

New Year's Headache? Take cover!

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On 15 January, the European Commission's DG Competition launched a sectoral inquiry into the pharmaceutical industry. Uniquely its first act was to dawn raid a number of pharmaceutical companies – reportedly taking copies of contracts, intellectual property rights, and records of litigation and settlement issues. The Commission intends to obtain information from other participants in the more usual way, i.e. by sending requests for information. The Commission's intention is to issue an interim report by autumn 2008 with the final report in the spring 2009.

The Commission confirmed that it will look to see whether the market for pharmaceutical products is operating properly. Key issues will be the relationship between generics and proprietary medicines and the potential for collusion among producers to close off the EU market from other world markets. Such issues immediately call into question an analysis of the way IP rights are used to protect the income stream from medicines and in turn to generate sufficient returns to re-invest in new product development.

Just as with the recent investigation into the financial services sector, the fact that the Commission has taken this step is indicative of its long-term interest in the operation of this now highly concentrated sector. EU regulators are also working in close cooperation with U.S. officials. The Commission fined Astra Zeneca EUR 60 million in 2005 for breach of EU competition rules (abuse of patent rights).

The Commission has expressly noted a reduction in the numbers of new and novel products being brought to the market.

It is also noteworthy that once again DG Competition has focussed on an issue, which is of direct interest and often substantial financial significance to almost all consumers.

If the Commission does decide to start infringement proceedings against specific companies, it will initiate separate cases against the companies in question, but may use the information gathered in this sector inquiry.

For those who were not dawn raided, participation in the investigation is open to all those who can show a direct interest in the operation of the

market. Companies will also need to consider now whether there is anything they would wish to bring to the attention of the Commission for purposes of a leniency application. Companies will likely receive their request to participate in the current sector inquiry in the form of a questionnaire / request for information from the Commission.

As ever with the Commission putting parties on notice of the involvement of the US Anti-trust authorities, care will need to be taken to ensure that contributions are properly made in order to preserve legal privilege.

Footnotes:

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