

First margin squeeze win for Competition Authority

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The Court of Competition, Regulation and Supervision recently upheld a Competition Authority decision regarding an infringement of competition rules through the abuse of a dominant position as a result of a margin squeeze.

Facts

The case involved the National Association of Pharmacies and three other entities within the same group:

- Farminveste and Farminveste-Investimentos, both active in the sale of pharmacies' commercial data; and
- Health Market Research, which conducts market studies.

The Competition Authority initiated an in-depth investigation into the markets for the sale of pharmacies' commercial data following a complaint by IMS Health, a competitor in the downstream market, which reported that the National Association of Pharmacies' prices for the sale of commercial data combined with those charged for market studies based on that data rendered it impossible for even an equally efficient market player to cover its costs for the sale of market studies.

Decision

In its 2015 infringement decision, the authority found that the three entities had engaged in margin squeeze practices from 2010 to 2013, leading to the foreclosure of the market for the provision of market studies and harm to consumers – in this case, pharmaceutical laboratories. The authority further noted that this constituted serious exclusionary conduct contrary to the Competition Act and the Treaty on the Functioning of the European Union. It therefore imposed a fine of €10.34 million on the National Association of Pharmacies.

On appeal, the Court of Competition, Regulation and Supervision generally upheld the Competition Authority's findings, but decided to reduce the fines imposed to €6.89 million, having considered the markets concerned by the abusive practices.

Comment

This case undoubtedly constitutes an important result for the Competition Authority. As verified in recent years and demonstrated by the authority's 2015 activity report (for further details please see "[Competition Authority publishes report for 2015](#)"), the authority has been trying to consolidate its decisional practice in the antitrust field by developing improved response times for cases and generally delivering more detailed investigations and solid decisions.

Previously, the authority had seen its high-profile abuse of dominance decisions reversed by the courts and for a long-time these unilateral conducts were not targeted again. The recent case against the National Association of Pharmacies is the first in which a margin squeeze issue has arisen,

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although in 2013 the authority fined Sport TV €3.7 million for abusing its dominant position in the premium sports channel market (the Court of Competition, Regulation and Supervision and the Lisbon Court of Appeal later confirmed the decision and reduced the penalty to €2.7 million).

The Court of Competition, Regulation and Supervision's establishment in 2012 has endowed the Portuguese authorities with a specialised court for these matters and has thus provided a better judicial response in terms of the speed of handling cases and the quality of the rulings adopted.

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