

E-5911/07EN

Answer given by Ms Kuneva
on behalf of the Commission

The compatibility of any exclusivity contracts between Apple iPhone and telecom operators with laws on unfair commercial practices and unfair competition laws is to be assessed by the national authorities and courts. The Commission is aware that legal proceedings are ongoing at national level. The Commission has no enforcement powers regarding these rules and cannot intervene or give legal interpretations in individual cases under Directive 2005/29/EC¹.

Whether or not there is a violation of the EU antitrust rules laid down in Articles 81 and 82 of the EC Treaty depends on a range of factual, economic and legal issues. Apple is not dominant in the market for mobile handsets. Likewise, the operators that distribute the iPhone in the UK, France and Germany are unlikely to be dominant in their respective markets.

The compatibility of the current Belgian legislation prohibiting joint offers with Directive 2005/29/EC on Unfair Commercial Practices will be assessed by the European Court of Justice following recent requests for preliminary rulings (C-261/07 VTB-VAB v.n.v. Total Belgium and C-299/07 Galatea BVBA v. Sanoma Magazines Belgium NV).

By 2011 the Commission shall submit a report on the application of Directive 2005/29/EC. The report shall be accompanied, if necessary, by a proposal to revise the Directive. An impact assessment would precede any proposal.

The Commission would like to draw the Honourable Member's attention to the fact that other EU consumer protection legislation could be relevant in this context. In particular, the Unfair Contract Terms Directive² aims at preventing significant imbalances in the rights and obligations of consumers, on the one hand and sellers and suppliers, on the other hand. This general requirement is supplemented by a list of terms which may be regarded as unfair. Terms which are found by a national court, tribunal or administrative body to be unfair under the Directive are not binding on consumers. The Directive also requires contract terms to be drafted in plain and intelligible language and states that ambiguities will be interpreted in favour of consumers.

So, for instance, a contract term which has the object or effect of limiting consumer's freedom to choose a telecom operator may, in some cases, be regarded by a national court as unfair and therefore not binding on consumers.

¹ Directive 2005/29/EC of the 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 Parliament and of the Council and Regulation (EC) No 2006/2004 of the Parliament and of the Council ('Unfair Commercial Practices Directive'), OJ L 149, 11.6.2005.

² Council Directive 93/13/EC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993.