Health facilities: The Autorité de la concurrence clears Elsan's acquisition of Hexagone Santé Méditerranée subject to commitments

Published on February 28, 2020

The parties

Elsan operates 120 healthcare facilities (hospitals, clinics, rehabilitation centres) across France offering medical, surgical and obstetric services, follow-up care and rehabilitation, and to a lesser extent, psychiatric care, home hospitalisation and cosmetic surgery. In the Gard *département*, Elsan's primary facility is the Clinique Kennedy in Nîmes.

Hexagone Santé Méditerranée (HSM) consists of three healthcare facilities in the Gard *département*: Nouvelle Clinique Bonnefon in Alès, Polyclinique Grand Sud and Hôpital Privé les Franciscaines, both in Nîmes. The facilities mainly provide medical, surgical and obstetric services, as well as cosmetic surgery.

The transaction has no effect on the cost or quality of healthcare services

Since the rates for healthcare services paid by the French social security fund to facilities are set at the national level on a per act basis from which healthcare facilities cannot derogate, the merger is not likely to have any effects in this regard. The *Autorité* has also ruled out the risk of deterioration in the quality of healthcare linked to the transaction. At both the national and local levels, healthcare authorities are responsible for monitoring the quality of healthcare

and the facilities in which it is provided.

Basing its work on a broad consultation of operators in the sector (market tests, survey of private practitioners, hearings), the Autorité has identified three main risks of harm to competition in the markets for healthcare and the provision of infrastructure for private practitioners

- **A risk of reducing the healthcare offering**

Following the transaction, Elsan will have significant positions in a number of medical specialities, particularly in the areas around HSM's facilities.

However, the investigation brought to light Elsan's plan to close the Clinique Kennedy after the transaction in order to transfer its activities to the sites of the Polyclinique Grand Sud and the Hôpital Privé les Franciscaines, owned by HSM, without there being any certainty that the activities would be transferred in whole or in part.

A partial transfer, however, which implies abandoning certain activities, would result in a reduction of the healthcare offering in the areas concerned (Nîmes), to the detriment of patients.

- **A risk of rate increases and a decline in the quality of ancillary services**

The transaction presents a risk of rate increases and a deterioration in the quality of ancillary services (mainly access to a private room, television and Wi-Fi). The risk results in particular from the disappearance of the significant competitive pressure that the facilities of the parties exerted on each other prior to the transaction.

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A risk of reducing the pool of practitioners for healthcare facilities

The transaction has the effect of placing Elsan in the position of a key operator vis-à-vis private practitioners in the Gard *département*. Elsan could thus impose exclusivity clauses on current or future practitioners in order to reduce the pool of available practitioners in the department.

The transaction generates efficiency gains for patients but these are not sufficient to offset the identified risks of harm to competition

During the investigation, Elsan demonstrated that the transaction, and specifically the transfer of the Clinique Kennedy maternity ward to the Polyclinique Grand Sud site, will contribute to the quality and safety of obstetric care. Uniting the maternity hospitals will enable the facility to cross one of the thresholds for the number of births per year provided for in Article D. 6124-44 of the French Public Health Code (*Code de la santé publique*) and above which a health facility is obliged to enhance the human resources devoted to the safety of patients and newborns (see inset below).

The *Autorité* has however taken the view that the gains demonstrated by Elsan are not sufficient to offset all the identified problems of competition, particularly as regards the provision of ancillary services, which is not specific to obstetrics alone.

The commitments make it possible to address the competition concerns while preserving the efficiency gains for patients linked to the consolidation of the Clinique Kennedy's activities at HSM's sites in Nîmes.

In order to address the competition concerns, Elsan submitted a mixed commitment proposal, which includes structural and behavioural components.

- Full transfer of the activities of Clinique Kennedy to HSM's facilities in Nîmes

Elsan commits to transfer the entire activity of Clinique Kennedy to the sites of the Polyclinique Grand Sud and the Hôpital Privé les Franciscaines. In addition, Elsan shall maintain all of the activities of these two facilities, including those transferred from Clinique Kennedy, until 6 March 2028.

- Continuation of ancillary services

In substance, Elsan commits, at the very least, to maintain the standard of quality and content of ancillary services offered without increasing the price above the level of inflation.

- Prohibition of exclusivity clauses binding practitioners to the facilities concerned by the transaction

Elsan commits not to include exclusivity clauses in the contracts between the facilities concerned by the transaction and private practitioners unless this exclusivity is reciprocal and does not prevent the practitioner from carrying out shifts with some public facilities.

Positive and proven relationship between the volume of procedures and the quality of care in certain specialities such as obstetrics

In the course of the investigation, the *Autorité* held discussions with several administrations responsible for monitoring the quality of healthcare that confirmed the positive link between the volume of procedures performed and the quality of healthcare provided for certain specialities, particularly obstetrics. The link may have led the public authorities to define thresholds that directly influence the level of safety measures.

In this case, the transaction will eventually result in the Polyclinique Grand Sud crossing the threshold of 1,500 births per year - to nearly 2,400 births (compared to less than 1,400 at present and less than 1,000 at the Clinique Kennedy) - which, under Article D. 6124-44 of the French Public Health Code, requires the presence of a gynaecologist-obstetrician and an anaesthetist in the facility 24/7, 365 days a year. In addition, a paediatrician must be available on standby duty.

> See the Full text of the decision 20-DCC-38

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