

Legal Alert

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The President of the OCCP announces greater supervision of the pharmaceutical industry

During a January meeting of the Parliamentary Committee on Economy and Development,¹ the President of the Office of Competition and Consumer Protection ("President of the OCCP"), Tomasz Chróstny, announced more investigations into the pharmaceutical market. The President of the OCCP pointed out that the actions taken in the pharmaceutical market in recent years (including proceedings initiated in the wholesale market regarding an allegation of data exchange, market research, and interventions on COVID testing, medical gas supplies, and decisions regarding the protection of consumer rights for medical and peri-medical products) are part of broader plans for supervision by the President of the OCCP of the pharmaceutical industry.

According to Tomasz Chróstny, the Authority has not been active enough so far² while, according to his announcement, the coming years could be a period of increased activity for the Authority in the medical and pharmaceutical sectors.

According to the information provided, the OCCP's employees are to constantly increase their competences to exercise effective supervision over the pharmaceutical market. This applies, i.a. to the preparation for handling cases in areas such as intellectual property rights, including patent protection.

We have highlighted this issue in our previous publications, particularly in the context of the 2019 Report from the Commission to the Council and the European Parliament re: the enforcement of competition rules in the pharmaceutical sector (2009-2017) ([LINK](#))

Cooperation between the **OCCP and the Chief Pharmaceutical Inspector, the Patent Office, the National Health Fund, and the Ministry of Health** was also to be intensified recently "(...) so that, on the one hand, they know what our competencies are in this area, and also, potentially,

what are the actions that constitute either a violation of competition laws or a violation of the collective interests of consumers. First of all, we are talking here from the point of view of the functioning of the market - the protection of competition" the President of the OCCP explained during the meeting.

This exchange will probably also result in the greater integration of the activities of the pharmaceutical inspection and other significant players on the pharmaceutical and medical market with the activities of the President of the OCCP. There is also the possibility that the authorities' dialogue will result in a better understanding of the problems of the industry and the regulatory environment. So far, the President of the OCCP has indicated that regulatory issues are not taken into account in the competition law analysis of the antimonopoly authority.³

Similar supervisory⁴ activity have been observed for a long time, e.g. in Belgium⁵ and the Netherlands⁶. The Belgian and Dutch Competition Authorities, on 24 January 2023, simultaneously announced the initiation of proceedings against entities from the pharmaceutical industry for an alleged abuse of a dominant position, charging excessive prices, and bundling. The European Commission is also very active and initiates competition law proceedings – also in seemingly non-obvious cases, e.g. the dissemination of disparaging claims about competitors' products⁷.

¹<https://orka.sejm.gov.pl/zapisy9.nsf/o/FCC1F543A949A041C125893A0049DoB4/%24File/0340209.pdf>

² "Starting with the pharmaceutical market. Without a doubt, this is the kind of market where we have not been active enough for many years."

³ https://uokik.gov.pl/aktualnosci.php?news_id=18021

⁴ <https://mailchi.mp/vbb/belgian-and-dutch-competition-authorities-aim-again-at-pharmaceutical-sector?e=6a2fc272c8>

⁵ https://mcusercontent.com/80a2795e9aa8aacacoc148b3b/files/407c64d4-e679-301f-2ecf-754c860d720a/20230124_Press_release_3_BCA.pdf

⁶ https://mcusercontent.com/80a2795e9aa8aacacoc148b3b/files/76e14cd9-3662-01e2-110a-4272a3426151/ACM_Inquiries_in_Medicine_Sector_24_January_2023.pdf

⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3882

As can be seen from the above, **the pharmaceutical industry must prepare for increased interest from the President of the OCCP and other antitrust authorities.** Therefore, it will be particularly important in the near future to increase the emphasis on ensuring compliance of the actions taken not only in the regulatory field, but also in the field of competition law.

If you have any questions or doubts regarding the practices used, please feel free to contact us. We have many years of experience in representing clients in proceedings before the OCCP, the European Commission, and the courts, including in the pharmaceutical and medical industries. We defend against charges by antitrust authorities for violating the prohibition on restrictive agreements, abusing a dominant market position, and violating the collective interests of consumers. We also advise on the creation and implementation of new marketing or distribution models, and assessing the compliance of planned activities with competition law.

Contact us!



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