Is IP Good for Our Health?

*Drugs and Competition Law*

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Competition Refresher

• Article 101
  • Anti-competitive agreements
• Article 102
  • Abuse of a dominant position
Key Topics

- Patented Drugs Settlements
- Patented Drugs Discounts/Other
- Off-Patent Drugs Price Rises
Patented Drugs – Settlements

• Commission’s Pharma Sector Inquiry (2008-2009, monitoring → 2016)
• C-591/16P Lundbeck v Commission (AG Kokott due 12 March 2020)
  • Cipramil (citalopram) – Article 101 (2002-2003 → 2013)
• C-307/18 Generics (UK) v CMA – CJEU (30 January 2020) (AG Kokott)
  • Seroxat (paroxetine) – Articles 101 & 102 (2001-2004 → 2016)
• C-201/19P Servier v Commission (pending, filed 28 January 2019)
  • Coversyl (perindopril) – Articles 101 & 102 (2005-2007 → 2014)
• US: Baltimore et al v AbbVie (pending)
  • Humira (adalimumab)
Patented Drugs – Discounts/Other

• CMA 50236 MSD/Remicade (14 March 2019)
  • Remicade (infliximab) – Article 102 (2015-2016 → 2019)
  • No grounds for action decision; loyalty discounts intended to exclude biosimilars, but on facts not likely to work
• CMA CE/9855-14 Unknown (26 June 2015)
  • Closed on grounds of administrative priority but warning letter sent; loyalty discounts/rebates
• Pfizer (Xalatan) (Italian Supreme Administrative Court, 12 February 2014)
• C-457/10P AstraZeneca (6 December 2012)
Off-Patent Drugs – Price Rises

- CMA CE/9742-13 *Pfizer/Flynn* (Court of Appeal; due 9 March 2020)
- Epanutin (phenytoin) – Article 102 (2012 → 2016)
- CMA 50277 – hydrocortisone (Auden McKenzie, Waymade, Advanz)
- CMA – liothyronine (Advanz)
- CMA 50455 – fludrocortisone (Aspen, Tiofarma, Amilco)
- CMA 50507.2 – nortritptyline (Auden McKenzie, King, Lexon, Alissa)
- CMA 50511-1 – nitrofurantoin (Advanz, Morningside)
- CMA 50511-2 – prochlorperazine (Alliance, Focus, Lexon, Medreich)