Autorité de la Concurrence
de la Nouvelle–Calédonie

Mergers : the New Caledonian Competition Authority prohibits proposed merger between Calédobio and Biolabo

(Decision n° 2023-DCC-06, November 17th, 2023)

The New Caledonian Competition Authority has prohibited the acquisition of Biolabo by Calédobio under the New Caledonian Merger Regulation. After an in-depth investigation, the Authority concluded that the merger would have substantially reduced competition on the concerned markets and thatthe parties did not offer adequate remedies to address these concerns.

In May 2023, Calédobio (Cerballiance group), which holds a dominant position on the medical laboratories market (with seven laboratories in New Caledonia), notified to the New Caledonian Competition Authority its proposed acquisition of Biolabo (two laboratories in New Caledonia).

The Authority's concerns

The competitive analysis was conducted in three stages:

First, the Authority analyzed the hypothetical scenario and its effects on the relevant markets by comparing the probability of closure of the target's laboratories, with another scenario consisting of the likeliness of an alternative offer to acquire the target company.

As the result, the Authority noted that, in the absence of the transaction, the closure of the target's laboratories was unlikely, whereas an alternative offer to acquire the target company was more likely. Indeed, a competitor of the Cerballiance group had expressed interest in entering the New Caledonian medical laboratories market by acquiring several of Calédobio's competitors, including the target Biolabo.

The Authority concluded that this scenario would be less damaging to competition than the proposed transaction, as it would avoid strengthening Calédobio's dominant position and reduce the fragmentation of operators competing with Calédobio.

Secondly, the Authority examined the horizontal effects of the transaction and found that the new entity would have market shares of [55-60%] in volume (number of sites) and [80-85%] in value (sales), with an increment of [10-15%]. In addition, the analysis highlighted a risk of a quasi-monopoly or monopoly following the transaction.

In fact, four risks have been identified:

- Risks of undermining the competitive structure of the markets, insofar as the strengthening of Calédobio's dominant position is likely to constitute a barrier to entry for any new entrant, and competitors, who consider themselves already victims of the notifying party's strong market power, would not be able to counter Calédobio's newly strengthened dominant position.

- Pricing risks which would increase significantly and could be affected by unilateral price effects.

- Risks relating to quality of service and diversity of care.

- Risks concerning public procurement markets: a deterioration in the price of bids submitted as well as a deterioration of the diversity of responses within the framework of calls for public tender.

Thirdly, regarding vertical effects, the Authority noted that the presence of Calédobio at different levels of the market chain for medical laboratorytests services in New Caledonia could lead to a risk of customer foreclosure to the benefit of the Cerballiance group in mainland France.

Furthermore, the analysis of the contribution to economic progress put forward by Calédobio shows that the efficiencies resulting from the transaction are not sufficient to offset its anti-competitive effects.

The company proposed remedies

In order to reduce the anti-competitive risks identified, Calédobio submitted several remedies.

However, the Authority considered that these commitments, which were exclusively behavioral, were insufficient to remedy the pricing and non-pricing risks identified, as well as the risks of harm to the structure of competition, linked to the strengthening of the notifying party's dominant position following the transaction.

Indeed, Calédobio proposal did not include any structural remedies to reduce its market power following the transaction.

In addition, the Authority found that some of the remedies in fact would be simply a result of the transaction (implementation of the quality approach within the target company, 3-year investment program, regulatory declarations, etc.) and were not sufficient to remedy the competition concerns.

Other proposals could not be considered as undertakings, as their implementation was the responsibility of third parties (organization by the government of an awareness-raising campaign for healthcare professionals on patient freedom of choice) or did not allow *ex ante* control of the Calédobio's behavior.

In addition, the remedies submitted by Calédobio in its letter of commitment were difficult to oversee, due to their lack of precision.

This confirmed the Authority’s view that the remedies offered by Calédobio were not sufficient to address the serious competition concerns and would not have resolved the anticompetitive effects.

Furthermore, the Authority considered that a structural injunction would be irrelevant in this case.

The decision

As a result, the Authority has prohibited the proposed transaction.

Companies and products

Calédobio, headquartered in New Caledonia, is a company active in the sector of medical test laboratories, with seven laboratories in New Caledonia. The company is owned by Cerballiance.

Cerballiance, headquartered in France, is an industrial group active in the medical sector all around the world.

Biolabo, headquartered in New Caledonia, is a company active in the sector of medical test laboratories, with two laboratories in Nouméa.

Merger control rule and procedure

The transaction was notified to the Authority on 2nd May 2023.

The Authority has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see articles Lp. 431-2 of the commercial code) and to prevent concentrations that would significantly impede effective competition in the New Caledonian market or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Authority generally has 40 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

In the past five years, the Authority has approved over 40 mergers. Today's prohibition is the first that the Authority has blocked.