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**COMPETITION ISSUES IN THE DISTRIBUTION OF PHARMACEUTICALS**

**Contribution from Estonia**

-- Session III --

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## COMPETITION ISSUES IN THE DISTRIBUTION OF PHARMACEUTICALS

-- Estonia --

### 1. Proposal to sell over-the-counter medicines outside pharmacies

1. In relation to the proceedings related to concentrations in the pharmacies market, the Competition Authority made in 2009 more detailed analysis of sale of pharmaceuticals in Estonia and assessed the impact of the rules governing these activities on competition.

2. The Authority found, taking into account the marketing practice of over-the-counter medicines that selling such medicines exclusively in pharmacies was no more justified. Many pharmacies have developed into self-service pharmacies – customers can take pharmaceuticals from open shelves themselves without any prior advice from the pharmacy staff, similar to choosing food products and primary consumer goods in a food store. However, so far the only reason given why over-the-counter medicines should be only sold in pharmacies, is the advice given by the pharmacy staff. Self-service pharmacies also indicate that the awareness of the consumers has grown. Consumers are now able to find the necessary over-the-counter medicine on the shelf. Therefore, from the consumers's perspective it is not necessary any more to restrict the sales by giving an exclusive right to pharmacies. The Authority came to the conclusion that this unjustified and unnecessary restriction to entrepreneurship is excessive and places obstacles to free competition.

3. A more lenient organisation of the sale of over-the-counter medicines would give impetus to competition and would have a positive impact on the product mix and general price level of over-the-counter medicines. If new sellers of medicines come to the market, it will put pressure on the present concentrated market structure where two undertakings practically hold 80-90% of the marketing of pharmaceuticals in Estonia (import → wholesale → retail sale in pharmacies). Based on the practice of other countries, supermarket chains selling food and primary consumer products and petrol stations could be alternative over-the-counter marketing channels. Those chains have strong purchasing power and should have the same position in negotiations with pharmaceutical companies as the current larger wholesalers of pharmaceuticals. Larger supermarket chains have their own logistics centres for purchasing and distributing the goods between the outlets. This centralised purchase model makes it possible for many producers to sell their products directly to the retail seller. If it were possible to sell over-the-counter medicines in the supermarket chains, most probably a direct scheme (producer → retail seller) would be used, leaving out the wholesaler. Such practice would put more pressure on the wholesalers of pharmaceuticals currently operating in the market and would motivate them to purchase cheaper over-the-counter medicines. The Competition Authority found that product-specific competition would be possible, thanks to the wide choice of pharmaceuticals, different price level of similar medicines and lack of many pharmaceuticals in Estonia. Competition is technically possible if the new retail sellers of pharmaceuticals will not only use the services of Estonian wholesalers but also direct and parallel imports as an alternative.

4. In order to support its viewpoint the Competition Authority studied the practice of other European countries in the marketing of over-the-counter medicines. The replies showed that such medicines were sold outside pharmacies in the following countries: Bulgaria, Netherlands, Norway, Poland, Sweden, Germany, Finland, Denmark, Czech Republic, Hungary, UK. The Authority also

commissioned AS EMOR to conduct a survey on the availability of over-the-counter medicines in smaller settlements. The survey mapped all possible barriers to the availability of such medicines. The results showed that the most frequent obstacle to the availability of over-the-counter medicines was price – almost half of the respondents mentioned this factor. About one quarter of the respondents were of the opinion that location and opening hours of pharmacies were an obstacle. The attitude to sale of over-the-counter medicines outside pharmacies in outlets holding a respective permit was rather positive than negative. 58% of all respondents had a positive or rather positive attitude and 37% a rather negative and very negative attitude. The attitude was more positive in South-Estonia where pharmacies are on the average at a greater distance.

5. Unfortunately no changes had taken place in the regulation regarding over-the-counter medicines for the present. Pharmacies still have the exclusive right to sell over-the-counter medicines.

## **2. Proposal to abolish of restrictions on establishment of pharmacies**

6. Also, in 2009 the Competition Authority made a proposal to abolish restrictions on the establishment of pharmacies stipulated by the Medicinal Products Act (§ 42<sup>1</sup> 1–3).

7. The Authority indicated that according to the statistics collected by the State Agency of Medicines the restrictions set out in § 42<sup>1</sup> of the Medicinal Products Act have not fulfilled their purpose – to ensure a more even distribution of pharmacies in rural areas. Since 2006 the number of general pharmacies has decreased by 4.8% in cities and by 11.5% in the countryside. Thus, contrary to the purpose of the restriction, access to the pharmacy service has become more uneven, i.e. the distribution of pharmacies over the country has changed even more to the benefit of cities. The Authority is of the opinion that such competition restriction can not even theoretically function as intended. The explanatory letter to the draft of the Medicinal Products Act states that investors will decide to open pharmacies in the countryside if no more pharmacies can be opened in urban areas due to administrative restrictions. In reality, investors' decisions are based on how much return a business plan may yield and not on the fact that implementation of another business plan is administratively hindered. If a pharmacy in the countryside is economically not viable, it will not come into being and the opportunity to open a pharmacy in an urban area has no significance for this decision. The Authority's position is that the restrictions set out in § 42<sup>1</sup> of the Medicinal Products Act for the issue and alteration of an activity licence for a general pharmacy are unnecessary and do not fulfill the intended purpose.

8. In 2013 the Chancellor of Justice of Estonia turned to the Estonian Supreme Court with an application to declare the geographic and demographic restrictions on the establishment of pharmacies stipulated unconstitutional.

9. For the present, the Estonian Supreme Court has declared unconstitutional § 42<sup>1</sup> 1–3 of the Medicinal Products Act. The court provided for a transition period of June 2014 for the changes.

10. In order to improve competition and accessibility of medicinal products in rural areas, criteria are currently being developed. The Supreme Court cited several possible solutions, for example internet pharmacies, pharmacy buses, direct subsidies or support fund to rural pharmacies. A proposal that, undertakings that operate a pharmacy at a profitable city spot, should establish a pharmacy in some less inhabited area i.e. support a less profitable pharmacy on account of the prosperous one.

11. The Competition Authority hopes that the Supreme Court's decision provides for greater competition on the pharmacy market, which will positively affect both consumers and undertakings.

**3. Structure of the pharmacy market**

12. Pharmaceutical wholesale market in Estonia is dominated by two large wholesalers, owning more than 80% of the wholesale market. These two wholesalers own many pharmacies and thereof the vast majority of pharmacies buy most of medicinal products from certain wholesalers. Approximately 90% of the pharmaceutical retail market is dominated by pharmacy chains. Thus, competition in pharmaceutical wholesale and retail market is limited and for new competitors it is difficult to enter the market.