

The French Competition Authority sanctions for the first time an operator of the health industry for abusive price increases

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The French Competition Authority ("FCA") found that Sanicorse, a monopoly provider of services to hospitals in Corsica, abused its dominant position by having imposed significant, sudden and unjustified price increases upon hospitals.

Whilst acknowledging that competition authorities are entitled to assess pricing policies of dominant companies and to sanction those which impose unfair commercial conditions, the FCA has nevertheless showed some reluctance so far to interfere in companies' price-setting.

Case law on excessive pricing practices, which was established by EU courts decades ago and according to which excessive prices may be established where product prices appear to be clearly disproportionate compared to their economic value or their production costs, seems to have given rise to some renewed interest recently throughout Europe. In the pharmaceutical sector, excessive pricing issues have become one of the enforcement priorities not only of the European Commission but also of a number of national competition authorities, notably in Italy, Spain and the UK.

In this case, the FCA found that the price increases implemented by Sanicorse between 2011 and 2015, should be regarded as abusive considering not only their significant level but also the conditions in which they were imposed upon hospitals.

The FCA found that Sanicorse imposed its price increases without any notice period upon its customers and threatened them to terminate the contracts in case they would refuse the new pricing conditions. As regards the level of the price increases, the FCA first made clear that there is not pre-defined threshold beyond which a price increase should be regarded as being significant. In this case, however, the level of the annual price increases implemented by Sanicorse between 2011 and 2015 was beyond 60%. More importantly, such price increases could not be justified on the basis of cost increases borne by Sanicorse.

Although Sanicorse provides services for the treatment of infectious clinical waste, the FCA's reasoning would be applicable to the provision of medicines and medical devices (subject or not to regulated prices).

Indeed, any anticompetitive practices leading to higher prices for the public health insurance system, hospitals and/or patients are always regarded as particularly serious by the FCA, for which the competitive functioning of the healthcare sector has constituted one of the

enforcement priorities for a number of years now. In that respect, the FCA should make recommendations to the French President Macron and the government on how to increase competition and lower prices of medicines in the coming months (the press release relating to the FCA sector inquiry regarding the functioning of competition in the healthcare sector is available [here](#)).

Sanicorse being a very small company, the amount of its fine (199,000 euros) is negligible compared to fines usually imposed by the FCA in the health sector (e.g., 25 million euros for a pharmaceutical company in 2017, 41 million euros for another one in 2013). But there is no doubt that the FCA has issued this decision to send a clear message to all players in the health industry as regard their pricing policies.

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