

Evaluations on generic drug competition in pharmaceutical sector

The pharmaceutical sector ("Sector") is one of the leading sectors with significant volume in terms of both employment and tax revenues in the countries' economies, where multinational producers actively participate. It is apparent that a sector with such importance has to be under supervision in terms of competition law for the sake of both market players and consumers.

In this article, the importance of the Sector in the scope of competition law, considering the specific structure of the supply chain and the administrative permits and processes of the products in the process of supply and patent protection, will be emphasized and evaluated in the light of important decisions.

To give a general information, the provisions of the Law on the Protection of Competition No. 4054 ("Law") that should be significantly reviewed by the undertakings operating in the pharmaceutical sector are as follows:

- Article 4 that regulates the prohibition of agreements, ancillary restraints and decisions eliminating competition
- Article 6 on the prohibition of abuse of dominant positions by the undertakings having dominant position
- Article 7 that regulates the prohibition of mergers and acquisitions aimed at creating a dominant position or strengthening dominant position.

The abuse of legal security granted by the patent rights is one of the most important examples of competition law violations in the Sector. Agreements concluded by rival pharmaceutical companies to prevent generic (equivalent) drug manufacturers from entering the market can be considered as another important example.

For original drug producer companies, the existence of a patent has great importance, and generic drugs can be released to the market only after the end of the patent protection period. Competition authorities' evaluations include findings showing that original drug manufacturers can sometimes develop strategies in order to protect their market share by raising their legal rights against patent infringement or pricing for products under patent protection.

The actions of the original pharmaceuticals producers, which may be referred as unilateral anti-competitive behavior and/or vertical or horizontal agreements aiming to restrict or prevent entry of generic drugs into the market by taking advantage of their dominant position is mostly the subject of Turkish Competition reviews. As in Turkey other countries' competition watchdogs strictly scrutinize the operations of active players in the pharmaceutical sector.

In the light of above mentioned information, it is seen that the Sector has been subject to a great deal of regulation in our country and all around the world due to its sectoral structure and its direct effect on consumers. Considering high amount of penalties imposed by competition authorities, it is apparent that it is of utmost importance for companies active in the Sector to have a strong competition compliance strategy and take measures to increase their level of competition compliance.

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