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Press and Information

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Judgment of the Court of First Instance in Case T-193/02

Laurent Piau v Commission of the European Communities

THE FIFA REGULATIONS ON THE OCCUPATION OF FOOTBALL PLAYERS' AGENTS ARE NOT CONTRARY TO COMMUNITY COMPETITION LAW

The Commission did not commit a manifest error of assessment by rejecting a complaint which challenged inter alia the compulsory nature of the licence for player's agents.

The Fédération Internationale de Football Association (FIFA) is an association governed by Swiss law founded in 1904. According to its statutes, its members are national associations which are groupings of amateur or professional football clubs. In 1994, in order to put an end to certain practices which were harmful to players and clubs, FIFA adopted regulations governing the occupation of player's agent.

Since he considered that those regulations were contrary to the provisions of the EC Treaty on competition because of the excessive, opaque and discriminatory restrictions on access to the profession which they brought about, Mr Piau lodged a complaint with the European Commission.

Following the opening of a competition procedure by the Commission, FIFA agreed to amend its regulations. In view of the improvements and deletions in the new regulations, the Commission decided to take no further action on Mr Piau's complaint. Under the new FIFA regulations:

- to carry on the occupation of players' agent, a person must hold a licence issued by the competent national association for an unlimited period;
- the applicant must pass an examination in the form of a multiple choice test;
- the relations between the agent and the player must be the subject of a written contract for a maximum period of two years, which may be renewed. The contract must specify the agent's remuneration, to be calculated on the basis of the player's basic gross salary;
- in the event of non-compliance with the regulations, a system of sanctions for clubs, players and agents is established;

– the agent must take out a professional liability insurance policy.

Mr Piau maintained his complaint before the Commission, which rejected it on the ground that there was no Community interest in continuing the proceedings. It is that rejection which is the subject of the action brought by Mr Piau.

The nature of the FIFA regulations

The Court of First Instance notes, first, that football clubs and the national associations to which they belong are undertakings and associations of undertakings respectively for the purposes of Community competition law; consequently, FIFA, which is a grouping of national associations, is itself an association of undertakings.

The Court observes, next, that the regulations governing the occupation of players' agent constitute a decision by an association of undertakings. The object of the occupation of players' agent is, for a fee and on regular basis, to introduce a player to a club with a view to the conclusion of a contract of employment, or to introduce two clubs to one another with a view to the conclusion of a transfer contract. **It is therefore an economic activity for the provision of services, which does not fall within the special nature of sport as defined by the case-law.**

As regards FIFA's authority to adopt such regulations, the Court points out that the very principle of the regulation of an economic activity, not relating to either the special nature of sport or the internal freedom of organisation of sporting associations, by an organisation governed by private law and not having any regulatory powers delegated by the public authorities – such as FIFA – cannot be regarded from the outset as compatible with Community law, in the context in particular of the respect due to civil and economic freedoms. Such regulation falls in principle within the jurisdiction of the public authorities.

However, the action brought by Mr Piau concerns the lawfulness of a decision taken by the Commission following a complaint made in respect of competition. The Commission could not therefore exercise powers other than the powers it has in that context. **Judicial review is necessarily limited to the competition rules and the Commission's assessment of the alleged infringements of them by the FIFA regulations.** That review can extend to compliance with other provisions of the Treaty and with fundamental principles only if they disclose a breach of the competition rules.

Elimination of the most restrictive provisions in the original regulations

The Court of First Instance finds that the Commission did not make a manifest error of assessment by considering that the changes made by FIFA to its original regulations eliminated their principal anti-competitive features. In particular, the Commission was able to consider that the examination provided sufficient guarantees of objectivity and transparency, that the obligation to take out professional insurance did not constitute a disproportionate requirement, and that the provisions in the regulations relating to the remuneration of players' agents did not constitute the fixing of imposed prices within the meaning of competition law.

The compulsory nature of the players' agent's licence

The Court of First Instance observes that the requirement of a licence to carry on the occupation of players' agent constitutes a barrier to access to that economic activity and affects the play of competition. It can therefore be accepted only to the extent that the

amended regulations contribute to promoting economic progress, allow consumers a fair share of the resulting benefit, do not impose restrictions which are not indispensable to the attainment of those objectives and do not eliminate competition, in which case an exemption could be granted.

The Court considers that the Commission did not make a manifest error of assessment by taking the view that the restrictions which follow from the compulsory nature of the licence could enjoy such an exemption.

Thus the need to introduce professionalism and morality to the occupation of players' agent in order to protect players whose careers are short, the fact that competition is not eliminated by the licence system, the almost general absence (except in France) of national rules, and the lack of a collective organisation of players' agents are circumstances which justify the rule-making action on the part of FIFA.

Possible abuse of a dominant position by FIFA

The Court of First Instance disagrees with the Commission and considers that **FIFA, which constitutes an emanation of the clubs, thereby holds a dominant position in the market of services of players' agents.** Nevertheless, the FIFA regulations do not impose quantitative restrictions on access to the occupation of players' agent which harm competition, but qualitative restrictions which may be justified, and do not therefore constitute an abuse of FIFA's dominant position in that market.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE EN ES FR GR IT NL PL

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731