

Press and Information Division

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Judgment of the Court of Justice in Cases C-264/01, C-306/01, C-354/01 and
C-355/01

*AOK Bundesverband and Others v Ichthyol-Gesellschaft Cordes, Hermani & Co. and
Others*

**THE COMPETITION RULES OF THE EC TREATY DO NOT PRECLUDE
GERMAN SICKNESS FUND ASSOCIATIONS FROM DETERMINING
CEILINGS FOR PAYMENTS IN RESPECT OF CERTAIN MEDICINAL
PRODUCTS**

*In determining the ceilings, the sickness fund associations do not act as undertakings
engaging in economic activity, but perform their task, imposed by legislation, as part
of the management of the German social security system.*

Pharmaceutical undertakings (Ichthyol-Gesellschaft Cordes, Hermani & Co. and Others) challenged before the courts decisions of the national sickness fund associations in Germany (AOK Bundesverband and Others) altering the level of the ceilings for payments in respect of certain of their products.

In Germany, the vast majority of employees must be insured under the statutory health insurance scheme which is financed through compulsory contributions by insured persons and their employers. The scheme is founded on a system of benefits in kind and not on subsequent reimbursement of expenditure incurred by insured persons. It is therefore the sickness fund which pays the pharmacy for medicinal products supplied by it, up to the limit of the ceiling (fixed maximum amount) determined in accordance with the law. Where the sale price of the medicinal product exceeds this ceiling, the insured person must pay the difference.

The ceilings are determined in a two-stage procedure. First, a committee composed of representatives of doctors and of sickness funds selects the medicinal products for which ceilings are to be determined. Their choice must be authorised by the Federal

Ministry of Health. Then the sickness fund associations jointly lay down the ceilings in accordance with certain statutory criteria. The fixed maximum amounts which are determined in this way are subject to annual review and must be adapted to market circumstances.

The German courts before which the cases were brought asked the Court of Justice of the European Communities whether the competition rules laid down by the EC Treaty allow groups of sickness funds themselves to determine the fixed maximum amounts applicable to medicinal products whose cost is borne by sickness funds.

The Court of Justice observed first that **sickness funds in the German statutory health insurance scheme are involved in the management of the social security system. They fulfil an exclusively social function, which is founded on the principle of national solidarity and is entirely non-profit-making.**

Second, the sickness funds are compelled by law to offer to their members essentially identical obligatory benefits which do not depend on the amount of the contributions.

Finally, the sickness funds are **joined together in a type of community founded on the basis of solidarity which enables an equalisation of costs and risks between them.** An equalisation is thus effected between the funds whose health expenditure is lowest and those whose expenditure is highest.

The Court therefore found that **the sickness funds are not in competition with one another or with private institutions** as regards grant of the obligatory statutory benefits in respect of treatment or medicinal products.

The latitude available to the sickness funds when setting the contribution rate and their freedom to engage in some competition with one another in order to attract members does not alter this finding.

Furthermore, in determining the precise level of the fixed maximum amounts paid in respect of medicinal products, the fund associations do not pursue a specific interest separable from the exclusively social task of the funds. On the contrary, **the fund associations merely perform a task for management of the German social security system which is imposed upon them by legislation and do not act as undertakings engaging in economic activity.**

Consequently, the Court concluded that **groups of sickness funds such as the German sickness fund associations do not constitute undertakings or associations of undertakings within the meaning of the Community competition rules** when they determine maximum amounts for the price of medicinal products whose cost is borne by sickness funds.

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Available languages: French, English, German and Dutch.

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday GMT on the day of delivery.

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Pictures of the hearing are available on "Europe by Satellite"

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