Private Healthcare Australia

Better Cover. Better Access. Better Care.

Response to ACCC consultation on ACL's proposed divestiture remedy for Healius acquisition

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About Private Healthcare Australia (PHA)

Private Healthcare Australia (PHA) is the Australian private health insurance industry's peak representative body. We have 24 registered health funds throughout Australia as members and collectively represent 98% of people covered by private health insurance. PHA member funds provide healthcare benefits for 14.6 million Australians.

Introduction

Health funds pay for a significant proportion of hospital care delivered in Australia, including millions of pathology services each year. Forty-five per cent of Australians (11.95 million) have hospital cover. In 2021-22, private health insurers paid for two in five admissions to both private and public hospitals. In the private hospital system alone, insurers paid for four in five hospital admissions. In 2022-23, health insurers paid more than $174 million for 14 million pathology services in hospitals.

Health funds have a vested interest in competitive markets for health services, including pathology, so they can keep premiums as low as possible for their customers. Maintaining the affordability of private health insurance is critical to its sustainability and the role it plays in balancing demand for our private and public health services. Through Medicare and private health insurance, all Australians should be guaranteed access to affordable, high quality health care.

Response

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?

The divestiture proposal is not sufficient to replace any loss of competition from the proposed acquisition. PHA is concerned the merger could result in:

- Pathology companies increasing prices during a cost-of-living crisis. This may include the introduction of private billing for pathology services that would otherwise be bulk billed and an increase in the gap fee for privately billed pathology services. This, in turn, increases the risk of the Commonwealth Government being pressured into increasing the MBS rate to ensure access to bulk billed services. As the ACCC notes, this is an alternative means of increasing price and may become more likely if the merged firm has an increased ability to introduce private billing.
- Pathology companies using their market power to negotiate exorbitant rates under Medical Provider Purchase Agreements (MPPAs) with health funds. This could drive

up private health insurance premiums, prompting people to drop their cover and use the stressed public health system more.

- Deterioration of service quality due to less competition. The ACCC has previously found pathology companies compete on turnaround time, the number and convenience of Approved Collection Centre locations (ACCs), opening hours of ACCs, range of tests and customer service.
- Less competition, and in some cases, no competition between pathology companies for private hospital tenders. ACL, Healius and Sonic are currently the only companies competing for private hospital tenders, and in some areas, only ACL and Healius compete against each other. PHA shares the ACCC's concern that the post-merger entity could leverage its market position to obtain more favourable terms in lease agreements with private hospitals or decrease service quality to private inpatients. This could involve decreasing staffing levels at on-site laboratories or limiting collection frequency for non-urgent testing. This would undermine the value of private health services for consumers.

These concerns remain regardless of whether there is a single purchaser or separate purchasers. If the divestiture proposal is approved, a merger would still result in the new entity having a high market across Australia. When combined with Sonic's current market share, this would create two pathology companies with a combined market share ranging from 75 – 83% across all states and territories except the Northern Territory.

This creates an unacceptably high risk of coordinated conduct, particularly between the merged entity and Sonic. As noted by the ACCC in its July 2023 Statement of Issues, Sonic has a history of increasing prices in 2009. If a new merged entity raised its prices or introduced co-payments, Sonic would likely follow suit, and vice versa.

While ACL has argued that its divestiture proposal 'will result in the creation or strengthening of a viable, effective, standalone, independent and long-term competitor(s)', PHA disagrees. As outlined by the ACCC, new entry or expansion on a scale sufficient to prevent a substantial lessening of competition appears unlikely. This risk remains even with the divestiture proposal due to the challenges new entrants face, including the need to win trust from medical practitioners for referrals, and difficulties finding appropriate collection sites and achieving economies of scale.

Furthermore, the current competition between ACL and Healius, and their contracting arrangements with health funds and private hospitals, appears to be minimising the rate of gap fees being charged for pathology services in private hospitals. As noted by the ACCC, ACL, Healius and Sonic are currently the only providers of pathology services to consumers using private hospitals. Data from the Australian Prudential Regulation Authority shows the proportion of pathology services involving an out-of-pocket fee has decreased over the past six years from 6.36% in 2017-18 to 3.4% in 2022-23. See table below.

Hospital pathology services paid for by private health insurers

	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Total amount charged ($)	$465,717,967	$484,731,192	$475,828,656	$459,039,503	$461,805,814	$478,814,306
Total fund benefits paid ($)	$165,603,650	$172,437,747	$171,258,629	$166,678,388	$168,673,745	$174,049,974
Total Medicare benefits paid ($)	$282,347,082	$294,967,857	$290,812,122	$279,779,099	$280,498,149	$291,300,842
Total number of services	14,530,219	14,936,116	14,741,478	14,307,814	13,835,122	14,534,668
% services where there was a medical gap	6.36%	6.34%	3.86%	3.62%	3.62%	3.40%

Source: APRA
Tables notes: Based on MBS Speciality Block Grouping, *Pathology services: Category 6; all Groups P1-P10; items 65060 and over*.

This data suggests a healthy competitive market for pathology services exists for private health services and their customers. There has never been a more important time to maintain this competition and limit out-of-pockets costs for healthcare. Most Australians have never seen inflation this high, and the pressure on household budgets is growing. The most recent Australian Bureau of Statistics data on barriers to use of healthcare showed an increasing number of Australians are delaying or foregoing healthcare, including prescription medicines and hospital care due to cost.

In addition, Australians cannot afford the risk of higher premiums being driven by pathology companies seeking profits for shareholders or private equity firms. Most Australians with private health insurance are not rich and many are making difficult financial decisions during a cost-of-living crisis. Two in five people (40%) with private health insurance have an annual taxable income of $50,000 or less, and seven in 10 people (68%) with private health insurance have an annual taxable income of $90,000 or less.

More than 14.7 million Australians have private health insurance – the impact on these people must be front and centre to any decisions that could drive up health care costs during a cost-of-living crisis. These people are trying to do the right thing by contributing to their health care. They should not be hit by unnecessary costs associated with this choice. The interests of consumers and the sustainability of Australia's dual public private health system must be paramount when judging this proposal.