

THE COMMISSION ON PROTECTION OF COMPETITION LAUNCHED A SECTOR INQUIRY IN THE PHARMACEUTICAL SECTOR (FOLLOW-UP)

As we announced earlier in May this year, the Bulgarian Commission on Protection of Competition ("CPC", "Commission") launched a sector inquiry in the pharmaceutical sector.

Ultimately, the Commission published its decision on opening a sector inquiry. It is now evident that the Commission's investigation will be focused on the retail market of pharmaceuticals paid in full or in part by the National Health Insurance Fund ("NHIF"). The inquiry was provoked by the request of the Bulgarian Pharmaceutical Union in April 2015.

Based on its findings published in a previous pharma sector inquiry (2006), and based on current information provided by the Bulgarian Pharmaceutical Union that the process of horizontal integration in the pharmaceutical retail market has developed significantly, the CPC took the decision to review the retail market of pharmaceuticals. In particular, one of the regulator's concerns is that a group of undertakings has been formed to conduct business under one brand and share a common commercial behaviour - "Mareshki" pharmacy chain ("Аптеки Марешки"). According to CPC, such activities might escalate to a coordinated anticompetitive behaviour. Therefore, CPC decided to carry out an in-depth investigation of the structure and organisation of the relevant market, trends in the market and potential anticompetitive practices undertaken by certain market players.

The main goals of the sector inquiry, as defined by the Commission are the following:

- providing a clear definition of the market of pharmaceutical products paid in full or in part by the NHIF;
- specifying the services concerned within the market of pharmaceutical products paid in full or in part by the NHIF, as well as their price formation, compared to the number of customers;
- tracking the amendments to the market structure;
- identifying the main market participants and analysing the changes in their market behaviour;
- following the changes to demand and supply of the medicines paid by public funds which come as a result of state regulation, legislation and the general economic

environment in the country;

- ascertaining the reasons behind potential competition issues.

Based on CPC considerations, we may expect the Commission to send mandatory questionnaires to major market players (pharmacies), state authorities, as well as contract partners of the pharmacies, such as wholesale distributors. Answers to such questionnaires have to be given very carefully since, based on the provided information, CPC may open individual cases against one or more undertakings. Therefore, the information and evidence provided to CPC should be considered in the light of possible further proceedings for antitrust infringement, unfair competition and non-compliance with merger control requirements.

We would like to note that for supply of inaccurate or misleading information, and even for delays in the provision of complete and accurate information, CPC may impose significant financial penalties - 1 % of the company's total turnover in the preceding business year.

One needs to keep in mind that in the course of the inquiry, the CPC legislative investigative powers are limited in comparison to its powers in individual antitrust investigations. CPC is not entitled to inspect (dawn raid) the premises of market participants in order to obtain relevant evidence for the investigation. However, collected evidence during the course of the inquiry may be used in other investigation cases at the Commission.

Based on the results of the inquiry, CPC can open individual investigation files against particular market player(s) for infringement of competition law (abuse of a dominant position, restrictive business practices, unfair competition and non-notified mergers). 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).

ABOUT

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