

European Commission Launches Monitoring of Patent Settlements Concluded Between Pharmaceutical Companies

On January 12, 2010, the European Commission issued a press release¹ announcing that it had sent information requests to selected originator and generic companies requesting them to submit copies of patent settlement agreements they concluded between July 1, 2008 and December 31, 2009 relevant for the EU/EEA markets. The Commission is particularly interested in patent settlements involving payments by originators to generic companies in return for delayed market entry of generic drugs. The Commission's main concern is that by delaying/preventing entry of generic medicines, patent settlements may deprive consumers of a broader choice of medicines at lower prices.

This wave of information requests is part of the Commission's "focused monitoring" exercise announced in its Final Report on the Pharmaceutical Sector Inquiry issued in July 2009. In that Report, the Commission confirmed that it would monitor patent settlement agreements for a limited period of time to gather additional information on this type of practice.²

The Commission is empowered to require companies to provide it with all necessary information relevant for its investigations. Such information requests are less aggressive investigation tools than dawn raids, which the Commission has made extensive use of in the pharma sector in the past months.³

In its most recent guidance issued on January 6, 2010 and open for consultation until March 3, 2010,⁴ the Commission indicated a clear intention to enhance the transparency of its proceedings. The issuance of a press release by the Commission in relation to this wave of information requests appears consistent with this intention. Traditionally, the Commission has not issued press releases when sending out information requests to companies.

After this data gathering exercise, the Commission will publish a short report with a statistical overview on patent settlement practices. In addition, antitrust investigations targeted at specific companies may follow. Finally, the Commission confirmed that similar information requests may be repeated annually for as long as the Commission considers that there is a potential problem.

¹ Press release, "Antitrust: Commission launches monitoring of patent settlements concluded between pharmaceutical companies," available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/12&format=HTML&aged=0&language=EN&guiLanguage=en>

² "European Commission's Final Report on Pharmaceutical Sector Inquiry Ushers in Era of Increased Antitrust Scrutiny," *DechertOnPoint*, Issue 41 (July 2009), available at http://www.dechert.com/library/Antitrust_41_07-09_European_Commission.pdf

³ "European Commission Conducts New Dawn Raids in Pharmaceutical Sector," *DechertOnPoint*, Issue 45 (December 2009), available at http://www.dechert.com/library/Antitrust_45_12-09_European_Commission_Conducts_New_Dawn_Raids.pdf

⁴ "Best Practices on the conduct of proceedings concerning Articles 101 and 102 TFEU," available at http://ec.europa.eu/competition/consultations/2010_best_practices/index.html

Practice group contacts

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