EXCLUSIVITY (TELEVISION RIGHTS): THE UEFA CASE

Subject: Exclusivity

Industry: Sports; Broadcasting

Parties: European Union of Football Associations (UEFA)

Source: Commission Statement IP/01/1043 and, by way of background, Commission Memorandum MEMO/01/271, both dated 20 July 2001

(Note. At first sight, it is necessary, in the transmission of sports events, for the broadcasting rights to be awarded, by auction or otherwise, on an exclusive basis; and it is significant in the present case that the Commission's investigation was not prompted by complaints from any of the various parties to the broadcasting on television of the Champions League football matches. However, the Commission publicised in the usual way - that is, in the Official Journal of the European Communities, - the notification which it had received from UEFA and found that the response to the notice in the Official Journal was both substantial and critical of the existing arrangements.)

The Commission has sent a statement of objections to the European football organisation (UEFA) challenging UEFA's current arrangements for the selling of the rights to televise the UEFA Champions League. The Commission is concerned that UEFA's commercial policy of selling all the free and pay-TV rights on an exclusive basis to a single broadcaster per territory for a period lasting several years may be incompatible with EC competition law and should be improved to ensure that European sports fans can benefit from a wider coverage of top European football events.

UEFA notified its Regulations concerning the joint selling of the commercial rights to the UEFA Champions League to the European Commission in 1999 requesting clearance under European Union competition rules. This statement of objections relates only to the UEFA Champions League TV rights.

Joint selling on an exclusive basis has a number of effects threatening affordable access to football on TV unless certain safeguards are taken. UEFA sells all the TV rights to the final stages of the UEFA Champions League on behalf of the clubs participating in the league. One effect of this is that only bigger media groups will be able to afford the acquisition of and exploitation of the bundle of rights. In turn, this leads to unsatisfied demand from those broadcasters who are unable to obtain TV rights to football. This lack of competition may also slow down the use of new technologies, because of a reluctance of the parties to embrace new ways of presenting sound and images of football.

The Commission fully endorses the specificity of sport as expressed in the declaration of the European Council in Nice in December 2000, where the Council encourages a redistribution of part of the revenue from the sales of TV rights at the appropriate levels, as beneficial to the principle of solidarity between all levels and areas of sport. However, the Commission considers that the current form of joint selling of the TV rights by UEFA has a highly anti-competitive effect by foreclosing TV markets and ultimately limiting TV coverage of those events for consumers. The Commission considers that joint selling of the TV rights as practiced by UEFA is not indispensable for guaranteeing solidarity among clubs participating in a football tournament. It should be possible to achieve solidarity without incurring anti-competitive effects.

The Commission will examine carefully any constructive proposals to render the current arrangement compatible with EC competition law and to guarantee open access to TV coverage of football. The sending of a Statement of Objections does not prejudge the final outcome of the investigation and respects the rights of the notifying party and other interested parties to be heard. UEFA has a total of three months to reply to the Commission's objections and can also request the organisation of a hearing at which it would be able to submit its arguments directly to the representatives of the national competition authorities

The UEFA Champions League: Background Note

The Champions League is a tournament organized every year by Geneva-based UEFA between the top European football clubs: 72 clubs participate from both European Union and non-EU countries. The Champions League is one of the most important sports events in Europe. It is also one of the most watched events on television, generating over 800 million Swiss francs (□530 million) in TV rights, approximately 80 percent of the Champions League's total revenues.

UEFA sells the TV rights to a single broadcaster per Member State on an exclusive basis for periods of three to four years (See table in annex). The rights are split into primary and secondary rights. UEFA imposes minimum broadcasting obligations on the TV companies that win the rights. Champions League matches are currently played on Tuesdays and Wednesdays. In big football nations the broadcaster must televise a Tuesday match live on either free TV or pay-TV and a Wednesday match live on free TV. The contract broadcaster must broadcast highlights on free TV both nights. In the smaller member associations the contract broadcaster must televise a Tuesday match live match on free TV on Tuesday if a club from that country is playing, and on Wednesday. Once the contract broadcaster has complied with its minimum broadcast obligations, it can exploit any additional rights by free TV or pay-TV.

The Commission's interest in how UEFA markets the TV rights to the Champions League was prompted by a formal notification: the Commission initiated its investigation into the joint selling by UEFA of the TV rights because UEFA notified the arrangement to the Commission on 1 February 1999 seeking a legal guarantee that the agreement did not fall in the category of agreements that

are prohibited by Article 81(1) of the EU treaty, or an exemption from EU competition rules.

Joint selling of free-TV and pay-TV rights combined with exclusivity has an important effect on the structure of the TV broadcasting markets since football is in most countries the driving force not only for the development of pay-TV services but it is also an essential programme item for free TV broadcasters. UEFA sells all the TV rights to the whole tournament in one exclusive package to one broadcaster per Member State. Because the winner gets it all, there is a fierce competition for the TV rights whose increasing value can only be afforded by large broadcasters. This may increase media concentration and hamper competition between broadcasters. If one broadcaster holds all relevant football TV rights in a Member State, it will become extremely difficult for competing broadcasters to establish themselves in that market. If different packages of rights were sold, several broadcasters would be able to compete for the rights, including smaller, regional or thematic channels.

This is not remedied by UEFA's sub-licensing policy, which is rather exclusive and allows only one other broadcaster to show the UEFA Champions League matches that the main broadcaster itself is not showing. Thus a maximum of two broadcasters per Member State can televise the UEFA Champions League to the exclusion of all other broadcasters in that Member State, who cannot even show highlights of the matches.

This does not mean that the Commission wants to ban collective selling of football rights: while joint selling arrangements clearly fall within the scope of Article 81(1), the Commission considers that in certain circumstances, joint selling may be an efficient way to organize the selling of TV rights for international sports events. However, the manner in which the TV rights are sold may not be so restrictive as to outweigh the benefits provided.

Although the Commission has not received any formal complaints from TV companies, individual clubs, sports fans or others on the current system, it has received observations from a total of 65 national authorities, associations, football clubs, broadcasters and sport rights agencies in reply to a summary of the case published in the Official Journal on 10 April 1999. Criticisms of central marketing are mainly to be found among broadcasters, sport right agencies and the national competition authorities. They contest that joint selling is necessary for the protection of the UEFA Champions League brand or for ensuring broadcasting on free-TV and argue that central marketing leads to higher prices for consumers and less football on TV and that UEFA's solidarity measures are inefficient, insufficient and conducted in a non-transparent way.

As to how the Champions League TV rights are currently re-distributed between qualifying clubs, it should be noted that, out of a total revenue of 800 million Swiss Francs, 75% goes to the clubs and 25 percent remains with UEFA to cover organizational and administrative costs as well as for solidarity payments. This leaves approximately 122 million Swiss Francs for solidarity payments, 105 million for operational costs and 47.2 million for UEFA.

The Commission fully endorses the specificity of sport as expressed in the declaration of the European Council in Nice in December 2000, where the Council encourages a redistribution of part of the revenue from the sales of TV rights at the appropriate levels, as beneficial to the principle of solidarity between all levels and areas of sport. The statement of objections sent by the Commission does not put this principle into question. The Commission is convinced that furthering competition in the broadcasting market will lead to better quality TV coverage and lower subscription fees. In joint selling arrangements there is a reluctance to give licenses to apply new technologies such as the Internet and UMTS, because broadcasters fear that it will decrease the value of their TV rights.

Annex: Parties gaining rights for last three periods auctioned

Country	Contract Broadcaster / Sub-licensee
Austria	ORF
Belgium	VRT+RTL TVI
Denmark	TV3
Finland	Nelonen + Ch.4
France	TF1/Canal+
Germany	RTL/Première
Greece	Megachannel
Ireland	TV3
Italy	RTI/Stream
Netherlands	NOS/Canal+
Portugal	RTP/Sport TV
Spain	TVE/ViaDigital
Sweden	TV3
United Kingdom	ITV/OnDigital

The German Post Office (again)

Yet again, the German Post Office (Deutsche Post AG) has fallen foul of the Commission. On 25th July, the Commission adopted a formal decision finding that Deutsche Post had abused its dominant position in the German letter market by intercepting, surcharging and delaying incoming international mail which it erroneously classified as circumvented domestic mail (so-called A-B-A remail). The abusive behaviour of Deutsche Post warranted the imposition of a fine; but, due to the legal uncertainty that prevailed at the time of the infringement, the Commission has decided to impose only a "symbolic" fine of €1,000 on DP. In 1998, the British Post Office had filed a complaint with the Commission which alleged that Deutsche Post had frequently intercepted, surcharged and delayed international mail from the UK arriving in Germany. (Source: Commission Statement IP/01/1068, dated 25 July 2001.)