5 July 2007: Distribution of medicines

Published on July 05, 2007

The Conseil accepts the commitments proposed by four pharmaceutical laboratories
making the medicine quota system more flexible for wholesale distributors

>Version française

History of the case

After examining the situation of pure exporters (decision 05-D-72), the Conseil de la concurrence has handed down its decision on the quota practices implemented by pharmaceutical laboratories towards wholesale distributors.

On 3 April 2002, the Conseil de la concurrence received a complaint by the pharmaceutical distribution union (Chambre syndicale de la répartition pharmaceutique, CSRP) and on 20 October 2003, a complaint by the company Phoenix Pharma, concerning practices implemented by several pharmaceutical laboratories, which had set up quota systems for supplying medicines to wholesale distributors in France.

Phoenix Pharma's referral was accompanied by a request for interim measures, which had been rejected by the Conseil de la concurrence in its decision n° 04-D-05. However some part of the referral had been retained concerning quota practices of four laboratories.

The two referrals on the merits have been joined and the investigation enabled to examine the quota operating systems of six laboratories, which had set up delivery quotas on the French market. With regard to this context the companies Boehringer Ingelheim France, Laboratoires Merck-Sharp & Dohme-Chibret, Lilly France and Sanofi-Aventis proposed commitments.

Competition concerns

Medicine distribution in France is organised so as to meet general interest issues, which are set by the public health code. Mainly provided by wholesale distributors, medicine distribution to pharmacies is subject to delivery quotas by laboratories. The quotas are determined by criteria, which are exclusive to each laboratory and notably take into account the record of sales to pharmacies by every wholesaler. But these systems were characterized by little transparency, a relative rigidity to face wholesalers' business fluctuations and were not favourable to new entrants.

If these quota systems have the legitimate aim to rationalize production and optimize medicine distribution with regard to each country's need, the restrictions imposed by this regulation have to be limited to what is strictly necessary for a reliable and optimal supply of the French market, whilst maintaining real competition possibilities between wholesale distributors.

The pharmaceutical laboratories' commitment proposals

So as to meet the competition concerns expressed by the Conseil de la concurrence, the companies Boehringer Ingelheim France, Laboratoires Merck-Sharp & Dohme-Chibret, Lilly France et Sanofi-Aventis proposed commitments, which have been completed at the Conseil's request, amending the supply system of medicines so as to increase its fluidity, flexibility and transparency.

From now on, the quotas imposed on wholesale distributors may be adjusted according to their business activity since deliveries may exceed the quotas initially fixed. It also includes to improve information to wholesale distributors concerning system operating conditions. New entrants on the market will be granted distribution quotas so as to be able to start their business activity in satisfactory conditions.

The Conseil has accepted these commitments and closed the proceedings. The flexibility introduced by the supply system of wholesalers enables to maintain competition through services between wholesalers. The introduction of accurate information relative to the system conditions meets, for its part, the transparency

requirement.

> Decision 07-D-22, relative to practices implemented in the sector of medicine distribution



> See decision of the Paris court of appeal (26th November 2008)

> See decision of the Cour de cassation (Supreme Court of appeals) - 2nd February 2010