The Autorité de la concurrence has begun an in-depth (Phase 2) examination into Elsan's plans to acquire Hexagone Santé Méditerranée

Published on October 11, 2019

Elsan notified the *Autorité de la concurrence* of its plans to take exclusive control of Hexagone Santé Méditerranée (HSM).

The parties to the transaction are especially active in the diagnosis and hospital care markets in the Gard *département* at numerous healthcare facilities (hospitals and clinics).

After an initial examination phase (Phase 1), the *Autorité* considered that there was a serious suspicion of harm to competition on the healthcare and diagnosis markets and that the proposed commitments failed to sufficiently meet competition requirements, which justified an in-depth examination of the transaction (Phase 2).

Parties to the transaction

Elsan operates 120 healthcare facilities (hospitals, clinics, rehabilitation centres) located across France, offering medical, surgical and obstetric services, aftercare and rehabilitation, and to a lesser extent, psychiatric care, home hospitalisation and cosmetic surgery.

HSM is a group of three healthcare facilities located in the Gard *département*: Nouvelle Clinique Bonnefon in Alès, Nouvelles Cliniques Nîmoises and Polyclinique Grand Sud in Nîmes. These facilities primarily provide medical,

surgical and obstetric services, in addition to cosmetic surgery.

The transaction is likely to harm competition on the hospital care and diagnosis markets in the Gard département

The *Autorité* considers that the transaction will significantly strengthen Elsan's position, with a market share exceeding 50% across multiple segments on the hospital care and diagnosis markets. Its position will be strengthened both in the Gard *département* and at a more local level in the areas near the clinics acquired (around Alès and Nîmes). A stronger position for Elsan entails a risk of price increases for supplementary services (e.g. private room supplement, accommodation and meals for people accompanying patients, television, telephone and Wi-Fi) and a risk of a decline in the quality and diversity of the healthcare services offered to patients living close to the facilities affected by the transaction.

The commitments proposed by Elsan during the first examination phase are insufficient to eliminate the competition problems identified

In August and September 2019, Elsan proposed two commitments to rectify the competition problems identified, which were tested on the market (market consultations).

The first proposal of commitments included the sale of Clinique Bonnefon in Alès. However, analysis of the effects of this sale revealed that it was insufficient to eliminate competition problems in the area surrounding one of the clinics acquired by Elsan in Nîmes.

In a second version of commitments, in addition to the sale of Clinique Bonnefon, Elsan proposed to transfer inpatient services operated in one or more Elsan

clinics to another facility of its choice, either Clinique Bonnefon or a competing facility located close to Polyclinique Grand Sud. However, the *Autorité* considered these proposed commitments to be insufficient in rectifying the competition problems identified. Moreover, the commitments to transfer inpatient care were not confirmed to be credible or verifiable during our investigation. In particular, the market test demonstrated implementation difficulties for a commitment to transfer inpatient care.

After this initial examination phase, given the insufficiency of the commitments proposed by Elsan to address the competition problems identified, the *Autorité* considered that the transaction required in-depth examination (Phase 2).

Issues studied during the in-depth examination phase

During this in-depth examination phase, the *Autorité* will consider in greater depth the issue of defining the relevant service markets (changes to the classification of diagnostic procedures) and geographical markets (identification of geographical analysis zones).

To ascertain the effects of the transaction, the *Autorité* will examine the market share calculation method (based on the number or duration of hospital stays) and will also study the influence of recent and upcoming legislative and regulatory changes.

The *Autorité* will also consult with market stakeholders, in particular by conducting interviews.

Provisional timetable

Pursuant to the French Code of Commercial Law (*Code de commerce*), examination of a merger should be carried out within 65 days from the start of Phase 2, which may be extended, if necessary, particularly should the notifying party submit commitments. The opening of a Phase 2 does not indicate the direction of the *Autorité*'s decision.

Contact(s)

Bertille Gauthier
Communications Officer
+33155040039
Contact us by e-mail