WHITE & CASE

Client Alert

Competition Law

March 2013

On 26 February 2013, the French Competition Authority ("*Autorité de la concurrence*") announced the launch of a pharma sector inquiry. The *Autorité*'s main goal is to address the cost of prescription medicines for social security, the high prices of non-reimbursable medicines, and the low level of generic competition in France. The inquiry will focus on the distribution of medicinal products by pharmaceutical companies, wholesalers and pharmacists and will not touch upon patent settlement agreements. The *Autorité* will also examine the issue of online sale of medicines. Read the full announcement by the *Autorité* here.

In sum, the sector inquiry will focus on:

- **Pricing of medicinal products:** The *Autorité* will examine whether there is room for competition for **reimbursable medicines** despite the fact that price is regulated. According to the *Autorité*, parallel trade could play a role in encouraging price competition for such products. The *Autorité* will also analyse the competitive environment in which the prices of **non-reimbursable products** are set by pharmacists. Since prices of non-reimbursable products have significantly increased in recent years, the *Autorité* will review the pharmacists' pricing policies. In this respect it will take into consideration measures which were adopted in other EU Member States in order to enhance price competition for non-reimbursable products and the effects of these measures. Finally, the *Autorité* will examine the relationship between pharmaceutical companies on the one hand and wholesalers and pharmacists on the other in terms of price-setting for non-reimbursable products (discounts, etc.).

- **Promotion of generics**: Generic sales in France are very low but ought to increase since numerous patents will expire within the next two years. Given that prescription of generic medicines represents a substantial source of public savings, and pharmacists have the most important role within the distribution chain in promoting generic medicines to patients, the *Autorité* will propose ways for pharmacists to encourage generic penetration. The *Autorité* may also recommend the establishment of internal mechanisms within pharmaceutical companies which will ensure that generic competition is not hindered.

- **Wholesale distribution and direct distribution of medicinal products**: Wholesalers have been facing economic difficulties in recent years, which are linked to lower margins and reduced volume activity. In this context, the *Autorité* will examine the relationship between wholesalers and pharmaceutical companies on the one hand, and wholesalers and pharmacists on the other. It will also examine the issue of direct distribution from pharmaceutical companies to pharmacists as well as the competitive pressure that

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parallel trade may exert on the distribution of medicinal products.

- **Online sale of medicinal products**: On 19 December 2012, a French order introduced the online sale of medicines in France by implementing the EU Directive on Falsified Medicines. This order had been criticised by the *Autorité*, in an Opinion dated 13 December 2012, because it limited online sales to OTC products and did not cover all non-prescription products (including those which do not require prescription but do not fall within the OTC category). The implementation of the order is currently suspended following an interim order by the French administrative Supreme Court ("*Conseil d'État*") dated 14 February 2013, which supported the *Autorité*'s analysis. In this context, the *Autorité* will now examine the full framework of online sale of medicines including advertisement, price competition, patient information etc.

The scope of the inquiry as set out above shows that the *Autorité*, in order to examine why the level of generic competition is low and medicinal prices are high, will focus its investigation on regulatory and distribution aspects of the pharma sector.

The *Autorité* will publish its conclusions on the initial phase of the inquiry this summer. After this first report, a public consultation will follow. The final report of the inquiry is expected at the end of 2013.