SPORTS: COMMISSION STATEMENT

Subject: Abuse of dominant position
Restrictive agreements
Exemption
De minimis rules
Relevant markets

Industry: Sports

Source: Commission Statement IP/99/133, dated February 24th, 1999

(Note. According to the Court of Justice in the Bosman judgment, referred to in the Commission's Statement, "sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the [EC] Treaty": Case C-415/93, Union Royale Belge des Societes de Football Association v Bosman, paragraph 73. This case was mainly concerned with the free movement of workers; but the Commission rightly takes the view that, if the sport in question is an economic activity, then it should on the face of it be subject to the competition rules as well. The Statement does not add a great deal to what was already known; but it is interesting to see that the Commission has a surprisingly large number of sports cases to be dealt with under the rules on competition.)

Commission policy on sport and competition

The Member of the Commission responsible for competition policy has informed the Commission about his services' preliminary conclusions on the application to sports of the European Community's competition rules. These conclusions do not prejudge the Commission's current examination of sixty-odd pending cases, in whose context the Commission intends to address certain sensitive issues. Final conclusions will not he drawn up until after finalising a process of discussions with the sports world. The Commission's aim is to guarantee the consistency of its various actions and policies which have an impact on the sport, including the guarantee of free movement of persons within the European Union, the defence of competition and cultural and audio-visual policies.

European institutions do not have any general authority as regards sport. It is primarily for sporting organisations and for Member States to take responsibility for sporting matters. However, on the one hand the international dimension of sporting phenomena increasingly limits the ability of these authorities to cope with the problems arising. On the other hand, the European Union could in certain cases, without going beyond the bounds of its existing legal powers, contribute to solving some of these problems.

The European Council requests a dialogue with the sports world

The Vienna European Council asked the Commission to submit reports to the Helsinki European Council both on safeguarding current sport structures and on

doping issues. The latter were the subject of an informal meeting of sport ministers in Bonn on January 18th, 1999. This initiative follows the declaration on sport annexed to the Treaty of Amsterdam, which stresses the need to take account of the impact of Commission policies on the world of sport and asks the Commission to consult sporting organisations before taking action likely to affect them.

The four main topics which the Commission will address are:
(I) the application of European Community competition rules (see below);
(ii) the European sport model, an issue closely linked to the relationship between sport and television;
(iii) sport as an instrument of social and employment policies; and
(iv) the fight against doping.

These issues will be on the agenda of four seminars of the European Sports Conference scheduled to take place in Olympia in May 1999. The seminar's results will enable the Commission to prepare more fully the report requested by the European Council. The seminars are also a means to comply with the Amsterdam declaration, which encouraged the Commission to hear sporting organisations before taking any decisions which would concern them.

Among its legal powers, the Commission attaches special importance to the fundamental freedoms under the Treaty establishing the European Community (in particular freedom of movement as enshrined in Article 48 of the Treaty), to competition policy (Articles 85 and 86 of the Treaty), and to the audio-visual sector.

Free movement of persons

The Court of Justice's Bosman judgement confirmed that the free movement principle applies to a professional player who is a national of a European Economic Area (EEA) Member State and whose contract comes to an end (Article 48 of the Treaty). The Court held that an obligation, imposed by regulations falling within the scope of Article 48, to pay transfer fees, was unlawful if applied to international transfers inside the EEA of a professional player or a player becoming a professional of EEA Member State nationality and at the end of his/her contract. Likewise, it is unlawful to limit the number of players from other EEA Member States who can play inter-club competitions.

In the Commission's opinion, the principles and legitimate objectives recognised in this judgement, that is, the balance between large and small clubs and the fostering and training of young players, can also be ensured applying the competition rules of the Treaty.

Competition

The Commission notes that sport comprises two levels of activity:
(I) the sporting activity itself, which fulfils a social, integrating and cultural role which must be preserved and to which in theory the competition rules of the EC Treaty do not apply; and
(ii) a series of economic activities generated by the sporting activity, to which

the competition rules of the EC Treaty apply, albeit taking into account the specific requirements of this sector.
The interdependence and indeed the overlap between these two levels render the application of competition rules more complex.

Sport also has features, in particular the interdependence of competitors and the need to guarantee the uncertainty of results of competitions, which could justify sporting organisations implementing a specific framework, in particular on the markets for the production and the sale of sport events.

However, these specific features do not warrant an automatic exemption from the EC Treaty competition rules of any economic activities generated by sport, due in particular to the increasing economic importance of such activities. The general principles which are at the core of any application of EC Treaty competition rules to economic activities generated by the sport are:

(1) safeguarding the general interest in relation to the protection of private interests;

(2) restricting Commission action solely to cases which are of Community interest;

(3) applying the so-called *de minimis rules*, according to which agreements of minor importance do not significantly affect trade between Member States;

(4) applying the 4 authorisation criteria laid down in Article 85(3) of the EC Treaty, but also refusing an exemption to any agreements which infringe other provisions of the EC Treaty and in particular freedom of movement for sportsmen;

(5) defining reference markets pursuant to the applicable general rules but adapted to the features specific to each sport.

The Commission's decision-making and administrative practice in this field is not yet sufficiently developed to answer all the important issues on the agenda. These issues concern in particular the principle of organising sports on a national territorial basis, the creation of new sporting organisations, club relocation, the ban on organising competitions outside a given territory, the regulatory role of sporting event organisers, the transfer systems applying to team game players, nationality clauses, selection criteria for athletes, the agreements governing ticket sales for the 1998 football world cup, broadcasting rights, sponsorship and the prohibition for clubs belonging to one and the same owner to take part in the same competitions.

In the light of these issues, the Commission has taken note of certain preliminary conclusions on the application of the competition rules in the sport sector by debating examples of sporting organisations' practices grouped in four categories:

(1) rules to which, in principle, Article 85(1) of the EC Treaty does not

apply, given that such rules are inherent to sport and/or necessary for its organisation;

(2) rules which are, in principle, prohibited if they have a significant effect on trade between Member States;

(3) rules which are restrictive of competition but which in principle qualify for an exemption, in particular rules which do not affect a sportsman's' freedom of movement inside the European Union and whose aim is to maintain the balance between clubs in an proportioned way by preserving both a certain equality of opportunities and the uncertainty of results and by encouraging recruitment and training of young players; and

(4) rules which are abusive of dominant position under Article 86 of the EC Treaty.

It is not the power to regulate a given sporting activity as such which might constitute an abuse but rather the way in which a given sporting organisation exercises such power. A sporting organisation would infringe Article 86 of the EC Treaty if it used its regulatory power to exclude from the market, without an objective reason, any competing organiser or indeed any market player who, even meeting justified quality or safety standards, failed not obtain from said sporting organisation a certificate of quality or of product safety. □

Dagenham Motors / Polar Motors / Jardine Motors

The Commission of the European Communities has given the green light to the acquisition of Dagenham Motors Group plc by Polar Motors Group Ltd, both companies being active in the retailing and servicing of Ford motor vehicles in the United Kingdom. Polar Motor Group Ltd is jointly controlled by Ford Motor Company Ltd and Jardine Motors Group plc, the latter being active in motor vehicle retailing in the UK. The acquisition affects the retailing and servicing of Ford motor vehicles in the UK. The Commission found that the combined market shares of the parties to the concentration on both the passenger car and commercial vehicle markets in the UK were not such as to raise competition concerns. Moreover, Dagenham Motor Group's retail network was already reserved exclusively for Ford and will remain so after the acquisition, so no additional foreclosure effects are created. Therefore the Commission has decided not to oppose the concentration. (Source: Commission Statement IP/99/135, dated 25th February 1999.)

Competition and Intellectual Property Rights

Readers are reminded that, starting on 1 March, 1999, an Internet Conference on this subject is being held, at no charge to participants. Check in at the following web-site: *www.ipconference.com*