NOTICE 204 OF 2015

COMPETITION COMMISSION

NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

LIFE HEALTHCARE GROUP (PTY) LTD

AND

LOWVELD HOSPITAL GROUP PTY LTD AND INTERSTATE CLEARING (126) (PTY) LTD

2014SEP0530

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms:

On 30 September 2014, the Competition Commission (Commission) was notified of an intermediate merger, wherein Life Healthcare Group Proprietary Limited (LHG) intends to acquire Lowveld Hospital Proprietary Limited (Lowveld) and Interstate Clearing (126) Proprietary Limited (Interstate), collectively referred as the target firms. The primary acquiring firm is LHG, a private company incorporate in terms of the laws of South Africa. LHG is a wholly owned subsidiary of Life Healthcare Group Holdings Limited (LHG Limited), a public company listed in the Johannesburg Stock Exchange. The primary target firms are Lowveld and Interstate. Lowveld and Interstate are private companies which are mostly owned by individual doctors practising at Lowveld in Nelspruit.

In terms of Sale of Shares Agreements, LHG made a conditional binding offer to purchase the target firms. Upon completion of the proposed merger, Lowveld and Interstate will be controlled by LHG.

LHG is a private hospital group whose primary business is the provision of acute private hospital care services to the medically insured market. The business comprises a geographical spread of acute care private hospitals and same day surgical centres located in Southern Africa. The business includes general hospital facilities of various sizes that include: intensive care units (ICUs), high care units (HCUs), operating theatres, emergency units, maternity units and cardiac units.

Lowveld is a small independent surgical hospital that offers a wide range of surgical services for the following disciplines: ear, nose and throat surgery, maxilla facial surgery, ophthalmologists (eye specialists), orthopaedic surgery, plastic surgery, general surgery, dentists, gynaecology, dermatology, neurophysiology and urology. Some of the procedures performed at Lowveld include: knee and hip replacements, hernia, gallbladder, hysterectomies, mandible osteotomies, cataract and replacement of lens, removal of wisdom teeth, removal of skin lesions, breast reductions and breast augmentation, tonsillectomies, sleep studies and gastroscopies and colonoscopies.

There is a horizontal overlap arising from the activities of the merging parties in relation to the provision of hospital medical and related health services. There are both local and regional dynamics to the geographic market concerned in this instance. The competition concerns arising in this merger are however not dependent on whether the geographic market is deemed local or regional. If the narrow market comprising the Nelspruit and surrounding areas is considered, it is the Commission's view that there may be no potential geographic overlap arising from the proposed merger. To the extent that the geographic market is wider than the Nelspruit and surrounding areas, the merged entity will have combined market share [between 25% and 35%] with a market accretion of [between 5% and 10%] using the number of licenced hospital beds. Mediclinic is the largest hospital (group) in both the wider Mpumalanga and the narrower Nelspruit area. There is also a newly licenced hospital, Kiaat, which also operates in the Nelspruit area.

Based on these market shares alone, it may appear that there may be no competition concerns arising. However, there are significant price effects that arise and these price effects are not dependent on the geographic market adopted.

The proposed merger will result in hospital tariffs for Lowveld immediately increasing when the hospital fee structure is changed from the current National Hospital Network (NHN) based structure, which is used at Lowveld, to the LHG fee models. The increase in prices will be significant and immediate, ranging from [6% to 19%] if the hospital tariffs alone for some of the procedures that have recently been performed at Lowveld are taken into account. If the entire hospital bills between LHG and Lowveld for the top 20 hospital procedures are compared instead, the price increase will even be higher, reaching highs of [between 60% and 70%] in some procedures. Such price increases are significant and are directly arising as a result of the merger.

The proposed merger will thus potentially lessen competition between Mediclinic and LHG. This is because currently, Lowveld offers prices that are lower than Mediclinic hence, this feat currently presents some constraining influence and pressure upon Mediclinic to lower its fees in the Nelspruit and surrounding areas. Post-merger, this pressure is likely to disappear given that LHG offers higher prices that are in some instances higher than Mediclinic.

Even if prices are determined nationally for Mediclinic, the presence of an independent hospital in the Nelspruit area may play some role in influencing the prices that are eventually negotiated nationally. Lowveld is losing the autonomy to influence any constraining influence it was currently exerting in the market before the merger. Given that the prices of LHG are significantly higher than Lowveld's for the majority of procedures that were compared, there will be less pressure on Mediclinic to lower its prices in future. This is contrary to the situation when Lowveld is present in the market and offers lower prices than Mediclinic. It will likely be mutually beneficial for both Mediclinic and LHG to maintain higher prices after the proposed merger.

Further, it is only the larger medical schemes that exert some countervailing power during negotiation for tariffs. The proposed merger is likely to also enhance LHG negotiating power, as it increases its presence in all major regions in the country by virtue of the proposed merger. In addition, barriers to entry are also high, rendering new entry in the market unlikely.

The Commission has previously recommended the prohibition a 2012 large merger involving LHG and Joint Medical Holdings in the Durban Metropolitan area, on the basis that LHG would have exercised market power with potential price increases after the merger. The decision was however overturned by the Tribunal. The circumstances are however different in this instance, with the main difference being that LHG does not have an existing stake in Lowveld as was the case in that merger, wherein it was revealed that LHG had already been negotiating prices on behalf of the target before the merger by virtue of its pre-merger stake. This is starkly different in this instance as LHG does not have influence at all in the NHN prices that are currently charged by Lowveld. Therefore, the tariff increase is not existent before the merger, but purely arising as a result of the merger.

The proposed merger is therefore likely to result in a substantial lessening of competition in the market for the provision of hospital services in the Nelspruit and surrounding areas. There are no credible technological, efficiency or pro-competitive gains that have been submitted by the merging parties that outweigh the competitive harm arising.

The merger also raises a negative public interest, in that it significantly negatively impacts on a particular industrial sector and region. Hospital prices in the Nelspruit and surrounding areas will increase as a result of the merger, and a source of independent competition to the incumbent large hospital groups will be undermined by the proposed merger.

Taken as a whole, the Commission prohibits the proposed merger in terms of section 14(1)(b)(iii) of the Act, no. 89 of 1998 as amended.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.