



Press Release

St. Gallen, 10 January 2018

Judgments B-843/2015, B-844/2015 and B-846/2015 of 19 December 2017

Fines against manufacturers of ED medications lifted

The Federal Administrative Court has confirmed its original decision to lift the CHF 5.7 million in fines imposed by the Competition Commission on the producers of Viagra, Levitra and Cialis. In its three judgements of 19 December 2017, the FAC has concluded that the published price recommendations did not restrict competition. As maximum price recommendations, they rather prevented the ED medications from being sold at excessively high prices.

In 2009 the Competition Commission (COMCO) imposed fines totalling CHF 5.7 million on three pharmaceutical companies: Pfizer AG, Eli Lilly (Suisse) SA and Bayer (Switzerland). It accused them of unlawfully fixing the prices of ED medications Viagra (Pfizer), Levitra (Bayer) and Cialis (Eli Lilly) in the form of published price recommendations. After the Federal Administrative Court (FAC) had ruled in favour of the appellants in its judgments rendered in 2013¹, the Federal Supreme Court (FSC) referred the cases back to the FAC in 2015² for re-examination. In essence, the FSC ordered the FAC to assess the disputes in light of Articles 4 and 5 of the Cartel Act (CartA).

No distortions of competition through maximum price recommendations

After analysing the extensive case files, the FAC now concludes that the existence of any unlawful vertical agreements has not been proven. There is no evidence that the price recommendations for Viagra, Levitra and Cialis could have led to concerted practices with the purpose or effect of restraining competition. The market data gathered by COMCO actually indicate that the price recommendations have prevented excessively high prices. According to the FAC the price recommendations did not distort competition and were, as maximum price recommendations, permissible under the Cartel Act.

These judgments may be appealed to the Federal Supreme Court.

¹ Judgments B-364/2010, B-362/2010 and B-360/2010 of 3 December 2013.

² FSC judgments BGE 141 II 66, 2C_80/2014 and 2C_79/2014 of 28 January 2015.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 347 employees (306.2 FTE) and its 77 judges (69 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court.

The FAC is composed of six divisions. It renders an average of 7,500 judgments every year. Most of these decisions are not appealable before the Federal Supreme Court (FSC) and only a few of the appealable ones are challenged before the FSC.