



EUROPEAN COMMISSION

Brussels, 13.12.2002

Cupido Van Den Berg
Cupido Tickets
Linnaeuskade 32
NL-1098 BH Amsterdam

Subject: Case Comp/37.932 – Cupido/Stichting Euro 2000

Complaint by Cupido Tickets, Travelagency Van Gerwen and European Tickets 2000 B.V against UEFA, Euro 2000 and ISL Marketing AG.

Dear Mr Van Den Berg,

I. Introduction

1. I refer to your complaint of 6 June 2000, made pursuant to Article 3(2) of Council Regulation No.17, relating to an alleged violation by the organisers of the 2000 European Football Championships of Articles 81 and 82 of the EC Treaty.
2. On 18 February 2002 Mr. Pons on behalf of Mr. Schaub informed you that the Commission, according to Article 6 of Regulation (EC) 2842/98 of 22 December 1998¹, intended to consider that there were insufficient grounds for granting your application (“the Article 6 letter”).
3. This preliminary conclusion was in particular based on the fact that the Commission qualified the relationship between UEFA and its member associations with respect to ticket sales as a principal/agent relationship. Any limitations imposed by UEFA on its member associations could therefore not be regarded as a restriction of competition for the purposes of Article 81 EC. Furthermore, the Commission considered that neither UEFA nor Euro 2000 or the national associations infringed Article 82 EC by virtue of the behaviour mentioned by the complainant.
4. By letter of 18 April 2002 you submitted a reply to the Article 6 letter. Your reply focuses upon the following claims:

¹ OJ L 354, p. 18 of 30 December 1998

- (1) The complainant has not received any documents produced by UEFA or any other defendants before the Article 6 letter was sent.
 - (2) The complainant claims that the position of the Commission laid down in the Article 6 letter is drastically different from the position it took when issuing a comfort letter for the Euro 2000 ticketing arrangements in June 2000.
 - (3) The relationship between UEFA and its member associations cannot be qualified as an agency agreement.
 - (4) The “closed system” for the sale of tickets did not function properly.
5. Following this letter, the complainant was invited to an informal meeting at the Directorate-General for Competition. At this meeting, which took place on 23 May 2002, the issues raised in the 18 April letter were discussed. The Commission confirmed its position that the complaint does not show any violation of the competition rules of the EC Treaty. It explained again why it came to that conclusion and it stated that no new facts or legal arguments relevant for that assessment were presented in the April 18 letter. The outcome of that meeting was recorded in its letter of 28 May 2002, which is annexed.

II. The complaint and the Article 6 letter

The parties to the complaint

UEFA

6. UEFA is the governing body for football in Europe, consisting of 51 member associations. One of UEFA’s objectives is to organise and conduct international football competitions and international tournaments at European level. It organises a European Football Championship every four years involving the participation of national representative teams from its member associations.

Euro 2000

7. UEFA appointed the Belgian and Dutch national football associations to organise and stage the finals competition of the 2000 European Football Championships. Euro 2000 was subsequently established by those associations as a joint local organising committee responsible, inter alia, for the formulation and implementation of a ticketing system for the finals competition. Euro 2000 was required to seek approval of its proposed ticketing arrangements from UEFA’s Committee for the European Football Championships before putting them into effect. Approval of those arrangements, including those relating to the sale of tickets in combination with hospitality services for the event, was given by UEFA on 10 November 1998² and by the governments of Belgium and the Netherlands on 18 January 1999.
8. In view of the overall control exercised by UEFA over the ticketing arrangements for the 2000 European Football Championships, the Commission considers that the

² Ticketing Strategy Euro 2000, point 1.3.

legal responsibility for those arrangements, to the extent that they have been determined by UEFA, rests with UEFA.

ISL Marketing AG

9. ISL Marketing AG (ISL), having its registered office in Nyon, France, was UEFA's exclusive marketing and licensing partner for the 2000 European Football Championships, and developed a comprehensive marketing programme for the tournament.

Cupido Tickets

10. Cupido Tickets, having its registered office in Amsterdam, purchases and sells entry tickets to major events.

Travelagency Van Gerwen

11. Travelagency Van Gerwen, having its registered office in Veldhoven, the Netherlands, which sells travel and/or accommodation and/or entertainment services.

European Tickets 2000 B.V.

12. European Tickets 2000 BV, having its registered office in Leischendam, the Netherlands, which provides ticket agency services.

The complaint

13. In order to clarify the scope of the complaint, by letter of 11 September 2000 the complainant was requested to clarify the specific factual and legal grounds on which the allegations against ISL were based. The Commission does not consider that the documents submitted on 16 October 2000 as a response to this request were sufficient to clarify that there was indeed a complaint against ISL, on which this undertaking could comment, and which the Commission could assess.
14. The complaint relates to a number of practices concerning the distribution of tickets for the 2000 European Football Championships, which the complainant alleges are in breach of Articles 81 and 82 of the EC Treaty. The rules on the distribution of tickets were set out in the UEFA-approved *Euro 2000 Ticketing Strategy* and *UEFA Ticketing Regulations*³, which inter alia set out certain requirements on member associations (who initially received on average 37% of the tickets to each match). Further requirements are set out in the General Terms and Conditions of sale for Euro 2000 tickets.⁴
15. There are a number of allegations in the complaint: (i) that UEFA required its member associations to sell their allocation of tickets exclusively to their own supporters, thus preventing parallel trade; (ii) that Euro 2000 tied tickets to travel

³ UEFA Ticketing Regulations for member associations qualified for the final tournament and for the local organising committee (LOC) in Belgium/The Netherlands

⁴ Euro 2000 General Terms and Conditions

and accommodation packages, whilst UEFA and Euro 2000 prevented tickets being sold to tour operators; (iii) that Euro 2000 engaged in illegal price-fixing; that (iv) the limitation of two tickets per match per applicant and (v) the non-transferability condition on match tickets (which was applied discriminatorily) are also illegal under EC competition law.

Legal assessment

16. The Commission takes the view that the practices complained of are not in violation of Articles 81 or 82 of the EC Treaty. The complainant has not specified which rules or practices of Euro 2000 violate which articles of the Treaty, hence the Commission has assessed each allegation under the appropriate Article, and where relevant under both Articles 81 and 82.

Article 81

17. Article 81 of the EC Treaty prohibits agreements between undertakings and decisions by associations of undertakings which prevent, restrict or distort competition and which may have an appreciable effect on trade between Member States.
18. Professional football clubs in Europe carry out economic activities and as such are undertakings for the purposes of Article 81. The national associations of which professional football clubs are members can therefore be qualified as associations of undertakings when they act on behalf of, or in the interest of, their members. When the latter is not the case and the national associations have an economic activity of their own, they are undertakings in their own right. The same reasoning applies to UEFA, as an umbrella body whose membership comprises *inter alia* all national associations of EU Member States. Decisions taken and Regulations established by UEFA pertaining to the organisation of the 2000 European Football Championship finals competition are decisions of UEFA acting as an undertaking in its own right.
19. Agency agreements, in which an *agent* is given the power to negotiate and/or conclude contracts on behalf of another person (a *principal*), for the purchase of goods and services by the principal or the sales of goods or services supplied by the principal, fall outside Article 81⁵. With respect to the sale of tickets for the 2000 European Football Championship finals competition, the Commission considers that an agency agreement existed between UEFA as a principal and its member associations, as agents.
20. According to the UEFA regulations relating to the organisation of the European Football Championships, UEFA's Committee for the European Football Championships is vested with the organisation and administrative running of these championships. The entire ticketing system for the final round, including production, prices, distribution and sales, is subject to approval by the Committee.⁶ As mentioned in paragraph 7 above, Euro 2000 was therefore required to seek

⁵ Paragraphs 12 to 20 of the Commission Notice: Guidelines on Vertical Restraints (2000/C 291/01).

⁶ Article 21 of the UEFA regulations relating to the organisation of the European Football Championships.

approval of its proposed ticketing arrangements from the Committee before putting them into effect. The Committee is also responsible for the financial organisation of the final round. In staging the final round, Euro 2000 had to adhere to the financial guidelines laid down in Articles 21 and 22 of the aforementioned regulations and had to submit its accounts for approval by the Committee within 90 days of the completion of the final round.⁷ It is the UEFA Executive Committee that fixes the percentage of the gross revenue from ticket sales to be paid by UEFA to the host associations. That amount is to cover the costs incurred by the host associations in organising the final round of the championships.⁸ UEFA also has the right to exploit the commercial rights to the matches in the final round and it decides on the distribution of the receipts from this exploitation amongst UEFA, the national associations and a pool. For these reasons, the Commission takes the view that the legal and financial responsibility for the ticketing arrangements at issue in this complaint rests with UEFA.

21. The national associations do not bear any risk related to the performance of their contract with UEFA nor any risk related to specific investments made for the purposes of carrying out the activity of selling tickets for UEFA⁹. The complainant has not contradicted the Commission on this point. Inter alia, the associations do not contribute toward the costs relating to the supply or purchase of match tickets, are not obliged to invest in promotional activities relating to the sale of tickets and do not maintain at their own cost or risk stocks of tickets. A competing association can only order the next batch of tickets if it can confirm that the previous batch has been completely sold out. Moreover, to the extent that it is unable to sell its allocated quota of tickets, a qualifying association must return the unsold tickets to UEFA who will give first refusal to the opponent of this association in a particular match, then sell them to the general public.¹⁰ These arrangements reduce to a negligible level the financial risk associations bear in connection with the sale of tickets allocated to them. Associations only bear such a risk if they fail to return unsold tickets to UEFA in accordance with UEFA rules.

⁷ Articles 4 and 6 of these regulations.

⁸ Article 22 of these regulations.

⁹ The Commission considers, therefore, that member associations bear none of the risks or costs set out in its Guidelines on Vertical Restraints, paragraph 16, nor any other such risks or costs.

¹⁰ Ticketing Strategy Euro 2000, point 3.1.1.

(i) Territorial restrictions on ticket sales through national associations

22. The complainant alleges that member associations in countries other than the Netherlands acted contrary to Article 81 when they refused to supply Cupido with tickets for the 2000 European Football Championships because the tickets they had received were intended for distribution to supporters of the country concerned. The Commission notes that the UEFA Safety Instructions¹¹ say that: “*each association or club is responsible for ensuring that its ticket allocation is distributed among its own supporters*”.
23. Pursuant to the paragraphs 19-21 above, it can be concluded that associations act as agents of UEFA insofar as ticket sales are concerned. Consequently, limitations imposed by UEFA on associations regarding the type of consumers with whom they may deal cannot be regarded as a restriction of competition for the purposes of Article 81. This represents instead the straightforward exercise by UEFA, as the bearer of financial risk, of its right to determine the commercial sales strategy adopted by its member associations.

(ii) ‘Tying’ for travel/accommodation packages and ban on sales to tour operators

24. First, the complainant states that national associations outside the Netherlands sold tickets to third parties for further distribution, but the Dutch national association did not do so. The fact that the national associations enjoyed this limited degree of commercial freedom does not prejudice their position as agents. By virtue of the principal/agent relationship between UEFA and its member associations with respect to ticket sales mentioned above, limitations on the customers to whom the member associations, as agents, may sell tickets, fall outside Article 81.
25. Second, the complainant alleges that Euro 2000 breached competition law by refusing to provide tickets to third parties itself. In fact, Article 1(5) of the UEFA Ticketing Regulations makes clear that “*The Local Organising Committee (Euro 2000) will not distribute tickets to tour operators...*”. UEFA’s decision that tickets should not be sold to undertakings wanting to offer ‘transport/accommodation and ticket’ or similar packages to third parties for resale to final consumers is the unilateral decision of UEFA acting as an undertaking, and therefore this decision falls outside the scope of Article 81.

(iii) Pricing restrictions on sales by national associations

26. It is alleged by the complainant that Euro 2000 fixed the price of tickets, making price competition impossible. It is true that Euro 2000 determined the price of tickets, and required the national football associations to sell these tickets at no more than this price plus a fee for handling and administration costs of less than or equal to 10% of the ticket price. Clearly, therefore, there was a limitation on the actions of the national associations when they sold the tickets.
27. Again, by virtue of the principal/agent relationship existing between UEFA and each of its member associations as regards ticket sales (see above), any restrictions

¹¹ Safety and Security in the Stadium for all UEFA Competition Matches. Binding instructions for the prevention of crowd disturbances. Point 1.a of the 1998 edition.

imposed by UEFA on the price at which tickets may be sold by these associations fall outside the scope of Article 81.

Article 82

28. Article 82 of the Treaty states that any abuse of a dominant position shall be incompatible with the common market insofar as it may affect trade between Member States. To determine whether UEFA, Euro 2000, or the national associations were in a dominant position it is first necessary to consider the relevant market in which they operated. The narrowest definition of the relevant market on which UEFA operated would include ticket sales to the 2000 European Football Championships only, that on which Euro 2000 operated would be direct sales by Euro 2000 only, and that on which the national associations operated would be sales of tickets to their supporters after the group draw. However, even if this were so, neither UEFA nor Euro 2000 or the national associations infringe Article 82 by virtue of the behaviour mentioned by the complainant.

(i) Territorial restrictions on ticket sales through national associations

29. As noted above, member associations were effectively obliged by UEFA rules to ensure that their ticket allocation was distributed among their own supporters. However, these rules do not appear to constitute conduct which breaches Article 82, for the reasons described below. In this context, the Commission first notes UEFA's justification for this requirement. UEFA considers *inter alia* that limiting the distribution of tickets by national associations to their own supporters is a measure taken to enhance security.
30. The Commission considers that this is indeed a legitimate aim of ticketing policy. That security has been a problem at some international football matches in the past, and that segregation of spectators from different countries is an appropriate measure to attempt to tackle such problems is uncontroversial, and in any case evident from, for example, the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches¹². Article 3 (4) of this Convention indicates that a very important means to achieve this segregation is ticketing policy, viz. "*The Parties shall seek to ensure, where necessary by introducing appropriate legislation which contains sanctions for non-compliance or by any other appropriate means, that, where outbreaks of violence and misbehaviour by spectators are to be feared, sports organisations and clubs, together with, where appropriate, stadium owners and public authorities, in accordance with responsibilities defined in domestic law, take practical measures at and within stadia to prevent or control such violence or misbehaviour, including:*

...

- (b) to segregate effectively groups of rival supporters, by allocating to groups of visiting supporters, when they are admitted, specific terraces;

¹² Council of Europe European Treaty Series No.120, Strasbourg, 19.VIII.1985, available at <http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=120>

- (c) to ensure this segregation by strictly controlling the sale of tickets and to take particular precautions in the period immediately preceding the match;”
31. In this context, the Council of the European Union has also recognised that “*Ticketing policy should be given practical effect through ticket control in which:*
- *separation of fans is brought about through strict allocation of accommodation (seating) to spectators by means of tickets, so that location in the stadium is determined by the participating team supported by a spectator and/or the nationality of a fan,*
 - *ticketing policy should be designed so that allocation and hence separation of rival fans cannot be bypassed*”¹³
32. With this in mind, the obligation on member associations to ensure that the tickets intended for their supporters are indeed allocated to these supporters is necessary for and proportionate to the security objective mentioned above.

(ii) ‘Tying’ for travel/accommodation packages

33. The complainant also alleges that, whilst not providing tickets to third parties, Euro 2000 itself offered “all-in travel-accommodation-ticket packages”. No evidence is offered in support of this allegation. Moreover, the Ticketing Strategy (section 2) states that “*There should be no linking of tickets to hotel and/or travel arrangements on the part of Euro 2000....*”. Whilst Euro 2000 did provide hospitality packages to official tournament sponsors and suppliers, this cannot be considered equivalent to providing transport/accommodation/ticket packages. The Euro 2000 hospitality packages included premium tickets for the match, entrance to the prestige villa, catering, parking place and a special gift, and not transport or accommodation. Therefore, Euro 2000 was not in a dominant position on any possible market of “all-in-travel-accommodation-ticket packages”.

(iii) Ban on sales to tour operators

34. Even if it were considered that UEFA, Euro 2000 or the national associations were in a dominant position, their refusal to supply tickets to tour operators does not constitute an abuse. Despite the refusal to supply tickets, it would be possible for tour operators to continue to compete with one another for the provision of travel and/or accommodation arrangements to the general public for Euro 2000 matches. Moreover, it has not been shown that tickets to the 2000 European Football Championships are indispensable to the economic activity of ticket agents, tour operators or corporate hospitality providers. The fact that some national associations decided to supply tickets to tour operators, whereas others did not, does not mean that dissimilar conditions were applied to equivalent transactions with other trading parties, putting some tour operators at a competitive disadvantage. Because of the territorial restrictions on the sale of tickets through the national associations, which as noted above are justified for safety/security reasons, tour operators were obliged

¹³ Council Resolution of 21 June 1999 concerning a handbook for international police co-operation and measures to prevent and control violence and disturbance in connection with international football matches (OJ C 193, 24.6.1997, p.1), Chapter 6 (2).

to sell tickets only to the supporters of the team of their own national association. This means that markets for tour packages involving tickets for matches of different countries are separate and national – a tour operator wishing to provide tour packages including tickets for Sweden’s matches would not be in competition with tour packages including tickets for France’s matches, irrespective of the policies of the national football associations in Sweden and France. Hence there could be no discrimination between tour operators of different countries.

(iv) Limit on number of tickets per person

35. The complainant cites the fact that the general public was not permitted to order more than two tickets per Euro 2000 match as a violation of EC competition law. The complainant claims that this restriction was particularly relevant to the general public in the Netherlands. It is unclear how and under what legal construction this rule could constitute an abuse. Article 5.2 of the Euro 2000 General Terms and Conditions applies this condition to all ticket sales. Moreover, the Commission notes that this condition arises from concerns expressed by the Dutch and Belgian governments in order, in their view, to avoid black market sales which could compromise their security arrangements. The Commission also notes that the Council of the European Union also considers that a maximum of two tickets per purchaser is necessary in the interests of public order and safety¹⁴. The Commission considers that this rule is not disproportionate to the legitimate objective of ensuring safety at international football matches.

(v) Non-transferability of tickets

36. The complainants also take the view that the fact that the right of admission on a ticket could not be transferred to a third party (Article 5.8 of the Euro 2000 General Terms and Conditions) was contrary to EC competition law, and furthermore that this restriction was only applied to tickets bought by the general public in Belgium and the Netherlands. As with the rule discussed in the previous paragraph, it is unclear how and under what legal construction this rule could constitute an abuse, even if different systems were used to ensure this non-transferability condition, depending on whether the tickets were distributed directly by Euro 2000 or to national associations, UEFA or sponsors. The Commission also notes that a non-transferability requirement is intimately linked with the limitation of two tickets per person, discussed in the previous paragraph, and is necessary to give that rule effect. Non-transferability is also referred to specifically by the Council of the European Union as necessary in the interests of public order and safety¹⁵. The Commission considers that non-transferability of tickets is proportionate to achieving the legitimate objective of ensuring safety at international football matches.

III. Conclusion of the Article 6 letter and complainant’s reply of 18 April 2002

37. On the basis of the reasons set out in the Article 6 letter, the Commission took the preliminary view that there were insufficient grounds for granting complainant’s

¹⁴ Council Resolution of 21 June 1999, cited above, Chapter 6 (4) 13th sub-paragraph.

¹⁵ Council Resolution of 21 June 1999, cited above, Chapter 6 (2) 2nd and 6th sub –paragraphs.

application. It invited the complainant to submit further comments if he considered it appropriate to do so.

38. The comments in your letter of 18 April 2002 were dealt with in the informal meeting at the Directorate-General for Competition, the outcome of which is recorded in its letter of 28 May 2002, which is annexed. For the sake of completeness, the Commission will again address the claims upon which your reply focuses.

(1) *The complainant has not received any documents produced by UEFA or any other defendants before the Article 6 letter was sent.*

It should be borne in mind that whilst complainants may properly be involved in proceedings, the case law of the European Courts does not confer on complainants the same rights as the incriminated party, and in particular, does not give complainants the right of access to the Commission's file, even after an Article 6 letter.¹⁶ Nevertheless, pursuant to the Commission Notice published on 23 January 1997¹⁷, the Commission gives complainants who have been informed of the Commission's intention to reject their complaints access to the documents on which the Commission based its position. This procedure was followed precisely in this case. The documents mentioned in point 31 of the Article 6 letter and the UEFA notification were indeed sent to you on 18 February 2002, 4 March 2002 and 8 April 2002.

(2) *The position of the Commission laid down in the Article 6 letter is drastically different from the position it took when issuing a comfort letter for the Euro 2000 ticketing arrangements in June 2000.*

During the meeting of 23 May 2002 and in its letter of 28 May 2002 the Commission explained that there has been no change of position by DG Competition as regards the legal assessment of the ticketing arrangements for the Euro 2000 tournament. In June 2000, DG Competition sent UEFA a 'comfort letter' stating that the ticketing arrangements did not appreciably affect competition in the EC, and so that Article 81(1) of the EC Treaty did not apply. DG Competition took this position because there was an agency agreement between UEFA and the National Football Associations. The agency agreement was not mentioned in the 'comfort letter' to UEFA because such letters do not contain the reasoning leading to the conclusion. Now, in DG Competition's letter to Cupido of 18 February 2002, the original reasoning has been included. There is therefore no difference between DG Competition's position in the summer of 2000 and its position in 2002. You have not provided any arguments to rebut the position of the Commission on this point.

¹⁶ Case T-17/93 *Matra-Hachette v. Commission* [1994] ECR II-595, points 34-36; Case T-65/95 *Kish Glass v. Commission* [2000] ECR II-1885, points 32-34.

¹⁷ Commission notice on the internal rules of procedure for processing requests for access to the file in cases under Articles 85 and 86 of the EC-Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 (OJ C23, 23.1.1997, p.3)

- (3) *The relationship between UEFA and its member associations cannot be qualified as an agency agreement.*

During the meeting of 23 May 2002 the Commission explained again why it qualified this relationship as a relationship between principal and agent. The reasons why it came to that conclusion were set out extensively in the Article 6 letter and repeated briefly in the 28 May letter. We refer to paragraphs 19-21 of this decision. The Commission also stated at this meeting and in this letter that no new facts or legal arguments relevant for its assessment were presented in your letter of 18 April. You have not contested this point.

- (4) *The “closed system” for the sale of tickets did not function properly.*

In your letter of 18 April you mention the ruling of the Amsterdam Court of Appeal (Gerechtshof Amsterdam) of 28 June 2001 that found that the closed system for the sale of tickets did not function properly. The right of the complainant to seek damages on this ground is indeed a matter for a national civil court, this does not influence the competition law assessment of the ticketing arrangements under Articles 81 and 82 EC.

IV. Conclusion

39. In conclusion the Commission considers that there are insufficient grounds for acting on your complaint. This conclusion is based on the reasons mentioned above and which can be summarised as follows:
- By virtue of the principal/agent relationship between UEFA and its member associations with respect to ticket sales, any limitations imposed by UEFA on its member associations can not be regarded as a restriction of competition for the purposes of Article 81 EC.
 - Neither UEFA nor Euro 2000 or the national associations infringed Article 82 EC by virtue of the behaviour mentioned by the complainant.
40. For these reasons, I inform you that the final decision of the Commission is to reject your complaint of 6 June 2000 pursuant to Article 3 paragraph 2 of Council Regulation 17 of 6 February 1962.
41. An action challenging this Decision may be brought before the Court of First Instance of the European Communities in accordance with Article 230 of the EC Treaty. Such actions shall not, pursuant to Article 242 of the EC Treaty, have suspensory effect unless the Court otherwise orders.

Done in Brussels,

For the Commission

Franz FISCHLER
Member of the Commission