

2. If the Court holds that limitation of parallel trade, for the reasons set out above, does not constitute an abusive practice in every case where it is engaged in by an undertaking holding a dominant position, how is possible abuse to be assessed? In particular:
- 2.1 Do the percentage by which normal domestic consumption is exceeded and/or the loss suffered by an undertaking holding a dominant position compared with its total turnover and total profits constitute appropriate criteria? If so, how are the level of that percentage and the level of that loss determined (the latter as a percentage of turnover and total profits), above which the conduct in question may be abusive?
- 2.2 Is an approach entailing the balancing of interests appropriate, and, if so, what are the interests to be compared? In particular:
- (a) is the answer affected by the fact that the ultimate consumer/patient derives limited financial advantage from the parallel trade and
- (b) is account to be taken, and to what extent, of the interests of social insurance bodies in cheaper medicinal products?
- 2.3 What other criteria and approaches are considered appropriate in the present case?

---

**Reference for a preliminary ruling from the Efetio Athinon (Greece) lodged on 21 November 2006 — K.P. Marinopoulos — Anonimos Etairia Emporias kai Dianomis Farmakeftikon Proionton v GlaxoSmithKline Anonimi Emporiki Viomikhaniki Etairia Farmakeftikon Proionton**

(Case C-476/06)

(2007/C 20/11)

*Language of the case: Greek*

#### Referring court

Efetio Athinon

#### Parties to the main proceedings

*Claimant:* K.P. Marinopoulos — Anonimos Etairia Emporias kai Dianomis Farmakeftikon Proionton

*Defendant:* GlaxoSmithKline Anonimi Emporiki Viomikhaniki Etairia Farmakeftikon Proionton

#### Questions referred:

1. Where the refusal of an undertaking holding a dominant position to meet fully the orders sent to it by pharmaceutical wholesalers is due to its intention to limit their export activity and, thereby, the harm caused to it by parallel trade, does the refusal constitute per se an abuse within the meaning of Article 82 EC? Is the answer to that question affected by the fact that the parallel trade is particularly profitable for the wholesalers because of the different prices, resulting from State intervention, in the Member States of the European Union, that is to say by the fact that pure conditions of competition do not prevail in the pharmaceuticals market, but a regime which is governed to a large extent by State intervention? Is it ultimately correct for a national court to apply Community competition rules in the same way to markets which function competitively and those in which competition is distorted by State intervention?
2. If the Court holds that limitation of parallel trade, for the reasons set out above, does not constitute an abusive practice in every case where it is engaged in by an undertaking holding a dominant position, how is possible abuse to be assessed? In particular:
- 2.1 Do the percentage by which normal domestic consumption is exceeded and/or the loss suffered by an undertaking holding a dominant position compared with its total turnover and total profits constitute appropriate criteria? If so, how are the level of that percentage and the level of that loss determined (the latter as a percentage of turnover and total profits), above which the conduct in question may be abusive?
- 2.2 Is an approach entailing the balancing of interests appropriate, and, if so, what are the interests to be compared? In particular:
- (a) is the answer affected by the fact that the ultimate consumer/patient derives limited financial advantage from the parallel trade and
- (b) is account to be taken, and to what extent, of the interests of social insurance bodies in cheaper medicinal products?
- 2.3 What other criteria and approaches are considered appropriate in the present case?