

CORPORATE COMPLIANCE ALERT

12/13/13

Antitrust: European Commission Fines Johnson & Johnson and Novartis over \$22 Million for Delaying Market Entry of Generic Painkiller Fentanyl

On December 10, 2013, The European Commission (Commission) announced that it had imposed fines of \$14,827,141 (€ 10 798 000) on the U.S. pharmaceutical company Johnson & Johnson (J&J) and \$7,542,221 (€ 5 493 000) on Novartis of Switzerland. The Commission found that in July 2005, their respective Dutch subsidiaries concluded a so-called "co-promotion agreement," in essence an anticompetitive agreement, to delay the market entry of a cheaper generic version of the painkiller fentanyl in the Netherlands, in breach of EU antitrust rules. Fentanyl is a painkiller 100 times more potent than morphine and is most commonly prescribed for patients suffering from cancer.

The agreement provided strong incentives for the Dutch subsidiary of Novartis not to enter the market, in the form of monthly payments that exceeded the profits it expected to obtain from selling its generic product. The agreement ended in December 2006 when a third party was about to launch a generic fentanyl patch. By that time, the delayed entry of the cheaper generic medicine had lasted 17 months and kept prices for fentanyl in the Netherlands artificially high.

Not only was a fine imposed, but the companies were also reprimanded for their behaviour. Commission Vice-President Joaquín Almunia, in charge of competition policy, said, "*J&J paid Novartis to delay the entry of a generic pain killer. The two companies shockingly deprived patients in the Netherlands, including people suffering from cancer, from access to a cheaper version of this medicine. Today's decision should make pharmaceutical companies think twice before engaging into such anticompetitive practices, which harm both patients and taxpayers.*"

As in the U.S., the EU continues to expand its scrutiny of both foreign and domestic operations, therefore making compliance with antitrust and other regulations critical for all businesses. For further information and counsel on antitrust and other compliance matters, please contact the following Roetzel attorneys:

Anthony J. Calamunci
419.254.5247 | acalamunci@ralaw.com

Jonathan R. Secrest
614.723.2029 | jsecrest@ralaw.com

Brian E. Dickerson
202.570.0248 | bdickerson@ralaw.com

Andrew S. Feldman
954.759.2753 | afeldman@ralaw.com

Donald S. Scherzer
216.615.7418 | dscherzer@ralaw.com

Amanda M. Knapp
216.615.7416 | aknapp@ralaw.com

Rose M. Schindler
954.759.2751 | rschindler@ralaw.com

Klodiana B. Tedesco
614.723.2092 | ktedesco@ralaw.com

This Alert is informational only and should not be construed as legal advice. ©2013 Roetzel & Andress LPA. All rights reserved.
For more information, please contact Roetzel's Marketing Department at 330.849.6636.