
Competition Law

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PRICE INCREASE OF 2000% AMOUNTED TO ABUSE OF DOMINANCE

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The Danish Competition Appeals Tribunal agrees that CD Pharma, a distributor of pharmaceuticals, abused its dominant position back in 2014 when it increased the price of its oxytocic drug by up to 2000% without such increase serving a legitimate purpose.

The Competition Appeals Tribunal's decision of 29 November 2018 – CD Pharma

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Background

On 31 January 2018, the Danish Competition Council found ([read our previous news article](#)) that CD Pharma had a dominant position on the market, and that the company had abused this position by charging excessive prices. The Council held that CD Pharma's strong competitive position on the market had made the abuse possible, noting in particular that the price increase did not serve a legitimate purpose.

CD Pharma brought the matter before the Competition Appeals Tribunal, claiming that the company did not occupy a dominant position and that the conduct had not amounted to an abuse.

Council decision was upheld

The Competition Appeals Tribunal has now affirmed the Council's decision, noting in relation to the issue of dominance that, for competition law purposes, it should not be given any significant weight that the market players bid for the contract every year.

As for the finding of abuse, the Tribunal specifically noted that the fact that CD Pharma did not want to "get stuck with" a large batch of the oxytocic drug did not justify a price increase of 2000%.

What next?

Following the Tribunal's decision, the Council has announced that it will ask the State Prosecutor for Serious Economic and International Crime (SØIK) to look into the matter.

The decision is in line with the general trend among competition authorities in the EU and USA to focus particularly on unfair and abusive practices in the pharmaceutical industry, which was also [confirmed by Margrethe Vestager in 2017](#).

However, the Danish Competition and Consumer Authority has recently indicated that cases involving excessive pricing are not a priority as such in Denmark, and that this

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case was also investigated due to its foreclosure effects on parallel importer Orifarm.

[Read the Competition Appeal Tribunal's decision](#) (in Danish).