



## LISBON APPEAL COURT

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**PROCESS:** 4292/1999.L1-7

**REDACTOR:** ABRANTES GERALDES

**DATE:** 10/09/2009

**THEMATIC:** CARTELS | AGREEMENTS, CONCERTED PRACTICES AND DECISIONS BY ASSOCIATIONS OF UNDERTAKINGS

**LEGISLATION AT ISSUE:** ARTICLE 101 (1), (3) OF TFEU

### **DECISION SUMMARY:**

1. UEFA is a private organization governed under Swiss legal order whose regulatory authority only binds natural or legal persons which integrate that organization.

2. Neither Article 14 of the UEFA Statutes, in effect in September 1997 and concerning television broadcasting of football matches, nor the Television Broadcasting Regulation, drafted in accordance with such statutory regulation, bind third parties, namely undertakings operating in the industry of television broadcasting.

3. Therefore, the broadcasting of a football match by a television undertaking outside that regulatory framework does not constitute an unlawful fact, which means this cannot be used by another club, as Plaintiff, as legal grounds to plea a compensation right for being hampered by such event.

4. In terms of the application of Competition rules under the EC Treaty, UEFA is considered an undertaking.

5. UEFA's football television broadcasting regulation in effect in September 1997 and notified to National Federations and football clubs belonging to such organization infringed competition rules under article 85, no 1 of the time (now article 81, no. 1) of the EC Treaty, therefore being considered null.

6. The nullity of such regulation would always preclude the club from pleading compensation for being hampered by the undertaking's football television broadcast. (Redactor's Summary, A.S.A.G.)

### **PROCEEDINGS' RELEVANCE IN COMPETITION LAW ENFORCEMENT:**

Vitória Sport Clube (VSC) and Federação Portuguesa de Futebol (FPF) brought legal proceedings against Rádio Televisão Portuguesa (RTP) to settle a dispute over television broadcasting rights.

The Plaintiff plead that the Defendant was sentenced to pay a compensation for broadcasting a football match without the necessary authority to do so under UEFA Regulations, between the teams of Benfica and Bastia on the 16<sup>th</sup> September 1997, which ended 15 minutes before the beginning of another football match (the rule was 45 minutes), between the Plaintiff VSC and Lazio, which resulted in many people not attending the VSC's stadium.



The Defendant claimed that its activity was not bound to those regulations and that they even infringed the EC Treaty and the EEA Agreement (EEAA), in the matter of competition rules.

Given the fact the Trial Court ruled that the Defendant had to pay a compensation to the Authors, the Defendant appealed to Lisbon's Appeal Court claiming, in short, that article 14 of the mentioned Statutes and the Regulation on UEFA Broadcastings (under which radio and television broadcasting of football matches happening within UEFA's territory was regulated) infringed the EC Treaty and the EEA Agreement by restricting competition.

The Defendant claimed that, regarding competition matters, UEFA should be considered an "undertaking", given its economic activity directed to produce profit. Thereby, resorting to the case law of the Court of Justice of the European Union, it claimed UEFA should be subject to Competition Law.

Lisbon's Appeal Court's understanding was that any regulation issued by UEFA, whilst being a membership body and subject to private law, would solely bind entities that were a part of it and since said regulations were meant to regulate economic activities within the European Union, Competition Law must be observed.

Besides, the Statutes were null and did not produce any legal effect regarding EU Competition Law, including article 14, which the European Commission found to be susceptible to substantially restrict competition, under article 81, no. 1 of the EC Treaty (now article 101, no. 1 of TFEU), for which it was not susceptible of being exempted under no. 3 of the same article, for it was not essential to ensure football matches' quality, nor the live audience.

Resorting to European Commission decisions, the Court showed that competition rules should be respected when it comes to selling television rights (football television rights, in this case), since it is was a commercial activity that allowed national football associations, affiliated leagues and clubs to obtain considerable economic gains, fomenting competition among them.

Having all of this in consideration, the Appeal Court considered UEFA (as well as National Federations and the clubs that are part of them) to be an economic agent or "undertaking" under Competition Law, namely when it comes to regulations emanated from UEFA, which should be considered as "undertaking agreements".

Furthermore, considering the "communitarian relevance" of sports television broadcasts, the Court stressed that this is a "relevant market", subject to Competition Law, since there were significant economic interests involved.

So, bearing in mind the existence of these three preconditions ("undertaking agreements", "communitarian interest" and "relevant market"), the Court considered that UEFA's Regulation on Broadcasting undermined the functioning of competition within the European Union, under article 81, no. 1 of EC Treaty, given that for an entity to broadcast a football match it depended on an authorization from another entity, UEFA.



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Therefore, Lisbon's Appeal Court ruled the appeal admissible, because the regulation was not binding to the Defendant, besides being legally null for violation of Community competition law, which it makes it impossible to resort to it as basis to any plea.

The proceedings continued on in the Supreme Court of Justice that adopted the decision found here:

<http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/151a603895ac431480257714004fef3c?OpenDocument>