

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

26 January 2005 ^{*}

In Case T-193/02,

Laurent Piau, residing in Nantes (France), represented by M. Fauconnet, lawyer,

applicant,

v

Commission of the European Communities, represented by O. Beynet and A. Bouquet, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

Fédération internationale de football association (FIFA), established in Zurich (Switzerland), represented by F. Louis and A. Vallery, lawyers,

intervener,

^{*} Language of the case: French.

APPLICATION for annulment of the Commission's decision of 15 April 2002 rejecting the complaint lodged by the applicant concerning the Fédération internationale de football association (FIFA) Players' Agents Regulations,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of H. Legal, President, V. Tiili and M. Vilaras, Judges,
Registrar: I. Natsinas, Administrator,

having regard to the written procedure and further to the hearing on 22 April 2004,

gives the following

Judgment

Background to the dispute

- ¹ The Fédération internationale de football association (FIFA) is an association governed by Swiss law founded on 21 May 1904. Under its statutes, in the version which entered into force on 7 October 2001, its members are national associations (Article 1), which are groupings of football clubs classified as amateur or

professional, the latter having specific associations known as 'professional leagues'. National associations may also form confederations (Article 9). Players in national associations affiliated to FIFA are either amateur or non-amateur (Article 61).

- 2 Under its statutes, FIFA's objects are to promote football, to foster friendly relations among national associations, confederations, clubs and players, and to draw up and monitor regulations and methods concerning the laws of the game and the practice of football (Article 2).

- 3 FIFA's statutes, regulations and decisions are binding on its members (Article 4). FIFA has legislative, executive and administrative bodies, namely the Congress, the Executive Committee and the general secretariat, as well as standing and ad hoc committees (Article 10). FIFA's 'judicial' bodies are the Disciplinary Committee and the Appeal Committee (Article 43). The Arbitration Tribunal for Football, initially envisaged as the sole mandatory body for the settlement of disputes exceeding a value fixed by the Congress (Article 63), has not been set up. Under an agreement between FIFA and the International Council of Arbitration for Sport, the jurisdiction of the Arbitration Tribunal for Football is exercised by the Court of Arbitration for Sport, a body set up by the International Olympic Committee with its seat in Lausanne (Switzerland), which rules on the basis of FIFA rules, the Code of Sports-related Arbitration and, additionally, Swiss law. Actions for annulment may be lodged against its decisions before the Swiss Federal Court.

- 4 The regulations governing the application of the statutes provide that players' agents must possess an agent's licence issued by FIFA (Article 16) and authorise the Executive Committee to draw up binding rules for agents (Article 17).

- 5 On 20 May 1994 FIFA adopted the Players' Agents Regulations, which were amended on 11 December 1995 and entered into force on 1 January 1996 ('the original regulations').
- 6 The original regulations made the exercise of this occupation subject to the possession of a licence issued by the competent national association and reserved the occupation for natural persons (Articles 1 and 2). The procedure prior to obtaining the licence provided for an interview to ascertain the candidate's knowledge (in particular of law and sport) (Articles 6, 7 and 8). The candidate also had to have regard to certain incompatibilities and moral conditions, such as having no criminal record (Articles 2, 3 and 4). They also had to deposit a bank guarantee of 200 000 Swiss francs (CHF) (Article 9). Relations between the agent and the player had to be governed by a contract for maximum period of two years, which was renewable (Article 12).
- 7 A sanctions mechanism was laid down for agents, players and clubs in the event of infringement of the regulations. Agents could face a caution, censure or warning, a fine of an unspecified amount, or withdrawal of their licence (Article 14). Players and clubs could be fined up to CHF 50 000 and CHF 100 000 respectively. Players could also be liable to disciplinary suspensions (of up to 12 months). Suspension measures or bans on transfers could also be applied to clubs (Articles 16 and 18). A 'Players' Status Committee' was designated as FIFA's supervisory and decision-making body (Article 20).
- 8 On 23 March 1998 Mr Piau lodged a complaint with the Commission in which he challenged the original regulations. He alleged, first of all, that the regulations were contrary to 'Article [49] et seq. of the [EC] Treaty concerning free competition with regard to services', because of the restrictions on access to the occupation imposed

by opaque examination procedures and by the requirement of a guarantee and because of the controls and sanctions provided for. Secondly, he considered that the regulations were likely to give rise to discrimination between citizens of the Member States. Thirdly, he complained that the regulations did not include any legal remedies against decisions or applicable sanctions.

- 9 Previously, on 20 February 1996, Multiplayers International Denmark had lodged a complaint with the Commission challenging the compatibility of the regulations with Articles 81 EC and 82 EC. The Commission had also been notified of petitions lodged with the European Parliament by German and French nationals, which were declared admissible by the European Parliament on 29 October 1996 and 9 March 1998 respectively and which also concerned these rules.
- 10 The Commission initiated a procedure under Regulation No 17 of the Council of 6 February 1962, First Regulation implementing Articles [81] and [82] of the Treaty (O), English Special Edition 1959-1962, p. 87) and sent FIFA a statement of objections on 19 October 1999. The statement of objections stated that the [original] regulations constituted a decision by an association of undertakings within the meaning of Article 81 EC and called into question the compatibility with that article of the restrictions contained in the regulations relating to the licence requirement, the exclusion of legal persons from the award of a licence, the prohibition on clubs and players using unlicensed agents, the requirement of a bank guarantee and the sanctions.
- 11 In its reply to the statement of objections, dated 4 January 2000, FIFA disputed that the regulations could be classified as a decision by an association of undertakings. It justified the restrictions contained in the regulations in the interests of raising ethical standards and levels of professional qualification and claimed that they could be exempted under Article 81(3) EC.

- 12 A hearing was held at the Commission on 24 February 2000 and was attended by the representatives of Mr Piau and of FIFA, as well as representatives of the international professional players' trade union, FIFPro, which expressed the interest of players in the regulation of agents.
- 13 Following the administrative procedure initiated by the Commission, on 10 December 2000 FIFA adopted new Players' Agents Regulations, which entered into force on 1 March 2001 and were amended again on 3 April 2002.
- 14 The new FIFA regulations ('the amended regulations') maintain the obligation, in order to exercise the occupation of players' agent, which is still reserved for natural persons, to hold a licence issued by the competent national association for an unlimited period (Articles 1, 2 and 10). The candidate, who must satisfy the requirement of having an 'impeccable reputation' (Article 2), must take a written examination (Articles 4 and 5). The examination consists in a multiple-choice test to verify the candidate's knowledge of the law and sport (Annex A). The agent must also take out a professional liability insurance policy or, failing that, deposit a bank guarantee to the amount of CHF 100 000 (Articles 6 and 7).
- 15 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 stipulate the agent's remuneration, which is calculated on the basis of the player's basic gross salary and, if the parties cannot reach agreement, is fixed at 5% of the salary. A copy of the contract must be sent to the national association, whose register of contracts must be made available to FIFA (Article 12). Licensed players' agents are required, *inter alia*, to adhere to FIFA's statutes and regulations and to refrain from approaching a player who is under contract with a club (Article 14).

- 16 A system of sanctions against clubs, players and agents is set up. They may all be punished, in the event of failure to comply with the above rules, by a caution, censure, or warning, or by a fine (Articles 15, 17 and 19). Players' agents may have their licence suspended or withdrawn (Article 15). Players may be suspended for up to 12 months (Article 17). Clubs may also be punished by suspension measures and bans on transfers of at least three months (Article 19). Fines may also be imposed on players' agents, players and clubs. For players' agents, the amount of the fine is not specified, as in the original regulations, while in the case of players and clubs minimum amounts of CHF 10 000 and CHF 20 000 respectively are now provided for (Articles 15, 17 and 19). All these sanctions are cumulative (Articles 15, 17 and 19). Disputes are dealt with by the competent national association or the 'Players' Status Committee' (Article 22). Transitional measures allow licences granted under the former provisions to be validated (Article 23). A code of professional conduct and a standard representation contract are also annexed to the amended regulations (Annexes B and C).
- 17 The amendments made on 3 April 2002 state that nationals of the European Union or the European Economic Area (EEA) must make their application for a licence to the national association of their home country or the country of domicile without any condition relating to length of residence and that they may take out the required insurance policy in any country of the European Union or the EEA.
- 18 On 9 and 10 July 2001 the European Parliament declared that the files opened following the petitions mentioned in paragraph 9 above were closed.
- 19 On 3 August 2001 the Commission sent Mr Piau a letter under Article 6 of Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18). In that letter, the Commission pointed out that its representation to FIFA had resulted in the elimination of the main restrictive aspects of the Players' Agents Regulations and that there was no longer any Community interest in continuing with the procedure.

- 20 The Commission sent a similar letter to Multiplayers International Denmark on 12 November 2001, to which that complainant did not reply.
- 21 In response to the letter of 3 August 2001 mentioned in paragraph 19 above, on 28 September 2001 Mr Piau informed the Commission that he was maintaining his complaint. He claimed that the infringements of Article 81(1) EC still remained in the amended regulations with respect to the examination and professional liability insurance and that new restrictions had been introduced in the form of rules relating to professional conduct, the standard contract and the determination of remuneration. In the view of the complainant, these restrictions could not be covered by an exemption on the basis of Article 81(3) EC. In addition, Mr Piau stated that the Commission had not examined the rules in question having regard to Article 82 EC.
- 22 By a decision of 15 April 2002 ('the contested decision'), the Commission rejected Mr Piau's complaint. The Commission stated that there was no Community interest in continuing with the procedure in so far as the most important restrictive provisions at issue in the complaint had been repealed, whilst the licence requirement could be justified, the remaining restrictions could enjoy an exemption under Article 81(3) EC, and Article 82 EC was not applicable in the present case.

Procedure and forms of order sought by the parties

- 23 By an application lodged on 14 June 2002, Mr Piau brought the present action.

- 24 On 5 November 2002 FIFA applied to intervene in support of the form of order sought by the Commission. By order of the President of the First Chamber of the Court of First Instance of 5 December 2002, that intervention was allowed.
- 25 By decision of the Court of First Instance of 2 July 2003, the Judge-Rapporteur was assigned, from 1 October 2003, to the Fourth Chamber, to which the case was therefore reassigned.
- 26 By a measure of organisation of procedure notified on 11 March 2004, the Court of First Instance asked the Commission and FIFA questions about professional liability insurance, remuneration of players' agents and legal remedies provided for under the amended regulations, and asked Mr Piau questions regarding the steps he had taken with a view to carrying on the occupation of players' agent.
- 27 FIFA, the Commission and Mr Piau answered the questions asked by the Court by letters received on 1, 2 and 5 April 2004 respectively.
- 28 The parties presented oral argument and replied to the Court's questions at the hearing on 22 April 2004.
- 29 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

30 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

31 FIFA claims that the Court should:

— declare the action inadmissible and, in any event, unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

32 FIFA questions the admissibility of the action. It claims that the applicant does not have a legal interest in bringing proceedings since he has never taken any official steps with a view to carrying on the occupation of players' agent and the French law applicable to his situation is stricter than the FIFA regulations.

- 33 The Commission states that it did not raise a plea of inadmissibility with regard to the application because it considered that Mr Piau had links with the football world and that he had wished to carry on the occupation of players' agent.
- 34 Mr Piau contends that his action, which was brought against the Commission's decision rejecting his complaint, is admissible. He asserts that he has wished to carry on the occupation of players' agent since 1997 and that there are inconsistencies between the FIFA rules and the French legislation.

Findings of the Court

- 35 The Commission has not raised a plea of inadmissibility. An application to intervene must be limited to supporting the form of order sought by one of the parties (Article 40, last paragraph, of the Statute of the Court of Justice, applicable to the Court of First Instance under Article 53 of that Statute).
- 36 FIFA 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. The Court is not therefore bound to consider the pleas on which it relies in this regard (Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, paragraph 22).
- 37 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 (Case T-239/94 *EISA v Commission* [1997] ECR II-1839, paragraph 26).

38 It is common ground that Mr Piau is the person to whom a Commission decision that definitively closes a procedure initiated on the basis of Regulation No 17 was addressed and that he duly brought an action against that decision. The refusal to continue with such a procedure and the rejection of a complaint adversely affect its originator who, according to settled case-law, should be able to institute proceedings in order to protect his legitimate interests (Case 26/76 *Metro v Commission* [1977] ECR 1875, paragraph 13, and Case T-37/92 *BEUC and NCC v Commission* [1994] ECR II-285, paragraph 36). The Court has also ruled that another undertaking which the Commission has recognised as having a legitimate interest in submitting comments in a procedure pursuant to Regulation No 17 is entitled to bring proceedings (*Metro v Commission*, paragraphs 6, 7 and 11 to 13).

Substance

1. *The treatment of the complaint*

Arguments of the parties

39 Mr Piau claims, first, that the Commission has failed to comply with its obligations in dealing with a complaint lodged under Article 3 of Regulation No 17. Although FIFA had not notified the original regulations, the Commission had refrained from taking a position on the alleged infringement and presumed that the regulations were possibly exempt. Its actions are contrary to the principle of good faith which must govern relations between citizens and the Community and the principle of legal certainty.

- 40 He submits, second, that the Commission did not conduct an inquiry or state reasons for the contested decision with reference to Article 82 EC, although his complaint also concerned that article, as can be seen inter alia from the letters of 31 January and 30 March 2001 exchanged between the applicant and the Commission. The investigation did not relate to Article 82 EC, which was not mentioned in the statement of objections. The Commission therefore harmed Mr Piau's legitimate expectations by failing to examine his complaint in this regard.
- 41 The Commission claims, first, that the failure to notify does not mean that the unnotified measure is illegal under Community law.
- 42 Second, the defendant contends that it was not required to conduct an inquiry or to state reasons for its decision with reference to Article 82 EC, which was not mentioned in the complaint but was relied on belatedly (on 28 September 2001) by the applicant, as there was nothing to suggest that that provision had been infringed.
- 43 FIFA maintains that the contested decision did not require a statement of reasons with reference to Article 82 EC, which was not mentioned in the complaint and was relied on belatedly by the applicant. In any case, the Commission, which could reject the complaint solely on the ground that there was no Community interest, gave an adequate statement of reasons in the contested decision with reference to Article 82 EC.

Findings of the Court

- 44 First, as regards the treatment of the complaint under Regulation No 17, it should be pointed out that the Commission has broad discretion in this area (see, to that effect, Case C-119/97 P *Ufex and Others v Commission* [1999] ECR I-1341, paragraphs 88 and 89).

- 45 In the present case, Mr Piau lodged a complaint on 23 March 1998 concerning the FIFA Players' Agents Regulations, drafted as a summary outline, which referred to 'Article [49] et seq. of the [EC] Treaty concerning free competition with regard to services', but did not mention Regulation No 17. The Commission, which had received another complaint concerning the same regulations (see paragraph 9 above), considered that the facts adduced raised certain questions of competition law and considered Mr Piau's complaint to have been lodged under Article 3 of Regulation No 17.
- 46 The Commission then conducted the administrative procedure laid down for infringements in competition matters, conducting an inquiry, sending a statement of objections to FIFA on 19 October 1999 and holding a hearing of the interested parties on 24 February 2000. It is common ground that this procedure eventually resulted in FIFA adopting amended Players' Agents Regulations on 10 December 2000. Since it was satisfied with the amendments made by FIFA to the rules in question, the Commission then considered that no further steps should be taken in the procedure, and notified Mr Piau of this by sending him a letter on 3 August 2001 under Article 6 of Regulation No 2842/98 and then rejecting his complaint on 15 April 2002.
- 47 It is apparent that the Commission properly applied, from a procedural point of view, the powers conferred on it by Regulation No 17, which was applicable at that time, to conduct an inquiry into a complaint in a competition matter, having regard to its discretion in this area. The Commission did not therefore fail to comply with its obligations in this regard. The fact that the original regulations had not been notified to the Commission does not affect the lawfulness of the procedure, since the sole effect of the failure to give notification was to deprive the Commission of the opportunity to take a decision concerning, in particular, a possible exemption for the regulations under Article 81(3) EC, in the absence of an application by FIFA to that effect. Lastly, the applicant has not adduced any evidence to show that, in dealing with his complaint, the Commission failed to act in good faith or breached the principle of legal certainty.

- 48 Second, as regards the inquiry into the complaint and statement of reasons for the contested decision with reference to Article 82 EC, it can be seen from the documents before the Court that the complaint lodged on 23 March 1998 did not mention Article 82 EC. However, Mr Piau did rely on that provision in his letter of 28 September 2001 which stated, in response to the Commission's communication under Article 6 of Regulation No 2842/98, that he was maintaining his complaint (see paragraph 21 above). In that letter, the complainant argued that, in his view, the case had not been investigated with reference to Article 82 EC, even though FIFA was abusing a dominant position, and that, in a letter of 30 March 2001, the Commission had stated that his complaint related primarily to Articles 81 EC and 82 EC.
- 49 The applicant cannot rely on the principle of protection of legitimate expectations with respect to information contained in the requests for information sent by the Commission to FIFA on 11 November 1998 and 19 July 1999, which envisaged the possibility of infringements of Articles 81 EC and 82 EC. Such information cannot be equated with precise assurances that may give rise to reasonable expectations (see, for example, Joined Cases T-485/93, T-491/93, T-494/93 and T-61/98 *Dreyfus and Others v Commission* [2000] ECR II-3659, paragraph 85). Furthermore, subsequently, in the statement of objections of 19 October 1999, the Commission did not identify any infringements with reference to Article 82 EC, but only with reference to Article 81 EC.
- 50 The Commission cannot, for its part, claim that the belated mention by the applicant of Article 82 EC in the course of the administrative procedure relieved it of the obligation to conduct an inquiry and state reasons for the contested decision in this regard. As long as the administrative procedure had not been concluded and a decision had not been taken on Mr Piau's complaint, the Commission could still conduct fresh investigations if new objections, whose relevance it had to assess, were raised.
- 51 On the other hand, in so far as, after examining the points of fact and of law relating to the application of Article 82 EC, the Commission decided that an investigation of

the complaint was unwarranted or unnecessary in this regard, it was not required to pursue the investigation on this point (Case T-74/92 *Ladbroke v Commission* [1995] ECR II-115, paragraph 60).

- 52 With regard to its statement of reasons having regard to Article 82 EC, the contested decision states that Mr Piau's comments on that provision 'are vague with regard to the market on which FIFA is said to have a dominant position and the alleged abuse'. It explains that FIFA is not active on the market for provision of advice [to players] in which players' agents operate and concludes that 'Article 82 EC does not apply in the present case as described by the complainant'. In the circumstances of the present case, such information satisfies the Commission's obligation to give a statement of reasons (Case T-74/92 *Ladbroke v Commission*, cited above, paragraph 60).
- 53 It follows from the above considerations that Mr Piau is not justified in claiming that the Commission failed to comply with its obligations in dealing with the complaint referred to it. The applicant's pleas pertaining to that claim must therefore be rejected.

2. *Community interest*

Arguments of the parties

- 54 Mr Piau claims that his complaint was of Community interest. The market is 'cross-border in nature', the most important restrictive provisions of the original regulations have not been repealed and the amended regulations cannot be the

subject of an exemption under Article 81(3) EC. The anti-competitive effects will remain, since agents licensed under the original regulations will retain the market shares that they have acquired. In addition, Article 82 EC is applicable. Lastly, Mr Piau cannot obtain adequate protection before the national courts.

55 He submits, first, that the Commission made an error of assessment with regard to the FIFA Players' Agents Regulations. The obligation, on pain of sanctions, to comply with the FIFA regulations constitutes an obstacle to 'free competition with regard to services' and freedom of establishment and prevents any unlicensed players' agents from gaining market access. The provision contained in the amended regulations relating to remuneration of players' agents amounts to fixing of an imposed price, which restricts competition. The requirement of a standard contract infringes the principle of freedom of contract and the obligation imposed on the national association to send a copy to FIFA does not guarantee the protection of personal data. The code of professional conduct annexed to the regulations leaves scope for arbitrary action. The amended regulations are not compatible with the French legislation governing the occupation; however, the French football federation had given preference to the regulations and awarded licences in contravention of national legislation. The amended regulations also prohibit recourse to the ordinary courts.

56 Second, Mr Piau claims that the amended regulations cannot enjoy an exemption on the basis of Article 81(3) EC, since none of the conditions set out in that provision is satisfied. The restrictions are neither essential, appropriate nor proportionate. On the contrary, those regulations eliminate any competition, since FIFA alone is authorised to grant a licence. He submits that, behind the declared objective of protecting players and raising ethical standards in the occupation of players' agent, FIFA's real intention is to take complete control of the occupation of players' agent in breach of the freedom to carry on a business and the principle of non-discrimination. Mr Piau also argues that the 'specific nature of sport', which makes it possible to derogate from Community competition law, cannot be relied on in the present case, since the activity in question is not linked directly to sport.

- 57 Third, Mr Piau submits that FIFA holds a dominant position on the 'football market' and is abusing its dominant position on the related market of services provided by players' agents. FIFA is an association of undertakings and the amended regulations constitute a decision by an association of undertakings. Representing the interests of all buyers, FIFA is acting as a monopsony, a single buyer imposing its conditions on sellers. The abuses of the dominant position are the result of the binding provisions of the regulations. Licensed players' agents also hold, jointly, a collective dominant position which they are abusing through the FIFA rules. The market in the services provided by players' agents is reserved for members of the association of undertakings and unlicensed agents are prohibited from having access.
- 58 Fourth, Mr Piau submits that, by making access to the occupation of players' agent subject to the possession of a licence, the amended regulations are an obstacle to freedom to provide services and freedom to carry on a business. He argues that FIFA does not have any legitimacy to lay down rules governing an economic activity and that the Commission thus implicitly delegated it a power to regulate an activity of providing services in contravention of the competences conferred on the Member States.
- 59 The Commission submits, principally, that there was no Community interest to justify continuing with the procedure, that the complaint was rightly rejected on that ground, and that Mr Piau's action is consequently unfounded. The 'cross-border nature' of the market does not necessarily mean that there is a Community interest. The most important restrictions had been removed in the amended regulations. Any persistent effects of the original regulations can be regarded as transitional measures guaranteeing the acquired rights of agents licensed under the old system. The fact that a complaint challenges alleged abuses of a dominant position does not in itself allow the conclusion that there is a Community interest. Contrary to his assertions, the applicant is not prevented from referring the matter to an ordinary law court.

- 60 In the alternative, the Commission submits, first, that the applicant's arguments, based on provisions not falling within the scope of competition law, are inadmissible or unfounded, since it does not derive from Regulation No 17, or from any other legal basis, the power to act with regard to an association of undertakings on bases other than compliance with rules of Community competition law. The Commission also submits that Community law accepts the recognition of acquired rights and that the applicant's fears over protection of personal data are unfounded. It argues that, while the organisation of the occupation of players' agent has not been harmonised at Community level, the FIFA regulations, which lay down uniform conditions for access at world level, are not liable to restrict the free movement of players' agents.
- 61 Second, the Commission submits that it did not make an error of assessment with regard to the rules in question, which seek to protect players and to ensure that agents are qualified. In the absence of an internal organisation of the occupation, the licence system imposes justified, essential and proportionate qualitative restrictions. In addition, the main restrictions have been removed, in particular concerning conditions of access to the occupation and examination procedures. The amended regulations are proportionate to the objectives set out and take into account the specific nature of sport. The provision relating to agents' remuneration merely lays down a subsidiary rule, allowing the parties a large degree of freedom. The standard contract does not hamper the parties' freedom and the limitation of its duration to two years promotes competition. The alleged prohibition on having recourse to ordinary law courts is not proven to exist. The rules of professional conduct, which can be justified by the general interest, are proportionate and compatible with Community competition law. Lastly, the binding nature of the regulations and the sanctions provided for therein are inherent in the existence of rules.
- 62 Third, the Commission submits that the amended regulations satisfy the conditions for an exemption laid down by Article 81(3) EC. The restrictions entailed, which are intended to raise ethical and professional standards, are proportionate. Competition is not eliminated. The very existence of regulations promotes a better operation of the market and therefore contributes to economic progress.

- 63 Fourth, the Commission submits that Article 82 EC, which concerns only economic activities, is not applicable to the present case, which relates to a purely regulatory activity. FIFA cannot be described as an 'economic power' or a monopsony and no abuse has been shown to exist on a market related to the 'football market'. FIFA does not represent the economic interests of clubs and players. Licensed players' agents are a fairly scattered occupation, without any structural links, and do not therefore abuse a collective dominant position. On the other hand, the Commission submits that FIFA is an association of undertakings and that the regulations at issue constitute a decision by an association of undertakings.
- 64 FIFA submits, first, that the Commission was right to reject Mr Piau's complaint on grounds of lack of Community interest. The restrictive provisions retained in the amended regulations have a qualitative purpose. They do not include any restrictions prohibited by Article 81(1) EC and are justified under Article 81 (3) EC. The anti-competitive effects that allegedly persist do not result from the rules in question, but from the activity of agents. The 'cross-border nature' of the market has no bearing on the likely Community interest of a case.
- 65 Second, FIFA submits that the amended regulations cannot be classified as a decision by an association of undertakings, since professional clubs, which may be regarded as undertakings, form only a minority of the members of the national associations, which are the members of the international organisation. The regulations adopted by FIFA are not therefore the expression of the will of professional clubs. The amended regulations do not contain any considerable restrictions of competition. The procedures for obtaining a licence are now satisfactory. Professional liability insurance, whose amount is determined objectively, is an appropriate means to settle disputes. The provisions relating to agents' remuneration are not comparable with a price-fixing mechanism. The standard contract contains conventional stipulations and does not in any way violate privacy. The rules of professional conduct, the sanctions mechanism and the dispute settlement system are not contrary to Article 81 EC.

- 66 Third, FIFA submits that the amended regulations could have been the subject of an exemption under Article 81(3) EC. Those rules are necessary in the absence of organisation of the occupation and of national legislation and because of the global dimension of football. They raise professional and ethical standards for the occupation of players' agent, the increasing number of whom shows that the rules in question are not restrictive.
- 67 Fourth, FIFA submits that Article 82 EC is not applicable and that it has not abused a dominant position. It states that it is not an association of undertakings and argues that, in exercising its regulatory power, which is at issue in this case, it does not carry on economic activities. It argues that the applicant never mentioned the 'football market' in the course of the administrative procedure and that the fact that it exercises a regulatory power over economic actors in a certain market does not mean that it is active on that market or, a fortiori, that it holds a dominant position. Furthermore, the market for the provision of advice at issue in the present case is not connected with any market where FIFA is active. Its situation cannot be classified as a monopsony either, since FIFA does not represent either clubs or players in their relations with agents. Similarly, licensed agents do not exercise a collective dominant position which they abuse through the FIFA rules.

Findings of the Court

The nature of the FIFA Players' Agents Regulations

- 68 Without classifying on the basis of Community law either the nature of the Players' Agents Regulations or FIFA as the author of those regulations, in the contested decision the Commission examined Mr Piau's complaint with reference to the Community rules on competition, in particular Article 81 EC. That provision and

the powers conferred on the Commission to ensure compliance concern decisions, agreements or practices on the part of undertakings or associations of undertakings, since Community law applies only in so far as the acts or conduct in question and the authors of such acts or conduct fall within the scope of that provision. In the present proceedings, the Commission has pointed out that, in its opinion, FIFA constituted an association of undertakings and the regulations at issue were a decision by an association of undertakings, thereby confirming the view it took in the statement of objections, a view shared by Mr Piau, but contested by FIFA.

69 As regards, first, the concept of an association of undertakings, and without it being necessary to rule on the admissibility of the arguments put forward by an intervener which go against the claims made by the party in support of which it is intervening, it is common ground that FIFA's members are national associations, which are groupings of football clubs for which the practice of football is an economic activity. These football clubs are therefore undertakings within the meaning of Article 81 EC and the national associations grouping them together are associations of undertakings within the meaning of that provision.

70 The fact that the national associations are groupings of 'amateur' clubs, alongside 'professional' clubs, is not capable of calling that assessment into question. In this regard, it should be noted that 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, to that effect, Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paragraph 46).

71 Furthermore, the national associations, which 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, also carry on an economic activity in this regard (see Case T-46/92 *Scottish Football v Commission* [1994] ECR II-1039). They therefore also constitute undertakings within the meaning of Article 81 EC.

72 Since the national associations constitute associations of undertakings and also, by virtue of the economic activities that they pursue, undertakings, FIFA, an association grouping together national associations, also constitutes an association of undertakings within the meaning of Article 81 EC. That provision applies to associations in so far as their own activities or those of the undertakings belonging to them are calculated to produce the results to which it refers (Case 71/74 *Frubo v Commission* [1975] ECR 563, paragraph 30). 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 (Case 123/83 *BNIC* [1985] ECR 391, paragraph 17).

73 As regards, second, the concept of a decision by an association of undertakings, it is apparent from the documents before the Court that the purpose of the occupation of players' agent, under the very wording of the amended regulations, is 'for a fee, on a regular basis [to introduce] a player to a club with a view to employment or [to introduce] two clubs to one another with a view to concluding a transfer contract'. This is therefore 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 (Case 13/76 *Donà* [1976] ECR 1333, paragraphs 14 and 15, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 127, *Deliège*, paragraphs 64 and 69, and Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraphs 53 to 60).

74 On the one hand, the Players' Agents 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 (see, by analogy, Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraphs 68 and 69). Those regulations do not fall within the scope of the freedom of internal organisation enjoyed by sports associations either (*Bosman*, paragraph 81, and *Deliège*, paragraph 47).

- 75 On the other hand, since they are binding on national associations that are members of FIFA, which are required to draw up similar rules that are subsequently approved by FIFA, and on clubs, players and players' agents, those regulations are the reflection of FIFA's resolve to coordinate the conduct of its members with regard to the activity of players' agents. They therefore constitute a decision by an association of undertakings within the meaning of Article 81(1) EC (Case 45/85 *Verband der Sachversicherer v Commission* [1987] ECR 405, paragraphs 29 to 32, and *Wouters and Others*, paragraph 71), which must comply with the Community rules on competition, where such a decision has effects in the Community.
- 76 With regard to FIFA's legitimacy, contested by the applicant, to enact such rules, which do not have a sport-related object, but regulate an economic activity that is peripheral to the sporting activity in question and touch on fundamental freedoms, the rule-making power claimed by a private organisation like FIFA, whose main statutory purpose is to promote football (see paragraph 2 above), is indeed open to question, in the light of the principles common to the Member States on which the European Union is founded.
- 77 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, like FIFA, which has not been delegated any such power by a public authority, cannot from the outset be regarded as compatible with Community law, in particular with regard to respect for civil and economic liberties.

- 78 In principle, such regulation, which constitutes policing of an economic activity and touches on fundamental freedoms, falls within the competence of the public authorities. Nevertheless, in the present dispute, the rule-making power exercised by FIFA, in the almost complete absence of national rules, can be examined only in so far as it affects the rules on competition, in the light of which the lawfulness of the contested decision must be assessed, while considerations relating to the legal basis that allows FIFA to carry on regulatory activity, however important they may be, are not the subject of judicial review in this case.
- 79 The present action concerns 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. Judicial review is necessarily limited to the rules on competition and the assessment made by the Commission of the alleged infringements of those rules by the FIFA regulations. 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.

Assessment of the Community interest of the complaint

- 80 The contested decision rejects Mr Piau's complaint on grounds of lack of Community interest in continuing with the procedure. It should be pointed out, first, that the assessment of the Community interest raised by a complaint in competition matters 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 (see, to that effect, *Ufex and Others v Commission*, paragraphs 79 and 80). 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 (see, to that effect, *Ufex and Others v Commission*, paragraphs 88, 89, 93 and 95).

⁸¹ 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 (Case T-115/99 *SEP v Commission* [2001] ECR II-691, paragraph 34).

⁸² In the present case, three kinds of considerations form the basis for the Commission's assessment regarding lack of Community interest, namely the repeal of the most restrictive provisions contained in the original regulations, the eligibility of the amended regulations for an exemption under Article 81(3) EC, and the inapplicability of Article 82 EC.

— Repeal of the most restrictive provisions contained in the original regulations

⁸³ The contested decision starts by noting that the most important restrictive provisions that were part of the regulations adopted on 20 May 1994 were deleted in the regulations adopted on 20 December 2000. It examines the provisions of the FIFA regulations under five headings, relating to the examination, insurance, the

code of professional conduct, the setting of remuneration for players' agents and the standard contract.

84 First, as regards the examination, the Commission states in the contested decision that candidates must now take a written examination, consisting in a multiple-choice test, the procedures and dates for which, as set out in the annex to the amended regulations, are uniform throughout the world. It notes that a two-stage appeal system is now envisaged and that the two-year residence requirement for European Union nationals was removed by an amendment to the regulations on 3 April 2002. The contested decision states that the requirement of an 'impeccable reputation' for obtaining the licence, which must be interpreted in accordance with national laws, would be construed in France, where Mr Piau is resident, as having no criminal conviction. In the final analysis, the Commission did not consider the applicant's claims of arbitrariness to be well founded.

85 Second, in the contested decision, the Commission notes that a professional liability insurance policy, required of everyone, whose base relates to the objective criterion of the turnover of the players' agent, replaced the requirement of lodging a guarantee and that it can be taken out with various insurance companies in all the countries of the Union. On this point, in response to the Court's questions mentioned in paragraph 26 above, FIFA produced examples of professional liability insurance contracts offered to players' agents by 12 insurance companies within the European Union or the EEA. The contested decision also points out that the required guarantee, which must cover all risks liable to result from the representation activity, does not appear to be disproportionate to the risks covered, for example, by professional insurance in the liberal professions.

86 Third, as far as the code of professional conduct is concerned, in the contested decision the Commission considers that the elementary principles of good

professional conduct set out in that code, annexed to the amended regulations, which refer in particular to rules relating to professional conscientiousness, truthfulness, fairness, objectivity, transparency, sincerity, justice and equity, do not impose a disproportionate obligation on players' agents.

87 Fourth, as regards setting the remuneration of players' agents, in the contested decision the Commission examined Article 12 of the regulations, which provides that the agent's salary is calculated on the basis of the player's basic gross salary and will be 5% of the salary if the parties cannot reach agreement. It considers that this provision refers to an objective, transparent criterion (the player's basic gross salary) and is merely a (subsidiary) mechanism for the settlement of disputes.

88 Fifth, the contested decision states that Mr Piau's complaint concerning the breach of privacy stemming from the fact that a copy of the contract signed between a player and an agent is sent to the relevant national association for registration is not a problem capable of being caught by the Community rules on competition.

89 The contested decision does not therefore show that the principles stemming from the case-law referred to in paragraphs 80 and 81 above regarding the extent of its obligations were breached by the Commission, which closely examined the evidence put forward by the applicant.

90 The Commission did not make a manifest error of assessment with regard to the provisions of the amended regulations examined in paragraphs 84 to 88 above by considering that the examination offered satisfactory guarantees of objectivity and transparency, that the professional liability insurance obligation did not constitute a

disproportionate requirement and, with regard to the provisions of the regulations relating to remuneration for players' agents, by implicitly excluding a classification as the fixing of imposed prices from the point of view of competition law (Joined Cases T-213/95 and T-18/96 *SCK and FNK v Commission* [1997] ECR II-1739, paragraphs 158, 159 and 161 to 164).

- 91 The arguments outlined by Mr Piau in this case relating to the content of the amended regulations, which concern the obligation under the regulations to comply with FIFA rules, the content of the standard contract, the sanctions system and legal remedies, do not call that assessment into question.
- 92 First, the obligation imposed on players' agents to comply with the FIFA rules concerning, among other things, transfers of players does not appear in itself to be contrary to the rules on competition, as the FIFA rules on transfers of players, which were not the object of Mr Piau's complaint, cannot be examined in the present dispute, since they fall outside its scope. When asked about this point at the hearing, the applicant did not explain, any more than he did in his written pleadings, how the obligation to comply with FIFA rules might affect competition.
- 93 Second, the provisions on the content of the contract between the agent and the player, under which the contract, in writing, must set out the criteria and details of the agent's remuneration and cannot have a term of longer than two years, although that term is renewable, do not reveal any interference with competition. The limitation of the duration of contracts to two years, which does not preclude the renewal of the commitment, seems likely to encourage the fluidity of the market and, as a result, competition. In fact, this relatively limited framing of contractual relations seems likely to help to make the parties' financial and legal relations more secure, without jeopardising competition.

94 Third, the sanctions system, summarised in paragraph 16 above, in so far as it can affect the rules on competition, does not appear to be open to criticism. The amended regulations provide that the sanctions applicable to agents, players and clubs are caution, censure, warning, suspension or withdrawal of licence for agents, suspension of up to 12 months for players and suspension measures or bans on transfers for at least three months for clubs, which cannot be regarded as manifestly excessive for a system of professional sanctions. Furthermore, the amounts of the fines for players and clubs were reduced from those in the original regulations. In addition, Mr Piau has not produced any evidence to show that this mechanism is applied in an arbitrary and discriminatory manner, thereby interfering with competition.

95 Fourth, with respect to legal remedies available in the ordinary courts, and assuming that the provisions of the amended regulations may have an effect on the rules on competition in this regard, it is apparent from the answers given by FIFA and by the Commission to the questions asked by the Court (see paragraph 26 above) that, irrespective of the system of remedies against decisions by national associations or by the Players' Status Committee, which is competent in matters involving players' agents, before the Court of Arbitration for Sport, interested parties can always have recourse to the ordinary courts, in particular in order to assert their rights under national law or under Community law, and actions for annulment can also be brought before the Swiss Federal Court against decisions by the Court of Arbitration for Sport. The applicant, who, at the hearing, reported difficulties and slow progress affecting national court proceedings, has not however established that he was deprived of all remedies before the ordinary courts or, a fortiori, that competition was thereby affected.

96 It follows from the above considerations that the pleas in law and arguments put forward by Mr Piau based on competition law do not call into question the conclusion that the Commission was entitled to consider that the most restrictive provisions of the regulations in question had been repealed. The applicant's arguments in this regard must therefore be rejected.

- 97 The pleas in law and arguments put forward by the applicant which are not related to competition law should also be rejected, since they do not indicate any infringements in this regard. Mr Piau has not shown that his pleas in law and arguments regarding the breach of contractual freedom, the incompatibility of the FIFA regulations with the French legislation and the interference with the protection of personal data disclose an infringement of the rules on competition. His pleas in law and arguments, which are not, moreover, accompanied by corroborative evidence, must therefore be rejected as irrelevant in a competition matter.
- 98 In addition, the argument put forward by Mr Piau that, since agents licensed under the original regulations retained their licences, anti-competitive effects persisted cannot be accepted. On the one hand, the applicant does not establish that this fact would in itself give rise to anti-competitive effects. On the other hand, it is contrary to the principle of legal certainty to call into question legal positions which are not shown to have been unlawfully acquired (see, by analogy, Case T-498/93 *Dornonville de la Cour v Commission* [1994] ECR-SC I-A-257 and II-813, paragraphs 46 to 49 and 58). Moreover, as the Court has held with regard to transitional measures relating to recognition of diplomas — this case-law being applicable to the present case — it is permitted to preserve acquired rights in similar cases (Case C-447/93 *Dreessen* [1994] ECR I-4087, paragraph 10, and Joined Cases C-69/96 to C-79/96 *Garofalo and Others* [1997] ECR I-5603, paragraphs 29 to 33).
- 99 In the light of all the foregoing considerations, the Commission did not commit a manifest error in its assessment of the rules in question or with regard to the alleged persistence of the anti-competitive effects of the original regulations, the reason for Mr Piau's complaint. The applicant is not therefore justified in claiming that the most restrictive provisions of the original regulations were not abolished and that anti-competitive effects persisted because those provisions were retained in the amended regulations.

— Eligibility of the provisions of the amended regulations for an exemption under Article 81(3) EC

- 100 In the contested decision, the Commission considers that the compulsory nature of the licence might be justified and that the amended regulations could be eligible for an exemption under Article 81(3) EC. It explains that the licence system, which imposes restrictions that are more qualitative than quantitative, seeks to protect players and clubs and takes into consideration, in particular, the risks incurred by players, who have short careers, in the event of poorly negotiated transfers. It considers that, since there is at present no organisation of the occupation of players' agent and no generalised national rules, the restriction inherent in the licence system is proportionate and essential.
- 101 The actual principle of the licence, which is required by FIFA and is a condition for carrying on the occupation of players' agent, constitutes a barrier to access to that economic activity and therefore necessarily affects competition. It can therefore be accepted only in so far as the conditions set out in Article 81(3) EC are satisfied, with the result that the amended regulations might enjoy an exemption on the basis of this provision if it were established that they 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 these objectives, and do not eliminate competition.
- 102 Various legal and factual circumstances have been relied on to justify the adoption of the regulations and the actual principle of the compulsory licence, which lies at the heart of the mechanism in question. It seems that, first of all, within the Community, France alone has adopted rules governing the occupation of sports agent. Furthermore, it is not contested that, collectively, players' agents do not, at present, constitute a profession with its own internal organisation. It is not contested either that certain practices on the part of players' agents could, in the past, have harmed players and clubs, financially and professionally. FIFA explained that, in laying down

the rules in question, it was pursuing 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.

103 Contrary to the claims made by the applicant, competition is not eliminated by the licence system. That system 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 to that occupation. On the contrary, the quantitative opening up of this occupation is corroborated by statistics communicated by FIFA at the hearing. FIFA stated, without being contradicted, that while it recorded 214 players' agents in 1996, when the original regulations entered into force, it estimated that there were 1 500 at the beginning of 2003 and that 300 candidates had passed the examination at sessions held in March and September of that year.

104 In view of the circumstances set out in paragraphs 102 and 103 above and the current conditions governing the exercise of the occupation of players' agent, where there are virtually no national rules and no collective organisation for players' agents, the Commission did not commit a manifest error of assessment by considering that the restrictions stemming from the compulsory nature of the licence might benefit from an exemption on the basis of Article 81(3) EC, and, moreover, by rightly reserving the right to review the rules in question. The arguments put forward by Mr Piau in this regard must therefore be rejected.

105 Similarly, the applicant's argument that the 'specific nature of sport' may not be relied on to justify a derogation from the rules on competition must be rejected as irrelevant. The contested decision is not based on such an exception and envisages the exercise of the occupation of players' agent as an economic activity, without claiming that it should be accepted as falling within the scope of the specific nature of sport, which in fact it does not.

- 106 Mr Piau's arguments relating to the breaches of freedom to conduct business and freedom to provide services should also be rejected, since the applicant has not shown that they disclose a concomitant infringement of the rules on competition that precludes an exemption for the amended regulations on the basis of Article 81 (3) EC.

— Inapplicability of Article 82 EC

- 107 The contested decision states that Article 82 EC does not apply in the present case, as described by the applicant, since FIFA is not active on the market for the provision of advice to players.
- 108 Article 82 EC prohibits any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it.
- 109 That provision 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 (Joined Cases C-395/96 P and C-396/96 P *Compagnie maritime belge transports and Others v Commission* [2000] ECR I-1365, paragraph 34).

- 110 The expression ‘one or more undertakings’ in Article 82 EC 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 (*Compagnie maritime belge transports and Others v Commission*, paragraph 36).
- 111 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 (Case T-342/99 *Airtours v Commission* [2002] ECR II-2585, paragraph 62, and Case T-374/00 *Verband der freien Rohrwerke and Others v Commission* [2003] ECR II-2275, paragraph 121).
- 112 In the present case, the market affected by the rules in question is a market for the provision of services where the buyers are players and clubs and the sellers are agents. In this market FIFA can be regarded as acting on behalf of football clubs since, as has already been stated (see paragraphs 69 to 72 above), it constitutes an emanation of those clubs as a second-level association of undertakings formed by the clubs.
- 113 A decision like the FIFA Players’ Agents Regulations may, where it is 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 (*Compagnie maritime belge transports and Others v Commission*, paragraph 44).

- 114 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. Within the meaning of the case-law cited in paragraphs 110 and 111 above, 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.
- 115 It seems unrealistic to claim that FIFA, which is recognised as holding supervisory powers over the sport-related activity of football and connected economic activities, such as the activity of players' agents in the present case, does not hold a collective dominant position on the market for players' agents' services on the ground that is not an actor on that market.
- 116 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 associations and the clubs, the actual buyers of the services of players' agents, and it therefore operates on this market through its members.
- 117 As regards abuse of the alleged dominant position, however, it follows from the above considerations regarding the amended regulations and the possible exemption under Article 81(3) EC that such an abuse has not been established. It has been found that those regulations did not impose quantitative restrictions on access to the occupation of players' agent that could be detrimental to competition, but qualitative restrictions that may be justified in the present circumstances. The

abuses of the dominant position that, according to the applicant, stem from the regulations are not therefore established and his arguments in this regard must be rejected.

- 118 Lastly, Mr Piau's argument that licensed players' agents are abusing their collective dominant position within the meaning of Article 82 EC must also be rejected in the absence of structural links between these agents, the existence of which Mr Piau has failed to establish. The holding of the same licence, the use of the same standard contract and the fact that agents' remuneration is determined on the basis of the same criteria do not prove the existence of a dominant position for licensed players' agents, and the applicant does not show that the parties concerned adopt an identical approach or that they implicitly divide up the market.
- 119 Consequently, although the Commission wrongly considered that FIFA did not hold a dominant position on the market for players' agents' services, the other findings contained in the contested decision, namely that the most restrictive provisions of the regulations had been deleted and that the licence system could enjoy an exemption decision under Article 81(3) EC, would accordingly lead to the conclusion that there was no infringement under Article 82 EC and to the rejection of the applicant's arguments in this regard. Therefore, despite the error in law made by the Commission in taking the view that Article 82 EC was not applicable, its application could not, in any event, have resulted in a finding of an abuse of a dominant position based on the other findings that had rightly been made from the examination of the regulations. Thus, the lawfulness of the rejection of the complaint on the ground of lack of Community interest in continuing with the procedure is not affected.
- 120 In the light of the foregoing considerations, the Commission did not commit a manifest error of assessment in deciding to reject Mr Piau's complaint on the ground of lack of Community interest in continuing with the procedure. The 'cross-border nature' of the market, which is not disputed, is irrelevant in this regard, since this fact alone does not confer a Community interest on a complaint. In view of the

fact that the assessment of the Community interest raised by a complaint depends on the circumstances of each case, the number of criteria of assessment the Commission may refer to should not be limited, nor conversely should it be required to have recourse exclusively to certain criteria (*Ufex and Others v Commission*, paragraphs 79 and 80).

121 The action brought by Mr Piau must therefore be dismissed.

Costs

122 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

123 Since the applicant has been unsuccessful and the Commission has applied for costs, the applicant must be ordered to bear his own costs and pay those incurred by the Commission.

124 Under the third subparagraph of Article 87(4) of the Rules of Procedure, the Court may order an intervener other than the Member States and the institutions to bear its own costs.

125 In the circumstances of the present case, FIFA must be ordered to bear its own costs in connection with its intervention.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- 1. Dismisses the application;**
- 2. Orders the applicant to bear his own costs and pay those incurred by the Commission;**
- 3. Orders the Fédération internationale de football association to bear its own costs.**

Legal

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Vilaras

Delivered in open court in Luxembourg on 26 January 2005.

H. Jung

H. Legal

Registrar

President