14 March 2007: Sale of drugs to hospitals and private clinics

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Conseil de la concurrence imposes €10 millions fine on GlaxoSmithKline for having abusively hindered the entry of certain generic drugs to hospitals

>Version française

Following a referral by Flavelab company, a generic drug manufacturer which has now disappeared, combined with an ex-officio referral, the Conseil de la concurrence has issued a decision penalizing Glaxo Wellcome France laboratory (now 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).

In France, this is the first case to penalize predatory prices. A predatory price is an unusually low price, i.e. below the variable costs of the company. The predation mechanism works as follows: First the company offers very low prices so as to evict or discourage the arrival of competition on a given market. Once competition has been eliminated, the company can raise its prices to the detriment of the consumer and regain the losses made during the first phase.

In 1999 and 2000 Glaxo laboratory sold injectable Zinnat® at a price below costs so as to deter generic drug manufacturers from effectively entering the hospital market

Glaxo laboratory sales Zinnat® , an antibiotic, which is commonly used in hospitals before operations.

The Conseil de la concurrence considered that the prices proposed by Glaxo for this drug had a predatory nature on 43 hospital markets concluded in 1999 and 2000. The sale prices of injectable Zinnat® were lower than the price paid for the drug by Glaxo France, which provided itself at another group's subsidiary.

Once Flavelab was out of the market, Glaxo laboratory noticeably raised its prices in a profitable way during the following two years, thus largely regaining the losses recorded during the predation period.

The predation policy was part of a global intimidation strategy aimed at discouraging generic drug manufacturers from entering the hospital medicine market

The predation policy, which focused on a relatively small sized market (market for cefuroxime sodium was about 1 million euros), actually had a more general objective for Glaxo, which consisted in making an aggressive reputation and sending a "signal" aimed at deterring small sized generic manufacturers from entering the market of hospital medicines.

The strategy produced an unexpected impact since it led to evict Flavelab laboratory from the hospital market. The strategy also deterred Panpharma and Ggam laboratories - other players on the market of cefuroxime sodium- from developing other Glaxo generic drugs, such as acyclovir, an antiviral injection sold to hospitals under the brand name Zovirax®, the laboratory's leading product.

These practices hindered the development of generic drugs in hospitals and thus seriously damaged the sector's economy

The development of generic drugs, which are cheaper than brand name drugs, is essential for favouring a reduction in average drug price, a major item in hospital budget. Such practices thus damaged the sector's economy in a difficult context of health expenditure control.

Besides, the Conseil reminded that eviction practices were very serious practices by nature and that they had been implemented by a laboratory which was, at the time, the first supplier of pharmaceutical medicines for hospitals.

> Decision 07-D-09 of 24 February 2007, relative to practices implemented by GlaxoSmithKline France laboratory

> See decision of the Paris Court of Appeal (8th April 2008)

> See decision of the Cour de cassation (Supreme court of appeals) 17th March 2009