



BOND VAN DE GENERIEKE  
GENEESMIDDELENINDUSTRIE  
NEDERLAND

**CONFIDENTIAL AND PRIVILEGED**

By e-mail  
[COMP-SECTOR-PHARMA@ec.europa.eu](mailto:COMP-SECTOR-PHARMA@ec.europa.eu)

European Commission  
DG Comp

Re: Comments on the Preliminary Report  
Pharmaceutical Sector Inquiry  
Commission reference: 39514

Dear Sirs,

On behalf of the members of Bogin, the Association of the Dutch Generic Medicines Industry, we would like to comment on the preliminary report on the pharmaceutical sector inquiry. The eight members of Bogin together represent more than 90 % of the generic medicines industry in the Netherlands. On behalf of its members, Bogin participates in all discussions with the respective stakeholders, including the Dutch government, on all the relevant pharmaceutical issues in the Netherlands.

With respect to the pharmaceutical sector inquiry Bogin would like to express its support of the comments submitted by the EGA, the European Generic Medicines Association.

Bogin would also like to draw your specific attention to the market behaviour of Healthcare Insurers (HCI's) in the Netherlands that, in Bogin's opinion, restricts normal competition. As you may be aware, the legislation with respect to HCI's in the Netherlands changed in 2006. HCI's are now private companies that have to operate as such, with an own profit target and loss risk. They have to operate as fully independent companies and therefore have to prepare and execute their own business plans. In the Netherlands the 5 largest HCI's represent approximately 90% of the market! The two largest HCI's each have a market share of more than 25%.

In July 2005, a number of HCI's, with a current combined market share of more than 50% and a combined market share of more than 70% in 2006, started a collective preference strategy for a limited number of medicines through their association, "Zorgverzekeraars Nederland" ("ZN") The medicines subject to such collective preference strategy were omeprazol, simvastatine and pravastatine. This was followed in 2008 by an "individual" preference policy by a number of HCI's with respect to a limited number of 8 to 9 products. One particular HCI, UVIT, started with a preference policy for a total of 38 products, including the 8-9 products mentioned earlier.



All the HCI's use the same pricelist for the purposes of their collective and "individual" preference policies: the so-called "Taxe". The Taxe is a list with gross prices produced on a monthly basis. The net prices can vary considerably from the gross prices. Even HCI's which do not apply a preference policy will use the Taxe as reference list and in most cases the reimbursement is limited to the lowest price with a margin of 5 %.

Effectively, the use of the Taxe in collective and individual preference systems, results in the collective behaviour of all HCI's as if they were one. This is unacceptable to the generic industry. The cooperation by the HCI's constitutes dominant behaviour and limits fair competition in the market place. Bogin has commissioned Lexonomics, an external economic consultancy specialised in competition and regulation economics. ([www.lexonomics.com](http://www.lexonomics.com)) to conduct a study on the effect of the collective and "individual" preference policies. Lexonomics concluded that the way the preference system was operated resulted in a collective system. A copy of the report is included for your information (confidential and privileged).

Bogin requests that the sector inquiry to be extended to the above described cooperation by HCI's in the Netherlands as it results in an abuse of a dominant position as well as limits normal market competition. We are happy to provide further details if needed.

Yours Sincerely,

Drs. P.F. Bongers  
Chairman Bogin

Enclosed: Lexonomics Report (**confidential and privileged**)