



Australian  
Competition &  
Consumer  
Commission

## ACCC acts to restore competition for pathology services in Queensland

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16 June 2016

The Australian Competition and Consumer Commission has accepted court enforceable divestiture undertakings from Primary Health Care Limited (Primary) (ASX: PRY) and Healthscope Limited (Healthscope) (ASX: HSO).

The undertakings follow an extensive investigation by the ACCC into whether Primary's acquisition of Healthscope's pathology assets in Queensland, which occurred in 2015, breached section 50 of the *Competition and Consumer Act 2010* (Cth) (the Act). The investigation included multiple statutory notices and the compulsory examination under oath of executives from both firms.

The Primary undertaking requires the divestiture of the pathology assets that Primary acquired from Healthscope, therefore largely reversing the acquisition. The package of divestiture assets, including more than 70 collection centres, will be sold to Medlab Pathology, an experienced pathology provider based in Sydney, to enable it to establish a competitive presence in Queensland.

"Primary and Healthscope completed the transaction without notifying the ACCC, despite being on notice that the ACCC would have serious concerns about the likely competitive effect," ACCC Chairman Rod Sims said.

"It is of considerable concern to the ACCC that well-advised firms such as Primary and Healthscope chose to complete the transaction in the way that they did."

"While there is no legal obligation to obtain ACCC clearance before completion of a transaction, this matter highlights the risks to companies if they complete contentious acquisitions without seeking ACCC clearance beforehand," Mr Sims said.

"The acquisition removed a significant third player in Queensland, leaving just two major full-service pathology providers in that state. We considered that this change in market structure would be likely to result in increased prices and reduced service levels for pathology services in Queensland."

"The ACCC has decided not to commence proceedings against both Primary and Healthscope seeking penalties and other remedies including divestiture. In making this decision, the ACCC's motivation has been to restore a competitive market structure in Queensland as expeditiously as possible, and the onerous undertakings given by Primary and Healthscope should achieve that," Mr Sims said.

### Background

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Section 50 of the Act prohibits acquisitions likely to substantially lessen competition in a market. The Court may order a range of remedies against both the vendor and purchaser in a transaction which breaches section 50, including pecuniary penalties, divestiture orders and orders declaring the transaction void.

Primary's acquisition took place on 2 February 2015. The ACCC became aware of the acquisition shortly after this date as a result of complaints from market participants. The ACCC commenced an investigation immediately and made the matter public on 13 February 2015.

Primary is an Australian healthcare company listed on the ASX. It operates medical centres as well as providing pathology services, diagnostic imaging services, health technology solutions and private health insurance throughout Australia.

Healthscope is an Australian private health care operator listed on the ASX. It operates private hospitals and medical centres in Australia, as well as pathology businesses in New Zealand, Singapore, Vietnam and Malaysia. Healthscope sold its remaining Australian pathology operations to Crescent Capital Partners in July 2015.

In 2012, the ACCC opposed Sonic Healthcare Limited's proposed acquisition of Healthscope's pathology business in Queensland, which gave rise to similar concerns to those arising from this acquisition.

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