Lithuania: The Competition Council accepts Commitments by eight pharmaceutical Companies

On 21 July 2011, the Lithuanian Competition Council (the CC) closed an investigation into possible anticompetitive vertical agreements between producers/suppliers and wholesalers of pharmaceuticals with regard to their participation in public procurement tenders, following commitments proposed by the said companies.

Based on the information provided by the Ministry of Health of the Republic of Lithuania, the CC conducted an investigation into the activities of undertakings active in the wholesale trade of pharmaceuticals and the activities of the association of such undertakings and examined their compliance with Article 5 of the national Law on Competition and Article 101 TFEU. The practices of the following five producers/suppliers of pharmaceutical products: UAB “Berlin Chemie Menarini Baltic”, UAB “GlaxoSmithKline Lietuva”, “Fresenius Kabi Polska”, UAB „Viasana” (authorised representative of the German medicine producer medac GmbH in Lithuania, Latvia and Estonia), UAB “Nutricia Baltics”, and three distributors of pharmaceutical products: UAB “Tamro”, UAB “Limedika”, UAB “Armila” were covered by the investigation.

In the course of the investigation, the CC established that some of the distribution agreements concluded between the producers/suppliers and the distributors included clauses which may give rise to competition concerns. Namely, the clauses foresaw obligations on the part of the distributor to inform the supplier in advance about announced public tenders and to negotiate the supply conditions for such tenders with the supplier. Should the distributor win the tender, the suppliers were to be informed again and the distributor was then entitled to a special discount.

The CC also examined whether the agreements were of a vertical nature and could have been concluded for the purpose of fixing the price charged by the distributors in the public tenders with hospitals and other budgetary institutions. However, given that no factual data on the existence of resale price maintenance was found and taking into account that the undertakings concerned offered commitments, the CC decided to terminate the investigation subject to the commitments described below.

The commitments undertaken by the companies concerned essentially include an obligation on their part to amend the current contracts which directly or indirectly include an obligation on the part of a distributor to negotiate with the supplier the price or any other conditions for the supply of pharmaceuticals (aimed at reselling them through a public tender) considering that in order to ensure competition on the market, such terms have to be decided independently by the distributor itself. The commitments also include the obligation to refrain from including such clauses in future contracts and refrain from implementing such clauses in practice.

The commitments undertaken by companies not to include such clauses in future contracts must be implemented immediately after entry into force of the CC Resolution of 21 July 2011. The commitments regarding the amendment of particular clauses in current contracts must be implemented no later than 6 months after entry into force of the Resolution.

Additionally, given that the investigation also included an assessment of the regulatory environment, the decision of the CC also includes recommendations to the Ministry of Health advocating for changes in the current legislation in order to promote competition on the pharmaceutical market and ensure more efficient allocation of resources of the State Health Insurance Fund.

See further: Full text of the CC Resolution (in Lithuanian).