
Clearance of two laboratory acquisitions: Sonic Healthcare/Lademannbogen and BC Partners/ Futurelab

Sector clinical laboratory services

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The Bundeskartellamt has cleared the acquisition of a substantial part of the assets of Lademannbogen GbR by the international medical diagnostics company Sonic Healthcare Ltd. in main examination proceedings under merger control and the acquisition of Futurelab Holding by the equity company BC Partners in the first phase of merger control.

The first merger affects the market for clinical laboratory services in the greater Hamburg area. Although the Bundeskartellamt has had to decide on several mergers in the area of clinical laboratory services in the past years, this is the first time that a merger in this field was examined in the main examination proceedings phase. In these proceedings the Bundeskartellamt also had to decide on the product and geographic market definition.

It defined the relevant product market for outpatient clinical laboratory services as comprising general as well as special laboratory services provided for general practitioners and other senders such as e.g. hospitals. This market covers the laboratory services provided to third parties by special laboratory practices, medical centres and hospital laboratories. Other laboratory services, e.g. those provided by the treating general practitioners themselves or within a hospital, on the other hand, are not part of the relevant product market. Where independent laboratories provide services which have been outsourced by hospitals, these also do not belong to the relevant product market already described.

In order to define the relevant geographic market the Bundeskartellamt sent out extensive questionnaires to competitors. Having considered three scenarios of a narrower and a somewhat broader geographic market definition and found that none of them raised any competition concerns, it was able to leave the exact geographic market definition open.

The Bundeskartellamt came to the conclusion that in spite of considerable market share additions, the acquisition could not be expected to create or strengthen a dominant position in the Hamburg area. It was apparent that the parties had already lost market shares and more considerable losses are to be expected. In the relevant geographic market several market entries could be observed in the form of "spin-offs", new start-ups of major laboratory chains and the market entry of hospital laboratories into outpatient care, from which a further meltdown in the market shares of the parties to the merger can be expected. Furthermore, strong competitors, other supra-regional chains as well as regionally active laboratories, could also be identified, which can be expected to put considerable competitive pressure on the parties even after the conclusion of the merger.

The similar acquisition of Futurelab by the BC Partners Capital Fund affected the Munich/Augsburg area. The merger was already cleared in the first phase of merger control because it did not raise any competition concerns. The questionnaire responses of the competitors revealed that the parties will continue to be exposed to strong competition in the relevant geographic market even after the merger is put into effect.

Oligopolistic parallel conduct could be ruled out in both cases because the market shares of the different market participants varied greatly from region to region and the traditional locations of the large laboratory chains were in some cases in close proximity to one another, making division of the market into traditional territories unlikely.