

COLLEGE OF EUROPE
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‘Competition on the Merits’ or the Abuse of a Patent?

**The Consequences of the AstraZeneca Judgment of the General
Court for Dominant Companies and the Pharmaceutical Industry**

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Abstract:

This thesis deals with the judgment of the General Court in AstraZeneca and its implications for the pharmaceutical sector and dominant companies in general.

In defining the relevant market one can observe that the GC has shifted its priority away from the ATC classification system, towards a more general market definition. The assessment of dominance still shows that the GC attaches high importance to market shares and that a ‘more economic approach’ is still not applied in the jurisprudence. This leads to the problem that the specific characteristics of the pharmaceutical industry are not sufficiently taken into account. The focus will then lie on the abusive conducts, since the issues connected to this part of the judgment are most problematic. The ‘special responsibility’ and its deduced obligations such as ‘transparency’ are notions that lack clarity and therefore result in increased legal uncertainty. Finally, it has to be noted that the GC accepted the Commission’s use of the notion of a ‘single and continuous infringement’ for Article 102 TFEU. This could have implications for proceedings against companies using patent ambushes or other constellations where time of dominance and first ‘abusive’ conduct do not coincide.

The interpretation of Article 102 TFEU in this judgment raises numerous questions for future cases. The market definition, the finding of dominance and the two abuses will be discussed in depth to conclude that the GC’s judgment decreases legal certainty for the application of Article 102 TFEU for the pharmaceutical sector but also for dominant companies in general.