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3 October 2023

Dear Interested Party

**Request for submissions: ACL's proposed acquisition of Healius – proposed divestments**

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on Australian Clinical Labs Limited's (**ACL's**) proposed acquisition of Healius Limited (**Healius**) (the **Proposed Acquisition**).

ACL has offered an undertaking to the ACCC pursuant to section 87B of the *Competition and Consumer Act 2010* (the **Act**) (the **proposed undertaking**) in order to address the preliminary competition concerns as outlined in the ACCC's Statement of Issues.

The ACCC is now seeking feedback from stakeholders on whether the proposed undertaking offered by ACL would be capable of addressing the ACCC's preliminary competition concerns.

While the ACCC has decided to publicly consult on the proposed undertaking, this should not be interpreted to mean that this or any other form of undertaking will ultimately be accepted by the ACCC.

The proposed undertaking would require ACL to divest the following to an ACCC approved purchaser or purchasers:

- 60 Approved Collection Centres (**ACCs**) in Western Australia,
- 25 ACCs across regional Victoria, and
- 14 ACC's in the Northern Territory.

The proposed undertaking does not contain commitments by ACL relating to other areas of concern identified by the ACCC in its Statement of Issues, namely:

- community pathology in New South Wales, Queensland and South Australia;
- public pathology in Victoria;
- private in-patient services; and

- veterinary pathology.

The ACCC has not reached a concluded view as to the efficacy or acceptability of the proposed undertaking and its assessment will focus on the potential composition, purchaser and implementation risks raised by the proposed undertaking.

**Attachment A** to this letter outlines the background to the ACCC's preliminary competition concerns and provides an overview of the proposed undertaking. A list of specific questions that interested parties may wish to address when making a submission can be found at **Attachment B**. The non-confidential version of the proposed undertaking is provided at **Attachment C**.

Please provide your response by no later than **5pm on 17 October 2023**. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: *Submission re: ACL's proposed s87B undertaking – attention Annelise Caplan/Aggie Marek*.

The ACCC may decide not to accept or require changes to the proposed undertaking depending on the nature and extent of any concerns raised during the market consultation process.

This matter is public and you can forward this letter to anybody who may be interested.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

If you would like to arrange a time to discuss the matter with ACCC staff, or have any questions about this letter, please contact George Cunningham on 07 3835 4673.

#### ***Confidentiality of submissions***

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Bruce Mikkelsen  
Executive Director  
Merger Investigations

## Attachment A

### Background – the ACCC’s review

The ACCC is conducting a public review of the Proposed Acquisition and has identified preliminary competition concerns in relation to community pathology services in all states and territories (except Tasmania, where ACL does not operate), as well as public pathology services in Victoria and veterinary pathology services in Victoria and South Australia. Please refer to the Statement of Issues dated 20 July 2023 for discussion.

### Overview of the divestment proposal

ACL has offered a draft s.87B undertaking to address the ACCC’s competition concerns.

Pursuant to the undertaking, ACL would divest:

- 60 Approved Collection Centres (**ACCs**) in Western Australia
- 25 ACCs across regional Victoria
- 14 ACCs in the Northern Territory

(each a **Divestiture Business** and together, the **Divestiture Businesses**). At the option of the purchaser, ACL is willing to offer supporting assets to support the Divestiture Businesses.

The proposed undertaking does not contain commitments by ACL relating to the other areas of concern identified by the ACCC, namely:

- community pathology in New South Wales, Queensland and South Australia;
- public pathology in Victoria;
- veterinary pathology; and
- private in-patient services.

Under the proposed undertaking, ACL must divest the Divestiture Businesses to a single purchaser or to separate purchasers, who must be approved by the ACCC. Divestiture would be required to occur within a prescribed period.

The proposed undertaking would also require ACL to appoint an ACCC-approved independent manager of the Divestiture Businesses during the divestiture period (from the date the Proposed Acquisition completes to the date the Divestiture Businesses are divested to a purchaser or purchasers) and an ACCC-approved independent auditor to monitor ACL’s compliance with the proposed undertaking.

## **Attachment B**

We have set out a list of questions you may wish to address in your submission. Please feel free to comment on any other issues that you consider relevant to the ACCC's assessment.

1. If you have not previously provided a submission to the ACCC on this matter, please:
  - a. provide a brief description of your business or organisation
  - b. outline the reasons for your interest in the Proposed Acquisition, including any commercial relationship/s with ACL.
2. Is the divestiture proposal sufficient to replace any loss of competition resulting from the Proposed Acquisition, noting that it does not seek to address the full range of competition concerns identified by the ACCC? Why or why not? Does your view differ according to whether there is a single purchaser or separate purchasers?
3. What are the key assets and personnel required to ensure a purchaser, or purchasers, can become a viable, effective and long-term competitor?
4. Are you aware of any third party (including regulatory) consents required to transfer the assets to a purchaser that may impact on the effective implementation of the divestiture proposal?
5. Do you have any concerns about the loss of competition resulting from the Proposed Acquisition that are not addressed by the divestiture proposal?
6. Please provide any additional information or comments you consider relevant to the ACCC's consideration of the Proposed Acquisition under section 50 of the Act.

**Attachment C**

*See proposed undertaking attached.*