

## **Case on Cochlear implants**

On July 3, 2018 the Commission received a complaint from the Ministry of National Economy of the Republic of Kazakhstan, which reported on the possible allocation of the market along national borders between the suppliers of cochlear implant systems of Belarus, Kazakhstan and Russia.

Cochlear implantation is an electrode hearing prosthetics, which includes a system of measures aimed to restore hearing and social adaptation of patients with deafness or profound hearing loss.

The speech processor (outer part) is a sophisticated electronic medical device that converts sound waves of mechanical nature into electrical impulses transmitted to the cochlear implant (inner part).

The cochlear implant system has been manufactured for over 30 years by a major international holding company, a manufacturer of medical equipment, including medical equipment for hearing restoration. In 2019, cochlear implants accounted for more than 58% of the holding company's revenue; services (sound processor upgrades and other) accounted for 30% of total revenue. Cochlear Holding has operations worldwide; for 2019 48% of revenue was generated in the Americas (U.S., Canada and Latin America), 36% of revenue - in EMEA (Europe, Middle East and Africa), and 16% of revenue in Asia Pacific (Australia and Asia).

Total revenue for 2019 under International Financial Reporting Standards was \$1.5 billion. Reported net income increased by 13% to \$276.7 million in 2019 compared to 2018. U.S.

Headquarters is located in Switzerland. Production is located in the U.S., Switzerland, South Korea, Australia. Representative offices are located in more than 20 countries: USA, Mexico, Panama, European Union, etc.

As a result of the case consideration, it was found that between January 2016 and September 2018, supplies of speech processors produced by Cochlear were limited to the assigned territories: in Belarus – by Assomedica and Belvivad; in Kazakhstan – by PharmExpress and SPP VEK; in Russia – by Euromax.

In Armenia and Kyrgyzstan no official distributors of Cochlear products were identified.

In accordance with subparagraph 3 of paragraph 3 of Article 76 of the EAEU Treaty, agreements between business entities of the member states that are competitors operating in the same commodity market, which lead or may lead to the division of the commodity market by territory, volume of sale or purchase of goods, assortment of goods sold or composition of sellers or buyers (customers) are prohibited.

The participants of the anticompetitive agreement divided the EAEU market along the borders of the states and each of them observed the ban on the sale of goods outside their territory.

The distribution agreements concluded by each participant with Cochlear EUROPE LTD, which oblige the distributor to operate within the territory of a particular EAEU member-state, was evidence of the anticompetitive agreement.

Implementation of the anticompetitive arrangement was also confirmed by correspondence and other materials on the case obtained, including in the course of an on-

site inspection conducted jointly by the FAS Russia and the EEC. The information obtained confirmed both the appeals of consumers from Kazakhstan and the actual refusal of Euromax LLC to consider cooperation with consumers from other EAEU countries, as well as close cooperation between the parties to the anticompetitive agreement, including personnel training, joint activities, and others.

At the same time, the participants adhered to relatively unified approaches to prices. It is noted that the bulk of sales accounted for public procurement, so the prices were determined by relevant procurement procedures, and the absence of participants from other states in the procurement actually eliminated price competition.

The practice of referring speech processor customers to a cochlear implant provider (repair, replacement of medical device parts) in accordance with the geographical principle of service territories was noted.

Thus, the conditions of subsequent service of the implant system by the company that installed the internal part of the implant were determined. This deprived the patient of the opportunity to receive warranty and post-warranty service from other suppliers of cochlear products.

Farm Express LLP and SPP VEK LLP admitted the violation and informed about prevention of similar violations from their side in future. Assomedica LLC and Belvivad LLC also acknowledged that some provisions of the agreement did not comply with the EAEU Treaty.

The EEC Board took the decision, obliging the defendants to stop the violation, including:

- to terminate and not execute arrangements that may result in the division of the commodity market, and to exclude such provisions from previously concluded distribution agreements;
- stop giving preferential treatment to individuals;
- place publicly available information for consumers to contact any of the Union's suppliers regarding the purchase and service of Cochlear's speech processors.

The defendants received the following fines:

Assomedica LLC - 100,000 Russian rubles;

Pharm Express LLP - 381,005 Russian rubles;

SPP VEK LLP - 100,000 Russian rubles;

OOO Belvivad - 175,085 Russian rubles;

Evromax LLC - 3,655,896 Russian rubles;

officials - 66,041 Russian rubles each.

The circumstances mitigating responsibility (voluntary cessation of the violation, assistance in the case, not being an organizer of the agreement) and the circumstances aggravating responsibility (continuous violation) were taken into account when calculating the fines.

At present the economic entities and officials of the Republic of Belarus and the Russian Federation have duly paid the fines to the budgets of the respective states.