

The Competition College of the Belgian Competition Authority condemns “l’Ordre des pharmaciens – Orde der apothekers” for having tried to hinder the development of the MediCare-Market group and imposes a fine of 1 million euros

The Competition College of the Belgian Competition Authority (BCA) imposed a fine of 1 million euros on “l’Ordre des pharmaciens – Orde der apothekers” for implementing restrictive practices aimed at hindering the MediCare-Market group's development on the market for pharmacists services, or even expelling it from this market.

The College confirmed the draft decision of the Investigation and Prosecution Service and noted in its decision of 28 May 2019 that the National Council of “l’Ordre des pharmaciens – Orde der apothekers” had infringed Articles IV.1 CEL and 101 TFEU between October 2015 and January 2017 by adopting a strategy and implementing it in order to defend the economic interests of the majority of its members.

The National Council of “l’Ordre des pharmaciens – Orde der apothekers” is responsible for developing the Code of Ethics and is the guardian of the non-commercial nature of the profession of the pharmacist. In this respect, it may refer a matter to the disciplinary councils and lodge an appeal against their decisions. The decisions of the National Council of “l’Ordre des pharmaciens – Orde der apothekers” are therefore likely to have a direct impact on the profession of the pharmacist in general.

The market for pharmacists services is a highly regulated market in which price competition between traditional players is reduced. The entry into this market of new players, such as the MediCare-Market group, should allow competition to intensify in this market.

“l’Ordre des pharmaciens – Orde der apothekers” opposed the development of the MediCare-Market group by deciding, in particular, to refer the matter in October 2015 to all disciplinary councils then concerned by the opening of a MediCare-Market brand and, at the same time, to apply for judicial injunction, essentially alleging the existence of confusion between the group's pharmacies and parapharmacies, particularly where they are contiguous.

The investigation of this case by the Investigation and Prosecution Service began on 29 April 2016 and ended on 31 October 2018.

The College considered that the disciplinary and judicial actions brought by the National Council of “l’Ordre des pharmaciens – Orde der apothekers” were in fact intended to hinder the development of the MediCare-Market group on the market of pharmacists services, or even to expel the services from this market. The practices in question do not concern the decisions to take legal action, but rather the overall strategy of the National Council of “l’Ordre des pharmaciens – Orde der apothekers” to oust the MediCare-Market’s model or to prevent its development and that of comparable business models. This overall strategy is based on a series of actions identified in the competition prosecutor's analysis, including the referral to disciplinary councils, the initiation of a judicial injunction, the public dissemination of threatening information regarding MediCare-Market and the government recruitment measures. These decisions to take legal action are only elements that help to prove, on the one hand, the existence of the strategy and, on the other hand, its

implementation. In other words, the legal actions brought by the National Council of “l’Ordre des pharmaciens – Orde der apothekers” are not anti-competitive in themselves, but they are part of a series of measures aimed at implementing an anti-competitive strategy.

The College considered that the decisions of the National Council of “l’Ordre des pharmaciens – Orde der apothekers” should be considered as decisions of associations of companies restricting competition by object. Indeed, the National Council of “l’Ordre des pharmaciens – Orde der apothekers” acted for an economic purpose and took decisions aimed at excluding an innovative distribution model. The decisions of National Council of “l’Ordre des pharmaciens – Orde der apothekers” are so harmful to consumer welfare, and in particular to price competition (on the selling price of medicines) and non-tariff competition (on innovation), that they constitute serious infringements of competition law. They also violate case law and decision-making practice regarding competition law established at the European and Belgian level. Finally, these decisions are not intended to achieve a legitimate objective or, at the very least, are not necessary and proportionate to the achievement of such an objective.

The BCA has the power to impose fines on associations of undertakings on the basis of the turnover of their members. The basis for calculating the fine is thus based on the relevant turnover achieved by Belgian pharmacies throughout Belgium. The College considered that a fine of one million euros is sufficient to take into account the seriousness of the infringement found and to act as a deterrent, without being excessive. The College notes, for the sole purpose of providing a perspective here, that this amount corresponds to the average annual turnover achieved by a single pharmacy out of a total of some 5,000 pharmacies.

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The Belgian Competition Authority (BCA) is an independent administrative authority that contributes to the definition and implementation of competition policy in Belgium. Concretely, the BCA pursues anti-competitive practices, such as cartels and abuses of a dominant position, and reviews the main merger operations. The BCA cooperates with the other competition authorities of the member states of the European Union and the European Commission within the European Competition Network (ECN)