

**Undertaking to the
Australian Competition and
Consumer Commission**

**Given under section 87B by
Healthscope Limited**

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1. Background

- 1.1 Healthscope and Symbion each operate pathology businesses in markets for the provision of community pathology services and a market or markets for the provision of pathology services to public hospitals in Australia. In the Commission's view, there are state markets for the provision of community pathology services with geographical segments within those markets. The Commission considers it unnecessary to form a concluded view in relation to whether there is a national market for the provision of pathology services to public hospitals in Australia or whether there are state markets for those services.
- 1.2 Healthscope proposes to acquire Symbion's pathology, medical centre and imaging businesses in Australia (**Diagnostics Business**). Relevantly, Symbion's pathology businesses compete with Healthscope in markets for the provision of community pathology services.
- 1.3 Healthscope and Symbion initially proposed that Healthscope's acquisition of the **Diagnostics Business** would be implemented by way of a scheme of arrangement (the **Scheme**) under which all of the shares in Symbion were to be acquired by Healthscope Investments, a wholly owned subsidiary of Healthscope (the **Initial Proposed Acquisition**). The Scheme was announced by Healthscope and Symbion to the Australian Stock Exchange on 29 May 2007.
- 1.4 Immediately after implementation of the Scheme, it was proposed that agreements would be entered into between Symbion and companies ultimately jointly owned by funds managed and advised by Ironbridge Capital and Archer Capital (**IAC Consortium**) for the sale of Symbion's consumer products group and Symbion's pharmacy services and distribution group (**C&P Business**). The only businesses previously operated by Symbion that were proposed to remain in the control of Healthscope were the **Diagnostics Business**.
- 1.5 The **Initial Proposed Acquisition** raised competition concerns for the Commission in markets for the provision of community pathology services. The Commission was concerned that a participant's ability to compete in markets for the provision of community pathology services in regional areas may be affected by its ability to compete to provide pathology services to public hospitals in the same regional area.
- 1.6 Specifically, concerns arose in relation to the Victorian market for community pathology services and in particular, regions within the Victorian market; namely north-eastern Victoria and Gippsland. The Commission was concerned that following the **Initial Proposed Acquisition** Healthscope would be the sole or dominant provider of community pathology services in those regions and that competitors would have little or no opportunity to compete for the provision of pathology services to public hospitals in the relevant regions making entry or expansion in the market for the provision of community pathology services difficult.
- 1.7 The Commission conducted market inquiries in relation to its concerns. Following those market inquiries, the Commission was satisfied that the **Initial Proposed Acquisition** would

make it unlikely that a competitor to Healthscope could either enter or expand into the relevant market with sufficient scale to constrain Healthscope. Consequently the Commission was concerned that the Initial Proposed Acquisition was likely to have the effect of substantially lessening competition in the relevant market.

- 1.8 Healthscope did not agree that the Initial Proposed Acquisition would be likely to substantially lessen competition, but provided an undertaking pursuant to section 87B of the Act on 15 August 2007 in order to address the Commission's concerns (**Initial Undertaking**). The Initial Undertaking provided for the divestment by Healthscope of sufficient assets to enable a purchaser of those assets to compete effectively in the relevant market.
- 1.9 Pursuant to the Initial Undertaking, Healthscope agreed to sell the Divestiture Business, comprising the Gippsland Business, Benalla Business and Albury Business operated by Symbion and the Wangaratta Business operated by Healthscope. Healthscope agreed to use its best endeavours to enter into an arrangement with a purchaser for the Divestiture Business prior to the Scheme's implementation date, with the sale to occur the day after the implementation of the Scheme to a purchaser approved of by the Commission. If this did not occur, then Healthscope agreed to have the Divestiture Business independently managed until it was sold in accordance with the Initial Undertaking. In addition, Healthscope agreed to sell the Divestiture Business within a confidential timeframe to a purchaser approved of by the Commission. However, in the event that Healthscope did not sell the Divestiture Business within the specified timeframe, Healthscope agreed to provide a power of attorney to a Divestiture Agent to ensure the Divestiture Business was sold within a further limited timeframe. Healthscope accepted that such a sale was to occur on terms necessary, including as to price, to ensure a sale was effected within that further limited period.
- 1.10 To address the Commission's concern in relation to the relationship between the provision of pathology services to public hospitals and community pathology services in the same geographic regions, Healthscope agreed that it would tender for the provision of pathology services to public hospitals in the relevant regions on terms approved of by the Independent Manager of the Divestiture Business and would give the purchaser of the Divestiture Business the option to acquire from Healthscope any contract for the provision of pathology services to public hospitals in the relevant regions.
- 1.11 The Commission was satisfied that the Initial Undertaking, the primary purpose of which was to divest an independent, viable business in competition with the merged entity, addressed its competition concerns.
- 1.12 On 15 August 2007 the Commission accepted the Initial Undertaking proposed by Healthscope and announced that it did not propose to oppose the Initial Proposed Acquisition.
- 1.13 Symbion shareholders voted on the Scheme on 11 September 2007. The Scheme did not receive sufficient votes to proceed.

- 1.14 On 8 October 2007, Healthscope and Symbion announced to the Australian Stock Exchange that they had agreed on a revised proposal for Healthscope to acquire the Diagnostics Business. Under the revised proposal, Symbion will sell Symbion's Diagnostics Business to Healthscope pursuant the Diagnostics Sale and Purchase Agreement (the **Proposed Acquisition**) in exchange for Healthscope shares which will be distributed to Symbion shareholders. The IAC Consortium will then acquire all of the shares in Symbion pursuant to a scheme of arrangement which is scheduled to complete shortly after the acquisition of the Diagnostics Business.
- 1.15 The implementation of the Proposed Acquisition essentially replicates the outcome of the Scheme through an alternative structure, in that Healthscope will own the Diagnostics Business and IAC will own the C&P Business. Healthscope has submitted to the Commission that while various amendments are necessary to the Initial Undertaking in order to accommodate the new transaction structure, no new competition issues arise that were not considered under the previous Scheme proposal.
- 1.16 The Commission is of the view that the Proposed Acquisition would raise the same competition concerns as those that it identified (and which are described in paragraphs 1.5-1.7 above) in respect of the Initial Proposed Acquisition. In order to address the Commission's concerns, Healthscope has offered this Undertaking in replacement for the Initial Undertaking and has sought the Commission's consent to withdraw the Initial Undertaking.
- 1.17 The Commission is satisfied that this Undertaking, the primary purpose of which is to divest an independent, viable business in competition with Healthscope, addresses its competition concerns.

2. Commencement of Undertaking

- 2.1 This Undertaking comes into effect when:
- (a) it has been executed by Healthscope; and
 - (b) it has been accepted by the Commission, (Commencement Date).

3. Sale of the Divestiture Business

- 3.1 Healthscope will, after the Control Date and in accordance with the sale processes set out in this Undertaking, divest, or cause the divestiture of, the Divestiture Business as a viable going concern to an Approved Purchaser within the Divestiture Period.
- 3.2 Healthscope will divest the Divestiture Business on terms which include:
- (a) the assignment or transfer to an Approved Purchaser of all assets that comprise the Divestiture Business, including leases, equipment, intellectual property and rights and obligations under material contracts;

- (b) the transfer of employment to the Approved Purchaser of all employees necessary for the operation of the Divestiture Business at the time of the sale, and the transfer of any service contract necessary for the operation of the Divestiture Business at the time of sale;
- (c) the provision by Healthscope of services that the Approved Purchaser requests subject to the services being:
 - (i) provided on a transitional basis;
 - (ii) provided on reasonable arm's length terms; and
 - (iii) approved by the Commission;
- (d) the transfer, subject to law, of all licences or other regulatory approvals to the Approved Purchaser that are required for the operation of the Divestiture Business, including a requirement for Healthscope to obtain any relevant regulatory or other approval for such transfers;
- (e) that Healthscope will not do anything to discourage any employees or contractors of the Divestiture Business from taking up employment or contracting with the Approved Purchaser, and that Healthscope will take all reasonable steps to facilitate the transfer of those employees or contractors to the Approved Purchaser;
- (f) that Healthscope will procure that any Independent Manager appointed pursuant to clause 6 continues to operate the Divestiture Business in the ordinary course of business in competition with Healthscope between the Control Date and the Divestiture Date and will not reduce the scope of any services provided by the Divestiture Business;
- (g) that Healthscope will apply for third party consents to assignment or transfer of material contracts;
- (h) that Healthscope will do everything within its power to obtain the consent of third parties to the transfer of assets under this Undertaking; and
- (i) that Healthscope will cooperate with the Approved Purchaser in any application to obtain an Approved Pathology Authority for the Divestiture Business.

3.3 If by the Execution Date the Divestiture Business has not been divested, Healthscope will, on the first Business Day of every month from the Execution Date until the Divestiture Date, provide a written report to the Commission as to the progress made in the divestiture of the Divestiture Business.

4. Sale to an Approved Purchaser

- 4.1 Healthscope must sell the Divestiture Business to an Approved Purchaser and must not authorise the Divestiture Agent to sell the Divestiture Business to a purchaser other than an Approved Purchaser.
- 4.2 At the election of the Approved Purchaser, Healthscope will, as soon as practicable and at no additional cost, assign or otherwise divest to the Approved Purchaser the benefit of any

contract to provide pathology services or any right to provide pathology services at or to a hospital or public health service listed at Item 5 of Schedule 2 pursuant to a tender lodged by Healthscope between the Control Date and the Divestiture Date.

4.3 Where Healthscope seeks to have a purchaser of the Divestiture Business approved by the Commission, Healthscope must without delay provide the Commission with a Proposed Purchaser Notice in respect of any Proposed Purchaser which Notice provides the Commission with sufficient information to form a view as to the suitability of the Proposed Purchaser including:

- (a) the name, address, telephone number and any other available contact detail of the Proposed Purchaser(s);
- (b) a copy of the proposed Sale and Purchase Agreement;
- (c) a description of the business carried on by the Proposed Purchaser(s) and, with precision, the locations in which that business is carried on;
- (d) details as to the Proposed Purchaser's experience in the relevant markets; and
- (e) the names of the owners and directors of the Proposed Purchaser(s).

4.4 The Commission may provide Healthscope with a notice (**Approval Notice**) that the Proposed Purchaser is an Approved Purchaser. An Approval Notice must be in writing and must be provided within ten Business Days after receipt of a Proposed Purchaser Notice, or such further period as is required by the Commission and notified to Healthscope. In making its decision to provide an Approval Notice, the Commission will have regard to whether:

- (a) the Proposed Purchaser is independent of Healthscope and Symbion;
- (b) the Proposed Purchaser is of good financial standing and has an intention to maintain the Divestiture Business;
- (c) the Proposed Purchaser is able to conduct the Divestiture Business having regard to, without limitation, regulatory requirements; and
- (d) the sale of the Divestiture Business to the Proposed Purchaser will address any competition concern held by the Commission.

4.5 Healthscope will not challenge the Commission's refusal to issue an Approval Notice.

5. Preservation of Divestiture Business

5.1 From the Control Date, Healthscope will not, except in accordance with this Undertaking, sell or transfer any of its interest in, or assets of, the Divestiture Business or remove or make any material adverse change to the structure, attributes, extent or operations of the Divestiture Business.

5.2 Between the Control Date and the Divestiture Date, Healthscope will not submit a tender or proposal for the provision of pathology services pursuant to a contract, arrangement or

understanding, to any of the hospitals or public health services listed in Schedule 2 without the consent of the Independent Manager.

- 5.3 Healthscope will from the Control Date until the Divestiture Date, take all steps to ensure that:
- (a) subject to the best interests of the Divestiture Business (which is to be determined by the Independent Manager), it is not involved in the management and operation of the Divestiture Business;
 - (b) the Independent Manager is able to manage and operate the Divestiture Business as a separate, fully operational and competitive going concern and in such a way that preserves the value (including goodwill) of the Divestiture Business; and
 - (c) to the maximum extent practicable, the Divestiture Business is financially and operationally separate from Healthscope.
- 5.4 Without limiting the operation of clause 5.3, Healthscope will, from the Control Date until the Divestiture Date, take all steps to ensure that:
- (a) any Approved Pathology Authority issued by the Minister for Health and Ageing pursuant to the *Health Insurance Act 1973* (Cth) in respect of the Divestiture Business continues in force and is not suspended, withdrawn, revoked or allowed to lapse;
 - (b) any approvals granted under the *Health Insurance (Eligible Collection Centres) Approval Principles* and the *Health Insurance Act 1973* (Cth) in relation to the Approved Collection Centres that constitute part of the Divestiture Business continue in force and are not suspended, withdrawn, revoked or allowed to lapse;
 - (c) any approvals granted under the *Health Insurance (Accredited Pathology Laboratories - Approval) Principles* and the *Health Insurance Act 1973* (Cth) in relation to the Accredited Pathology Laboratories that constitute part of the Divestiture Business continue in force and are not suspended, withdrawn, revoked or allowed to lapse;
 - (d) the Accredited Pathology Laboratories that constitute part of the Divestiture Business continue to be operated and supervised in a manner consistent with the requirements for a laboratory of that category as set out in Part 4 of the *Health Insurance (Accredited Pathology Laboratories - Approval) Principles*; and
 - (e) all approvals granted by the National Association of Testing Authorities Australia in relation to the Accredited Pathology Laboratories that constitute part of the Divestiture Business continue in force and are not suspended, withdrawn, revoked or allowed to lapse.
- 5.5 Healthscope will, within five Business Days of the Control Date, notify the Commission of any changes to the Divestiture Business that Healthscope intends to make to ensure the separation of the Divestiture Business required by clause 5.3. Healthscope will within five Business Days implement any additional changes notified to Healthscope by the Commission as being necessary in order to comply with clause 5.3.

- 5.6 In complying with the obligations in this clause 5 Healthscope will, from the Control Date:
- (a) continue to provide access to reasonable working capital and sources of credit for the Divestiture Business;
 - (b) provide and maintain reasonable levels of administrative, promotional, technical, advertising and marketing support to the Divestiture Business;
 - (c) ensure that the Independent Manager is able to acquire and pay for the sufficient and timely delivery of all goods and services (including from third parties) which the Independent Manager considers are required by the Divestiture Business;
 - (d) accept (and direct its directors, officers, employees, contractors and agents to accept) direction from the Independent Manager as to the control, management, financing and operations of the Divestiture Business, and for the Divestiture Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (e) provide and pay for any external expertise, assistance or advice required by the Independent Manager to perform their role;
 - (f) ensure that the Divestiture Business has, at Healthscope's cost, access to and use of the personnel required by the Divestiture Business to operate as a viable going concern;
 - (g) subject to specific approval by the Independent Manager, ensure that, between the Control Date and the Divestiture Date, any Healthscope personnel (including contractors) concerned with the management or operation of the Divestiture Business are not concerned with the management or operation of any aspect of Healthscope's business other than the Divestiture Business;
 - (h) not procure, promote or encourage the redeployment of personnel working at the Divestiture Business as at the Control Date to any other business operated by Healthscope;
 - (i) take any steps directed by the Commission in relation to matters arising from the report of any Independent Manager, within ten Business Days of being so directed;
 - (j) not, at any time from the Control Date and within one year of the Divestiture Date, use any confidential information gained through the ownership and/or management of the Divestiture Business; and
 - (k) direct its personnel including directors, managers, officers, employees and agents to act in accordance with the prohibitions and duties in this clause 5.6.
- 5.7 In respect of Healthscope's Wangaratta Business, references to the Control Date in this clause 5 are to be read as references to the Commencement Date.

6. Appointment of Independent Manager

- 6.1 Healthscope must appoint an Approved Independent Manager who will manage the Divestiture Business as Independent Manager in accordance with this Undertaking and will maintain that appointment until the Divestiture Date.
- 6.2 The Independent Manager must be a person who is independent of Healthscope and Symbion and will not be independent if, without limitation, he or she is a:
- (a) current employee or officer of Healthscope or Symbion;
 - (b) person who has been an employee or officer of Healthscope or Symbion in the past 18 months;
 - (c) shareholder who, in the opinion of the Commission, holds a material number of shares of Healthscope or Symbion;
 - (d) professional adviser of Healthscope or Symbion, whether current or in the past 18 months;
 - (e) person who has a contractual relationship with Healthscope or Symbion;
 - (f) person who is a supplier of Healthscope or Symbion;
 - (g) person who is a material customer of Healthscope or Symbion.
- 6.3 Healthscope will, within ten Business Days of the Commencement Date, advise the Commission in writing of the identity of the Proposed Independent Manager together with such information that the Commission requires to assess whether the Commission is prepared to consent to the Proposed Independent Manager.
- 6.4 If, within five Business Days of receipt by the Commission of the information from Healthscope referred to in clause 6.3 above or such further period as is required by the Commission and notified to Healthscope:
- (a) the Commission does not object to the Proposed Independent Manager, the Proposed Independent Manager will be an Approved Independent Manager and Healthscope will appoint the Approved Independent Manager as soon as practicable thereafter on terms approved by the Commission and consistent with the performance by the Independent Manager of its functions under this Undertaking and forward to the Commission a copy of the executed terms of appointment of the Approved Independent Manager; or
 - (b) the Commission does object to the Proposed Independent Manager, Healthscope must appoint a person identified by the Commission at its absolute discretion as the Approved Independent Manager on terms approved by the Commission and consistent with the performance by the Independent Manager of its functions under this Undertaking.
- 6.5 In the event that the Independent Manager resigns or is otherwise unable to continue as the Independent Manager, Healthscope will, within five Business Days or such further period as is required by the Commission and notified to Healthscope, appoint a new

Independent Manager who is either approved of in writing by the Commission, or identified by the Commission, and whose appointment will be maintained by Healthscope until the Divestiture Date on terms approved by the Commission and consistent with the performance by the Independent Manager of its functions under this Undertaking.

6.6 Healthscope will procure that:

- (a) the Independent Manager will operate the Divestiture Business in the ordinary course of business and must not make any material change to the structure, attributes, extent or operations of the Divestiture Business;
- (b) to the maximum extent practicable, the Independent Manager will operate the Divestiture Business in a manner which is financially and operationally separate from Healthscope;
- (c) the Independent Manager will keep the books and records of the Divestiture Business separate from those of Healthscope;
- (d) the Independent Manager will implement specific measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business;
- (e) the Independent Manager will use their best endeavours to renew or replace upon expiry material contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
- (f) the Independent Manager will maintain appropriate personnel levels and ensure that the Divestiture Business has access to sufficient personnel to operate as a viable going concern and may engage personnel (including professional advisers) as the Independent Manager determines to be necessary;
- (g) the Independent Manager will not use any confidential information gained through the ownership and/or management of the Divestiture Business other than for performing their functions as Independent Manager;
- (h) the Independent Manager will provide a written report each month to the Commission in relation to the operation of the Divestiture Business and this Undertaking over the preceding month, and the Independent Manager will carry out the Commission's directions in relation to matters arising from the report;
- (i) the Independent Manager must review and report to the Commission regarding any changes made to the Divestiture Business by Healthscope to ensure separation of the Divestiture Business required by clause 5.3, and make any recommendations to the Commission that the Independent Manager considers appropriate;
- (j) the Independent Manager will only give their consent pursuant to clause 5.2 if the Independent Manager forms the view that the terms of the tender or proposal in relation to which consent is being sought is on terms that would be favourable to any Approved Purchaser of the Divestiture Business;
- (k) the Independent Manager will provide information requested by the Commission directly to the Commission; and

- (i) the Independent Manager may report or otherwise inform the Commission directly of any issues that arise in the performance of their functions as Independent Manager or in relation to any matter that may arise in connection with this Undertaking.
- 6.7 Healthscope will indemnify the Independent Manager for any expenses, loss, claim or damage arising from the performance by the Independent Manager of functions required to be performed by the Independent Manager by this Undertaking.
- 6.8 The Commission may approve any proposal by, and alternatively may direct, Healthscope to terminate the Independent Manager if the Independent Manager acts inconsistently with the provisions of this Undertaking or the terms of their engagement. On termination, Healthscope will, within five Business Days of the Commission nominating an alternative Independent Manager, appoint the Independent Manager on terms approved by the Commission and consistent with the performance by the Independent Manager of its functions under this Undertaking.
- 6.9 Healthscope will provide to the Independent Manager any information requested by the Independent Manager that the Independent Manager considers necessary for the running of the Divestiture Business or for reporting to or otherwise advising the Commission.
- 6.10 Healthscope will not request any information relating to the Divestiture Business from the Independent Manager without such a request having been made through the Commission.

7. Failure to divest within the Divestiture Period

- 7.1 If the sale of the Divestiture Business to an Approved Purchaser is not completed by the end of the Divestiture Period, the Divestiture Business is an Unsold Business and the provisions of this clause 7 apply.
- 7.2 Within five Business Days of the Divestiture Business becoming an Unsold Business, Healthscope will notify the Commission in writing of the identity of a Proposed Divestiture Agent who is independent of Healthscope and has appropriate experience and/or qualifications to act as a Divestiture Agent, together with such information as the Commission requires regarding the appointment of the Proposed Divestiture Agent, including the proposed terms of appointment.
- 7.3 The terms upon which the Divestiture Agent is appointed must be approved by the Commission and must include terms to the effect that the Divestiture Agent:
 - (a) is empowered and required by Healthscope to effect the divestiture of the Unsold Business to an Approved Purchaser within three months of the Appointment Date (or such further period as determined by the Commission at its absolute discretion) at the best price that is attainable within that period subject to an overriding and unconditional obligation to sell the Unsold Business at no minimum price by the end of this period;

- (b) may charge such fees as are agreed between the Divestiture Agent and Healthscope (but not contingent on the price to be obtained for the Unsold Business), to be paid by Healthscope. If agreement cannot be reached between the Divestiture Agent and Healthscope within five Business Days from the date of the Commission's notice that it does not object to the Proposed Divestiture Agent, Healthscope will pay such fees as are reasonably directed by the Commission;
- (c) is the only person who may effect the divestiture of the Unsold Business after the Appointment Date;
- (d) may at Healthscope's expense retain any lawyer, agent or other adviser required to effect the divestiture of the Unsold Business;
- (e) will account to Healthscope for:
 - (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Divestiture Agent in undertaking his/her duties; and
 - (iii) all fees of the Divestiture Agent (including the fees of any advisor appointed under clause 7.3(d));
- (f) will provide a written report on the first Business Day of each month until the Divestiture Date to the Commission and Healthscope, or answer any reasonable enquiries of either the Commission or Healthscope, concerning:
 - (i) the efforts made to effect the divestiture of the Unsold Business;
 - (ii) the identity of any advisers engaged;
 - (iii) any costs incurred;
 - (iv) the identity of any persons expressing interest in the Unsold Business; or
 - (v) any other information reasonably required by the Commission or Healthscope; and
- (g) will use best endeavours to ensure that Healthscope complies with its obligations as set out in this Undertaking and notify the Commission if it becomes aware of any material failure by Healthscope to do so.

7.4 If within ten Business Days of receipt by the Commission of the information referred to in clause 7.2 (or such further period as is required by the Commission and notified to Healthscope in writing prior to the expiration of the ten Business Day period) the Commission objects to the Proposed Divestiture Agent, then Healthscope will appoint an alternative Divestiture Agent nominated by the Commission within ten Business Days of such nomination.

7.5 If the Commission does not object to the Proposed Divestiture Agent within ten Business Days of receipt by the Commission of the information referred to in clause 7.2 (or such further period as is required by the Commission and notified to Healthscope in writing prior to the expiration of the ten Business Day period), then Healthscope will, within five Business Days of that date, appoint the Proposed Divestiture Agent as Divestiture Agent.

- 7.6 Healthscope will grant the Divestiture Agent an irrevocable power of attorney conferring all necessary power and authority to effect the divestiture of the Unsold Business on terms which are considered by the Divestiture Agent to be consistent with this Undertaking.
- 7.7 Healthscope must not authorise the Divestiture Agent to sell the Unsold Business to a purchaser other than an Approved Purchaser.
- 7.8 Healthscope must not contract to sell the Unsold Business on terms which would be inconsistent with the Divestiture Agent's role, the granting of authority to the Divestiture Agent under clause 7.6, or any other obligation in this Undertaking.
- 7.9 Healthscope will provide a copy of the executed terms of appointment for the Divestiture Agent to the Commission within five Business Days of their execution.
- 7.10 Healthscope must provide the Divestiture Agent with all relevant information available to Healthscope and reasonably assist the Divestiture Agent to effect the divestiture of the Unsold Business as quickly as possible.
- 7.11 The Commission may request information from the Divestiture Agent directly at any time. Healthscope undertakes to require the Divestiture Agent to report and respond to the Commission directly in response to any such request, or as otherwise required by the Commission.
- 7.12 The Commission must approve any proposal by, and alternatively may direct, Healthscope to terminate the appointment of the Divestiture Agent if the Divestiture Agent acts inconsistently with the provisions of this Undertaking. On termination of the Divestiture Agent, Healthscope must appoint an alternative Divestiture Agent nominated by the Commission within ten Business Days of such nomination.

8. Release of personnel

8.1 Where:

- (a) the Divestiture Business or Unsold Business is divested as contemplated by this Undertaking; and
- (b) the terms of the divestment contemplate that, immediately following the completion of the sale, Healthscope personnel including staff or persons under a service agreement will be employed by, or otherwise provide services to, the Divestiture Business or Unsold Business,

Healthscope must release the relevant personnel, with effect from the Divestiture Date, from:

- (c) any obligation to provide services to Healthscope; and
- (d) any non-compete or similar restraint of trade obligation, to the extent that such obligation would otherwise prevent the staff member or person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business.

- 8.2 Healthscope will not directly or indirectly discourage personnel including staff of, or persons under service agreements with, the Divestiture Business or Unsold Business from continuing in or seeking employment with, or providing services to, the Approved Purchaser of the Divestiture Business or Unsold Business.

9. Provision of information to the Commission

- 9.1 Healthscope will advise the Commission in writing of the date of the Control Date within one Business Day of the Control Date.
- 9.2 Healthscope will provide the Commission with copies of any executed Sale and Purchase Agreement within five Business Days of it being entered into.
- 9.3 At the Commission's direction, Healthscope will, and will procure that its directors, employees, agents or contractors identified by the Commission will:
- (a) furnish information to the Commission;
 - (b) produce documents to the Commission within Healthscope's custody, control or power; and/or
 - (c) attend the Commission at a time and place appointed by the Commission to answer any questions the Commission, its Commissioner, staff or agents may have;
- as directed by the Commission in relation to this Undertaking.
- 9.4 Nothing in 9.3 requires the provision of information in respect of which Healthscope has a claim of legal professional privilege.

10. Obligation to procure

- 10.1 Where performance of an obligation under this undertaking requires a Related Body Corporate of Healthscope to take or refrain from taking some action, Healthscope will use its best endeavours to procure that Related Body Corporate to take or refrain from taking that action as the case may be.

11. Confidentiality and disclosure

- 11.1 Subject to clause 11.2, Healthscope acknowledges that the Commission will make this Undertaking available for public inspection and that the Commission will from time to time publicly refer to this Undertaking.
- 11.2 Healthscope and the Commission agree that Confidential Schedule 1 to this Undertaking will remain confidential until the Divestiture Date.
- 11.3 Nothing in clause 11.2 prevents the Commission from disclosing such information as:
- (a) is required by law;

- (b) is reasonably necessary for the purpose of enforcement action under section 87B of the Act; or
- (c) is necessary for the purpose of making such market inquiries as the Commission thinks fit to assess the impact on competition arising in connection with the divestment of the Divestiture Business or the Unsold Business.

12. Costs

All costs incurred by Healthscope in providing information to the Commission, in responding to Commission inquiries as required by this Undertaking and in complying with this Undertaking are to be paid by Healthscope.

13. Notices

- 13.1 Any notice, demand, consent or other communication given or made under this Undertaking to the Commission should be sent to:

Australian Competition & Consumer Commission
Attention: General Manager, Mergers and Asset Sales
Address: 23 Marcus Clarke Street, Canberra ACT 2601
Fax No: (02) 6243 1212

or to any other address which the Commission subsequently notifies to Healthscope.

- 13.2 Any notice, demand, consent or other communication given or made under this Undertaking to Healthscope should be sent to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

Healthscope Limited
Attention: Chief Financial Officer
Address: Level 1, 407 Royal Parade, Parkville VIC 3052
Fax No: (03) 9356 7599

or to any other address which Healthscope subsequently notifies to the Commission.

14. Definitions and Interpretation

Definitions

- 14.1 The meanings of the terms used in this document are as follows:

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| Act | means the <i>Trade Practices Act 1974</i> (Cth). |
| Accredited Pathology Laboratory | means a laboratory that has been accredited as an Accredited Pathology Laboratory by the Minister for Health and Ageing pursuant to the <i>Health Insurance Act 1973</i> and the <i>Health Insurance (Accredited Pathology Laboratories – Approval) Principles</i> as amended from time to time. |

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| Albury Business | means Symbion's pathology business conducted at Albury, New South Wales, as set out in item 4 of Schedule 2. |
| Appointment Date | means the date on which a Divestiture Agent is appointed under clause 7. |
| Approval Notice | means a notice given by the Commission pursuant to clause 4.4. |
| Approved Collection Centre | means an eligible collection centre approved by the Minister for Health and Ageing pursuant to the <i>Health Insurance Act 1973</i> and the <i>Health Insurance (Eligible Collection Centres) Approval Principles</i> as amended from time to time. |
| Approved Independent Manager | means a person approved pursuant to clause 6 by the Commission to act as Independent Manager. |
| Approved Purchaser | means a Proposed Purchaser in relation to which the Commission issues an Approval Notice pursuant to clause 4.4. |
| Approved Pathology Authority | means a person approved by the Minister for Health and Ageing as an Approved Pathology Authority pursuant to the <i>Health Insurance Act 1973</i> . |
| Benalla Business | means Symbion's pathology business conducted at Benalla, Victoria, as set out in item 2 of Schedule 2. |
| Business Day | means a day on which all banks are open generally in Melbourne, but does not include a Saturday, Sunday or public holiday. |
| C&P Business | means Symbion's consumer products, pharmacy services and pharmacy distribution business. |
| Commencement Date | means the date determined in accordance with clause 2.1. |
| Commission | means the Australian Competition and Consumer Commission. |
| Control Date | means the earlier of: <ul style="list-style-type: none"> (a) the date of completion of the Proposed Acquisition; or (b) the date on which Healthscope obtains control, within the meaning of section 50AA of the <i>Corporations Act 2001</i> (Cth), of the Diagnostics Business. |
| Diagnostics Business | means Symbion's pathology, medical centre and imaging businesses in Australia. |
| Diagnostics Sale and Purchase Agreement | means the Share Sale and Purchase Deed to be entered into between Symbion, Symbion CP Holdings Pty Ltd, Symbion Pharmacy Services Pty Ltd and Healthscope pursuant to the TID and pursuant to which Healthscope will acquire all of the shares in the capital of Symbion Healthcare Holdings, being the owner of the Diagnostics Business. |
| Divestiture Agent | means a person appointed under clause 7 to effect the divestiture of |

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| | the Unsold Business. |
| <i>Divestiture Business</i> | means the businesses identified in Schedule 2. |
| <i>Divestiture Date</i> | means the date on which Healthscope no longer has ownership or control of the Divestiture Business. |
| <i>Divestiture Period</i> | means the period described in Confidential Schedule 1 to this Undertaking. |
| <i>Execution Date</i> | means the date one Business Day after the Control Date. |
| <i>Gippsland Business</i> | means Symbion's pathology business conducted at Gippsland, Victoria, as set out in item 1 of Schedule 2. |
| <i>Healthscope</i> | means Healthscope Limited (ACN 004 405 152). Unless the context otherwise indicates, a reference in this Undertaking to Healthscope includes a reference to any of its related bodies corporate. |
| <i>Healthscope Investments</i> | means Healthscope Investments Pty Ltd (ACN 125 694 251). |
| <i>Independent Manager</i> | means the Approved Independent Manager appointed by Healthscope in accordance with clause 6 to be the Independent Manager of the Divestiture Business. |
| <i>Initial Proposed Acquisition</i> | has the meaning given to it in clause 1.3. |
| <i>Initial Undertaking</i> | means the undertaking given by Healthscope pursuant to section 87B of the Act in relation to the Initial Proposed Acquisition and accepted by the Commission on 15 August 2007. |
| <i>Proposed Acquisition</i> | means the proposed acquisition, announced to the ASX on 8 October 2007, of the Diagnostics Business by Healthscope pursuant to the Diagnostics Sale and Purchase Agreement. |
| <i>Proposed Divestiture Agent</i> | means a person proposed by Healthscope to be the Divestiture Agent. |
| <i>Proposed Independent Manager</i> | means a person proposed by Healthscope to the Commission pursuant to clause 6 to act as the Independent Manager. |
| <i>Proposed Purchaser</i> | means a proposed purchaser of the Divestiture Business in respect of whom Healthscope has provided the Commission with a Proposed Purchaser Notice. |
| <i>Proposed Purchaser Notice</i> | means the notice referred to in clause 4.3. |
| <i>Related body corporate</i> | has the meaning given to that phrase by section 4A of the Act. |
| <i>Sale and Purchase Agreement</i> | means an agreement or agreements in respect of the sale and purchase of the Divestiture Business. |
| <i>Scheme</i> | has the meaning given to it in clause 1.3. |

| | |
|------------------------------------|---|
| Symbion | means Symbion Health Limited (ACN 004 073 410). Unless the context otherwise indicates, a reference in this Undertaking to Symbion includes a reference to any of its related bodies corporate. |
| Symbion Healthcare Holdings | means Symbion Healthcare Holdings Pty Limited (ACN 078 954 631) |
| TID | means the Transaction Implementation Deed dated 8 October 2007 between Symbion and Healthscope (as amended). |
| Unsold Business | has the meaning given to that phrase in clause 7.1. |
| Undertaking | is a reference to all of the provisions of this document, including its Schedules. |
| Wangaratta Business | means Healthscope's pathology business conducted at Wangaratta, Victoria, as set out in item 3 of Schedule 2. |

Interpretation

14.2 The following rules of interpretation apply:

- (a) the singular includes the plural, and vice versa;
- (b) a gender includes all genders;
- (c) referring to anything after the words include, includes or including does not limit what else might be included;
- (d) a reference to "this Undertaking" is a reference to all the provisions of this document;
- (e) a reference to dollars and \$ is to Australian currency; and
- (f) all references to time are to time in Melbourne, Australia.


14.3 In the interpretation of a clause of this Undertaking, a construction that would promote the purpose or object underlying this Undertaking (whether that purpose or object is expressly stated in this Undertaking or not) shall be preferred to a construction that would not promote the purpose or object.

14.4 In the interpretation of this Undertaking, material not forming part of this Undertaking may be considered if that material is capable of assisting in the ascertainment of the meaning or context of a clause of this Undertaking in order to:

- (a) confirm that the meaning of a clause is the ordinary meaning conveyed by the text of the clause taking into account its context in this Undertaking and the competition concerns intended to be addressed by this Undertaking and the clause in question; or
- (b) determine the meaning of a clause when the ordinary meaning conveyed by the text of the clause taking into account its context in this Undertaking and the purpose or object underlying this Undertaking leads to a result that does not promote the purpose or object underlying this Undertaking.

- 14.5 In determining whether consideration should be given to any material in accordance with clause 14.4, or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to:
- (a) the effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in this Undertaking and whether that meaning promotes the purpose or object of this Undertaking); and
 - (b) the need to ensure that the result of this Undertaking is to address the Commission's competition concerns.
- 14.6 The Commission may authorise the Mergers Review Committee, a member of the Commission or a member of the Commission staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the Commission may impose.
- 14.7 This Undertaking does not prevent the Commission from taking enforcement action at any time during or after the period of this Undertaking in respect of any breach by Healthscope of any term of this Undertaking.
- 14.8 Nothing in this Undertaking restricts the right of the Commission to take action under the Act for penalties, divestiture or any other remedy/s in the event that divestiture of the Divestiture Business is not implemented in accordance with this Undertaking.

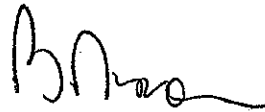
Executed by Healthscope Limited ACN 006 405 152 in accordance with section 127 of the Corporations Act by or in the presence of:



Signature of Secretary/Director

INGRID ANNE PLAYER

Name of Secretary/Director in full

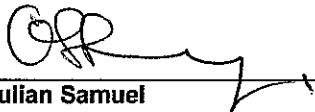


Signature of Director

BRUCE ROBERT DIXON

Name of Director in full

Accepted by the Australian Competition and Consumer Commission pursuant to Section 87B of the Trade Practices Act 1974.



Graeme Julian Samuel
Chairman

Date

25/10/07

Confidential Schedule 1 – Divestiture Period

Schedule 2 – Divestiture Business

The Divestiture Business comprises:

1. The Gippsland pathology business conducted by Symbion from its Accredited Pathology Laboratories at the following locations:

| | |
|------------|---------------------|
| Sale | Macalister Street |
| Warragul | Landsborough Street |
| Leongatha | Koonwarra Road |
| Bairnsdale | Day Street |
| Wonthaggi | Graham Street |
| Traralgon | Princes Highway |

and including 29 Approved Collection Centres (and their respective statutory approvals) at the following locations:

| | |
|----------------|---------------------|
| Bairnsdale | Day Street |
| Lakes Entrance | 649 Esplanade |
| Orbost | Boundary Road |
| Paynesville | 6 Fleischer Street |
| Leongatha | Koonwarra Road |
| Mirboo North | 4-6 Brennan Street |
| Maffra | 168 Johnson Street |
| Sale | Palmerston Street |
| Sale | 284 Raymond Street |
| Churchill | 13 Georgina Place |
| Moe | 16 Kirk Street |
| Moe | 5-7 Lloyd Street |
| Morwell | 241 Princes Drive |
| Neerim South | Main Road |
| Pakenham | 56 Main Street |
| Traralgon | Princes Highway |
| Traralgon | 6 Kay Street |
| Yarram | 121 Commercial Road |
| Drouin | 22-26 Princes Way |
| Warragul | 40 Albert Street |
| Cowes | 12 Wardley Avenue |
| Foster | 95 Station Street |
| Inverloch | 11 Williams Street |
| Kooweerup | Rossiter Road |
| Korumburra | 50 Radovick Street |
| San Remo | 123 Marine Parade |
| Wonthaggi | Graham Street |
| Wonthaggi | 42 Murray Street |
| Heyfield | Tyson Street |

2. The Benalla pathology business conducted by Symbion from its Accredited Pathology Laboratory at Coster Street, Benalla, including the Approved Collection Centres (and their respective statutory approvals) at the following locations:

| | |
|-----------|--------------------|
| Benalla | Coster Street |
| Mansfield | 49 Highett Street |
| Mooroopna | 69 McLennan Street |

3. The Wangaratta pathology business conducted by Healthscope from its Accredited Pathology Laboratory at Part Clark Street, Wangaratta, including the Approved Collection Centres (and their respective statutory approvals) at the following locations:

| | |
|------------|-----------------|
| Wangaratta | 61 Ovens Street |
| Yarrowonga | 25 Piper Street |

4. The Albury pathology business conducted by Symbion from its Accredited Pathology Laboratory at 1/2 Ramsay Place, Albury, including the Approved Collection Centres (and their respective statutory approvals) at the following locations:

| | |
|--------------|-------------------------|
| Albury | 1/2 Ramsay Place |
| Albury | 552 Englehardt Street |
| Beechworth | 39 Camp Street |
| Corryong | Kiell Street |
| Corowa | 30 Evelyn Street |
| Lavington | 3/334-336 Griffith Road |
| Mount Beauty | Tawonga Crescent |
| Wodonga | 101 Hume Street |
| Wodonga | Nordsvan Drive |

5. At the discretion of the Approved Purchaser, any contract, or right to enter a contract, for the provision of pathology services at any of the following hospitals or to any of the following public health services secured between the Control Date and the Divestiture Date:

Benalla and District Memorial Hospital

Heyfield Bush Nursing Hospital

Latrobe Regional Hospital

Maffra District Hospital

Mansfield District Hospital and North Eastern Pathology

Maryvale Private Hospital

South Gippsland Hospital

Wangaratta District Base Hospital

Wonthaggi and District Hospital

Bairnsdale Regional Health Service

Gippsland Southern, Central Gippsland and West Gippsland Health Services

Omeo District Health Service

Orbost Regional Health Service

Yarram and District Health Service

Wodonga Regional Health Service

Alpine Health Service

