

Competition - Romania

Competition Council focuses on pharmaceuticals sector

Contributed by **Musat & Asociatii**

May 24 2012

In March 2012 the Competition Council completed two high-profile investigations within the pharmaceuticals market. It closed an investigation - without imposing penalties - into a potential breach of Article 5 of the Competition Law and Article 101 of the Treaty on the Functioning of the European Union by the members of two organisations, the Association of Distributors and Importers of Medicinal Products and the Romanian Association of Distributors of Medicinal Products. The investigation had been opened in October 2008 following the member companies' decision to cease deliveries of medicinal products to hospitals and pharmacies. The associations' representatives maintained that the decision was driven by the Ministry of Health's refusal to adjust the price of medicinal products in light of changes in the currency exchange rate.

This case again raised the question of the extent to which lobbying activities conducted by an association for its members' benefit may amount to an anti-competitive agreement between the members. The issue here was whether the cessation of deliveries was the result of a legal attempt to convince the ministry to act in accordance with its legal obligations or the result of a concerted practice that was contrary to competition rules. On the facts of the case, there was no anti-competitive behaviour on the part of the association's members, given that the objective pursued by the lobby activities was achieved: the ministry eventually reviewed the prices based on the current exchange rate. Once this objective was accomplished, the members resumed their deliveries of the products under their respective contractual and legal obligations.

The other investigation concerned pharmaceutical companies Bayer and Sintofarm, as well as several of their distributors (ie, Mediplus, Polisano, Farmexim, Farmexpert, Fildas, Montero, ADM and Pharmafarm). In total, the companies involved were fined around L51.52 million (approximately €12 million) for having concluded anti-competitive agreements relating to a restriction on exports of the two manufacturers' products. The council argued that the agreement isolated the Romanian market and impeded trade within the European Union, leading to a limitation of competition.

For further information on this topic please contact [Anca Buta Musat](#) at Musat & Asociatii by telephone (+40 21 202 5900), fax (+40 21 223 3957) or email (anca.butamusat@musat.ro). The Musat & Asociatii website can be accessed at www.musat.ro.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

Anca Buta Muşat



Online Media Partners



© Copyright 1997-2012 Globe Business Publishing Ltd