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# Netherlands clarifies consumer association's standing in mergers

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Bergen op Zoom, site of one of the merged regional hospitals (Credit: Sjaak Kempe/ Flickr)

A Dutch court has thrown out an appeal by a patients' federation against a hospital merger decision, while for the first time confirming that consumer federations may have standing to appeal such decisions if they have sufficient interest in a case.

Rotterdam's district court said yesterday that the Dutch Patients and Consumers Federation lacked standing and thus rejected its appeal against the merger of two south Netherlands hospitals that the Netherland's Authority of Consumers and Markets cleared in 2013.

It said the federation had no interest in the proceedings as it was neither a consumer organisation nor an interested party. However, it said that under Dutch law, a consumer organisation can be an interested party and a patient association can be a consumer organisation.

The federation appealed against the authority's clearance of the regional merger in 2014, as it would leave too few hospitals from which local and regional patients could choose and give control to one health-care insurer – Bravis, which would own the combined hospital.

In its decision, the court said that the opposition of the federation, a collection of patient organisations, conflicted with the interests of one of its members. A federation-affiliated patient group based in the same region as the merging hospitals had supported the merger, which persuaded the court to find the federation lacked legal standing.

Weyer VerLoren van Themaat at Houthoff Buruma in Amsterdam says that the articles of association of the federation, as a collection of patients' right organisations, only supported the interests of its member organisation, not the rights of patients themselves. Without that direct support of patient interests, the court dismissed the federation's appeal, finding it was not a consumer organisation.

But Diederik Schrijvershof at Maverick in Amsterdam says the ruling did not exclude the federation having standing in itself, as a consumer organisation could qualify as an interested party. Yet the fact that a local federation member had agreed to the merger gave the court a reason to dismiss the appeal.

The authority cited opposition only from the federation, which Schrijvershof attributes to the regional buying power of the merged hospital's health insurer. The authority promised to consider the federation's comments at Phase II, but the federation said that it failed to do so.

VerLoren van Themaat says the decision is "unfortunate as many observers in the hospital merger world were waiting for some further guidance from the court as to when such hospital mergers can or must be approved."

Guidance would be welcomed, given the public debate and criticism surrounding the authority's hospital merger approvals, he says.

The authority has in recent years approved a number of hospital

“supermergers”, leaving fewer independent hospitals, says Schrijvershof. The authority approved three previous hospitals mergers at Phase II on the same day in December 2012.

The authority cleared this merger in September 2013.

Berend Reuder at Houthoff Buruma in Amsterdam says: "The case emphasises the importance for the authority of seeking patient associations’ views when reviewing hospital mergers, to strengthen its decisions."

The federation has six weeks to appeal against the ruling. It did not reply to request for comment by press time.

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