IP/99/633

Brussels, 17th August 1999

Commission intervenes against a quota scheme to control public expenditure on pharmaceuticals

The European Commission has intervened against a quota arrangement, forming part of an agreement between the Danish Association of Pharmaceutical Producers (Lif) and the Danish Ministry for Health, which aims to control public expenditure on pharmaceuticals. In the Commission's opinion the quota arrangement, which attributes a quota of total expenditure to each supplier, infringes Article 81 of the EC Treaty because it reduces competition although there are less restrictive means to reduce public health expenditure. The Commission has closed the file after the parties to the agreement agreed to lift certain restrictions and committed to not renewing their agreement when it expires in 2000.

On 6th February 1999 the Danish Ministry for Health and Lif, on behalf of its members, concluded an agreement aiming to control public expenditure on price subsidies for pharmaceuticals. The agreement expires on 1st March 2000.

The agreement freezes prices for prescription drugs and places a cap on total public expenditure on price subsidies. Furthermore, the agreement contains a quota arrangement whereby each supplier is allocated a quota of the overall expenditure cap based on that supplier's share of public price subsidies during the previous year. The quota is calculated on a monthly basis. If the overall expenditure cap is exceeded, those Lif-members who have exceeded their quotas must eliminate such surplus by means of price reductions during the following three months' period.

In the Commission's view this quota arrangement violates Article 81 EC Treaty because it reduces the incentive for operators to expand sales by promoting existing products and by introducing new products and because less restrictive means to reduce public expenditure are available. The Commission has in the past accepted as compatible with Article 81 EC Treaty certain agreements aiming to limit expenditure within the public health sector. These agreements contained a price freeze or a commitment by industry to reduce prices by a certain percentage.

Following the Commission's intervention the parties to the agreement have accepted a common interpretation according to which the quota scheme does not force any Lif-member to reduce prices below a calculated European average price for each individual product. The products which are currently priced at that level account for 94% of turnover of the Lif-members. Furthermore, the parties have commited not to renew their quota scheme when the agreement expires (i.e. on 1st March 2000).

In the Commission's opinion these measures eliminate the practical anti-competitive effects of the quota scheme. Given the overall purpose of the agreement, the Commission has therefore concluded that no further action is necessary.