

A close-up photograph of a pair of ornate, silver-colored scales of justice, positioned on the left side of the page. The scales are set against a blurred background of a courtroom with wooden paneling and rows of seats.

Drug Distribution: Recent Court Developments

Representative Rulings: Single Member Court of Athens 2837/2018 & 6001/2018

Highlights of the recent jurisprudence:

- Marketing Authorization Holders (MAH) can freely organize/restructure their distribution network
- The nature of medicinal products does not dictate an obligation of the MAH to cooperate with every active wholesaler in the region
- The public service obligation entrusted with the MAH and drug wholesalers is considered fulfilled, as long as the market is sufficiently supplied.
- A drug distribution contract, once terminated, cannot be revived through a Court ruling.

Introduction

The issue of effective drug distribution has repeatedly been addressed in Greece, and examples that evidence the flaws of the system often come to light. In this context, the industry has attempted to meet the challenge and solve the arising problems by way of restricting its distribution network of wholesalers, at times more drastically, and, in some cases, in a more structured and conservative manner.

Factual Background

With an eye on effectiveness, a major pharmaceutical company operating in Greece decided to restructure and reduce its distribution network by way of terminating long-standing relationships with a number of wholesalers. Following this termination, some of [the wholesalers] appealed to the Greek courts either by filing applications for interim measures, requesting that the pharmaceutical company be ordered to continue to sell to them medicinal products, or by bringing civil actions, claiming that the termination of their contractual relationships was abusive and thus void and therefore they shall be compensated for the damages incurred by

them due to the termination of their contracts.

Recent Jurisprudence

Following above legal measures, all Courts so far have accepted unanimously that the termination of such contracts, even if found to be abusive, is never void and therefore it always results in the termination of the cooperation. Furthermore, according to the Courts' perspective, expressed either indirectly or explicitly, this effect occurs even when the products distributed are medicinal products, since there is no legal provision requiring pharmaceutical companies to maintain contractual relationships with every active wholesaler in the domestic market. Therefore, in the absence of such a provision, the judicial imposition of a compulsory and undesirable cooperation would be contrary to the constitutionally accepted principle of economic freedom and freedom of contract prescribed within article 5 of the Greek Constitution and 361 of the Greek Civil Code respectively. The obligation of the pharmaceutical companies is limited to the adequate supply of medicines to the Greek market, so as to efficiently meet the needs of the patients.

As for the terminated wholesalers, the Courts ruled that there was no urgent need for the preservation of their clientele, since they have the option to alternatively obtain the MAH's products from other wholesalers at a

reduced profit margin or even without profit. The above ruling, regarding the absence of an urgent case, is enhanced by the fact that the terminating pharmaceutical company did not abruptly interrupt its cooperation with the wholesalers, but it gave them a six-month notice. Such a notice is considered offering reasonable and sufficient time that simplifies the amortization of any investments made by the wholesalers and enables their adaptation to the new market conditions and circumstances.

Comment

The development of the aforementioned case proves beyond doubt that the success of this restructuring project is attributed to the purpose it sought to serve. In particular, all Courts in upholding this case until today have considered that the restructuring of a distribution network is a sufficient reason for the termination of even long-standing contracts and considered such termination to be lawful, valid and compatible with both the Greek and the European legislation. In none of the cases did the Courts estimate that there exists an obligation, dictated by the nature of the medicinal products, to conclude a contract with all wholesalers, as claimed by the latter. To the contrary, MAHs, as long as they do not violate any legal requirements, should have complete discretion to form their network freely. This very freedom was confirmed by the Greek Courts in the recent cases.



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