

Board of Governors of the Federal Reserve System, February 21, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

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FEDERAL TRADE COMMISSION

[File No. 021 0140]

Quest Diagnostics Incorporated, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 24, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Michael Cowie or Jackie Mendel, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2214 or 326-2603.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 21, 2003), on the World Wide Web, at <http://www.ftc.gov/os/2003/02/index.htm>. A paper copy can be

obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Quest Diagnostics Incorporated ("Quest") and Unilab Corporation ("Unilab") (collectively "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects resulting from Quest's proposed acquisition of Unilab. The Consent Agreement includes a proposed Decision and Order (the "Order"), which would require the Respondents to divest to Laboratory Corporation of America ("LabCorp") assets used to provide clinical laboratory testing services to physician groups in Northern California.

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated April 2, 2002 ("Merger Agreement"), Quest proposes to acquire all of the issued and outstanding voting securities of Unilab in exchange for cash, stock of Quest, or a combination of cash and stock of Quest. The value of the transaction was approximately \$877

million at the time the Merger Agreement was announced. On January 4, 2003, Quest and Unilab agreed to amend the Merger Agreement to extend the termination date and to reduce the purchase price for the overall transaction by approximately \$60 million. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the market for providing clinical laboratory testing services to physician groups in Northern California.

The Merging Parties

Headquartered in Teterboro, New Jersey, Quest is the largest supplier of clinical laboratory testing services in the United States, with a nationwide network of 30 full-service laboratories located in major metropolitan areas throughout the United States, approximately 100 smaller "stat," or rapid response, laboratories, and approximately 1,350 patient service centers ("PSCs"). Quest had sales of approximately \$4.1 billion in 2002. Quest's operations in Northern California consist of a full-service testing laboratory located in Dublin, California, 5 stat labs, and approximately 76 PSCs.

Unilab, headquartered in Tarzana, California, is the largest supplier of clinical laboratory testing services in California. Unilab had sales of approximately \$390 million in 2001. It operates 3 full-service laboratories, located in Los Angeles, San Jose, and Sacramento; 39 stat laboratories; and approximately 386 PSCs. About 23 of the stat labs and 230 of the PSCs are located in Northern California.

The Clinical Laboratory Testing Services Market

Clinical laboratory testing services ("Laboratory Services") are a critical element in the delivery of quality health care in the United States. Clinical laboratory tests are used to detect and analyze the presence, concentrations or composition of chemical, biological or cellular components in human body fluids and tissue in order to help physicians diagnose, monitor, and treat their patients' health conditions. They include thousands of individual test procedures in the areas of hematology, blood chemistry, urine chemistry, endocrinology, and microbiology, among others. Examples of commonly ordered tests include red and white blood cell counts, blood chemistry panels, urinalyses, microbiology cultures, HIV screening tests, and