8 March 2007: Conseil de la concurrence facilitates online sale of cosmetic products

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10 companies of the cosmetic industry committed to introduce more competition into online sale of their products

>Version française

The Conseil de la concurrence decided on its own initiative (ex officio referral) in June 2006 to analyse the lawfulness of the conditions imposed by different cosmetic product companies for selling their products via the Internet.

The companies all resort to a selective distribution system, through which their products are sold via approved distributors (pharmacies, parapharmacies, special counters at department stores), which are selected for the quality of their retail outlet and the level of staff qualification required for giving pharmaceutical counselling.

As part of the procedure, ten companies have committed themselves to change substantially the clauses of their selective distribution contracts as regards online sale by approved distributors. The aim is to reconcile the respect for the brand image, the guarantee of the products quality and the access of approved distributors to this dynamic distribution medium.

The concerns of the Conseil de la concurrence

Within their respective selective distribution network, the companies forbade their distributors to sell their products online or imposed on them conditions, which substantially restricted their ability to venture into online selling.

The commitments taken by the companies

In response to these concerns, ten companies committed themselves to change their behaviour. The commitments, which are made binding by today's decision of the Conseil de la concurrence, mainly concern the following points:

· requirements relative to the website's quality

The quality of the website is a common concern for all the relevant companies, which all put forward the need to guarantee the respect for their brand image. In this respect, some of the conditions required were worrying: requirement to create a website, which is exclusively dedicated to the sale of products with pharmaceutical counselling, need to have a payment point reserved for the products concerned, detailed requirements as regards product presentation (description, size and weight of the pictures), compulsory resort to a webcam to visualize the customer, etc.

The manufacturers concerned accepted to simplify the contract clauses, without restricting their objective to respect the brand image of their products. Alternatives have been found, which are more respectful of competition, notably as regards the requirement of a dedicated Internet website, which was replaced by the requirement of a dedicated page as part of a virtual store. Some companies went even further, in accepting the principle of platform selling, under certain conditions.

· Conditions relative to hot lines availabilities

The creation of a hot-line via telephone or email (both can be combined), offers, via Internet, a personal counselling service given by a pharmacist.
The operating conditions of the system (time tables, maximum time period for reply) have also been reduced.

· Restrictions or limitations on quantities or prices

The Conseil de la concurrence believes that the restriction on the number of products likely to be purchased via an Internet order can restrict parallel trade.

However the Conseil observed that this requirement did not exist for real outlets and stressed that intra-network trade between approved distributors should not be limited. Some of the companies concerned then committed themselves to increase the anticipated quantitative thresholds and others to simplify authorization mechanisms.
Besides, the Conseil reminded that the clauses leading directly or indirectly to control the prices practiced by distributors on the Internet were prohibited. Two companies have therefore removed or amended the contentious clauses.

· Foreign languages

Requirements as regards translation of the website and counselling in one or several foreign languages have been reviewed and simplified by some manufacturers in order not to constitute an obstacle to the will and to the distributors' ability to create an Internet website.

· Referencing of search engines

Most companies concerned removed the prohibition to use their corporate name or their brand as a keyword in so called “natural” search engines and a certain number of changes have been brought to clauses relative to the control of paying referencing.

The commitments taken by the ten companies will therefore lead to the development of online sale of parapharmaceutical products. The consumer will then be able to compare prices of different brands, and also to use more easily intra-brand competition i.e. competition between different approved distributors for a single brand product.