

CMS Romania | Romanian watchdog fines pharma companies for anti-competitive conduct



In a landmark decision, the Romanian Competition Council (RCC) has sanctioned five pharmaceutical companies, including suppliers of immunoglobulins and other medicinal products derived from human plasma, and an association representing the industry with fines totalling approximately EUR 71 million.

In 2018, the RCC initiated its investigation, aided by authorities in Italy and Belgium, finding that between 2015 and 2018 the five companies adopted a coordinated strategy aimed at limiting and even interrupting the supply of immunoglobulins to the Romanian market in order to put pressure on state authorities to suspend the clawback tax for medicinal products derived from human blood or human plasma.

In this way, states the RCC, the companies sought to create a commercial advantage and therefore improve their profit margins. The fined undertakings are headquartered in Switzerland, Germany, Belgium and Italy.

According to the RCC, the association facilitated anti-competitive practices, and went beyond the scope of an association by attempting to influence the legislative process in Romania for the benefit of other suppliers.

The RCC framed the theory of harm in terms of a cartel whereby companies blackmailed the Romanian state into giving up the clawback tax by deliberately withdrawing medicines from the market vital to certain patients.

In so doing, the RCC balanced the legitimate lobbying rights of companies, and their commercial right to decide whether or not to sell a product at a certain price in Romania, against what the authority found to be a deliberate and coordinated action among companies to increase their bargaining power against the Romanian state. Specifically, this coordinated action included withdrawing products from the Romanian market to add pressure to renegotiate the terms of contracts and have legal rules changed to their advantage.

Immunoglobulin is used in cancer treatments and helps patients with diseases that affect the synthesis of antibodies. At present, these medicines are vital for scores of Romanians for both daily and long-term treatments. These medicines, however, have been in short supply in Romanian pharmacies over the past three years. This lack of access to immunoglobulins, essential for the treatment of multiple serious conditions, led Romanian authorities to initiate the European Civil Protection Mechanism, appealing to EU and NATO for help in sourcing these medicines.

The RCC's fines are expected to be contested.

Although Romania is not among the jurisdictions with an appetite for damage claims, particularly for

anti-competitive practices, this decision has the potential for claims in particular from harmed patients or associations of patients. The outcome of such cases would turn, among other factors, on whether the RCC's findings of unlawful acts are upheld on appeal.

For more information on this ruling and the work, the RCC and the Romanian pharmaceutical industry, contact your CMS client partner or local CMS experts: **Horia Draghici, Cristina Popescu and Laura Capata.**