Significant Number of Dawn Raids Shows Increased Antitrust and Criminal Law Enforcement in Italian Pharmaceutical Sector

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On 27 November, the Italian Competition Authority dawn raided a major South African company for alleged excessive pricing of its oncology products in Italy. According to a complaint by one of the most active consumer associations in Italy, the group would have required the Italian Medicines Agency (AIFA) to align the price of its products, which are covered by the National Health Service (NHS), with the higher prices applied in other European countries, threatening the withdrawal of the products from the Italian market.

This new investigation is just the latest of many dawn raids that have taken place in Italy throughout 2014 relating to alleged bid rigging and other antitrust and criminal law infringements by pharmaceutical companies, including their participation in public tenders for the supply of products to the NHS. The significant number of dawn raids this year shows increased antitrust and criminal law enforcement in Italy in the pharmaceutical sector.

Two good examples of this trend are the €182.5 million in fines imposed in February 2014 on two major international groups for alleged collusive conduct concerning the sale of drugs for treating eye illnesses, and the investigation started by the Authority in January 2014 into alleged infringements in the sale of octreotide acetate in Italy. In the first case, the NHS would have suffered an overall cost increase of over €45 million in 2012 and likely damages of approximately €540 million in 2013 and €615 million in 2014. The second case relates, as do many of the investigations started this year, to alleged collusive conduct in public tenders for the supply of products to the NHS.

As soon as a proceeding is started in one Member State, international groups should brace themselves for potential complaints and investigations in all other countries where they have a presence or do business. As a recent example, the February 2014 fines were followed in April 2014 by unannounced inspections by the French Competition Authority at the premises of the same two pharmaceutical groups. In May 2014, former EU Competition Commissioner Joaquín Almunia reportedly indicated that the European Commission was gathering more information on the conduct of the two companies and was in contact with the national competition authorities of several EU Member States to assess whether or not further action would be needed. On 25 November 2014, a Belgian consumer association filed a complaint before the Belgian Competition Authority against the two pharmaceutical companies concerning the same alleged conduct.

Closer Cooperation Between the Commission and National Competition Authorities

Since the entry into force of Regulation No 1/2003 and the European Commission Notice on Cooperation within the Network of Competition Authorities of 27 April 2004, the Commission and the national competition authorities within the European Economic Area can cooperate more easily and more closely. They can now

- Inform each other about pending cases, even during informal proceedings
• Exchange and use information, including documents, statements and digital information, collected by other national competition authorities

• At the latest, 30 days before the adoption of a decision applying Articles 101 or 102 of the Treaty on the Functioning of the European Union, send the Commission and national authorities a summary of the case, including the envisaged decision or any other documents indicating the proposed course of action.

Very often, when companies are active in several EU Member States, such cooperation results in multiple proceedings before two or more national competition authorities acting in parallel.

International pharmaceutical groups are well advised to take this trend of increased enforcement into account. They should set up bespoke antitrust audit and compliance programs, tailored for participation in public tenders, taking into account the particular features of all the jurisdictions where they have premises or do business. In doing so, they should build efficient global coordination structure across their various local teams and offices, under a single antitrust compliance strategy.

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