



EUROPEAN COMMISSION  
Competition

***CASE COMP/39732/BRV / FIA, certain  
Formula One engine manufacturers,  
FIM, Dorna, Honda***

**ANTITRUST PROCEDURE**

**Council Regulation (EC) 1/2003 and  
Commission Regulation (EC) 773/2004**

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Article 7(2) Regulation (EC) 773/2004

Date: 04/08/2011

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EUROPEAN COMMISSION

Brussels, 4.8.2011  
SG-Greffe(2011)D/ 13456  
C(2011) 5734 final

BRV Pty Ltd  
48 Westminster RD  
Gladesville NSW 2111  
Australia

**Subject: Case No 39732 BRV / FIA, certain Formula One engine manufacturers, FIM, Dorna, Honda  
Commission Decision rejecting the complaint  
(Please quote this reference in all correspondence)**

Dear Sir / Madam,

1. I refer to your complaint of 10 September 2009 lodged with the Commission against Fédération Internationale de l'Automobile (FIA), Bayerische Motoren Werke Aktiengesellschaft (BMW), Fiat S.p.a. (Fiat), Ford Motor Company (Ford), Honda Motor Co. Ltd. (Honda), Renault, Toyota Motor Corporation (Toyota), Dorna Sports S.L. (Dorna), and Fédération Internationale de Motocyclisme (FIM) regarding alleged violations of Article 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)<sup>1</sup> in connection with the use of BRV Pty Ltd's (BRV) rotary valves in the Formula One and MotoGP championships. I also refer to your letters of 21 April, 26 May and 23 July 2010 by which you provided additional information/explanations on the above matter.

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<sup>1</sup> With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the TFEU; the two sets of provisions are in substance identical. For the purposes of this letter references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when appropriate.

2. I also refer to the Commission's letter of 22 December 2010 whereby you were informed that pursuant to Article 7(1) of the Commission Regulation (EC) No 773/2004<sup>2</sup>, after careful examination of the factual and legal elements put forward in its complaint, the Commission took the preliminary view that there was no sufficient degree of interest of the European Union in conducting a further investigation into the alleged infringements ("the Article 7(1) letter"). You responded to this letter by email on 25 February (updated version sent on 28 February) and on 1 March (updated version sent on 7 March) 2011 in which you submitted that the preliminary assessment set out in the Article 7(1) letter was incorrect.
3. The Commission has examined in detail your comments on the Article 7(1) letter. However, this examination has not led to a different assessment of the facts underlying the complaint. Therefore, for the reasons set out below, the Commission considers that there is no sufficient degree of European Union interest for conducting a further investigation into the alleged infringement(s) and rejects your complaint pursuant to Article 7(2) of Commission Regulation (EC) 773/2004.

## 1. THE COMPLAINT

### 1.1 *The parties*

4. The complainant is an Australian undertaking with headquarters in Gladesville, Australia. In March 2009, BRV acquired from Bishop Innovation Limited (Bishop Innovation), another Australian undertaking, the assets and intellectual property related to a new rotary valve technology (Bishop Rotary Valve). The technology related to the Bishop Rotary Valves was initially developed by Bishop Innovation.

### *Formula One*

5. The parties targeted by the part of the complaint related to Formula One are the FIA, and six Formula One engine manufacturers (BMW, Ford, Fiat, Honda, Renault and Toyota).
6. The FIA is the governing body for world motor sport. It administers the rules and regulations for all international four-wheel motor sport including the FIA Formula One World Championship, the FIA World Rally Championship and the FIA World Touring Car Championship. It was founded in 1904 with headquarters in Paris, and it is a non-profit making association. It brings together 228 national motoring and sporting organisations from 132 countries on the five continents.
7. BMW, Ford, Fiat, Honda, Renault and Toyota were the ultimate parent companies of the Formula One engine manufacturers (BMW Motorsport for BMW, Cosworth Limited for Ford, Ferrari S.p.A for Fiat, Honda R&D Co. Ltd for Honda, Renault F1 Racing for Renault,

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<sup>2</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24, as amended by Commission Regulation (EC) No 1792/2006, OJ L 362, 20.12.2006, p. 1-66.

and Toyota Motorsport GmbH for Toyota) at the time of the alleged breaches of competition law.

#### *Moto GP*

8. The parties targeted by the part of the complaint related to MotoGP are the FIM, Dorna and Honda.
9. The FIM is the governing body for world motorcycling sport. It runs some 50 world championships and prizes in five disciplines (road racing, motorcross, trial, enduro and track racing). As part of road racing, the FIM runs the Road Racing World Championship Grand Prix, commonly known as MotoGP, the series of races to which the complaint relates. The FIM was founded in 1904, has its headquarters in Mies (Switzerland) and brings together 101 national motorcycle federations throughout the world.
10. Dorna is an undertaking incorporated since 1998 under the laws of Spain. Its headquarters are in Madrid. Dorna, among its other activities, is the current holder of the commercial rights, including audiovisual, advertising, marketing and sponsorship rights of MotoGP.
11. Honda is the ultimate parent company of the MotoGP engine manufacturer Honda R&D Co. Ltd. Honda is also a competitor in all the FIM racing series.

#### *1.2 The facts*

##### *Formula One*

12. In your complaint you submitted that BRV owned the Bishop Rotary Valve. You stated that between 1993 and 2004, Bishop Innovation allegedly worked with the Formula One engine manufacturer Mercedes Ilmor to develop a Formula One racing car equipped with Bishop Rotary Valves instead of the conventionally used poppet valves.
13. As regards the Formula One engine regulations, you submitted that until October 2004, the rotary valve technology was permissible in Formula One and that the engine regulations were free from technical restrictions and encouraged innovation.
14. In your complaint you submitted that on 30 June 2004, following two serious accidents, the FIA issued a safety declaration for Formula One and used special powers derived from this declaration to mandate changes to the engine regulations.
15. You also claim that on 15 September 2004, the Formula One engine manufacturers met in the FIA Formula One Engine Manufacturers Working Group and agreed to seek a change in the Formula One engine regulation that would effectively ban the Bishop Rotary Valve technology.
16. In October 2004, the FIA amended its engine regulations applicable to Formula One, effective from 1 January 2006. Among a series of modifications, the amended regulations required teams to use internal combustion engines with poppet valve technology, thereby

effectively banning the use of Bishop Rotary Valves. You stated that as a result, Bishop Innovation and Mercedes Ilmor were forced to abandon the development of their new car equipped with Bishop Rotary Valves. You also alleged in your complaint that, under the amended engine regulations, no new technology could be introduced to Formula One without the prior approval of a special committee of Formula One engine manufacturers (New Technology Committee).

17. In your submission of 21 April 2010, you further argued that, in 2004, the FIA amended the engine regulations applicable to Formula One to reduce costs, rather than to increase safety.

#### *Moto GP*

18. In your complaint you submit that in July 2004, Bishop Innovation entered into discussions with Honda for the use of rotary valve in motorcycling, resulting in the signature of a confidentiality agreement in December 2004. In your complaint you alleged that, between 2004 and 2007, Bishop Innovation worked with Honda to develop a 250cc four-stroke engine equipped with Bishop Rotary Valves that Honda would have used in the 250cc MotoGP worldwide motorcycle racing series. In February 2007, Honda decided to end the collaboration with Bishop Innovation.
19. As a result of a series of changes to the MotoGP regulations in 2008, the 250cc MotoGP category was renamed to Moto2 and required the exclusive use of 600cc four-stroke engines with conventional poppet valves, thereby effectively banning the use of Bishop Rotary Valves.
20. In April 2009, Moto2 was declared a single engine formula. Subsequently, the FIM and Dorna awarded Honda the contract to supply engines for the purpose of Moto2.

### *1.3 The complaint*

#### *Formula One*

21. You alleged in your complaint that BMW, Fiat, Ford, Honda, Renault and Toyota infringed Article 101 of the TFEU by cooperating in order to have the FIA amend its engine regulations and to ban rotary valve technology, with the objective of eliminating potential competition from cars equipped with Bishop Rotary Valves.
22. You also alleged in your complaint that the FIA, BMW, Fiat, Ford, Honda, Renault and Toyota held a dominant position in the market for Formula One engines and in the market for production cars, and that they infringed Article 102 of the TFEU by banning the rotary valve technology in Formula One. In your submission of 25 February 2011 you argued that these companies held a dominant position collectively.
23. You further alleged that the FIA infringed Article 101 and 102 of the TFEU by setting up a committee of engine manufacturers and delegating to such committee the right to approve any new technology to be introduced to Formula One.

24. In your submission of 23 July 2010, you argued in particular that the competition between engine manufacturers within Formula One does not qualify as sport, and that therefore Articles 101 and 102 of the TFEU should apply to the practices of the FIA, BMW, Fiat, Ford, Honda, Renault and Toyota without any limitations.
25. In your submission of 25 February 2011, you further stressed that the FIA's decision to ban the rotary valve technology in Formula One had no legitimate objective, it was not inherent and not proportionate to a legitimate objective and therefore it violated Article 101 of the TFEU.
26. As new evidence, you referred to the Concorde Agreement<sup>3</sup> which – according to your view – shows that there existed no legitimate objectives for the FIA prior to 2008 that could have justified any change to the engine regulations. You also refer to Appendix 6 of the 2008 Formula One Sporting Regulations (provisions about engine homologation) which – according to your view – establishes that the changes introduced in 2008 eliminated all engine competition.

#### *Moto GP*

27. You alleged in your complaint that Honda, Dorna and the FIM infringed Article 101 of the TFEU by cooperating in order to ban the use of rotary valve technology in MotoGP (later renamed Moto2). You further alleged in your complaint that Honda, Dorna and the FIM held a dominant position in the Moto2 market and in the recreational motorcycle market, and that they infringed Article 102 of the TFEU by banning the use of rotary valves in the Moto2 category.
28. In your submission of 1 March 2011 you further stressed that that FIM's favouring certain technologies and excluding others had no legitimate objective, it was not inherent and not proportionate to a legitimate objective and therefore it violated Article 101 of the TFEU.

## 2. ASSESSMENT

29. According to the settled case law of the Courts of the European Union, the Commission is not required to conduct an investigation in each complaint it receives.<sup>4</sup> The Courts of the European Union have also recognized that the Commission has discretion in its treatment of complaints.<sup>5</sup> In particular, the Commission is entitled to give differing degrees of priority and refer to the European Union interest in order to determine the degree of priority to be applied to the various complaints brought before it.<sup>6</sup> In assessing the European Union interest as

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<sup>3</sup> The Concorde Agreement has been concluded between FIA, all of the Formula One teams and FOA, the latter being designated as the commercial rights holder. The agreement sets out terms for the organisation and running of the FIA Formula One World Championship and the voting structure for its control, by reference to other agreements, contracts, FIA rules and regulations.

<sup>4</sup> See Case T-24/90, *Automec v Commission*, [1992] ECR II-2223, para. 76.

<sup>5</sup> See Cases C-119/97 P, *Ufex v Commission*, [1999] ECR I-1341, para. 88; T-193/02, *Laurent Piau v Commission*, [2005] ECR II-209, paras. 44 and 80.

<sup>6</sup> *Automec, supra*, paras. 77 and 85.

regards the continuation of the investigation of a case, the Commission may in particular balance (i) the significance of the alleged infringement in view of the functioning of the common market, (ii) the probability of establishing the existence of the infringement and (iii) the scope of the investigation required.<sup>7</sup>

30. As regards your complaint, the Commission considers that the further investigation of certain changes to the regulations of the Formula One and MotoGP championships would be disproportionate in light of the limited impact that this conduct has on the functioning of the internal market as well as the complexity of the investigation required and the limited likelihood of establishing proof of an infringement of Articles 101 and/or 102 TFEU.

### *2.1. Limited impact on the functioning of the internal market*

31. The fact that a certain technology developed by one company does not form part of a Formula One race car or a race motorcycle has no, or at best a very limited, impact on the functioning of the internal market and on consumers. Formula One and Moto GP races constitute one possible platform but by no means the only marketing platform for car and motorcycle technologies. You failed to provide any evidence in your complaint which would suggest that the use of Formula One and Moto GP as marketing platforms is of crucial importance for commercializing new technologies outside car and motorcycle racing, or indeed, for using them in other car or motorcycle race series. As a result, even if these specific marketing channels were unavailable for a particular company and its technology, this is unlikely to have any impact on the functioning of the internal market. Since the amendment of the Formula One engine regulation in 2004, there has been no indication that the amendment of the engine regulation had any meaningful impact on Formula One and/or production car or engine markets.
32. Furthermore, the alleged infringements mainly concern the individual rights of legal persons in their relations *inter se* which are normally protected by civil courts, whereas the European Commission as a public enforcement authority must act in the public interest. There is no indication that the alleged infringements form part of a wider pattern or scheme which would affect companies other than the complainant at a large scale and thus would have a significant impact on the functioning of the internal market. In your submission of 25 February 2011 you point out that the alleged behaviour – besides the complainant – had an impact only on a Formula One engine manufacturer, Mercedes Ilmor.<sup>8</sup> You also claim that the alleged behavior might have an effect on companies wanting to introduce new technology in the future. However, these unsubstantiated claims do not provide enough support that the behavior would have a significant impact on the functioning of the internal market.

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<sup>7</sup> *Automec, supra*, para. 86.

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[...]

## ***2.2. Limited likelihood of establishing proof of infringements and disproportionality of further investigation***

33. Further investigation into the matter would be disproportionate in view of the limited impact of the alleged infringements on the functioning of the internal market and the limited likelihood of establishing the proof of the alleged infringements.

### ***2.2.1 Complaint under Article 101 TFEU in relation to Formula One and MotoGP***

34. The amended engine regulation in question constitutes a rule related to the organisation of competitive sport. To determine whether the regulation infringes Article 101 TFEU, the Commission must first assess the overall context in which it was adopted or produces its effect, and, more specifically, of its objectives. The Commission then must consider whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them.<sup>9</sup>
35. According to the FIA, the revised regulations were necessary to make the championship safer, less expensive, and consequently, more attractive to manufacturers, teams, drivers sponsors and fans.<sup>10</sup> The FIA claimed that revised regulations ensured that there are more teams involved in the competition, sporting equality was increased and that the competition is more interesting for the spectators.<sup>11</sup> These claims have not been called into question by your submissions. Rather, some engine manufacturers (BMW, Renault Ferrari and Cosworth) confirmed the cost-saving argument in support of the ban on rotary valve technology.<sup>12</sup> The Commission considers *prima facie* that improving safety, increasing sporting equality, better participation and enhanced spectator experience appear to be genuine and legitimate objectives.<sup>13</sup> The changes introduced in the revised Formula One engine regulation *prima facie* appear to have been inherent in the above objectives<sup>14</sup>, and were proportionate to them.
36. In your submission of 25 February 2011, you claimed that the revised regulations did not pursue legitimate objectives and the restrictive effects on competition were not inherent and proportionate to these objectives. However, you provide no evidence supporting this statement. Contrary to your statement, FIA did claim that the modification of the engine regulations had a legitimate objective.<sup>15</sup> You did not provide evidence that would show the contrary.
37. In your submission of 25 February 2011, you also stated that according to the Concorde Agreement, unless there was an emergency safety issue, the FIA was not entitled to make

<sup>9</sup> See C-519/04 P, *David Meca-Medina*, [2006] ECR I-6991, paragraph 42.

<sup>10</sup> See paragraph 7 of FIA's response, dated 18/01/2010.

<sup>11</sup> See FIA's response, paragraph 41.

<sup>12</sup> See section 328 of your complaint.

<sup>13</sup> According to the European Commission's White Paper on Sport, COM(2007) 391, Annex I: sport and EU competition rules, legitimate objectives of sporting rules may include e.g. ensuring equal chances for all athletes, ensuring the uncertainty of results, the protection of safety of spectators, etc. (see page 68)

<sup>14</sup> The FIA argues that their proposal aimed at reducing engine power output and therefore reducing speed and increase safety, as well as making the championship less expensive. As confirmed by the complainant, the rotary valve technology would allow greatly increased engine power.

<sup>15</sup> See FIA's response, paragraphs 70-75.



changes to the engine regulations, unless the FIA first obtained the unanimous agreements of the teams. This information has been already submitted in your complaint and has been already examined by the Commission. The Commission understands that the FIA shares its rule-making powers with stakeholders and while some procedures apply to 'normal' rule changes, others apply to urgent changes relating to safety. However, when assessing your complaint under competition rules, it is irrelevant which procedure has been applied to adopt the modifications.

38. You also pointed out that your complaint relates not only to the introduction of the ban in 2006 but also to the maintenance of the ban after 2008.<sup>16</sup> You took the view that the Commission examined only superficially this part of your complaint. The Commission has examined this part of your complaint as well. However, the Commission considers that if the introduction of a ban is legitimate and proportionate, the maintenance of such ban will also fulfil the conditions for its lawfulness unless circumstances have changed significantly. There is, however, no evidence for such a change in this case.
39. Concerning MotoGP, the FIM claimed that the objective of the changes to the 250cc MotoGP class were to increase participation of motorcycle racers by reducing costs. In addition, the changes aimed to improve sporting equality among competitors. In particular, the FIM claimed that the number of participants decreased from 31 in 2001 to merely 23 in 2008, whereas the maximum safe number of participants was 41<sup>17</sup>. The FIM informed us that following the changes the annual costs of racing were significantly reduced and that it received approximately 38 entries for the 2010 Moto2 series.<sup>18</sup> The Commission considers that safety, increased sporting equality, better participation and enhanced spectator experience constitute *prima facie* legitimate objectives. You have provided no evidence to the contrary. The Commission considers likely that the FIM's decision to favour certain technologies and thereby to inevitably exclude others from Moto2 was inherent in achieving the above objectives, namely to improve sporting equality and increase participation, and that it was proportionate to them. You failed to provide evidence that would suggest the contrary.
40. In view of the above, the Commission considers that the likelihood of establishing an infringement of Article 101 TFEU is very limited.

#### 2.2.2 *Complaint under Article 102 TFEU in relation to Formula One*

41. You alleged in your complaint that BMW, Fiat, Ford, Honda, Renault and Toyota hold a dominant position in the alleged market for Formula One engines and the alleged market for production cars. In your submission of 25 February 2011 you stressed that you did not allege that these companies were individually dominant. Instead, you claimed that these companies were acting as a group and exerted pressure on the regulator to change or influence the engine regulations to their advantage.

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<sup>16</sup> You refer to paragraph 117 of your complaint

<sup>17</sup> See FIM's response (dated 16/12/2009), paragraphs 39.

<sup>18</sup> See FIM's response (dated 16/12/2009), paragraphs 39 and 69.

42. In the Commission's view there is insufficient information to determine whether the alleged market for Formula One engines constitutes a distinct product market. In particular, the Commission has insufficient information as to the extent to which other single seat car engines are interchangeable with Formula One engines from the supply side. In your submission of 25 February 2011 you pointed out that there are other single seat car races, similar to Formula One, such as the IndyCar series. However, it is not clear whether the manufacturers supplying engines for these races could supply engines for Formula One.
43. Irrespective of the question of market definition, there is no indication that BMW, Fiat, Ford, Honda, Renault and Toyota would have collective dominance either in a hypothetical Formula One engines market, or in a potentially wider single seat race car engines market.<sup>19</sup> Moreover, there is no evidence suggesting that BMW, Fiat, Ford, Honda, Renault and Toyota would hold a collective dominant position in the alleged market for the production of cars. In addition, you did not provide evidence how these companies acting collectively exerted pressure on the FIA. As sport governing bodies typically consult stakeholders when changing rules, this fact in itself does not show that these companies exerted pressure on the FIA.
44. The Commission received no information from you indicating any economic links or factors giving rise to a connection between BMW, Fiat, Ford, Honda, Renault and Toyota in the EEA passenger car market, or in any segments thereof. But for the fact that BMW, Fiat, Ford, Honda, Renault and Toyota are bound by the FIA rules applicable to Formula One and are consulted by FIA before it makes certain changes to such rules, you show no economic links or other factors giving rise to a connection between them.<sup>20</sup> In addition, there is no evidence indicating that the *Airtours* criteria<sup>21</sup> could be met.
45. In your submission of 25 February 2011 you explained that in your view FIA is dominant in the alleged Formula One engine market, since it is the sole organizer of Formula One sport events. You point out that although FIA is not itself an economic operator in the market (it does not manufacture or supply engines) its dominance stems from its rule-making activity. In earlier cases<sup>22</sup> the Commission considered that the FIA - the sole regulatory body of international motor racing in Europe - holds a significant market power in the market for the provision of organizational services in relation to cross-border motor sport series within the

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<sup>19</sup> According to the case law of the Court of the European Union, three conditions ("*Airtours* criteria") should be satisfied in order to find collective dominant position: (i) the undertakings must be able to reach terms of collusion with relative ease; (ii) it must be possible for the undertakings to monitor deviations from these terms and to deter such deviation or retaliate effectively; (iii) it must be impossible for the reactions of other competitors or potential competitors to jeopardize the effectiveness of tacit collusion (Case T-342/99, *Airtours plc v Commission*, 6 June 2002; [2002] ECR II-2585). See also Case C-413/06 P *Bertelsmann AG and Sony Corporation of America v. Independent Music Publishers and Labels Association (Impala)*, *Sony BMG Music Entertainment BV*, [2008] ECR I-4951, para. 119 et seq.

<sup>20</sup> In your submission of 25 February 2011 you alleged that some of the companies are shareholders of GPWC Holding B.V., a company that intended to start its own World Championship. However, you do not explain how this would support your claim that these companies would have collective dominance in the alleged Formula One engines market or in the alleged passenger car market.

<sup>21</sup> See above in footnote 19.

<sup>22</sup> FIA (COMP/35163), FIA +FOA (COMP/36638) and GTR/FIA et autres+5 (COMP/36.776)

EU. Due to its market power in this market, FIA could influence competitive conditions in the alleged Formula One engine market and therefore FIA's behavior might be examined under Article 102 of the Treaty. However, the Commission takes the view that it is unnecessary to determine whether the alleged Formula One engines market exists, and whether BMW, Fiat, Ford, Honda, Renault, Toyota hold a collective and/or the FIA holds an individual dominant position in such market, because, in any event, the changes made by the FIA to the Formula One engine regulations are highly unlikely to infringe Article 102.

46. The Commission considers that the principles expressed by the European Court of Justice for determining whether Article 101 applies to a sporting rule are also relevant when determining whether a sporting rule constitutes an abuse under Article 102.<sup>23</sup> Therefore, to determine whether the incriminated changes to the engine regulations constituted an abuse within the meaning of Article 102, the Commission would first assess the overall context in which the regulation was changed or produces its effect and, more specifically, its objectives. The Commission then would consider whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them.<sup>24</sup>
47. If a rule fulfils the above-referenced criteria it does not constitute a violation of EU competition law, whether Article 101 or 102 TFEU. As discussed above the Commission considers *prima facie* that the objectives of improving safety and spectator experience are legitimate, and the possible restrictions resulting from these objectives are inherent and proportionate to them. As a result, the Commission sees a very limited likelihood to establish that any of the parties infringed Article 102 TFEU, irrespective of whether they are dominant on any of the alleged markets.

### 2.2.3 Complaint under Article 102 TFEU in relation to MotoGP

48. You alleged in your complaint that Honda, Dorna and the FIM held a dominant position in an alleged MotoGP market for engines and in an alleged recreational motorcycle market. You did not make such a claim vis-à-vis other companies.
49. You did not specify the boundaries of the MotoGP market for engines. You suggested that the market should only include the engines supplied by motorcycle manufacturers to the teams of the 250cc MotoGP class championship (and subsequently, to the Moto2 championship). However, manufacturers supply racing engines to many international, regional and national motorcycling championships. You provided no evidence as to why the engines of the 250cc MotoGP class and the Moto2 class are so peculiar that they are not interchangeable from a supply perspective with the engines supplied to other race classes of MotoGP, or indeed, with the engines of certain other motorcycle championships. In the Commission's view, it appears unlikely that there is a distinct market for supplying engines for Moto GP and therefore that Honda holds a dominant position in this market.

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<sup>23</sup> See the European Commission's White Paper on Sport, COM(2007) 391, Annex 1 : sport and EU competition rules, page 65.

<sup>24</sup> See paragraph 30, above, and C-519/04 P, *David Meca-Medina*, [2006] ECR I-6991, paragraph 42.

50. You alleged in your complaint that Honda holds a 24% market share of the alleged recreational motorcycle market.<sup>25</sup> The Commission's preliminary investigation did not confirm whether such market exists. However, the Commission generally takes the view that a company is unlikely to be dominant if its market share on the relevant market is below 40%.<sup>26</sup> Therefore, even if the alleged recreational motorcycle market existed, Honda would be unlikely to be dominant on such a market. Your complaint did not contain any further information suggesting that Honda may be dominant despite its low market share.
51. The FIM and Dorna are not active in supplying engines or motorcycles. Instead, the FIM is organizing, promoting, licensing and sanctioning motorcycle race championships, and it is active in all matters in relation to all types of motorcycle activities. Dorna is the sole promoter of the MotoGP World Championship series. Therefore, the Commission takes the view that they are not dominant in the alleged recreational motorcycles markets. The FIM is the sole international authority empowered to control international motorcycling sport events organised under its jurisdiction and by its regulatory powers it may influence competitive conditions in the alleged MotoGP market for engines. However, the Commission considers that it is not necessary to determine whether FIM holds a dominant position in the alleged market for MotoGP market for engines, because, in any event, the changes made by FIM to the engine regulations are highly unlikely to infringe Article 102.
52. The Meca Medina principles regarding organisational sporting rules established for Article 101 TFEU equally apply to Article 102 TFEU. If a rule fulfils the above-referenced criteria it does not constitute a violation of EU competition law, whether Article 101 or 102 TFEU. As described above, the Commission considers that *prima facie* increasing participation and improving sporting equality seem legitimate objectives and the changes referred to in the complaint seem likely to be inherent in these objectives and proportionate to them. As a result, the Commission sees a very limited likelihood to establish that any of the parties infringed Article 102, irrespective of whether Honda, FIM or Dorna are dominant in any of the alleged markets.
53. Your submission of 1 March 2011 does not contain new evidence on the market definition and on the alleged dominant position of the incriminated parties. On the basis of the information available, the Commission therefore concludes that there is a very limited likelihood of establishing an infringement and that, also because of the limited impact of the alleged infringement on the functioning of the internal market, further investigations would be disproportionate.

### 3. CONCLUSION

54. In view of the above considerations, the Commission has come to the conclusion that the information contained in the submissions made by the complainant in response to the Article 7(1) letter have not led to a different assessment of the complaint and maintains that there is

<sup>25</sup> See page 304, Appendix 24 of your complaint.

<sup>26</sup> See Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, Official Journal C 45/7, 24.02.2009, paragraph 14.

no sufficient degree of European Union interest for conducting further investigation into the alleged infringements and consequently rejects the complaint on the basis of Article 7(2) of Commission Regulation (EC) No 773/2004.

#### **4. PROCEDURE**

55. An action challenging this Decision may be brought before the General Court of the European Union in accordance with Article 263 of the Treaty.

*For the Commission*

*Johannes HAHN  
Member of the Commission*