent site.

21. The ACCC understands that the majority of private hospitals and clinics can effectively be serviced by an Approved Collection Centre with testing taking place at a central laboratory, with smaller day hospitals and clinics typically using collection bins as the volume of their pathology samples is insufficient to require an Approved Collection Centre. In relation to private hospitals, the ACCC's review focused on private hospitals and clinics that require onsite laboratories due to the need for fast turnaround times on pathology tests.

Pathology funding

22. At the time of the ACCC's consideration, most pathology testing was funded by:

    - The Australian Government – pathology tests are funded via Medicare rebates on a fee-for-service basis, in some cases supplemented by out-of-pocket expenses paid by patients. The rate at which a pathology test is covered by Medicare rebates is set by the Australian Government under the Medicare Benefits Schedule.

    - Health funds – a private health fund may cover some or all of any 'gap' payments (see further below) for private in-patients with private health insurance. For this purpose, many private health funds seek to enter into Medical Provider Purchase Agreements with pathology providers.

    - State governments – the pathology expenses of public in-patients at public hospitals are generally covered by a state-based funding system covering all services provided during a hospital stay.

23. A pathology provider can choose whether to receive only the applicable Medicare Benefits Schedule rebates for services it provides ('bulk bill') or to impose an additional charge to patients, known as an 'out of pocket' expense or 'gap' ('privately bill'). The pathology provider's decision is influenced by a range of factors, including whether the patient is a concession card holder, the preference of the doctor as expressed on the referral form, the billing policy of competing pathology providers and the complexity of the test. Pricing is implemented through the billing policy of each pathology provider.

24. When a pathology provider chooses to bulk bill its patients, the pathology provider obtains payment directly from the Australian Government. The result is that the services are effectively free to the patient.

25. In relation to private hospital in-patients, pathology providers receive 75% of the Medicare Benefits Schedule rate for pathology tests from Medicare, with the remaining 25% paid by the private health fund.

26. Private health funds may enter into Medical Provider Purchase Agreements with pathology providers to minimise gap payments charged to the private health fund's customers when admitted in a private hospital. Medical Provider Purchase Agreements typically provide for additional payments to the pathology provider above the Medicare Benefits Schedule rate, subject to negotiation between the pathology provider and the private health fund.

27. If a patient does not have private health insurance, or their private health insurer does not have a Medical Provider Purchase Agreement with the pathology provider that provides the test to the patient, then the patient may be directly billed by the pathology provider for the cost of the pathology test.

28. Some pathology tests are not covered by Medicare, for example pathology tests connected with elective cosmetic surgery and some genetic tests. In this instance, patients are directly billed for the full cost of a pathology test. In addition, tests conducted for private and government organisations, such as drug and alcohol testing, are not covered by Medicare. Pathology companies contract directly with these organisations to provide these tests.

Referrals

29. A patient must obtain a referral from a medical practitioner for a pathology test to be covered by the Medicare Benefits Schedule. Pathology providers supply branded referral forms to medical practitioners, which patients then take to an Approved Collection Centre.

30. Since 11 December 2010, patients have been free to take these forms to any pathology provider, regardless of the branding on the form. The ACCC understands that the number of 'foreign' request forms received by pathology providers is low as patients generally opt for the pathology provider listed on the form.

Other industry participants

Commercial pathology providers

31. Sonic Healthcare Limited (**Sonic**) (ASX:SHL) is a prominent commercial pathology provider. Sonic provides pathology and radiology services in all states and territories in Australia, and overseas. It also offers medical centre management services through subsidiary company Independent Practitioners Network, and healthcare software development services through subsidiary company Precedence Healthcare.

32. 4Cyte Pathology Pty Ltd (**4Cyte**) is a commercial pathology provider. At the time of the ACCC's assessment, 4Cyte had Approved Collection Centres in Queensland, New South Wales and Victoria. 4Cyte commenced operations in 2018. 4Cyte's prominent role in securing state government contracts for conducting rapid antigen tests during the COVID-19 pandemic was a factor that

contributed to 4Cyte's significant growth across New South Wales, Victoria and Queensland.

33. There are also other commercial pathology providers with limited geographic presence at the time of the ACCC's assessment. These included:

    - Medihealth Pathology Pty Ltd, operating in New South Wales
    - Saturn Pathology Pty Ltd, operating in Western Australia
    - Austech Medical Laboratories (trading for KSPC Pty Ltd), operating in New South Wales.

Not-for-profit pathology providers

34. There are several not-for-profit pathology providers. Some are owned by hospital operators and may not offer their services to all market participants.

35. Not-for-profit providers tend to operate in limited geographic areas, including metropolitan areas, typically around hospitals to which they are attached. Where a not-for-profit provider is affiliated with a particular hospital, these providers usually maintain Approved Collection Centre locations within a small geographic radius of the affiliated hospital.

Public pathology providers

36. All Australian states and territories other than Victoria have state-wide publicly funded pathology services that are required to service the clinical pathology testing needs of their respective public hospital systems, under state health regulations.

37. These public pathology providers are required to provide the full range of pathology services 24 hours a day, 7 days a week, including complex tests. They also accept pathology samples from a variety of sources including out-patients and private in-patients. Some public pathology providers maintain Approved Collection Centres in the general community, usually in the area surrounding the public hospitals they service.

38. In Victoria, there are public pathology providers that are associated with specific public hospital operators (Monash Health Pathology, Austin Pathology, Eastern Health, Alfred Pathology Services, Northern Pathology Victoria, and Melbourne Health). These providers operate at a smaller scale than the state-wide public pathology providers in other states.

39. At the time of the ACCC's assessment, Victoria had a high proportion of public pathology services that were outsourced to commercial pathology providers. Market feedback suggested this has occurred due to historical policy settings favouring deregulation of pathology services in public hospitals.

Market definition and competition analysis

40. The ACCC's starting point for considering which markets will be affected by the proposed acquisition is to identify the areas of overlap between the products actually or potentially supplied by the merger parties. The ACCC then considers other actual or potential suppliers of those products, as well as what other products constitute sufficiently close substitutes to provide a significant source of constraint on the merged entity. The ACCC's approach to market definition in this matter is outlined below.

Out-patient pathology services

Market definition

41. In previous pathology related acquisitions, the ACCC considered the product dimension for community pathology services encompassed both out-patient and private in-patient pathology services.

42. However, for the purposes of this review, the ACCC considered that the competitive effects of the proposed acquisition are more appropriately considered in separate markets for the supply of pathology services to out-patients and private in-patients, due to distinct market features and service requirements. Some private hospitals require urgent tests conducted at on-site laboratories, while out-patient tests are generally less urgent and are primarily processed at central laboratories.

43. The ACCC did not reach a concluded view on the geographic dimension of the relevant market/s, but considered that there may be local, state-based and/or regional dimensions.

44. The ACCC's review found that patients typically choose among local (or at times regional) pathology collection service providers. In making this choice between competing pathology providers, patients value factors such as bulk billing, hours of operation and convenience (such as proximity to their GP clinic).

45. Medical practices, when choosing among competing offers for co-located Approved Collection Centres, tend to reflect these patient preferences by choosing providers offering favourable opening hours and staffing levels, and bulk billing policies. In addition, medical practices will also consider other factors such as turnaround times, breadth of testing capability, pathologist reputation, reporting standards and rental payments.

46. While competition for collections takes place at the local level, whether a service provider is well-positioned or not to compete for local collection services depends in large part on whether they are at (or likely to achieve) competitive scale in courier services and laboratory testing. That is in turn informed by whether the service provider has a nearby, central laboratory that can service the area. Centralised laboratories typically service a region including multiple Approved Collection Centres.

47. Pathology providers compete for out-patient pathology services by competing for Approved Collection Centre leases co-located with medical practices through rental offers, billing policies (including choosing to bulk bill) and other non-price

service factors discussed above. Approved Collection Centres do not have to be co-located with a medical practice, but they typically are as this increases the likely referral volumes from patients of that practice.

48. As such, while demand for collection services is typically local, to effectively compete to provide such collection services, the provider typically must have a testing laboratory within the region.

Competition analysis

49. At the time of the ACCC's assessment, markets for out-patient pathology services were highly concentrated and dominated by the three large private providers: Sonic, Healius and ACL. Based on Approved Collection Centre numbers, a combined ACL-Healius would have been the largest provider of out-patient pathology services in each state and territory in which they both operated, with more than 50% of Approved Collection Centres across Australia at the time of the ACCC's assessment.

50. The share of total Approved Collection Centres held by a pathology provider does not directly correlate to market share based on revenue. However, it is a useful proxy for it, and one which is readily available since it is based on public information.

51. The ACCC's review also indicated that ACL and Healius were close competitors in many regions on the basis of their non-price service offerings (such as the breadth of testing capability, opening hours and turnaround times) and their scale with respect Approved Collection Centres, central laboratories and courier networks.

52. Information available to the ACCC also indicated that ACL and Healius regularly competed for the same Approved Collection Centre leases and they often adjusted their price and non-price offerings in response to one another. At the time of the ACCC's assessment, ACL and Healius were also the largest (and in some cases, the only) pathology providers in some regions, such as regional Victoria.

53. The ACCC found there are a limited number of comparable pathology providers in relevant regions operating at scale due to the substantial barriers to entry and expansion.

54. At the time of the ACCC's assessment, 4Cyte had grown its network of Approved Collection Centres across Queensland and some regions of New South Wales and Victoria. It was likely to be an important source of competition in these areas. However, 4Cyte did not operate across all relevant geographic areas and did not undertake as wide a range of tests in-house as ACL and Healius.

55. As a result, the ACCC considered that competition from existing providers was unlikely to sufficiently constrain a combined ACL-Healius. Further, the significant barriers to expansion were likely to have limited 4Cyte's and other pathology providers' ability to replace the competition lost from the proposed acquisition in a timely and sufficient manner.

56. The ACCC considered that the proposed acquisition would be likely to result in a substantial lessening of competition in the supply of out-patient pathology services. This may have resulted in higher prices (including more frequent and/or higher out of pocket expenses for patients) and/or lower service levels (including increased testing turnaround times, reduced opening hours and lower staffing levels).

Pathology services to private hospital in-patients

Market definition

57. As identified above, the ACCC's review indicated that there was likely to be a separate market for the supply of pathology services to private hospital in-patients, distinct from the supply of pathology services to out-patients.

58. The ACCC focused its assessment on private hospitals and clinics that require on-site laboratories. These private hospitals are typically larger and provide services that require urgent pathology testing, including emergency departments, intensive care units and/or oncology services.

59. Private hospital operators often have more stringent service level requirements (including strict turnaround times for test results) than out-patient tests, which are generally less urgent. Further, a pathology provider's experience, expertise and reputation are critical considerations for private hospital operators when conducting tenders.

60. The ACCC did not reach a concluded view on the geographic dimension of the relevant market/s but considered that there may be national and/or state dimensions to competition.

Competition analysis

61. The ACCC found that the supply of pathology services to private hospital in-patients is highly concentrated. Sonic (40%), Healius (26%) and ACL (17%) account for over 80% of pathology laboratories located in private hospitals nationally. A combined ACL-Healius would have had market shares of 48% in NSW, 52% in Victoria and 80% in WA. The share of total pathology laboratories in private hospitals does not directly correlate to market share based on revenue but is a proxy, based on public information.

62. At the time of the ACCC's review, ACL and Healius did not overlap in the supply of pathology services to private hospitals in South Australia, the Northern Territory, Tasmania or Queensland. It was not clear the extent to which ACL and Healius would compete for future tenders in these states, particularly in Queensland.

63. The ACCC found alternative pathology providers were unlikely to be competitively effective constraints on a combined ACL-Healius and Sonic as:

    - Public pathology providers rarely tender for private hospital contracts unless the private hospital is co-located with a public hospital, due to their focus on serving the public hospital system.

- Reputation, clinician support and a proven track record of servicing private hospital contracts are critical considerations for private hospital operators when inviting pathology providers to tender and awarding contracts. As such, alternative private pathology providers that have not historically serviced private hospitals face significant hurdles to viably compete for these contracts.

- While collection buckets are often present in private hospitals, these are typically used for non-routine tests and are not a substitute for the types of services provided at onsite laboratories.

64. Private hospital operators are not party to Medical Provider Purchase Agreements between pathology providers and private health insurers. Despite this, information available to the ACCC indicated private hospital operators take these agreements into account when selecting a pathology provider.

65. Similarly, the number of private hospitals a pathology provider services is an important consideration for private health funds to ensure coverage and minimise out of pocket expenses for its members. As such, competitors entering or expanding may be at a competitive disadvantage relative to incumbent providers such as ACL and Healius which have Medical Provider Purchase Agreements in place.

66. In these circumstances, the ACCC was concerned that the proposed acquisition result in a substantial lessening of competition leading to increased prices, either in the form of increased costs to private health insurers under Medical Provider Purchase Agreements, increased out of pocket costs to patients, and/or reduced service levels to private hospital operators.

Commercial pathology services

Market definition

67. Individual commercial pathology opportunities are dependent on the needs of the customer and include services such as drug and alcohol screening, government health screening programs, insurance related testing, immunity screening, pre-employment screening, clinical trials, personal health screening and genetic testing.

68. Many commercial customers require pathology service providers with an extensive footprint of Approved Collection Centres. While some customers require or prefer to engage a pathology provider with a national presence, these are in the minority. Many commercial customers require at least state-wide services, often requiring a wide network of Approved Collection Centres, including in regional areas.

69. The ACCC did not form a concluded view on market definition, but assessed the likely effect of the proposed acquisition in state markets for the supply of non-Medicare funded pathology testing to commercial customers (excluding private and public hospitals).

Competition analysis

70. At the time of the ACCC's assessment, markets for commercial pathology services were already highly concentrated, with the number of potential suppliers dependent on the specific needs of the customer. ACL and Healius were close competitors for many commercial pathology contracts, both in terms of price and service.

71. The ACCC concluded that ACL, Healius and Sonic were the major competitors. However, in some geographic regions (such as Victoria), Sonic lacked a regional presence to service some customers, and Sonic did not appear to compete for all opportunities.

72. The ACCC noted that some other suppliers compete for some opportunities where customers have more limited requirements. However, aside from ACL, Healius and Sonic, few alternative providers were able to compete for many commercial pathology contracts. Therefore, alternative providers were unlikely to effectively constrain a combined ACL-Healius from increasing prices and/or decreasing service levels.

Pathology services to public hospitals in Victoria

Market definition

73. Similar to private hospital in-patients, pathology services provided to public hospitals requires a high capacity and breadth of testing, as well as prompt turnaround times.

74. However, the ACCC considered that pathology services provided to public in-patients varies from private in-patients as:

    - pathology services provided to public in-patients are covered by state-based funding systems (and are not covered by Medicare)

    - state-owned public pathology providers are more likely to provide these services.

75. As identified above, Victoria was the only state that outsourced some of its public in-patient pathology services. As such, the ACCC confined its assessment to considering the likely effect of the proposed acquisition in Victoria.

Competition analysis

76. The ACCC found that ACL and Healius were the two most active commercial pathology providers competing in the supply of pathology to public hospitals in Victoria. The proposed acquisition would have combined the only active private competitors for these services in some regional areas of Victoria where Sonic and 4Cyte did not operate.

77. At the time of the ACCC's consideration, the Victorian Government had in-sourced some public in-patient pathology services. The threat of further in-sourcing may have limited ACL's ability to increase prices and/or decrease service levels post-acquisition.

78. The ACCC did not reach a concluded view as to whether the proposed acquisition was likely to substantially lessen competition in this market.

Veterinary pathology services in Victoria and South Australia

Market definition

79. Veterinary pathology services are provided to veterinarians who treat companion and/or production animals. The ACCC considered that veterinary pathology services are distinct from human pathology services as there are specialist veterinary pathologies and no government funding arrangements.

80. While Healius provided veterinary pathology services in all states and territories of Australia, ACL only provided veterinary pathology services in Victoria and South Australia. The ACCC therefore considered the likely effect of the proposed acquisition in separate markets for veterinary pathology services in Victoria and South Australia.

Competition analysis

81. The ACCC found the markets for veterinary pathology services in Victoria and South Australia were already concentrated. The ACCC considered whether the proposed acquisition would combine two important competitors in Victoria and South Australia.

82. The ACCC identified a number of smaller private veterinary pathology providers, as well as government funded and university funded laboratories that may have imposed competitive constraint on the merged firm.

83. The ACCC did not reach a concluded view as to whether the proposed acquisition was likely to substantially lessen competition in these markets.

Proposed undertaking

84. On 14 September 2023, ACL offered to provide the ACCC with a court-enforceable undertaking pursuant to s87B of the Act (**Proposed Undertaking**) which sought to address some of the ACCC's preliminary concerns set out in the Statement of Issues. ACL proposed to divest:

    - 60 Approved Collection Centres in Perth
    - 25 Approved Collection Centres across various parts of regional Victoria
    - the entirety of its existing Approved Collection Centre network (14 Approved Collection Centres) in the Northern Territory and its Darwin Private Hospital laboratory.

85. The ACCC conducted market consultation on the Proposed Undertaking.

86. The ACCC found that:

    - The proposed divestiture package was insufficient to establish an independent, standalone, long-term competitor that would be able to compete across a wide range of tests and broader geographic areas.

- The success of the proposed divestments would be contingent upon the purchaser/s having (or the ability and incentive to rapidly acquire and develop) an existing network of Approved Collection Centres, adequate supporting infrastructure, a wide breadth of pathologists across disciplines, established recognition and trust, and stable relationships with referring GPs and specialists.

- The Approved Collection Centres proposed to be divested were unlikely to be sufficient in number, scale and density.

- The proposed divestment was at significant risk of being frustrated or undermined by the actions of third parties, including landlords, referring practitioners and patients.

- The trust of medical practitioners for referrals is of utmost importance and was not transferrable with the proposed divestment.

87. As a result, the ACCC considered that the proposed divestment set out in the Undertaking was not capable of addressing the ACCC's competition concerns.

Conclusion

88. Based on the above analysis, the ACCC concluded that the proposed acquisition of Healius by ACL was likely to substantially lessen competition in the markets for the supply of pathology services to out-patients, private in-patients, and commercial and government customers.