

## Newsletter

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## Competition & Consumer Commission of Singapore Grants Conditional Approval for Private Clinical Laboratories Merger

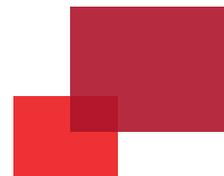
The Competition and Consumer Commission of Singapore (the “**CCCS**”) has announced its conditional approval of the merger of Innovative Diagnostics Private Limited (“**Innovative**”) and Quest Laboratories Pte. Ltd. (“**Quest**”). The two labs, acquired by Pathology Asia Holdings Pte. Ltd. (“**PAH**”) in 2018, form the largest providers of in-vitro diagnostic (“**IVD**”) tests serving the majority of the country’s private sector clinics and hospitals.

Earlier this year, the CCCS raised competition concerns that the merger of the two labs would substantially reduce competition in the Singapore market for IVD tests. To address the CCCS’s competition concerns, PAH proposed a number of two-year behavioural commitments. Public feedback on PAH’s proposal was subsequently sought by the CCCS in June 2019.

In response to the issues identified by the public consultation, PAH revised its earlier commitments to address the competition concerns arising from the merger (the “**Final Commitments**”). The CCCS has since confirmed that the Final Commitments are sufficient to address the competition concerns of the merger, and approved the merger on 18 October 2019 on the condition that PAH complies with the Final Commitments for a period of four years (the “**Commitment Period**”).

The Final Commitments include:

- (a) The commitment to supply Send-Out Tests (“**SOTs**”) to competing clinical laboratories at fair, reasonable and non-discriminatory prices. A fair, reasonable and non-discriminatory price will be determined by reference to prices offered to direct non-contracted customers of the merged entity. The SOTs supplied must also be of a standard consistent with those offered to direct non-contracted customers of the merged entity.
- (b) The commitment to remove all exclusivity obligations. Exclusivity obligations would include clauses such as loyalty-inducing retroactive rebates which give rise to *de facto* exclusivity. This commitment will apply to both new and renewed agreements which commence after 4 March 2019.
- (c) The commitment to allow contracted customers to terminate the contract early without cause so long as prior written notice has been given in advance of the termination. Depending on whether the merged entity has incurred unrecoverable expenditure, the written notice will have to be given 60 or 90 days in advance. The merged entity will not impose any penalty or have any other form of remedy or relief from the contracted customer.
- (d) The commitment to maintain the same prices and terms and conditions during the Commitment Period in relation to IVD tests and services for



existing agreements and new agreements with private hospitals that do not manage or operate their own in-house laboratories and health screening companies. The merged entity shall also extend or renew any existing agreements with such private hospitals, unless there are commercially justifiable reasons not to do so.

A key difference between PAH's initial proposed commitments and the Final Commitments is that of the Commitment Period, which is two years longer than the earlier proposed commitment period. This increase in the Commitment Period is indeed welcomed insofar as this will provide alternative service providers a longer runway to grow into effective competitors for the merged entity.

The longer Commitment Period is likely to be in response to third party feedback received by the CCCS. One gap that third party feedback indicated was that the two-year commitment period would be insufficient for a new entrant or an existing supplier to grow into a significant player.

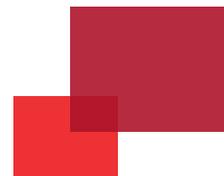
Nevertheless, it remains to be seen if customers of the merged entity will switch providers as a result of the Final Commitments. Accompanying risks such as increased costs and operational difficulties still exist and this could render customers resistant towards switching providers.

More details on the CCCS's decision and the Final Commitments can be found in the CCCS's official press release [here](#) and the July 2019 edition of our newsletter [here](#).

## Ministry of Health to introduce guidelines for companies that provide non-clinical genetic testing

On 29 October 2019, the Ministry of Health ("MOH") and the Health Sciences Authority ("HSA") jointly announced that they will be developing a guide on areas such as marketing for firms that offer non-clinical genetic testing services.

Non-clinical genetic tests are tests that can be conducted in the comfort of one's home and are usually performed by way of a saliva collection kit. These tests are often marketed by firms as being able to provide a variety of information on an individual's health. Such information includes the diseases that the user might be more susceptible to based on genetics, as well as details on their ancestry and origins.



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As such non-clinical genetic tests are currently not regulated under the *Private Hospitals and Medical Clinics Act*, MOH intends for the guide to clarify how providers of non-clinical genetic testing should market and sell their tests. The guidelines also purportedly intend to aid consumers in ensuring that they are provided with the right information in order to make informed choices about these non-clinical genetic tests.

With the increased accessibility of various non-clinical genetic testing kits, it is hoped that the proposed guidelines will assist to curb the risk of consumers being misled by the results of such unsupervised tests. The added guidance may also guard consumers against undue reliance on non-clinical genetic testing results as being conclusive.

More details on MOH's announcement can be found [here](#).

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