# EU MERGER CONTROL: HEALTHCARE MARKET ISSUES

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## ABSTRACT

This article analyses the laws and practices regarding the control of mergers in the healthcare sector at the EU level and in several EU member states. It compares the legal frameworks of the EU and its member countries to establish the legal basis for controlling the mergers (concentrations) of the undertakings. Additionally, the article indicates interconnections between the jurisdictions of the European Commission and EU member states national competition regulatory authorities. It also provides an analysis of the European Commission's merger assessment practices in the healthcare sector since the adoption of EU Merger Regulation 139/2004 on 1 May 2004 till the end of 2024 in comparison with the practice of the Lithuanian competition regulatory authority.

**Keywords:** merger control, concentration control, healthcare sector, EU merger regulation

**JEL Code:** O17, L84

## 1 INTRODUCTION

Policymakers' perspectives on competition significantly influence how each country regulates market concentrations. The EU competition policy also plays a key role in this regulation. The EU Merger Regulation 139/2004 aims to strengthen the internal market, enhance competitiveness, protect effective competition, and improve living standards within the EU. Improving living standards includes various social objectives, such as ensuring the well-being of individuals (Simanavičienė *et al.*, 2024, p. 780). This well-being encompasses aspects like high-quality healthcare, among others.

Under the EU health policy, member states are responsible for organising and delivering health services and medical care. EU health policy complements national policies (Commission, 2025a). Consequently, EU merger regulations support these objectives.

Merger analysis in the healthcare sector, excluding pharmaceuticals, is often overlooked in academic and Commission research. This study is the first to investigate the specifics of merger regulation in the healthcare industry.

**https://doi.org/10.11118/978-80-7701-047-4-0016**

The article presents the merger regulatory framework in the healthcare sector at both the EU and national levels.

Methodology: In section 2, the article analyses and compares legal acts regulating mergers on EU and national levels in eight countries: France, Greece, Finland, Germany, the UK, Spain, and Lithuania. All countries, except Lithuania, were selected considering European Commission case practice in the healthcare sector, which primarily covers the assessment of mergers in these states.

Section 3 presents an analysis of the European Commission's merger assessment practices in the healthcare sector, covering the period from May 1, 2004, when EU Merger Regulation 139/2004 was adopted, to December 30, 2024 (Commission, 2025). The focus was on cases classified under economic activity: Q.86 Human Health Activities and related subsections. During this period, 120 merger cases were identified within the healthcare sector that met the selected criteria. Additionally, the analysis includes a comparison of merger cases handled by the Lithuanian Competition Council in the healthcare sector during the same timeframe with the practices of the European Commission. It is important to clarify that this analysis does not include cases related to the health sector that do not involve patient care. Such cases include purchasing medicines, medical supplies, equipment, accommodations, meals for patients, patient transportation, home care services, etc.

# 2 LEGAL FRAMEWORK

Following the EU principles of subsidiarity and proportionality, the jurisdiction for regulating concentrations or mergers (hereinafter both referred to as the merger) in the EU is shared between the EU institutions and EU member states. Mergers with the EU dimension are regulated under EU law, whereas mergers not considered within the EU dimension are regulated under the laws of EU member states.

However, even in cases where the European Commission performs the merger assessment, the Commission communicates closely and continuously with the relevant authorities of the member states to gather comments and information during the merger assessment procedure (Council, 2004, §13).

Considering that, this paper analyses the key elements of merger regulation at the EU and national levels.

## 2.1 EU Dimension

The main document regulating mergers at the EU level is *EU Council Regulation No 139/2004 On the control of concentrations between undertakings* (Merger Regulation).

Art. 3 of the Merger Regulation indicates that the merger arises where there is "a change of control on a lasting basis". Such changes can occur in two ways: (a) through the merger of two or more previously independent undertakings or parts of undertakings or (b) through the acquisition of direct or indirect control over undertaking by an individual controlling at least one undertaking or by another undertaking. The form under which the control can be acquired is defined broadly. This can happen via purchasing securities or assets, contracts, or other means.

The Merger Regulation shows that the merger with the EU dimension exists where the aggregate turnover of the undertakings concerned exceeds given thresholds. According to Art. 1 of the Merger Regulation, the merger is considered to have EU dimensions if:

1. the combined worldwide turnover of all participants of the merger exceeds EUR 5000 million, and at least two of them have turnovers exceeding EUR 250 million in the EU market (Art. 1 (2)) or;

2. the combined worldwide turnover of all merger participants exceeds EUR 2.500 million; at least two have turnovers exceeding EUR 100 million in the EU market. Furthermore, the combined turnover of all undertakings should exceed EUR 100 million, and at least two should have a turnover of more than EUR 25 million in at least three EU member states (Art. 1 (3)).

Art. 4 (1) of the Merger Regulation requires the participants to notify the Commission about the EU dimension merger before its implementation. However, the Commission is not obligated to assess each notified merger. If each participant in the merger achieves more than two-thirds of its aggregate Community-wide turnover within the same member state, the Commission can refer to that member state notified merger following the principles of subsidiarity and proportionality and considering competition interests of the member states (Council, 2004, Art. 1 (2) & 1 (3), §§ 6 & 11).

Participants in the merger can also ask the Commission to transfer the case to the competition regulating authority of a particular member state when the merger may significantly affect competition in that state's market, which has all the characteristics of a distinct market. They can submit the request to the Commission before officially notifying it about the merger (Council, 2004, Art. 4(4)).

Discussing the Commission assessment, it could be noted that the Commission does not authorise a merger that "would significantly impede effective competition in the common market or a substantial part of it", particularly if it leads to the establishment or reinforcement of a dominant position (Council, 2004, Art. 2 (3)). If the Commission finds that the merger does not raise serious doubts about its compatibility with the common market, it declares that the concentration is compatible with the common market and decides not to oppose it following Art. 6 (1)(b) of the Merger Regulation. If the merger requires more scrutinised analysis, its compatibility with the common market can be declared through the procedure defined under Art. 8 of the Merger Regulation.

To speed up the merger authorisation process, the EC applies a simplified procedure for mergers, which, under EC practice, are "generally not likely to raise competition concerns" (Commission, 2023, § 1).

## 2.2 National Dimension

Five analysed countries: France (2000, Art. L430-1), Greece (2011, Art. 5), Finland (2011, Sec. 21), Spain (2007, Art. 7 (1) (2)), and Lithuania (1999, Art. 3), define concentration similarly to the one described in the EU Merger Regulation. Concentration is a transaction where two or more independent undertakings or their parts merge. It also includes situations where an undertaking or one or more individuals who already control at least one undertaking acquire lasting control, directly or indirectly, over all or part of one or more other undertakings.

In all five countries, control refers to the ability to have a decisive influence on the undertaking's activities. Control can be acquired by purchasing securities or assets, contracts, or other means. Decisive influence refers to a situation where a controlling person or undertaking can implement decisions related to economic activities, the decisions of governing bodies, or the composition of personnel. Additionally, Finland (1997, Sec. 5) provides a more precise definition of control. Under the law, the person or undertaking is considered to have control when it has more than half of the votes in the target company based on ownership, membership, articles of association, partnership agreement or comparable rules or other agreement; has the right to appoint or dismiss a majority of the members of the board of directors of the target company or a comparable body or otherwise actually exercises control over the target company.

In Germany, the Competition Act (2013, Sec. 37) outlines two additional forms of concentration not covered by the previously discussed countries. These forms include acquiring 50 or 25 percent of shares or voting rights in another company. Additionally, it encompasses any

**Tab. 1** Thresholds for notifying the merger to national competition regulatory authorities.

| Country | Threshold tests | | | GDP in millions of US$; population; Per capita in thousands of US$; (2023) |
|---|---|---|---|---|
| **UK** | **The turnover test:**<br>→ turnover of acquired undertaking in the UK exceeds £100 m. | **The share of supply test:**<br>→ turnover of one involved undertaking in the UK exceeds £10 m.,<br>→ and merger group will have 25% of the supply or acquire market in UK,<br>→ and increment to the share of supply or acquisition | **The hybrid test:**<br>→ 33% of supply or acquire market in UK by person(s) that carry on an enterprise,<br>→ and UK turnover of the same enterprise exceeds £350 m., and other enterprise has a UK nexus | GDP: 3,380,854.52<br>Population: 68,350,000<br>Per capita: 49.46 |
| **France** | **I turnover test:**<br>→ total worldwide turnover exceeds 150 m. EUR,<br>→ and total turnover in France by at least two participants exceeds 50 m. EUR | **II turnover test, when two of the participants operate retail stores:**<br>→ total worldwide turnover of all participants exceeds 75 m. EUR,<br>→ and total turnover in the retail sector in France by at least two participants exceeds 15 m. EUR | **III turnover test, when at least one has activity in overseas departments:**<br>→ total worldwide turnover exceeds 75 m. EUR, and<br>→ total turnover of the two participants individually in any overseas department exceeds 15 m. EUR or 5 m. EUR in the retail market. | GDP: 3,051,831.61<br>Population: 68,287,487<br>Per capita: 44.69 |
| **Greece** | **The turnover test:**<br>→ total worldwide turnover exceeds 150 m. EUR,<br>→ and total turnover in Greece by at least two participants exceeds 50 m. EUR | | | GDP: 243,498.33<br>Population: 10,405,588<br>Per capita: 23.40 |
| **Finland** | **The turnover test:**<br>→ total worldwide turnover exceeds 350 m. EUR, and total turnover in Finland by at least two participants exceeds 20 m. EUR | | | GDP: 295,532.34<br>Population: 5,583,911<br>Per capita: 52.93 |
| **Spain** | **The turnover test:**<br>→ total turnover of the merger group in Spain exceeds 240 m. EUR, and<br>→ total turnover in Spain by at least two participants exceeds 60 m. EUR | **The share of supply test:**<br>→ Merger group market share reaches 30% of the product or service market in Spain or a geographical market | | GDP: 1,620,090.73<br>Population: 48,347,910<br>Per capita: 33.51 |
| **Germany** | **The hybrid test:**<br>→ total worldwide turnover of the group exceeds 500 m. EUR, and<br>→ total turnover in Germany by one participant exceeds 50 m. EUR, but the turnover of other participants is less than 17.5 m. EUR, and<br>→ value of the acquisition exceeds 400 m. EUR, and<br>→ the target undertaking has substantial operations in Germany | **The turnover test:**<br>→ total worldwide turnover of the group exceeds 500 m. EUR, and<br>→ total turnover in Germany by at least one participant exceeds 50 m. EUR and by another participant exceeds 17.5 m. EUR | | GDP: 4,525,703.90<br>Population: 83,280,000<br>Per capita: 54.34 |
| **Lithuania** | **The turnover test:**<br>→ total turnover of the group in Lithuania exceeds 20 m. EUR, and<br>→ turnover in Lithuania by at least two participants, individually, exceeds 2 m. EUR | | | GDP: 79,789.88<br>Population: 2,871,585<br>Per capita: 27.79 |

combination of companies that allows one or more firms to exert a significant competitive influence on another company, either directly or indirectly.

In the UK (2002, Sec. 23), a merger occurs when two or more undertakings "cease to be distinct". Sec. 26 specifies that "cease to be distinct" happens when undertakings come under common ownership or control, irrespective of the form. This definition indicates that, despite the differing language, the concept of a merger is similar to that in the already--discussed jurisdictions.

In all analysed countries, except the UK, the law mandates that the merger must be authorised by the competition regulatory authority before it can be implemented (France, 2000, Art. L430-3; Grece, 2011, Art. 7 (1); Finland, 2011, Sec. 23; Spain, 2007, Art. 9 (1), Germany, 2013, Sec. 39 (1); Lithuania, 1999, Art. 8(1)), if the merger group exceeds the established thresholds (Table 1). In the UK, the notification can be done voluntarily.

The thresholds are very different in the countries (France, 2000, Art. L430-2; Grece, 2011, Art. 6; Finland, 2011, Sec. 22; Spain, 2007, Art. 8, Germany, 2013, Ch.7 Sec. 35; UK, 2025, p.14; Lithuania, 1999, Art. 8).

All analysed countries apply the turnover test to identify relevant merger transactions; however, the test varies significantly among countries. France has even three of them. Some countries consider worldwide turnover (France, Greece, Finland, and Germany), whereas others account for only national turnovers (the UK, Spain, and Lithuania). The turnover value also differs significantly among countries; for example, the requirement for worldwide turnover in Greece is 150 million EUR, whereas in Finland, it is 350 million EUR. It is even hard to say that it has some correlation with the country's GDP (World Bank, 2023).

In addition to the threshold tests, some countries apply the share of supply tests (UK and Spain) and hybrid tests (UK and Germany). The requirements for the share of supply and hybrid tests are not uniform, either.

When comparing the rules for substantive assessment, some countries define the rule similarly to that provided in the EU Merger Regulation. They apply significant impediments to the effective competition (SIEC) test, in which creating a dominant position in the market is considered one of the forms which would significantly impede effective competition. For example, competition regulatory authorities in Germany (2013, Ch.7, Sec. 36(1)) prohibit a merger that would significantly impede effective competition, particularly if it is expected to create or strengthen a dominant position. In Finland (2011, Sec. 25), the law specifies that the merger would be prohibited if it substantially prevents effective competition in the Finnish market or a substantial part of it, particularly if it creates or strengthens a dominant market position.

France and Greece have slightly different assessment rules than the EU Merger Regulation. However, the essence of the assessment is as defined in the EU Merger Regulation. In France (2000, Art. L430-6), the merger would be prohibited if it is likely to harm competition, in particular, by creating or strengthening a dominant position or by creating or strengthening purchasing power that places suppliers in a situation of economic dependence. In Greece (2011, Art 7), the merger would be prohibited if it significantly impedes competition in the national market or a substantial part in the specified market of goods or services, especially by creating or strengthening a dominant position.

In Lithuania (1999, Art. 3 (12)), the strengthening of a dominant position and the significant impediment to effective competition are separate forms of harm to competition. The Lithuanian Competition Council would not authorise the merger when it creates or strengthens the dominant position of involved undertakings or would significantly impede effective competition in the defined market.

No specific test exists for assessing mergers in Spain (2007, Art. 10 (1)). The law indicates that while assessing the notified merger, the National Competition Commission analyses the possible hindrances to maintaining effective competition.

The UK (2013, Art. 22 (1)) applies the substantial lessening competition (SLC) test, which is different from that of other countries. The merger would be prohibited when it resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services (UK, 2021, § 2.1). Under the SLC test, the merger would not be considered as substantially lessening competition if "any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned" (UK, 2013, Art. 35). The benefit for the customers means the lower prices, higher quality or greater choices of goods or services, or increased innovation because of the merger.

It should be noted that some countries, even when applying SIEC, consider whether the benefits outweigh the harm to the market. In France (2000, Art. L430-6), while assessing the merger, the Autorité de la Concurrence considers whether the operation contributes sufficiently to economic progress to offset the harm to competition. In Germany (2013, Ch. 7, Sec. 36 (1)), the merger would not be prohibited if its participants proved that the merger would also lead to improvements in the conditions of competition and that these improvements would outweigh the impediment to competition. Such considerations make the merger assessment under the SIEC more like under the SLC. It cannot be said that merger benefits are not considered in other countries. Under SIEC, a significant impediment to effective competition is determined while assessing the merger's overall impact (harming and benefitting the market) on the market.

Finally, it should be highlighted that in some countries, even when the merger should be considered to harm the competition in the market, noneconomic criteria are also considered when deciding whether to allow or prohibit the merger. In Spain (2007, Art.10 (4), even if the National Competition Commission considers prohibiting the merger, the Council of Ministers can authorise it when national defence and security, protection of public safety or health, free movement of goods and services, environmental protection, and promotion of technological research and development require it. In the UK (2002, Sec. 42 & 58), the Secretary of State may consider public interest factors, such as media plurality and other media issues, the stability of the UK financial system, and the need to maintain the capability to combat and mitigate the effects of public health emergencies in the UK. In Germany (2013, Sec. 42 (1) & 187), the Federal Minister for Economic Affairs and Energy can authorise the merger, which an overriding public interest can justify. Additional considerations for mergers in the healthcare sector are foreseen to be implemented by 31 December 2027.

# 3 THE HEALTHCARE SECTOR IN EC DECISIONS

## 3.1 General overview

In all 120 merger cases in the healthcare sector from 1 May 2004 to 30 December 2024, found in the Commission case database (Commission, 2025 (b)), the mergers were in the form of acquisition of control under Art. 3(1)(b) of the Merger Regulation.

Under a simplified procedure, the Commission authorised eighty (80) merger cases pursuant to Art. 6 (1) (b) of the Merger Regulation, representing 67% of the total number of notified cases. The Commission determined that these mergers do not raise serious doubts about their compatibility with the common market. Table 2 specifies the conditions and the number of cases authorised under the simplified procedure. Some cases were processed under the simplified procedure based on multiple conditions.

The Commission forwarded 19 cases to the member states under Art. 4(4) of the Merger Regulation for the assessment at the request of the merger participants because the merger was considered to significantly impact competition within a market with distinct characteristics; therefore, it should be examined by that member state, either in whole or in part.

**Tab. 2** Mergers under the simplified procedure for the 1 May 2004 – 30 December 2024 period

| Conditions for processing the assessment of the merger under simplified procedure | Number of cases |
|---|---|
| **a.** If undertakings acquire control of the joint venture which does not have income from the EU market and do not intend to transfer any assets within the EEA | 1 |
| **b.** If undertakings acquire control of the joint venture, which has negligible activities in the EEA (the current and expected annual turnover is 100 m. EUR, and the value of the asset is less than 100 m. EUR) | 21 |
| **c.** If merging undertakings whose business activities were not in the same product and geographic market before the merger. | 40 |
| **d.** If the merger does not create market power, it could harm competition. Criteria:<br>**i.** i. The horizontal overlap in the same product and geographic market 1) is lower than 20 %, or 2) it is lower than 50 %, and the increment (delta) of the Herfindahl-Hirschman Index (HHI) is below 150.<br>**ii.** ii. The vertical combined market share 1) is less than 30 % in upstream and downstream markets or 2) is less than 50 % in upstream and downstream markets, and the increment (delta) of the HHI is below 150). | 24 |
| **e.** If a merger participant obtains sole control of an undertaking over which it already has joint control. | 4 |

In 21 cases, the Commission assessed the notified mergers itself. The analysis shows that in all healthcare sector mergers, the Commission did not need a thorough analysis and authorised the mergers under Art. 6 (1) (b) of the Merger Regulation. Only in one case did the Commission authorise the merger with conditions and obligations (M.4367, 2007).

## 3.2 Relevant market in the healthcare sector

While apprising whether the merger could significantly impede the competition, the member states consider similar criteria to those which the Commission considers: the structure of all the relevant markets, the actual or potential competition from undertakings located inside or outside the particular market, any legal or other barriers to market entry, merger participants position in the market and their economic and financial power, the alternatives available in the market to suppliers and users, they access to sources of supply or markets for the goods, the supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers and other. This indicates that the central element in the assessment is defining the relevant market.

By identifying the market, the Commission establishes the boundaries of competition between businesses and identifies the competitive constraints undertakings face when they offer specific products in a particular area (Commission, 2024, § 6). The relevant market includes product and geographic dimensions (Commission, 2024, § 12).

In 21 analysed merger cases in the healthcare sector, the Commission discussed markets in France (3 cases), Greece (1 case), Finland (1 case), Spain (2 cases), Germany (1 case), the UK (3 cases) and in multiple countries (10 cases). Notably, in all cases, the opinion and practice of national competition regulatory authorities had a remarkable influence on the Commission's attitude toward delineating the relevant market.

### 3.2.1 Product Market

The analysis of the cases revealed that the Commission is reluctant to identify precisely the relevant product market in the healthcare sector. Often, the product market delineation was ultimately left open (M.7813, 2016, § 43; M.8146, 2016, § 15; M.10301, 2022, §32) since the transaction does not "raise serious doubts as to its compatibility with the internal market or

the functioning of the EEA agreement even under the narrowest plausible product market definition" (M.7309, 2014, § 25; M.10247, 2021, §161; M.10255, 2021, §25), or transaction "does not raise serious doubts as to its compatibility with the internal market irrespective of the alternative market definition considered" (M.7833, 2025, § 20; M.5805, 2010, § 11), or "competition concerns are unlikely to arise under any plausible market definition" (M.7323, 2014, § 41).

Nonetheless, the Commission's merger case practices reveal trends in its approach to defining the relevant market within the healthcare sector.

The Commission first examined whether a distinction should be made between (i) private healthcare institutions (hospitals) and (ii) public healthcare institutions (publicly funded hospitals) (M.5548, 2009, § 9). In addressing this issue, the Commission indicated that the answer depends on each member state's structure, regulation, and funding of healthcare systems (M.10301, 2022, §32; M.10247, 2021, §158). The precise delineation depends largely on the specifics of each case and the national market involved (M.9044, 2018, §§ 21 & 145). This perspective considers the variations in the organisation of national healthcare systems and the regulatory environments of individual states (M.4367, 2007, § 11).

The Commission case practice shows that the distinction between private hospital services and publicly funded hospitals can be drawn up in the UK, Greece, and Finland.

The Commission determined that in the UK, there are valid reasons to view private acute general hospitals as a separate market from public acute general hospitals provided by the National Health Service (NHS) (M.4788, 2007, § 9). Private and public healthcare services have several differences. Private healthcare is typically funded by the patient, often through insurance with a national private medical insurer, whereas public healthcare is primarily funded through taxation. This means that public healthcare may require a limited patient contribution or is offered for free (M.4367, 2007, §§ 11-13). Private acute hospitals also distinguish themselves from public acute hospitals regarding patient experience, waiting times, clinical outcomes, and overall comfort (M.4229, 2006, § 13).

In Greece, there are distinct markets for public and private hospital services, which can be attributed to two main factors: i) the differing characteristics of each sector, such as the level of investment in medical equipment, the ability of patients to choose their treating physicians, the speed of service delivery, and the costs involved, and ii) the variations in treatment covered by public health insurance (M.10301, 2022, § 31).

In Finland, the public and private healthcare markets were separated because public and private healthcare institutions (hospitals) do not necessarily provide the same kind of services (M.7058, 2013, § 24). In addition, the Commission found that the Finnish healthcare sector can be segmented into even smaller markets. The Finnish market can be divided considering three basic models of organising healthcare services: (i) fully private, (ii) fully public, (iii) a combined model in which the private healthcare supplier deals with the provision of staff only and uses third-party facilities (owned by the public (municipality) or sometimes by private companies) (M.7058, 2013, § 25).

The Commission found that market investigation results did not support any private/public separation in the German (M.8146, 2016, § 11) and French (M.7833, 2015, § 17; M.5805, 2010, § 10; M.6343, 2011, § 24) healthcare markets. Public and private healthcare institutions in both countries belong to one healthcare market.

Secondly, the Commission conducted an examination of the market for hospital services by differentiating between two types of procedures: inpatient (acute) procedures in hospitals and outpatient (ambulatory) procedures (M.10301, 2022, § 32; M.10255, 2021, § 25; M.9044, 2018, § 21; M.8146, 2016, § 13). For instance, in Germany, the Commission determined that the market for acute hospital services does not include medical care units, where doctors exclusively provide ambulatory healthcare and rehabilitation services (M.8146, 2016, § 9). However, this is not the case in all EU member states. The Commission's investigation suggests that it is unnecessary to segment further the market for general private hospital services in Greece, dividing it between inpatient and outpatient services (M.10301, 2022, § 37). Additionally,

the Commission maintains that hospital and home healthcare services should be classified as separate product markets (M.6504, 2012, §16).

Thirdly, the Commission also discussed whether separate markets should be defined for services in each medical specialisation within the private hospital sector (M.10301, 2022, § 32; M.9044, 2018, § 12; M.8146, 2016, § 12; M.7309, 2014, § 24).

In its practice, the Commission recognised distinct markets separate from general private hospital services for several specialisations: maternity hospital services and diagnostic centre services in Greece (M.10301, 2022, § 36), acute inpatient hospital services for mental illnesses in Germany (M.8146, 2016, § 13) and the UK (M.4788, 2007, § 10), as well as mental rehabilitation services in Germany (M.8146, 2016, § 13), and acute inpatient neurology services in Germany (M.8146, 2016, §§ 14-15). It also acknowledged markets for more "rare" specialisations, such as transplantation, neurosurgery, and major burns in France (M.5805, 2010, § 11), dialysis services in 13 EU member states (M.6091, 2011, §§ 42 & 43), diagnostic tests performed in vitro in the UK (M.4788, 2007, § 12), and biological examinations that contribute to the diagnosis, treatment, or prevention of human diseases in France (M.5805, 2010, § 16). However, the Commission did not separate routine and "rare" analyses (M.5805, 2010, §§ 17-20; M.7833, 2015, § 18).

The Commission has not concluded on the need to further segment the market according to other "group of specialities", namely medicine, surgery, obstetrics, gynaecology (M.8146, 2016, § 12; M.7323, 2014, § 40; M.7309, 2014, § 24; M.5805, 2010, § 11), and ophthalmological treatments and services (M.10255, 2021, § 41) etc.

The analysis of the decisions of the Lithuanian Competition Council shows that the definition of the product market in the health sector differs from the practice of the Commission and other EU countries and is very narrowly segmented. In Lithuania, outpatient and hospital services are divided into different product markets. Also, private and public health services are divided into different markets. In addition, private outpatient services at the primary, secondary, and tertiary levels constitute separate product markets. (Primary outpatient services are primary health care. Secondary outpatient services are services provided by specialists (cardiologists, neurologists, endocrinologists). Tertiary outpatient services are services provided by consultant doctors, who consult patients and provide advice and treatment methods to doctors of primary or secondary health care institutions.) Moreover, the product market is divided according to private outpatient service specialists (cardiologist, urologist, rheumatologist, etc.) (Lithuania, 2021, §§ 18-76)

### 3.2.2 Geographical Market

The analysis of merger cases in the healthcare sector conducted by the Commission revealed that, across all areas of health services, it typically defines the geographical market as national or even narrower. This finding is supported by several cases, including M.9044 (2018, § 22), M.10247 (2021, § 162), M.7323 (2014, § 42), M.4229 (2006, § 38), M.4788 (2007, § 14), and M.7058 (2013, § 28). For example, in Spain, the Commission stated that the relevant geographic market for private hospitals, when broadly defined, would be national in scope; when narrowly defined, it would be provincial (M.5548, 2009, § 10).

When considering the narrower than the national market, the Commission typically refrains from concluding on the exact geographic scope of this market (M.5548, 2009, §11; M.10255, 2021, § 46; M.4788, 2007, §§ 14 & 16; M.9044, 2018, § 22; M.6091, 2011, § 49; M. 4229, 2006, § 38 & 39; M.5548, 2009, § 11). It stated that considering the case at hand, "competition concerns are unlikely to arise under any plausible market definition" (M.7323, 2014, § 19; M.7058, 2013, § 30; M.7309, 2014, § 28, M.8146, 2016, § 27), the transaction does not raise any serious doubts whatever the market definition adopted (M.5805, 2010, § 15), "whatever definition is adopted, the transaction does not raise serious doubts as to its compatibility with the internal market" (M.7833, 2015, § 23), or "serious doubts can be excluded whether the market is defined as regional/local or national" (M.6091, 2011, §52). For example, the Commission has recognised

that the geographic market for acute general hospitals—both public and private—might be considered national from insurers' perspective. At the same time, it may appear local from the patient's viewpoint. However, the Commission has left open the precise scope of the geographic market (M.6343, 2011, § 26; M.4788, 2007, § 14).

The precise geographic market also would not be defined if "under either delineation of the geographic market concerned competition concerns would be likely to be identified" (M.4367, 2007, § 36).

If the Commission considers the geographic market narrower than the national geographical market, it inquires to the national competition regulatory authorities about the distance patients are typically willing to travel to undergo medical treatment (M.10255, 2021, § 50). The geographic dimension would be limited to a catchment area around the merger participants' clinics, hospitals, or other healthcare facilities (M.10255, 2021, § 51).

The Commission merger case practice revealed that for diagnostic and hospital care services, the Commission considered a local scope for the geographical market extending over a radius of a 30-minute car drive around the institution in the UK (M.4367, 2007, § 34) and France (M.7221, 2014, § 26). In Germany, however, the geographical market for general acute hospital services and the acute treatment of mental illnesses is defined by catchment areas of 50–200 km. For acute neurology services, a narrower catchment area of 30 km was determined (M.8146, 2016, § 23). The smallest catchment area for mental rehabilitation services in Germany was identified as 100 km (M.8146, 2016, § 27). In Sweden and Norway, patients seeking refractive ophthalmological treatment and surgery in urban areas typically consider clinics within the city or a catchment area of up to 100 km. However, patients in remote and less populated regions are generally willing to travel longer distances, often exceeding 100 km and potentially up to 200 or even 300 km, to access their preferred clinic. Consequently, the Commission opted to analyse a potentially narrower relevant market limited to the city level and a catchment area of 100 km (M.10255, 2021, § 51 & 55).

The geographic area seems to differ in the case of specific specialised treatment or treatment for which long waiting lists exist (M.4367, 2007, § 34). In particular, the Commission found that in France, the geographic market in the medical biology analysis sector is rather local for routine analyses and rather national for "rare" analyses (M.5805, 2010, § 21).

The analysis of the Lithuanian Competition Council's decisions shows that the geographical market in the health sector is also very narrowly segmented in Lithuania. The market is defined as encompassing the patient's residential area, corresponding to the administrative boundaries of a city or district (Lithuania, 2021, §§ 77-92).

## 4 DISCUSSION AND CONCLUSIONS

The legal framework analysis governing mergers at both the EU and national levels reveals significant shortages. While the EU Merger Regulation allows a consistent approach to merger assessments at the EU level, the criteria used in national laws vary considerably among member states. This variation includes differences in merger assessment tests, threshold criteria, and even differing definitions of what constitutes a concentration (merger).

The majority of analysed states define "concentration" in a manner consistent with the description found in the EU Merger Regulation. Concentration refers to the merger of undertakings or the acquisition of control of one undertaking by another, or by an individual who already controls at least one undertaking. However, some countries have different definitions. As discussed in this paper, Germany includes two additional forms of concentration: acquiring 50% or 25% of the shares or voting rights in another company, or in any combination of companies, which allows one company to exert significant competitive influence over another. In the UK, a merger occurs when two or more undertakings "cease to be distinct".

The EU, as well as member states, have criteria to determine concentrations that require attention from the EU or national regulatory authorities. Like the EU, all member states utilise a threshold test; however, significant differences exist in these thresholds across member states. In addition to the threshold tests, some countries apply share-of-supply tests and hybrid tests. However, these tests also differ between the countries.

Finally, the EU Merger Regulation employs the Significant Impediment of Effective Competition (SIEC) test for evaluating mergers that have an EU dimension. However, the assessment tests at the national level vary among member states. Some countries use the same SIEC test as outlined in the EU Merger Regulation or a similar test. In contrast, others utilise the dominance test or the Substantial Lessening of Competition (SLC) test.

Moreover, non-economic objectives may influence national regulations, such as national security, public safety, health, and environmental protection. These inconsistencies hinder uniformity and predictability in merger regulation. As a result, similar transactions may be authorised in one member state while prohibited in another, leaving businesses uncertain in this regulatory landscape.

These inconsistencies not only affect the predictability of the merger control across the EU but also may hinder the development of the EU internal market. Therefore, it would be beneficial to consider options for achieving more uniform regulation among EU member states.

The analysis of merger cases indicates that, in the healthcare sector, merger transactions at the EU level typically do not raise concerns for the Commission. The Commission has authorised all notified mergers, over half of which were processed through a simplified procedure. Only in one instance did the Commission impose conditions and obligations on a particular merger transaction.

When discussing the Commission's approach to identifying product and geographical markets, it is important to note that the Commission does not put much effort into determining relevant markets in the healthcare sector. It mainly collects opinions from the competition regulatory authorities of member states and other interested parties regarding the criteria for defining relevant markets and then, after making a "first glance" assessment, leaves questions open. This lack of clear guidance on market definition in the healthcare sector hinders the development of uniform practices and more coherent health systems across EU member states. Currently, some states adopt a very narrow market segmentation at the local level based on specialisation, while others take a broader view. The Commission's more precise delineation of the relevant market could provide a roadmap for national competition regulatory authorities, fostering a more cohesive development of competition policy in EU member states.

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