COMMISSION OF THE EUROPEAN COMMUNITIES

Mario Monti
Member of the Commission

Brussels,

Mr André Gorgemans
World Federation of the Sporting
Goods Industry
Le Hameau
P.O.B. 480
CH-1936 Verbier

Subject: Case n° IV/F-1/35.266 - FIFA

Dear Mr Gorgemans,

I refer to your complaint dated 24 January 1995. I have taken careful note of the contents of your lawyer's letter of 7 July 1999 in reply to the letter from the Director-General for Competition dated 3 June 1999. The Commission maintains the arguments set out in the letter dated 3 June 1999, and makes the following remarks:

The complaint

I recall that your complaint pointed to FIFA's adoption of new technical specifications for footballs, a new game rule, and an exclusive FIFA licensing system relating to the new specifications and game rule. Following receipt of that complaint, the Directorate-General for Competition undertook a series of initiatives for the purpose of establishing the factual and legal situations. Details of those initiatives have been provided to you at regular intervals throughout the intervening period.

FIFA's practices have, as already explained, been examined in the light of the requirements set out in Articles 81 and 82 of the EC Treaty.

Your reply dated 7 July 1999

My position on the arguments set out in that letter is as follows:

1. Article 81

The Commission remains of the opinion, supported by yourself in the past, that the responsibility for the system remains with FIFA and its agent ISL, in that they conceived and implemented – and benefit from - that system. In the case of a principal and his agent, there is no agreement between undertakings within the meaning of Article 81 to the extent that the agent does not assume any risk resulting from the transaction[1], which implies that there is in this case no

[1] See also SIV v Commission, [1992] ECR II-1547.

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infringement of that Article. Moreover, you remark that ISL only became FIFA's agent in 1994 in order to develop the FIFA system. I would remind you also that you explained to Commission staff on 12 October 1994[2] that ISL had been in charge of marketing for FIFA since 1978. Material attached to your complaint confirms ISL's position prior to development and introduction of the FIFA system[3]. I therefore cannot accept your suggestion of "collusion as independent entities"[4]. ISL drew up its proposal for the system for and at the behest of FIFA, in the context of its position as marketing agent for FIFA, and not as an independent entity[5]. ISL thus does not bear any risk in relation to the contract in question. Article 81 does not, therefore, apply to the relationship between FIFA and ISL.

I now turn to your remarks to the effect that agreements exist between FIFA and undertakings, in particular ball manufacturers, who participate in the system. I merely point out that the fact that these companies choose to take out a licence does not of itself constitute an infringement: to enter into service or licence agreements of this kind is *prima facie* a normal autonomous business decision. No restriction of competition can be discerned in the agreements examined by the Commission department responsible, and there is accordingly no infringement of Article 81.

2. Article 82

I first recall that action under Article 82 implies that quite different requirements are fulfilled. Firstly, the Commission must identify an economic market on which it can be shown that the undertaking enjoys a dominant position; and secondly, proof must be provided that the undertaking's behaviour amounts to abuse of that dominant position.

You indicate in your letter of 7 July that producers are obliged to comply with various requirements under the system: these requirements have been set out in your letter dated 7 July. The fundamental problem, however, remains that no undertaking can be shown to have abused a dominant position unless a market can be defined on which that undertaking enjoys a dominant position: this was the tenor of the letter to yourself dated 3 June. The conclusion reached by the Directorate-General for Competition was, as stated in that letter, that no relevant market on which FIFA enjoyed a dominant position could be identified, despite repeated efforts following appeals for assistance to yourself.

I remind you that careful consideration was given to the various activities of FIFA and to the effects those activities might have. It was clear from the outset that the FIFA system had an effect on the market for footballs. It was, however, also clear that FIFA did not itself operate on that market, which meant that it was necessary to determine, as explained above, whether FIFA did operate and enjoy a dominant position on any particular market.

You identify a market for quality certification. The Commission agrees, but FIFA is not present on this market and can thus *a fortiori* not hold a dominant position on it, since it is simply, for the purposes of the FIFA system, the customer of an independent body carrying out such tests, the Swiss organisation EMPA.

As for your observations concerning trade-mark rights, I would simply observe that there seems to be no possible objection to FIFA requiring a fee for use of its trade mark, subject only to third parties' rights to contest the validity of such trade mark in the usual way. Manufacturers remain

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2 File, page 56.

3 File, page 36.

4 Your letter of 7 July 1999, page 2.

5 File, pp. 43-44.

free to subscribe to the FIFA system or not, according to their own commercial judgment. Certain manufacturers indeed achieve commercial success while remaining outside the system.

You consider there exists a "linkage between rulemaking and economic activities within sport"[6]. You adduce as authority for that statement the Commission Decision concerning the 1990 World Cup[7]. Allow me to point out that in that case FIFA's activity was examined as organiser of a sporting event on an economic basis, no reference to the rulemaking activities of FIFA being made. In the present case, while it is true that the rules of the game were changed, introducing a text to allow for the FIFA system, there is no general requirement to subscribe to that system, whether as organiser of competitions or as manufacturer or supplier of equipment, as explained in the previous paragraph of this letter. The rulemaking activities of FIFA are accordingly not relevant for the purposes of market analysis under Article 82.

Where no dominant position can be established on a relevant market, no abuse can take place and, accordingly, there can be no infringement of Article 82.

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In its letter dated 3 June 1999 the Directorate-General for Competition set out the facts, gave an assessment of the situation and informed you, pursuant to Article 6 of Commission Regulation (EC) n° 2842/98[8], that its provisional view was that there were no grounds for granting your application. After having examined your reply to that letter, I must inform you that the Commission considers that there are no grounds for granting your application. Your complaint submitted on 24 January 1995 under Article 3 of Regulation n° 17 is hereby rejected.

Yours sincerely,

Copy: Mr Searles, Oppenheimer, Wolff & Donnelly

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6 Letter of 7 July, p. 3, *in fine*.

7 Decision 92/521/EEC, OJ n° L 326, 12.11.1992, p. 31.

8 OJ n° L 354, 30.12.1998, p. 18.