



Department of Justice

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**JUSTICE DEPARTMENT ANNOUNCES IT WOULD CHALLENGE
PHARMACEUTICAL MANUFACTURERS ASSOCIATION PROPOSAL**

WASHINGTON, D.C. -- The Justice Department is prepared to challenge a drug industry proposal that could reduce price competition for prescription drugs, if implemented. The Department's position was stated in a business review letter from Assistant Attorney General Anne K. Bingaman, in charge of the Antitrust Division, to counsel for the Pharmaceutical Manufacturers Association (PMA).

The PMA proposal would limit individual pricing decisions among the more than 100 companies that develop, produce and market most of the prescription drugs sold in the United States.

The Department said that the arrangement would fall within the types of agreements that the Supreme Court has held to be per se illegal.

Bingaman said, "Agreements among competitors, including agreements setting maximum prices, that interfere with the ability of each firm in a market to determine its own prices have long been illegal under the antitrust laws. Maximum price agreements often become agreements on actual price increases.

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Courts have recognized this danger and have held such agreements to be clearly unlawful."

PMA is a trade association of more than 100 pharmaceutical companies that develop, produce and market most of the prescription drugs sold in the United States.

Under PMA's program, each participating member company would agree to limit the annual increase in the average change in the prices of its prescription drug products to a level not greater than the annual increase in the consumer price index. The program would not apply to the price of any individual product, and it would specifically exclude new products.

PMA members would agree upon a definition of "new products," and the methodology to be used in calculating the average price increases each year. The proposal also includes a mechanism to allow PMA members to certify that they had in fact limited their price increases in conformity with the agreement.

Bingaman noted that price competition in the pharmaceutical industry has been increasing rapidly in recent years and is expected to increase further as managed care assumes a larger role in providing health care.

"This Administration is committed to making health care affordable and available to all Americans but antitrust laws can not be violated in the process," said Bingaman. "Individual firms are allowed to adopt unilateral policies designed to

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control price increases for their products; however, agreement on prices among competitors is clearly illegal."

Under the Department's business review procedure, a person or organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Room 3233, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

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