

Ms. Margrethe Vestager
Commissioner
Competition
European Commission
Rue de la Loi, 200

B – 1049 Brussels

Ref.: BEUC-X-2016-101/MGO/IPA/cm

Brussels, 20 October 2016

Subject: Aspen Pharma's anticompetitive practices

Dear Commissioner Vestager,

I write on behalf of the European Consumer Organisation (BEUC), to share with you our concerns with regard to potential anticompetitive practices put in place by Aspen Pharma for the sale of the anticancer medicines Alkeran, Leukeran, Thioguanin and Purinethol across Europe.

As you might know, on 14 October 2016, the Italian Antitrust Authority¹ fined the multinational pharmaceutical company Aspen Pharma for 5 million euros for abusing of its dominant position and fixing unfair prices for the above mentioned products.

Alkeran (melphalan), Leukeran (chlorambucil), Thioguanin (thioguanine) and Purinethol (mercaptopurine) are life-saving and irreplaceable drugs used in the treatment of some forms of cancer (e.g. leukemia, non-Hodgkin lymphoma, multiple myeloma) especially among children and elderly people. These products do not have a direct substitute and, despite the fact that their patents expired a long time ago, there is no generic version available either.

After purchasing this group of medicines from GlaxoSmithKline, Aspen Pharma started negotiations with the Italian Medicines Agency (AIFA) to obtain a significant price increase, despite the absence of any valid economic justification.

According to the Italian Antitrust Authority, Aspen Pharma adopted a particularly aggressive negotiating strategy which reached a climax when Aspen threatened to interrupt the supply of those medicines to the Italian market. By means of such negotiation, Aspen obtained a very high price increase, ranging between 300% and 1500% of the initial price, which AIFA would not have otherwise accepted.

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¹ <http://www.agcm.it/stampa/comunicati/8419-a480-rincari-di-farmaci-oncologici-antitrust-multa-la-multinazionale-aspen-per-5-milioni-di-euro.html>

BEUC Italian member **Altroconsumo**² played a key role by denouncing the shortage of the medicines in 2014 and the unjustified price increase when they were reintroduced on the market.

Aspen Pharma behaviour undermined consumers' access to essential medicines and put profits before consumers' health.

In the Council Conclusions³ on strengthening the balance in the pharmaceutical system adopted in June 2016, Member States have rightly sounded the alarm about the increasing shortages of drugs because of business strategies, among other factors. They have also called on the European Commission to "*continue and where possible intensify...the monitoring, methods development and investigation...of potential cases of market abuse, excessive pricing as well as other market restrictions specifically relevant to the pharmaceutical companies ...*".

Just like the Member States we urge the European Commission to ensure a better enforcement of competition law in the pharmaceutical sector, including, among others, in relation to shortages.

In particular, following the results of the Italian Antitrust investigation and taking into account that the products in question are used in many Member States, we ask the European Commission to investigate if the above mentioned practices have been adopted in other EU countries in violation of Article 102 a) of the Treaty on the Functioning of the EU and if they caused detriment to consumers' health and welfare.

For more information please find here our [position paper on access to medicines](#).

We remain at your disposal to discuss this further.

Yours sincerely,

Monique Goyens
Director General

C/c: Dr. Vytenis Andriukaitis – Commissioner for Health and Food Safety
Mr. Xavier Prats Monne – Director General DG SANTE
Mr. Johannes Laitenberger – Director General DG COMPETITION

² <https://www.altroconsumo.it/organizzazione/in-azione/azioni-in-corso/aspen-pharma-farmaci-carenti>

³ <http://www.consilium.europa.eu/en/press/press-releases/2016/06/17-epsco-conclusions-balance-pharmaceutical-system/>