

The Prosecution Service of the Belgian Competition Authority sanctions two pharmaceutical wholesalers for their participation in a cartel and imposes fines of €29.8 million following a settlement

The Prosecution Service of the Belgian Competition Authority ("Prosecution Service") has adopted a settlement decision by which it sanctions two pharmaceutical wholesalers, **Febelco CV** and **Pharma Belgium-Belmedis SA**, for having participated in a cartel in violation of Belgian and European competition rules. The Prosecution Service imposes a total fine of 29,8 millions of euros on Pharma Belgium-Belmedis as legal and economic successor of Pharma Belgium SA and Belmedis SA. Febelco has been granted immunity from fines for having disclosed the existence of the cartel.

The two companies in question acknowledged their involvement in two separate infringements and accepted the terms of the settlement proposed by the Prosecution Service.

1. Infringement of Transfer Orders

The distribution of pharmaceutical products is generally carried out in the following way:

- Pharmaceutical laboratories develop and market pharmaceutical products;
- Pharmaceutical wholesalers purchase products from laboratories and sell them to pharmacists, while handling the distribution logistics as well as the payment and monitoring of sales;
- Pharmacists sell pharmaceutical products to patients.

In some cases, pharmaceutical laboratories may sell their products directly to pharmacists. The laboratory then manages the distribution logistics, payment and monitoring of its sales.

Instead of selling their products directly to pharmacists, laboratories can also use the Transfer Orders system. This system allows pharmaceutical laboratories to offer special terms to pharmacists for ordering large quantities of products but these orders are then managed by wholesalers. In practice, the pharmacist places an order at the price proposed by the laboratory but it is the wholesaler of his choice that prepares and executes the order from his own stock of products, which he has built up as part of his regular activity, which it owns and manages at its own expenses and risks. It is also the wholesaler that takes care of the distribution and of the invoicing and collection of payment for the order.

In the present case, certain wholesalers including Febelco and Pharma Belgium-Belmedis agreed to apply the same commercial conditions for the distribution of pharmaceutical products via the Transfer Orders system. In particular, the companies agreed to apply the same pricing to pharmaceutical companies and to offer services with identical content. The objective pursued by the wholesalers was to limit direct sales to pharmacists by the pharmaceutical companies and to fix their margin in the context of the distribution of products via the Transfer Orders system.

2. Infringement of Influenza Vaccines

Influenza vaccines are pharmaceutical products with certain specificities. In particular, influenza vaccines have a different composition each year to take into account the evolution of the influenza virus. “New” vaccines are therefore produced each year by pharmaceutical companies. In addition, to be effective, influenza vaccination must take place in the autumn.

Each year, a system of pre-sales allows customers of pharmaceutical wholesalers, including pharmacists, to pre-order a certain quantity of vaccines for a specific period before they are put on the market.

In the present case, certain wholesalers including Febelco and Pharma Belgium-Belmedis agreed to apply the same commercial conditions for sales of flu vaccines to pharmacists during the pre-sales periods. In particular, the companies agreed not to grant discounts to pharmacists and not to accept returns of unsold vaccines ordered during the presale period. They also agreed on the duration of the pre-sales period.

The tables below summarise the participation of each company in the two infringements in question, as well as the duration of that participation:

Transfer Orders Infringement			
Company	Main features	Start date	End date
Febelco	Pricing and content of services	4 April 2003	19 October 2016
Pharma Belgium-Belmedis		4 April 2003	21 November 2016

Influenza Vaccine Infringement			
Company	Main features	Start date	End date
Febelco	Pricing and commercial conditions for pre-sales	4 April 2003	19 October 2016
Pharma Belgium-Belmedis		4 April 2003	21 November 2016

3. Fines

The fines imposed by the decision were determined on the basis of the [Belgian Competition Authority's Guidelines on the calculation of fines](#).

In accordance with these guidelines, the Prosecution Service took into account the value of sales in Belgium of the products in question by the undertakings concerned, the gravity of the infringements and their duration.

In the present case, the Prosecution Service took into account the value of sales to pharmacists of the products concerned by the Transfer Orders system, on the one hand, and the value of sales to pharmacists of influenza vaccines during the pre-sales period, on the other hand.

On the basis of the Belgian Competition Authority's Leniency Guidelines, Febelco was granted immunity from fines for having revealed the existence of the two infringements, thereby allowing the Prosecution Service to carry out targeted inspections. Pharma Belgium-Belmedis received a 40% reduction in fines for providing evidence that strengthened the Prosecution Service's ability to establish the existence of the infringements.

In addition, in the context of the settlement procedure, the Prosecution Service reduced the fines imposed on the companies by 10%, as they acknowledged their participation in the infringements and their resulting responsibility.

The fines imposed on each company were calculated as follows:

Infringement of Transfer Orders			
Wholesalers	Reduction under the Leniency Guidelines	Transaction discount	Fine (in euros)
Febelco	100%	10%	0
Pharma Belgium-Belmedis	40%	10%	26 780 401

Infringement of Influenza Vaccine			
Wholesalers	Reduction under the Leniency Guidelines	Transaction discount	Fine (in euros)
Febelco	100%	10%	0
Pharma Belgium-Belmedis	40%	10%	3 016 792

4. Legal framework

Article IV.1 of the Code of Economic Law and Article 101 of the Treaty on the Functioning of the European Union prohibit cartels and concerted practices that restrict competition, including collusion on sales prices and other trading conditions.

In the context of the enforcement of these provisions, the Prosecution Service may resort to a settlement. The present decision is the ninth settlement decision adopted since this possibility was introduced by the Act of 3 April 2013. A settlement implies that the undertakings concerned acknowledge their participation in one or more infringements, as well as their responsibility in this respect. The companies then benefit from a 10% fine reduction in fine and the Prosecution Service can adopt a decision by itself at the end of a simplified procedure. This possibility to settle cases is beneficial for consumers and taxpayers as it reduces

costs and delays, while freeing up resources to investigate other alleged infringements. A settlement decision is also not subject to appeal.

In the present case, a third company (CERP SA) was investigated but did not wish to enter into the settlement proposed by the Prosecution Service, hence the procedure against it continues in accordance with the applicable provisions of the Code of Economic Law.

The decision of the Prosecution Service will be available as soon as possible on the website of the Belgian Competition Authority: <https://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)