COMPETITION LAW IN THE EUROPEAN COMMUNITIES

November, 2001

Volume 24, Issue 11

FRANKLIN PIERCE
LAW CENTER LIBRARY
CONCORD, N. H.
NOV 28 2001

FAIRFORD PRESS

Publisher and Editor: Bryan Harris

Fairford Review : EU Reports : EU Services : Competition Law in the European Communities

58 Ashcroft Road, Cirencester GL7 1QX, UK
P O Box 323, Eliot ME 03903-0323, USA

www.fairfordpress.com

Tel & Fax (44) (0) 1451 861 464
Tel & Fax (1) (207) 439 5932

Email: aobh 28@aol.com

November, 2001

Volume 24 Issue 11

COMPETITION LAW IN THE EUROPEAN COMMUNITIES

Copyright © 2001 Bryan Harris
ISSN 0141-769X

CONTENTS

251 COMMENT

Pharmaceuticals

252 DISTRIBUTION (MOTOR VEHICLES)

The DaimlerChrysler Case

255 DOMINANT POSITION (RAILWAYS)

The Deutsche Bahn Case

257 ACQUISITIONS (IRON ORE)

The CVRD Case

260 PROCEDURE (GLASS)

The Kish Case

267 PROCEDURE (MARKET RESEARCH)

The IMS Case

MISCELLANEOUS

The AOL TW/ IPC Case 254
The IATA (Freight) Case 250
The La Poste / SNELPD Case 266
Hearing Officers 275

Pharmaceuticals

Recent press reports have been suggesting that the pharmaceutical industry, which it is currently fashionable to criticise, has been attacked by "officials of the Commission in Brussels". The press reports have not identified the officials; but it seems reasonably certain that the origin of the criticisms is a speech given by Mario Monti, Commissioner for Competition Policy, in Antwerp on 11 October 2001. In his speech, he said, fairly enough, that in this sector there was the rather specific phenomenon that the consumer usually was not directly affected by the price of the product being reimbursed or otherwise covered by the different national health insurance systems. Price control is a common feature in many national regulatory systems in the pharmaceutical sector throughout the Community.

As in so many other sectors, such as the car sector, prices differ between Member States and parallel trade occurs between low-price countries and high-price countries. From the early sixties the Commission has pursued a merciless policy against companies which, one way or the other, clipped the wings of parallel traders. DaimlerChrysler is the last one in a long series of companies to feel the heat. *[See page 252 in this issue.]* "Does this policy also make sense in the pharmaceutical sector? The industry claims it does not. The Commission takes a different viewpoint. However, industry is tenacious. All our decisions are being challenged in the European Courts. In the past the debate has been on mere technicalities. In all other pending cases the debate is much broader. The industry asks the Courts in Luxembourg to declare that the pharmaceutical sector is so different that the Commission's parallel trade policy has no *raison d'être*. Leaving aside the details, we take the view that the industry is wrong." (This is by no means self-evident: see the Advocate-Geberal's Opinion in *Merck v Primecrown*.)

The other important issue is that the Commission is confronted more and more with the question of the boundaries within which a pharmaceutical company can use its intellectual property rights, typically its patents, to prevent potential newcomers from entering the market. "There should not be any misunderstanding. Research based companies, which have invested vast amounts of money to develop new, innovative medicines are entitled to patent protection. That monopoly right enables them to charge profitable prices in order to recoup their investment; and patent holders will obviously fight tooth and nail to hold on to their monopoly right since every extra day of protection generates monopoly profits. Potential newcomers sometimes complain that they do so in an abusive manner. It is for us to examine these allegations." *[For a copyright case, see IMS on page 267 of this issue.]* ■