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The Italian Antitrust Authority investigates on Pfizer for abuse of a dominant position by the enforcement of patents

Daniela Ampollini (Trevisan & Cuonzo) · Friday, October 29th, 2010

The Italian Antitrust Authority (Autorità Garante della concorrenza e del mercato) announced on 26 October that it commenced proceedings against Pfizer following a complaint filed by Ratiopharm alleging that Pfizer's behaviour in the enforcement of its patent rights amounts to abuse of a dominant position. It is too soon to make comments on this case. The readers of this blog may however find it interesting to read an English translation of the Antitrust Authority press release. Here it is.

> Medicinal products: The Antitrust Authority commences a procedure against Pfizer for abuse of a dominant position. The procedure will have to establish whether the company activated strategies to artificially prolong the patent protection of the active principle latanoprost (used in the treatment of the eye glaucoma) for the purpose of preventing or delaying the entry into the market of generic drugs. The Antitrust Authority, in its session of 13 October 2010, decided to start a procedure against Pfizer to establish if, with their behaviour, they artificially prolonged the patent protection of latanoprost in Italy, in order to prevent the access to the market of a new generic drug. The decision to launch this procedure – which was served today on Pfizer in the course of inspections carried out by the officers of the Antitrust Authority, assisted by the Market Protection Department of the Fiscal Police – was adopted based on a complaint filed by Ratiopharm. This complaint highlighted certain behaviours of Pfizer Italia S.r.l. aimed at preventing or delaying the entry into the Italian market of generic copies of the medicinal product Xalatan, which is produced and marketed by Pfizer for the treatment of the eye glaucoma. According to the documentation submitted, Pfizer would have artificially requested and obtained an extension of its patent protection, by means of the filing of an application for a divisional patent which was followed by an application for a supplementary protection certificate (hereinafter SPC) aimed at extending patent protection up to 2011. The divisional patent in respect of which the SPC was granted has recently been revoked by the EPO in Munich. The procedure – which is being carried out in the groove recently created by the Enquiry on the Pharmaceutical Sector concluded in 2009 by the European Commission – will have to verify if Pfizer's behaviour had the objective of preventing the access to the market of a new generic drug, abusing of the dominant position held in the market of the products for the treatment of the eye glaucoma. In fact, in light of the expiry of the patent

> protection which had supposedly to take place in 2009, generic companies had developed a legitimate expectation that they would be able to sell, by that date, a new generic drug: in this perspective they had made significant investments, which later became vane due to the extension of the patent protection. With their behaviour – including in court proceedings – Pfizer would have tried to create a status of legal uncertainty on the possibility to market the new generic drug, making the costs for the entry into the market of the generic companies higher, both in the planning and the finalisation phases. The procedure should be completed on 15 October 2011.

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