

Does different treatment of efficiencies (“efficiency defence”) and inefficiencies (“not within the scope of the merger test”) create a bias in favour of merging parties?

	Amsterdam Medisch Centrum – Vrije Universiteit Medisch Centrum	Central Manchester University Hospitals - University Hospital of South Manchester
<i>Jurisdiction - NCA</i>	The Netherlands - ACM	The United Kingdom - CMA
<i>Registration</i>	20 June 2016	9 February 2017
<i>Phase I decision</i>	14 December 2016	27 February 2017
<i>Phase II decision</i>	5 September 2017	1 August 2017
<i>Length (pages)</i>	59 + 37 = 96	28 + 210 = 238
<i>Description of parties</i>	Academic hospital providing care, research and education.	NHS foundations providing NHS services, teaching and research.
<i>Care markets</i>	Basic care and top care	Each speciality is a separate product market
<i>Relation between parties</i>	PP are the closest competitors for top care	PP are closest alternatives in 18 elective and maternity services and overlap in some specialised services
<i>Client's opinions</i>	All 6 health care insurers and the Dutch Healthcare Authority NZA express <u>concerns</u> . NZa predicts price increases up to 15.1%.	Widespread <u>support</u> of the merger, including from the GMHSCP (body procuring some specialised services), Clinical Commission Groups, NHS England and other providers.
<i>Qualitative concerns</i>	The Healthcare Inspectorate IGZ notes that a merger process by definition poses <u>risks for quality and patient safety</u> . The NZA identifies <u>risks for the quality of care</u> from the sheer size of the organisation and the required management skills. Qualitative concerns are not within the scope of the merger test	The merger may be expected to give rise to unilateral effects and therefore an SLC But: NHS Improvement predicts <u>improvements for patients</u> in many specialties. It was also noted that the PP's post-merger integration programme was well resourced.
<i>Conclusion on SLC</i>	PP are close competitors however there are sufficient competitors for top care in the region. Despite the bundling of unique care of PP, it is not plausible that the market power increases. No SLC	The adverse effects likely to result from the SLC are substantially lower than the benefits for patients. Therefore, it would be disproportionate to prohibit the merger .

(PP = parties)



Rob van der Laan PhD LLM MSc
OmniCLES Competition Law Economic Services

DD +31 6 4530 9810
rob.van.der.laan@omnicles.com

www.omnicles.com

