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EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
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Judgment of the Court of Justice in Case C-53/03

Synetairismos Farmakopoion Aitolias & Akarnanias (Syfait) and Others v. GlaxoSmithKline plc and Others

THE COURT OF JUSTICE HAS NO JURISDICTION TO ANSWER THE QUESTIONS REFERRED BY THE GREEK COMPETITION COMMISSION

The Epiteproi Antagonismou does not have certain characteristics of a court or tribunal which are necessary in order for it to make a reference to the Court of Justice for a preliminary ruling

GlaxoSmithKline (GSK), a pharmaceuticals company, distributes its products, including the medicinal products Imigran (for the treatment of migraines), Lamictal (an anti-epileptic drug) and Serevent (for the treatment of asthma), via its Greek subsidiary to the complainants, which are Greek associations of pharmacists and wholesalers of pharmaceutical products. Until November 2000, GSK met in full all orders from the complainants. However a large proportion of the products ordered were then exported to other Member States where prices were much higher. After November 2000, GSK stopped supplying the complainants and stated that from then on it would directly supply hospitals and pharmacies because the export by the wholesalers of the products in question was resulting in significant shortages on the Greek market. GSK did subsequently resume supplies to the complainants, but only in limited quantities.

The wholesalers and associations of pharmacists involved brought a complaint before the Epiteproi Antagonismou (the Greek competition commission) against that refusal to meet in full their orders. The Epiteproi Antagonismou ordered interim measures and GSK's Greek subsidiary met the complainant's orders to the extent that it was supplied by its parent company. That supply exceeded the consumption needs of the national market but was insufficient to meet the complainants' orders, the volume of which was much higher.

In the course of considering the complaints from the wholesalers and associations of pharmacists, the Epiteproi Antagonismou asked the Court of Justice of the European Communities whether and in what circumstances a dominant pharmaceutical company can, in order to restrict parallel trade in its products, refuse to meet in full orders placed with it by wholesalers.

The Court has found that it **has no jurisdiction to answer** the questions referred by **the Epitropi Antagonismou** since that body is **not a "court or tribunal"** within the meaning of Article 234 EC – the provision which allows national courts or tribunals to refer questions to the Court for a preliminary ruling – **because it does not have certain of the characteristics necessary** for it to be classified as such, namely independence and the fact of being called upon to give judgment in proceedings intended to lead to a decision of a judicial nature.

First, the Court notes that the Epitropi Antagonismou is subject to the supervision of the Minister for Development, which implies that that minister is empowered, within certain limits, to review the lawfulness of the decisions adopted by the Epitropi Antagonismou.

Second, although the members of the Epitropi Antagonismou are independent in the exercise of their duties, their dismissal or the termination of their appointment are not subject to any particular safeguards.

Third, since the President of the Epitropi Antagonismou is responsible for the coordination and general policy of the secretariat and is the immediate superior of the personnel of that secretariat, there is no separation of functions between the Epitropi Antagonismou, a decision-making body, and its secretariat, a fact-finding body on the basis of whose proposal it adopts decisions.

Lastly, the Court pointed out that a national competition authority such as the Epitropi Antagonismou is required to work in close cooperation with the Commission of the European Communities and may, as a matter of Community competition law, be relieved of its competence by a decision of the Commission initiating its own proceedings. It is therefore possible that the proceedings initiated before the Epitropi Antagonismou will not lead to a decision of a judicial nature. A body may refer a question to the Court only if there is a case pending before it and it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature.

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Languages available: DE, EL, EN, ES, FR, HU, IT, NL, PL

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.

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