

Joined 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

(References for a preliminary ruling
from the Oberlandesgericht Düsseldorf and the Bundesgerichtshof)

(Competition — Undertakings — Sickness funds — Agreements, decisions and concerted practices — Interpretation of Articles 81 EC, 82 EC and 86 EC — Decisions of groups of sickness funds determining maximum amounts paid in respect of medicinal products)

Opinion of Advocate General Jacobs delivered on 22 May 2003 I - 2495
Judgment of the Court, 16 March 2004 I - 2524

Summary of the Judgment

Competition — Community rules — Undertaking — Concept — Group of sickness funds determining maximum amounts paid in respect of medicinal products — Not included — Conditions
(Art. 81 EC)

The concept of an undertaking in Community competition law does not cover bodies entrusted with the management of statutory health insurance and old-age insurance schemes which pursue an exclusively social objective and do not engage in economic activity. That is so in the case of sickness funds which, even if the legislature has granted them some latitude in setting the contribution rate, in order to promote sound management, are compelled by law to offer to their members essentially identical obligatory benefits which do not depend on the amount of the contributions. Since the sickness funds therefore have no possibility of influence over those benefits, and are joined together in a type of community founded on the basis of solidarity which enables an equalisation of costs and risks between them, they 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 which constitute their main function.

When groups of those sickness funds determine, pursuant to an obligation imposed upon them by the legislature, fixed maximum amounts corresponding to the upper limit of the price of medicinal products whose cost is borne by sickness funds, they do not act as undertakings or associations of undertakings within the meaning of Article 81 EC, inasmuch as they do not pursue a specific interest separable from the exclusively social objective of the funds, but perform an obligation which is integrally connected with the activity of the funds within the framework of the statutory health insurance scheme.

(see paras 47, 52-54, 56-57,
63-65, operative part)