

Hot off the press: The CJEU Judgment in Paroxetine

*Analysing the Court's first ruling on Pay for Delay
Agreements, and its latest word on restrictions by
object*

Competition Law Association, 6th February 2020
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The pharma companies' defence

1. No effect on competition problem
2. The incentive to settle problem

The Practical Reality for Settling Parties



Paroxetine Appeals: The Facts

- 2 settlement agreements between GSK and Alparma & GUK
- Payments of millions of pounds
- Parties actively engaged in litigation
- Settlement on eve of trial
- GUK Injunction / Alparma voluntary undertaking
- Authorised early entry agreements

Concept of Restrictions by Object: Correct Approach for Written Agreements

Sufficient
degree of
harm

Strict
interpretation

No need to
assess
effects

Cartes Bancaires C-67/13P
Maxima Latvija C-345/14



Where:

- The generic rival undertakes not to enter the market and to cease its challenge in exchange for payment of a substantial sum
- The “sole consideration” for the payment is that undertaking not to enter / challenge

Then - provided no other plausible explanation - the generic co's no entry / no challenge undertaking:

- Does not reflect the generic company's perception of patent strength
- Was induced by the prospect of the transfer of value

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Restriction by Object

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