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ACM procedure

Merger notifications in hospital care

The Netherlands Authority for Consumers and Markets (ACM) assesses mergers in specialty care. This type of health care is offered by hospitals and independent treatment centers (ITCs[1]). When handling notifications of planned mergers, ACM will carry out more detailed analyses for the purpose of getting more accurate market definitions in order to remain an effective regulator. This means that, among other things, ACM will take the health care needs of patient groups as the starting point of our analyses, so that we are able to gain a better understanding of any differences in health care provisions of hospitals and ITCs. This approach corresponds with current developments in health care services. For example, we are seeing increased concentration in the health care market, and hospitals and ITCs increasingly differ in the extent to which they are able to offer high-complexity care. Our merger notification procedure in hospital care is thus revised accordingly. From now on, health care providers must submit more specific information in their notifications. And market participants (other providers and health insurers) should expect more specific questions as part of our market assessments. In this document, we explain in greater detail what exactly changes for providers that wish to merge *and* for market participants that may be affected.

How does ACM assess mergers?

ACM assesses mergers on the basis of the Dutch Competition Act. Such merger assessments safeguard the public interest of effective competition, and, in that way, helps ensure high-quality care that is accessible and affordable. When assessing planned mergers, ACM seeks to estimate the effect of changes in the market structure as a result of the merger between the parties involved. Price and quality are important aspects that ACM looks at in merger assessments. Through the merger, the merged company could attain a dominant position or strengthen its position, and, subsequently, could be able to raise prices or invest less in quality or innovation. In our merger assessments in hospital care, we seek to prevent patients/insured from being worse off because of reduced competition. In order to estimate the effects on competition, one of the first steps is the definition of markets. When defining markets, we determine, among other things, what health care services of different providers are substitutable. This will offer insight into the competitive dynamics between health care providers, and it helps determine what the effects are of the planned merger.

What will change for hospitals and ITCs that wish to merge?

From now on, ACM will analyze health-care services at a much more detailed level, when assessing planned mergers between providers of hospital care.

The definition of ‘basic care’

Broadly speaking, hospitals offer ‘basic care’ and ‘high-complexity care’. When defining ‘basic care’, we

[1] The Dutch acronym is ZBC – *zelfstandige behandelcentra*.

want to take better account of the different health care services that fall under basic care. For example, due to specialties (and subspecialties), each hospital cannot offer every type of health care. This means that we only speak of basic care once a considerable number of general hospitals offer a certain diagnosis-treatment combination (DTCs[2]). This leads to the following principle:

An individual DTC will fall under the definition of 'basic care' if at least 20 general hospitals offer that DTC.

On our website, www.acm.nl, the following information can be found that you need when filing merger notifications:

1. A list of hospitals that we consider 'general hospitals'.
2. A list of DTCs that fall under the definition of 'basic care'.

These lists are updated each year, so please make sure you use the most recent version on our website.

Health care needs of patient groups

Furthermore, we want to take better account of any potential differences in the health care needs of patients. Patients have specific health care needs, and, for their treatments, they can turn to some hospitals or ITCs, but not to other ones. In order to be able to include this fact in our analysis, we use the concept of 'patient groups'. When creating such groups, we use the patient's health care needs as the guiding factor. For each diagnosis, it is determined what health care need a patient has when visiting a hospital or ITC. Patients with the same health care needs fall under the same patient group. This leads to the following principle:

ACM analyzes planned mergers between providers of specialty care at the level of patient groups.

What information do you need?

The Dutch Healthcare Authority (NZa) manages the classification of patient groups. The NZa has a distribution list for which you can sign up by contacting our secretariat (secretariaatDZ@acm.nl). You will then be able to use the most recent version of the list of treatments classified into patient groups. In addition, you can contact us for an overview of the total number of patients per patient group in specific regions. With those, you will be able to make your own analyses of your planned merger's effects on various patient groups.

How do you use that information?

When filing a merger notification, please use the notification form (in Dutch). In part 3 of the form, please indicate for all patient groups what the planned merger's effects are. In addition, you will have to indicate per patient group what the market shares of the merging parties are in the regions where you are active, who the five most important competitors are, and who the five most important health-care insurers are. In an optional meeting prior to the filing of the merger notification, we could indicate for which patient groups a more detailed analysis would be necessary.

Any questions?

We completely understand if you still have questions about filling out the notification form, and about the

[2] The Dutch acronym is DBC – *diagnosebehandelcombinatie.*

analyses you need to carry out. If so, please contact the secretariat of ACM's Health Care Department: secretariaatDZ@acm.nl. In the investigation, you will have the opportunity to put forward any specific circumstances that you believe ACM should take into account.

The two abovementioned principles also apply to the assessment of collaboration agreements. Unlike with mergers, health-care providers must assess themselves whether or not the collaboration will lead to competition problems.

What will change for market participants?

In order to be able to assess the effects of mergers, ACM carries out market assessments. In these studies, we ask, among other market participants, health care providers (*competitors*) and buyers (*health-care insurers and patient associations*) questions such as: what do you believe are the effects of this merger? We also ask market participants questions about the effects of the planned merger on specific patient groups.

Example: imagine two hospitals that wish to merge attaining a strong competitive position for the patient group 'dementia'. We would then ask health-care insurers the following questions:

- *What is your view of the prospect of the merger hospitals attaining a strong position for the patient group 'dementia'?*
- *To which health care providers are patients from this patient group able to switch if they no longer wish to visit the merger hospitals?*
- *What options do you believe other health care providers have for expanding their range of services for this patient group?*
- *What options do new health care providers have for offering health care services to this patient group?*
- *What are your options for countering the strong bargaining position of the merger hospitals for this patient group?*

Background

The changes to our procedure are the result of a process in which we examined how we can stay effective in our merger control efforts in hospital care. The starting point of this process was an external study into the difference between basic care and high-complexity care, and the inter-relatedness between various health care services within individual hospitals. This is relevant when competition authorities define the relevant markets as part of merger assessments. Based on the results, we have conducted a follow-up study ourselves. For example, we took stock of and compared different analysis methodologies. Before making actual choices, we sat down with health-care insurers, hospitals, and medical specialists. In three meetings, we explained our procedure, and presented our considerations and choices. Based on the responses, we found that there was sufficient support for changing our procedure. Next, together with several research firms, we explored what the practical implications would be. In our revision process, we took into account the findings thereof. ACM pays constant attention to the effects of its oversight. We use new insights to improve the way we oversee hospital mergers, where possible.