

# Case T-41/96 R

**Bayer AG**

v

**Commission of the European Communities**

(Competition — Procedure for interim relief —  
Suspension of operation of a measure)

Order of the President of the Court of First Instance, 3 June 1996 ..... II - 383

## Summary of the Order

*Applications for interim measures — Suspension of operation of a measure — Suspension of a Commission decision prohibiting refusal to supply a pharmaceutical product widely exported in parallel — Conditions for granting — Serious and irreparable damage — Balancing of all the interests involved*

*(EC Treaty, Art. 185; Rules of Procedure of the Court of First Instance, Art. 104)*

Where the Commission prohibits a manufacturer of pharmaceutical products from refusing to supply a medicinal product in order to prevent an increase in parallel exports from Member States where the product is marketed at a significantly lower price than in the Member State of importation, on the ground

that the Commission considers that such refusals to supply fall within the category of agreements prohibited by Article 85(1) of the Treaty, and where the manufacturer concerned contests that reasoning, maintaining that it unilaterally determines its business policy on the basis of a monitoring system

not designed to dissuade wholesalers from exporting, the manufacturer is entitled to claim that immediate application of the Commission's decision, which leaves uncertainties as to the criteria for distinguishing the unilateral from the contractual, would deprive it of its independence in defining certain crucial elements in its business policy and place it in a state of uncertainty as regards the extent of its freedom in defining that policy.

It is particularly likely, through a significant rise in parallel imports, to cause the manufacturer serious damage in the context of the pharmaceutical industry, which is distinctive in that prices and methods of reimbursement

are fixed or controlled by national health services, giving rise to large disparities in the prices for a single medicine in the various Member States.

Where such damage would be disproportionate to the interests of wholesalers in increasing their exports and to the interest of the national health service, consumers and taxpayers of the State of importation in having the price of the product on the national market reduced, the Court hearing the application for interim measures must, in the light of the urgency of the matter, grant the suspension sought.