



EUROPEAN COMMISSION

Brussels,
D(2002) /

ENIC plc
For the attention of
Mr Stephen Kon
SJ Berwin & Co
222 Gray's Inn road
London WC 1X 8HB

Subject: Case COMP/37 806: ENIC/ UEFA

Dear Sir,

I. INTRODUCTION

1. On 18 February 2000, you lodged a complaint pursuant to Article 3(2) of Regulation 17/62 against the “Union des Associations Européennes de Football” (UEFA) as regards its rule on “Integrity of the UEFA Club competitions: Independence of clubs” (the UEFA rule). The UEFA rule was the subject of a communication¹ made pursuant to Article 19(3) of Council Regulation 17/62, concerning a request by UEFA for negative clearance or for exemption pursuant to Article 81(3). Your complaint challenges the compatibility of the UEFA rule with Articles 81 and 82 of the EC Treaty.
2. On 23 January 2002, Mr. Pons on behalf of Mr. Schaub informed you that the Commission, according to Article 6 of Regulation (EC) 2842/98 of 22 December 1998² intended to consider that there were insufficient grounds for acting on your application.
3. This preliminary conclusion was in particular based on the fact that the Commission considers that the contested rule seems to be inherent to the very existence of the UEFA clubs competitions and does not lead to a limitation on the freedom of action of clubs and investors that goes beyond what is necessary to ensure its legitimate aim of protecting the uncertainty of the results and giving the public the right perception as to the integrity of the

¹ Published on 17 December 1999, OJ C 363

² OJ L 354, p.18 of 30 December 1998

UEFA competitions with a view to ensure their proper functioning. Thus, the rule cannot be qualified as a restriction of competition and therefore falls outside the scope of Article 81(1) of the EC Treaty. Furthermore, in adopting the rule UEFA does not appear to have abused any possible dominant position.

4. By letter of 15 March 2002, you submitted a reply to the Article 6 letter. Your reply focuses upon the following claims :
 - (1) The object of the contested rule is in fact to distort competition. The Commission makes no reference to an UEFA internal memorandum attached as annex 22 to the complaint. An important motive for UEFA in introducing the rule was to maintain its grip on the economic activities.
 - (2) ENIC produced body of evidence that the public will not perceive a risk of match-fixing if clubs sharing a common owner meet in competition. Moreover from an economic point of view it will be unwise to fix matches.
 - (3) The rule has negative effects as shown in the NERA report attached to the complaint. The rule has led to a reduction in investment in small and medium size clubs.
 - (4) The rule goes beyond what is necessary to achieve any legitimate objectives. There is no consideration, in the Article 6 letter of the nature or the scope of the rule and of the concept of control it defines and no analysis of possible alternatives.
 - (5) ENIC considers that Article 82 applies in this case.

II. THE FACTS

1. The parties

5. UEFA is a confederation of FIFA that has the responsibility to promote football in Europe and to organise and conduct international competitions and international tournaments at European level. UEFA currently consists of 51 member associations, eighteen of which are located inside the territory of the European Union (one per Member State except in the United Kingdom where there exist four).
6. ENIC plc is a public limited company, listed on the London Stock Exchange. It consists of three divisions: entertainment, sport and media. ENIC currently owns stakes in five clubs – Glasgow Rangers FC in Scotland (25,1%), FC Basel in Switzerland (50%), Vicenza Calcio in Italy (99,9%), Slavia Praga in the Czech Republic (96,7%), AEK Athens in Greece (47%) and recently in Tottenham Hotspur in England (29.9%). Its Media arm has also been involved in sports, namely through the delivery of betting services.

2. The UEFA rule

7. The rule establishes that:

- (1) no club participating in a UEFA club competition may, either directly or indirectly:
 - (a) *Hold or deal in the securities or shares of any other club, or*
 - (b) *Be a member of any other club, or*
 - (c) *Be involved in any capacity whatsoever in the management, administration and/or sporting performance of any other club, or*
 - (d) *Have any power whatsoever in the management, administration and/or sporting performance of any other club.*
- (2) no person may at the same time, either directly or indirectly be involved in any capacity whatsoever in the management, administration and/or sporting performance of more than one club participating in the same UEFA competition. And
- (3) In the case of two or more clubs which are under common control, only one may participate in the same UEFA club competition. In this connection, an individual or legal entity has control of a club where he/she/it
 - (a) Holds a majority of the shareholders' voting rights, or
 - (b) Has the right to appoint or remove a majority of the members of the administrative, management or supervisory body, or
 - (c) Is a shareholder and alone controls a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club in question.

8. The rule provides for selection criteria to apply when two or more clubs under common control are put forward to play in a UEFA competition. The rule was adopted by the UEFA Executive Committee on 19 May 1998 and on 24 November 1998. An Extraordinary Conference of the Presidents of UEFA Member associations unanimously adopted a Resolution in which the associations confirmed their "unqualified support for the UEFA rule and the sporting principles which underline it".

3. The complaint: ENIC arguments

ENIC's legitimate interest

9. ENIC justifies its legitimate interest in lodging the complaint because it has been directly and materially affected by the operation of the UEFA rule and it is likely to continue to suffer irreparable damage in the future.

The relevant market and some ancillary markets

10. In support of its complaint, ENIC defines the relevant market as the market for capital investment in football clubs in Europe. It also identifies a number of other ancillary markets in which, allegedly, the UEFA rule actually or potentially produces appreciable restrictions and distortions of competition. According to ENIC the first market is characterised on the demand side by football clubs seeking capital and/or investment and on the supply side by individuals or corporations interested in investing in a European football club. Football clubs are competing in this market for access to capital. ENIC seems here to rely on the market definition followed by the Court of Arbitration for Sport (CAS) in its arbitral award dated 20 August 1999 in Case CAS 98/200 – AEK Athens and Slavia Prague v UEFA but the demand side for ENIC is the supply side for CAS and vice-versa. In fact, the relevant market defined by the CAS is “the market for ownership interests in football clubs capable of taking part in UEFA competitions” which includes in the supply side the potential sellers of ownership interests (point 133). CAS considered this narrow market “because of the peculiarities of the football sector, investment in football clubs does not appear to be interchangeable with investments in other businesses, or even in other leisure businesses” (point 135).
11. However, in a report prepared by National Economic Research Associates (NERA) which ENIC sent to the Commission in December 2000 to further clarify the market definition, it is argued that whether the UEFA rule distorts competition in the market for the supply of capital to football clubs “for the purposes of assessing the competitive impact of the rule” the relevant market should be defined as “the supply of club football in the EU” without giving details about the definition of such a market.
12. The ancillary markets are, according to ENIC: the market for players; the sponsorship market; the football merchandising market; the media rights market and the market for gate revenues.

The UEFA rule does not fall outside Article 81(1) of the Treaty, rather it violates Article 81(1) and does not fulfil the conditions of 81(3)

13. ENIC stresses that the UEFA rule is not a rule of the game, for example one defining the number of players in a team or the size or the shape of the ball. Even if the UEFA rule is purely concerned with non-economic activities, given its clear economic impact it cannot fall within the so-called “sporting exception”, confirmed by the case law of the Court of Justice with regard to the Treaty’s provisions on the free movement of persons and services.
14. On the basis of the arguments below, ENIC sustains that the introduction and the maintenance in force of the UEFA rule infringes Articles 81 of the EC Treaty because it is a decision of an association of undertakings which appreciably restricts and distorts competition in the market for capital investment in football clubs and in a number of ancillary markets. The rule both actually and potentially prevents, restricts and distorts competition by: (1) preventing and restricting investment in European clubs; (2) changing the nature, intensity and patterns of competition between commonly-controlled clubs and those having other ownership structures; (3) enhancing the

economic imbalance between football clubs leading to increasing market dominance of a few clubs over the majority of smaller and medium sized clubs with the result of decreasing uncertainty in the outcome of the matches. Furthermore, in the market for players, clubs excluded from UEFA competitions will lose a competitive edge on the transfer market and will be deprived of reputation and substantial revenues needed to retain and attract top class players. Similarly, the loss of opportunity to participate in UEFA competitions will have an economic impact on gate revenues and on sponsorship, merchandising and media rights arrangements.

15. In ENIC's opinion, even if these restrictions were indispensable for attaining the legitimate objectives pursued they would not be proportionate and therefore they could not escape the application of Article 81 (1) of the Treaty. ENIC states that the UEFA *a priori* assumption that multi-ownership increases the risk of match fixing or creates such a perception was not demonstrated by any evidence and therefore there is no objective justification for the rule. The "dominant purpose of the UEFA rule was to preserve UEFA's monopoly control over European football competitions"³. Even if there was a public perception issue to be addressed, the absolute prohibition for commonly owned teams competing in the same competition is not the least restrictive means to protect concerns arising from public perception. A clear example of a less restrictive alternative would be a regulatory system which would allow the football regulator to analyse a specific common-owned club's participation in a competition on a case by case basis, allowing scrutiny of all interests. For instance, one solution could be the common owner taking no further part in the administration of one of the clubs until the participation of both clubs in the competition comes to an end. Therefore, ENIC stresses that the rule does not fulfil the criteria for an exemption set out in Article 81(3) because it is disproportionate to any legitimate aim which it may seek to address and is neither necessary nor appropriate to achieve the aims of preserving sporting integrity and uncertainty of outcome of matches and as such is not indispensable to the achievement of certain pro-competitive objectives.
16. A report prepared by Deloitte & Touche, produced before the CAS and another one prepared by NERA contain further discussion of the possible direct and indirect effects of the UEFA rule. They stress on one hand the advantages of multi-club ownership as a key source of capital for clubs which significantly improves sporting success and commercial activity. On the other hand they focus on the restrictions and distortions of competition resulting from the UEFA rule on the "European market for professional football", which is not the same market as defined in the complaint, and on the ancillary markets (the same as identified in the complaint). The restrictions on investors and on clubs are described in a similar way as in the complaint.

³ In support of this allegation ENIC makes reference to its annex 22 of the complaint which is an internal UEFA memorandum of 25 February 1998 where some doubts were expressed *inter alia* about the probability of a media group to take advantage of ENIC's groundwork and create a European league with the ENIC clubs.

17. Moreover, ENIC argues that UEFA has abused its dominant position in the Common Market, contrary to Article 82 by introducing a rule that is without sufficient objective basis to justify its anti-competitive effect. UEFA is the only body that organises European competitions and therefore holds a dominant position in the European football market and in other ancillary football markets. Equally, UEFA and its member associations – which themselves normally enjoy monopoly power in their respective countries – enjoy joint dominance by virtue of their economic links and in particular through the obligation of those member associations to comply with the UEFA Statutes, regulations and decisions made under them. This position of dominance and the ability to control entry in competitions requires UEFA and its member associations to show that the rules they adopt are objectively justified, precise and non-discriminatory in application, necessary and proportionate to the aims thought to be achieved. The contested rule constitutes an abuse of dominant position because it restricts competition, is an unnecessary and disproportionate means of achieving the objective of protecting the integrity of UEFA competitions and unfairly discriminates between clubs, placing those which have common owners at a competitive disadvantage.

Summary of ENIC's arguments

18. To sum up according to ENIC, the UEFA rule cannot be qualified as a sporting rule and it appreciably restricts investment in European football clubs' stocks which has an economic impact not only in the relevant market but also in some ancillary markets. This restriction cannot be exempted because it is not indispensable to attain the legitimate aim of avoiding the risk of match fixing or of creating such a perception. The UEFA rule constitutes also an abuse of a dominant position because it restricts competition and it is not proportionate to the objective of protecting the integrity of UEFA competitions.

4. UEFA comments on the complaint

19. UEFA considers, as it states in the notification, that “the rule at issue is a valid sporting rule which is not covered by the competition provisions of the EC Treaty”. According to UEFA the contested rule is inherent in the nature of sport and does not violate either the competition provisions or the free movement provisions of the EC Treaty. Contrary to ENIC, UEFA argues that even if a rule has economic consequences it still can fall outside Article 81 (1) of the Treaty and therefore can be covered by a “sporting exception”, provided it is necessary for the organisation of sport or it can be justified on non-economic (sporting) grounds. Thus, UEFA's claim is that an analogy with the case law relating to the free movement of persons and services should be made. In support of its position UEFA refers to the CAS arbitral award above

mentioned and to the Lehtonen⁴ and Deliège⁵ judgements of the Court of Justice.

20. The UEFA statement that the rule at issue is necessary to meet the public believe that the teams are really trying to win and therefore is “inherent in the nature of sports” was confirmed by the CAS when it stated that “the crucial element of integrity in football is the public’s perception of the authenticity of results” and that “the most important requirement for football is not honesty in itself or authenticity of results in itself but rather the public perception of such honesty and such authenticity”. According to the CAS “it is not enough that competing athletes, coaches or managers are in fact honest; the public must perceive that they try their best to win and, in particular, that clubs make management or coaching decisions based on the single objective of their club winning against any other club. This particular requirement is inherent in the nature of sports”.
21. UEFA concludes from the Lethonen and Deliège judgements that rules that are inherent in conduct and/or organisation of sporting events do not, in themselves, infringe Community law and that the responsibility in adopting such rules remains that of the sporting organisations. Therefore, UEFA considers that it has the responsibility to take appropriate measures to protect the integrity of competition without having “a legal duty to divine the least restrictive alternative to protect integrity of competition”. In the views of UEFA, it is not either for the European Commission to assess whether there are less restrictive alternatives, since that would mean that the Commission would end up as the *de facto* regulator for sport. UEFA recognises that the notified rule should be consistent with the principle of proportionality but considers that “this does not mean that the rule would be necessarily illegal in the sole event that somebody conceives a less restrictive alternative to achieve the same objective”.
22. Furthermore, UEFA stresses that the contested rule can neither provoke irreparable loss and damage on ENIC or other potential investors, nor does it have the inevitable effect of deterring investors from making future investments in European football. UEFA supports this position by citing some statements of ENIC to the press following the CAS arbitral award where ENIC confirmed “its commitment to maintaining its position within the European sports community as this position is not dependent on the holding of majority interests in football clubs. Of the five investments currently held only two holdings are in excess of 50%” and ENIC affirmed that it “continued maximising the value of the investments in the clubs” which was evidenced by the recent acquisition of a significant shareholding in AEK Athens⁶. UEFA states that there is no evidence to suggest that the rule has impeded

⁴ Case C-176/96 *Lehtonen* [2000] ECR

⁵ Joint cases C-51/96 and C-191/97 [2000] ECR

⁶ It should be added that ENIC has also since the complaint was lodged acquired a 29.9% stake in the Premiership club Tottenham Hotspur.

investment in football clubs. UEFA illustrates this statement with some examples that show that corporate investment has continued in football clubs even in countries where rules to protect the sporting integrity of the competition are even more restrictive than the UEFA rule. In any case UEFA concludes that even if the rule had such economic effects it could not nevertheless be declared illegal because it is designed to protect the integrity of sporting competition and it is a proportionate measure for the attainment of that goal. For UEFA it is a rule designed to prevent “ a clear conflict of interests situation occurring and goes to ensure that competition is genuine” and there was not an “ulterior motive” for the adoption of the rule, contrary to what ENIC suggests.

23. As to the alleged abuse of dominant position UEFA simply says that the adoption of a measure aiming to protect the integrity of competition cannot be qualified as abusive conduct. As to the less restrictive alternative means suggested by ENIC, UEFA sustains that they are not viable and refers to the CAS's opinion which considered the rule as proportionate to the aim of protecting public confidence in the authenticity of results and that it was not necessary to test the rule against any conceivable alternative because judges should not substitute for legislators.

III. LEGAL ASSESSMENT

1. Applicability of Article 81(1) of the Treaty

Undertakings or associations of undertakings

24. According to the Court of Justice, "the concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way it is financed".⁷
25. The practice of sport is subject to EC law only in so far as it is an economic activity⁸. Professional football clubs are undertakings within the meaning of Article 81(1) of the Treaty. A football club, through its team, supplies sporting entertainment by playing matches against other clubs, usually in the context of a championship. These events are made available against payment (admission fees and/or radio and television broadcasting rights, sponsorship, advertising, merchandising, etc.) on several markets. As clubs are engaged in economic activity and are undertakings within the meaning of Article 81(1) of the Treaty, it follows that national associations grouping clubs together may be considered associations of undertakings within the meaning of the same provision⁹. UEFA, which groups together national football associations at European level, is an association of associations of undertakings.¹⁰ The fact

⁷ Case C-41/90 *Höfner v Macroton* [1991] ECR I- 1979.

⁸ Case 36/74 *Walrave et al. v Association Union Cycliste Internationale et al* [1974] ECR 1405.

⁹ Case T-513/93 *CNSD v Commission*, [2000] ECR, paragraph 39

¹⁰ Case 71/74 *FRUBO* [1975] ECR, p.563. See also Opinion of Advocate-General Lenz in Case C-415/93, *URBSF v Bosman* ,[1995] ECR I-4921, paragraph 256; Commission Decision of 19 April 2001

that, as well as the professional clubs, a large number of amateur clubs also belong to the national associations makes no difference to their status as associations of undertakings or to UEFA's status as an association of associations of undertakings. UEFA can also be qualified as an undertaking for certain activities such as the organisation of European club competitions.

Decision

26. The UEFA rule on “Integrity of the UEFA club competitions: independence of clubs” is a decision taken by an association of associations of undertakings¹¹ within the meaning of Article 81(1) of the Treaty, as it was drawn up by UEFA Executive Committee.

Restriction of competition

27. In order to assess whether an agreement is caught by the prohibition contained in Article 81 (1) of the Treaty it is necessary to consider whether, taking account of the economic context in which it is to be applied, its object or effect is to restrict or distort in an appreciable manner competition within the common market and whether it is possible to foresee with a sufficient degree of probability that it may have an influence - direct or indirect, actual or potential - on the pattern of trade between Member States¹².
28. The object of the contested rule is not to distort competition. On the basis of the information in its possession the Commission considers that the main purpose of the rule is to protect the integrity of the competition and to avoid conflicts of interests that may arise from the fact that more than one club controlled by the same owner or managed by the same person play in the same competition. It is motivated by the need to protect integrity of sporting UEFA competitions. It aims to ensure the uncertainty of the outcome and to guarantee that the consumer has the perception that the games played represent honest sporting competition between the participants, as consumers may suspect that teams with a common owner will not genuinely compete.
29. In your reply of 15 March, you stated that the Article 6 letter made no reference to certain sentences extracted from the UEFA internal memorandum attached as annex 22 to the complaint where you alleged that the object of the Rule was to preserve UEFA’s lucrative marketing rights and control over pan-European competitions. This is not correct since there was a clear reference to this memorandum in the Article 6 letter in footnote 2. The memorandum in question amounts to the minute of a meeting between UEFA and ENIC where the latter presented its structure as well as its strategy and aims. After this presentation, there is a section about ENIC’s and UEFA’s discussion on multiple involvement in clubs versus clean competition. The memorandum

relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case 37.576 UEFA's broadcasting regulations) *Official Journal L 171* , of 26/06/2001 p .0012/0028

¹¹ See Case T-25/95 *S.A. Cimenteries CBR v. Commission* [2000] ECR, paragraph 1325.

¹² Case C-56-65, *Société Technique Minière* [1966] ECR , p.337

goes on with the comments from UEFA on the pros and cons of ENIC's approach. The selection of quotations you mentioned in your reply are taken from the list of possible problems, risks and questions. The reading of the memorandum, contrary to what you argue, does not show that the objective of UEFA is to preserve its position in the economic sphere, but that the main focus of the discussion was on clean competition.

30. However, the simple fact that the UEFA rule may not have as its object a restriction of competition is not sufficient to consider that it falls outside of the scope of application of Article 81 (1) of the Treaty. It is also necessary to assess whether the effect of the rule is restrictive and if so, whether this effect is inherent in the pursuit of the objective of the rule which is to ensure the very existence of credible pan European football competitions. The rule may limit the freedom to act of clubs or their owners.
31. As the Court of Justice recently stated in the *Wouters case*¹³, *not every agreement between undertakings or any decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article [81(1)] of the Treaty. For the purposes of application of that provision to a particular case, account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects. More particularly, account must be taken of its objectives, which are here connected with the need to make rules relating to organisation, qualifications, professional ethics, supervision and liability, in order to ensure that the ultimate consumers of legal services and the sound administration of justice are provided with the necessary guarantees in relation to integrity and experience (see, to that effect, Case C-3/95 *Reisebüro Broede* [1996] ECR I-6511, paragraph 38). It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives. (...) a national regulation such as the 1993 Regulation adopted by a body such as the Bar of the Netherlands does not infringe Article [81(1)] of the Treaty, since that body could reasonably have considered that that regulation, despite the effects restrictive of competition that are inherent in it, is necessary for the proper practice of the legal profession, as organised in the Member State concerned.*
32. Thus the question to answer in the present case is whether the consequential effects of the rule are inherent in the pursuit of the very existence of credible pan European football competitions. Taking into account the particular context in which the rule is applied, the limitation on the freedom to act that it entails is justified and cannot be considered as a restriction of competition. Without the UEFA rule, the proper functioning of the market where the clubs develop their economic activities would be under threat, since the public's perception that the underlying sporting competition is fair and honest is an essential precondition to keep its interest and marketability. If UEFA competitions were not credible and consumers did not have the perception that the games played represent honest sporting competition between the

¹³ Case C-309/99, *Wouters*, judgment of 19 February 2002 not yet published points 97 and 110

participants, the competitions would be devalued with the inevitable consequence over time of lower consumer confidence, interest and marketability. Without a solid sporting foundation, clubs would be less capable of extracting value from ancillary activities and investment in clubs would lose value.

33. In your reply of 15 March 2002, you firstly indicated that the rule has negative effects as shown in the NERA report attached to the complaint and the rule has led to a reduction in investment in small and medium size clubs. As previously mentioned, a rule may fall outside the scope of Article 81(1) despite possible negative effects that are inherent in it for the pursuit of an objective such as the integrity of pan European football competitions.
34. Moreover, the rule does not prevent capital investment in football clubs. It is limited to prohibiting more than one club with the same ownership, management or control from participating in the same UEFA competition. Accordingly, investors or managers remain free to take control of or manage whatever number of clubs they want if they accept the risk that should more than one of these clubs qualify for the same UEFA competition, only one would play. In addition, contrary to what ENIC stated UEFA confirmed that point 2 of the rule concerning the protection of integrity of the UEFA club competitions does not apply to accountants and auditors of the clubs provided they remain independent of the relevant clubs.
35. The *ratio* of the rule is manifest: if two or more clubs participating in the same contest are under control of or managed by one single entity, there is cause for concern that in a given situation the existence of opposing interests which underlies any sport competition will not be apparent. For instance, should two clubs under joint control or ownership meet at a certain stage of the competition, the public's perception of the authenticity of the result would be jeopardised. In the present case, for example, ENIC's business interests in the field of the provision of betting services could be seen by some as an obstacle to the development of fair competition on the pitch. Secondly, the UEFA rule does not limit the freedom of action of investors that have shares in clubs below the level that gives them control over the club, because clubs with such ownership structure remain free to play in the same UEFA competition. Thirdly, in some Member States national associations have adopted rules, even stricter than the UEFA rule, in order to attain the same objective. In England the mere holding of shares in another club would be prohibited. Even though the English rule provides for an exception if the Board of the League gave its written consent, in practice such an exception has never been granted. The Scottish, French, German, Spanish and Portuguese Leagues have rules designed to ensure that clubs remain independent. Accordingly, the UEFA rule seems to constitute a prolongation of the national rules and their natural corollary. In the United States, the four major League sports (Basket ball, American football, ice hockey and Base ball) all have similar provisions.
36. Fourthly, a voluntary code of conduct which you see as a less restrictive mean does not seem to be, in this particular context, an alternative to the contested rule. As there is a possibility that some clubs would not comply with it, there will be in the public a general suspicion that clubs with the same owner or

manager do not play a fair game. In order to achieve the same aim its substance would have to be the same and it would have to be binding. Furthermore, any regulatory system which would allow the football regulator to analyse a specific common-owned club's participation on a case by case basis only, would not enable clubs (or spectators) to know in advance whether or not they would be likely or able to participate in a UEFA competition and would not be a workable alternative to the UEFA rule either. In addition, a case-by-case evaluation would by its very nature leave scope for discretion and it may be difficult for the governing body to disregard considerations, such as the significance of investments already made or the prestige of the clubs concerned, which would have no place in such an analysis.

37. In your reply of 15 March 2002 you stated that UEFA is about to introduce for the 2004/2005 season a system of auditing each club qualifying for UEFA competitions and therefore the case by case analysis of clubs ownership should be workable. However, it should be noted that responsibility for implementing the new Licensing System will be with each national football association, not with UEFA itself. The national associations act as “licensors” and decide whether clubs have satisfied the licence conditions. Only in exceptional circumstances would UEFA take over the function of “licensor” (for example, if a national association refused to comply with its obligations as licensor according to the UEFA licensing system). The UEFA Club Licensing System does not contain any common provisions concerning multiple ownership of clubs because various national associations in Europe have established their own national rules which deal with, *inter alia*, protecting sporting integrity and guarding against conflicts of interests. These national rules will remain valid. At the same time, UEFA’s rule protecting the integrity of the UEFA club competitions remains a requirement (in addition to holding a valid club licence) which clubs must satisfy in order to be eligible to participate in a UEFA club competition. UEFA will verify that this rule has been complied with once clubs which have qualified for each of the three single UEFA club competitions (on the basis of their sporting performance) are known. UEFA cannot therefore examine issues of multiple ownership during the licensing process since at that time it will not be known whether a club has qualified for a UEFA club competition. Instead, it will be more logical and efficient for UEFA to examine this matter at the time when individual clubs are being admitted to the UEFA club competitions in question.
38. On the basis of the above, the limitation on the freedom to act therefore merely constitutes the effect of the application of a rule which is deemed necessary and proportionate to the need to maintain the public’s confidence in the fairness and authenticity of the game, the absence of which would have the effect of rendering, in the long term, any competition impossible.
39. You also added that UEFA has shown a lack of concern in the past towards the public perception of football competitions in Europe and in particular in Greece where corruption and match-fixing would be widespread. The rule on multiple ownership does not have as objective to solve any outstanding issue on the integrity of football competitions in general, but to address the specific issue of “clean” football in pan European football competitions.

40. Therefore, the rule cannot be qualified as a restriction of competition under Article 81 (1) of the Treaty because its object is not to restrict competition and that the limitation of freedom of action of clubs and investors that it entails is inherent to the very existence of the UEFA competitions.
41. In any case the rule does not seem to go beyond what is necessary to ensure its legitimate aim - to ensure the uncertainty of the outcome and to guarantee that the consumer has the perception that the games played represent honest competition between the participants with a view to ensure a proper functioning of the UEFA competitions and of the markets developed around them in order to keep fans and spectators interested in the sporting competition.
42. In conclusion, taking into account the aim of the rule and its context, on the basis of a settled case-law¹⁴ related to the application of Article 81 (1) of the Treaty, the UEFA rule seems to fall outside Article 81(1) of the Treaty provided it is applied in an objective and non-discriminatory manner.

2. Applicability of Article 82 of the Treaty

43. ENIC alleges that UEFA alone or jointly with national associations enjoys a dominant position both in the market for the organisation of the UEFA competitions and in other related markets.
44. UEFA, which groups together national football associations at European level, is an association of associations of undertakings.
45. If one were to assume that UEFA enjoys a dominant position in whatever market, the fact that UEFA has adopted such a rule does not appear to constitute in itself an abuse of dominant position. In your reply of 15 March, you stated that the rule is abusive in that it discriminates between clubs and because ENIC was faced with the choice of either one of its clubs being excluded or either being forced to sell part of its shareholding. There is no evidence that the rule in question is applied in a discriminatory manner to clubs liable to take part in competitions organised by UEFA.
46. Contrary to your submission, there is no evidence that such a rule is disproportionate to its ends. On the basis of the facts and arguments known to the Commission at this time, it is not plausible that the use of a provision less stringent would achieve the aims which are sought by UEFA, i.e. to ensure that the sport is perceived by consumers as being honest (see paragraphs 33 and 34 above). The Commission therefore finds no evidence of any abuse of a dominant position.

¹⁴ Case 26/76 *Metro v Commission*, [1977] ECR p. 1875, paragraphs 20-22, Case 161/84 *Pronuptia* [1986] ECR p. 353, paragraphs 14-27, Case T- 112/99 *Metropole Television and others v Commission*, paragraphs 107, not yet published.

III - CONCLUSION

47. In conclusion the Commission considers that there are insufficient grounds for acting on your complaint. This is based on the reasons mentioned above and which can be summarised as follows:

- (a) *The object of the contested rule (a decision by an association of associations of undertakings) is not to distort competition,*
- (b) *Its possible effect on the freedom of action of clubs and investors is inherent to the very existence of credible UEFA competitions and,*
- (c) *In any case, it does not lead to a limitation on the freedom of action of clubs and investors that goes beyond what is necessary to ensure its legitimate aim of protecting the uncertainty of the results and giving the public the right perception as to the integrity of the UEFA competitions with a view to ensure their proper functioning.*

Therefore the rule cannot be qualified as a restriction of competition and therefore falls outside the scope of Article 81(1) of the EC Treaty.

Furthermore the rule does not lead to the application of Article 82.

48. For these reasons, I inform you that the final decision of the Commission is to reject your complaint of 18 February 2000 pursuant to Article 3 paragraph 2 of Council Regulation 17 of 6 February 1962.
49. An action challenging this Decision may be brought before the Court of First Instance of the European Communities in accordance with Article 230 of the EC Treaty. Such actions shall not, pursuant to Article 242 of the EC Treaty, have suspensory effect unless the Court otherwise orders.

Yours faithfully

Done in Brussels,

For the Commission

Mario MONTI
Member of the Commission