



EU court dismisses Akzo claim for legal privilege for in-house lawyers UPDATE

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(Updates with lawyer comment) BRUSSELS (Thomson Financial) - The EU's second highest court, the European Court of First Instance (CFI), has rejected Akzo Nobel Chemicals Ltd and unit Akcros Chemicals Ltd's case against the European Commission on the issue of legal privilege of in-house company lawyers.

Akzo brought the case against the Commission after internal company documents were seized during a 2003 investigation into anti-competitive practices.

The case sought to annul the Commission's decision to reject claims for legal privilege of documents the company said were confidential communications between lawyers and their clients.

The court found that the Commission infringed confidentiality procedures in forcing the company to allow it a 'cursory glance' at the documents in question before sealing them in an envelope.

However, it added that the Commission's later decision to open the envelope against the company's wishes was correct, finding that the Commission did not err in deciding that none of the documents fell within the scope of confidentiality protection.

The court held that internal communication between in-house lawyers and company executives is not covered by existing protection of confidentiality of communications between lawyers and their clients.

Akzo said in a statement that the ruling has no bearing on any substantive pending cases involving the company, and therefore has no financial or other substantive impact on it.

The company said it is studying the court's ruling and will issue a response in due course, should it be deemed appropriate.

Lawyers said that an effect of the decision will be that businesses will find it harder and more expensive to comply with the increasing demands of competition laws.

Piers Reynolds, lawyer at Allen & Overy LLP said: "Competition compliance is now at the top of the boardroom risk agenda and with the increasing threat of criminal sanctions, it is surprising indeed that the European court has not taken the opportunity to make it easier for businesses to access competition law advice." He added: "Big businesses operate in an increasingly complex global environment. In these circumstances, obtaining competition compliance advice from external lawyers in multiple jurisdictions is an unwanted, and costly, headache."

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