Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber)

19 March 2012*

((Competition — Restrictive practices — Abuse of dominant position — Rejection of a complaint — Legitimate interest — Community interest — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law))

In Case T-273/09,

Associazione 'Giùlemanidallajuve', established in Cerignola (Italy), represented by L. Misson, G. Ernes and A. Pel, lawyers,

applicant,

v

European Commission, represented by A. Bouquet and V. Di Bucci, acting as Agents, assisted by J. Derenne, lawyer,

defendant,

supported by

Fédération internationale de football association (FIFA), established in Zurich (Switzerland), represented by A. Barav and D. Reymond, lawyers,

intervener,

APPLICATION for annulment of Commission decision C(2009) 3916 of 12 May 2009, taken pursuant to Article 7(2) of Commission Regulation (EC) No 773/2004 and rejecting, for lack of legitimate interest and lack of Community interest, the complaint submitted by the applicant concerning the infringement of Articles 81 EC and 82 EC allegedly committed by the Federazione italiana giuoco calcio, the Comitato olimpico nazionale italiano, the Union of European Football Associations and the Fédération Internationale de football association, in the context of the sanctions imposed on Juventus Football Club SpA de Turin (Italy) (Case COMP/39464 – *Supporters Juventus Turin* v *FIGC-CONI-UEFA-FIFA*),

THE GENERAL COURT (Fourth Chamber),

composed of I. Pelikánová, President, K. Jürimäe and M. van der Woude (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: French.

Order

Background to the dispute

1 The Associazione 'Giùlemanidallajuve' ('the Association' or 'the applicant') is a not-for-profit organisation composed of members, minority shareholders and supporters of Juventus Football Club SpA of Turin (Italy) ('Juventus').

2 The Association was created for the purpose of defending its members' interests and disputing the sanctions imposed on Juventus in 2006 on account of unlawful practices aimed at influencing the appointment of referees.

3 Those sanctions were imposed on Juventus by the Federal Appeals Commission of the Federazione italiana giuoco calcio (Italian Football Federation ('FIGC'), by decision of 14 July 2006. The sanctions were subsequently upheld, for the most part, by the FIGC Federal Court, by decision of 25 July 2006, and by the Conciliation and Arbitration Chamber of Comitato olimpico nazionale italiano (Italian Olympic Committee, 'CONI'), by decision of 27 October 2006. The sanctions led to the imposition of a fine on Juventus, to the revocation of its Italian championship title for the 2004/2005 season, to the non-award of the Italian championship title for the 2005/2006 season and its demotion to last place in Serie A of the Italian Championship in that season. Following that decision, Juventus had to play in Serie B for the 2006/2007 season with a nine-point deduction and was unable to take part, at a European level, in the Champions League for that season, despite having qualified for that competition.

4 After bringing an action before the Regional Administrative Court of Latium ('the RAC'), the Association lodged a complaint, on 1 June 2007, with the Commission of the European Communities on the basis of Article 7(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1). The purpose of that complaint was to denounce alleged infringements of Article 81 EC and 82 EC committed by FIGC, CONI, the Union of European Football Associations ('UEFA') and the Fédération internationale de football association ('FIFA'), independently and/or collectively, in the context of the sanctions imposed on Juventus. The Association claims, in essence, that both the establishment of the bodies of FIGC and CONI which rule on disciplinary issues (Federal Appeals Commission of FIGC, Federal Court of FIGC and the Conciliation and Arbitration Chamber of CONI) and the proceedings conducted by those bodies were illegal. Further, according to the applicant, the disciplinary measures were unjustifiably severe and discriminatory, adversely affecting Juventus and numerous supporters, shareholders and fans of that club.

5 On 10 July 2007, the Commission invited FIGC, CONI, FIFA and UEFA to submit comments on the complaint. On 19 February 2008, the Association formally requested the Commission to set out its views on its complaint. The Commission responded by letter of 14 March 2008, stating that its services were considering the complaint. On 26 June 2008, the applicant brought an action for failure to act before the General Court on the basis of Article 232 EC. The case was registered under number T-254/08. On that same date, the Commission asked the Association for further information. On 10 July 2008, the Commission asked the Association for additional clarifications. The Association responded to both those requests for information by letter dated 1 August 2008.

6 By letter of 29 August 2008, the Commission informed the applicant, pursuant to Article 7(1) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 [EC] and 82 [EC] (OJ 2004 L 123, p. 18), that, after examination of the factual and legal issues put forward, it considered that the Association did not have a legitimate interest to bring a complaint within the meaning of Article 7(2) of Regulation

No 1/2003 and that, in any event, there was insufficient Community interest to launch an investigation into the alleged infringements. By letters of 25 September and 30 October 2008, the applicant replied to that letter, maintaining its initial position.

7 On 12 May 2009, the Commission adopted Decision C (2009) 3916 pursuant to Article 7(2) of Regulation No 773/2004, in which it rejected the complaint ('the contested decision'). The Commission relied primarily on the applicant's lack of legitimate interest and, as a secondary point, the lack of sufficient Community interest to pursue the inquiry.

8 In respect of the lack of legitimate interest, the Commission, firstly, pointed out that the Association did not represent Juventus' interests and that it did not act in the latter's name. The Commission then stated that the Association had not demonstrated prejudice to its members' economic interests, whether supporters or minority shareholders of Juventus.

9 In respect of the lack of sufficient Community interest to pursue the investigation, which was invoked as a secondary point, the Commission considered that even if it were assumed that the alleged infringements might have affected intra-Community trade, the conduct complained of did not significantly affect the functioning of the common market. In any event, the pursuance of the investigation would have required the Commission to conduct an inquiry which would be disproportionate in the light of the low probability of detecting an infringement.

10 Following the adoption of the contested decision, the Sixth Chamber of the General Court ruled that it was not necessary to give a ruling on the action for failure to act brought by the Association (order of 22 December 2009 in Case T-254/08 *Associazione 'Giùlemanidallajuve'* v *Commission*, not published in the ECR).

Procedure and forms of order sought by the parties

11 By application lodged on 10 July 2009, the Association brought the present action.

12 By document lodged on 23 November 2009, FIFA (the intervener) applied for leave to intervene in these proceedings in support of the form of order sought by the Commission. By order of 18 March 2010, the President of the Sixth Chamber granted leave to intervene.

13 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Fourth Chamber, to which the present case was accordingly allocated.

14 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to carry out an investigation to establish the infringements of Articles 81 EC and 82 EC by FIGC, CONI, UEFA and FIFA in order to:

  — annul the regulations infringing Articles 81 EC and 82 EC and the sanctions imposed by FIGC, CONI and UEFA on Juventus;

  — order FIGC, CONI, UEFA and FIFA to compensate for the loss actually suffered by the Association as a result of the infringement of Articles 81 EC and 82 EC by those undertakings and associations of undertakings;

  — order all appropriate sanctions.

15 In the reply, the applicant also contends that the Commission should be ordered to pay the costs.

16 The Commission and the intervener contend that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

17 Under Article 111 of the Rules of Procedure, where it is clear that the General Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the General Court may, by reasoned order, without taking further steps in the proceedings, give a decision on the action.

18 In the present case, the General Court considers that it has sufficient information from an examination of the documents before it and decides, on the basis of that article, to give a decision on the present action without opening the oral procedure.

1. *The applicant's claim that a direction be issued to the Commission*

19 By its second head of claim, the applicant asks the Court to order the Commission to carry out an investigation to establish the infringement alleged in order to annul the regulations and sanctions in issue, to order FIGC, CONI, UEFA and FIFA to compensate the loss suffered by the Association and to order all appropriate sanctions.

20 In that regard, the Court recalls that, according to settled case-law, it is not for the Union judicature to issue directions to the institutions when exercising its power to review the legality of their acts. Pursuant to Article 233 EC, it is for the institution whose act has been declared void to take the necessary measures to comply with a judgment given in annulment proceedings (see, to that effect, Case T-224/95 *Tremblay and Others* v *Commission* [1997] ECR II-2215, paragraph 36, and the case-law cited).

21 It follows that the applicant's claim that a direction be issued to the Commission must be rejected as manifestly inadmissible.

2. *The claim for annulment*

22 It must be noted, as the Commission did, that the application does not include pleas in law for annulment of the contested decision. A first section entitled 'Facts' (paragraphs 1 to 27 of the application) is followed by some arguments concerning the Commission's treatment of the complaint (paragraphs 28 to 42 of the application), the Association's legitimate interest (paragraphs 43 to 63 of the application), the admissibility of the action before the Court (paragraphs 64 to 72 of the application) and the temporally restricted nature of the sanctions imposed on Juventus (paragraphs 73 to 76 of the application). The application then includes a very detailed section entitled 'Law', which concerns the infringement of Articles 81 EC and 82 EC by the sporting bodies in issue and which repeats the arguments put forward by the applicant in its complaint against the measures complained of as well as some clarifications provided by the Association in response to the Commission's letter of 29 August 2008 (paragraphs 77 to 368 of the application).

23 At paragraphs 371 to 373 of the application, the applicant summarises its complaints as follows:

— The Commission did not sufficiently take into consideration the factual and legal issues set out in the complaint and, therefore, breached its duty to implement and orient competition policy and its obligation to state reasons;

— however, it is apparent that the measures complained of clearly infringe Articles 81 EC and 82 EC.

24 Since the applicant essentially reproduced the wording of its complaint in its action, it is difficult, as the Commission points out, to identify the pleas in law for annulment put forward against the Commission's reasoning in the contested decision.

25 On the basis of its own understanding of the application, the Commission believed that it was possible for it to deduce, in the defence, the existence of five pleas. The pleas thus identified allege, firstly, breach by the Commission of its obligation to state reasons; secondly, misapplication of the concept of legitimate interest within the meaning of Article 7(2) of Regulation No 1/2003; thirdly, breach by the Commission of its duty to implement and orient competition policy; fourthly, misapplication of the concept of Community interest to the examination of the complaint; and, fifthly, infringement of Articles 81 EC and 82 EC.

26 In the reply, the applicant did not dispute that interpretation of the application and set out its complaints on the basis of the pleas identified by the Commission in its defence.

27 The Commission also noted, in the rejoinder, the existence of a new plea submitted by the applicant in the reply, alleging breach of the principle of sound administration.

28 It must be pointed out that Article 44(1)(c) of the Rules of Procedure of the General Court provides that an application must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. According to settled case-law, that information must be sufficiently clear and precise to enable the defendant to prepare its defence and the General Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and sound administration of justice, it is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (orders in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, paragraph 20, and in Case T-154/98 *Asia Motor France and Others* v *Commission* [1999] ECR II-1703, paragraph 42, and Case T-277/97 *Ismeri Europa* v *Court of Auditors* [1999] ECR II-1825, paragraph 29). Similar requirements are called for where a submission is made in support of a plea in law (see, to that effect, Case T-209/01 *Honeywell* v *Commission* [2005] ECR II-5527, paragraph 55, and the case-law cited).

29 In the present case, the Court takes the view that the application, despite its manifest shortcomings, contains sufficient information for the Commission to adopt a position on the substance and for the Court to exercise its power of review.

30 The action is therefore admissible in that it seeks annulment of the contested decision. It is therefore necessary to examine the applicant's arguments on the basis of the pleas identified by the Commission and which the Court considers as corresponding, in essence, to the tenor of the application.

31 The Court will first examine the fourth plea, alleging misapplication of the concept of Community interest. The applicant's arguments, which can be grouped together in the framework of that plea, seem to be the most substantial. Further, the fourth plea concerns one of the pillars on which the Commission based its reasoning for the rejection of the complaint, the other pillar being the Association's lack of legitimate interest (see paragraphs 7 to 9 of the present order).

32 It must be noted that either of the two pillars alone is a sufficient ground on which to reject the complaint. In those circumstances, if the fourth plea, alleging misapplication of the concept of Community interest, is rejected, examination of the second plea, concerning misapplication by the Commission of the concept of legitimate interest, will no longer be necessary (see, to that effect, Case T-155/04 *SELEX Sistemi Integrati* v *Commission* [2006] ECR II-4797, paragraph 47, and the case-law cited).

The fourth plea, alleging misapplication of the concept of Community interest

33 It is settled case-law that, where the Commission decides upon certain priorities in examining complaints brought before it concerning infringement of Articles 81 EC and 82 EC, it may establish the order in which those complaints are to be examined and refer to the Community interest in a particular case as being a criterion for determining priority (see, to the effect, Case T-24/90 *Automec* v *Commission* [1992] ECR II-2223, paragraphs 83 to 85).

34 In assessing the Community interest in continuing its examination of a case, the Commission must balance the significance of the alleged infringement as regards the functioning of the common market, the probability of its being able to establish the existence of the infringement and the extent of the investigative measures required for it to perform, under the best possible conditions, its task of making sure that Articles 81 EC and 82 EC are complied with (see *Automec* v *Commission*, paragraph 86).

35 Thus, in a situation where intra-Community trade is found to be affected, a complaint relating to infringement of Articles 81 EC and 82 EC will only be investigated by the Commission if there is sufficient Community interest. That can be the position, in particular, where the infringement complained of is capable of giving rise to serious impediments to the proper functioning of the common market (Case C-425/07 P *AEPI* v *Commission* [2009] ECR I-3205, paragraph 54).

36 The review by the Courts of the European Union of the Commission's exercise of the discretion conferred on it for dealing with complaints must not lead them to substitute their assessment of the Community interest for that of the Commission, but focuses on whether the contested decision is based on materially incorrect facts, or is vitiated by an error of law, manifest error of appraisal or misuse of powers (Case T-115/99 *SEP* v *Commission* [2001] ECR II-691, paragraph 34, and Case T-193/02 *Piau* v *Commission* [2005] ECR II-209, paragraph 81).

37 In the present case, the Commission discounted the existence of a Community interest in the pursuance of an investigation on the basis of two considerations.

38 Primarily, the Commission took the view, at paragraphs 41 to 49 of the contested decision, that the conduct complained of did not significantly affect the functioning of the common market, within the meaning of the case-law referred to above, for four reasons, namely, firstly, the limited economic scope of the case and the limited number of consumers affected, secondly, the commencement of proceedings before competent national courts, thirdly, the limited geographic scope of the alleged infringements and fourthly, the cessation of the effects of the alleged infringements.

39 As a secondary point, the Commission took the view, at paragraphs 50 to 56 of the contested decision, that, in any event, the pursuance of an investigation would have required it to conduct an inquiry which would be disproportionate in the light of the low probability of detecting an infringement.

40 The Commission, supported by the intervener, claims that the applicant did not dispute this second part of its reasoning, submitted as a secondary point in the contested decision. According to the Commission, it follows that, even if the applicant's arguments concerning the first part of its

reasoning are valid, that does not suffice to undermine its conclusion concerning the lack of Community interest in the continuation of the investigation. The arguments submitted by the applicant in the context of the fourth plea are therefore ineffective.

41 Such an argument cannot succeed.

42 Even though the applicant has not formally disputed the validity of the Commission's conclusion concerning the disproportionate nature of the inquiry in relation to the low probability of detecting an infringement, it claims, at paragraph 373 of the application, that the measures which are the subject-matter of the complaint clearly infringe Articles 81 EC and 82 EC. At paragraph 146 of the reply, the applicant claims that it provided in its complaint the factual and legal information necessary to facilitate the Commission in its investigations as much as possible. It follows that the application, in particular, its 'Law' section concerning the infringement of Articles 81 EC and 82 EC by the sporting bodies in question, could be interpreted as disputing the Commission's secondary conclusion, at paragraphs 50 to 56 of the contested decision, concerning the disproportionate scope of the inquiry in relation to the low probability of detecting an infringement.

43 Having made that observation, the Court will examine, firstly, whether the Commission's conclusion concerning the lack of a significant effect on the functioning of the common market, submitted as a principal argument at paragraphs 41 to 49 of the contested decision, is based on materially incorrect facts or is vitiated by an error of law, by a manifest error of assessment or by a misuse of powers. If the legality of such a conclusion is not undermined by the applicant, the analysis concerning the Commission's alternative conclusion, referred to in paragraphs 50 to 56 of the contested decision, will no longer be necessary (see, to that effect, *SELEX Sistemi Integrati* v *Commission*, paragraph 47).

44 The applicant points out first, at paragraph 28 of the application, that the Commission found that there was a lack of both Community interest and significant effect on the functioning of the common market on the basis of four arguments (see paragraph 38 above), of which three – alleging, respectively, the limited economic scope of the case, the commencement of proceedings before competent national courts and the cessation of the effects of the alleged infringements – are irrelevant, because they do not concern the issues linked to the affecting of trade between Member States.

45 The applicant then submits, rather sporadically, several arguments in the application which are capable of being regarded as disputing the Commission's reasoning concerning the lack of a significant effect on the functioning of the market. Those arguments include, firstly, the international scope of the case, secondly, the continuing effects of the infringements complained of, thirdly, the insufficiency of the legal remedies at a national level and, fourthly, the economic scope of the case.

The international scope of the case

46 It is necessary to firstly gather the arguments of the applicant which may be linked to the geographic scope of the alleged infringement.

47 In the section of the application entitled 'Law: infringement of Articles 81 [EC] and 82 [EC]', the applicant stresses, in paragraphs 123 to 138 of the application, the international character of the dispute and claims that the measures complained of are not excluded from the prohibition laid down in Articles 81 EC and 82 EC, because they significantly affect the market since the practices have an impact on the whole of Italy (partitioning of the market on an Italian level) and restrict free competition on a European level (the impossibility for Juventus to participate in the Champions League on account of the links between FIGC, CONI, UEFA and FIFA).

48 The applicant also claims, at paragraphs 144 to 158 of the application, that the restrictive effects on competition, which it had complained of to the Commission, result in an appreciable effect on trade between Member States. The same is true for its arguments put forward before the Commission concerning the infringement of the free movement of capital within the meaning of Article 56 EC. In that regard, the applicant explains, at paragraphs 159 to 171 of the application, that the sanctions imposed on Juventus restricted the investments of the club, its shareholders and those people who wished to acquire shares in the capital of the club, which affects trade between Member States. The concept of 'may affect trade between Member States' within the meaning of Article 81 EC and 82 EC should be understood as covering all the restrictive practices liable to endanger the realisation of the Treaty's objectives, irrespective of whether they are capable of restricting trade between Member States.

49 In that regard, as the Commission points out, it must be held that the applicant manifestly confuses the concept of an effect on trade between Member States within the meaning of Articles 81 EC and 82 EC with that of serious impediments to the proper functioning of the market. They are, however, separate concepts, clearly defined by the case-law (*AEPI* v *Commission*, paragraph 49).

50 The concept of affecting trade between Member States, to which the applicant refers, is a condition for the application of Articles 81 EC and 82 EC. Without an effect on intra-Community trade, those provisions are not applicable (see *AEPI* v *Commission*, paragraphs 50 and 51, and the case-law cited).

51 On the other hand, the issue of serious impediments to the proper functioning of the market, to which the Commission refers when it pointed out that the lack of a significant effect on the functioning of the common market at paragraphs 41 to 49 of the contested decision, is a matter within the discretion of the Commission, on the basis of which it may refrain from an examination of a complaint. That concept constitutes one of the criteria for evaluating whether there is sufficient Community interest to in the investigation of a complaint by the Commission. In that context, the Commission is required to assess in each case how serious the alleged interferences with competition are and how persistent their effects. That obligation means in particular that the Commission must take into account the duration and extent of the infringements complained of and their effect on the competition situation in the Union (see *AEPI* v *Commission*, paragraphs 52 and 53, and the case-law cited).

52 As noted in paragraph 35 above, the Commission is entitled to refrain from examining a complaint in the absence of a significant effect on the functioning of the common market, even if the conduct complained of affects trade between Member States within the meaning of Articles 81 EC and 82 EC (*AEPI* v *Commission*, paragraph 54).

53 The applicant's arguments aiming to demonstrate an effect on trade between Member States are therefore ineffective.

54 Finally, even supposing that some of the applicant's pleas could be interpreted as disputing the Commissions assessment regarding the lack of a serious impediment to the proper functioning of the common market, *quod non*, nothing submitted by the applicant is capable of calling in question the soundness of the contested decision on that point.

55 As observed by the Commission in paragraphs 43 to 47 of the contested decision, the impact of the sanction imposed on Juventus on the competitive structure of the football market does not have significant scope: the club continued to play in Serie B and was able to resume its participation in Serie A of the Italian Championship only one year after having been sanctioned and in the Champions League two years after that same sanction. Another Italian club was able to participate in the Champions league, in order to represent Italy, during the 2006/2007 and 2007/2008 seasons. The applicant's arguments concerning, firstly, a possible impact on pricing by football clubs on account of the sanctions imposed on Juventus and, secondly, an alleged risk of tacit collusion between the major

European clubs following the relegation of Juventus to Serie B are not substantiated and do not, therefore, undermine the Commission's conclusion that the measures in issue do not have a significant effect on the functioning of the common market.

56 The applicant's arguments concerning the international scope of the case must, therefore, be rejected as ineffective and, in any event, manifestly lacking any foundation in law.

The cessation of the effects of the alleged infringements

57 The applicant disputes, in particular at paragraphs 73 to 76 of the application, the Commission's conclusion, at paragraph 48 of the contested decision, concerning the lack of Community interest in the pursuance of the inquiry on account of the cessation of the effects of the alleged infringements.

58 The Commission contests the applicant's arguments.

59 In that regard, it must be noted that, according to settled case-law, the Commission is lawfully entitled to decide not to pursue a complaint denouncing practices which were subsequently discontinued provided that it states reasons for its decision (Joined Cases T-133/95 and T-204/95 *IECC* v *Commission* [1998] ECR II-3645, paragraph 146). However, if the Commission wishes to base its reasoning on the fact that the conduct has ceased, it is bound to verify whether the anti-competitive effects are still ongoing and to take account of the seriousness and duration of the infringement in assessing the Community interest in pursuing the complaint (Case T-60/05 *UFEX and Others* v *Commission* [2007] ECR II-3397, paragraph 74). If it complies with those obligations, it may dismiss the complaint even if the infringements are lengthy and very serious, provided that it does not rely on facts that are substantively incorrect or commit a manifest error of assessment (*UFEX and Others* v *Commission*, paragraph 140).

60 In the light of that case-law, the applicant was manifestly wrong to claim that the duration of the alleged infringement and the continuation of its effects were not relevant factors for assessing the Community interest in the pursuance of the investigation.

61 Further, the applicant has not provided any evidence to explain how the anti-competitive effects of the alleged infringements had continued, in the light of the fact that Juventus was able to rapidly resume competing in Serie A of the Italian Championship and the Champions League. Nor has the applicant demonstrated how the financial consequences borne by Juventus could have a lasting influence on pricing by that club and by competing clubs.

62 Finally, contrary to the applicant's claims, the theoretical possibility of the sporting bodies repeating the conduct complained of in the future does not permit the inference that the effects of the measures complained of in the present case persist.

63 It is therefore apparent that the Commission was entitled to conclude that there was a lack of Community interest on the basis of, in particular, the cessation of the effects of the alleged infringements.

64 The applicant's arguments must therefore be rejected as manifestly lacking any foundation in law.

The possibility of commencing proceedings before competent national courts

65 The applicant disputes the Commission's conclusion, at paragraphs 45 and 46 of the contested decision, that the complaint could be rejected particularly because of the possibility of commencing proceedings before national authorities and courts.

66 The Commission, supported by the intervener, disputes the applicant's arguments.

67 In that regard, it must be noted that the fact that a national court or national competition authority is already dealing with a case concerning the compatibility of an agreement or practice with Article 81 EC or 82 EC is a factor which the Commission may take into account in evaluating the extent to which a case displays a Community interest (see Case T-5/93 *Tremblay and Others* v *Commission* [1995] ECR II-185, paragraph 62 and the judgment of 3 July 2007 in Case T–458/04 *Au Lys de France* v *Commission*, not published in the ECR, paragraph 72).

68 In accordance with case-law, where the effects of the infringements alleged in a complaint are essentially confined to the territory of one Member State and where proceedings in respect of those infringements have been brought before the courts and competent administrative authorities of that Member State, the Commission is entitled to reject the complaint for lack of a Community interest, provided however that the rights of the complainant can be adequately safeguarded by the national courts — which presupposes that the latter are in a position to gather the factual information necessary in order to determine whether the practices at issue constitute an infringement (*Automec* v *Commission*, paragraphs 89 to 96, and *Au Lys de France* v *Commission*, paragraph 83).

69 In the present case, contrary to the applicant's claim, the impact of the measures complained of at a European level is not, as noted in paragraph 55 above, of significant importance, as the centre of gravity of the case is in Italy.

70 Furthermore, the applicant provided no evidence that the remedies available under Italian law did not adequately safeguard its rights. On the contrary, it is apparent from the file that the Association supported Juventus in the context of its action brought before the RAC against the decision of the FIGC Federal Court of 25 July 2006, and moreover, brought an action itself before the RAC against the decision of the Conciliation and Arbitration Chamber of CONI of 27 October 2006. The fact that the RAC declared the intervention to be nugatory following the withdrawal of the proceedings by Juventus, and the fact that the Association's action was declared inadmissible pursuant to national law, do not affect the possibility, of which the applicant made use, of commencing proceedings before the national courts (see, to that effect, *Au Lys de France* v *Commission*, paragraph 86). Furthermore, the Association could have brought proceedings before the Italian competition authority, but the applicant did not do so in the present case.

71 In respect of the alleged pressure on Juventus not to exercise its rights of recourse before the national courts, it is important to note, as conceded by the applicant in paragraphs 13 and 364 of the application, that Juventus was not, at any time, deprived of its rights of recourse which it had on a national level to dispute the decisions taken by the appellate bodies of the sporting bodies.

72 Finally, the applicant's arguments that the Italian courts were unable to gather the factual information necessary in order to determine whether the practices at issue constituted an infringement of Articles 81 EC and 82 EC are unsubstantiated. The fact that the applicant is of the opinion that the Commission was better placed to deal with the complaint is only a subjective opinion, which cannot force that institution to pursue the investigation of a complaint as though it fell within its exclusive competence.

73 It must therefore be concluded that the Commission did not err when it held that the commencement of proceedings before national courts was a relevant factor for dismissing the complaint.

74 The applicant's arguments must therefore be rejected as manifestly lacking any foundation in law.

The limited economic scope of the case

75 The applicant disputes, in particular at paragraphs 139 to 143 and 150 to 157 of the application, the Commission's conclusions, at paragraphs 42 to 44 of the contested decision, regarding the limited economic scope of the case.

76 In that regard, it must be noted that the figures provided by the applicant at paragraph 151 of the application, concerning the economic loss suffered by Juventus, were not presented to the Commission before the adoption of the contested decision. It is settled case-law that, in the context of an action for annulment under Article 230 EC, the legality of a measure falls to be assessed on the basis of the elements of fact and of law available to its author when the measure was adopted (see, by example, judgment of 4 March 2009 in Case T-424/05 *Italy* v *Commission*, not published in the ECR, paragraph 169). As pointed out by the Commission, the figures provided by the applicant must therefore be declared manifestly inadmissible.

77 In response to the inadmissibility of that evidence, raised by the Commission in its defence, the applicant claimed, in its reply, that that evidence had already been mentioned in its complaint and that the Commission had breached the principle of good administration, in so far as it had never asked the Association for any further information in that respect and, more generally, on the elements of its complaint which were found to be insufficient in the contested decision.

78 In that regard, it must be borne in mind that, under Article 48(2) of the Rules of Procedure, new pleas in law may not be introduced in the course of the proceedings unless they are based on matters of law or of fact which have come to light in the course of the procedure.

79 It must be noted — as the Commission did — that the argument put forward by the applicant, based on a breach of the principle of good administration, constitutes a new plea in law within the meaning of that article and must therefore be declared inadmissible.

80 The applicant's argument was not put forward in its application and does not relate to the pleas identified by the Commission. As will be stated at paragraphs 100 to 106 below, in the context of the third plea put forward in the application, the applicant merely complained that the Commission had not taken into account the factual and legal issues submitted in the complaint. The application does not, however, contain any criticism regarding the questions that the Commission should have put to the Association concerning, in particular, the economic impact of the sanctions complained of on Juventus.

81 In any event, even if the applicant's arguments relating to the failure to observe the principle of good administration could be declared admissible, *quod non*, the Commission cannot be criticised, in the context of an action against a decision of the Commission rejecting a complaint in a competition matter, for failing to take account of facts which the complainant did not bring to its attention and which could only have been discovered by an investigation (Case T-319/99 *FENIN* v *Commission* [2003] ECR II-357, paragraph 43). Since the Commission's only obligation is to examine the factual and legal particulars brought to its notice by the complainant, it is not, contrary to the applicant's assertions, incumbent on the Commission to prove that it has adopted measures of investigation (Case T-432/05 *EMC Development* v *Commission* [2010] ECR II-1629, paragraphs 58 and 59).

82 Furthermore, it must be held that the economic losses allegedly suffered by a single sanctioned operator do not allow the automatic conclusion that the functioning of the market has been significantly affected and that it is necessary for the Commission to commit its limited resources to the investigation of the alleged infringement.

83 In the present case, the Commission noted, at paragraph 43 of the contested decision, without being challenged by the applicant, that thirty-two clubs participate each year in the Champions League and that another Italian club was able to participate in that competition in place of Juventus. Juventus was able to compete again against the other European teams in the 2008/2009 season. On the basis of those factors, the Commission was able to correctly conclude, at paragraph 44 of the contested decision, that the case had a limited scope and that there was not sufficient Community interest to pursue in-depth investigations.

84 As stated at paragraph 55 above, those concrete findings cannot be called into question by the applicant's general and unsubstantiated claims concerning, firstly, the alleged harm to the global functioning of the football market and, secondly, the possible impact on pricing by the football clubs and the alleged risk of tacit collusion between the big clubs.

85 It follows that the applicant's claims regarding the economic scope of the case must be rejected as being, in part, clearly inadmissible and, in any event, manifestly lacking any foundation in law.

86 In the light of the foregoing, it must be concluded that the Commission was able, correctly, to establish the lack of a significant effect on the functioning of the market and to reject the complaint on that basis.

87 Since the legality of that conclusion, submitted by the Commission as its principal argument, was not called into question by the applicant, there is no longer any need to examine, as stated in paragraph 43 above, whether the Commission wrongly concluded, as its secondary argument, that the continuation of the complaint would have, in any event, required it to commit itself to the conduct of an investigation, the scale of which appeared disproportionate in the light of the low probability of finding an infringement.

88 The fourth plea in law put forward, in essence, by the applicant must therefore be rejected as being, in part, ineffective, in part, manifestly inadmissible and, in part, manifestly lacking in any foundation in law.

89 Since the Commission was able validly to reject the complaint in the absence of Community interest in the continuing of the investigation, it is no longer necessary, as stated in paragraph 32 above, to examine the second plea in law identified by the Commission, alleging a breach of the concept of legitimate interest.

The first plea in law: breach of the obligation to state reasons

90 The applicant claims, at paragraphs 38 to 42 and 372 of the application, that the contested decision states reasons summarily and that it makes no reference to the factual and legal issues which it had put forward during the administrative proceedings. According to the applicant, the Commission's explanations do not enable the parties or the Court to determine how the Commission applied Community competition law in the present case.

91 In its reply, the applicant states that the Commission should have explained the legal and factual reasoning which led it to consider that the impact of the alleged infringements on trade between Member States was insufficient, because such an analysis is a prior condition for the exercise of its discretion as regards the rejection of complaints. The applicant also claims that the Commission did not respond to its argument that the decisions of the sporting bodies went beyond the Italian borders and were ongoing. Finally, the Commission did not explain how its task would have been so disproportionate in relation to the situation at issue.

92 The Commission contests the applicant's arguments.

93 It is apparent from settled case-law that the statement of reasons for an individual decision must be such as, first, to enable the person concerned to ascertain the matters justifying the measure adopted so that he can if necessary defend his rights and verify whether or not the decision is well founded and, secondly, to enable the Courts of the European Union to exercise their power of review (see *Au Lys de France* v *Commission*, paragraph 96, and the case-law cited).

94 In that regard, it must be noted that the Commission, in stating the reasons for the decisions which it takes in order to apply the competition rules, is not obliged to adopt a position on all the arguments relied on by the parties concerned in support of their request; it is sufficient if it sets out the facts and legal considerations having decisive importance in the context of the decision (Case T-387/94 *Asia Motors France and Others* v *Commission* [1996] ECR II-961, paragraph 104, and Case T-111/96 *ITT Promedia* v *Commission* [1998] ECR II-2937, paragraph 131).

95 Concerning, firstly, the applicant's claim that the Commission's explanations do not enable it to be determined how it applied Community competition law, it is important to note that, as stated in paragraphs 7 to 9 and 51 above, the Commission did not rule in the contested decision on the infringement of Articles 81 EC and 82 EC, but, in accordance with the case-law, merely rejected the complaint having, in particular, given reasons for its conclusion as to the lack of impediments to the proper functioning of the common market. The arguments put forward by the applicant alleging that no reasons were stated for the contested decision on that point are intended, in fact, to dispute the Commission's failure to adopt a position concerning the alleged infringement of Articles 81 EC and 82 EC by the sporting bodies in issue.

96 It is clear from the contested decision that the Commission rejected the complaint primarily for the applicant's lack of legitimate interest and, secondarily, for the lack of Community interest.

97 With regard more specifically to the lack of Community interest, the Commission explained in detail the reasons which led it to consider that any impact on trade between Member States was not sufficient and that the effects of the alleged infringements had ceased. The applicant's arguments concerning the Commission's failure to take its arguments in that regard into account seek, in reality, to challenge the validity of the Commission's findings on that point.

98 Concerning the disproportionate character of the investigation in relation to the probability of establishing an infringement, it must be noted that the Commission explained its reasoning in a clear and substantiated manner in paragraphs 50 to 56 of the contested decision.

99 In the light of these considerations, the applicant's first plea in law must be rejected as manifestly lacking any foundation in law.

The third plea in law: breach by the Commission of its duty to implement and orient competition policy

100 The applicant claims, in particular at paragraphs 370 to 372 of the application, that the Commission breached its general duty to implement and orient competition policy by retreating behind its procedural arguments to escape its main obligation, which is to ensure the implementation of Community competition law, and by not taking sufficient account of the factual and legal issues put forward in the complaint.

101 It must be borne in mind, in that regard, that the Commission is under no obligation to initiate procedures to establish possible infringements of Community law and that the rights conferred on complainants do not include the right to obtain a final decision as to the existence or non-existence of the alleged infringement (Case T-204/03, *Haladjian Frères* v *Commission* [2006] ECR II-3779 paragraph 27).

102 The Commission is nevertheless required to consider carefully the factual and legal issues brought to its attention by the complainant (see *Automec* v *Commission*, paragraph 79, and the case-law cited, and Case T-198/98 *Micro Leader* v *Commission* [1999] ECR II-3989, paragraph 27).

103 In the present case, it is apparent from the various exchanges which have taken place between the applicant and the Commission that the latter attentively examined the various legal and factual issues brought to its attention by the Association. The applicant does not dispute the fact that it has had repeated contact with the Commission's services and that those services requested additional information concerning, in particular, its legitimate interest to complain (see paragraph 5 above). It is only after taking cognisance of the information and observations presented by the Association in response to the letter sent in respect of Article 7(1) of Regulation No 773/2004 that the Commission rejected the complaint (see paragraph 6 and 7 above).

104 In the light of the factual and legal issues contained in the complaint, it must be concluded that the Commission carried out a suitable examination of the complaint and that it is not guilty of any breach of its duty to implement and orient competition policy.

105 Finally, the applicant's claims that none of its arguments had been disputed or analysed by the Commission seek, in fact, to challenge the Commission's failure to adopt a position concerning the practices complained of.

106 In those circumstances, the third plea in law must be rejected as manifestly lacking any foundation in law.

The fifth plea: alleging infringement of Articles 81 EC and 82 EC

107 As stated in paragraph 22 above, the application includes a very detailed section entitled 'Law', which concerns the infringement of Articles 81 EC and 82 EC by the sporting bodies in issue and which repeats, in essence, the arguments put forward in the complaint against the measures complained of and in the Association's response to the letter of 29 August 2008.

108 In that regard, it must be noted that the Commission did not rule, in the contested decision, on the alleged infringement of Articles 81 EC and 82 EC by the sporting bodies in issue, but that it merely rejected the complaint on the ground, firstly, that the applicant did not have a legitimate interest (see paragraph 8 above) and, secondly, that there was a lack of Community interest in pursuing the investigation (see paragraph 9 above). The applicant's arguments concerning the infringement of Article 81 EC and 82 EC are therefore ineffective (see, to that effect, *Au Lys de France* v Commission, paragraph 104).

109 However, as stated at paragraph 42 above, it cannot be ruled out that the arguments put forward by the applicant also seek to challenge the Commission's conclusion that the extent of the investigation required was disproportionate in relation to the low probability of detecting an infringement of Articles 81 EC and 82 EC (paragraphs 50 to 56 of the contested decision).

110 An analysis of the applicant's arguments is, however, no longer necessary, since, as stated in paragraphs 86 and 87 above, the Commission was able, correctly, to reject the complaint on the basis of the lack of a significant effect on the functioning of the market (paragraphs 41 to 49 of the contested decision).

111 It follows that the fifth plea in law cannot, therefore, in any event, justify the annulment of the contested decision.

112 In the light of the foregoing, the action must be dismissed in its entirety, since the pleas put forward, in essence, by the applicant are, in part, ineffective, in part, manifestly inadmissible and, in part, manifestly lacking any foundation in law.

Costs

113 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.

114 In accordance with the third subparagraph of Article 87(4) of the Rules of Procedure, the Court may order an intervener to bear his own costs.

115 Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those of the Commission, in accordance with the form of order sought by the Commission.

116 Under the third subparagraph of Article 87(4) of the Rules of Procedure, the intervener must be ordered to bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby orders:

1. **The action is dismissed.**

2. **The Associazione 'Giùlemanidallajuve' shall pay its own costs and those incurred by the European Commission.**

3. **The Fédération internationale de football association (FIFA) shall pay its own costs.**

Luxembourg, 19 March 2012.

E. Coulon
Registrar

I. Pelikánová
President

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