

## Competition in Hemodialysis Care Provision in Portugal

*Preliminary Version for Public Consultation*

### *Executive Summary*

**In March 2020, more than 12,000 Portuguese were undergoing hemodialysis, which is the predominant method of dialysis therapy for treating chronic kidney disease. Hemodialysis is mostly provided by private operators – about 93% of patients.** The prevalence of chronic kidney disease in Portugal is high compared to other countries and the number of patients undergoing treatment has increased, on average, about 3.5% per year, between 1998 and 2019.

**The Portuguese Competition Authority (Autoridade da Concorrência - AdC) undertook an analysis of the conditions for entry and expansion of new facilities and the levels of concentration in the sector,** in light of the prevalence of hemodialysis and the concerns raised by the National Association of Dialysis Facilities<sup>1</sup>. The concerns were about barriers to opening new facilities and about the high levels of concentration. The AdC gathered the views of several stakeholders.

**The high levels of concentration and the existence of unnecessary barriers to entry can have negative impact on the well-being of chronic kidney patients and for the State, as a buyer of dialysis services.** Indeed, the price paid by the State to the private facilities is regulated and the treatment is subject to quality control. Still, there are specific competition dimensions in the provision of in-centre hemodialysis care, namely the location of the facilities and the quality of the services provided. The vulnerabilities resulting from high concentration and limited competition can affect these competition dimensions and in turn, negatively affect patients.

**The AdC found high concentration levels in the hemodialysis sector.** Several geographical areas (NUTS III) are serviced by a single private operator (excluding the option of the public sector). In March 2020, the four largest operators held around 81% of hemodialysis facilities in mainland Portugal and were responsible for the treatment of about 88% of patients. Concentration is high in all geographical areas in the country.

**Between 1990 and 2020, the share of facilities of the remaining operators (excluding NephroCare, Diaverum, DaVita and B. Braun) reduced by circa 60 pp.** (from around 78% of the facilities in the start of 1990 to about 19% in 2020). We note a high stability of market shares of these private operators, following their entry and establishment in the market.

**Only 24% of the facilities of the largest private operators were obtained by opening new facilities.** *Ex novo* entry increases the proximity of chronic kidney disease patients to facilities.

**We also identified barriers to entry as a result of the procedures in place to open new facilities. This, in turn, can compromise the coverage of the network of hemodialysis facilities, with a negative impact on patients' well-being by affecting their choice and proximity to facilities.** There is legal uncertainty in the regime of private contracting of NHS services (i.e. convention regime). The multiplicity of entities and the multiplication of procedures may lead to delays in the convention regime and in the licensing procedure. Indeed, the existing procedures to open a new facility can take several years. This is intensified by the required investments prior to the authorities' decision to license and to grant the convention, that can reach 2.5 million euros. These barriers create disincentives to invest by new operators, especially smaller ones.

**Promoting patient choice and reducing barriers to entry will have a positive impact on the well-being of chronic kidney patients.** Our aim is to promote effective and well-informed patient choice, as opposed to a model of allocation of patients to facilities. This can intensify competition for quality and innovation in the sector. The removal of unnecessary barriers to the

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<sup>1</sup> This association represents mostly small entrepreneurs active in the area of in-centre hemodialysis in Portugal.

opening new facilities can result in greater proximity between patients and facilities, to the benefit of patients' quality of life.

**The AdC proposes a number of recommendations to the Government primarily to promote the well-being of chronic kidney patients.**

### *AdC Recommendations for the hemodialysis sector*

#### ***Removal of unnecessary barriers to the opening new facilities of hemodialysis***

**Recommendation 1:** Ensure a timely publication of the new standard clause concerning hemodialysis, in accordance with the 2013 convention regime (Decree-Law no. 139/2013), in order to reduce the legal uncertainty concerning the convention regime.

**Recommendation 2:** Within the scope of the procedures for private operators adhering to a standard clause, (a) introduce the possibility of granting a convention by tacit approval; and (b) introduce a deadline to respond to convention requests.

**Recommendation 3:** Remove unnecessary obstacles that prevent entry of operators and/or the opening of facilities because of the existing capacity, the concentration in the market, or the profitability and/or use of existing resources, namely:

- a) Within the scope of the Health Regulatory Authority (ERS)'s prior opinion, take into account the possible positive effects of the expansion of supply resulting from the opening of new facilities, as to properly balance the effects of increased concentration resulting from the opening of new facilities.
- b) In the new standard clause, do not include a clause similar to paragraph 5 of Clause 5 of Order 7001/2002.

**Recommendation 4:** Create a unique portal and/or form that, from the point of view of the operators, link both the licensing and the convention procedures required in the National Health System (NHS) sector, in charge of the ERS, the Central Administration of the Health System (ACSS) and the Regional Health Administrations (ARS).

**Recommendation 5:** Ensure that the quality requirements in the best practice guidelines for hemodialysis, under discussion, are technologically neutral.

#### ***Promotion of effective and informed patient choice regarding the hemodialysis facility***

**Recommendation 6:** In the non-emergency patient transport regulations:

- a) Introduce a duty for the ARS to inform the patients when several facilities meet the NHS transportation management criteria.
- b) Undertake a cost-benefit analysis on the possibility of introducing a reimbursement option for patients who ensure their own transport, limited to a certain reference value.

**Recommendation 7:** Create a system to compare facilities on quality and outcome indicators of hemodialysis treatments, based on the monitoring results of the National Dialysis Monitoring Commission (CNAD).

**The AdC launches a public consultation to the *Market Study*, and welcomes all interested parties to submit comments, within 30 working days to the following e-mail address [consultapublica@concorrenca.pt](mailto:consultapublica@concorrenca.pt).**