COMPETITION RULES (SPORT): COMMISSION MEMORANDUM

Subject: Exclusivity
Complaints

Industry: Sports; broadcasting; other commercial aspects

Source: Commission Memorandum MEMO/02/127 dated 5 June 2002

(Note. This Memorandum puts into context the UEFA case, reported on page 133 of this issue, as well as the other cases referred to by the Commission. Whatever the activity concerned, it is likely, if it has economic aspects, as defined in the case law, to fall within the purview of the competition authorities; as the summary points out, this has been true in principle ever since the Walrave case in the 1970s. Since then sport has had an increasing economic importance and has run an increasing risk of falling foul of the competition rules.)

The declaration adopted by the European Council in Nice on the specific character of sport stresses the need to take account, in all action by the Community, of "the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured". It is the task of sports organisations to organise and promote their particular sports, having due regard to the sporting rules applicable and, in particular, to national and Community legislation. The Court of Justice has ruled on several occasions that sport, in its economic aspect, is subject to Community law, but has recognised at the same time certain special characteristics of the sector.

Series of sports cases

Commissioners Monti and Reding in particular have engaged in constructive discussions with sporting organisations over the last two years, to put these principles into practice. As a result, the sporting organisations have put into effect important changes to bring their rules into line with their legal obligations, bringing about better legal security to sport as a basis for future economic and sporting development, and a better deal for fans and consumers. UEFA's agreement to change its rules regarding the sale of broadcasting and other media rights to the Champion's League *[see the previous report in this issue]* is the latest positive resolution of a series of sports cases that have been under examination.

Other concrete examples include the following cases. First, there was the case involving football players' agents *[also referred to in the previous report]*. Second, there was the earlier (2001) UEFA Broadcasting case, in which the Commission cleared revised UEFA broadcasting regulations, allowing national football associations to block the broadcasting on television of football during two and a half hours either on Saturday or Sunday to protect stadium attendance and amateur participation in the sport. The regulations originally submitted to the

Commission were highly complex and very broad in scope. The broadcasting of football matches was prohibited throughout the weekend. A balance was found between the interests of the broadcasters to maximise the rights they paid for and those of clubs throughout the game.

Third, there was the Formula One case, in which, after long negotiations, the Fédération Internationale d'Automobile (FIA) agreed to change its rules to bring them into line with EC law. The modifications ensure that the role of the FIA is limited to that of a sports regulator, with no commercial conflicts of interest. FIA rules will not be used to prevent or impede new competitions unless justified on grounds related to the safe, fair or orderly conduct of motor sport. Appeal procedures against FIA have also been strengthened.

Fourth, there was the case involving football player transfer rules. After lengthy negotiations between the Commission and the Presidents of FIFA and UEFA, ending on 5 March 2001, FIFA and UEFA undertook to adopt new transfer rules on the basis of a number of principles, including three main ones which seek to promote the training of young players and to ensure the stability of teams as well as the integrity, regularity and proper functioning of competitions, in the context of the specific features of football, so as to safeguard the interests of fans and spectators of the sport. New regulations were adopted in July, and in August 2001, FIFA and FIFPro (the players union) reached an agreement about FIFPro's participation in the implementation of the new rules.

Fifth, in a case dealt with under the state aid rules in 2001, the Commission authorised the award of state grants by France for the financing of training centres for young players in view of their educational and integrative objective and the little impact they had on competition between the leading clubs.

Sixth, in The Mouscron case in 1999, the Commission had already rejected a complaint against the UEFA "home and away rule", on the basis that this was a sporting rule and a necessary part of the organisation of sporting competitions; as such it fell outside the scope of competition law.

Judgments of the Court

The judgment of the Court of Justice in the *Walrave* case (Case C-36/74, *Walrave and Koch*) established that European Community law applied to sports, insofar as the practice constituted an economic activity within the Community. However, it was only in the mid-1990s, after the judgment in the *Bosman* case (C-415/93, *Bosman*) and the increase in the money being paid for broadcasting rights to major sporting events, that the economic aspects of sporting activities became an issue of major importance. It is only relatively recently that sporting organisations have embarked on the complex task of adjusting their sporting regulations to bring them into line with today's sporting, economic and legal requirements. The Commission's involvement in this exercise of modernising the rules has come about largely as a result of complaints. ■