

The Belgian Competition Authority imposes a fine of 225,000 euros on the Order of Pharmacists for some of its decisions limiting the ability of pharmacists to advertise, in particular via paid referencing, and the interest to apply rebates for parapharmaceuticals. The Order of Pharmacists also commits to comply with competition law by the disciplinary bodies.

Between 2010 and 2017, the Investigation and Prosecution Service of the Belgian Competition Authority (hereafter “the Investigation and Prosecution Service”) has received various complaints from pharmacists and pharmacies, some of which have an online presence, reporting disciplinary proceedings by the Order of Pharmacists preventing them to continue their commercial activity in a normal way.

The Investigation and Prosecution Service established that these complaints were partly founded and reached a settlement with the Order of Pharmacists, on the basis of which they were fined 225,000 euros and obliged them to revise their Code of Ethics and to facilitate, through various measures, an interpretation and application consistent with competition law by its disciplinary bodies. The Investigation and Prosecution Service has dismissed the complaints for the remainder.

Description of the infringement

The Investigation and Prosecution Service sanctions the Order of Pharmacists for having, on the one hand, adopted, maintained and implemented provisions of the Code of Ethics providing for the prohibition of many advertising practices for parapharmaceuticals and, on the other hand, adopted, maintained and implemented the provisions of the Code of Ethics and communications leading to the prohibition of the main online advertising mechanisms for parapharmaceuticals.

The behaviour questioned by the Investigation and Prosecution Service are decisions made by the National Council of the Order of Pharmacists.

These decisions constitute violations of Articles IV.1 of the Code of Economic Law and 101 of the Treaty on the Functioning of the European Union.

Settlement and sanction

In this case, the settlement procedure was applied.

The settlement procedure is a tool which simplifies and accelerates the closing of the infringement proceedings.

In this case, the settlement procedure has allowed the Order of Pharmacists to adapt its Code of Ethics and to prepare an explanatory code for pharmacists allowing both to remedy specific objections of the Investigation and Prosecution Service. The Order of Pharmacists was thus able to commit itself to have this new Code of Ethics and this explanatory code adopted in the short term by the bodies of the Order of Pharmacists.

As part of the settlement, the Order of Pharmacists also acknowledged its participation in the infringement as described in the decision and accepted the sanction. For this reason, a 10% reduction of the fine was granted.

The settlement decision is not subject to any appeal.

The Order of Pharmacists has been fined 225,000 euros.

Scope of commitments received

The Investigation and Prosecution Service has obtained important commitments from the Order of Pharmacists.

The Order of Pharmacists first agreed to adopt, by the end of 2019, a revised Code of Ethics, with effect from January 1, 2020, which provides for the approval in principle of advertising and commercial practices, such as “patient solicitation”. In this context, it is committed to the fact that the use of paid referencing and advertising via social media are also the subject of an authorization in principle both as regards to the personal advertising of the pharmacist and to the sale of parapharmaceuticals

In addition, the Order of Pharmacists committed to adopt, by the end of 2019, an explanatory code on advertising and commercial practices to complete the provisions of the Code of Ethics and to facilitate the interpretation of these rules, in compliance with competition law, by pharmacists and disciplinary bodies.

The Order of Pharmacists has also made a commitment to regularly review the explanatory code in light of the disciplinary bodies’ decision-making practice in order to avoid restrictive interpretations of competition by the disciplinary bodies and to adopt a mechanism with the effect that, at least every five years, the Code of Ethics is evaluated and the need for a reform of the Code of Ethics is considered, particularly in view of the evolution of the pharmacist profession and the markets for medicinal products and other products sold by pharmacists.

To end the investigation

In view of the commitments received by the Order of Pharmacists, the Investigation and Prosecution Service decided to partially put an end to the investigation and to declare the commitments received by the Order of Pharmacists binding.

The decision of the Investigation and Prosecution Service is available on the website of the Belgian Competition Authority: www.belgiancompetition.be.

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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)