

# Case C-418/01

IMS Health GmbH & Co. OHG

v

NDC Health GmbH & Co. KG

(Reference for a preliminary ruling from  
the Landgericht Frankfurt am Main)

(Competition — Article 82 EC — Abuse of a dominant position — Brick structure  
used to supply regional sales data for pharmaceutical products in  
a Member State — Copyright — Refusal to grant a licence)

Opinion of Advocate General Tizzano delivered on 2 October 2003 . . . 1 - 5042  
Judgment of the Court (Fifth Chamber), 29 April 2004 . . . . . 1 - 5069

## Summary of the Judgment

1. *Competition — Community rules — Application by national courts — Assessment of an agreement or practice which has been examined by the Commission or has already been the subject of a Commission decision — Conditions*  
(Arts 81 EC and 82 EC)

2. *Competition — Dominant position — Abuse — Refusal of an undertaking in a dominant position to allow another undertaking access to a product or service that is necessary for its business — Assessment of whether the product or service at issue is indispensable — Criteria — Licence to use a brick structure for supplying regional sales data for pharmaceutical products*  
(Art. 82 EC)
3. *Competition — Dominant position — Copyright — Rights over a brick structure used to supply regional sales data for pharmaceutical products — Refusal to grant a licence to another undertaking — Abuse — Conditions*  
(Art. 82 EC)

1. Where the national courts give a ruling on agreements or practices which may subsequently be the subject of a decision by the Commission, they must avoid taking decisions which conflict with those taken or envisaged by the Commission in the implementation of Articles 81 and 82 EC.

making it impossible or at least unreasonably difficult for any undertaking seeking to operate in the market to create, possibly in cooperation with other operators, alternative products or services. In order to accept the existence of economic obstacles, it must be established, at the very least, that the creation of those products or services is not economically viable for production on a scale comparable to that of the undertaking which controls the existing product or service.

(see para. 19)

2. In the assessment of the abusive character of a dominant position, in order to determine whether a product or service is indispensable for enabling an undertaking to carry on business in a particular market, it must be determined whether there are products or services which constitute alternative solutions, even if they are less advantageous, and whether there are technical, legal or economic obstacles capable of

It follows that, for the purposes of examining whether the refusal by an undertaking in a dominant position to grant a licence for a brick structure protected by an intellectual property right which it owns is abusive, the degree of participation by users in the development of that structure and the outlay, particularly in terms of cost, on the part of potential users in order to purchase studies on regional sales of

pharmaceutical products presented on the basis of an alternative structure are factors which must be taken into consideration in order to determine whether the protected structure is indispensable to the marketing of studies of that kind.

- the undertaking which requested the licence intends to offer, on the market for the supply of the data in question, new products or services not offered by the owner of the intellectual property right and for which there is a potential consumer demand;

(see paras 28, 30, operative part 1)

- the refusal is not justified by objective considerations;

3. The refusal by an undertaking which holds a dominant position and owns an intellectual property right in a brick structure indispensable to the presentation of regional sales data on pharmaceutical products in a Member State to grant a licence to use that structure to another undertaking, which also wishes to provide such data in the same Member State, constitutes an abuse of a dominant position within the meaning of Article 82 EC where the following conditions are fulfilled:

- the refusal is such as to reserve to the owner of the intellectual property right the market for the supply of data on sales of pharmaceutical products in the Member State concerned by eliminating all competition on that market.

(see para. 52, operative part 2)