

MICHEL BARNIER

Membre de la Commission européenne

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Dear Minister,

Earlier this year we met and discussed your plans for reforms in the area of health services in the Netherlands. More specifically, you expressed a desire for an informal view of the Commission services on your intentions with regard to the limitation of vertical integration in certain circumstances between health insurers and healthcare providers.

My services have analysed your plans in detail, in collaboration with the Legal Service of the Commission and other competent services. The case is complex with a number of legal implications, hence the time which it has taken to complete the assessment. I must also strongly emphasise that any position which I express here is informal and preliminary, based solely on the information provided by the Dutch authorities and without prejudice to whatever position the Commission or the Court of Justice might take on this matter in the future.

With these important provisos, our preliminary assessment, based on the information available, is that the planned prohibition on vertical integration would constitute a restriction to the free movement of capital within the Union. However, it could, in the light of recent Court jurisprudence¹, fall within one of the cases where such restrictions could be justified, given the broad discretion confirmed by the Court for Member States to organise their healthcare systems.

I must also emphasise that any cases of vertical integration in the healthcare sector in the Netherlands which have a EU dimension in the meaning of the EU merger regulation² would fall under EU jurisdiction, and any intervention by Member States can only be made in accordance with the criteria and procedures laid down in article 21 of that Regulation.


Ms Edith SCHIPPERS
Minister and State Secretary
Ministry of Health Welfare and Sport
PO Box 20350
2500 EJ - The Hague
THE NETHERLANDS

¹ In recent cases on ownership of pharmacies and medical analyses laboratories (C-171/07 - C-172/07, C-531/06, C-89/09), the Court emphasised the importance of preserving the independence of health professionals against the possible pressure from various sources in view of making profit.

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), Official Journal L 24, 29.01.2004

I understand that current plans are not to issue a blanket ban on any horizontal integration between healthcare providers or healthcare insurers, leaving the Dutch competition authority to evaluate such mergers on a case by case basis. I also understand that any prohibition on vertical integration will have certain exceptions, and will be regularly reviewed to see whether the market situation justifies a removal of the across-the-board ban and a return to case by case evaluation by the competition authority. These elements are very important in my view.

I hope that this is helpful to you. Both my services and I are available for any further clarifications which may be required and we look forward to remaining in contact on this important matter.

Yours sincerely, 

Michel BARNIER