

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 47/05

31 May 2005

Judgment of the Court of Justice in Case C-438/02

Krister Hanner

THE SWEDISH MONOPOLY ON RETAIL SALES OF MEDICINAL PREPARATIONS IS CONTRARY TO COMMUNITY LAW

The system of selecting medicinal preparations operated by the monopoly in question, Apoteket, is liable to place at a disadvantage medicinal preparations from other Member States as compared with trade in Swedish medicinal preparations.

Since 1970, the retail sale of medicinal preparations in Sweden has been entrusted to Apoteket, a company under State control enjoying a sales monopoly.

In breach of the Swedish rules governing that sales monopoly, the company Bringwell International AB sold in 2001, in Stockholm, 12 packages of Nicorette Plåster (nicotine patches) and NicoretteTuggummi (nicotine chewing gum), those products being regarded as medicinal preparations in Sweden. The Swedish authorities commenced criminal proceedings against Mr Hanner, who at that time was the general manager of Bringwell.

The Swedish court before which the proceedings were brought submitted a number of questions to the Court of Justice of the European Communities in order to ascertain whether or not the sales monopoly on medicinal preparations was contrary to Community law.

The Court found, first, that **Apoteket is a ‘State monopoly of a commercial character’** within the meaning of Community law.

Community law, although not requiring total abolition of State monopolies, requires them **to be adjusted in such a way as to ensure that no discrimination exists between nationals of Member States**. As far as sales monopolies are concerned, the Court has already held that monopolies arranged in such a way that **trade in goods from other Member States is placed at a disadvantage as compared with trade in domestic goods** are not allowed.

The Court observed in that connection that the agreement concluded between the Swedish State and Apoteket does not provide either for a purchasing plan or for a system of calls for tenders providing an opportunity for the producers of products that are not selected to

ascertain the reasons for the selection and to contest selection decisions before an independent supervisory authority. On the contrary, under that agreement, Apoteket appears to be entirely free to select a product range of its choice.

Thus, that agreement does not ensure that all discrimination is ruled out and the Swedish Government has not claimed that any other measure exists which might compensate for that lack of safeguards.

For those reasons, the Court held that Apoteket's system of selecting medicinal preparations is liable to place at a disadvantage medicinal preparations from other Member States and that that sales monopoly is not therefore arranged in such a way as to rule out any discrimination against such medicinal preparations. It is therefore, in principle, contrary to Community law.

The Court added that the grant of exclusive rights contrary to Community law may be **justified** in the case of an exclusive right granted to an undertaking entrusted with providing services of general economic interest in circumstances where the task undertaken in the general interest can only be carried out through the grant of such a right and provided that the development of trade is not affected to such an extent as would be contrary to the interests of the Community.

However, **in the absence of a selection system which excludes all discrimination** against medicinal preparations from other Member States, the sales monopoly in question cannot be justified.

The Court therefore held that the Swedish State monopoly on retail sales of medicinal preparations is contrary to Community law.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, EN, DE, ET, LT, LV, SV, IT

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731