

**Opinion of the Advisory Committee on restrictive practices and dominant positions given at its 391st meeting on 30 May 2005 concerning a Draft Decision in case COMP/A.37.507/B2 — AstraZeneca**

(2006/C 291/02)

1. The members of the Advisory Committee agree with the Commission to apply both Article 82 of the EC Treaty and Article 54 of the EEA Agreement.
  2. The members of the Advisory Committee agree with the Commission's definition of the relevant product market (that is the market for oral formulations of prescription PPI's, thereby excluding the H2 blockers).
  3. The members of the Advisory Committee agree with the Commission's definition of the relevant geographical market (especially the national nature of the market).
  4. The members of the Advisory Committee agree with the Commission that AstraZeneca has a dominant position in each of the relevant markets.
  5. The majority of members of the Advisory Committee agrees with the Commission that AstraZeneca has abused its dominant position by its pattern of misrepresentations which were made over a long period of time to patent offices in Belgium, Denmark, Germany, the Netherlands, Norway and the United Kingdom and to national courts in Germany and Norway, taking into account the fact that the pattern of misrepresentations was part of AstraZeneca's strategy for omeprazole. A minority abstains.
  6. The majority of members of the Advisory Committee agrees with the Commission that AstraZeneca has abused its dominant position by systematic misusing the procedures for the authorisation of pharmaceutical products by selective deregistration of Losec capsules in Denmark, Sweden and Norway combined with a switch from Losec capsules to Losec MUPS tablets as part of AZ's LPPS strategy. A minority abstains and an other minority disagrees.
  7. The members of the Advisory Committee agree with the Commission on the gravity of the infringement.
  8. The members of the Advisory Committee agree with the Commission on its considerations in relation to the existence of mitigating circumstances (that is the novel features).
  9. The members of the Advisory Committee ask the Commission to take into account all the other points raised during the discussion.
  10. The members of the Advisory Committee ask the Commission to publish this opinion.
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