Case T-504/93

Tiercé Ladbroke SA
v
Commission of the European Communities

(Action for annulment — Rejection of a complaint — Article 86 — Relevant market — Joint dominant position — Refusal to grant a transmission licence — Article 85(1) — Clause prohibiting retransmission)

Summary of the Judgment

1. *Acts of the institutions — Statement of reasons — Obligation — Scope — Commission decision rejecting a complaint alleging infringement of the competition rules — Reference to a letter sent pursuant to Article 6 of Regulation No 99/63*

   (EC Treaty, Art. 190; Regulation No 17 of the Council, Art. 3; Regulation No 99/63 of the Commission, Art. 6)

2. *Competition — Dominant position — Relevant market — Definition — Criteria*

   (EC Treaty, Art. 86)

3. *Competition — Dominant position — Relevant market — Geographical delimitation — Criteria*

(EC Treaty, Art. 86)

4. *Competition — Dominant position — Intellectual property rights in respect of sound and pictures of horse races — No direct or indirect exploitation of the rights in the market of a Member State — Refusal to grant a betting outlet a licence for the territory of that State — Abuse — None*

(EC Treaty, Art. 86)

5. *Competition — Agreements, decisions and concerted practices — Intellectual property rights — Exercise — Grant of an exclusive licence — Restriction of competition — Conditions*

(EC Treaty, Art. 85(1))

6. *Competition — Agreements, decisions and concerted practices — Undermining of competition — Meaning — Refusal by parties to an agreement to grant to a third party a licence to exploit intellectual property rights*

(EC Treaty, Art. 85(1))

1. The question whether a Community measure fulfils the obligation laid down in Article 190 of the Treaty to state the reasons on which it is based depends on the nature of the act in question and on the context in which it was adopted. Thus, the requirements concerning the statement of reasons of a decision are considerably relaxed where the party concerned was closely involved in the process by which the contested decision came about and is therefore aware of the reasons for which the administration considered that the request should not be upheld.

   In that regard, a Commission decision rejecting a complaint alleging infringement of the competition rules contains an adequate statement of reasons if it refers, without expressly repeating them, to the grounds contained in a letter sent to the complainant pursuant to Article 6 of Regulation No 99/63 and thus discloses with sufficient clarity the reasons for which the complaint was rejected, thereby enabling the complainant to defend its rights before the Community judicature and the latter to review the legality of the decision.

2. For the purposes of applying Article 86 of the Treaty, the relevant product or service market includes products or services which are substitutable or sufficiently interchangeable with the product or service in question, not only in terms of their objective characteristics, by virtue of which they are particularly suitable for satisfying the constant needs of consumers, but also in terms of the conditions of competition and/or the structure of supply and demand on the market in question.

3. Under the scheme of Article 86 of the Treaty, definition of the geographical market, like that of the product market, calls for an economic assessment. The geographical market can be defined as the territory in which all the traders concerned are exposed to objective conditions of competition which are similar or sufficiently homogeneous.

4. In so far as the geographical market in sounds and pictures of horse races is divided into distinct national markets and horse-racing associations in Member State A refuse, in the absence of direct or indirect exploitation of their intellectual property rights in the market of Member State B, to grant to a betting outlet in State B a licence in respect of the sound and pictures of the races which they organize, that refusal does not constitute discrimination between operators on the market in State B and cannot be regarded as involving any restriction of competition on that market. Nor can that refusal be regarded as an abuse merely because outlets operating in the market of a third State, State C, have those sound and pictures available to them since there is no competition between betting outlets operating in States B and C.

Even if it were assumed that the presence of the horse-racing associations on the market in State B in sound and pictures were not a decisive factor for the purposes of applying Article 86 of the Treaty, such a refusal could not fall within the prohibition laid down by that provision unless it concerned a product or service which was either essential for exercise of the main activity of taking bets, in that there was no real or potential substitute, or was a new product whose introduction might be prevented, despite specific, constant and regular potential demand on the part of consumers. In that regard, the televised broadcasting of horse races, although constituting an additional, and indeed suitable, service for bettors, is not in itself indispensable for the exercise of bookmakers' main activity.

5. The mere fact that the owner of the intellectual property right has granted to a sole licensee an exclusive right in the territory of a Member State, while prohibiting the grant of sub-licences for a specified period, is not sufficient to justify a finding that such a contract must be regarded as the purpose, the means or the result of an agreement prohibited by the Treaty. However, the exercise of an intellectual property right and of an assigned right deriving from it may be caught by the prohibition contained in Article 85(1) of the Treaty, where there are economic or legal circumstances the effect of which is to restrict the activity in question to an appreciable degree or to distort competition on the market, regard being had to the specific characteristics of that market.

6. The prohibition set out in Article 85(1) of the Treaty covers all agreements, deci-

sions by associations of undertakings or concerted practices whose object or effect is to restrict not only actual or possible competition between the parties concerned but also any possible competition between them or one of them and third parties.

It follows that an agreement between two or more undertakings whose object is to prohibit the grant to a third party of a licence to exploit intellectual property rights does not fall outside the scope of Article 85(1) of the Treaty merely because no contracting party has granted such a licence to a third party on the relevant market and there is no resultant restriction of the present competitive position of third parties.

Whilst it is true that, in the absence of current competition on the relevant market, such a refusal cannot be regarded as discriminatory and therefore as liable to be caught by Article 85(1)(d) of the Treaty, the fact nevertheless remains that an agreement embodying that refusal may have the effect of restricting potential competition on the relevant market, since it deprives each of the contracting parties of its freedom to contract directly with a third party by granting it a licence to exploit its intellectual property rights and thus to enter into competition with the other contracting parties on the relevant market. Moreover, the effect of such an agreement might be to 'limit or control ... markets' and/or to 'share markets' within the meaning of Article 85(1)(b) and (c) of the Treaty.