



Statement of Issues

5 December 2013

Sonic Healthcare Limited - proposed acquisition of assets of Delta Imaging Group

Introduction

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) on the proposed acquisition of assets of Delta Imaging Pty Limited (in liquidation), Delta Imaging Maitland Pty Limited (in liquidation) and Cscan Asset Pty Limited (in liquidation) (collectively, **the Delta Imaging Group**) by Sonic Healthcare Limited (**Sonic**) (**proposed acquisition**).
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 (at www.accc.gov.au/processguidelines) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 20 December 2013 and anticipates making a final decision by 17 January 2014. 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 to the proposed acquisition

5. On 11 October 2013, in response to a request by the ACCC, Sonic provided its submission seeking informal clearance from the ACCC to acquire the assets of the Delta Imaging Group.
6. Sonic proposes to acquire assets of the Delta Imaging Group, primarily consisting of radiology equipment for the supply of x-ray, ultrasound, computed tomography (**CT**) and magnetic resonance imaging (**MRI**) services.

7. Sonic may use the assets to provide a full-service radiology business at the former premises of the Delta Imaging Group in Maitland and Charlestown, provided it can obtain a lease at those premises. Alternatively, Sonic may deploy some or all of those assets elsewhere.
8. The ACCC has considered both possibilities in assessing the potential competitive effects of the proposed acquisition. The concerns raised in this Statement of Issues apply regardless of whether Sonic were to continue to operate the former Delta Imaging Group practices or whether Sonic were to close those practices and redeploy the equipment.

The parties

Sonic Healthcare Limited

9. Sonic is an Australian Securities Exchange listed company. It provides diagnostic imaging services in Australia and New Zealand, as well as pathology services in Australia, New Zealand, Europe and the United States and medical centre management services in Australia.
10. In Newcastle and the Hunter region of New South Wales, Sonic provides diagnostic imaging services through its subsidiary, Hunter Imaging Group Pty Ltd (**Hunter Imaging**). Hunter Imaging operates a number of clinics in the region, providing a range of general x-ray, ultrasound, CT (collectively, **general diagnostic imaging**), MRI and nuclear medicine services.
11. Relevant to the assessment of proposed acquisition, Hunter Imaging operates the following radiology practices in Newcastle and Maitland (located approximately 32km from the centre of Newcastle).

Table 1: Locations of Sonic radiology practices in Newcastle and Maitland

Location	Services provided
<u>Newcastle</u>	
Charlestown	<ul style="list-style-type: none"> • General diagnostic imaging • MRI
Cardiff	<ul style="list-style-type: none"> • General diagnostic imaging • MRI
Gateshead	<ul style="list-style-type: none"> • General diagnostic imaging
Broadmeadow	<ul style="list-style-type: none"> • General diagnostic imaging
Belmont	<ul style="list-style-type: none"> • General diagnostic imaging
Wallsend	<ul style="list-style-type: none"> • General diagnostic imaging
Toronto	<ul style="list-style-type: none"> • General diagnostic imaging
<u>Maitland</u>	
Maitland	<ul style="list-style-type: none"> • General diagnostic imaging
East Maitland	<ul style="list-style-type: none"> • General diagnostic imaging • MRI

Delta Imaging Group

12. The Delta Imaging Group was established in 2009 in Charlestown and expanded to Maitland in 2012. Both practices provided general diagnostic imaging services (including, x-ray, ultrasound and CT) and MRI services.
13. The Delta Imaging Group ceased trading on 9 July 2013 and is in liquidation.

Other industry participants

14. As explained further below, the areas in which Sonic and the Delta Imaging Group overlap is in the supply of general diagnostic imaging services and MRI services. Other suppliers of these services in Newcastle and Maitland are set out below.

Table 2: Suppliers of diagnostic imaging other than Sonic and the Delta Imaging Group

Supplier	Locations	General diagnostic imaging	MRI	Public Hospital/Private Radiology Practice
NEWCASTLE				
Primary	Charlestown	✓		Private Radiology Practice
	Merewether	✓	✓	Private Radiology Practice
Hunter Radiology	Newcastle	✓		Private Radiology Practice
	Glendale	✓	✓	Private Radiology Practice
Newcastle Radiology	Adamstown	✓		Private Radiology Practice
In Focus Radiology	Warners Bay	✓		Private Radiology Practice
Newcastle X-ray	Edgeworth	✓		Private Radiology Practice
Hunter New England Imaging: Calvary Mater Hospital	Waratah	✓	✓	Public Hospital
Hunter New England Imaging: John Hunter Hospital	New Lambton	✓	✓	Public Hospital
MAITLAND				
Greenhills X-ray	Maitland	✓		Private Radiology Practice
Hunter Health Imaging Service: Maitland Public Hospital	Maitland	✓		Public Hospital

Market inquiries

15. On 15 October 2013, the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided submissions, including radiology practices in the Newcastle and Maitland areas, referring medical practitioners, industry bodies and alternative bidders for the Delta Imaging Group assets.

Future with and without the acquisition

16. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
17. In this case, if the proposed acquisition does not proceed, the ACCC considers that it is likely another radiology company would acquire the Delta Imaging Group’s assets and operate full-service radiology practices at the former Delta Imaging Group sites, providing general diagnostic imaging services and MRI services.

Industry background

18. Diagnostic imaging is a healthcare service that seeks to diagnose conditions through the generation and interpretation of structural and functional images of the human body. The practice of diagnostic imaging also includes preventative medicine (through screening services) and treatment (through interventional image-guided procedures and nuclear medicine). The various technologies (often referred to as modalities) used in diagnostic imaging allow detailed visualisation of structures within the human body without the need for surgery or major intervention.
19. Sonographers and radiographers (medical imaging technologists) are medical professionals who operate the relevant diagnostic imaging machinery. Radiologists are medical professionals who interpret diagnostic images and provide clinical reports.
20. Diagnostic imaging involves a variety of modalities, including:
- general x-ray;
 - dental x-ray / orthopantomogram (OPG);
 - ultrasound;
 - doppler ultrasound;
 - fluoroscopy or (fluoroscopic screening);
 - bone mineral densitometry (DEXA);
 - mammography;
 - fine needle aspiration biopsy (FNA);
 - CT;

- MRI; and
- nuclear medicine / position emission tomography (PET).

Medical practitioners – referral practices

21. Medical practitioners make referrals to diagnostic imaging service providers. The choice as to which radiology practice to refer a patient to is determined by a range of factors including quality, convenience, price, location, services available and clinical relationship with the reporting radiologist.
22. Market inquiries have indicated that medical practitioners generally prefer to refer to a single radiology practice for all imaging services as opposed to sending different patients with different imaging needs to different practices. Additionally, many medical practitioners prefer to refer to radiology practices which supply general diagnostic imaging and MRI which are considered to be full-service. This is because full-service practices are considered to be a more convenient one stop shop and are also often perceived to provide better quality of service.
23. Although patients are given a referral slip for a particular radiology practice or company, patients are free to go to radiology practices other than the practice their medical practitioner refers them to. However, market inquiries have indicated that patients typically attend the radiology practices they are referred to.

Medicare

24. Medicare rebates account for the largest proportion of revenue for diagnostic imaging service providers and have a significant impact on the price of radiology services. Other sources of revenue include co-payments from private patients, private health funds and other uninsured patient out-of-pocket expenses for items not included under the Medicare Benefits Scheme (**MBS**).

Medicare eligibility of MRI scans

25. The Australian Government regulates Medicare funding of MRI services by entering into deeds of undertaking with certain accredited MRI service providers. A deed of undertaking permits specific MRI units to supply Medicare rebatable MRI scans. These deeds of undertakings define MRI units as either:
 - fully funded – these units can supply the full range of Medicare eligible MRI scans under the MBS when referred by a specialist, surgeon or GP; or
 - partially funded – these units can supply a selected number of Medicare eligible scans under the MBS when referred by a GP and certain Medicare eligible cancer staging and breast screening scans referred by a specialist or surgeon.
26. MRI units without a deed of undertaking are 'unfunded'. While these units can supply all types of MRI scans, these scans will not attract a Medicare rebate and patients will be charged out of pocket fees.
27. Prior to 1 November 2012, only patients referred by specialists or surgeons for MRI scans listed under the MBS were eligible for the Medicare rebate. Additionally, to receive the Medicare rebate for these scans, patients would have needed to be referred to fully funded MRI units of which there were only 125 throughout Australia.

28. On 1 November 2012, the Australian Government increased the number of MRI items under the MBS which could attract the Medicare rebate if supplied by a funded MRI unit. These items related to MRI scans for patients under 16 years old, referred by a GP. The Australian Government also increased the number of fully funded MRI units and introduced partial funding of MRI units.
29. On 1 November 2013, the Federal Government further increased the number of MRI items which can be referred by a GP to a fully or partially funded MRI unit and attract the Medicare rebate.
30. Currently in Australia there are 169 partially funded and 168 fully funded MRI units. The ACCC understands that the Australian Government is unlikely to enter deeds of undertaking for further MRI units to become fully or partially funded in the foreseeable future.
31. Market participants stated that throughout Australia, GPs have often referred patients for CT scans when MRI scans would be a more appropriate clinical investigation. This is because these CT scans are Medicare rebateable whereas MRI scans are not always Medicare rebateable. Additionally, because an MRI scan is a relatively expensive test, prior to the regulatory changes made in November 2012, GPs would often refer patients to specialists, who could subsequently refer patients for an MRI scan that would attract the Medicare rebate. Consequently, patients often waited for long periods of time (due to waiting periods for specialists' appointments) to access MRI services. The ACCC understands that part of the rationale behind the expansion of Medicare eligible GP referrable MRI scans is to improve access to MRI services and to reduce the number of less appropriate CT scans.
32. Table 3 below summarises the availability of Medicare rebates for MRI services, based on the referrer and the funding status of the MRI unit.

Table 3: Summary of Medicare eligibility on funded and unfunded MRI units.

Referrer	Fully funded MRI unit	Partially funded MRI unit	Unfunded MRI unit
Specialist or surgeon	All Medicare eligible MRI scans.	Certain cancer staging and breast screening items.	Nil
GPs	<ul style="list-style-type: none"> Select MRI scans for patients under 16 years of age with certain symptoms for scans of the head, spine, ankle, knee, hip, elbow and wrist. Select MRI items for patients over 16 years of age with certain symptoms for scans of the head, spine or knee. 	<ul style="list-style-type: none"> Select MRI scans for patients under 16 years of age with certain symptoms for scans of the head, spine, ankle, knee, hip, elbow and wrist. Select MRI items for patients over 16 years of age with certain symptoms for scans of the head, spine or knee. 	Nil

Areas of overlap and market definition

33. The following areas of overlap exist between the parties to the proposed acquisition:

- general x-ray;

- ultrasound;
- CT; and
- MRI.

Product dimension

34. In previous matters the ACCC has considered that all diagnostic imaging modalities, except for MRI and nuclear medicine, fall within the same product dimension. The ACCC has not received any submissions to indicate a different approach should be taken.
35. In most cases, the various diagnostic imaging modalities are complements with limited substitutability, as they offer different functionalities to diagnose a variety of injuries or ailments. However, the ACCC considers it appropriate to consider the supply of general diagnostic imaging services, including x-ray, ultrasound and CT, as one product dimension because radiology practices tend to supply these modalities together.
36. Further, with the exception of MRI services, the training and qualifications of medical imaging technicians and radiologists allow these practitioners to provide several modalities of diagnostic imaging services.
37. In contrast, radiologists and medical imaging technicians require additional training and qualifications to provide MRI services. The ACCC therefore considers the supply of MRI services to be a separate product dimension to general diagnostic imaging services.

Radiology services provided by hospitals

38. Radiology practices compete for referrals of out-patients. These are patients who are not admitted to a hospital to obtain radiology or any other medical services.
39. The ACCC considers that services provided to hospital in-patients by public or private hospitals should not be included within the relevant markets, primarily because out-patients are not likely to become in-patients in order to access radiology services. Additionally, once admitted to a hospital, in-patients and their doctors generally do not have the ability to choose between radiology providers, meaning they are not contestable to external radiology providers.

Geographic dimension

40. Market inquiries have indicated that radiology patients in Newcastle and Maitland generally seek to obtain services in their local area, which may include the five or six suburbs surrounding their home or the location of their doctor.
41. However, some market participants indicated that the geographic dimension of these markets may be broader. Further, some market participants have stated that the supply of urgent or more complex imaging services, such as MRI, may be less common and such practices therefore draw patients from a wider geographic area.
42. Some market participants also stated that some patients would be willing to travel between Cessnock and Maitland for general diagnostic imaging services.
43. Additionally, many radiology practices are located close to hospitals or medical precincts. Therefore, patients who attend hospitals or medical precincts for other medical services may also attend nearby radiology practices for ancillary imaging

services. Consequently, these radiology practices may draw patients from a wider geographic region than most patients would normally travel for imaging services. Further, some patients converge to the clinic that better matches their price sensitivity (rather than the clinic that is necessarily closest). For example, patients might travel further to take advantage of bulk billing.

44. Notwithstanding the factors outlined above, market inquiries to date have indicated that insufficient patients would switch between Newcastle and Maitland in the event of a price increase or reduction of service in one of these locations.
45. The ACCC's preliminary view is therefore that there are likely to be separate local markets for the supply of general diagnostic imaging and MRI services. However, the ACCC is considering whether a broader geographic market may apply for either or both of these product markets.
46. The ACCC notes that even if the geographic market is broader for the supply of MRI services, encompassing certain satellite towns close to Newcastle, including Maitland, this is unlikely to affect the competition analysis for the proposed acquisition. This is discussed further in the 'issues of concern' section below.

Conclusion

47. The ACCC's preliminary view is that the following markets are likely to be relevant in assessing the proposed acquisition:
 - The supply of general diagnostic imaging services in Newcastle.
 - The supply of general diagnostic imaging services in Maitland.
 - The supply of MRI services in Newcastle.
 - The supply of MRI services in Maitland.
48. As noted above, the market definition does not include the supply of the above services to hospital in-patients.

The ACCC invites comments from market participants on its proposed definition of the relevant markets. In particular, market participants may wish to comment on:

- The extent to which the geographic dimension of the market for the supply of MRI services and/or the market for the supply of general diagnostic imaging services may be broader or narrower than Newcastle and Maitland separately or, the combined Newcastle-Maitland area. For example, to what extent do patients travel between Newcastle, Maitland and other locations such as Cessnock, to obtain radiology services?

Statement of issues

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

Issues of concern

Unilateral effects: The proposed acquisition is likely to give the merged entity market power in the supply of MRI services in Newcastle

50. The ACCC is concerned that the proposed acquisition would result in a substantial lessening of competition in the supply of MRI services in Newcastle. The ACCC considers that this would be the case regardless of whether the geographic dimension of the market is confined to Newcastle or is broadened to include both the Newcastle and Maitland areas.
51. In the absence of the proposed acquisition, it is likely that an alternative purchaser would operate a full-service radiology practice at the former Delta Imaging Group sites, providing MRI services using two partially funded MRI units (both in Newcastle) and one unfunded MRI unit (Maitland).
52. If a narrow geographic market definition were adopted, the partially funded MRI units would be operated in competition with MRI services provided by other service providers in Newcastle and in particularly close competition with Sonic's partially funded MRI unit at Charlestown and fully funded MRI unit at Cardiff. If a broad geographic market definition were adopted, the two partially funded units formerly owned by the Delta Imaging Group would also compete with Sonic's fully funded MRI unit at East Maitland.

Competitive constraints

53. The following MRI units are located in the Newcastle and Maitland areas:

Table 4: Providers of MRI services (funded and unfunded) in Newcastle and Maitland

Provider	Location	Medicare eligibility
NEWCASTLE		
Sonic	Cardiff	Full
Sonic	Charlestown	Partial
Delta Imaging Group	Charlestown	Partial
Delta Imaging Group	Charlestown	Partial
HNEI	John Hunter Hospital	Full
HNEI	John Hunter Hospital	Partial
HNEI	Calvary Mater Hospital	Partial
Hunter Radiology	Glendale	None
Primary Healthcare	Merewether	None
MAITLAND		
Sonic	East Maitland	Full
Delta Imaging Group	Maitland	None

54. The proposed acquisition would result in Sonic being the only private radiology practice with partially or fully funded MRI units in the Newcastle and Maitland areas.
55. Market participants have consistently stated that public hospitals do not compete with private radiology practices to a significant extent for out-patients. This is because public hospitals prioritise providing services to in-patients over out-patients. These patients commonly have acute illnesses which may be more progressed and complex, therefore requiring more time and resources for the provision of services. Public hospitals also focus time and resources on hospital

clinics. These factors can result in poor accessibility for out-patients in terms of wait times for appointments and diminished service through inconvenience and delays in providing reports for images.

56. As such, if the proposed acquisition proceeds, the funded MRI units at the John Hunter and Calvary Mater hospitals in Newcastle are unlikely to impose a sufficient constraint on Sonic to prevent a substantial lessening of competition.
57. Market participants have also consistently expressed the view that radiology practices with unfunded MRI units are not a strong competitive constraint on radiology practices with funded MRI units in relation to price. While practices operating unfunded MRI units provide some competition, practices operating partially or fully funded MRI units compete more closely on price as they have the ability to charge no or lower fees to patients for Medicare eligible scans.¹
58. Market participants consider that Sonic is the dominant provider of MRI services in the Newcastle and Maitland areas. Market participants stated that this position is, to a large extent, because Sonic operates the only fully funded MRI units outside of the public hospital system.
59. Market inquiries indicate that the key sources of demand for MRI units are:
- patients referred for scans by specialists and surgeons, the bulk of which are Medicare rebatable;
 - patients referred for scans by a GP, of which a selected number of items are Medicare rebatable; and
 - patients referred for scans by any medical practitioner for injuries under workers' compensation schemes (these scans do not attract a Medicare rebate).
60. The ACCC notes that while there is a select range of MRI items under the MBS which attract a Medicare rebate when referred by a GP, market inquiries indicate that these scans make up the most common indications for which patients would be referred for an MRI scan. As such, the Medicare expansion is likely to result in a significant proportion of GP referrals for MRI scans attracting the Medicare rebate.
61. Market inquiries indicate that the Medicare expansion is likely to result in GP referrals becoming a much more significant source of referrals for MRI services in the future. This is because GPs are more likely to refer patients for Medicare eligible scans rather than referring patients to specialists for initial consultations before receiving an MRI scan. Additionally, because these scans are now Medicare eligible they are likely to be used instead of CT scans for certain symptoms.
62. Market inquiries indicate that as medical practitioners, particularly GPs, are reluctant to refer patients for Medicare eligible scans to practices where they cannot receive the Medicare rebate, medical practitioners tend to refer patients to radiology practices with funded units for Medicare eligible scans.
63. The ACCC notes that, from the perspective of referring GPs, there is no difference between a fully funded MRI unit and a partially funded MRI unit, as both types of MRI units will attract the same Medicare rebate for Medicare eligible scans referred by a GP. This contrasts with the perspective of referring specialists and surgeons

¹ Further, to the extent that radiology providers were previously able to utilise unfunded MRI units to provide a competitive constraint for GP referrals, the recent expansion of the range of Medicare eligible scans for GP referrals is likely to significantly weaken this constraint.

who generally need to refer patients for eligible scans to fully funded MRI units in order to receive the Medicare rebate. This means that, in relation to GP referrals, radiology practices with a partially funded MRI unit are able to compete, in terms of pricing, on an equal footing with radiology practices with a fully funded MRI unit. Therefore, the partial licences allocated to the MRI units formerly owned by Delta Imaging have the potential to be a source of significant competitive constraint against Sonic's funded MRI units.

64. Additionally, as noted in the industry background section, because medical practitioners generally prefer to refer to a single radiology practice for all imaging services, it is anticipated that GPs who refer patients for Medicare eligible scans to practices with a funded MRI unit are also likely to refer patients to the same practices for non-Medicare eligible MRI scans. It is therefore anticipated that there will not only be a significant increase in GP referrals for Medicare rebatable MRI scans, but also the number of GP referrals to these practices for non-Medicare eligible scans.
65. In this context, if Sonic acquires the partially funded MRI units, it is likely to significantly increase its market share for the supply of MRI services through an increase in Medicare rebateable MRI scan referrals as well as ancillary referrals from GPs.
66. By contrast, the acquisition of the former Delta Imaging Group practices by an alternative purchaser would allow that purchaser to operate a full-service practice, which would competitively constrain Sonic in the supply of both MRI and general diagnostic imaging services in Newcastle (or potentially in Newcastle-Maitland if a combined geographic market were found to be relevant).

Barriers to entry and expansion

67. Market inquiries indicate that barriers to establishing a radiology practice (with or without MRI services) in the Newcastle and Maitland areas are significant for the following reasons:
 - There is a shortage of skilled labour.
 - There are high sunk costs in acquiring radiology equipment and undertaking construction to house equipment according to regulatory standards.
 - There is a shortage of suitable sites with sufficient electricity capacity to operate radiology equipment. In many cases, significant capital investment is necessary to ensure reliable power supply to a radiology practice, as well as high ongoing costs of operating transformers and generators or sourcing excess electricity from remote substations.
68. For the supply of MRI services, market participants identified the following additional barriers to entry and expansion:
 - The Federal Government is unlikely to allocate additional licences for fully or partially funded MRI units.
 - Funding status of MRI units is tied to their location. As such, it is unlikely that an existing or potential competitor could relocate a funded MRI unit from another area to the Newcastle or Maitland areas.
 - Investment in MRI equipment requires particularly significant capital investment and sunk costs.

- Having a Medicare-eligible MRI unit has the potential to attract much higher volumes of referrals and associated revenue than an unfunded unit would. If an MRI unit does not have full or partial Medicare eligibility, the financial risks of new entry or expansion into the MRI market may be high.
- It is difficult to attract skilled radiology staff to Newcastle and Maitland.

The ACCC invites comments from market participants on the likely competitive effects of the proposed acquisition in the supply of MRI services. In particular, market participants may wish to comment on:

- The extent to which funded MRI units at the public hospitals in Newcastle impose, or would impose, a competitive constraint on Sonic's funded MRI units at Cardiff, Charlestown and Maitland.
- The extent to which unfunded MRI units compete with funded MRI units.
- The extent to which new or existing unfunded MRI units are economically viable.
- Whether the GP referable MRI items on the MBS represent a significant proportion of the existing or potential demand for MRI services.
- The extent to which the barriers to entry and expansion to the supply of MRI services are surmountable, in particular;
 - the profitability of unfunded MRI units relative to funded MRI units;
 - the availability of suitable sites;
 - the availability of sufficient power to sites; and
 - the shortage of skilled staff.

Issues that may raise concerns

Unilateral effects: The proposed acquisition may give the merged entity market power in the supply of general diagnostic imaging services in Maitland

69. The ACCC considers that competition concerns may arise in the supply of general diagnostic imaging services in Maitland, as the proposed acquisition would result in Sonic being one of three suppliers of general diagnostic imaging services (i.e. Greenhills X-ray and the Maitland Public Hospital). Sonic would operate three out of four private radiology practices if it continued to operate the Delta Imaging Group practice, or two out of three private radiology practices if Sonic chose not to operate the Delta Imaging Group practice (see tables 1 and 2). This contrasts with a future without the acquisition where an alternative acquirer would operate the relevant assets in competition with Sonic and the other providers.
70. As noted in the 'industry background' section, market inquiries indicate that a full-service practice is likely to attract more referrals than a standalone general diagnostic imaging practice and also, therefore, to be a sustainable business. Therefore, in the absence of the proposed acquisition, an alternative acquirer providing MRI services in conjunction with general diagnostic imaging services (i.e.

a full-service practice) would be likely to be a significant competitor in the supply of general diagnostic imaging services in Maitland.

71. The ACCC is therefore concerned that the proposed acquisition may result in a significant increase in concentration in the supply of general diagnostic imaging services in Maitland. The ACCC is concerned that the Maitland Public Hospital and the only other private radiology practice supplying general diagnostic imaging services in Maitland, Greenhills X-ray, may not be a sufficient constraint to prevent Sonic from increasing prices or reducing quality of service.
72. However, as noted in the 'market definition' section, the ACCC is considering whether a broader geographic market definition is appropriate. If a broader market definition is appropriate, two additional private radiology practices, Valley Imaging and Local X-ray in Cessnock and, the public hospitals in Cessnock and Kurri Kurri would be included as competitors. The ACCC therefore intends to examine the extent to which these firms would impose a competitive constraint on Sonic post-acquisition.
73. As market inquiries suggest that the barriers to setting up a radiology practice (with or without MRI) are significant, it appears the threat of potential entry may not impose a competitive constraint in the supply of general diagnostic imaging services in Maitland. However, the ACCC is considering the extent to which barriers to entry to the supply of general diagnostic imaging services are surmountable.

Unilateral effects: The proposed acquisition may give the merged entity market power in the supply of MRI services in Maitland

74. If a narrow geographic market definition were adopted for the supply of MRI services in Maitland, the ACCC considers that competition concerns may arise in the supply of MRI services in Maitland as post-acquisition, Sonic would be the only supplier of MRI services. Sonic would provide MRI services through a funded MRI unit and an unfunded MRI unit, if it continues to operate the unfunded MRI unit which was formerly owned by the Delta Imaging Group. This contrasts with a future without the acquisition where an alternative acquirer would operate an unfunded MRI unit in competition with Sonic.
75. While unfunded MRI units do not provide strong price competition, they are capable of providing service competition. Therefore, the ACCC is concerned that the proposed acquisition may result in a deterioration of service levels for the supply of MRI services, for example, through less convenient opening hours for patients or increased waiting times for scans. The ACCC intends to further examine the extent that unfunded MRI units impose a competitive constraint, in terms of service quality, on funded MRI units.
76. As noted above, market inquiries suggest that the barriers to setting up a radiology practice (with or without MRI) are significant and, are even more significant for the supply of MRI services. As such, the threat of potential entry does not appear likely to impose a competitive constraint in the supply of MRI services in Maitland.

The ACCC invites comments from market participants on the likely competitive effects of the proposed acquisition in the supply of general diagnostic imaging services and MRI services in Maitland. In particular, market participants may wish to comment on:

- the financial viability of establishing a radiology practice in Newcastle and/or Maitland without a funded MRI unit;

- the competitive constraint imposed by the threat of new entry to the supply of general diagnostic imaging services;
- the competitive constraint imposed by the existing suppliers of general diagnostic imaging services in Maitland – Greenhills X-ray and the Maitland Public Hospital; and
- the competitive constraint on Sonic's Maitland practices imposed by suppliers of general diagnostic imaging services located in Cessnock.

Issues unlikely to pose concerns

The supply of general diagnostic imaging services in Newcastle

77. Market inquiries indicate that competition concerns are unlikely to arise in the supply of general diagnostic imaging services in Newcastle.
78. If the proposed acquisition proceeds, Sonic would be one of six private radiology companies supplying general diagnostic imaging services, operating eight out of 15 private radiology practices. The ACCC notes that other than Sonic, two of the six suppliers of general diagnostic imaging services in Newcastle operate full-service radiology practices. Market inquiries indicate that the existing providers of general diagnostic imaging services in the Newcastle are likely to impose sufficient competitive constraint on Sonic in this market.

ACCC's future steps

79. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
80. 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.
81. Submissions are to be received by the ACCC no later than 20 December 2013. 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 in light of the issues raised above.
82. The ACCC intends to publicly announce its final view by 17 January 2014. 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.