

Competition - Switzerland

Secretariat of Competition Commission Finds Vertical Collusion in Viagra Market

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On February 10 2009 the Secretariat of the Competition Commission issued a decision proposal to charge the manufacturers and distributors of male impotence drugs with price fixing. Following an investigation opened in 2006 into prices charged for erectile dysfunction medication (which includes Viagra, Cialis and Levitra), the secretariat came to the conclusion that Bayer (Schweiz) AG, Eli Lilly (Suisse) SA and Pfizer AG had made unlawful vertical competition agreements that maintained a recommended public selling price.

Under Article 5(4) of the Competition Act, vertical agreements are deemed to eliminate competition if they include retail price-fixing. Criteria according to which price recommendations may be deemed as vertical agreements falling under Article 5(4) of the act were set out by the commission on July 2 2007 in its Communication on the Assessment of Vertical Agreements. According to the commission, in the case of price recommendations by manufacturers or suppliers to resellers or distributors, it must be established on a case-by-case basis whether there is an unlawful agreement affecting competition within the meaning of Article 5. In making this determination, the following questions are of particular importance:

- Were the price recommendations communicated openly, or only to resellers or distributors?
- Were the price recommendations combined with pressure or with the granting of specific incentives?
- Were the price recommendations in Swiss francs indicated by the manufacturers or suppliers on the products, packages or catalogues, but not expressly stated to be non-binding?
- Were the price levels for the products subject to the price recommendations considerably higher than those in neighbouring countries despite similar product or service specifications?
- Were the price recommendations adhered to by a large number of resellers and distributors?

Considering that the price recommendations in this case were followed by a large majority of drug stores and physicians, the secretariat concluded that the publication and observance of the recommended retail prices for the medicines Viagra, Cialis and Levitra represented illegal vertical collusion between the producers and distributors. The commission has now to decide whether to follow the secretariat's recommendation to impose penalties on the undertakings concerned or to prohibit them from suggesting prices for the medication.

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