

Conclusion of Pharmaceutical Pricing Investigation in Austria

On 2 April 2021, the Austrian competition authority accepted commitments and closed its case concerning pricing strategies alleged to unlawfully hinder entry by generic competitors.

- [Press release \(in German\)](#)
- [Press release \(in English\)](#)

According to the authority's press release, the investigated pricing strategy concerned the product Temodal (temozolomide - a treatment for brain tumors), and involved special offers to hospitals of below-cost prices or free products, with higher prices charged for supply to community pharmacies. This strategy was alleged to unfairly foreclose the entry of generic competitors by removing any incentive for hospitals to use alternative generic versions for the initial doses received by patients in the hospital setting. Thereafter, patients were rarely switched to an alternative generic version for subsequent doses dispensed at pharmacies.

While this pricing strategy may have benefited hospitals due to the lower prices for the initial doses, the Austrian competition authority considered that, overall, the health system would be harmed due to the higher prices charged for later doses dispensed at pharmacies, and due to the reduced security of supply arising from the inability of other suppliers to successfully enter the market.

The case arose following a 2016 inspection by the European Commission, after which the Austrian authority commenced its investigation in 2018 and brought the case to the Austrian Cartel Court in 2020, ultimately resulting in a settlement with the following commitments:

- future sales of Temodal to hospitals must be at a price above average variable cost, and
- the pharmaceutical company must implement training and procedures to ensure compliance with the competition laws.

For those readers closely following competition law cases addressing the pricing of pharmaceuticals, this case and fact pattern will be reminiscent of the 2001 *Napp* case in the UK (resulting in a finding of an infringement and Napp receiving a fine) and the 2014 *AstraZeneca* case in the Netherlands (resulting in no infringement as the authority could not establish that AstraZeneca held a dominant market position). As this new case in Austria involves a settlement (with no fines and relatively light commitments), it is not certain what the ultimate result would have been had the case proceeded to a judgment by the Austrian Cartel Court.