DOMINANT POSITION (BROADCASTING): THE LADBROKE CASE

Subject: Dominant position

Industry: Broadcasting rights; horse-racing; betting

Parties: Ladbroke Group plc
Paris Mutuel Urbain (PMU)

Source: Commission Statement IP/01/82, dated 22 January 2001

(Note. Over the past four or five years we have carried reports of the seemingly endless Court cases involving Ladbroke and its subsidiaries on the one hand and the PMU on the other; and the main interest of the present report is to show how the litigation has at last ended. It is also interesting, however, to see how persistent and determined efforts to gain a foothold in a market, even where there may be no technical breach of the rules on competition, may ultimately succeed – at least, in part.)

The Commission has cleared an agreement which settles protracted litigation between British bookmaker Ladbroke Group plc and French racing companies' joint service, Pari Mutuel Urbain (PMU), over the broadcasting in Belgium of French horse races.

PMU is an economic interest grouping comprising the main French race societies which has exclusive responsibility to manage the rights of those societies to organise off-course betting, under the pari mutuel (totalizator) system. Ladbroke is the most important English bookmaker. The two have been in dispute since July 1990 over the right to retransmit in Belgium by satellite horse races run in France.

Against the PMU's refusal to grant it a licence as well as against Ladbroke's direct competitor on the Belgian market, the Belgian PMU, Ladbroke has lodged several complaints and applications with the Commission and the European Courts for a finding that the Community competition rules had been infringed. In particular, Ladbroke asserted that the refusal of the French racing societies and the PMU to provide it with the French sound and pictures constituted an abuse of a dominant position for which there was no objective justification.

To settle the litigation, PMU has agreed to supply on a non-exclusive basis live televised pictures of French races as well as commentary and data to Ladbroke to be broadcast in Ladbroke's off-course betting shops in Belgium. PMU will also supply the necessary equipment for decoding the satellite signal needed to receive the broadcasts.

According to the agreement notified to the Commission on 3 March 1999, Ladbroke has agreed to withdraw all proceedings before the Court of First

Instance (CFI) and the Court of Justice as well as its complaints to the Commission in respect of the activities of PMU. In its present version, the agreement recognises that the parties are free to enter any market where the relevant national legislation authorises their respective activities.
The arrangement is an excellent outcome to many years of dispute: it involves no restriction of competition within the meaning of the EC Treaty and in particular does not involve any partitioning of the EC on territorial lines.

Betting on horse races is allowed in all Member States. It can take two forms:

- bookmaking, where bets are placed against the bookmaker who incurs a financial risk dependent upon the bets placed and the outcome of the race, or
- under a tote or totalizator arrangement, where bets are pooled and winnings paid out as a given percentage of the monies received with no financial risk to the operator of the betting system.

The tote is the more common form of betting and is the only system authorised in France. Bookmaking is also allowed in Belgium, the United Kingdom, Germany, Ireland and Italy.

The notified agreement concerns not only a betting market but also a market in sound and pictures. This latter constitutes an ancillary market created as a result of the main betting market, whose operation tends to influence and direct gamblers' choice as regards betting on the races transmitted. In its originally notified version, the agreement specifically provided that the PMU was not to operate on the off-course betting market in Belgium and Ladbroke was not to operate on the off-course betting market in France. In the Commission's view, the prohibition for each of the parties from penetrating into the respective territory of the other amounted to a market-sharing agreement and the conditions for the application of Article 81(3) were not fulfilled. However, this restriction has now been limited to activities which are incompatible with the relevant national legislation and the agreement can be cleared. ■

The Unisource Case

In a number of cases under the rules on competition, the Commission imposes an obligation to report to it from time to time on the way in which the arrangements earning exemption are functioning. In the Unisource case, the Commission has released the telecommunications alliance between KPN of The Netherlands, Telia of Sweden and Swisscom of Switzerland, from its reporting obligations following the Commission's exemption of the operation in 1997. Unisource has divested most of its operations, keeping only the provision of sales to multinational companies and has repealed both the non-competition clauses which prevented the parent companies from competing with Unisource and the exclusive dealing arrangements. In view of these developments and taking into account the competitive situation on the relevant market, the Commission has concluded that the Unisource co-operation no longer appreciably affects competition. It has therefore repealed the 1997 exemption decision and replaced it by a negative clearance decision. (Source: Commission Statement IP/01/1, dated 3 January 2001.)