

Previous Exams for JUR1310 and JUR5310 - EC Competition Law

Autumn 2011

MagPharm was a company located in Metropolis, the capital of the EU Member State Metropolia. MagPharm had developed a business concept whereby customers could purchase pharmaceuticals from their web-shop, or subscribe to monthly deliveries. MagPharm also imported drugs to Metropolia. Metropolia had a substantial domestic pharmaceutical industry. The largest pharmaceutical manufacturer in Metropolia, MetroLabs, held the patent to "Cardozo", an innovative and patent-protected drug designed to prevent heart attacks. The product had been a success over several years, and there were no good substitutes.

For some years, MagPharm had imported Cardozo from Utopia (a low cost EU Member State), which had upset MetroLabs. In July 2008, MagPharm's usual Utopian supplier notified that it would no longer be able to supply Cardozo, as MetroLabs had refused to supply it with larger quantities than the estimated demand in the Utopian market.

Question 1: Discuss whether this amounts to an infringement of Article 102 TFEU and/or an infringement of Article 101 TFEU.

Several other undertakings in the Metropolian pharmaceutical industry were concerned about the "grey market import" (i.e. the parallel import from low cost countries), in that it was liable to reduce the price levels on the Metropolian market. MetroLabs invited the other undertakings, among them several competitors, to a senior management meeting, where the CEO described the company's strategy of fixing its supply levels at the estimated demand in export countries. Further, the CEO revealed a new strategy whereby MetroLabs would commit all its distributors in other EU Member States to report all orders placed by importers in other Member States including in Metropolia. The CEO of PharmaLab, one of the other companies, protested, claiming that MetroLabs could not reveal such business secrets to them. MetroLabs's CEO stated that it was perfectly lawful for the company to unilaterally communicate its strategies, and that the information, in any case, would not affect competition between the pharmaceutical manufacturers as the matter concerned vertical issues.

Question 2: Discuss whether the new strategy of MetroLabs, if implemented, constitute an infringement of Article 101 TFEU, and whether Article 101 TFEU has been infringed as between MetroLabs and its competitors.

Eventually, MagPharm was able to import Cardozo from a third country, but soon discovered that MetroLabs had signed an agreement with the Metropolian authorities granting it an exclusive right to supply Metropolian hospitals and state-owned pharmacies with the drug. When confronted with the possible infringement of EU competition law, MetroLabs claimed that there was no agreement

between undertakings, and that an exclusive right granted by the authorities was not challengeable under the competition rules.

Question 3: Discuss whether MetroLabs' agreement with the Metropolitan Authorities amounts to an infringement of Article 101 TFEU, and whether the exclusive right may be challenged under other Treaty provisions.

In 2010, the patent to Cardozo was about to expire, and MagPharm started to import a cheaper version of the same drug (a so-called "copy medicine", i.e. a pharmaceutical product with the same active ingredients as the original product, but with its own distinct brand name). The copy medicine was produced by UtoPharma, a company in Utopia. MetroLab sued UtoPharma for patent infringement. After several weeks in Court, the parties agreed to settle the dispute. Pursuant to the settlement, MetroLab would pay UtoPharma € 10 mill., and UtoPharma committed to postponing its introduction of the copy medicine for an additional three years. The settlement was confirmed by the Court. As a consequence, deliveries to MagPharm were discontinued.

Question 4: Discuss whether the settlement constitutes an agreement within the meaning of Article 101 TFEU, and whether it amounts to an infringement of the same provision.

Please answer all questions.