

Determination

Re: Canterbury SCL Limited and Medlab South Limited [2012] NZCC 8

The Commission: Sue Begg
Stephen Gale
Gowan Pickering

Summary of application: The application by Southern Community Laboratories Limited, through its 100% subsidiary Canterbury SCL Limited, to acquire 100% of the shares in Medlab South Limited from Sonic Healthcare (New Zealand) Limited.

Determination: Pursuant to s 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for Southern Community Laboratories Limited, through its 100% subsidiary Canterbury SCL Limited, to acquire 100% of the shares in Medlab South Limited from Sonic Healthcare (New Zealand) Limited.

Date of determination: 22 March 2012

Confidential material in this report has been removed. Its location in the document is denoted by [].

The proposal

1. A notice under s 66(1) of the Commerce Act 1986 (the Act) was registered on 1 March 2012. The Notice sought clearance for Southern Community Laboratories Limited, through its 100% subsidiary Canterbury SCL Limited, to acquire 100% of the shares in Medlab South Limited from Sonic Healthcare (New Zealand) Limited. In these reasons, the Commission will generally refer to the parties to the acquisition by the names of their parent companies, that is, Healthscope and Sonic respectively.

The decision

2. The Commission considers the relevant markets for the assessment of this application are those for the contracts for pathology testing to be let by South Island District Health Boards (DHBs) between 2015 and 2017 (either the stand-alone contract of one DHB or the aggregated contracts of several DHBs). These contracts are likely to include the Nelson Marlborough, South Canterbury and Southern DHB contracts, or any combination of these or any other DHB contracts. An additional market is the national market for the provision of cervical screening tests. The expected contracts (in any combination) are collectively referred to in these reasons as “the relevant markets.”
3. The proposed acquisition would result in a transfer of existing contracts from Sonic to Healthscope without any change to the competitive situation in the relevant markets. The analysis, therefore, focuses on the competition for the pathology contracts when they are next due for tender (most of these are currently due for tender in 2015/16).
4. The Commission concludes that the proposed acquisition is unlikely to reduce the ability of Sonic (or any other potential pathology provider), to compete for the contracts when they are offered for tender. Accordingly, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any of the relevant markets.

Procedure

5. Section 66(3) of the Act requires the Commission to either clear or decline to clear the acquisition referred to in a s 66(1) notice within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the application is required by 30 March 2012.
6. The Commission’s approach to analysing the proposed acquisition is based on principles set out in the Commission’s Mergers and Acquisitions Guidelines.¹

Analytical framework

7. An important tool in assessing the acquisition is the determination of the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target, and then considers what, if any, products and

¹ Commerce Commission *Mergers and Acquisitions Guidelines* (2004).

geographic regions, constitute relevant close substitutes from both a customer's and a supplier's point of view.

8. The Commission uses a forward-looking analysis to assess whether a substantial lessening of competition is likely, so an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
 - 8.1 with the acquisition (the factual); and
 - 8.2 without the acquisition (the counterfactual).
9. In framing a suitable counterfactual, the Commission bases its view on a pragmatic and commercial assessment of what is likely to occur in the absence of the proposed acquisition.²
10. The High Court³ has noted that there may be more than one "likely" counterfactual. Accordingly, where there is more than one potential counterfactual, the Commission assesses the possibilities, discards those that only have remote prospects of occurring, and considers each of the real and substantial possibilities as counterfactuals against which the factual is to be assessed.
11. A comparison of the extent of competition in the relevant markets in the factual and counterfactual scenarios enables the Commission to assess the probable extent of the lessening of competition under the proposed acquisition, and whether that contemplated lessening is likely to be substantial.

Key parties

Healthscope

12. Healthscope, which is ultimately owned by private equity funds, provides pathology services in Australia, New Zealand and South East Asia. Through its subsidiaries, Healthscope is currently contracted to provide community, and in some instances, hospital pathology services to six DHBs. This includes the provision of community pathology services for the Canterbury DHB with effect from 1 April 2012. Healthscope also provides cervical screening tests to the National Screening Unit (NSU), a unit of the Ministry of Health. The NSU is the sole purchaser of such tests in New Zealand.

Sonic

13. Sonic, the owner of Medlab South, is an Australian-listed company which provides pathology and radiology services in Australia, Europe, the USA and New Zealand. Through various subsidiaries, Sonic currently contracts to provide community, and in many instances, hospital pathology services for eight DHBs. This includes the provision of community and hospital pathology services for the South Canterbury and Nelson

² *New Zealand Electricity Market* (Commerce Commission Decision 277, 1996), at p 16.

³ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 at 116,118 and 122. This view was not challenged before the Court of Appeal.

Marlborough DHBs. Previously, Sonic was contracted to provide community pathology services to the Canterbury DHB on a non-exclusive basis but that contract expires on 31 March 2012. Sonic also provides cervical screening tests for the NSU.

14. Following the loss of the Canterbury DHB contract and the destruction of its Christchurch laboratory as a result of the February 2011 earthquake, the Medlab South business now essentially comprises the contracts to supply the Nelson Marlborough and South Canterbury DHBs with pathology services and a contract to provide cervical screening tests. It also employs South Island-based staff, most of whom will be made redundant if the proposed acquisition does not proceed.

Other parties

Pathology Associates Limited (PAL)

15. PAL is a pathologist-owned and operated company which provides pathology services in the Waikato and Bay of Plenty regions. It is currently contracted to provide community and hospital pathology services to the Bay of Plenty DHB, community pathology services to the Waikato DHB, and in a joint venture with Sonic and the Lakes DHB, community and pathology services to the Lakes DHB in the Rotorua region.⁴ PAL was unsuccessful in its recent bid for the Canterbury DHB contract to provide community pathology services in the Canterbury region.

Abano Healthcare Limited (Abano)

16. Abano is a publicly listed company which is involved in the provision of various healthcare and medical services throughout New Zealand. Relevant to the proposed acquisition is its 55% shareholding in Aotea Pathology Ltd (Aotea), with the other 45% shareholding held by Sonic. Aotea is currently contracted by the Hutt Valley/Capital & Coast DHBs to provide community pathology testing in the Greater Wellington region.

Canterbury Health Laboratories (CHL)

17. CHL, which is a wholly owned subsidiary of the Canterbury DHB, provides all hospital pathology testing services in the Canterbury region, and as a reference laboratory, undertakes specialist send-away testing, and cervical screening testing. Additionally, it has previously provided a small volume of community pathology testing in the Canterbury region and has competed for pathology business when other South Island DHB pathology contracts have been tendered.

District Health Boards

18. There are currently 20 DHBs, which are responsible for the planning, funding and provision of a wide range of health services, including pathology testing, for the people in their regions. These include the South Canterbury and Nelson Marlborough DHBs, both of which currently contract with Sonic to provide community and hospital pathology services in their respective regions. The Southern DHB currently contracts Healthscope to provide community and hospital pathology testing in the Otago/Southland region with the contract due to expire in 2016.

⁴ PAL and Sonic each hold a 25% share in this joint venture with Lakes DHB holding the remaining 50%.

Industry Background

Overview

19. The provision of core pathology services (also referred to as diagnostic laboratory services) essentially involves the examination of clinical specimens to provide information for the diagnosis, prevention and treatment of disease, and reporting of the diagnosis to the referring medical practitioner. Related to the analysis itself is the collection and transportation of the samples and the dissemination of the results to the medical practitioner.
20. Currently the Government, through the Ministry of Health, meets the full cost of most pathology tests for New Zealand citizens and permanent residents. The Ministry allocates public funds to the DHBs who then use the funds to plan, provide and purchase a wide range of healthcare services in their regions, including pathology testing. Each DHB can contract with pathology service providers, largely as they choose. Attached as Attachment A is a table showing the existing contractual arrangements for the purchase and provision of pathology testing services throughout New Zealand.
21. There are two main forms of pathology testing in New Zealand: community testing and hospital testing. Community testing is mainly carried out by private providers for medical practitioners and certain other healthcare providers. Hospital testing is often provided by DHB-owned laboratories, although there are instances where private providers are contracted to undertake both community and hospital testing. These include the Nelson Marlborough and South Canterbury DHBs which are relevant to this acquisition.
22. Community and hospital pathology services can broadly be categorised as follows:⁵
 - 22.1 “Routine tests” which are straightforward and undertaken in large volumes by any pathology laboratory in New Zealand. According to Healthscope they make up about 75% of hospital and community pathology tests.
 - 22.2 “Volume tests” require specialised staff and equipment and are therefore only profitable to supply if performed in large volumes. Such tests make up about 12% of all community and hospital pathology work.
 - 22.3 “Send away tests” require very specialised equipment and staff and are only undertaken in a small number of facilities, known as reference laboratories. These include the Canterbury DHB’s Christchurch laboratory. Send away tests make up about 12% of all community and hospital testing.

Industry trends/changes

23. The following is a summary of the key developments affecting the provision of pathology services over the last five-ten years:

⁵ See para 8.2 of the Application.

- 23.1 Most of the DHBs have now moved to single provider contracts for the supply of community and/or hospital laboratory services in their region.
- 23.2 Most DHBs have changed the way pathology services are funded, from a fee-for-service payment to a bulk funding arrangement.
- 23.3 There has been a trend for DHBs to combine to co-ordinate the provision and purchase of healthcare services in their regions, and this is likely to increase in future. For instance, a South Island DHB Alliance has been formed, which has the purpose of providing integrated and co-ordinated health services and enabling South Island DHBs to work effectively together.
- 23.4 Some DHBs, especially those in the major centres, have continued to provide hospital testing in their own laboratories, but other DHBs, particularly those in the provincial regions, have outsourced hospital testing to a private provider, either on its own, or in a joint venture with another private provider and/or a DHB.

Background to the Transaction

- 24. Sonic currently has contracts with various DHBs, of which the following are most relevant to the consideration of the proposed acquisition:
 - 24.1 A non-exclusive contract with the Canterbury DHB under which Sonic has been providing around []% of community pathology testing in the Canterbury region. However, this contract expires on 31 March 2012 and following a successful tender, Healthscope will be the exclusive provider of community pathology services in Canterbury for the next five years with effect from 1 April 2012 (and the potential for a five year extension at the Canterbury DHB's discretion).
 - 24.2 Separate contracts with the Nelson Marlborough and South Canterbury DHBs to provide, on an exclusive basis, community and hospital pathology services in the Nelson/Marlborough and South Canterbury regions. Both contracts expire in 2016. In each case, Sonic undertakes routine tests in laboratory facilities owned by the respective DHBs. Until the February 2011 Canterbury earthquake, volume tests for both contracts were sent to Sonic's laboratory in Christchurch, while send away tests had been performed using CHL's facility in Christchurch, and have continued to be sent to CHL's laboratory.
- 25. In February 2011, Sonic's Christchurch laboratory was destroyed by earthquake. This forced Sonic to have the laboratory testing that it previously undertook at its Christchurch facility, carried out at CHL's laboratory, until new premises could be established. [

] Sonic therefore approached Healthscope to ascertain its interest in purchasing the Medlab South business. A sale to Healthscope would, among other things, avoid the redundancy costs that Sonic would otherwise incur as a result of the loss of the Canterbury DHB contract.

Market definition

26. The Commission considers the relevant markets for the assessment of this application are those for the contracts for pathology testing to be let by South Island DHBs between 2015 and 2017 (either the stand-alone contract of one DHB or the aggregated contracts of several DHBs). These contracts are likely to include the Nelson Marlborough, South Canterbury and Southern DHB contracts, or any combination of these or other DHB contracts. An additional market is the national market for the provision of cervical screening tests.
27. The Act defines a market as:⁶

a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

Product markets

28. The Applicant submits that the market definition as set out in the New Zealand Diagnostic and Sonic and the Valley Diagnostic and Wellington Pathology decisions⁷ is appropriate for the purposes of considering the proposed acquisition. In those decisions, the Commission defined separate product markets for community and hospital pathology testing. This was based on a range of factors, including that hospital testing is more urgent and requires a quicker turnaround than community testing. Also, hospital laboratories typically provide a range of more advanced testing than community laboratories.
29. While the Commission continues to recognise that there are different requirements and characteristics between the two types of testing, it does not consider that it is necessary to define separate community and hospital testing product markets in this instance. This is largely because the contracts for community and hospital pathology tests that are relevant to the proposed acquisition have each been awarded to a single provider and there are economies of scale and scope that make it cost effective for some DHBs to operate the tests in the same facility. The distinctions between community and hospital testing also appear more blurred, but the Commission is of the view that regardless of whether community and hospital testing are combined or treated separately, there would be no change to the conclusions reached in these reasons.

Geographic markets

30. Healthscope submits, and the Commission agrees, that the relevant geographic markets for community and hospital testing are the regional markets for each DHB (or a combined market incorporating more than one DHB region when two or more DHBs purchase pathology services jointly).

⁶ Section 3(1A) of the Act.

⁷ *New Zealand Diagnostic Group Ltd and Sonic Healthcare (New Zealand) Ltd* (Commerce Commission Decision 559, 2005); *Valley Diagnostic Laboratories Limited and Wellington Pathology Limited* (Commerce Commission Decision 572, 2005).

Temporal dimension

31. Consistent with the approach taken in the previous pathology decisions, the Commission considers that the competitive effects of the proposed acquisition would occur when the relevant pathology contracts are next due for tender. The current schedule for the expiry of the South Island DHB contracts is set out in Table 1 below. The Commission recognises that the timing of the next tendering round may be impacted by possible changes in the combinations of contracts put out for tender. This possibility does not materially affect the Commission's assessment of the temporal dimension of the relevant markets.

Table 1: South Island DHB Contracts: Expiry Dates

DHB	Community contract	Hospital contract	Expiry Date
Nelson Marlborough	Sonic	Sonic	November 2016
West Coast	DHB	DHB	Not applicable
Canterbury	Healthscope (effective 1 April 2012)	DHB	March 2017
South Canterbury	Sonic	Sonic	June 2016
Southern	Healthscope	Healthscope	July 2016

Source: The application for clearance and Commission interviews.

Conclusion on market definition

32. The Commission considers that the relevant markets for considering the competitive effects of the proposed acquisition are those for the contracts for pathology testing to be let by South Island DHBs between 2015 and 2017 (either the stand-alone contract of one DHB or the aggregated contracts of several DHBs). These contracts are likely to include the Nelson Marlborough, South Canterbury and Southern DHB contracts, or any combination of these or any other DHB contracts. An additional market is the national market for the provision of cervical screening tests.

Factual/counterfactual

Factual

33. In the factual, Healthscope would acquire the contracts held by Sonic to supply community and hospital pathology testing for the Nelson Marlborough and South Canterbury DHBs, both of which are due for retender in 2016. In addition, Healthscope may, as a consequence of the proposed acquisition, acquire up to 100% of the volume of tests originating from Medlab South's contract to provide cervical screening tests.

Counterfactual

34. In the counterfactual, Sonic is likely to retain the contracts to provide community and hospital pathology testing services in the Nelson/Marlborough and South Canterbury regions. Sonic would continue to provide routine tests from the respective hospital laboratories, but since its laboratory in Christchurch was destroyed following the February 2011 Canterbury earthquake, it would no longer have the capacity to

undertake volume tests in that facility. Since the earthquake, Sonic has been using CHL's laboratory [] for volume tests. Sonic had been planning to develop a new laboratory in Christchurch following the earthquake, but it has abandoned those plans following its unsuccessful bid for the Canterbury DHB's community pathology contract.

35. Sonic has advised the Commission [

]

36. In addition, if the acquisition does not proceed Sonic will be required to make most of its existing Medlab South staff redundant.

37. Sonic has stated that if it retains Medlab South, its options for the next contracting round are no different to the factual. [

]

38. In addition, Healthscope will carry out its contracts with the Canterbury and Southern DHBs until 2017 in the former case and 2016 in the latter. The West Coast DHB is likely to continue to self supply.

Competition analysis in pathology testing markets

39. The relevant markets for the analysis of this acquisition are those for pathology testing contracts to be let by South Island DHBs. There would be no difference in competition between the factual and the counterfactual while the present pathology testing contracts are extant. In regard to the Nelson Marlborough and South Canterbury contracts that are subject to the acquisition, there would be a contract between the DHB and a single provider of community and hospital pathology whether or not the proposed acquisition occurs. Therefore, the Commission has not analysed competition on a continuous basis - but at the point of time when competition occurs - at the end of the contracts when the relevant DHB (or combination of DHBs) requests bids for a new contract.

Market participants' views on pathology testing markets in the South Island

40. The South Island pathology testing contracts are shown in Table 2 below:

Table 2: DHB pathology testing contracts pre- and post-acquisition at 1 April 2012

DHB	Community Testing Contracts		Hospital Testing Contracts	
	Counterfactual	Factual	Counterfactual	Factual
Nelson Marlborough	Sonic	Healthscope	Sonic	Healthscope
West Coast	DHB	DHB	DHB	DHB
Canterbury	Healthscope	Healthscope	DHB	DHB
South Canterbury	Sonic	Healthscope	Sonic	Healthscope
Southern	Healthscope	Healthscope	Healthscope	Healthscope

Source: The application for clearance and Commission interviews

41. Sonic has stated that it wishes to withdraw from its pathology testing contracts with the Nelson Marlborough and South Canterbury DHBs because:
- 41.1 It has lost the Canterbury DHB pathology testing contract as at 31 March 2012 to Healthscope.
- 41.2 Its laboratory in Christchurch was destroyed by earthquake.
- 41.3 [
-]
- 41.4 In Sonic’s words, it has taken a “battering” in New Zealand over the last few years failing with its tenders for the pathology testing work of DHBs in Auckland, Hawke’s Bay, Canterbury and in the southern South Island. However, it still has a strong presence in the lower North Island supplying pathology testing services to DHBs in Palmerston North, Whanganui, Gisborne and Wellington (the latter in a joint venture with Abano). Sonic is the largest provider of pathology testing services in Australia with a combined Australasian turnover of over A\$900 million, and has stated that it is interested in remaining in New Zealand where it has had a long term presence [
-]
42. In any event, and importantly for the competition analysis, Sonic submitted to the Commission that the sale of the shares in Medlab South to Healthscope would make no difference to its decision on whether or not it will tender for the Nelson Marlborough or South Canterbury DHB contracts in 2016. The issues for Sonic to consider are the same in the factual and the counterfactual.
- PAL*
43. PAL provided the Commission with useful information as to the populations that, in its view, made DHB single provider contracts viable:
- 43.1 Palmerston North with a population of 150,000⁸ was just large enough to be viable as a stand-alone hospital and community contract.

⁸ Application figures are 169,320.

43.2 Waikato with a population of 368,500 was large enough for a community-only contract to be viable, although a population greater than 400,000 would be more viable.

43.3 PAL had tendered for the Canterbury DHB contract [

]

44. PAL contrasted these figures with the populations of Nelson/Marlborough at 139,605 and South Canterbury at 56,220 and said that [

] ⁹[

]

45. [

]

South Canterbury DHB

46. The South Canterbury DHB [

]

Canterbury Health Laboratories

47. CHL considers that the work of hospital and community testing is very similar – the same tests are carried out in the same analysers by each facility and the required turnaround times are the same. The only difference between the two types was the collateral collection and delivery of samples which did not occur in respect of hospital work. CHL carried out the provision of community pathology services in Christchurch involving after-hours clinics and two general practices.

48. As a result, CHL believed that it was possible for it to bid for both the community and hospital pathology testing work of other DHBs. [

]

49. The Canterbury DHB confirmed that there would be no impediment to CHL again bidding for pathology testing contracts outside of Canterbury, provided a suitable economic justification could be made.

⁹ [

]

Nelson Marlborough DHB

50. The Nelson Marlborough DHB submitted that [

]

Analysis of potential competition for future tenders by DHBs in the South Island

51. Even absent the potential for entry, the Commission concludes that because this acquisition (a) will not change Sonic's competitive position when the Nelson Marlborough, South Canterbury and Southern DHB contracts are offered for tender in 2015/2016; and (b) in any event there is likely to be competition from existing providers for an aggregated tender for the pathology testing work of Nelson Marlborough, South Canterbury and Southern DHBs in 2016 (should such consolidation take place), there is unlikely to be a substantial lessening of competition as a result of this acquisition.
52. As stated, there are no competition concerns until the 2015/2016 tendering round if the acquisition proceeds. Until such time, in the counterfactual, Sonic is a single provider of community and hospital laboratory tests to the Nelson Marlborough and South Canterbury DHBs until 2016, with the price and other terms set by the contract. In the factual, Sonic would merely be replaced by Healthscope as a single provider which would have the same contractual obligations as Sonic.
53. The competition issue for the Commission in South Island pathology testing markets is what will be the competitive situation in 2015 and 2016 when requests for proposals to provide hospital and community testing for the Nelson Marlborough, South Canterbury and Southern DHBs (and possibly in 2017 when (and if) the Canterbury DHB contract is offered for tender)¹⁰ will be issued, and whether this acquisition will reduce competition for those tenders. That is, whether Sonic, as a result of selling its shares in its subsidiary Medlab South and, for the time being at least, withdrawing from the South Island pathology testing markets, would be less likely to re-enter the South Island to bid in 2015 and 2016 (and potentially 2017).
54. Alternatively, the question might become whether there would be sufficient other competition for those bids in 2015 and 2016 such that it would be unimportant in competition terms whether or not Sonic would itself bid at that time.
55. [

]

¹⁰ The Canterbury DHB contract let this year is for a term of five years but with the possibility of a rollover for another five years. The contract will thus not necessarily be offered for tender in 2017.

56. [

] On this basis, the Commission does not consider that this acquisition would be likely to have the effect of substantially lessening competition in the relevant pathology testing markets for the Nelson Marlborough and South Canterbury DHB contracts in 2016.

57. In respect of the likely state of competition that would exist in 2016, the Commission notes that according to its submission, [

] In such a scenario the Nelson Marlborough and South Canterbury DHBs would be likely to receive a single tender from the incumbent Healthscope. Alternatively, it is likely that these DHBs would receive at least two tenders should the 2016 Southern DHB community and hospital testing contract be won off Healthscope by another party. The bidding for the Southern DHB contract would be the same in the factual and counterfactual.

58. However, in the Commission's view, the outlook for competition for future South Island DHB bids is not as grim as the picture just painted. There is a strong move afoot in DHB circles for collaboration between the DHBs in their purchasing arrangements. A formal South Island DHB Alliance has been formed whose purpose is to enable the DHBs in the South Island to work effectively together recognising national, regional and district priorities. The Nelson Marlborough, South Canterbury and Southland DHBs all informed the Commission that [

]

59. Given that size of tender, the Commission considers that Sonic, Healthscope, PAL and possibly CHL would be likely to tender. The competitors in New Zealand include all but one of the pathology testing providers in Australasia. The "odd man out" is Primary Health Care Ltd, the second largest provider in Australia. The Commission has been advised by that company that [

]

60. Additionally, the Commission considers that there are unlikely to be any other potential entrants on the five year horizon. There are difficult conditions of entry into pathology testing markets, including access to scarce pathologists and other technicians, the cost of equipping a greenfields laboratory, the relatively limited scale of New Zealand DHB contracts, the need to establish credibility with DHBs and the political sensitivity relating to the contract provider and the public's resistance to change from incumbent providers.

61. The Commission has also considered whether this acquisition could increase the likelihood of bid rigging occurring when the three contracts come up for renewal. In the Commission's view that is unlikely to occur. The standard scenario for bid rigging is for one firm to tender a high price to allow its fellow bidder to win the contract at a

higher than usual price. This is an unlikely scenario in pathology testing contract markets due to the infrequent nature of tendering and the small number of contracts for tender, which means, for the firms bidding, there is too much riding on every contract that becomes available. It is unlikely a firm would arrange with a competitor for it to be a low tenderer (and win) one contract when the next tender might be years away.

Conclusion on pathology testing markets

62. The Commission concludes that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the markets for the contracts for pathology testing to be let by South Island DHBs between 2015 and 2017.

Competition analysis in the cervical screening market

63. Healthscope submits that in respect of cervical screening tests, it is not yet clear how much, if any, of Sonic's existing cervical testing work will transfer to Healthscope as part of the proposed acquisition. However, the Commission considers that even if Healthscope were to acquire all of Medlab South's existing volume of business, the aggregation of market share would be relatively minor. Sonic's remaining contracts are likely to be unaffected by the proposed acquisition. Accordingly, competition for the provision of cervical screening tests would continue to be provided by Sonic, the largest existing provider of such tests, along with the other providers, PAL, CHL and LabPLUS.¹¹
64. Additionally, the Commission considers that the NSU, as the monopsony purchaser of cervical screening tests, would continue to have a substantial degree of purchasing power. For instance, it would continue to control the parties it could contract with, and to determine the prices as well as the terms and conditions of the contracts under which such tests are provided.
65. In view of these factors, the Commission concludes that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening of competition in the national market for the provision of cervical screening tests.

Overall conclusion

66. The Commission concludes that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in the relevant markets.

¹¹ LabPLUS is the specialist reference laboratory owned and operated by the Auckland DHB.

Determination on Notice of Clearance

67. Pursuant to s 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for Southern Community Laboratories Limited, through its 100% subsidiary Canterbury SCL Limited, to acquire 100% of the shares in Medlab South Limited from Sonic Healthcare (New Zealand) Limited.

Dated 22 March 2012

Sue Begg
Deputy Chair

ATTACHMENT A: SUMMARY OF PATHOLOGY PROVIDERS BY DHB REGION

DHB	Community pathology provider	Hospital pathology provider	Comments
<i>North Island</i>			
Northland	Healthscope	Healthscope	
Auckland/Waitemata/Counties Manukau	Healthscope: GP & Midwife referrals	DHB	
	Sonic: Specialist referrals		
Bay of Plenty	Pathology Associates	Pathology Associates	
Waikato	Pathology Associates	DHB	
Lakes	Rotorua: Pathology Associates/Sonic/DHB JV	Rotorua: Pathology Associates/Sonic/DHB JV	
	Taupo: Healthscope	Taupo: Healthscope	
Tairāwhiti	Sonic/DHB JV	Sonic/DHB JV	
Taranaki	Taranaki Medlab	DHB	
Whanganui	Sonic	Sonic	
Hawke's Bay	Healthscope	DHB	
MidCentral	Sonic	Sonic	
Wairararapa	Sonic	Sonic	
Hutt Valley/Capital & Coast	Aotea (JV: Abano/Sonic)	DHB	
<i>South Island</i>			
Nelson/Marlborough	Sonic	Sonic	
West Coast	DHB	DHB	
Canterbury	Healthscope	DHB	Effective 1/4/12
South Canterbury	Sonic	Sonic	
Southern	Healthscope	Healthscope	

Source: The application for clearance and Commission interviews