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BEUC welcomes Commission fines on Teva and Cephalon for agreement to delay marketing of generic sleep drug

The European Consumer Organisation (BEUC) welcomes the European Commission's decision today to fine Teva and Cephalon 30 and 30.5 million euros respectively for agreeing not to market a cheaper generic version of Cephalon's drug for sleep disorders, modafinil, in Europe for six years. The "pay for delay" agreement, which the Commission has found to violate EU antitrust rules, allowed Cephalon to charge European patients and healthcare systems higher prices for the drug in the six year period before Teva finally marketed its generic alternative.

BEUC welcomes the clear signal this decision sends to the pharmaceutical industry that pay for delay agreements are unacceptable, regardless of how they are disguised.

Modafinil is a drug used to treat sleep disorders. US pharmaceutical company Cephalon owned the patents for the drug and its manufacture. After certain Cephalon patents on the modafinil compound expired in the European Economic Area (EEA), Teva entered the UK market for a short period of time with a cheaper generic product.

Following a lawsuit concerning an alleged infringement of Cephalon's processing patents on modafinil, the companies settled their litigation in the UK and the US with a world-wide agreement reached in 2005. As part of this agreement Teva undertook not to sell its generic modafinil products in the EEA until October 2012 in exchange for lucrative side deals. In practice, the agreement ended once Teva acquired Cephalon in October 2011.

Monique Goyens, Director General of the European Consumer Organisation BEUC commented:

"We welcome the Commission's decision to fine Teva and Cephalon for denying patients and healthcare systems access to a cheaper generic version of the sleep drug modafinil during no less than six years.

"It's outrageous that pharmaceutical companies choose to boost their profits by agreeing to delay entry onto the market of cheaper generic versions of important drugs. We only regret that the investigation has taken almost ten years, a clear sign that decision-makers must ensure antitrust enforcers have the resources to pursue such cases more quickly.

“Fining those who broke the rules should not be the end. Consumers who have paid too much for their medicine due to the illegal behaviour of pharma companies should be compensated.”

After an investigation opened in April 2011, the European Commission has now concluded that the 2005 “pay for delay” agreement concerning Teva’s generic version of modafinil breached EU antitrust rules on restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union - TFEU).

ENDS

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