

ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
28 November 1991 *

In Case T-35/91,

Eurosport Consortium, represented by Michel Waelbroeck and Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 Avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by Julian Currall and Berend Jan Drijber, members of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of R. Hayder, a national official temporarily attached to the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

application for a declaration that Commission Decision 91/130/EEC of 19 February 1991 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/32.524 — Screensport/EBU Members) (Official Journal 1991 L 63, p. 32) is void,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber)

composed of: D. A. O. Edward, President of the Chamber, R. García-Valdecasas, K. Lenaerts, H. Kirschner and R. Schintgen, Judges,

Registrar: B. Pastor, Administrator,

makes the following

* Language of the case: English.

Order

- 1 By an application lodged at the Registry of the Court of First Instance on 21 August 1991, The European Sports Network (formerly Screensport Limited), whose registered office is at London, represented by Jonathan Scott and Stephen Kinsella, Solicitors, of Messrs Herbert Smith, Brussels, with an address for service in Luxembourg at the Chambers of Georges Baden, 8 Boulevard Royal, applied for leave to intervene in Case T-35/91 in support of the defendant.
- 2 The application for leave to intervene was submitted in accordance with Article 115 of the Rules of Procedure of the Court of First Instance, pursuant to the second paragraph of Article 37 and the first paragraph of Article 46 of the EEC Statute of the Court of Justice.
- 3 The application was served on the parties. The defendant stated that it had no comments to make on the application. The applicant declared that it had no objection against the intervention.
- 4 In accordance with the third subparagraph of Article 116(1) of the Rules of Procedure, the President of the First Chamber referred the decision to the Chamber.
- 5 It appears from the decision in issue in this case that on 17 December 1987 The European Sports Network submitted a complaint to the Commission under Article 3 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (Official Journal, English Special Edition 1959-1962, p. 87), on the basis of which the Commission initiated a proceeding pursuant to Article 85 of the EEC Treaty and adopted the contested decision. The European Sports Network therefore has an interest in seeing that decision upheld.
- 6 The European Sports Network's application for leave to intervene must therefore be granted.

- 7 By an application lodged at the Registry of the Court of First Instance on 19 September 1991, Sky Television plc, whose registered office is at London, represented by Mario Siragusa, of the Rome Bar, and Michael Bowsher, of the Bar of England and Wales, with an address for service in Luxembourg at the Chambers of Messrs Elvinger, Hoss & Prussen, 15 Côte d'Eich, applied to intervene in the same case in support of the applicant.
- 8 The application to intervene was submitted in accordance with Article 115 of the Rules of Procedure of the Court of First Instance, pursuant to the second paragraph of Article 37 and the first paragraph of Article 46 of the EEC Statute of the Court of Justice.
- 9 In accordance with the third subparagraph of Article 116(1) of the Rules of Procedure, the President of the First Chamber referred the decision to the Chamber.
- 10 In support of its application, Sky Television claims, first, that it has an interest in seeing the contested decision annulled because it was one of the parties directly involved in the administrative procedure and the contested decision was addressed to it.
- 11 Secondly, Sky Television claims that it has an interest in seeing the contested decision annulled because its legal position stands to be affected by that decision and by the outcome of the action brought before the Court of First Instance by the Eurosport consortium. That situation arises as a result of an action for damages brought against Sky Television, among others, by The European Sports Network, the complainant in the administrative proceedings, and Sportskanal GmbH. That action was commenced by writ issued in the High Court of Justice, Chancery Division, London, on 14 May 1991, by which time Sky Television asserts that it had withdrawn from the operation of the Eurosport channel. The writ was served on it on 4 July 1991.
- 12 Sky Television states that in the High Court action the two plaintiffs mentioned claim damages for, *inter alia*, breach of Article 85 and/or Article 86 of the EEC Treaty in and about the creation and operation of the Eurosport channel. In the statement of claim served on Sky Television on 30 July 1991, the two plaintiffs

specifically rely upon the Commission's finding in the contested decision of an infringement of Article 85 in support of their claim for damages. In Sky Television's opinion, the contested decision will form an important element of any decision in the High Court action, and its legal position will therefore be directly affected by the final decision of the Court of First Instance.

- 13 Finally, Sky Television claims that its interest in the outcome of the present action is continuing, notwithstanding the fact that it did not exercise its right to appeal against the contested decision as provided for in Article 173 of the Treaty. At no time, it stresses, did it waive, either expressly or by implication, its right to intervene in the present action.
- 14 The application for leave to intervene by Sky Television was served on the parties. The defendant stated that it had no observations to make on the application. The applicant declared that it had no objection against the intervention.
- 15 Article 37 of the EEC Statute of the Court of Justice provides that the right to intervene is to be open to any person establishing an interest in the result of a case such as the present. Sky Television's interest, as an addressee of the contested decision, is confirmed by the fact that it enjoyed an independent right of action under the second paragraph of Article 173 of the EEC Treaty (order of the Court of Justice of 28 January 1987 in Case 150/86 *Usinor and Sacilor v Commission*, not published). That interest is not negated by the fact that Sky Television did not bring such an action. However, since it did not do so, Sky Television's rights as intervener must be confined to supporting the form of order sought by the applicant.

- 16 Its application for leave to intervene must therefore be granted.
- 17 Under Article 116(2) of the Rules of Procedure of the Court of First Instance, if the Court allows the intervention, the intervener is to receive a copy of every document served on the parties.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders as follows:

1. **The European Sports Network is granted leave to intervene in Case T-35/91 in support of the defendant;**
2. **Sky Television is granted leave to intervene in Case T-35/91 in support of the applicant;**
3. **The Registrar shall serve on the interveners a copy of every document served on the parties;**
4. **A period shall be prescribed within which the interveners must state in writing their pleas in law in support of the forms of order sought by them;**
5. **Costs are reserved.**

Luxembourg, 28 November 1991.

B. Pastor
Registrar

D. A. O. Edward
President of the First Chamber