

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 15/LM/Feb02

In the large merger between:

Afrox Healthcare Ltd

and

Wilgers Hospital Ltd

Reasons for Decision

Approval

We approved without conditions the merger between Afox Healthcare Ltd (AHL) and Wilgers Hospital Ltd (Wilgers) on 13 March 2002. The reasons for our decision are set out below.

The parties

AHL is a South African-based company listed on the Johannesburg Securities Exchange whose main business is the provision of private healthcare services. It owns and manages a large number of private hospitals that provide a range of general and specialized medical care facilities and services. Most of these hospitals are operated by separate subsidiary companies controlled by AHL. AHL is ultimately controlled by British Oxygen Company PLC, an English company listed on the London Stock Exchange.

AHL is the largest single shareholder in Wilgers, the target company, with an effective 43.19% shareholding. The remaining shares are held by a diverse group of natural persons, companies close corporations and trusts. Wilgers is primarily involved in the provision of private hospital services.

The transaction

AHL is acquiring 54.85% of the shares in Wilgers. Post the merger AHL will own 98.04% of Wilgers' shares.

Rationale for the transaction

The rationale for the transaction is twofold.

According to the parties the East and South-East of Pretoria is the fastest growing economic area in Pretoria both from a residential and business perspective. AHL is located mainly in the North of Pretoria, with small interests in the East of Pretoria (60 beds at Faerie Glen) and in the South of Pretoria (at Little Company of Mary where they have a minority shareholding). AHL wants to establish its presence in the East of Pretoria.

Secondly, in acquiring the shares it will afford the shareholders of the hospital, who are mainly doctors, the opportunity to release the value of their shareholding because of the perverse incentive policy of the Health Professions Council of South Africa requiring that medical practitioners do not directly have any significant shareholding in privately owned hospitals.¹

Evaluation of the merger

The relevant product market

Both AHL and Wilgers compete in the market for the provision of private hospital services.

The parties referred to the possible entry of the State hospitals into the private sector healthcare by setting aside wards to accommodate private fee-paying patients. They argue that these beds should be taken into account in calculating market shares. The Commission reject this approach. We agree with the Commission that community hospitals, public hospitals and specialty hospitals are sufficiently different from private hospitals and cannot be considered to be competitors. We have in a previous decision discussed these differences and there is no need to repeat them here as the factual basis on which that assessment was based remains unchanged.²

The relevant geographic market

The parties argue that it is generally accepted that patients in Gauteng province are usually drawn to hospitals in large cities like Pretoria and Johannesburg within a maximum radius of about 100-200 km. The Commission, on the other hand, contends for a narrow market with a radius of 20-40 km.³

¹ See Afrox Healthcare Ltd/Amalgamated Hospitals Ltd, Tribunal Case No: 53/LM/Sep01

² See note 1

³ Most of the arguments that were raised in the Afrox case were repeated by the Commission and the parties in this case.

However, given our finding below, that even on a narrow definition of the market the merger is unlikely to lessen competition, we do not consider it necessary to decide the geographic market.

Market Shares

AHL, Netcare and Medi-Clinic are the three largest players in the private hospital industry and jointly own 74% of the private hospital beds in South Africa. AHL ranks second, owning 26% of the total private hospital beds.

On the narrow market definition, comprising private hospitals in Pretoria, the pre-merger and post merger market shares of the four largest players are:

	Pre-merger	Post-merger
Netcare	31.4%	31.4%
Curamed	16.3%	16.3%
AHL	15.4%	24.87%
Wilgers	9.1%	9.1%

According to the parties Curamed is currently building a private hospital in the East of Pretoria that will make available another 200 beds. These beds were not included in Curamed's market share of 16.3%.

Impact on competition

By adding Wilger's 341 beds to its total, AHL will post the merger move from being the third largest player to the second largest player in Pretoria. However, this might be of short duration since Curamed, currently number 2 in the market, is also in the process of adding 200 beds to its total.⁴

Competition in this industry is not only influenced by other players in the market. There are the roles that Government plays, in issuing licences to operate private hospitals, and several other role players such as private healthcare funders, medical practitioners and patients all exercise a marked influence over the private hospital industry.⁵

In light of the above we find that it is unlikely that the merger will substantially prevent or lessen competition in the market.

Public Interest issues

The merger does not raise any public interest concerns.

⁴ Curamed has been awarded a licence to build a private hospital in Erasmusrand in the East of Pretoria.

⁵ See Afrox case paragraph 20 – 22.

N. Manoim

19 April 2002
Date

Concurring: D. Lewis, P. Maponya