

The Competition Commission
Health Market Inquiry
Trevenna Campus,
Block 2A, Fourth Floor
70 Meintjies Street
Sunnyside
PRETORIA
0002

27 March 2015

ATTENTION: Mr. Clint Oellermann

Via Email: submissions@healthinquiry.net

Dear Sirs

WRITTEN SUBMISSION BY DRS DIETRICH, VOIGT, MIA & PARTNERS IN TERMS OF SUPPLEMENTARY GUIDELINES NO. 1 – HEALTH MARKET INQUIRY

Drs Dietrich, Voigt, Mia & Partners (“PathCare”) have made a submission to the Health Market Inquiry which will be referred to as the “Main Submission” during the course of this supplementary document so as to avoid duplication of statements.

PathCare has taken note of various specific allegations of fact and/or adverse conclusions made by participants by way of submission to the Health Market Inquiry. We wish to take this opportunity to respond thereto.

1. Submission by Verirad (Pty) Limited

1.1 With regard to points 1 and 2 of the Verirad submission, PathCare is not in a position to verify the accuracy of the information contained therein as it is

unclear as to whether Verirad is simply referring to statistical information provided by medical schemes that it represents or whether it is indicating that the statistics in point 2 accurately reflect the market share of PathCare.

1.2 PathCare estimates its market share to be approximately 17% in South Africa which is in line with the estimate given by Discovery Health of 17,5% in its submission to the Health Market Inquiry. With regard to the market share statistics for the North, Western and Eastern Cape and Free State versus market share statistics for KwaZulu-Natal, Limpopo, Mpumalanga and North Western Gauteng, PathCare is not in a position to verify the accuracy thereof.

1.3 **“The distribution of Private Pathology services in South Africa”**

PathCare strongly refutes the allegation made by Verirad in section 3 of its submission that PathCare and Lancet do not compete against one another in particular geographical areas. The private pathology industry in South Africa is concentrated from a market share perspective between 3 main laboratories and the historic reasons for this was set out in section 3.2 of the Main Submission.

1.4 [Confidential information]

1.5 It was only after the loan obtained in respect of the unbundling was repaid, that the PathCare partners, executive committee and the board of governors of PathCare considered the further possible expansion of their practice to other geographical areas in South Africa. PathCare did during this time invest in Kenya in 2003 and Nigeria in 2005. [Confidential Information]

1.6 Given the existence of two well established private medical laboratories, in Gauteng and KwaZulu-Natal namely Ampath and Lancet, PathCare decided to initially focus its attention on expanding its interests in Nigeria and Kenya.

The partners considered the commencement of a pathology practice in Angola, but due to the extensive initial capital investment required, decided not to pursue the opportunity in that country at the time. Pathcare did however conclude a memorandum of understanding with an Angolan company, [Confidential Information] should it in future embark on an expansion of its activities in that country. PathCare had also undertaken extensive negotiations to purchase a laboratory in Zimbabwe [Confidential Information] but the negotiation to purchase this laboratory was never formally concluded as agreement could not be reached between the parties.

1.7 In point 7 of its submission Verirad states that PathCare and Lancet don't in general compete in Africa. This is an incorrect statement as PathCare and Lancet do compete directly in Nigeria, Namibia¹ and Kenya. Section 3 of the Main Submission explains how the pathology market is defined and subsection 3.1.20 lists the countries that PathCare receives referral work from which includes Namibia, Nigeria, Kenya, Malawi, the Democratic Republic of Congo, Ethiopia, Mauritius, Sierra Leone, Zimbabwe, Tanzania, Ghana, Angola, Mozambique and Zambia. According to Verirad, Lancet operates in most of the aforementioned countries and therefore Lancet and PathCare **do compete generally in Africa.**

1.8 PathCare has extensive evidence available to the Panel of Inquiry and Commission showing that it had embarked on feasibility studies and extensive discussions to acquire pathology practices in Kwa-Zulu-Natal and Gauteng, or to participate in tenders for laboratories in hospitals in those geographical areas.

1.9 [Confidential Information]

1.10 [Confidential Information]

¹ According to the website of Maxi Medical Laboratories Lancet is a substantial shareholder in this company which competes directly with PathCare in Namibia.

1.11 [Confidential Information]

1.12 [Confidential Information]

1.13 PathCare can provide the Commission with extensive documentary evidence detailing the above should this be required.

1.14 **“Request Form Issues”**

The test requisition form allows laboratories to collect data accurately and includes data like age, gender, treating doctor, hospital, ward, contact numbers, address details of the guardian or parent, etc. and are designed to assist doctors in the clinical setting they find themselves.

ICD 10 codes and important clinical data is collected through this request form. Commonly used tests are grouped together in a logical format. As there are a few thousand tests available² and only space on an A4 page for between 50 – 100 different tests only the most commonly requested tests can be accommodated. In addition different specialities require different types of tests. This has led to multiple request formats being available depending on the specialty of the doctor who is focused on what their patients are likely to require.

We have a General Request Form which has about 100 tests listed and this can be used by most specialities. We have a GP request form that was designed specifically for the types of testing required by GP’s in a primary general practice setting. This was designed in conjunction with a GP practice association CPC in Cape Town. After drawing all tests requested from our system and then designing a form with the top 50 required tests for General Practitioners a general GP request form was attained. Several medical schemes

² Currently over 4000 tests are available.

also gave their input to this form. We also provide request forms that are particularly useful in gynaecological practice where gestational age and specific data related to assessing the risk for Down's syndrome before birth are recorded and taken into account.

Finally there are GP's and specialists who don't use request forms at all and use an ordinary blank page to write down the tests that they wish to request. We have compared the pathology "spend" of these doctors with those of supporters who use requisition forms and can advise the Panel of Inquiry that there is no obvious correlation between use of a requisition form and high pathology spend as intimated by Verirad and Discovery Health. Intimating that use of a request form leads to higher and unnecessary pathology spend (utilisation) without citing correlating evidence (of that in South Africa) is irresponsible.[Confidential Information].

PathCare has no agenda or vested interest as suggested by Verirad in enforcing a set format for the test requisition. GP's and specialists regularly approach us for custom requisition forms which suit their specific practice areas and we are happy to oblige. Similarly managed care organisations and medical schemes may also request a specific test requisition format and PathCare will oblige such requests. We will not, however, enforce a specific requisition format at the instance of any one party on all physicians.

1.15 **"Structure of industry in South Africa (Pathology)"**

We believe that the statement by Verirad that the three private laboratories that make up the bulk of the pathology industry will not compete on price is completely incorrect. It must be borne in mind that due to the establishment of the National Reference Pricing List and before its abolishment in 2006, firm guidelines were in place in terms of what private laboratories, could charge per specific test. It is, therefore, not surprising that the pricing between all private

laboratories operating in South Africa do not vary by wide margins or percentages. There is, however, no collusion or co-ordination by medical laboratories on pricing. PathCare has no idea what Ampath or Lancet charge in respect of the same test delivered or what rates or remuneration models these two main competitors, Ampath and Lancet have negotiated with medical schemes. These negotiations take place one on one with medical schemes since 2006 and we are confident that there must be clear differentiation in pricing between laboratories. [Confidential Information]

1.16 “Our experience in respect of our database in respect of huge amounts of money spent on Path and Radiology”

We have no means of verifying whether or not 11% of medical schemes spend is on pathology and radiology, but wish to point out that PathCare has never denied that there has been a marked increase in the utilisation of its services and in fact highlight this in section 5.2 of its submission. This read together with 3.1.9; 3.1.10 and 3.1.11 explains why sensational claims by Verirad and other submissions in terms of spend on pathology is no surprise and does not take the matter further or provide answers to the challenges of increased utilisation.

1.16 “Billing trends”

The statement contained by Verirad in Section 10 regarding vitamin D testing can be ascribed to new clinical guidelines that have encouraged doctors to request Vitamin D tests. This is in line with current published literature and global clinical practice. In a fact sheet distributed by the Cancer Association of South Africa it was noted in a study in South Africa³ that certain children in the greater

³ Poopdi et al 2011.

Johannesburg area are at risk in that they showed significantly lower 25 hydroxy-D levels with deficiency of 7% and insufficiency of 19% in 10 year olds. Vitamin D deficiency is associated with rickets where soft bones lead to skeletal deformities as well as other health risks which include cardiovascular disease, cognitive impairment and cancer.

Although PathCare has seen an increase in requests for Vitamin D tests it is indeed very small compared to overall test volumes. Please refer to the Main Submission, sections 3.1.11 and 3.1.12 for detailed information. As pathology lies at the heart of research in medicine and disease there will always be an increased trend in tests requested for emerging illnesses. The HIV epidemic is a well-known example of this in South Africa. Blood tests related to detecting this disease for e.g. the Elisa Screening test and the PCR test to detect the virus were all unknown tests in 1985 but are now extremely commonplace. The Elisa screening test is currently one of the most requested tests by physicians in South Africa.

In respect of molecular biology testing, the comment by Verirad, is not correct and we refer to sections 5.4.2 through to 5.4.10 of the Main Submission explaining the exponential increase in molecular biology tests, and the reasons for this. An example of a molecular test that has seen a dramatic increase in requests is the PCR test for tuberculosis. The deployment of Gene Expert instruments in multiple clinics in South Africa is an example of increasing utilisation of molecular biology testing for the rapid diagnosis and treatment of tuberculosis.

1.17 “Uniform approach to non-transparency in the listing of prices on request notes”

Firstly, PathCare has negotiated different rates with almost every medical scheme administrator to which it provides a service to. It is, therefore, impossible

to reflect all negotiated rates on a single requisition form. Please refer to sections 5.1.5 and 5.1.6 of the Main Submission dealing with how PathCare provides pricing information to its patients.

If, for argument sake, PathCare were to publish its individual test prices negotiated with each medical scheme on our request forms, this will create such transparency in the pathology market that it could be construed as signalling to other pathology laboratories and de facto price fixing.

1.18 **“Cost Saving”**

We do not understand or agree with the point that Verirad is making and can simply refer to the extensive comments made in our submission in section 5.

1.19 **“Lack of information on ICD 10 codes”**

The ICD 10 code is a clinical diagnostic coding system and not a laboratory or pathology coding system. As explained in sections 3.1.10 and 3.1.11 of the Main Submission pathologists are not consulting with the patient directly and are not responsible for the day-to-day care of the patient. The GP and specialist are responsible for the clinical diagnosis of the patient and any pathology tests requested should guide such diagnosis. Often when requesting pathology tests GPs’s and specialists are not yet in a position to make a definitive diagnosis of the patient.

A diagnostic code used by pathologists is the histology ICD10 code as the histologist is indeed making a diagnosis of malignant or non-malignant growths or other inflammatory diagnosis.

GP’s and specialists do provide pathologists with ICD10 codes in some instances in which case Pathcare will be sure to reflect same on the test result and invoice

issued. If not PathCare will, use a clinical non-specific diagnostic code which it allocates to patients where no ICD10 code has been supplied by either the GP or specialist.

As mentioned in section 5.3 of the Main Submission, the whole issue around coding needs to be urgently addressed.

2. SUBMISSION BY MEDSCHEME

We refer to the comment on Page 47 of the Medscheme submission stating that pathology and radiology test results are not shared between healthcare practitioners. This is an incorrect statement. Pathology tests are, of course, not generally shared amongst all GPs and specialists in South Africa, but, if a patient proceeds to visit such other GP, or specialist, the GP or specialist may request prior test results from the pathology service provider at no extra cost.

The reason why pathology and radiology test results are not generally shared amongst healthcare practitioners, is that this would be a breach of confidentiality (invasion of privacy); contrary to the Health Professions Council of South Africa's ethical guidelines and a contravention of the Protection of Personal Information Act. It is also not necessary to share a patient's private pathology tests with all GPs and specialists in the country, or with all medical schemes. The patient can elect with which practitioners the pathology test may be shared and the pathology service provider will then act in accordance with those instructions at no extra cost to the patient. The sensitivity around HIV tests are an example in point.

3. LABORATORIES DO NOT COMPETE

We now refer to section 4.2 of the Medscheme submission wherein it is stated that regionally it is clear that laboratories do not compete. We refer the Panel of

Inquiry to section 1 of this supplementary submission where the matter is addressed.

4. DISCOVERY HEALTH

[Confidential Information]

5. SUBMISSION BY BOARD OF HEALTHCARE FUNDERS

We refer to page 42, paragraph 7.7 of the submission by the Board of Healthcare Funders (“BHF”). The contention by BHF that pathologists charge more for their services when the patient is a member of a medical scheme than for services rendered to a cash patient is completely incorrect from a PathCare perspective.

PathCare charges medical schemes substantially less (dependent on volume) than its tariff or cash rate. We believe that the “cash price” BHF is referring to is the rate charged to indigent patients. This error was pointed out to the BHF in 2007 when it first presented these statistics at a conference.

We thank the Panel of Inquiry for the opportunity to provide a supplementary submission.

Yours sincerely



Dr John Douglass
CHIEF EXECUTIVE OFFICER