

VIOLATIONS OF COMPETITION AND CONSUMER PROTECTION POLICY IN THE PHARMACEUTICAL INDUSTRY IN VIETNAM

It is undeniable that access to healthcare is one of the most basic needs, an inviolable right of every human. It is also recognized by the Constitution of Vietnam. Healthcare is an intrinsic component of the development process, and its quality reflect clearly how the socio-economic development achievements are being translated into increased welfare for the whole society, or on the other hand, the drawbacks and remaining problems of a market economy without the regulatory role by the State. Despite the constitutional commitments to provide access to health to the nation's population, there remain a lot of problems in this field, which sometimes resulted in the legitimate rights and interests of patients and Vietnamese people in general not being respected and protected.

Access to medicines and healthcare has five aspects: availability of supply, price, quality, ability to pay and access to proper and affordable consultations. All these aspects are vitiated in our country by a number of factors, which range from poverty and poor infrastructure to corruption, market malpractices and lack of awareness. Competition law would be a good instrument, in addition to other legal instruments, to undertake this solution: promoting effective free market mechanisms, preventing anticompetitive practices or unfair trade practices, protecting the interests of the consumer and improving social welfare.

Anti-competitive practices in the pharmaceutical industry include, amongst others, price fixing, abuse of dominance, collusive agreements and tied selling. Even practices such as kickbacks to doctors and pharmacists may be deemed as anti-competitive as they result in depriving patients of best possible medicines and services at the lowest possible prices. The primary effect of anticompetitive practices on the health sector is that medicines and services are rendered costlier.

Besides, according to the current consumer protection policy of Vietnam, in the pharmaceutical industry, we can detect such abusive practices as manufacturing and trading in fake medicines; misleading information, advertisements and sale promotion; deceptions and acts which are harmful to the health and life of consumers.

Manufacturing and trading in fake medicines

Fake goods are quite rampant in Vietnam under many covers, such as: fake quality, fake labels, or fake in both quality and labels. Especially, faking of famous brands has switched to labeling in similar fashions as those famous brands. These practices are not only in violation of the law but are also deceptive in nature, harming the legitimate right and interests of consumers, and adversely affecting the safety and health of consumers, especially in such an area as the pharmaceutical sector. Fake medicine is a serious issue in Vietnam which needs to be addressed urgently.

Fake medicines might be packaged in very sophisticated manner, which makes it hard for consumers to differentiate. Fake medicines are often manufactured at illegal establishments (without business registration), and packaged and labeled as genuine ones so as to extract undue profits. Fake medicines might be traded directly between providers and pharmacists, without any receipts or supporting documents. Therefore, it is difficult for law enforcement agencies to catch the culprits, or the producers. Sometimes, fake medicines were even found in hospitals and clinics.

Every year, the market supervisory force and health inspectors in Vietnam have organized unannounced raids at pharmacists, collected a great quantity of fake medicines and imposed heavy fines on the violators. However, the situation is not much improved.

Fake medicines cannot cure diseases or sicknesses. Sometimes, they even cause unexpected side effects or damages to consumers/patients. Vietnamese consumers, when suffering from such damages, do not often have a clue what to do in order to protect their interests, due to lack of proof. Sometimes, the consumers do not even know who to sue, the pharmacists, or the prescribing doctors.

Misleading information or insufficient information

According to current laws and regulations, medicine prices (for wholesaling, retailing as well as importing) have to be registered with the relevant State agencies. Especially, retailing prices have to be clearly and fully listed at the site of the pharmacies. Besides, the retailing prices have to be pasted on the cover or package of the medicines so that the consumers can see, and must not be higher than the listed prices. However, these regulations are hardly observed in practices, harming consumers. Violations detected include:

- (i) Not listing the prices or listing the prices of only some products
- (ii) Only listing the generic names but not the names of prescribed medicines;
- (iii) Listing the prices of imported medicines but selling domestically-produced medicines at the same prices;
- (iv) Having price lists but not updating or keeping the price lists as small in size as possible, etc.

These deceptive practices by retailing stores and pharmacies are in violation of their obligations to provide clear and sufficient information to consumers. Health inspectorates in big cities like Hanoi and Ho Chi Minh City have uncovered and handled several such cases in the last two years. However, in remote regions or rural areas, where the level of awareness of consumers remains limited, such practices must be more rampant and more serious.

Another violation related to information is about the expiry date of medicines, or the withdrawal of choice between imported medicines, domestic medicines and generic medicines.

In Vietnam, it is quite a common practice to sell prescribed medicines over the counter, or unlabelled medicines, or expired medicines, both at wholesaling or retailing stores and in hospitals. These deceptions are based on withdrawal of important information from consumers and may harm them seriously.

Consumers might also be cheated when trying to buy frequently-advertised medicines on the mass media. Taking advantage of the limited awareness of consumers, manufacturers or wholesalers and retailers might sell them other products with similar names.

Besides, since large pharmaceutical companies often pay a lot of commissions to doctors, doctors may prescribe or tend to prescribe more expensive imported medicines. Coupled with limited awareness of the end consumers, imported medicines are often traded more popularly despite high prices.

Illegal advertisement or sale promotion activities

These above-mentioned mistakes of the consumers are very often caused by advertisements or sale promotion tactics, or measures to gain more market shares and maximize turnover by pharmaceutical companies. At present, in Vietnam, it is prohibited to advertise poisonous

medicines, addictives, unregistered medicines and other medicines related to the mental system. Prescribed medicines are also not allowed to be advertised, but marketed directly to consumers via doctors and healthcare staff. Pharmaceutical companies are allowed to market their products to doctors and healthcare staff by ways of conferences, seminars and through specialized salesmen. However, most OTC (over-the-counter) medicines can be advertised on the mass media quite freely. Some companies have gone overboard in such advertisement, or chose to withdraw certain information, adversely affecting the safety and interests of the consumers.

According to the World Health Organisation (WHO), in 2004, only 16% of all countries in the world can manage pharmaceutical advertising effectively, while 30% do not take any measures or do not do much.

In Vietnam, there is also another type of 'sham' advertisement – which might be seriously deceptive. These advertisements are published on the mass media as letters of thank from the patient to doctors, pharmacies or patented medicines. Sometimes, they are 'shammed' as doctors' advice, or awards, or instructions by doctors, etc. These 'sham' advertisements need to be closely checked and dealt with.