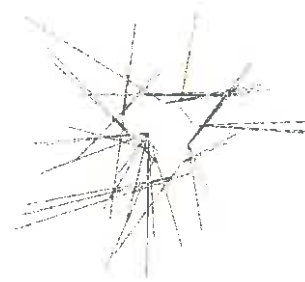


WEBBER WENTZEL

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The Health Market Inquiry Director
Market Inquiry into the Private Healthcare Sector

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Attention: Mr Clint Oellermann

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Your reference

Our reference

Date

Robert Wilson
2483244

19 March 2015

Dear Sirs

Lancet Laboratories' submissions to the Panel for the Market Inquiry into the Private Healthcare Sector

1. We confirm that we act for A C Mauff and Partners, an unincorporated practice of specialist pathologists who are registered with the Health Professions Council of South Africa ("HPCSA") under practice number 5201055 and who practise under the name of Lancet Laboratories ("Lancet Laboratories").
2. We refer to the stakeholder submissions that were published by the Inquiry on 5 February 2015, Supplementary Guideline No1, and the extension granted to Lancet Laboratories on 5 March 2015 to respond to certain allegations and assertions against Lancet Laboratories by specific stakeholders by 20 March 2015.
3. We note that paragraph 9 of Supplementary Guideline No1 requires this response to be concise. Accordingly, Lancet Laboratories reserves the right to supplement this response at any future public hearing convened by the Inquiry or in response to any request for information from the Inquiry.

Fees

4. Numerous submissions referred to the fees charged by and paid to specialists (in general) and pathologists (in particular). Lancet Laboratories does not herein respond to each of these submissions and simply refers the Inquiry to the response from the National Pathology Group ("NPG") which was submitted on or about 4 March 2015 and which is included herein by reference. Without limiting the extent of such inclusion, Lancet Laboratories specifically draws the Inquiry's attention to section 3.1 of the NPG submission that discusses the relationship between utilisation and costs.

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Market shares and dominance

5. A number of submissions purport, without more, to define relevant product and geographic markets in respect of the provision of pathology and related services, impute market shares to Lancet Laboratories and other pathology practices, and assert that Lancet Laboratories and other pathology practices are dominant or have market power in one or other market. These submissions also suggest that Lancet Laboratories and other pathology practices engage in vaguely described exclusionary acts, and furthermore insinuate that this has an anti-competitive effect.
6. The most notable of these submissions are as follows:
 - 6.1 Discovery Health: pages 125-128;
 - 6.2 Emmanuel Diagnostic Laboratories: pages 1-3;
 - 6.3 Medscheme: pages 15 and 63; and
 - 6.4 Verirad: pages 3 and 4.
7. Lancet Laboratories denies that it has market power in any market, engages in exclusionary acts and that its competitive business practices have an anti-competitive effect.
8. It is trite that any investigation of an abuse of a dominant position first requires defining the relevant market. Lancet Laboratories disagrees that the relevant geographic market is national (presumably so alleged by some stakeholders because Lancet Laboratories negotiates prices annually with significantly powerful medical schemes and administrators), or that a relevant regional geographic market is as broad as that asserted by Verirad (Northern, Western and Eastern Cape and Free State, on the one hand, and KwaZulu-Natal, Limpopo, Mpumalanga, North West and Gauteng on the other) or by Discovery Health and Medscheme (each of the nine provinces in South Africa).
9. Instead, Lancet Laboratories submits that it competes with other pathology practices in more narrowly defined geographic markets that vary in extent depending on whether its pathologists perform procedures in a metropolitan, urban, peri-urban or rural areas. Within each of these areas, Lancet Laboratories further submits that it competes with other pathology practices in the range of procedures it provides.
10. The competitive dynamics within each of these more narrowly (and more accurately) defined geographic and product markets vary across markets. This in turn affects the manner in which pathology practices compete with one another, and ultimately their respective service offerings to practitioners and patients.
11. Lancet Laboratories furthermore denies that it has a dominant relationship with one or more hospital group.
12. The fact that prior to 2004 Afrox Healthcare (the predecessor-in-title to Life Healthcare) and Mediclinic jointly held 30% of Lancet Laboratories (which they disposed of in 2004) has no bearing on where Lancet Laboratories now provides in-hospital pathology services, or the range of procedures and related services that it provides at a particular hospital.

13. Indeed, when responding to a request for proposal to provide in-hospital pathology services, Lancel Laboratories competes on an open bid basis with other pathology practices. Furthermore, Lancel Laboratories must demonstrate in great detail its ability to provide a range of procedures and with reference to various minimum service level requirements. Lancel is similarly required to demonstrate its competitive offering when wishing to conclude a preferred provider arrangement with a medical scheme for the supply of pathology services in particular hospitals.
14. The manner in which hospital groups compete with one another, on the one hand, and medical schemes compete with one another, on the other, determines which pathology practice they select to provide in-hospital pathology services. In short, where Lancel Laboratories does and might provide in-hospital pathology services is a function of competition between hospital groups, between medical schemes and between pathology practices, and is in no way attributable to prior shareholding relationships.

Corporatisation of pathology practices

15. Some submissions suggest that there are benefits to corporatized pathology practices. This takes place in different forms elsewhere in the world. In some countries, hospitals employ pathologists to provide in-hospital pathology services. In other countries, pathology laboratories are owned and operated by listed and unlisted corporations.
16. These different corporate models attempt in various ways to extract efficiencies from the practice of pathology in order to maximize profits within the practice, as well as in related businesses that the corporate might own and operate (including through the provision of vertically integrated and complementary medical services).
17. Lancel Laboratories believes that the corporatization of pathology practices increases the potential for moral hazard, which is best mitigated through the ethical codes, standards and practices of the pathology profession. Please refer to paragraphs 3.17 - 3.20 of Lancel Laboratories' submission of 31 October 2014.
18. We trust that this response assists the Inquiry. As noted at the outset, Lancel Laboratories reserves the right to supplement this response at any future public hearing convened by the Inquiry or in response to any request for information from the Inquiry.

Yours faithfully

WEBBER WENTZEL

Robert Wilson

Letter may be sent electronically. A signed copy will be sent on request.