EXCLUSIVITY (MEDIA RIGHTS): THE UEFA CASE

Subject: Exclusivity

Industry: Broadcasting; press; football

Parties: Commission of the European Communities
UEFA

Source: Commission Statement IP/03/1105, and MEMO/03/156, both dated 24 July 2003

(Note. The Commission's statement and memorandum, reproduced below, give the details of the final decision by the Commission in the matter of joint selling arrangements by the European soccer organization, UEFA. Essentially, UEFA will continue to market centrally the rights to live television matches, subject to the creation of various rights "packages" giving the winning broadcasters certain options.)

Commission Decision

The Commission has taken a final decision exempting the new joint selling arrangements of European soccer organisation UEFA for the media rights to the Champions League. The new policy will allow UEFA to continue selling the rights to its successful Champions League brand while bringing football within the reach of more broadcasters as well as Internet and telephone operators, and permitting clubs to market part of these rights individually. In the Commission's view, the decision will provide a broader and more varied offer of football on television; it will allow clubs to develop the rights for their own fan base and will give an impulse for the emerging new media markets such as UMTS services; and it will show that the marketing of football rights can be made compatible with the competition rules without calling into question their sale by a central body to the benefit of all stakeholders in the game.

The Commission originally objected to the joint selling arrangements, which were notified in 1999, because UEFA sold all Champions League TV rights in one package to a single broadcaster on an exclusive basis for up to four years at a time. The buyers were often free-TV broadcasters that could sub-licence some rights to pay-TV broadcasters. One of the important drawbacks of the original joint selling arrangement was that not all matches were seen live on TV while Internet and phone operators were simply denied access to the rights.

UEFA's joint selling arrangement therefore had the negative effect of restricting competition between broadcasters. By barring access to key sport content it also stifled the development of sport services on the Internet and of the new generation of mobile phones. This was not in the interest of broadcasters, clubs, fans and consumers.

UEFA's new joint selling arrangement

As a result of the Commission's objections, UEFA proposed a new joint selling arrangement, which solves the Commission's concerns, and which is operational starting with the 2003/2004-football season. According to the new system:
- UEFA will continue to market centrally the rights to live TV transmission of the Tuesday and Wednesday night matches. The main rights will be split into two separate rights packages (the Gold and Silver packages) giving the winning broadcasters the right to pick the two best matches.
- UEFA will initially have the exclusive right to sell the remaining live rights of the Champions League. However, if it does not manage to sell this so-called Bronze package within a certain cut-off date, the individual clubs will be able to market the matches themselves.

The new joint selling system also affords opportunities to new media operators as both UEFA and the football clubs will be able to offer Champions League content to Internet and operators seeking to launch or boost the new generation of mobile phone services using the UMTS technology. Individual football clubs will also, for the first time, have the right to exploit TV rights on a deferred basis and to use archive content, for example, for the production of videos, therefore provide their fans with a better and more varied offer. UEFA will not sell the rights for a period longer than three years and will do so through a public tender procedure allowing all broadcasters to put in bids.

UEFA's new joint selling system represents an improvement on the preliminary compromise reached with the Commission in July 2002 and which was subject to public consultation (see Official Journal C196 of 17 August 2002). It particularly agreed that football clubs would not be prevented from selling live rights to free-TV broadcasters where there is no reasonable offer from any pay-TV broadcaster.

Exclusivity and joint selling

Joint selling on an exclusive basis restricts competition - whether in the sports or in any other sector - because it has the effect of reducing output and limiting price competition. The sale of the entire rights on an exclusive basis and for a long period of time has the effect of reinforcing the position of the incumbent television companies as the only ones with the financial strength to win the bids. This, in turn, leads to unsatisfied demand from broadcasters and a lesser ability to make an attractive offer to customers. Sports and films are two key ingredients for television and for pay-TV channels in particular. They are also proving increasingly critical for the development of new technologies.

Therefore the Commission could only exempt the joint marketing of the rights to the Champions League if the arrangements were modified to meet the conditions foreseen in Article 81(3) of the EU Treaty. This provision 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". The Commission is also examining joint selling arrangements to national football leagues.

Background note on the UEFA Champions league

The Champions League is the most prestigious European football club competition. It pits Europe's top football clubs against each other and is organised every year by UEFA, the European Football Organisation and is one of the most watched events on television, representing around 20% of all the football rights paid broadcasters in the European Union for 1999/2000 season.

The UEFA Champions League is open to all national league champions as well as some of the second-best teams. Some countries can field in more clubs, however, according to an UEFA's coefficient ranking list. Including the qualifying stages, a total number of 72 football clubs participates in the UEFA Champions League. The Champions League starts in September with the 32 teams that qualified for the so-called last stage. For the 2003/04 season, a new format for the 32-team group stage (eight groups with four teams each) will be introduced. Following the three qualifying knockout rounds, there will be two different phases, beginning with a league format stage followed by a knockout stage, including the 1/8 finals, the quarter-finals, semi-finals and the final in May. The Champions League matches are played on Tuesdays and Wednesdays.

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. UEFA was seeking a legal guarantee that the arrangement did not fall in the category of agreements that are prohibited by Article 81(1) of the EC Treaty, or alternatively an exemption from the Community's competition rules. Competition law is not concerned with pure sporting rules, but only the economic activities connected with sports events. The Court of Justice ruled in 1974 that, as an economic activity, sport was subject to Community legislation (Case 36/74, Walgrave v Union Cycliste Internationale). The sale of broadcasting rights to sport events is a commercial activity and an extremely valuable one for that matter both for broadcasters, clubs and advertising companies.

UEFA used to sell the TV rights to a single broadcaster per Member State on an exclusive basis for periods of up to four years. The rights were split into primary and secondary rights. UEFA imposed minimum broadcasting obligations on the TV companies that won the rights. In big football nations, the broadcaster had to televise a Tuesday match live on either free TV or pay-TV and a Wednesday match live on free TV. In the smaller member associations, the contract broadcaster had to televise a Tuesday match live on free TV, if a club from that country was playing, and on Wednesday. The contract broadcaster had to broadcast highlights on free TV both nights. Once the minimum broadcast obligations were complied with any additional rights could be exploited by free TV or pay-TV.

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 premium football is, in most countries, the driving force not only for the development of pay-TV services but also a 'must-have' content for free-television. Football is also expected to be a driving content for the rollout of new media such as Internet and

UMTS services a potential that does not appear to be exploited currently. In many countries the national football association sell the TV rights to a whole tournament in one exclusive package to one broadcaster only. Because the winning broadcaster gets all rights, there is fierce competition for the TV rights whose value can only be afforded by large broadcasters. This may increase media concentration and 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.

UEFA and others have admitted that restrictions imposed on the sale of the media rights are intended to increase revenues. They have argued this is acceptable because the money is put into football. However, joint selling is a concern for all competition authorities, both on the EU and at national level, because of the commercial power this confers on the joint sales organisation, and because of the market power also enjoyed by the licensees of the rights, usually the incumbent TV players. This usually also has a negative impact on consumers as they pay more and get less for their money as they would if there was competition.

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 organise the selling of TV rights for international sports events as well as to guarantee the integrity and to protect the nature and the interest of competition. A single point of sale of media rights is an efficient trading method for the parties involved and joint selling may also be an efficient way to promote a brand such as the Champions League. However, the manner in which the TV rights are sold may not be so restrictive as to outweigh the benefits provided. According to Article 81(3) of the EC Treaty there must be a balance between the restrictions on competition and the benefits derived thereof.

The Commission is convinced that furthering competition in the broadcasting market - which this settlement is designed to achieve - will lead to better TV coverage and lower subscription fees for the consumers. Moreover, it is likely that there will be a better variety of games on TV providing more local games also to be broadcast. The Commission's intervention is likely to expand the offer of both live and deferred football on free and pay-TV as well as on the Internet. The fact that joint selling is maintained in respect of the vast majority of the live rights will avoid a situation where fans will have to switch from channel to channel to follow the UEFA Champions League.

Under UEFA's new sales policy the media rights will no longer be offered to a single operator only but split up into a large number of smaller rights' packages; the Gold and Silver packages have not gone to the same broadcaster in any of the big broadcasting markets, which the Commission takes as a good sign of the new joint selling arrangement creating more competition in the market.

In joint selling arrangements, the broadcasters that bid for the exclusive rights are reluctant to give licenses to Internet or UMTS operators, preferring to monopolise the rights. The settlement will help to remedy this, as UEFA has committed itself to make the rights available also for new media operators. Clubs will also be able to retail new media services. This is likely to contribute to a more rapid rollout of new media services to the benefit of consumers.

Diversification of income sources is good for clubs as it makes them less dependent on a single source of income. If one contractual partner out of several goes bust it is less serious for the football clubs than when they only have a single contract partner that runs into financial difficulties. The result of the Commission's action will be a greater disparity between large and small clubs. There is need for solidarity (the redistribution of revenue to ensure a more balanced sporting competition); and, if the changes expected under the joint selling arrangement alters the balance of income of the clubs significantly, then it is for the clubs themselves to implement the necessary adjustments to their solidarity mechanisms.

The Commission does not treat sport in the same as any other sector. Sporting rules such as promotion and relegation, appeals procedures and so on are unaffected. But the commercial reality of sports events is inescapable. So too are the importance and popularity of football in all the Member States. Fans are willing to spend a lot of time and money on football attending matches, buying merchandising and paying to watch it on television. Sports clubs and associations are commercial organisations as well as sporting ones. They pay taxes on their profits and are listed on stock exchanges. They compete for players and for sponsorship. The sale of their media rights profoundly affects media markets. The competition rules are there to protect consumers.

The Bundesliga Case

The Commission is planning to exempt the new system for marketing the rights to broadcast first and second division Bundesliga matches from the antitrust rules. The plan submitted by the German Football League (DFL) will ensure more variety and competition in the broadcasting of games from the Bundesliga first and second divisions. It is also expected to give a boost to the new media, UMTS and broadband Internet. In the Commission's view, the traditional central marketing system restricts competition between clubs and between media companies, exacerbating trends towards concentration in the sector. Under the new system, all broadcasting rights will no longer be sold to a single broadcaster in one package. For the first time, broadcasting rights will be unbundled and offered for sale transparently in a number of separate packages. In future, it will be possible to show all games live over the Internet and via mobile phones. First and second division Bundesliga clubs will also be allowed to sell some broadcasting rights themselves. At the next stage of the procedure the market participants will have the opportunity to present their views.

Source: Commission Statement IP/03/1106, dated 24 July 2003

The Konica / Minolta Case

The Commission has cleared the proposed acquisition of Minolta by Konica, two Japanese manufacturers of cameras, photocopiers and other imaging products. The Commission had concerns that the deal might create a dominant position in the market for photometers, which are devices used by professional photographers to measure light exposure. But Konica offered to divest its approximately 40% stake in Sekonic, a Japanese manufacturer of photometers, which removes the competition concerns. The Commission's investigation had shown that the activities of Konica and Minolta were largely complementary although they overlapped in several product markets. In the market for photocopiers and cameras, there are no competition concerns since the merged entity will still lag behind market leaders Ricoh and Canon (photocopiers) and Olympus (cameras). The only competition concerns related to the market for photometers, where the merged entity would have gained a dominant position and would have been able to act independently from consumers and competitors. These concerns were eliminated by Konica's offer of divestiture.

Source: Commission Statement IP/03/1004, dated 11 July 2003

Japan / European Union Competition Agreement

Japan and the European Union have signed an agreement designed to strengthen co-operation between their competition authorities to the benefit of companies and consumers in both jurisdictions. This is the third such agreement signed by the European Union after agreements concluded with the United States and with Canada. The agreement provides a concrete framework for co-operation between the Commission of the European Communities and the Japan Fair Trade Commission. It provides for reciprocal information on the enforcement activities of each authority that might affect the important interests of the other party. Typically, the Commission will routinely notify its Japanese counterpart of any merger proceedings or other proceedings against Japanese companies as well as cases where anti-competitive activities are carried out in Japan. This also applies to the other party. The Agreement provides for co-ordination and co-operation of enforcement activities to the extent consistent with each party's laws. Under the agreement the EU and Japan may request the other party to start enforcement actions against anti-competitive behaviour carried out in the territory of the other party. It enhances international co-operation in the fight against cartels and provides for regular contacts in order to discuss policy issues and enforcement efforts and priorities. The Agreement came into force on 9 August 2003.

Source: Commission Statement IP/03/995, dated 10 July 2003