

Case T-193/02

Laurent Piau

v

Commission of the European Communities

(Fédération internationale de football association (FIFA) Players' Agents Regulations — Decision by an association of undertakings — Articles 49 EC, 81 EC and 82 EC — Complaint — No Community interest — Rejection)

Judgment of the Court of First Instance (Fourth Chamber), 26 January 2005 II - 217

Summary of the Judgment

- 1. Procedure — Intervention — Plea of inadmissibility not raised by the defendant — Inadmissibility — Absolute bar to proceeding — To be considered of the Court's own motion*

(Statute of the Court of Justice, Arts 40, fourth para., and 53; Rules of Procedure of the Court of First Instance, Arts 113 and 116(3))

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Decision closing a procedure initiated under Regulation No 17 following a complaint — Maker of the complaint — Other undertaking recognised as having a legitimate interest in submitting comments in the administrative procedure — Admissibility*
(Arts 81 EC, 82 EC and 230, fourth para., EC; Council Regulation No 17)

3. *Competition — Community rules — Associations of undertakings — Definition — National football associations — Included*
(Arts 2 EC and 81 EC)

4. *Competition — Community rules — Associations of undertakings — Definition — Fédération internationale de football — Included*
(Art. 81 EC)

5. *Competition — Agreements, decisions and concerted practices — Decisions of associations of undertakings — Definition — Regulations governing the activity of players' agents adopted by the Fédération internationale de football — Included*
(Art. 81 EC)

6. *Competition — Administrative procedure — Examination of complaints — Complaint against the regulation of an economic activity with no sport-related object by a private-law body not having been delegated power by a public authority — Decision closing the administrative procedure — Judicial review limited to the assessments made by the Commission from the point of view of the rules on competition*
(Council Regulation No 17)

7. *Competition — Administrative procedure — Examination of complaints — Taking into account the Community interest in investigating a case — Criteria of assessment — Discretion of the Commission — Limits — Judicial review*
(Arts 81 EC, 82 EC and 85(1) EC)

8. *Competition — Agreements, decisions and concerted practices — Not allowed — Exemptions — Regulations governing the activity of players' agents adopted by the Fédération internationale de football — Introduction of a licence as a condition for carrying on the occupation — Objective of raising professional standards and collective organisation of agents — Whether permissible*
(Art. 81(3) EC)

9. *Competition — Dominant position — Collective dominant position — Definition — Collective entity — Conditions*

(Art. 82 EC)

10. *Competition — Dominant position — Collective dominant position — Conditions — Position of the Fédération internationale de football in the market for players' agents' services*

(Art. 82 EC)

1. An application to intervene must be limited to supporting the form of order sought by one of the parties. An intervenor is not therefore entitled to raise a plea of inadmissibility that is not relied on by the party in support of whose form of order it was granted leave to intervene.

plaint adversely affect its originator, who must be able to institute proceedings in order to protect his legitimate interests. Similarly, another undertaking which the Commission has recognised as having a legitimate interest in submitting comments in such a procedure is entitled to bring proceedings against the decision definitively closing it.

However, under Article 113 of the Rules of Procedure, the Court may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with a case, including any raised by the interveners.

(see para. 38)

(see paras 35-37)

3. National associations which are groupings of football clubs for which the practice of football is an economic activity and are therefore undertakings within the meaning of Article 81 EC are associations of undertakings within the meaning of that provision.

2. The Commission's refusal to continue with a procedure carried out on the basis of a complaint lodged under Regulation No 17 and the rejection of that com-

The fact that those national associations are groupings of 'amateur' clubs alongside 'professional' clubs is not capable of

calling that assessment into question. In this regard, the mere fact that a sports association or federation unilaterally classifies sportsmen or clubs as 'amateur' does not in itself mean that they do not engage in economic activities within the meaning of Article 2 EC.

(see paras 69-70)

calculated to produce the results to which it refers. The legal framework within which decisions are taken by undertakings and the classification given to that framework by the various national legal systems are irrelevant as far as the applicability of the Community rules on competition is concerned.

(see paras 71-72)

4. The Fédération internationale de football (FIFA) constitutes an association of undertakings within the meaning of Article 81 EC. It is a grouping of national associations which are themselves both associations of undertakings, since their members are clubs which carry on an economic activity, and undertakings, since they themselves carry on an economic activity in that they are required, under FIFA's statutes, to participate in competitions organised by it, must pay back to it a percentage of the gross receipts for each international match, and are recognised by those statutes, with FIFA, as being holders of exclusive broadcasting and transmission rights for the sporting events in question.
5. The regulations adopted by the Fédération internationale de football (FIFA) to govern the activity of players' agents, an economic activity involving the provision of services which does not fall within the scope of the specific nature of sport as defined by the case-law of the Court of Justice, constitutes a decision by an association of undertakings within the meaning of Article 81(1) EC, which must comply with the Community rules on competition where it has effects in the Community.

Article 81 EC applies to associations in so far as their own activities or those of the undertakings belonging to them are

On the one hand, the regulations were adopted by FIFA of its own authority and not on the basis of rule-making powers conferred on it by public authorities in connection with a recognised task in the general interest concerning sporting activity, and, on the other hand, since those regulations are binding on national associations that are members of FIFA, which are required to draw up similar rules that are subsequently

approved by that federation, and on clubs, players and players' agents, they are the reflection of FIFA's resolve to coordinate the conduct of its members with regard to the activity of players' agents.

(see paras 73-75)

decision complained of. This review can therefore extend to compliance with other provisions of the Treaty only in so far as any infringement of them reveals a concomitant breach of the rules on competition. Moreover, it can relate to a possible breach of fundamental principles only in the event that that breach resulted in an infringement of the rules on competition.

(see paras 76-79)

6. Regulation which constitutes policing of an economic activity and touches on fundamental freedoms falls in principle within the competence of the public authorities. The very principle of regulation of an economic activity concerning neither the specific nature of sport nor the freedom of internal organisation of sports associations by a private-law body which has not been delegated any such power by a public authority cannot from the outset be regarded as compatible with Community law.

7. When the Commission examines a complaint in a competition matter from the point of view of the Community interest, the assessment of that interest depends on the factual and legal circumstances of each case, which may differ considerably from case to case, and not on predetermined criteria which must be applied. The number of criteria of assessment the Commission may refer to should not therefore be limited, nor conversely should it be required to have recourse exclusively to certain criteria.

Judicial review in the context of an action concerning the lawfulness of a decision taken by the Commission following a procedure carried out on the basis of a complaint lodged under Regulation No 17, for the treatment of which the Commission could not apply any powers other than those it holds in this context, is necessarily limited to the rules on competition and the assessment made by the Commission of the alleged infringements of those rules by the

Second, the Commission, entrusted by Article 85(1) EC with the task of ensuring application of Articles 81 EC and 82 EC, is responsible for defining

and implementing Community competition policy and for that purpose has a discretion as to how it deals with complaints. That discretion is not unlimited, however, and the Commission must assess in each case the seriousness and duration of the interferences with competition and the persistence of their consequences.

Furthermore, review by the Community judicature of the exercise by the Commission of the discretion conferred on it in this regard must not lead it to substitute its assessment of the Community interest for that of the Commission, but focuses on whether or not the contested decision is based on materially incorrect facts or is vitiated by an error of law, a manifest error of appraisal or misuse of powers.

However, in view of the fact that, first, FIFA pursues a dual objective of raising professional and ethical standards for the occupation of players' agent in order to protect players, who have a short career; second, competition is not eliminated by the licence system, which appears to result in a qualitative selection, appropriate for the attainment of the objective of raising professional standards for the occupation of players' agent, rather than a quantitative restriction on access thereto; and, finally, the current conditions governing the exercise of the occupation of players' agent are characterised by there being virtually no national rules and no collective organisation for players' agents, the restrictions stemming from the compulsory nature of the licence might benefit from an exemption on the basis of Article 81(3) EC.

(see paras 101-104)

(see paras 80-81, 120)

8. The players' agent's licence, required by a rule of the Fédération internationale de football (FIFA) and a condition for carrying on that occupation, constitutes a barrier to access to that economic activity and therefore necessarily affects competition.
9. Article 82 EC deals with the conduct of one or more economic operators abusing a position of economic strength and thus hindering the maintenance of effective competition on the relevant market by allowing that operator to

behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.

The expression 'one or more undertakings' in that article implies that a dominant position may be held by two or more economic entities legally independent of each other; provided that from an economic point of view they present themselves or act together on a particular market as a collective entity.

Three cumulative conditions must be met for a finding of collective dominance: first, each member of the dominant oligopoly must have the ability to know how the other members are behaving in order to monitor whether or not they are adopting the common policy; second, the situation of tacit coordination must be sustainable over time, that is to say, there must be an incentive not to depart from the common policy on the market; thirdly, the foreseeable reaction of current and future competitors, as well as of consumers, must not jeopardise the results expected from the common policy.

(see paras 109-111)

10. The Fédération internationale de football (FIFA) holds a collective dominant position on the market for players' agents' services, in that its rules governing their activity may, when implemented, result in the undertakings operating on the market in question, namely the clubs, being so linked as to their conduct on a particular market that they present themselves on that market as a collective entity vis-à-vis their competitors, their trading partners and consumers.

Because the regulations are binding for national associations that are members of FIFA and the clubs forming them, these bodies appear to be linked in the long term as to their conduct by rules that they accept and that other actors (players and players' agents) cannot break on pain of sanctions that may lead to their exclusion from the market, in particular in the case of players' agents. Such a situation therefore characterises a collective dominant position for clubs on the market for the provision of players' agents' services, since, through the rules to which they adhere, the clubs lay down the conditions under which the services in question are provided.

The fact that FIFA is not itself an economic operator that buys players' agents' services on the market in question and that its involvement stems from rule-making activity, which it has assumed the power to exercise in respect of the economic activity of players' agents, is irrelevant as regards the application of Article 82 EC, since FIFA is the emanation of the national associa-

tions and the clubs, the actual buyers of the services of players' agents, and it therefore operates on this market through its members.

(see paras 112-116)