

TTY Biopharm & Two Other Pharmaceuticals

1542nd Commissioners' Meeting (2021)

Case: TTY and two other pharmaceuticals violated the Fair Trade Law when selling colon cancer drugs

Keyword(s): Generic drug, restricting each other's business activities

Reference: Fair Trade Commission Decision of May 11, 2021 (the 1542nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.110032

Industry: Manufacture of Drugs and Medicines (2002)

Relevant Law(s): Article 15 of the Fair Trade Law

Summary:

1. This case was originated because a few legislators raised questions about whether the sales of generic colon cancer drugs by TTY Biopharm Co., Ltd. (hereinafter referred to as "TTY Biopharm") and two other pharmaceuticals was in violation of the Fair Trade Law. Therefore, the FTC had initiated an ex officio investigation into the case.
2. Findings of the FTC after investigation:
 - (1) The Ufur capsules of TTY Biopharm, the Furil capsules of Lotus Pharmaceutical Co. Ltd. (hereinafter referred to as "Lotus Pharmaceutical") and the UFT capsules of Otsuka Pharmaceutical Co., Ltd. (hereinafter referred to as "Otsuka Pharmaceutical") were all prescription drugs covered by the National Health Insurance. Meanwhile, they were produced with the same ingredients, the same dose, and in the same dosage form. Except for selling its own Ufur capsules, TTY Biopharm had also signed exclusive distributor agreements with Lotus Pharmaceutical and Otsuka Pharmaceutical to sell their Furil capsules and UFT capsules. The relationship with Otsuka Pharmaceutical was vertical distributorship and agency. It was not in violation of the regulation against concerted actions in the Fair Trade Law.
 - (2) Lotus Pharmaceutical and TTY Biopharm signed their agreements respectively in 2009, 2013 and 2018, but the three agreements did not stipulate the quantity and price of Furil capsules to be purchased and how to split the profit. Since the signature of the first agreement in 2009, TTY Biopharm had also paid the licensing fee accordingly. However, TTY Biopharm had never placed orders to buy Furil capsules from Lotus Pharmaceutical. Nor did TTY Biopharm ever sell any Furil capsules to any hospitals. As a result, Furil capsules had not been sold at all in recent years. For 12 years, Lotus never sold Furil capsules to TTY Biopharm but both

companies continued to renew their agreements with TTY Biopharm. It was against business common sense. On the surface, the distribution agreements were signed to continue the distributorship. In reality, however, they were signed to restrict each other's business activities. With the agreement, both companies established their mutual understanding that Furil capsule would never be sold on the market.

3. Grounds for disposition:

- (1) Under the National Health Insurance system, the payment standards and price adjustment procedures for drugs covered by the National Health Insurance were subject to related regulations. In principle, the Fair Trade Law did not apply. Nevertheless, if competing pharmaceuticals took advantage of the distribution and cooperation relations, which often existed, and signed distribution agreements to engage in a concerted action and restrict other businesses from entering the market, it was in violation of the law.
- (2) There should have been space for competition between the Ufur capsules of TTY Biopharm and the Furil capsules of Lotus Pharmaceutical in the relevant market, but Lotus Pharmaceutical was restricted by the exclusive distributor agreement and could not compete in the market over the years. In the end, TTY Biopharm was able to take over and claim around 80% of the market. Besides restricting competition between each other, the concerted action also caused harm to the National Health Insurance system and deprived medical institutions and patients of the benefit of enjoying price cuts that would have taken place if Furil capsules had entered the market. It also reduced the options for physicians when they tried to decide which drug to prescribe. Moreover, it was disadvantageous to the adjustment of prices of drugs covered by the National Health Insurance and had an effect on the supply-demand function in the colon cancer drug market. After reviewing the case, the FTC imposed administrative fines of NT\$220 million on TTY Biopharm and NT\$65 million on Lotus Pharmaceutical respectively.

Appendix:

TTY Biopharm Company Limited's Uniform Invoice Number: 11821341

Lotus Pharmaceutical Co., Ltd.'s Uniform Invoice Number: 11456110

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