

The Prosecution Service of the Belgian Competition Authority is pursuing CERP (Centre européen de répartition pharmaceutique SA) a Belgian wholesale distributor of pharmaceutical products, for participation in a cartel in violation of Belgian and European competition rules

The Prosecution Service of the Belgian Competition Authority ("Prosecution Service") submitted on 9 December 2022 a reasoned proposal for a decision against **CERP** for its participation in two separate infringements committed in together with two other Belgian wholesale distributors. The first infringement concerns an agreement on the terms and conditions applicable to the distribution of medicinal products via "Transfer Orders". The second relates to the conditions for the marketing of influenza vaccines.

As a wholesale distributor, CERP 's main activity is the daily wholesale distribution of a complete range of pharmaceutical products to pharmacists.

1. Practice on Transfer Orders

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

- Pharmaceutical laboratories develop and market pharmaceutical products;
- Pharmaceutical wholesale distributors purchase products from laboratories and sell them to pharmacists, while handling the distribution logistics as well as the payment and follow up of transactions;
- 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 follow up 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 to have these orders managed by wholesalers (by means of a "transfer" to the pharmacist's "order"). 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.

The Prosecution Service's proposal for decision alleges the existence of a concerted practice between CERP and two other wholesale distributors in order to apply the same commercial conditions for the distribution of pharmaceutical products via the Transfer Orders system. In particular, CERP and the other wholesale distributors would have agreed to apply the same pricing to pharmaceutical companies and to offer services with identical content. The objective of the wholesale distributors was to limit the direct sales to pharmacists by the pharmaceutical companies and to fix their margin in the context of the distribution of products via Transfer Orders.

2. Practice on 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.

The proposal for decision alleges the existence of a concerted practice between CERP and two other wholesale distributors to apply the same commercial conditions for sales of influenza vaccines to pharmacists during the pre-sales periods. In particular, CERP and the other wholesale distributors would have allegedly agreed not to grant discounts to pharmacists and not to accept returns of unsold vaccines ordered during the pre-sales period. They would also have agreed on the duration of the pre-sales period.

3. 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.

A statement of objections was previously sent to CERP on 2 August 2022.

The reasoned proposal for decision will now be examined by the Competition College, before which CERP will have the opportunity to make its views known again. In particular, CERP will have the opportunity to submit written observations to the College and will be heard at a hearing. The reasoned proposal for decision submitted by the Prosecution Service does not prejudge the subsequent decision of the College.

The other two wholesale distributors involved in the cartel with CERP, Febelco and Pharma Belgium, have entered into a settlement with the Prosecution Service and have, in this context, acknowledged their participation in and responsibility for the infringements in question. The Prosecution Service's settlement decision was issued on 18 February 2022, and does not concern CERP.

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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)