

May/June 2008

# EU Law News

A bi-monthly review of EU legal developments  
affecting business in Europe



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## Consumer Protection

### Compensating victims of competition law violations

The European Commission has recently published a White Paper on how to compensate consumers and businesses harmed by anti-trust violations. While seeking to avoid a climate of excessive litigation, the new measures aim to make it easier to pursue private actions for full compensation, based on the actual loss incurred from anti-competitive behaviour. The White Paper, envisaging single rather than multiple damages, also addresses issues such as collective redress, for example in the case of SMEs with small value claims, and the full disclosure of evidence (with safeguards to prevent procedural abuses). The Commission recommends that final infringement decisions of Member States' competition authorities should be considered sufficient proof of an infringement in subsequent private actions for damages. Implementation measures will be set out following the results of a consultation process ending on 15 July 2008.

## International Trade

### WTO rules against the EU in banana dispute

The WTO has recently ruled that the EU continues to violate international trade rules by impeding access to bananas from Ecuador. This complex trade dispute has preoccupied the international community for many years and pre-dates the establishment of the WTO. The dispute was brought to the WTO by the Ecuadorian Government in 1996, supported



by Guatemala, Honduras, Mexico and the US and later by Colombia, Nicaragua and Panama. Ecuador's main argument is that the EU's import duty of 176 euros per tonne discriminates against its banana industry, as the EU had previously granted preferential treatment to African, Caribbean and Pacific (ACP) countries, allowing them to import a duty-free quota of 775,000 tonnes per year. The WTO ruling validated this argument. Companies affected include US-owned Chiquita Brands, Del Monte and Dole, and the Irish multinational Fyffes.

The EU has tried to meet WTO requirements by ending the ACP's tariff-free quota as part of new economic partnership agreements (EPAs) with most of the affected countries. However, the Ecuadorean banana exporters might contest the EPAs as they believe these still unfairly favour EU producers and the tariffs remain high. The EU is expected to appeal against the WTO ruling.

## Telecoms Industry

### Staying connected while airborne

New rules allowing in-flight use of mobile phones have been adopted by the European Commission. The aim is

to harmonise the technical requirements for safe in-flight use, allowing for EU-wide recognition of licences granted to individual airlines for mobile communications on board which do not interfere with mobile networks on the ground. The new arrangements, which will allow airline passengers to use their mobiles in the skies anywhere over the EU, should prove popular with customers and service suppliers. The security implications are now under consideration by national justice and home affairs authorities.

The Commission has indicated that it expects operators to be transparent and innovative in their price offerings and not charge too much for the new service. However, the issue of pricing is not covered in the measures so far adopted.

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## Pharmaceutical Industry

### Abuse of dominant position by pharmaceutical company

In a number of joined cases (C-468/06 to C-478/06) referred to the European Court of Justice (ECJ), the pharmaceutical company GlaxoSmithKline was accused of abusing its dominant position in the Greek market through its subsidiary GSK AVEE. The case was brought to the ECJ by the Greek company Sot. Lélos kai Sia EE (and other wholesalers) who have been buying from GSK AVEE several patented products to distribute not only in Greece but also in Germany and the UK, where the amount reimbursed per medicinal product is higher. However, in 2000, GSK changed its system of distribution in Greece and began supplying hospitals and pharmacies through a company called Farmacenter AE. This new system was opposed by the existing distributors and a dispute arose, leading to ECJ referral.

On 1 April 2008, the Court's Advocate General (AG) Ruiz-Jarabo issued his (non-binding) opinion that, apart from describing the negative consequences of parallel trade, GSK did not show any positive aspect resulting from the reduction in medicinal supplies to wholesalers. In the AG's view, an undertaking in a dominant position such as GSK, which refuses to meet in full the orders of wholesalers of pharmaceutical products, with a view to reducing the harm caused by parallel trade, engages in abusive conduct. The AG's opinion is a blow to pharmaceutical companies which seek to prevent wholesalers overbuying in low-cost countries in order to sell into higher-cost EU markets.

## Freedom of Information

### Public access to EC documents

Following the 2005 European Transparency Initiative and recent case law, the European Commission has adopted changes to the rules on access to documents in an effort to increase transparency, public understanding and democratic accountability. The new text emphasises active dissemination of information and aligns the Regulation to the provisions of the Aarhus Convention on access to environmental information. It also clarifies the definition of "document", to include, for example, the content of electronic databases, when it can be extracted as a printout or electronic file. The proposed text is also more explicit on the protection of documents related to ongoing investigations. The aim is to improve legal clarity without reducing the number of documents accessible to citizens. The Commission also plans to improve access to the names and functions of persons acting in a professional capacity, to documents from Member States and to the institutions' written submissions to courts.

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## Corporate Governance

### Transparency and Company Law Directives

The European Commission has issued "reasoned opinions" to the Czech Republic, Hungary, the Netherlands and Poland for failing to incorporate into national legislation the Directive on transparency obligations of listed companies (2004/109/EC) within the prescribed deadline. This Directive was due to be implemented by 20 January 2007, although the deadline for putting into force the EC's implementing measures which supplement this text (2007/14/EC) was 9 March 2008. In addition, the Commission is taking Italy to the ECJ for failure to implement fully the disclosure requirements for listed and unlisted companies covered by Directive 2003/58/EC.

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**This publication has been carefully prepared but is intended for general guidance only. On any specific matter, reference should be made to the appropriate adviser.**

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