



The European Commission fines Servier and five generic companies for breach of antitrust rules

In its press release of 9 July, the Commission states that it has fined the companies for a total of 427 Million Euro

Two infringements

In this recent decision of the Commission, not yet published, it is stated that Servier breached European competition law at least in two instances. On the one hand, Servier acquired the control of a company that developed a technology which would allow to manufacture generic versions of perindopril without infringing several secondary patents of Servier. When reading the press release, it seems that the Commission understands that the breach of Servier is not the result of just acquiring this company, but it derives from the fact that Servier itself stated that its intention when buying this company was to defend its business of perindopril, and because, in fact, Servier never used the technology of this company.

On the other hand, the Commission understands it has evidence that Servier and the generic companies reached agreements under which Servier paid significant amounts to delay the entry into the market of perindopril generic versions. In this area, the issue is undoubtedly more complex, because what Servier did, apparently, was to compensate the generic manufacturers in exchange for their withdrawing of cases that had been triggered to invalidate Servier's secondary patents. Additionally, the Commission also states in its press release that Servier would have paid some companies to limit the sales to certain countries.

A matter of balance

We are therefore in front of a new case where what is discussed is the balance between the legitimate rights of patent holders and the exercise of those rights taking into account public interests. This is not a new question. The Civil Code, which goes back to the 19th century, already states in article 7 that the Law does not protect the abuse of any right or the antisocial exercise of any right, and that all acts or omissions that go beyond what may be considered reasonable, causing damage to a third party, will result in the obligation to pay damages.

The issue, however, is a very complex one. It is not irrelevant that the Commission, in its press release states that "it is legitimate – and desirable – to apply for patents, including so-called 'process' patents, to enforce them, to transfer technologies and to settle litigation". It is evident that public interest must protect innovation and facilitate the settlement of court cases. Moreover, the Commission understands that the defense of competition as a tool which is necessary to protect the interests of consumers and guarantee economic growth requires to be very strict if the authorities detect that the exercise of this right is being carried out in an abusive manner.

The only conclusion that we think may be derived from all of this is that, in these matters, the facts must be analyzed very carefully.