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PRESS RELEASE No 113/03

11 December 2003

Judgment of the Court of Justice in Case C-322/01

Deutscher Apothekerverband eV v DocMorris NV and Jacques Waterval

A NATIONAL PROHIBITION ON THE SALE OF MEDICINAL PRODUCTS BY MAIL ORDER IS CONTRARY TO COMMUNITY LAW WHERE IT APPLIES TO NON-PRESCRIPTION MEDICINES WHICH HAVE BEEN AUTHORISED FOR SALE ON THE GERMAN MARKET.

Such a prohibition is compatible with Community law if it applies to medicinal products which have not been authorised in a Member State.

Deutscher Apothekerverband eV is an association whose aims include protecting and promoting the economic and social interests of pharmacists. Its members are the federations and associations of pharmacists in the *Länder*, which represent more than 19,000 pharmacists.

0800 DocMorris NV is a Netherlands pharmacy established in Landgraaf (Netherlands). Mr Waterval is a pharmacist and one of the legal representatives of DocMorris.

Since 8 June 2000 DocMorris and Mr Waterval have been offering for sale, at the Internet address "www.0800DocMorris.com", prescription and non-prescription medicines for human use, in languages including German, for end consumers in Germany. The medicines in question have been authorised either in Germany or in the Netherlands.

Consumers are able, for example, to consult a group of experts at the "Internet pharmacy" on health issues. They may also contact DocMorris and Mr Waterval directly on a free telephone number or by letter.

For each of the various medicines, there is a description of the package contents and the price is stated in euros. Alongside the notice stating any prescription requirement applicable to a particular product, there is a box for placing orders. Further information about the product itself may be obtained by clicking on the product icon.

DocMorris and Mr Waterval consider a given medicinal product to be available only on prescription where the product is regarded as a prescription-only product in the Netherlands or in the State in which the consumer is resident. Prescription medicines are supplied only on production of the original prescription.

Actual delivery can take place in a number of ways. The consumer may collect the order in person from DocMorris's pharmacy in Landgraaf, a town near the border between the Netherlands and Germany. Alternatively, he may, at no additional cost, use a courier service recommended by DocMorris.

The Apothekerverband has challenged before the Landgericht Frankfurt am Main (Germany) the internet sale of medicines and their delivery by international mail order. In its view, the provisions of the Arzneimittelgesetz (German law on medicinal products, "the AMG") and the Heilmittelwerbeengesetz (German law on the advertising of medicinal products, "the HWG") do not permit a business of that kind to be carried on. And the prohibitions thus imposed do not infringe the provisions of the EC Treaty on the free movement of goods.

First, the Court sets out its view on the provisions of the AMG prohibiting imports of medicinal products by mail order by pharmacies authorised in other Member States in response to individual orders placed over the internet. **It finds, first, in relation to medicinal products which have not been authorised in Germany, that the general prohibition laid down by the AMG corresponds to a prohibition at Community level:** under the directive on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (replaced by the Community Code), medicinal products must, if they are to be placed on the market of a Member State, have been authorised either by the competent authority of that Member State or under the Community rules. Consequently, the Court need not consider whether the prohibitions infringe the provisions of the EC Treaty on the free movement of goods.

Next, as regards medicinal products which have been authorised for sale on the German market, the Court points out that a national prohibition on the sale of medicinal products by mail order is a restriction on the free movement of goods.

Referring to its case-law, the Court states that a rule which is likely to have a restrictive effect on the importation of pharmaceutical products is compatible with the Treaty only to the extent that it is necessary for the effective protection of the health and life of humans. **In the case of non-prescription medicines, the prohibition is not justified**, since it is possible that adequate advice and information may be provided. Internet buying may even have certain advantages, such as giving consumers time to think about any questions they may wish to ask the pharmacist from home.

In so far as the prohibition concerns medicines available only on prescription, the Court takes the view that allowing such medicines to be supplied on receipt of a prescription and without any other control could increase the risk of prescriptions being abused or incorrectly used. Furthermore, the fact that the labelling of a medicinal product may be in a different language can have more harmful consequences in the case of prescription medicines. Consequently, **a national prohibition on mail order sales of medicinal products available only on prescription can be justified.**

Second, the Court examines the provisions of the HWG prohibiting advertising of mail order sales of medicinal products. The Court finds that where a prohibition of that kind applies to medicinal products which require authorisation but have not been authorised, or to medicinal products available only on prescription, the prohibition is in keeping with the prohibition in the Community directive (replaced by the Community Code) concerning the advertising of medicinal products.

By contrast, the Community Code precludes an advertising ban in respect of medicinal products which are authorised and available without prescription.

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