



## Dutch enforcer probes drugmakers over excessive pricing and tying

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The Dutch competition authority has launched a preliminary investigation to determine if three pharmaceutical companies are tying their services and charging excessive prices to both healthcare and insurance providers.

The Netherlands Authority for Consumers and Markets revealed yesterday it has asked the unnamed pharmaceutical companies for information as part of its probe.

The agency said it recently received several anonymous tip-offs alleging that healthcare providers were being forced to pay excessive prices for certain medicines and agree to unreasonable conditions that required them to purchase a variety of services, rather than one at a time.

The watchdog noted that it has had the pharmaceutical sector “in its sights” for some time, most recently [convincing](#) Pfizer in February 2022 to stop its exclusivity-based discount system for supplying an autoimmune disease treatment to hospitals.

While the antitrust agency did not disclose which companies it is investigating in its latest case, drug manufacturers Aspen and Daiichi Sankyo confirmed they have not been approached by the ACM.

Dozens of other major pharmaceutical companies did not respond to requests for comment.

Yesterday, the ACM said it is concerned that drug manufacturers sometimes charge very high prices for drugs without high development fees, which can impose unnecessary costs on healthcare providers and patients.

Forcing providers and insurers to purchase unnecessary products and services as part of a bundle can also disrupt the proper functioning of the healthcare industry, the authority added.

Bas Braeken, a partner at bureau Brandeis in Amsterdam, said it is rare for the ACM to launch formal investigations into abuses of dominance, even though the pharmaceutical industry has clearly been one of the agency’s focuses in recent years.

The agency’s case handlers appear hesitant – or even reluctant – to pick up abuse cases, potentially because the enforcer often

fails to defend such infringement decisions before the courts, he said.

Maverick Advocaten partner Cyriel Ruers in Amsterdam echoed the view that the ACM's "track record" in abuse of dominance cases has not been particularly strong over the last decade. In June 2021, for example, the Trade and Industry Appeals Tribunal [confirmed](#) the dismissal of the ACM's highest-ever abuse of dominance fine because the agency failed to prove that the company it sanctioned was actually dominant.

However, these court losses have clearly not stopped the watchdog from pursuing abuses of dominance in the healthcare sector, Ruers added.

In July 2021, the ACM [imposed](#) its first-ever excessive pricing penalty on Leadiant Biosciences, fining the pharmaceutical company €17.9 million for charging too much for a drug used to treat a rare genetic metabolic disorder.

The previous September, the authority [closed](#) an investigation into AbbVie's discount structure with behavioural remedies, after finding it had prevented rival drugs from competing.

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