

THE COMMISSION ON PROTECTION OF COMPETITION LAUNCHES A SECTOR INQUIRY IN THE PHARMACEUTICAL SECTOR

Background

On Friday, May 29th 2015, the Bulgarian Commission on Protection of Competition ("CPC", "Commission") announced that it is about to review in details the pharmaceutical sector in Bulgaria by conducting a sector inquiry. Sector inquiries are a non-company investigative tool used by the competition authorities in areas where the market face obstacles.

The main goal of the sector inquiry is to determine how the vertically integrated pharmaceutical markets have been functioning in recent years, to outline the difficulties which undertakings face operating on a market, and to detect any anticompetitive practices used by market players. We expect the CPC to focus its investigation on vertical relations between medicine manufacturers and their distributors, as well as on relations between distributors and pharmacies.

The last Commission's inquiry into the pharmaceutical sector (production, distribution and retail of medicines) took place ten years ago (in 2005-2006) where the analysed period covered the years of 2002-2005. As a result of this inquiry, the CPC opened three investigative proceedings against distributors and pharmacies.

During the present sector inquiry, the Commission will collect information from entities acting on all levels of the medicine's chain – manufactures, distributors, pharmacies; as well as public authorities such as the National Health Insurance Fund, Ministry of Health, etc.

The Commission will send mandatory questionnaires to major market players. Significant financial penalties for non-compliance may occur, with - 1 % of the company's total turnover in the preceding business year, for supply of inaccurate or misleading information, and even for delays in the provision of complete and accurate information. Replies to such questionnaires need to be prepared very carefully since based on the provided information; the CPC may open individual investigation cases against one or more undertakings. Therefore, the information and evidence provided to the CPC should be considered in the light of possible further proceedings for antitrust infringement, unfair competition and non-compliance with merger control requirements.

In the course of the inquiry, the CPC is not entitled to inspect (dawn raid) the premises of market participants in order to obtain relevant evidence for the investigation. However,

collected proof during the course of the inquiry may be used in other investigation cases at the Commission.

Based on the results of the inquiry, the CPC can (as in previous analyses) open investigation against individual companies for infringement of competition law (abuse of dominant position, restrictive business practices, unfair competition). Therefore, in order to be prepared for the Commission's requests, companies from the investigated sector should check whether their commercial relations (contracts, practices, communications, etc.) are compliant with competition regulations (i.e. internal competition compliance audit).

Further details for the inquiry will be provided in due course.

About Wolf Theiss

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