ABUSE OF DOMINANT POSITION (PHARMACEUTICAL DATA): IMS

Subject: Abuse of dominant position
Discounts
Conditional purchasing

Industry: Pharmaceutical data

Parties: Intercontinental Marketing Services (IMS) Health Inc

Source: Commission Statement IP/02/1430, dated 4 October 2002

(Note. It is essential to differentiate this case from the case at present before the Court of First Instance, in which the Commission alleges that IMS has unreasonably denied access to its system of analyzing pharmaceutical markets. The Court case suspended the Commission's decision but only pending a hearing of the substantive issues. The present case has been closed because IMS has ceased certain practices to which the Commission referred in its Statement of Objections and because the Belgian national authorities took action, leaving it open to other Member States' authorities to follow suit where the circumstances within their own jurisdiction warrant it.)

The Commission has closed a probe into the practices of IMS Health Inc in five European Union countries after concluding that the world leader in data collection on pharmaceutical sales and prescriptions had stopped alleged malpractice either voluntarily or upon intervention by the competition authority of one of the countries concerned. Further fact-finding has enabled the Commission to conclude that other aspects of IMS Health's conduct were not abusive. These proceedings are separate from the so-called "1860 brick system" German case, which awaits decision at the Court of First Instance.

The Commission in October 2000 sent a Statement of Objections to Intercontinental Marketing Services (IMS) Health Inc claiming abuses of a dominant position on a number of pharmaceutical market research data markets. IMS is the world's largest company active in this field. Article 82 of the EC Treaty specifically condemns abuses of dominant positions. The alleged abuses took place in five countries: Belgium, Germany, Spain, Italy and the Netherlands. They consisted of various discounting practices, and in making the sale of some services subject to the prior purchase of others.

In the Statement of Objections the Commission considered that IMS's then practices distorted competition and acted as a significant market entry barrier. The market consists of the collection of information on pharmacies' sales and doctors' prescriptions of pharmaceutical products. This information is used by pharmaceutical companies to assess the market share of their products and the performance of their sales representatives. The investigation was triggered by

complaints from Source Belgium and National Data Corporation (NDC) of the United States, two companies relatively new in this market.

The decision to close proceedings was taken after IMS ceased what the Commission considered in its preliminary analysis to be anti-competitive behaviour. Following a full investigation, much of IMS's conduct criticised in the Commission's Statement of Objections was found to have stopped; and, in the light of further information gathered, the Commission was satisfied that other aspects of IMS's market behaviour dealt with in these particular proceedings were not a barrier to entry into pharmaceutical data markets. The Commission's remaining concerns have since been dealt with by the Belgian Competition Council, which is monitoring IMS's compliance with the interim ruling of its President. This is a good example of national competition authorities acting when they are best placed to do so.

Source Belgium and NDC have also now withdrawn their complaints, though the Commission notes that this is without prejudice to their positions on the merits of these complaints. The Commission also notes the particular role played by the Belgian competition authorities which, at Source Belgium's request, issued an interim decision ordering IMS to change its pricing structure in Belgium. This was instrumental in Source Belgium's decision to withdraw its complaint.

The Commission's move to end proceedings in this case has the effect of freeing national authorities to act, if they so wished.

The closure of this proceeding is unrelated to another ongoing competition proceeding against IMS, which concerns its refusal to licence a copyright it holds over a structure for the ordering of regional pharmaceutical sales data in Germany. Following a complaint by NDC, the Commission found a breach of Article 82 by IMS and ordered IMS to licence this copyright in an interim measures Decision in July 2001. This Decision was suspended by an Order of the President of the Court of First Instance on 26 October 2001, a ruling upheld by the President of the European Court of Justice on 11 April 2002. ■

The Commission has confirmed that, on 26 September 2002, a number of Commission inspectors assisted by officials of the Member States concerned carried out unannounced inspections at the premises of certain rubber chemicals producers in several European countries. The purpose of these inspections is to ascertain whether there is evidence of a cartel agreement and related illegal practices concerning price fixing for rubber chemicals. Source: Commission Memo/02/209, dated 10 October 2002.

The Commission has confirmed that on Oct 1 and 2 it carried out unannounced inspections at the premises of certain companies in the Netherlands, Belgium, Germany, Portugal and Spain. The inspections follow suspicions of one or more cartels in the bitumen sector in the Dutch, Belgian/Luxembourg and Spanish markets. Source: Commission Memo/02/211, dated 10 October 2002.