TRADE BETWEEN MEMBER STATES (SPORTS): THE UEFA CASES

Subject: Trade between Member States
Sports as trade

Industry: Sports

Parties: UEFA (Union of European Football Associations)
Mouscron
Communaute Urbaine de Lille

Source: Commission Statement IP/99/965, dated 9 December 1999

(Note. Sport is organised largely on a national basis; and, on the face of it, any rules which operate on a national basis tend to hamper trade between Member States. However, if the rules have no economic importance, trade as such is unlikely to be affected by the existence of those rules, as in sporting events. The Commission has therefore, quite sensibly, taken the view that in general the rules on competition do not apply to the rules made by sporting organisations where the rules are designed mainly to regulate such matters as fixtures on home grounds. A complaint that the European body responsible for the rules on matches had abused its dominant position by refusing to allow a match to be held on an away ground was rejected.)

Two Decisions adopted by the Commission demonstrate the limits to the application of the EC Treaty's competition rules to sport. It highlights three key aspects of the Commission's policy in this sector: First, the Commission recognises the regulatory powers of sports organisations as regards the non-economic matters arising from the specific nature of the sport. Second, the rules of sports organisations that are necessary to ensure equality between clubs, uncertainty as to results and the integrity and proper functioning of competitions, are not, in principle, caught by the Treaty's competition rules. Third, the Commission investigates only those cases that have a Community dimension and significantly affect trade between Member States.

The first decision (the *Mouscron* case) rejects once and for all a complaint lodged by the Communauté Urbaine de Lille against UEFA. The Commission takes the view that the UEFA Cup rule to the effect that each club must play its home match at its own ground ("at home and away from home" rule) is a sports rule that does not fall within the scope of the Treaty's competition rules. In its opinion, there is no Community interest that would justify looking more closely into whether UEFA had abused any dominant position it might have by applying exceptions to that rule without taking account of the integration that exists between certain frontier regions.

The other decision, which was taken following a notification made by UEFA on 14 October 1999, allows publication in the Official Journal of the European Communities of a notice calling on interested third parties to submit their observations on the UEFA rule book entitled "Integrity of UEFA Club Competitions: Independence of the Clubs" (ownership of more than one club). The Commission's preliminary view is that the rule in question, which does not allow more than one club belonging to the same owner to take part in the same competition, could also fall outside the Treaty's competition rules. Before confirming this view by adopting an exemption decision, it must ascertain whether there are not less restrictive means of ensuring the integrity of competitions where more than one club belongs to the same owner. The Commission hopes that the observations of interested third parties will provide it with the information necessary to settle this question.

The Commissioner responsible for competition policy has emphasised that the adoption of these two important decisions would contribute to achieving one of the objectives set by the Commission for this sector, namely to draw over time a dividing line between the practices of sports organisations that fall outside the competition rules and prohibited practices. A third category, namely practices that may be exempted, will also be identified on a case-by-case basis.

According to the Commission, this guideline for applying the competition rules to sport will make it possible to create a framework that provides the world of sport with the legal certainty which it legitimately seeks. The Mouscron case stems from a complaint lodged against UEFA with the Commission on 31 December 1997 by the Communauté Urbaine de Lille. The complaint challenged UEFA's decision not to allow the UEFA Cup game between Excelsior Mouscron (the football club of a Belgian town located near the French border) and FC Metz to be held at the ground of Lille-Métropole. As a result, the Communauté Urbaine de Lille was unable to hire out the stadium to Excelsior Mouscron. UEFA based its decision on the UEFA Cup rules, which stipulate among other things that every club must play its home match at its own ground, except in a number of very exceptional circumstances.

The Commission considers that the "at home and away from home" rule and the exceptions to that rule (which do not rule out the possibility of the host club playing its home match in its opponent's country) are needed to ensure equality between clubs. It argues, therefore, that, by adopting this rule and the exceptions to it, UEFA has exercised its legitimate right of self-regulation as a sports organisation in a manner which cannot be challenged by the Treaty's competition rules.

However, when it comes to applying the exceptions laid down, UEFA has introduced a further condition that prevents a club from playing its home match in its opponent's country. In the Commission's view, there is not sufficient Community interest in examining more closely whether this further condition and its application could constitute examples of improper exercise of UEFA's regulatory powers that might significantly affect trade between Member States. The lack of any Community interest is justified by the fact that the probability of establishing that Article 82 of the Treaty (which prohibits abuses of dominant positions) has been infringed is reduced for three reasons in particular: In the first place, this case must be assessed within the context of the national geographical organisation of football in Europe, which is not called into question by Community law. In the second place, the case is the only one that has been brought to the Commission's notice and is an isolated case that gave rise to a dispute in the past. In the third place, the investigations needed would be disproportionate to the probability of establishing that an infringement had taken place. ■

Competition in Electricity Markets

Most harmonisation measures in the European Union are only indirectly concerned with the promotion of competition. However, Directive 96/92/EC of the European Parliament and of the Council, concerning common rules for the internal market in electricity, is intended to open up gradually the electricity production and supply markets to competition.

Member States were supposed to adopt the measures necessary to incorporate the provisions of the Directive into national law by 19 February 1999, with the exception of Greece (19 February 2001), Belgium and Ireland (19 February 2000). Ten of the Member States which were supposed to adopt measures by 19 February 1999 have already transposed the Directive into their national laws and have notified the texts to the Commission.

Two Member States, France and Luxembourg, which should also have adopted the necessary incorporating measures by this date, have not yet notified them to the Commission. Both states have had difficulty in ensuring the passage of the necessary legislation through their respective parliaments. The Commission has therefore decided to send letters of formal notice to France and Luxembourg for failing to incorporate into national law the provisions of the Directive. This procedure for initiating proceedings in the Court of Justice is based on Article 226 (formerly 169) of the EC Treaty.

Source : Commission Statement IP/99/881, dated 24 November, 1999.