

An innovative merge clearance decision in the healthcare institutions' sector

The French Competition Authority (FCA) has adopted an innovative merger decision in the health care institution sector, assessing not only the effects of the operation on medical services (diagnostic and treatments), but also the effects on non-medical ancillary services.

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| Submitted | 11 September 2017 |
| Applicable Law | France |
| Topic | Antitrust & Merger Control |
| Sector Focus | Life Sciences |

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The decision has not been published yet (press release of 23 July 2017). The operation consisted of the acquisition by the second largest private clinic group in France, Esan, of the third largest private clinic group, MédiaPôle-Partenaires (MPP), bringing the new entity to the second market position, with 109 healthcare institutions.

Referral decision.

The operation was originally filed before the European Commission. However, the European Commission used the referral procedure of Article 9 of the EU Merger Regulation, which provides that, even though the European Commission is the competent authority to examine the case, it can refer to the national competition authority if it considers it to be better placed to assess the effects of the operation on the national market. The EU Commission therefore referred the case to the FCA.

Competitive analysis

The FCA did not assess the price-effect for medical services which were subject to mandatory pricing. However, the FCA assessed whether the operation could have quality effect on the medical services and be likely to offer lower quality services.

The FCA analysed the operation in the following markets:

- both public and private healthcare institutions
- in each of the medical activity concerned (medicine, surgery, obstetrics, oncology, etc.), and
- in each of category of diagnostic concerned (eyes, ears, nose, mouth, teeth, respiratory system, digestive tract, etc.), considered as not substitutable on a patient standpoint.

The FCA also assessed the effect of the operation on healthcare services provided at home and on cosmetic surgery.

More interestingly, and for the first time, the FCA analysed the effect of the operation on the price of ancillary services, such as private room supplements, board and accommodation of visitors, telephone and TV services, or other exceptional services.

Commitments

The FCA considered that in three local areas, the operation would decrease the number of medical services offering and the quality of these services, therefore being likely to affect the patients' welfare.

In addition, it could not be excluded that the operation would lead to a price increase in the offering of ancillary services.

In order to solve the competition concerns raised, the buyer committed to divest three healthcare institutions and not to hinder the freedom of exercise of doctors working both in its own institutions and in competitive institutions. The buyer offered that these commitments be monitored by an independent trustee approved by the FCA.

The publication of the decision may provide valuable additional details on the FCAs reasoning.

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