

Decision by the Competition Authority in the case of the hospital in Eger (Hungary)

There is no need for Hospinvest to get an authorization from the Hungarian Competition Authority (hereinafter GVH) to operate the Markhot Ferenc Hospital and Clinic (hereinafter Hospital) in Eger. The aggregate net turnover of the two undertakings did not exceed HUF 15 billion in the preceding business year, which is the threshold according to the Competition Act.

On the 30th November the municipality of Heves county (Hungary) announced a public tender procedure for the operation of Markhot Ferenc Hospital (owned by the county). The tendering refers to the operation of the Hospital for 20 years in line with the legislation in force and according to the medical, professional and economic programme adopted. Moreover it refers to the operation, preservation, maintenance and development of the assets given into property management in line with the legislation in force in order to ensure or improve the meeting of the minimum conditions and to preserve or develop the structure of the treatment of in- and out-patients and of the diagnostics in the institution.

According to the decision of the general assembly of the county, on 25th March 2008 the Hospital and Hospinvest signed an Agreement on Property Management, Use and Utilization and further agreements on health provision, the assumption of debts and an assignment agreement on 27th March 2008. On 15th September 2008 the court annulled the decision of the general assembly of Heves County, which pronounced Hospinvest to be the winner in the tender procedure. Still Hospinvest started to operate the Hospital in November 2008. Hospinvest asked for the authorization of the transaction by the GVH on 19th May.

The Markhot Ferenc Hospital is owned by the municipality of Heves County and the performing of its public duties in health care are financed by the National Health Insurance Fund.

In 2007 it continued its operation as a budgetary institution. Its total turnover was HUF 6.9 billion, out of which it got HUF 6.5 billion from the Health Insurance Fund as assistant operating income. Patients coming from outside the Hospital's service provision area were only in insignificant number among the patients of the institution.

The members of the undertaking-group led by Hospinvest (founded in 2000)

- operate hospitals in Kiskunhalas, Hatvan, Gyöngyös, Parádfürdő and clinics in Kecel, Jánoshalma and Kiskőrös;
- operate pharmacies;
- provide services (e.g. by operating laundries) that are ancillary to health care services.

Each member of the Hospinvest-group operates functions as a company. The turnover of the Hospinvest-group was HUF 14.5 billion in 2007, out of which more than HUF 7 billion was the turnover of the hospitals mentioned above, which perform public duties financed by the Health Insurance Fund. Patients coming from outside the four hospitals' service provision area had only an insignificant share of the number of the patients of the institutions. A

concentration (pursuant to Competition Act) requires the authorization of the GVH only when the aggregate net turnover, in the preceding business year, of the undertakings concerned exceeds HUF 15 billion.

The GVH investigated the amount of the net turnover achieved together by the Markhot Ferenc Hospital and Hospinvest, since the Competition Act covers only the market behaviour of undertakings.

The activities of publicly financed hospitals can be classified as follows:

a, the treatments of patients allocated to the hospital's own provision area, which is in 100 per cent funded by the Health Insurance Fund;

b, the treatment of patients coming outside from the hospital's own provision areas, where they have to make a 30 per cent co-payment to the otherwise publicly funded services.

c, other activities, which are wholly financed by the patient receiving the treatment.

In the GVH's opinion, activities under point a) are not market activities, because:

- on the hospital's (supply) side, there capacity and output limitations on the one hand, and an obligation on the other hand. There it does not depend on a market decision whether the hospital would perform the particular services, which are wholly financed by the Health Insurance Fund;
- on the patient's (demand) side, the decision on which hospital to choose is also not made as a market decision, since patients can only visit the hospital in their respective areas. (Except some special cases.) This service is free, because health insurance is not made within a real insurance relationship but are "tax-like".

Concerning activities under point b), even though public funding is involved, both the public funded hospitals and the patients have some degree of discretion when making their decisions, therefore the whole amount of funding received for these activities can be regarded as a net turnover even in the case of hospitals which are not companies. With regard to services under point c) they are assumed to be provided in the framework of market activities, therefore any turnover derived from them has to be taken into account when calculating the relevant turnover.

Only if the aggregate net turnover of the undertakings concerned originating from these two kinds of activities had exceeded the HUF 15 billion threshold, would the GVH have examined the possible distorting effect of the transaction. The GVH found that the HUF 15 billion threshold is by no means exceeded.

Consequently, the concentration was not subject to an approval by the GVH due to the small scale of the market activities.