Memorandum

General Court Backs European Commission in Refusal to Approve Schizophrenia Medicine

On 19 December 2019, the General Court of the European Union (***GC***) handed down its judgment in Case T-211/18, *Vanda Pharmaceuticals Ltd. v. European Commission,* following an appeal by the UK-based pharmaceutical company against an implementing decision of the European Commission (the ***Commission***), which had denied market authorisation of the schizophrenia medicine, Fanaptum®, in accordance with a report issued by the European Medicines Agency (***EMA***). The GC sided with the Commission and upheld that body's decision to refuse authorisation.

Background

Possessing already since 2010 a marketing authorisation (***MA***) for Fanaptum® (active substance: iloperidone) in the United States, Vanda Pharmaceuticals Ltd. (***Vanda***) submitted in 2015 an application to the EMA requesting an MA for the European Union (***EU***) under the centralised procedure on the basis of Article 3(2)(a) of Regulation (EC) No 726/2004. Pursuant to this provision, an MA may be granted to a medicinal product which does not fall in one of the categories expressly contemplated by Regulation No 726/2004 if it contains a new active substance never authorised in the EU.

Under the centralised procedure, the EMA will carry out a scientific evaluation procedure which addresses the quality, safety and efficacy of the medicinal product. A principal objective is to shun products with a negative risk-benefit ratio.

On 9 November 2017, the EMA delivered its opinion and grounds for refusal, drawn up by the Committee for Human Medicinal Products (***CHMP***). On 15 January 2018, that negative decision was transposed by the Commission into Implementing Decision C(2018) 252 which refused to grant an MA for 'Fanaptum® — iloperidone'. The refusal was based on concerns arising from cardiac-related cases and sudden unexplained deaths in clinical trials and the product's modest efficacy.

In response, Vanda brought an action for annulment under Article 263 of the Treaty on the Functioning of the European Union against both the Commission Implementing Decision and the opinion and assessment report of CHMP of 9 November 2017, arguing that the overall risk-benefit assessment of the medicine was wrong on five grounds.

Findings of the GC

The GC rejected as unfounded the five pleas put forward by Vanda and dismissed the action in its entirety. Each of these pleas, broadly, was based on allegations of faulty reasoning, errors of assessment, breaches of the principle of equal treatment and other violations of principles of good administrative behaviour. However, each of these allegations was in essence grounded on an alternative

assessment of the scientific evidence. In that regard, the GC declined to depart from the analysis made by the specialised bodies and embraced by the Commission.

The GC's approach was in line with established case-law which defines the extent of judicial review by distinguishing between its control over the Commission's exercise of discretion and the review of the CHMP findings.

Pursuant to this case-law, a review of Commission decisions involving highly complex scientific and technical facts is limited to verifying whether there has been a manifest error of assessment or a misuse of powers.

As regards CHMP opinions and assessment reports, only the proper functioning of the CHMP and the internal consistency of the opinion and the statement of reasons are subject to judicial review.

Based on these standards, the GC considered that no errors had occurred.

Emblematic for the GC's approach is its treatment of Vanda's fifth plea. Vanda maintained that the overall risk-benefit evaluation of iloperidone carried out by the CHMP lacked an adequate statement of reasons and was, in any event, manifestly erroneous. In Vanda's view, the CHMP had overestimated the risks and underestimated the benefits of iloperidone. In so doing, the CHMP had allegedly "lost sight of the fact that schizophrenia is a serious disease and of the extent of the unmet needs of the patients concerned". But the GC rejected this complaint in the following terms: "[W]hile it is admittedly common ground that a significant medical need continues to exist in pharmacological treatments currently available to treat the symptoms of schizophrenia, that cannot cause the authorities responsible for examining MA applications submitted to them to be, in their examination of the risk-benefit balance of the relevant medicinal product, less demanding as regards the parameters that must be taken into account when evaluating the safety of that medicinal product."

Before assessing the substance of the case, the GC had also considered the admissibility of the action insofar as it was directed against the CHMP opinion and assessment report. The Commission argued that this part of Vanda's action should be declared inadmissible. The GC agreed holding that there could not be an annulment action in respect of these two documents. Nonetheless, the GC went on to say that the CHMP findings in both documents must be taken into account to the extent they are integral parts of the statement of reasons outlined in the Commission's implementing decision.

Importance

The judgment of the GC appears to be significant for the following reasons. First, even though actions against reports of the EMA and CHMP are not admissible, they are reviewable indirectly to the extent that they inform the decision of the Commission when issuing or denying a MA for a medicinal product. Second, the GC will require strong evidence to conclude that an opinion and assessment conducted by the relevant authorities is manifestly flawed, based on each of the lines of reasoning of the authority that contributed to its determination of refusal. Third, the GC appears to be quite firm in its view that sheer necessity of a given medicine should not outweigh a thorough and developed examination of the product's risks and benefits.

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