Pharmaceutical Accountability Foundation

A not-for-profit organisation in The Netherlands

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AbbVie tries to escape accountability for overcharging the Dutch health care system by 1.2 billion Euros

AMSTERDAM, THE NETHERLANDS: In February of 2023, the Pharmaceutical Accountability Foundation (PAF) brought a lawsuit against the company on the grounds that AbbVie had abused its dominant market position to make excessive profits, violating both Dutch competition law and human rights principles. AbbVie overcharged the Dutch healthcare system by as much as €1.2 billion through excessive pricing on its blockbuster rheumatoid arthritis medicine, Humira. Today, AbbVie responded to this lawsuit with delay tactics.

AbbVie was required to respond to PAF's subpoena by 15 November. AbbVie's response focuses on procedural issues. AbbVie claims *inter alia* that PAF's case is inadmissible since it was not directly harmed by AbbVie's pricing practices. AbbVie further claims that the Dutch court has no jurisdiction to hear the claim against AbbVie Inc. because AbbVie's main headquarters is in the USA. These claims are distractions in an attempt to delay or avoid addressing the substantive issues of the case.

The facts of the case are as follows: AbbVie netted €2.3 billion in the Netherlands from 2004-2018, charging an average price of €11,000 per patient per year for Humira. AbbVie made a global gross profit of 78% on Humira. After deducting a 'fair' profit of 25% it made 53% excessive profits: in the Netherlands an amount of €1.2 billion. Globally, AbbVie's turnover was $208 billion 2003-2022; the excessive profits of AbbVie might reach $110 billion.

As soon as competitors entered the Netherlands market in 2018, AbbVie promptly lowered its prices by more than 80%, demonstrating Humira's inflated price was not due to cost concerns but an attempt to use AbbVie's monopoly to make as much profit as possible. Further, AbbVie attempted to leverage the patent system to extend the life of its monopoly even further.

In so doing, AbbVie has created grounds for legal action along three lines. First, it abused its dominant market position. Under the Dutch Competition Act (DCA) and EU law companies that hold a monopoly (i.e. via a patent) cannot abuse that dominant position to engage in unfair practices. AbbVie's excessive pricing as well as its gaming of the patent system to extend its monopoly are, the Foundation contends, breaches of this law.

Second, AbbVIe's pricing practice is responsible for displacement of care. National health plans have limited financing, and health authorities set priorities about what medicines can be made available. When medicines prices exceed what a health system can afford, health authorities might need to ration care and make trade-offs. Some medicines are costly to produce and/or costly to administer; others are inexpensive to produce but have excessive prices due to abuse of a monopoly position in the market. It is the Foundation's contention that AbbVie is guilty of the latter.

Thirdly, AbbVie has violated human rights principles. Pharmaceutical companies are not selling luxury goods, but lifesaving medicines. They are given temporary monopolies over these medicines to help them recoup costs associated with research and development, but in return they have a duty of care not to abuse those monopoly rights. Human rights law guarantees the rights to life and to the highest attainable standard of health. The UN also has Guiding Principles on Business and Human Rights that set forward responsibilities of private companies to respect human rights. In charging excessive prices, AbbVie infringes these rights, and neglects its duties toward socially responsible behaviour.

It is now up to the court to decide the next steps. PAF expects a public court session in early 2024.

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