EXCLUSIVITY (BROADCASTING): THE UEFA CASE

Subject: Exclusivity

Industry: Broadcasting; sport

Parties: Union des Associations Européennes de Football (UEFA)

Source: Commission Statement IP/02/806, dated 3 June 2002

(Note. This appears to be a satisfactory resolution, subject to third party views, of the problem of exclusive joint sales of broadcasting rights for football matches.)

The Commission intends to take a favourable view of the draft new rules of UEFA, Europe's soccer governing body, regarding the sale of the broadcasting and other media rights to the Champions League. The Commission had objected to the current rules, which had been notified for regulatory clearance, on the grounds that if a group of people joined forces to sell a given product then that restricted competition. The rules distorted competition between broadcasters, encouraged media concentration and stifled the development of Internet sport services and the new generation of mobile phones by barring access to key content, which is not in the broad interest of fans and consumers generally. UEFA's draft new rules will bring the Champions League media rights within the reach of Internet content providers and UMTS operators as well as of a greater number of television and radio companies. Instead of selling the rights as a bundle to only one broadcaster per country, UEFA will sell the rights in several packages for shorter periods of time, and individual football clubs will also be able to exploit some of the rights with their fan base.

In the Commission's view, the existing rules, under which a single broadcaster has exclusive rights for a long period of time could not be exempted because they distorted competition between broadcasters, who regard sports as an essential content. The Competition Commissioner Mario Monti said: "This solution fosters a broader and a more varied offer of football in the European Union. It will allow clubs to develop some of the rights with their fan base and will give an impulse to the emerging new media markets such as the Internet and UMTS services. At the same time, the continuation of some central selling will permit UEFA to continue promoting the successful Champions League brand, which it created, while safeguarding financial solidarity in the sport.

"In short, the UEFA settlement proposal represents good news for clubs, broadcasters and fans. It is a clear example of the Commission's ability to achieve a balanced solution in sports related cases with the existing legal instruments and allows both sport and competition to flourish, to the benefit of the European consumer."

UEFA (Union des Associations Européennes de Football) notified its Regulations concerning the joint selling of the commercial rights to the UEFA Champions League to the Commission in 1999, requesting clearance under the competition rules. ("Commercial rights" include the television broadcasting rights – radio broadcasting rights, as well as stadium tickets, are sold by the individual home clubs – sponsorship, suppliership, licensing and intellectual property rights.)

Until now UEFA has sold all the TV rights to the final stages of the UEFA Champions League on behalf of the clubs participating in the league. The rights were sold as a bundle on an exclusive basis for up to four years to a single broadcaster in each Member State, in general a free-to-air television company, which would normally sub-license some rights to a pay-TV player. One of the drawbacks of the system is that some of the rights, including live footage, were unexploited: the clubs and possibly other players, such as regional television channels or small pay-per-view companies, would be happy to use these rights.

Joint selling on an exclusive basis, in the sports or in any other sector, restricts competition because it has the effect of reducing output and limiting price competition. This view is shared by a number of national competition authorities. Therefore, joint selling of football TV rights can be allowed only if it is beneficial to the consumer and if certain safeguards are taken, as foreseen in Article 81(3) of the EC treaty, which allows the Commission to exempt restrictive agreements if they contribute to "improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit". One effect of joint selling is that only bigger media groups are able to afford the acquisition and exploitation of the bundle of rights. Those groups are typically dominant incumbent broadcasters. It also leads to unsatisfied demand from those broadcasters who are unable to obtain the rights and slows down the use of new technologies, because of a reluctance of the parties to embrace new ways of presenting sound and images of football.

Following a careful examination of UEFA Champions League broadcasting rules, the Commission sent a statement of objections to UEFA on 19 July 2001 formally warning that UEFA's joint selling arrangement could not benefit of an exemption in its initial form.

UEFA's new joint selling arrangement (the full details of which will be published on UEFA's Internet web site at a later stage) will start with the 2003/2004 football season, and may be summarised as follows. First, UEFA will continue to sell the rights to live transmission of the main matches on Tuesday and Wednesdays. For example, at the beginning of the Champions League season, that is, the last stage which starts after the qualifying phases with 32 teams UEFA will be able to sell the "gold match", such as the Roma-Real Madrid match, to a TV company in Spain and Italy.

Second, if UEFA has not managed to sell some of the other matches played on that Tuesday (normally a total of eight at the beginning of the season) to another broadcaster, the clubs in question will have an opportunity to sell their match individually. This means that Arsenal and Liverpool, also playing the same day,

could sell the rights themselves in Spain and Italy if UEFA has not managed to sell the rights.

Third, as a departure from the present situation, all media rights will be offered to the market, including those rights that were unexploited so far such as Internet and UMTS rights. This is a welcome move for telecommunications operators currently rolling out the third generation of mobile phones. Fourth, the individual football clubs now have the right to exploit deferred TV rights to provide their fans with better services. The settlement means that UEFA has split all the media rights into 14 smaller packages some of which are exploited only by UEFA and some of which are exploited by both UEFA and the individual clubs. Fifth, UEFA will award the media rights contracts for a period not exceeding three years using a public tender procedure giving all broadcasters an opportunity to bid for the rights.

In the light of UEFA's settlement proposal, the Commission is in a position to give its preliminary approval of the modified arrangements. However, before giving its final approval, the Commission wishes to give third parties the opportunity to comment. To this end a Notice describing the new arrangements will be published in the EU's Official Journal in the coming weeks, and third parties will be invited to submit their comments on the new arrangements to the Commission. Depending on the outcome of this market testing, the Commission services will propose the adoption of a formal exemption decision pursuant to Article 81(3) of the Treaty.

This case is the latest in a line of cases that show that the Commission seeks to take into account the specific character of sport while intervening to ensure fair competition. The Commission last year cleared the UEFA broadcasting regulations, allowing national football associations to block the broadcasting on television of football during 2½ hours either on Saturday or Sunday to protect stadium attendance and amateur participation in the sport. This was possible after the conflicting interests of the broadcasters, to maximise the rights they paid for, were better balanced with those of the clubs to protect gate revenues.

In another well-publicised case, the Commission last year successfully concluded discussions with FIFA and UEFA with regard to the rules governing the transfer of players within the EU which had been the subject of a bitter feud between the players' unions and the world football governing body. The Commission last year also closed its long-standing investigation into the rules governing the FIA and the commercial agreements relating to the Formula One car racing championship. The settlement did not contest FIA's role to regulate the sport, but aimed to prevent certain conflicts of interest and remove unfair restrictions put on broadcasters and circuit owners among others. In these and other cases, the Commission has limited its intervention, which was always triggered by complaints or by the sports organisations' desire to seek legal certainty, to the commercial aspects of sport and other aspects that were in violation of the EC treaty rules. ■