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Australian Competition and Consumer Commission  
Level 5, The Tower  
360 Elizabeth Street  
Melbourne VIC 3000

**Reference: N95607.**  
**Contact Officer: Claire McGinness**

14 November 2011

Dear Ms McGinness

**Re: Exclusive dealing notification N95607 lodged by Cabrini Health Ltd**

Cabrini Health has recently made an application to provide and enforce the exclusive use of its own pathology services at its Melbourne hospitals, with concessions that nevertheless do not allow free access to other pathology providers that are currently available.

I should like to submit my concerns about the application, even though they do not impact on me directly.

I am an anatomical pathologist in private practice in Brisbane, Queensland. My practice is a relatively small one with four anatomical pathologists (3.5 full-time equivalents) that is devoted to gastrointestinal and liver anatomical pathology (GI-AP). It was established in 2007 and has grown quite rapidly, so that we now service a significant number of private GI-AP referrals in south-east Queensland, with a large referral base of gastroenterologists. Although the practice was established recently, I have 18 years of experience in AP, and have worked in academic & public hospital pathology as well as private practice (nine years each).

1. The Cabrini submission claims that other pathology providers are "cherry-picking" profitable work that is detrimental to its profitability. I disagree with this. In fact, niche providers very often provide a specialist service with the highest level of expertise, enhanced clinician-pathologist interaction and thus the optimal patient outcome. In support of this, it is clear that the proliferation of small and specialised pathology practices in recent years, and our own rapid growth since commencing, indicates a need for this specialist service and a desire by clinicians to refer their pathology to their provider of choice.

2. Although it was not clear in the submission, it is my understanding that Cabrini Health does not employ pathologists, but that they are contracted from Sonic Health (though one of their practices, Melbourne Pathology). Since Sonic Health has a number of close relationships with other hospitals throughout Australia, it is possible that a successful outcome of this application could trigger similar applications from other

hospitals in a similar situation. This would provide a vertical integration model that could potentially exclude free access of pathology providers to work. Additionally, other vertically integrated hospital and pathology providers (such as Healthscope) may use this as a precedent to exclude access of non-aligned pathology providers to their hospitals.

3. Vertical integration has been recognised as a key and critical risk to the provision of pathology services of the highest quality. Specifically, the Royal College of Pathologists of Australasia, the peak body representing pathology in Australia, has the following policy:

**"Subject: Vertical Integration in Medical Practice**

Approval Date: March 2001, August 2006, August 2007, November 2009

Review Date: November 2013

Review By: PPAC

Number: 1/2001

Vertical integration occurs in a variety of medical practices and may take different forms and structures.

The College's position on vertical integration applies to the practice of pathology in both the private and public sectors, and is as follows:

1. The College places the highest importance on the maintenance of professional and ethical standards in Pathology and for Pathologists.
  2. The College is adamant that the clinical independence of medical practitioners must be maintained when requesting other clinical services, such as pathology, for their patients. The requesting medical practitioner alone after taking expert advice where relevant, should form a decision in consultation with the patient to determine the need, the type, the number, the frequency and the provider of investigations in accordance with good medical practice. This clinical independence must not be affected in any way by the vertical integration arrangements.
  3. The College fully supports the existing requirements in the Health Insurance Act in relation to over-requesting, inducements and bribes as they apply to referring medical practitioners and medical providers of investigation services, e.g. pathology. These principles must be applied when operating in a vertically integrated environment.
  4. The College supports the view that all medical practitioners should disclose to patients any commercial links or financial interests they may have in products or services they recommend or provide.
  5. The College is totally opposed to any situation whereby instructions by any related parties direct a practitioner to refer to specific pathology providers."
4. The application from Cabrini also suggests that their more-profitable pathology department will enhance their ability to provide other community services. These are not specified. In fact, many of the pathologists in smaller, niche practices with a specialist focus provide direct benefits in their areas of

expertise, through membership of committees, research and teaching. Ensuring that smaller practices remain viable will enable these activities to continue.

Thank you for considering this submission.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'A Clouston'.

**Andrew Clouston MBBS PhD FRCPA**  
Managing Pathologist, Envoi Specialist Pathologists