EXCLUSIVITY (BROADCASTING): THE FAPL CASE

Subject: Exclusivity
Joint selling
Price fixing

Industry: Football; sports

Parties: Football Association Premier League (FAPL)

Source: Commission Statement IP/02/1951, dated 20 December 2002

(Note. It is perhaps an exaggeration to say, as the Commission does in its Statement below, that joint selling is tantamount to price fixing. A more persuasive point made in the Commission's Statement is that one effect of joint selling of media rights, especially when coupled with exclusivity, is that only big media groups can afford the acquisition and exploitation of the bundle of rights on offer. If the FAPL can make some concessions to the Commission, probably in the form of a willingness to allow important exceptions to its present policy, there is a fair chance that the Commission will approve an amended scheme.)

The Commission has sent a Statement of Objections to the English Football Association Premier League (FAPL) over the joint selling of the media rights to Premier League matches. Joint selling is tantamount to price-fixing, which could be exempted only if the restrictions of competition were strictly necessary to ensure the legitimate goals pursued by the arrangements for example solidarity among clubs and if they resulted in benefits for other interested parties, in particular football fans. These same considerations have led the Commission in June to reach a preliminary positive view on the modified rules of UEFA for the joint selling of the media rights to the final stages of the Champions League.

In June 2001 the Commission opened an investigation on its own initiative into the joint selling of media rights to the English Premier League. A year later, in June 2002, the Premier League notified its Regulations concerning the joint selling of the commercial rights to the Premier League and requested clearance under European Community competition rules.

The Premier League sells packages of media rights on behalf of the League clubs to television companies in Britain and Ireland on an exclusive basis. Under these arrangements, clubs are prevented from selling any rights on their own, even those that are not included in the packages. In practice, this means that at present only 25% of the Premier League matches are broadcast live.

One effect of joint selling, especially when coupled with exclusivity, is that only big media groups can afford the acquisition and exploitation of the bundle of rights. This leads to higher prices and shuts out competitors from key content. Football fans are also potentially harmed since they are offered less football on

TV, or no coverage at all in those cases where they do not subscribe to pay-TV as there are no live matches on free TV. The lack of competition may also limit the packages of rights available for new media and new technologies, in particular the third-generation of mobile phones, which could see their introduction slowed down as a result.

All these anti-competitive effects do not mean, however, that joint selling is to be banned outright. Article 81(3) requires the Commission to assess whether agreements, which on the face of it are anti-competitive, could bring benefits, not least to the consumer, in which case they could be exempted.

The Commission fully accepts that sport is not to be treated like any other sector and respects the declaration of the European Council in Nice in December 2000, which encourages a redistribution of part of the revenue from the sales of TV rights at the appropriate levels. Furthermore, in June the Commission reached a preliminary settlement with European football governing body UEFA regarding the joint selling of the Champions League. Under the proposed settlement, the Commission would accept a limited joint selling agreement subject to a number of conditions, leading to more matches being made available live, and greater individual selling of rights by the clubs.

As regards the Premier League, the Commission considers that the current joint selling arrangements are anti-competitive because they have the effect of foreclosing the market for other broadcasters and ultimately limit media coverage of soccer events to the detriment of consumers. The Commission believes at this stage that the selling of the media rights as practised by the FAPL is not indispensable for guaranteeing solidarity among clubs participating in the English leagues and that it is possible to achieve solidarity without incurring anti-competitive effects.

The Commission will examine carefully and with an open mind any proposals that the FAPL may submit to render the current arrangements compatible with European competition law and to guarantee open access to media 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. The FAPL has two and a half months to reply to the Commission's objections. It can also request a hearing at which it would be able to submit its arguments directly to the representatives of the national competition authorities. ■

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