Twitter Thread by SpinningHugo



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Ok. Having now read the contract through a couple of times, my initial view that the Commission had no good argument remains the same.

A quick run through the

The central obligations of AZ are found in 5.1. As Soriot said, it is to use "Best Reasonable Efforts" to manufacture and distribute the doses.

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5.4 is clumsily drafted, indeed makes no sense on its face given it is said not to apply to 51., but I'd read it as meaning AZ is to use EU and UK sites in fulfilling its BRE obligation.

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The date of this contract 27 August (ie 5 months ago). Approval is only being given for the drug today.

The Commission's argument is that the drug is manufactured and eady for distribution, hand it over.

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But the reason that there are (any?) manufactured doses in the UK to distribute is nothing whatsoever to do with this contract. it is because the UK entered into an earlier contract, for distribution to it.

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According to Soriot, the UK contract was signed three months earlier: 8 months ago

(I don't have the date, but that accords with other info we have).

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https://t.co/REP32HbZIc

The Commission may be relying upon 13.1 (e) where AZ undertook that there were no contracts in place that would impede their fulfilling this order.

Does the UK contract do that?

/7

Quite the opposite. the only way the Commission is getting as many doses as it is is that it is piggy backing on the earlier ramp up that occurred *because* of the UK contract. They're benefitting from it. Without it the ramp up would be even further behind.

/8

IF a company enters into two contracts that are inconsistent with one anothe, that company must breach one of them.

But I don't think AZ have done that.

/9

The Commission is now trying to grab doses that only exist because of a manufacturing ramp up done under another prior contract with someone else.

AZ is saying "we don't have to deliver those to you."

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The Commission's argument that because the doses have been manufactured at plants that AZ has agreed to source its doses for them from, so that they must as a result be allocated to them, is extremely weak.

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The Commission is only entitled to those doses that AZ have, after best reasonable efforts, produced for them under their contract. This attempt to grab doses only in existence because of another prior contract is a disgrace.

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The takeaway?

There is a scandal here. It is the scandal of the Commission's delay in procuring vaccines for millions of people the 27 Member States. People are dying in their thousands. Now.

/13

We know the Commission has failed miserably because despite the strong manfacturing base within the EU in this sector it is far, far behind comparable countries in the acquisition and roll out of vaccines.

The date on this contract is one example.

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It is now flailing around looking for someone else to blame, and is attcking AZ because of the shortfall it is suffering from in getting its (new) plant in th EU up and running.

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AZ, by sharp contrast, has developed, had approval of, manufactured, and is now delivering an easily stored vaccine which looks like saving (conservatively) thousands of ives and freeing all of us from lockdown.

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it is not the case, as the Commission claims, that millions of doses are "due" under this contract. they only become due for delivery if and when manufactured.

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There is a "Best Reasonable Efforts" obligation to so manufacture, but if the argument is that AZ has been dilatory in failing to deliver hundreds of millions of doses *in five months*, faster than any vaccine roll out before this year, I disagree.

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Minor points. This contract is governed by Belgin law and the jurisdiction of the Belgian courts. not as claimed previously by "EU Law" nor does it give jurisdiction to the CJEU.

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I have only read the contract, and followed this in the public domain. Maybe AZ said things of which we are unaware, failed to make important disclosures, and so on.

I know nothing about that.

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Maybe this will end up in a court, but for present purposes that doesn't matter. We need the vaccines now, not in several months or yers time when a court gives judgment.

/21

Politically, what matters now is who is in the right. AZ or the Commission?

On the material available to me, it is AZ. (For whom I hold no brief, I'm just an English contract lawyer).

/ends