

Put private labs' proposed merger under microscope

Questions arise over the future market competitiveness of in vitro diagnostic services, and their effect on healthcare costs and insurance premiums.

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Modern medical technologies have made in vitro diagnostic (IVD) tests an integral part of the healthcare infrastructure. With just a small blood or urine sample from a patient, IVD service providers can run a wide array of tests for many chronic diseases, and provide comprehensive reports quickly and effortlessly.

Providers of such tests have been in the headlines following news that the Competition and Consumer Commission of Singapore (CCCS) is inviting the public to give feedback on the two-year commitments proposed by Pathology Asia Holdings (PAH) to address competition concerns in the planned merger of two private clinical laboratories ("Feedback sought on proposed commitments in labs merger",

The Straits Times, June 22).

The labs are Innovative Diagnostics (Innovative) and Quest Laboratories (Quest), which PAH acquired last year.

With their state-of-the-art screening technologies, they are the two biggest market players in Singapore, serving most or all private sector clinics and hospitals between them. Other laboratories offering similar services in this market are much smaller niche outfits, lacking the scale of operations and resources of Innovative and Quest.

Public hospital-based clinical laboratories with IVD testing facilities do not compete with Innovative and Quest for the same customers, as the former focus on serving in-house patients seeking treatment at public hospitals.

The public consultation on PAH's commitments runs until Friday next week. The commitments PAH made are: to keep the current pricing policy, refrain from commercial practices which

prevent customers from switching to third-party IVD service providers, and ensure that the latter have access to Innovative-Quest IVD testing services "at fair prices". The firm has said it is making the commitments, although it believes that the merger does not result in substantially reducing competition in any market in Singapore.

However, plans to merge the operations of these two private providers into a single commercial entity should be carefully scrutinised by the relevant authorities because of their potential detrimental impact on competition in this healthcare market, on healthcare costs and health insurance premiums.

CONCERNS BEING FLAGGED

Mergers which substantially lessen competition in Singapore are prohibited under competition laws here.

In a market where the merging parties do not currently face competitive pressure from the small-scale operations of existing market participants, the CCCS needs to be convinced that the inevitable reduction in competition between these erstwhile rivals can be adequately ameliorated before clearance is

given for the transaction.

From the public invitation issued by the CCCS to comment on the commitments, it appears to have reached a preliminary conclusion that the merger does raise serious competitive concerns.

Thus, the CCCS now seeks the views of all relevant stakeholders to help it decide whether the commitments made by PAH are sufficient to mitigate the competitive harms of the merger.

Most mergers between direct competitors take place because the profit-oriented parties recognise that eliminating competition between them makes it possible to raise prices or reduce discounts.

The commitments that they give to a competition authority like the CCCS are thus meant to operate as self-imposed restraints on their freedom to do so. But only for a limited period of time – in this case, they have committed to adhering to their current price schedule for only two years.

They have also proposed commitments to supply their services to smaller competitors at prices which are "fair, reasonable and non-discriminatory" and maintain service standards that will allow – in theory – these rivals to expand their operations and be "better able to compete for

customers". Besides promising to provide assistance to its competitors in the post-merger landscape, the merged entity has also made commitments not to "lock in" customers and to allow them to switch service providers without being constrained by service contracts.

IF THE MERGER WERE TO GO AHEAD

There are assumptions underlying these commitments that need to be carefully scrutinised. First, is it realistic to assume – should these entities be cleared by the CCCS to integrate – that market conditions in Singapore will support the emergence of an effective competitor to Innovative-Quest, where none exists today?

This is a high-tech industry which requires players to operate on a very large scale before they are viable. Can such a minimum efficient scale of operations be achieved within just two years?

Second, how reasonable is it to expect those who seek to challenge the merged entity's commercial dominance to rely on the latter's help to grow into a serious competitive threat?

How would these challengers know whether the prices they are being charged by the merged entity to conduct IVD tests for their customers – which the merged entity would very much like to have as its own customers – are "fair, reasonable and non-discriminatory"? How would disputes relating to non-compliance be resolved?

Third, can it be expected that the private clinics and hospitals that purchase IVD testing services from the merged entity will readily switch between service providers, even if they are permitted to do so under their service contracts?

Apart from switching costs related to the established technical

and procedural links between these customers and their current service providers, might there be other operational risks that could disincentivise such switching? Might it not be easier, and safer, for these clinics and hospitals to simply pass on any increase in fees to their patients – and their health insurance providers?

The repercussions of a false negative – that is, mistakenly believing that the commitments given by the merging parties can adequately address the harmful effects of the merger, when they do not – are significant and will be difficult to unwind.

Apart from the prospect of patients having to pay higher prices for these essential diagnostic services, this merger could also have an impact on how often IVD services are deployed by general practitioners who will bear increasing responsibility for managing the chronic diseases faced by an ageing population.

In a free-market economy like Singapore's, it should always be borne in mind that neither the national competition authority nor any other government agency operates as a price regulator for the private healthcare services market.

So one cannot expect someone to do something about high prices charged by a merged entity when the commitments it has given to the competition authority have expired.

One hopes that the Singapore medical community seizes this opportunity to seriously evaluate the likely impact of this merger on the welfare of the hundreds of thousands of patients that will be affected by it in the years to come.

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