

## **Unternehmenszusammenschlüsse auf Krankenhausmärkten aus sozialrechtlicher und kartellrechtlicher Sicht**

### **Mergers on Hospital Markets from the Perspective of Social and Antitrust Law**

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Merger control on hospital markets, prohibition by the Federal Cartel Office, market definition on hospital markets.

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#### **Summary**

For the first time in 2005 the Federal Cartel Office prohibited two concentrations of municipal and private hospitals because they were expected to create or strengthen a dominant position in the market. The High Court of Düsseldorf (OLG) confirmed this view. An appeal is pending with the Supreme Federal Court of Justice (BGH) and will likely be ruled on in early summer 2008. Parallel to this appeal process a petition for a ministerial authorisation was forwarded which was supported by the Monopolies Commission. The petition was refused by the Minister for economic affairs and technology (Michael Glos).

This article shows that the application of merger control regulations to hospital fusions is counterproductive. The intervention of the Federal Cartel Office means that not more but less competition will be generated. Moreover, the danger arises that the interdiction of hospital fusions will prevent the hospitals from fulfilling their services of general interest to a sufficient extent (Art. 86 II Treaty on European Union).

Furthermore, the article shows that the peremptory regulation in § 69 Social Security Code V (SGB V) allows no opportunity worth mentioning for the application of the regulations on merger control in the act against Restraints on Competition (GWB). If however these rules should be applied to hospital fusions the product market and the geographical market will have to be defined differently: Geographically in non urban regions the market catchment area extends between 250 and 300 km, in urban areas it dwindles to approximately 150 km.