Record fines imposed by the Office of Competition and Consumer Protection (UOKiK) for **a cartel in the wholesale pharmaceutical market**

Jakub Jędrzejewski
Partner
jakub.jedrzejewski
@ssw.solutions

Maciej Walewski
Associate
maciej.walewski
@ssw.solutions

The President of UOKiK has penalised some of the largest wholesale pharmaceutical distributors in Poland (companies from the Neuca and Farmacol groups) for a long-standing agreement restricting competition. The case is an important signal of the antitrust authority's unrelenting activity and of the real benefits of the leniency programme.

WHAT HAPPENED

According to UOKiK's findings, for over a decade the largest pharmaceutical wholesalers exchanged confidential commercial information, in particular on current prices offered to pharmacies and on cooperation terms, which allowed them to avoid mutual price competition.

The authority found that this type of data exchange, obtained inter alia through IT tools used in partnership programmes for pharmacies, went beyond the permissible monitoring of competitors' publicly available prices and constituted an unlawful agreement restricting competition.

UNPRECEDENTED SCALE OF FINES

The total amount of fines imposed exceeded PLN 900 million, making this decision one of the highest in the history of Polish competition law in cartel cases. The level of sanctions for individual participants in the agreement varied and took into account, inter alia, the scale and duration of the infringement.

The decision is not final. The penalised entities have the right to appeal to the court.

THE LENIENCY PROGRAMME IN PRACTICE – FINE FULLY WAIVED

One of the participants in the agreement fully avoided a financial penalty, as it was the first to approach UOKiK under the leniency programme, providing evidence and cooperating with the authority throughout the entire proceedings.

The case confirms that UOKiK consistently honours the principles of the leniency programme: an entity that is the first to disclose the existence of a cartel and provide the authority with credible evidence can expect a full exemption from the fine, even if it was an active participant in the infringement.

SIGNIFICANCE FOR MARKET PRACTICE

The decision is in line with the visible trend of UOKiK's unrelenting activity in combating cartels and agreements restricting competition, including in sectors of significant social importance. It is worth taking this opportunity to highlight several practical conclusions for businesses.

The exchange with competitors of any data on prices, commercial terms or sales volumes, even carried out indirectly, e.g. through shared IT tools or partnership programmes, carries a significant antitrust risk.

It is worth examining whether IT systems, loyalty programmes or partnership programmes operating within the organisation inadvertently enable the sharing of commercial information with competitors.

If knowledge of possible participation in an unlawful agreement is obtained, the decision to use the leniency programme should be taken as quickly as possible, as the order of applications is of key importance for the scope of protection against the fine.

We recommend a review of internal competition law compliance procedures, covering both general antitrust policies and a detailed analysis of individual commercial relationships (including partnership programmes, data exchange systems and contacts with competitors).

HOW CAN WE HELP YOU?

We offer support in conducting a compliance audit of business activities with competition law, developing or updating antitrust policies, reviewing specific commercial relationships for cartel risks, as well as assessing the merits of filing a leniency application. We invite you to get in touch to discuss the individual needs of your organisation.