



Presentation of the Preliminary Report of the Pharma Sector Inquiry

The point of view of the Conseil de la concurrence

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Sector Inquiry: what added value for NCAs?

Comprehensive scope and scale

- 43 originator companies and 27 generic companies
- 219 medicines
- 2000-2007 time period
- Dawn raids in Europe and abroad (USA, Israel, etc.)

Big picture

- Questionnaires sent to producers, stakeholders and NCAs
- Insight into commercial practices and strategies within the pharmaceutical industry

Sensitive issues

- Key industry and markets (total size: € 138 billion)
- Social and public policy (not. health expenses)



Sector Inquiry: what are we looking for?

Substantive issues:

- Decline in innovation?
- Delayed market entry of generics?
- Abusive exercise of patents to block innovative and/or generic competition?
- Vexatious litigation?
- Settlement agreements preventing/delaying market entry?

Procedural aspects:

- Surprise effect
- Cooperation and coordination with NCAs



The Conseil de la concurrence: very active in the sector!

Proceedings on the substance:

Abusive practices (mainly regarding delayed market entry of generics):

- GSK decision (07-D-17) - 14 March 2007
 - Decision penalizing GlaxoSmithKline for having hindered the entry of generic drugs in hospitals with a predatory policy relative to the price of an injectable antibiotic (cefuroxime sodium)
 - The predation policy was part of a global intimidation strategy aimed at discouraging generic drug manufacturers from entering the hospital medicine market
- Sandoz Novartis decision (03-D-35) - 24 July 2003
 - Sales policy intended to increase customer loyalty among hospitals via a system of linked reductions
- Abbott decision (01-D-23) - 10 May 2001
 - New tariff system included a substantial discount where members of the purchasing syndicates agreed to purchase their Isoflurane exclusively from Abbott or to purchase quantities so substantial that they in effect amounted to exclusive purchase

Cartel case – Air liquide decision (03-D-01) – 14 January 2003

- Market for medical gases for use in hospitals
- Market sharing and price agreement



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Urgent intervention (interim measures):

- **Schering Plough decision (07-MC-06) – 11 December 2007**
(Schering's patent expired and Arrow company launched its generic equivalent on the market)
- Practices concerned
 - Defamation against Arrow's generic drug among pharmacists
 - Significant change in Subutex® business conditions in pharmacies when the generic drug entered the market
- The Conseil de la concurrence's analysis
 - Arrow's generic drug had an abnormal penetration rate on the pharmacies market
 - The company's conduct could have generated a deterrent signal effect towards other potential entrants on the market
- The interim measure ordered against Schering
 - Practices has stopped
 - Publication injunction



How to take advantage of the sector inquiry?

Standard of proof

- High level of proof
- Added value of compelling documents

Effect-based analyses

- Useful tool for economists, in particular in the perspective of guidance paper on Article 82 EC

What next?

- Need for coordination within the ECN



For further information on cases mentioned:

Please refer to:

1. Decisions 07-D-45 and 07-D-46 of 13 December 2007 relative to practices implemented in the sector of medicine distribution
 - <http://www.conseil-concurrence.fr/pdf/avis/07d45.pdf>
 - <http://www.conseil-concurrence.fr/pdf/avis/07d46.pdf>
2. Decision 07-MC-06 of 11 December 2007, relative to a request for interim measures presented by Arrow Generiques
 - <http://www.conseil-concurrence.fr/pdf/avis/07mc06.pdf>
3. Decision 07-D-09 of 24 February 2007, relative to practices implemented by GlaxoSmithKline France laboratory
 - <http://www.conseil-concurrence.fr/pdf/avis/07d09.pdf>
4. Decision n° 03-D-35 of 24th July, 2003, relative to practices implemented by laboratoires Sandoz (which became Novartis Pharma SA in 1997) in the market for certain medicinal products intended for hospitals
 - <http://www.conseil-concurrence.fr/pdf/avis/03d35.pdf>
5. Decision n° 03-D-01 of 14th January 2003, relative to behavior of companies belonging to the Air Liquide group in the media gas sector
 - <http://www.conseil-concurrence.fr/pdf/avis/03d01.pdf>