of the unfair commercial practice, the applicant would not be exempt from court fees and the discontinuance of proceedings would prevent the judicial proceedings concerning fulfilment of the unfair term?

(1) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'); OJ 2005 L 149, p. 22.
(2) OJ 1993 L 95, p. 29.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 26 August 2011 — CHS Tour Services GmbH v Team 4 Travel GmbH

(Case C-435/11)

(2011/C 340/13)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: CHS Tour Services GmbH

Defendant: Team 4 Travel GmbH

Question referred

Is Article 5 of Directive 2005/29/EC (1) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Directives 84/450/EEC, 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) No 2006/2004 (Unfair Commercial Practices Directive), to be interpreted as meaning that, in the case of misleading commercial practices within the meaning of Article 5(4) of that directive, separate examination of the criteria of Article 5(2)(a) of the directive is inadmissible?

(1) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'); OJ 2005 L 149, p. 22.

Appeal brought on 31 August 2011 by Bavaria NV against the judgment delivered by the General Court (Sixth Chamber, Extended Composition) on 16 June 2011 in Case T-235/07 Bavaria NV v European Commission

(Case C-445/11 P)

(2011/C 340/14)

Language of the case: Dutch

Parties

Appellant: Bavaria NV (represented by: O.W. Brouwer, P.W. Schepens and N. Al-Ani, advocaten)

Other party to the proceedings: European Commission

Form of order sought

— Set aside paragraphs 202 to 212, 252 to 255, 288, 289, 292 to 295, 306, 307 and 335 of the judgment delivered by the General Court on 16 June 2011;

— refer the case back to the General Court or annul the decision at issue (1) (in whole or in part); and

— order the Commission to pay the costs of the proceedings before the General Court and the Court of Justice.

Pleas in law and main arguments

First, the appellant submits that the General Court erred in its interpretation of European Union law, specifically Article 101(1) TFEU, infringed the principle of legal certainty and was inconsistent in the reasons for its determination of the starting date of the infringement. The meeting on 27 February 1996 does not constitute part of the infringement and cannot possibly be the starting point for a series of meetings having an anti-competitive object. In so far as the General Court considered that the mere fact that the meeting on 27 February 1996 was called a 'Catherijne-meeting' showed that the meeting had an anti-competitive object, this contradicts the decision at issue and the General Court is exceeding the limits of its jurisdiction. The method by which the General Court found that there was a series of meetings with an anti-competitive object cannot be used to determine when the infringement began. Furthermore, the General Court's reasoning was inconsistent when it determined that a single statement from InBev could suffice to demonstrate the existence of an infringement.

Secondly, the appellant submits that the General Court erred in its interpretation and application of the principle of equal treatment (and provided an inadequate statement of reasons) in determining that the decision at issue could not be compared with earlier cases in that area, in particular with the Commission's decision in Case 2003/569 (2) — Interbrew and Alken-Maes. Furthermore, there was no objective justification for the difference in treatment of the undertakings concerned in those cases.