

The Belgian Competition Authority adopts new decision in the Caudalie case following Court annulment

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In 2021, the Belgian Competition Authority imposed a fine of EUR 859,310 on several companies in the French Caudalie group for breaching competition law by imposing minimum prices and restricting active and passive sales in the framework of its selective distribution network. On 1 December 2021, the Market Court annulled the Belgian Competition Authority's decision. A new decision imposing the same fine was adopted on 20 January 2023.

Following complaints lodged by Newpharma and Pharmasimple against Caudalie, the Belgian Competition Authority ("BCA") launched an investigation in November 2017, and in February 2018 the Investigation and Prosecution Service carried out dawn raids at Caudalie's offices in both Belgium and France.

The practices under investigation were Caudalie's imposition of minimum resale prices on its selective distributors and the limitation of active and passive online sales by its distributors to customers established in another Member State.

In an effort to close the investigation without any sanction, Caudalie presented the Competition College with commitments that mainly consisted of a planned communication to its distributors concerning the conditions it could impose on distributors to safeguard the integrity of its distribution network and to protect its brand image and product quality as well as a confirmation that its distributors could themselves determine the resale price of Caudalie's products.

However, in its decision of 6 May 2021, the BCA made Caudalie's commitments binding and considered them to be mitigating circumstances and therefore reduced the fine to EUR 859,310 for breaching competition law.

Caudalie lodged an appeal requesting that the decision be annulled. The Brussels Market Court considered in its judgment of 1 December 2021 that the BCA had diverted the commitments from Caudalie's intended purpose. Indeed, the BCA could not substitute Caudalie's intention with its own. Specifically, the BCA replaced the commitments' initial purpose of closing the inquiry without any sanction (Article IV.52, §1, 7° CEL) with modalities constituting mitigating circumstances that can potentially reduce the fine (Article IV.52, §1, 2° CEL). Consequently, the applied legal basis in the decision was erroneous and led to the decision's illegality.

Following this judgment, the BCA adopted on 20 January 2023 a new decision and imposed the same fine of EUR 859,310.

It should be noted that Caudalie had contested the infringement itself during the appeal. Caudalie's practices were qualified by the BCA as hardcore restrictions by object.

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