

*Case No COMP/M.
6582 – DHC /
CORDÓN MURO
FAMILY / GRUPO
HOSPITALARIO
QUIRON*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Article 4 (4)

Date: 12.06.2012



EUROPEAN COMMISSION

Brussels, 12.06.2012
C(2012) 4082

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties and Spanish
Comisión Nacional de la Competencia
(CNC)

Dear Sirs,

**Subject: Case No COMP/ M.6582 – DHC / CORDÓN MURO FAMILY / GRUPO
HOSPITALARIO QUIRON
Commission decision following a reasoned submission pursuant to Article
4(4) of Regulation No 139/2004¹ for referral of the case to Spain.**

Date of filing: 10.05.2012

Legal deadline for response of Member States: 07.06.2012

Legal deadline for the Commission decision under Article 4(4): 19.06.2012

I. INTRODUCTION

1. On 10 May 2012, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The two notifying parties request the operation to be examined in its entirety by the competent authorities of Spain.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 14 May 2012.
4. By letter of 17 May 2012, the *Comisión Nacional de la Competencia* ("CNC") as the competent authority of Spain informed the Commission that Spain agreed with the proposed referral.

II. THE PARTIES

5. **DHC Limited** is the ultimate holding company of the Doughty Hanson & Co Group ("**DHC**"), a private equity fund manager that organizes and administers a number of private equity and equity related investment funds. [...]².
6. **The Cordón Muro Family** is composed of Mr Publio Cordón Munilla and Ms Pilar Muro Navarro, and their four daughters Mss María del Carmen, María Esther, Raquel Soledad and Pilar Lucrecia Cordón Muro.
7. **USP Hospitales, S.L.U. ("USP")**, is a Spanish group that provides acute hospital services to (i) privately insured patients, (ii) patients insured through an agreement with the public health system, and (iii) self-paying patients in Spain.
8. USP operates and manages an integrated network of twelve hospitals located in the provinces of Álava, Alicante, Barcelona, Islas Baleares, Tenerife, La Coruña, Madrid, Málaga, Murcia and Seville (plus one currently under construction in the province of Cádiz), two specialist clinics (ophthalmologic clinics in the provinces of Barcelona and Girona) and twenty-two auxiliary clinics.
9. [...]. In its hospitals and medical centers or clinics, USP offers different types of specialities including obstetrics and gynaecology, paediatrics, cardiology, neurology, general and specialist surgery, internal medicine, diagnostic services and imaging. In addition, USP provides oncology services at the Hospital San Jaime (Alicante), and ophthalmology services at the Eye Institute of Barcelona (IOB).
10. DHC has recently acquired (indirect) control over USP.³
11. **Grupo Hospitalario Quirón ("GHQ")** is a Spanish group that provides acute hospital services to (i) privately insured patients, (ii) patients insured through an agreement with the public health system, and (iii) self-paying patients in Spain.

² [...]

³ Operation cleared in first phase by the Spanish Competition Commission (CNC) – CNC Report C/0429/12, DHC/USP HOSPITALES (7 March 2012).

12. It operates and manages seven general hospitals located in the provinces of Barcelona, Madrid, Málaga, Guipuzcoa, Valencia, Vizcaya and Zaragoza. Furthermore, GHQ also operates and manages a day hospital located in Zaragoza and three assisted reproduction centres in Bilbao (Vizcaya), Pamplona (Navarra) and Torrente (Valencia).
13. [...]. In its hospitals GHQ offers a wide selection of health services including, among others, the same services that are provided by USP (see above).
14. GHQ is controlled and managed by the Cordón Muro Family.

III. THE OPERATION AND CONCENTRATION

15. In their Reasoned Submissions, DHC and the Cordón Muro Family describe the proposed concentration as an acquisition of joint control by DHC and by the Cordón Muro Family of GHQ and USP. The proposed concentration involves the combination of the GHQ group and the USP group under a single holding company⁴ which will be jointly held by DHC and by the Cordón Muro Family on the basis of a respective [...] % and [...] % shareholding. The relationship between DHC and the Cordón Muro Family will be governed by a Shareholders' Agreement, [...].

IV. EU DIMENSION

16. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5 billion (DHC: EUR [...]; GHQ: EUR [...]; The Cordón Muro Family: EUR [...]; USP EUR [...]). The aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million (DHC: EUR [...]; GHQ EUR [...]; the Cordón Muro Family: EUR [...]; USP: EUR [...]). DHC [...] does not achieve more than two thirds of its aggregate EU turnover in Spain. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

V. ASSESSMENT

17. On the basis of the information submitted in the reasoned submission, the proposed transaction will give rise to a horizontally affected market in relation to the activities of the merged entity in the private health care services market in Spain.

A. Relevant product markets

18. The Notifying Parties submit that the relevant product market is the market for the provision of private medical and hospital services. According to the Notifying Parties, demand in this market comes from (a) privately insured patients, (b) public health authorities, which refer patients to the private sector and (c) self-paying private patients. The supply side is made up of general hospitals and specialised health care centres (either charitable or non-charitable) both of which can possibly be vertically integrated in insurance companies.

⁴ The transactions relating to the combination of the GHQ and USP groups are to be considered as a single concentration: they are interrelated because they are governed by the same agreement and one part will not take place without the other.

19. In previous decisions⁵ the Commission assessed the market for private acute general hospitals, or, alternatively, a combined market for private/public acute general hospitals. The Commission has confirmed the differences between the private and public health care services in terms of the source of funding and the overall patient experience. However, given the differences between acute general hospitals among Member States, the Commission has left the precise market definition open.⁶
20. The CNC has previously subdivided the Spanish private health care services market into (i) health care services provided to "free choice" clients (including self-paying patients and patients benefiting from private "free choice" insurance policies) by private hospitals and specialised healthcare centres and (ii) state-subsidized health care services supplied by private and public hospitals and by physicians that are hired by insurance companies to civil servants and other beneficiaries.
21. The Notifying Parties claim that this subdivision considered by the CNC is not relevant for the present transaction. Private hospitals and health care centres provide their services on the same basis to all their patients.
22. The Notifying Parties have further explored the effects of the intended transaction on other possible sub-segments of the market.

B. Relevant geographic market

23. Regarding the geographical scope of the market, the Commission has previously considered the market for private acute general hospitals to be national in relation to private medical insurers, and to be local or regional from the patients' perspective.⁷
24. The Notifying Parties, in line with the position of the Spanish NCA in previous cases, submit that the relevant scope is regional, *i.e.*, at the level of the Spanish *provincias*.

C. Assessment

25. The Notifying Parties have identified a horizontal overlap on the (possible) market for the provision of general private medical and hospital services⁸ in the province of Málaga (including charitable and non-charitable health private care providers). In this market, the proposed concentration would lead to a combined market share of [20-30]% for the year 2011 in terms of revenue.
26. As such, the proposed transaction appears to give rise to a locally affected market within Spain.
27. In view of the foregoing, the principal effects of the proposed operation seem to be restricted to Spain. Furthermore, the market in question presents all the characteristics of a distinct market.

⁵ M.4367 APW/APSA/NORDIC CAPITAL/CAPIO.

⁶ Only in relation to the UK the Commission concluded that there is a separate market for private acute general hospitals. (M. 4367 and M.4788).

⁷ M.4367 APW/NORDIC CAPITAL/APSA/CAPIO.

⁸ This subsegment stems from the subdivision of the Catálogo Nacional de Hospitales 2012 (published, *i.a.*, by the Spanish Ministry of Health) which subdivides the private health care market into 16 segments.

Additional factors

28. Given that the likely competitive effects of the proposed transaction are confined to Spain, the CNC is well placed to examine the case since it has extensive experience in assessing the Spanish health care sector.
29. In particular, the CNC has recently assessed the acquisition of USP by DHC, a case which is closely related to the case at hand.

VI. REFERRAL

30. The Commission Notice on case referral in respect of concentrations⁹ ('the Notice') indicates that, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), two legal requirements must be fulfilled: (i) there must be indications that the concentration may significantly affect competition in a market or markets; (ii) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.
31. In the light of the foregoing, the Commission considers, on the basis of the information provided by the Notifying Party in the Reasoned Submission, that the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within Spain which presents all the characteristics of a distinct market. The Commission notes that the markets affected by the proposed transaction appear to be predominantly local in scope and further notes that, according to the information provided, there is no overlap between the parties' activities outside Spain.
32. The guiding principles on the referral of cases set out in the Notice further provide that regard should be held to (i) the specific characteristics of the case; (ii) the tools and expertise available to the authority and (iii) the likely locus of any impact on competition resulting from the concentration. The application of these principles suggests that the CNC would be best suited to review the proposed transaction given its extensive and recent experience in assessing the Spanish health care sector.

⁹ OJ C 56, 5.3.2005, p. 2.

VII. CONCLUSION

33. For the above reasons, and given that Spain has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Spain. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission

(signed)
Alexander ITALIANER
Director General