



Australian
Competition &
Consumer
Commission

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Statement of Issues — Lake Imaging & Western Medical Imaging - proposed merger

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed merger of Lake Imaging (**Lake**) with Western Medical Imaging (**WMI**) (**proposed merger**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 7 March 2008 and anticipates making a final decision on 20 March 2008. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

5. On 11 January 2008, Lake provided its submission to the ACCC seeking an informal review of the proposed merger pursuant to the ACCC's Merger Review Process Guidelines.

The parties

Lake Imaging

6. Lake is a partnership comprised of radiologists and radiographer/managers. Lake operates as a private diagnostic imaging provider (excluding reporting services) to public and private patients from 16 locations throughout regional Victoria and western metropolitan Melbourne. Lake operates radiology practices in the Ballarat, Melton, Geelong and Daylesford regions of Victoria.
7. Lake provides nuclear medicine and ultrasound services at the St John of God Health Care (**SJGHC**) hospital in Ballarat. In 2006, Lake acquired the nuclear medicine and ultrasound components of the SJGHC diagnostic imaging business in Ballarat.

Radsonic

8. Radsonic is a separate partnership comprised of the same radiologists that are in the Lake partnership (and not the radiographer/managers in the Lake partnership).
9. Amongst other customers, Radsonic supplies diagnostic imaging reporting services¹ to Lake and its competitor, Ballarat Health Services (**BHS**).

Western Medical Imaging

10. WMI is a group of three corporate entities; Western Medical Imaging Pty Ltd, Victorian Medical Imaging Pty Ltd, and Eastern Medical Imaging Pty Ltd. Two of its radiologists are the current sole directors and shareholders of each of the WMI group of companies.
11. WMI operates as a private diagnostic imaging provider (including reporting services) from 10 locations throughout regional Victoria and metropolitan Melbourne. WMI provides diagnostic imaging services in the Ballarat, Mount Waverley, Sunbury regions and in Broadmeadows. It also supplies reporting services under arrangements with numerous regional health services and other entities. These are located in Ballarat, the north-west and outer metropolitan Melbourne, Maryborough, Stawell, West Wimmera, East Grampians, Broadford, Yea, Wallan and Warragul.
12. WMI provides general radiology services at the SJGHC in Ballarat. In 2007, WMI acquired the remaining components of the SJGHC diagnostic imaging business in Ballarat, which now operates as Ballarat Radiology. Prior to the acquisition, WMI radiologists (directors / shareholders) were individually contracted to the SJGHC.

¹ Diagnostic imaging reporting services is the actual diagnosis and medical opinion of diagnostic images, which can only be provided by accredited radiologists.

Other industry participants

Ballarat Health Services

13. BHS was established on 1 January 1997, bringing together three public health services: Queen Elizabeth Centre, Ballarat Base Hospital and Grampians Psychiatric Services.
14. BHS is the largest regional hospital in the Grampians region, and is the principal referral hospital for the region, employing approximately 3000 staff.
15. BHS provides radiology services to public and private in-patients, and to public and private out-patients. BHS provides general diagnostic imaging services including ultrasound, CT, angiography, fluoroscopy and dental. While BHS employs its own radiographers and sonographers (both of which are imaging technicians), diagnostic imaging reporting services are provided under contract by Radsonic.

Primary Health Care Ltd

16. Primary Health Care Ltd (Primary) operates a medical centre in Ballarat (trading as the Eureka Medical Centre). The Eureka Medical Centre commenced operations in Ballarat on 24 April 2006. It primarily operates as a seven day general practitioner bulk billing clinic, and incorporates a pathology collection centre and diagnostic imaging services including CT, ultrasound, x-ray and dental services (trading as Healthscan Specialist Imaging).
17. Healthscan Specialist Imaging employs a permanent radiographer and sonographer respectively, with any shortfall covered by locum staff. Healthscan Specialist Imaging uses the services of a local radiologist (for procedures that require the presence of a radiologist) and uses teleradiology² for other reporting purposes. The local radiologist is also an employee of WMI.

The transaction

18. Lake and WMI will merge into one entity providing diagnostic imaging services.
19. The Radsonic partnership and the WMI directors / shareholders will merge into a single group that will supply diagnostic imaging reporting services to:
 - the merged entity;
 - BHS; and
 - some regional health services contracts (previously supplied by WMI).

² Teleradiology involves the electronic transmission of radiological images in digital form from one location to another. It can be used to provide reporting services where a radiologist does not need to be present on site.

Areas of overlap

20. The ACCC considers that the main area of overlap between Lake and WMI's businesses is in the provision of diagnostic imaging and diagnostic imaging reporting services in the Ballarat area. Consequently, this area of overlap is the focus of this Statement of Issues.

Market background

Diagnostic imaging services

21. Diagnostic imaging services are the process of diagnosing conditions of the human body through the generation and interpretation of images using specialised equipment that are often referred to as modalities. There are two professional diagnostic imaging disciplines; diagnostic radiology and interventional radiology.
22. Modalities include, but may not be limited to, x-ray, fluoroscopy, ultrasound, mammography, ultrasound, CT scans, magnetic resonance imaging (MRI), bone mineral densitometry and nuclear medicine.
23. Diagnostic imaging services can also be split into two functional levels, diagnostic imaging, which involve the use of diagnostic imaging equipment to obtain images pertinent to providing a diagnosis, and diagnostic imaging reporting services, which are the interpretation and diagnosis of conditions based on those images.
24. Diagnostic imaging is carried out by specially qualified technicians. Technicians trained to operate equipment concerned with the production and detection of radiation are referred to as radiographers, while those additionally trained to carry out ultrasound exams are referred to as sonographers.
25. Diagnostic imaging reporting services must be carried out by a radiologist, that is, a medical doctor with a suitable qualification in radiology. Some diagnostic imaging procedures require the presence of a radiologist during the procedure (usually for interventional radiology procedures³), while others do not require a radiologist's presence. Further, radiologists often consult with other specialists regarding their diagnosis of a diagnostic imaging procedure, particularly in more complex diagnosis. For these reasons, hospitals require permanent services of radiologists during business hours (and on an on-call basis after hours) given the high likelihood that patients would require the services of a radiologist at any time, either for consultations or interventions, for example, in emergency situations.

³ Part 2, *Health Insurance Act 1973* (Cth)

Relevant markets

26. The ACCC is considering the proposed merger in relation to two markets.

Local markets for the provision of diagnostic imaging

27. The ACCC considers that there is a market for the supply of diagnostic imaging services (excluding diagnostic imaging reporting services, and nuclear medicine and MRI imaging services) to public and private patients (excluding in-patients at public hospitals) in the Ballarat region.

Local markets for diagnostic imaging reporting services

28. The ACCC considers that there is also a separate market for the supply of diagnostic imaging reporting services (excluding diagnostic imaging services) to diagnostic imaging service providers.

29. The ACCC also considers that there are market segments for diagnostic imaging reporting services supplied to high acuity providers, where a radiologist is required to be on-call or present, and those services provided to low acuity providers, where a radiologist is not required to be on-call or present.

30. The provision of diagnostic imaging reporting services involves the interpretation and analysis of imaging results, and the provision of clinical reports. The provision of such reporting services to high acuity imaging providers differs from low acuity providers for the following reasons:

- High acuity imaging providers are largely hospitals that require attendance by a radiologist to provide immediate analysis of radiology imaging results and immediate consultation with other specialists.
- Teleradiology is only partially available for the provision of high acuity radiology reporting services due to the clinical and regulatory need for radiologist collocation with the patient.
- Radiologists are required to make themselves available on-call.

31. While both low acuity and high acuity diagnostic imaging reporting services have a regulatory requirement for supervision of interventional radiology, the nature of high acuity providers, such as hospitals, demands greater interventional procedures and thus supervision.

32. Due to the requirement that a radiologist be present during certain procedures, the ACCC considers that the relevant market is likely to be constrained geographically to the Ballarat region.

Market inquiries

33. On 11 January 2008 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers of radiology services, other doctors operating in the Ballarat area, state and federal government bodies, private health insurers and, health associations.

Statement of Issues

34. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories, issues that may raise concerns and issues unlikely to pose concerns.

Issues that may raise concerns

Unilateral Effects: Horizontal – concentration

35. Diagnostic imaging in the Ballarat region is provided by Lake, WMI, Primary (trading as Healthscan Specialist Imaging) and BHS (from the Ballarat Base Hospital).
36. Diagnostic imaging reporting services are provided by Radsonic and WMI.
37. The proposed merger will result in a reduction in the number of diagnostic imaging providers from four to three participants in the Ballarat region, and the number of diagnostic imaging reporting services providers will be reduced to a single provider in the Ballarat region.
38. Based on market inquiries to date, the ACCC considers that the proposed merger may lead to competition concerns arising with respect to the ability of the merged entity to increase prices or reduce service provision in either market.
39. Barriers to entry in the provision of high acuity diagnostic imaging reporting services appear high. The ACCC notes that the availability of radiologists, the key input to the provision of radiology reporting services, appears low. This particularly relates to the availability of enough radiologists willing to relocate to a regional centre to cover on-call radiology reporting services. Market inquiries suggest a national shortage of around 300 qualified radiologists.
40. Further, barriers to entry in the provision of low acuity diagnostic imaging reporting services and diagnostic imaging services appear to be moderate to high. The ACCC notes the difficulty in attaining radiologists, and the imperfect substitute offered by teleradiology.
41. The ACCC invites further information and views as to:
- a. The extent to which WMI is considered a viable alternative as a provider for diagnostic imaging reporting services;

- b. The extent to which WMI is likely to be perceived to be a viable alternative, as a provider for diagnostic imaging reporting services, in the next 1 to 2 years, absent the proposed merger;
 - c. The extent to which teleradiology may pose a constraint on the ability of the merged entity to increase prices and / or decrease service in the provision of high and low acuity diagnostic imaging reporting services, in the Ballarat region if the merger was to proceed;
 - d. The extent to which Primary is considered a viable alternative provider of diagnostic imaging; and / or
 - e. The extent to which WMI is considered a viable alternative as a provider of diagnostic imaging, and is likely to be perceived as a viable alternative in the next 1 to 2 years, absent the proposed merger.
42. The ACCC also invites the provision of any information relating to increased prices and / or decreased services in other similar sized regional areas, where a reduction of diagnostic imaging providers (which either directly employ radiologists or have entered into reporting services contracts with another provider in the regional area) has occurred.
43. The ACCC notes that information sought regarding high acuity diagnostic imaging reporting services in the next section of the SOI is also relevant to the ACCC's horizontal competition concerns.

Unilateral Effects: Vertical – ability and incentive to foreclose competition

44. The provision of diagnostic imaging services is inextricably linked to access to diagnostic imaging reporting services. Without the reporting services, diagnostic images are unable to be clinically interpreted. This creates a strong vertical link between the two relevant markets considered in this Statement of Issues.
45. The ACCC notes that Radsonic is responsible for providing diagnostic imaging reporting services to two of the four diagnostic imaging providers in Ballarat, BHS and Lake. Diagnostic imaging reporting services are provided to Primary for high acuity diagnostic imaging by an employee of WMI, with WMI self-supplying their own requirements for low acuity diagnostic imaging reporting services (through radiologists based outside of Ballarat).
46. Post-merger, all diagnostic imaging reporting services for high acuity diagnostic imaging supplied to competitors of the merged entity will be supplied by a single related group of radiologists. Market inquiries indicate that competition for the supply of diagnostic imaging services could be substantially reduced if the proposed merger resulted in the merged entity foreclosing access to key inputs in that market. Foreclosure could occur if the merged entity limits (or otherwise discriminates in relation to) the supply of diagnostic imaging reporting services to diagnostic imaging providers which compete with Lake in the Ballarat region, thus reducing the ability of those rival diagnostic imaging providers to compete.

47. The ACCC invites information on whether the merged entity would have the ability and/or incentive to possibly engage in such conduct, and if so, how such conduct would be likely to occur. For example, could the merged entity arguably use its position as the sole supplier of high acuity diagnostic imaging reporting services to diagnostic imaging services providers in Ballarat to:
- a. Restrict or discontinue the supply of diagnostic imaging reporting services;
 - b. Supply diagnostic imaging reporting services to rival diagnostic imaging providers at inflated prices;
 - c. Impose unfavourable conditions on the supply of diagnostic imaging reporting services (e.g. limited availability of radiologists) to rival providers of high acuity diagnostic imaging services; and / or
 - d. Otherwise discriminate in favour of its own diagnostic imaging business.
48. The ACCC also invites further information from interested parties on the extent to which there may be competitive concerns regarding the future provision of high acuity diagnostic imaging and in particular:
- a. The extent to which WMI is considered a viable alternative as a provider for high acuity diagnostic imaging reporting services;
 - b. The extent to which WMI is likely to be perceived to be a viable alternative, as a provider for high acuity diagnostic imaging reporting services, in the next 1 to 2 years, absent the proposed merger;
 - c. The ability for Primary to seek alternate high acuity diagnostic imaging reporting services; and / or
 - d. The ability for BHS to seek alternate high acuity diagnostic imaging reporting services.
49. The ACCC also invites the provision of information relating to any other (similar sized) regional areas, where a reduction of diagnostic imaging reporting service providers (which either directly employ radiologists or have entered into reporting services contracts with another provider in the regional area) has occurred, and any impact on competition in those areas that may have resulted from that reduction.

Issues unlikely to pose concerns

50. The ACCC notes that Ballarat is the only market in which both Lake and WMI currently overlap in the provision of radiology services. Consequently, the ACCC does not consider that the proposed acquisition is likely to raise concerns in the other areas of regional Victoria that the merger parties operate in or in metropolitan Melbourne.

ACCC's future steps

51. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
52. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
53. Submissions are to be received by the ACCC no later than 7 March 2008. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view as to the appropriate course of action to take to resolve any competition concerns that remain.
54. The ACCC intends to publicly announce its final view by 20 March 2008. However the anticipated timeline may change in line with the Merger Review Process Guidelines. A public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.