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EU COURT RULES: DUAL-PRICING IS ANTI-COMPETITIVE

The European Court of Justice today confirmed that dual-pricing is anti-competitive in the pharmaceutical sector as in any other industry.

"Once again the Court has made it clear that dual pricing in this sector is, as a matter of principle, illegal." said Heinz Kobelt, Secretary General of EAEP C.

In its judgement, the Court reaffirms its belief that parallel trade brings competition in an otherwise isolated market. "[...] agreements aimed at prohibiting or limiting parallel trade have as their object the prevention of competition" (cf. para 59). Furthermore, the Court affirms that restrictions to parallel trade are always anti-competitive: the Commission, therefore, does not need to prove a direct disadvantage for final consumers.

The Court also affirms that an anti-competitive agreement such as the one put in place by GSK can only be exempted from competition rules if it contributes "to improving production or distribution of goods or to promoting technical or economic progress". However the Court has requested the Commission to take a closer look at the manufacturers R&D policies, to assess whether there is such a link to anti-competitive practices.

"We believe that the Commission has already done a good job while assessing GSK's economic arguments. We are disappointed that the Court has decided to ask the Commission to look into the specificities of the pharmaceutical market once again. We trust that the European Commission will have the courage of its convictions and declare that GSK's system cannot benefit from an exemption. Otherwise, competition in this sector- and others- will continue to suffer, with the losers being national social security systems, taxpayers and patients", said Andreas Mohringer, President of EAEP C.

Pharmaceutical companies across Europe have been and are setting up various anti-competitive practices, from dual pricing to quota systems, to substantially obstruct parallel distributors in their national markets by aiming to impede in particular the only competition element in the markets for patented medicines. The economic

objective of all these practices is clear: maximise profits, at the expense of government health services, taxpayers and patients interests.

Notes to Editors:

- The press statement of the European Court of Justice on today's ruling can be found at: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-10/cp090085en.pdf>
- The European Commission's decision of 8 May 2001 finding that Glaxo-Wellcome violated EU competition law by operating a dual pricing scheme in Spain is available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_302/l_30220011117en00010043.pdf
- The CFI's judgement of 27 September 2006 can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62001A0168:EN:HTML>
- With operating profits of £7.1 billion in 2008 ([Annual Report 2008](#)), GlaxoSmithKline is one of the most profitable European pharmaceutical companies.
- The European Association of Euro-Pharmaceutical Companies (EAEPC) is the representative voice of pharmaceutical parallel distribution in Europe. Through national association or individual company membership it encompasses over 70 firms from 20 countries in the European Economic Area (EEA).
- The EAEPC's primary aims are to safeguard the free movement of medicines, as laid down in the EU treaty, and to counteract any attempts to restrict the freedom of choice for the consumer through trading patterns in breach of European competition law. The Association believes that free trade will lead to improvements in health standards through the provision of innovative medicines at lower cost, benefiting statutory healthcare systems, other third-party payers, and the public as both patients and taxpayers, as well as assisting the EU to achieve its objective of a single, internal market.
- All products handled by EAEPC members have EU or national regulatory approval, are 100% safe and are exclusively sourced from and sold to EEA countries using authorised channels.
- For further information visit <http://www.eaepc.org>