

Press and Information Division

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Judgment of the Court of Justice in Joined Cases C-2/01 P and C-3/01 P

*Bundesverband der Arzneimittel-Importeure and Commission of the European Communities
v Bayer AG*

**THE COURT OF JUSTICE CONFIRMS THE JUDGMENT OF THE COURT OF
FIRST INSTANCE CONCERNING AN ALLEGED AGREEMENT BETWEEN
BAYER AND ITS SPANISH AND FRENCH WHOLESALERS SEEKING TO
PREVENT PARALLEL IMPORTS OF THE MEDICINAL PRODUCT ADALAT
INTO THE UNITED KINGDOM**

*The Commission has not proved the existence of such an agreement concerning the medicinal
products >Adalat= or >Adalate=*

The Bayer Group, one of the main European chemical and pharmaceutical groups, is represented in all Member States by national subsidiaries. It produces and markets, amongst other things, a range of medicinal products designed to treat cardio-vascular illnesses under the brand name >Adalat= or >Adalate=.

In most Member States, the price of medicinal products is fixed, directly or indirectly, by the competent national authorities. From 1989 to 1993, the prices of Adalat in France and Spain were much lower than those charged in the United Kingdom. Those price differences of about 40% led Spanish wholesalers (from 1989) and French wholesalers (from 1991) to export a large quantity of that medicinal product to the United Kingdom.

That practice of parallel imports caused a DM 230 million loss of turnover for the British subsidiary of Bayer. The Bayer Group then changed its supply policy and began no longer to meet all orders placed by Spanish and French wholesalers.

On 10 January 1996, following complaints by the wholesalers concerned, the Commission adopted a decision requiring Bayer to change its policy deemed contrary to Article 81(1) EC and fined the company 3 million ecus.

On 26 October 2000, the Court of First Instance annulled that decision following an action by Bayer (judgment in Case T-41/96 of 26 October 2000).

The Court of First Instance found that the Commission had not proved that there was an >agreement= within the meaning of Article 81(1) between Bayer and its Spanish and French wholesalers to limit parallel exports of Adalat to the United Kingdom.

In the view of the Court of First Instance, neither the conduct of the Bayer Group nor the attitudes of the wholesalers were factors constituting an agreement between undertakings. None of the documents submitted by the Commission contained evidence proving either that Bayer intended to impose an export ban on its wholesalers or that supplies were made conditional on compliance with that alleged ban. Nor had the Commission proved that the wholesalers had adhered to that policy, their reaction showing, on the contrary, an attitude of opposition. The Commission had not therefore proved the existence of an express or tacit acquiescence by the wholesalers in the attitude adopted by the manufacturer.

Finally, the Court of First Instance rejected the Commission's argument that it was sufficient, in order to prove the existence of an agreement, to establish that the parties continued to maintain their business relations, and held that the very concept of an agreement rests on a meeting of minds between economic operators.

In January 2001, the Bundesverband der Arzneimittel-Importeure and the European Commission lodged an appeal against the judgment of the Court of First Instance before the Court of Justice.

The Court of Justice has today dismissed that appeal and confirmed the judgment of the Court of First Instance.

Unofficial document for media use only; not binding on the Court of Justice.

Available in: English, French, German and Spanish

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

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

For further information please contact Christopher Fretwell:

Tel: (00 352) 4303 3355; Fax: (00 352) 4303 2731