

with the probable excess capacity on a product which as yet had no patent protection.³³ When Pfizer and Merck violated their agreements by making bulk sales, Schering took no action, and its president indicated in the hearings that he realized that this part of the agreement was not enforceable.³⁴

Price competition ensued. Small companies could obtain the bulk powder from Syntex, Merck, Pfizer or from a small domestic producer, Formet, and package their own finished dosage forms with no restrictions until such date as a patent might be issued. If a patent were to be issued to any firm other than Syntex, these smaller producers could expect to be eliminated from the market immediately.³⁵ Until such time, however, small firms were free to cut prices as far below those of the major firms as they could. The lowest wholesale price reported in the hearings (\$1.75 per hundred 5-milligram tablets) was less than one-tenth of the \$17.90 charged by Merck, Schering and Upjohn.

Given perfect market information, differences of 90 (or of 1000) per cent in the prices of identical products would be impossible. The larger firms found it much more congenial to disparage the products of lower-priced sellers than to quote lower prices to meet their competition. Nor was any price reduction necessary in the retail druggist prescription market, where well over 90 per cent of the sales were made by the three large firms. It may be appropriate to inquire, in the perhaps extreme case of prednisone, what substance there may be to charges that lower-priced producers sell inferior prednisone.

Prednisone could be purchased under the generic name in late 1959 from a number of smaller firms, for prices ranging from \$1.75 to \$12.00 per hundred 5-milligram tablets at wholesale. It could also be purchased from Schering as 'Meticorten', from Upjohn as 'Delta-sone', from Merck as 'Deltra', or from Parke, Davis as 'Paracort'

³³ Excess capacity is very likely to have existed. Dr. Philip Berke of Formet Laboratories testified that an investment of only four or five million dollars would easily be sufficient to supply the entire world demand for prednisone and prednisolone, *ibid.*, Part 14, p. 8056.

³⁴ *Ibid.*, Part 14, p. 7928.

³⁵ It has not been the practice of the major drug firms to license smaller companies. Blackman of Premo, a small firm selling prednisone and other drugs at low prices under generic names, stated that he could produce the newer, and as yet unpatented, corticosteroid dexamethasone in the interval before a patent was issued, but that after its issuance his investment in production facilities would be worthless. He declared: 'With as much assurance as any human being can muster, I feel we would not get a license', *ibid.*, Part 14, p. 8231. Dr. Berke of Formet Laboratories, which is apparently the only small firm in the United States making prednisone and prednisolone in bulk form, was of the same opinion, and indicated that he would apply for a dexamethasone license 'tongue in cheek'. He further indicated that it was cheaper to produce prednisone and prednisolone than dexamethasone; hence he could afford to produce the former while patent proceedings were still pending, but not the latter, *ibid.*, Part 14, pp. 8057-8.