

20 November 2017: Healthcare

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As part of its advisory powers, the Autorité de la concurrence is launching a vast sector-specific inquiry on the functioning of competition in the medicinal products and chemical pathology sectors.

In particular it will look at the distribution of pharmaceuticals, their price regulation mechanism, as well as at the business development opportunities available to pharmacists.

In its opinion, the Autorité will make any recommendations, in accordance with public health matters, likely to stimulate competition.

Background

The importance of the healthcare sector in the national economy and constant developments in the sector have prompted the *Autorité de la concurrence* to take a regular interest in it.

In addition to litigation decisions, like those sanctioning certain practices carried out by laboratories distributing originator medicines with regard to generic medicines, the *Autorité* has submitted several opinions in which it has studied the pharmaceuticals distribution chain, the online sale of pharmaceuticals and the sale of hearing aids. Finding that, among other things, some of its recommendations had only partially been implemented, the *Autorité* deemed necessary to issue another opinion at its own initiative regarding these matters in order to update its proposals and supplement them in view of the new developments of the market.

The *Autorité* will analyse measures likely to stimulate competition in the distribution of pharmaceuticals and will look at how the prices of reimbursable medicinal products, and also of medicinal products that are not reimbursed, are set. The inquiry will also look at chemical pathology.

The pharmaceuticals distribution chain

1- How could the role of intermediaries be strengthened?

In its sector-specific inquiry conducted in 2013, the *Autorité* found an imbalance in the relationship regarding the negotiation of the purchase price of pharmaceuticals that are not reimbursed – whose prices are not set – between pharmaceutical companies and distribution intermediaries (wholesale distributors, purchasing group networks and pharmaceutical purchasing organisations). In this regard, the *Autorité* noticed that laboratories had adopted a strategy of not giving significant discounts to intermediaries and of favouring direct sale to pharmacies. It had pointed to the danger of smaller pharmacies – that have a limited bargaining power – not being able to charge their patients competitive prices.

The *Autorité* will examine whether the economic and competitive balance of the

pharmaceuticals distribution chain changed, especially regarding the specific role played by intermediaries on the market and sale price dynamics.

2- What development opportunities could be opened up for pharmacists?

In previous opinions, the ***Autorité*** recommended a controlled opening to competition of dispensing chemists' monopoly on the sale of non-prescription medicines and a relaxation of the rules on online sales of these medicines. Its recommendations have not been implemented yet. France's European neighbours have started on this path. In view of the new developments, the ***Autorité*** will examine this topic again, and, among others, explore the avenues for adapting dispensing chemists' activity and developing supply in retail sales of pharmaceuticals. The ***Autorité*** will be able, on this occasion, to examine new questions such as the creation of pharmacy chains, the relevance of – and, if appropriate, the methods – the floatation of pharmacies, and relaxation of the rules governing advertising.

The ***Autorité*** will extend its inquiry to chemical pathology laboratories and may make recommendations on the reorganisation and modernisation of their activity.

Setting the prices of pharmaceuticals

The prices of reimbursable pharmaceuticals are set by the French Economic Committee for Healthcare Products (***Comité économique des produits de santé***) with the pharmaceutical companies according to different criteria, such as improvement in the medical service delivered or prices elsewhere in Europe. The ***Autorité*** will examine this process of setting the prices to determine, among others, if it should change or integrate other criteria.

Regarding generic medicines, the ***Autorité*** will assess the impact of the heavy discounts given by the pharmaceutical companies to dispensing chemists on the balance of the medicines distribution chain, and will examine whether these discounts are reflected in the prices paid by patients.

Finally, as regards the purchase of medicinal products by hospitals, for which prices are not set, the ***Autorité*** will take a more particular interest in the

bargaining power of hospitals over the pharmaceutical companies.

If you wish to contribute to this sector-specific inquiry, the *Autorité de la concurrence* set up a specific email address : Email

What is a sector-specific inquiry?

Unlike an investigation, which examines the practices of one or more companies against which a complaint or *ex officio* proceedings have been brought to determine whether competition law has been breached and which can end in the handing out of a fine if the breaches are established, a sector-specific inquiry looks at the overall functioning of a sector and leads to the submission of an opinion, which has only a consultative value.

It is used to study the functioning of competition in an entire sector. After conducting a detailed analysis and identifying any dysfunctions or blockages, the *Autorité* can issue recommendations intended to improve the functioning of the sector, and are aimed at the public authorities and/or at operators.

> See the decision taken at its own initiative for opinion 17-SOA-01 of 20 November 2017 regarding the own-initiative referral for an opinion on the pharmaceuticals and chemical pathology

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