醫法新論

由歐盟Avastin/Lucentis案談我國藥品標示外使用的若干問題

EU Avastin/Lucentis Case and Several Issues on Drug Off-label Use in Taiwan

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摘 要

歐盟Avastin / Lucentis案涉及藥品標示外使用問題，羅氏與諾華兩藥廠分別在義大利、法國等國因違反競爭法而受處分。在競爭機關介入調查之前的相當期間，各國皆出現積極的社會倡議及辯論，要求癌症用藥Avastin若用於治療眼科「老年性黃斑部病變」，也就是將Avastin作標示外使用，國家衛生體系應予給付，以減輕持續支付高價Lucentis造成的財務負擔。法國2009年因Mediator案醜聞催生了陽光法案，同時也建立「暫時建議使用」制度，使主管機關有權力允許特定藥品作標示外使用，而有擴張藥品上市許可範圍的實

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關鍵詞：Avastin / Lucentis 案（Avastin/Lucentis Case）、不實廣告（false advertisement）、「貶抑」或「詆譭」（disparagement or denigration）、暫時建議使用（temporary recommendations for use, RTU）、標示外使用（off-label use）

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效。即使Avastin/Lucentis案在歐盟持續爭議多年，但國內對該案卻十分陌生。我國現行規定藥品為標示外使用者，全民健保不予給付，亦不得申請藥害救濟，不過兩項藥品分別只應用於癌症及眼科疾病的治療時，則已納入健保給付等，有效地降低Avastin標示外使用的誘因。我國缺乏類似應將Avastin作標示外使用納入全民健保給付的社會倡議，故相關議題極少被討論。對於藥品標示外使用，多年來主管機關採取消極不禁止的立場，但法制上定位不明確，成為法規空白的區塊，運作的結果對患者並不友善。當前有關藥品廣告的法令，亦不足以涵蓋「貶抑」或「詆譭」競爭藥品的行銷行為，實有待公平交易委員會與衛生福利部相互合作，彼此支援執法必須的專業知識與資訊，共同實現藥品市場管理的目標。歐盟 Avastin / Lucentis案展示了跨領域、跨機關合作的典範模式，值得參考借鑑。

EU Avastin / Lucentis Case comes against the backdrop of off-label use for drug. Both pharmaceutical manufacturers, Roche and Novartis, were fined by competition authorities in Italy and France respectively due to the violation of competition law. Before the intervention of competition agencies, there were vigorous societal advocates in these two countries asking for including Avastin, originally authorized for the treatment of a certain kinds of cancers, in the list for drug to be reimbursed by the national health systems (NHS) when it is used off-label for the treatment of age-related macular degeneration (AMD), even though there is already an authorized drug, i.e., Lucentis, on the market as a therapeutic alternative for AMD. Because the pricing for Lucentis is usually several times higher than Avastin, it is believed that, by paying Avasin instead of Lucentis, the effect of alleviating the drug expenditure

for NHS is possible. In France, the Mediator scandal in 2009 paved the way for introducing the temporary recommendation for use (RTU). RTU eventually allow the national authority to grant the RTU for a specific drug to be off-label used and *de facto* expands the drug's indications. In 2015, the French drug safety agency granted Avastin the RTU status for the treatment of AMD for the first time.

In contrast with the situation in the EU countries, Avastin/Lucentis Case is hardly heard in Taiwan and the relevant issues have been rarely discussed in our society. The existing rules and regulations, such as drug off-label use won't get reimbursed by our National Health Insurance (NHI), and any injury resulting from drug off-label use is not allowed for drug injury relief, etc., have significantly lowered the incentives for off-label drug prescriptions and uses. The nature and status of off-label prescription in our legal system has not yet clarified, and there is an empty space when it comes to rules to be applied for drug off-label use. The overall consequences due to the application of current policy and rules for drug off-label use are unfriendly for patients. For many years, our public health authorities have been passive for regulating the practice of off-label prescription. Our existing regulations for medicinal products advertisement are also insufficient to cover disparaging or denigrating competitors' medicinal product, which is the type of promotional conduct by Roche and Novartis in the case under discussion in this paper. Avastin/Lucentis Case is an exemplary model for cross-discipline integration and cross-agency cooperation, which is the exact pattern that our respectively responsible authorities, i.e., both competition and health authorities, should learn together.

壹、基礎事實與問題的提出

為有效管理全民健保的藥費支出，健保署自2013年起實施藥品費用支出目標制（Drug Expenditure Target, DET），使藥費支出在總額預算的概念下加以控制。由於健保給付藥品的支付價格與藥費支出預算的使用，關係至為密切，且支付藥價的高低也與藥廠的利益直接相關，因此藥廠實有誘因採取行必要的行動，以維護自身利益。類似的情形於國外已多有先例，歐盟Avastin/Lucentis案即為典型案例，充分演繹了藥廠的策略與行為、藥價高低、患者權益與國家健保財務間的相互關係，值得研究借鏡。

Avastin在我國商品名為「癌思停」，於歐盟及我國經核准的適應症都是特定癌症的治療；商品名為「樂舒晴」的Lucentis，主要用於治療「新生血管型老年性黃斑部病變」（neovascular age-related macular degeneration, AMD）。不過實驗證實將Avastin用於眼底注射來治療AMD，其效果與Lucentis相同，也就是將Avastin應用於仿單外適應症的治療，即所謂的藥品「標示外使用」（off-label use），不僅在有效性與安全性方面表現相當[1]，且Avastin治療AMD的價格相對低廉，這樣的標示外使用，在美國甚至是眼科的主要治療方法[2]。這二項

1 Maureen G. Maguire, Daniel F. Martin, Gui-shuang Ying, Glenn J. Jaffe, Ebenezer Daniel, Juan E. Grunwald, Cynthia A. Toth, Frederick L. Ferris III & Stuart L. Fine, *Five-Year Outcomes with Anti–Vascular Endothelial Growth Factor Treatment of Neovascular Age-Related Macular Degeneration: The Comparison of Age-Related Macular Degeneration Treatments Trials*, 123(8) OPHTHALMOLOGY 1751-1761(2016),doi.org/10.1016/j.ophtha.2016.03.045

2 Victor L. Van de Wiele, Maximilian Hammer, Ravi Parikh, William B. Feldman, Ameet Sarpatwari & Aaron S. Kesselheim, Competition Law and Pricing among Biologic Drugs: The Case of VEGF Therapy for Retinal Diseases, 9 (1) JOURNAL OF LAW AND THE BIOSCIENCES. 1-18 (2022).doi.org/10.1093/jlb/lsac001