Joint procurement

factsheet

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Problem Statement

Joint procurement is not a suitable method to procure multi-source generic medicines, as it does not provide additional value to patients, healthcare professionals or payers. The application of joint procurement to generic medicines presents important challenges that defeat any perceived advantage of countries pooling resources to procure multi-source medicines.

Whether under the European Commission's Joint Procurement Agreement (JPA), or on a multi-lateral basis, cross-border procurement of generic medicines has many shortcomings, from which we highlight:

- Regulatory: Off-patent products usually have different national licences and different presentations and names.
- Legal: The legal frameworks for public and private contract laws are of national scope.
- Intellectual Property: Patent or trademark landscapes differ nationally.
- Healthcare system governance: Heterogeneity of healthcare systems organisation.
- Supply chain: Likelihood of driving market consolidation and increasing shortages risk.

COVID-19: Joint procurement of ICU medicines

On 17 June 2020, the European Commission and participating countries launched a "Call for tenders SANTE/2020/C3/29 for the supply of medicinal products used for intensive care patients subject to the novel coronavirus (COVID-19) disease" without prior industry consultation and proper definition of the purpose and rules of the procedure, contravening the spirit of the EU's own procurement directive. The European Commission shared the call for tenders with selected industry partners with a remarkably short deadline to present bids (initially 9 working days, later extended to 24 days due to lack of clarity and many technical questions being raised), with the selection process started in early July. It took,

however, several months for the decision to be made on the suppliers that presented the awarded offers. The decision was then followed by bilateral contract signature with participating countries – one per each tender lot and country – taking the timeline up until early December. This meant that the process took close to 6 months to secure the urgent supply of essential ICU medicines. Overall, the dialogue with organising entities was limited, giving rise to a high level of uncertainty, and creating difficulties to solve issues in the process.

Procurement principles for generic medicines

- **Minor adjustments to existing procurement frameworks are better suited for securing the supply of generic medicines due to the complexities of joint procurement:**
  - Guaranteeing that the procurement processes reopen after the entry of the first multisource medicine to ensure a competitive and predictable supply to patients.
  - Adjusting the number of procurement winners according to the market, product and country characteristics.
  - Using selection criteria that consider other factors than price and ensure fair competition by implementing MEAT criteria. We urge the Commission to support member states in the implementation of MEAT criteria, as this would contribute to ensure security of supply and manufacturing resilience in Europe.
  - Preventing disproportionate penalties to encourage a sustainable supply of medicines to patients.
  - Providing accurate demand estimates with clear volume commitments in tenders.
  - Using sufficiently long lead times that guarantee a predictable supply of medicines to patients.

- **If the European Commission and signatory countries of the Joint Procurement Agreement insist on utilizing the mechanism to address cross-border health threats:**
  - The scope for joint procurement shall continue to be exclusively in the context of cross-border health crisis and only to guarantee stability in an unpredictable environment.
  - The call for tenders should be transparent, open and communicated to all possible suppliers.
  - The procurement must follow the rules and principles in the Public Procurement Directive of the European Commission.
  - The procurement process, criteria, specifications and formalities must be transparent and workable.
  - A preliminary consultation phase involving potential participating manufacturers should take place to ensure issues with the procedure are addressed.

- The European Commission and participating countries ensure clear volume commitments irrespective of the selected supply modality.
- The participating countries need to commit not to procure the same medicines via other means and must honor pre-existing supply contracts with manufacturers.
- Joint procurement lead times should be aligned with manufacturers lead times.
- National authorities should apply certain regulatory flexibilities.
- Award criteria beyond price should be defined to ensure the joint procurement mechanism provides a suitable framework to procure medicines during a cross-border health threats.

Relevant documentation

- https://www.medicinesforeurope.com/wp-content/uploads/2020/08/31072020_procurement-principles-letter-final.pdf
- https://www.medicinesforeurope.com/wp-content/uploads/2019/04/M-Best-procurement-practices-position-paper_final-version.pdf