



EUROPEAN COMMISSION  
Competition

*CASE AT.39899 Licensing of IPRs for  
football collectibles*

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

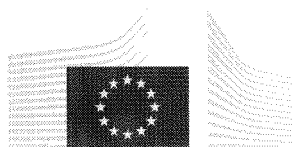
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Article 7(2) Regulation (EC) 773/2004

Date: 15/07/2014

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## EUROPEAN COMMISSION

Brussels, 15.7.2014  
SG-Greffe (2014) D/10137  
C(2014) 5123 final

PUBLIC VERSION

**Topps Europe Limited**  
**18 Vincent Avenue**  
**Crownhill Business Centre**  
**Milton Keynes**  
**MK8 OAW**  
**United Kingdom**

**Subject: Case AT.39899 – Licensing of intellectual property rights for football collectibles**  
**Commission Decision rejecting the complaint**  
**(Please quote this reference in all correspondence)**

Dear Sir,

(1) I am writing to inform you that the European Commission (the "Commission") has decided, pursuant to Article 7(2) of the Commission Regulation (EC) 773/2004<sup>1</sup>, to reject your complaint against Panini S.p.A. ("Panini"), Union des Associations Européennes de Football ("UEFA"), Fédération Internationale de Football Association ("FIFA"), Fédération Française de Football (the "FFF"); Associazione Italiana Calciatori (the "AIC"); Real Federación Española de Fútbol (the "RFEF"); and Deutscher Fußball-Bund (the "DFB") (collectively the "Targeted Parties").

### **1. THE COMPLAINT AND FURTHER SUBMISSIONS**

(2) Topps Europe Limited ("Topps") is a limited company registered in England and Wales and active in the marketing and sale of a range of collectible products across Europe. In relation to football tournaments, Topps produces official FA Premier League, England FA and Bundesliga football collections.

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<sup>1</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.

- (3) On 28 March 2011, you filed a complaint against Panini, an Italian joint stock company active *inter alia* in the production and marketing of football collectibles, UEFA, FIFA and various football federations in connection with the licensing and acquisition of various intellectual property rights ("IPRs") for the purpose of producing collectibles<sup>2</sup> relating to national and international football tournaments. In your complaint you alleged that a number of national football governing bodies and players' associations together with Panini had breached Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU").
- (4) On 14 June 2011, you filed a further submission, narrowing the scope of the original complaint to the Targeted Parties and focussing your complaint solely on the acquisition of rights required to produce collectibles relating to the main international football tournaments, namely the FIFA World Cup (World Cup) and the UEFA European Football Championship (EURO).
- (5) With regard to Article 101 TFEU, you argue that:
- Firstly, the Targeted Parties entered into long-term exclusive agreements both in collective and individual selling of rights<sup>3</sup>, by means of which an exclusive licence for the production of official World Cup and UEFA collections would have been granted to Panini resulting in the total market foreclosure of these two markets. You also claim that the duration of such exclusive licences has prevented other companies from producing an official tournament collection.
  - Secondly, the wide scope of the licences whereby the right holders grant licence to many varied collectible products together (stickers and trading cards) is anti-competitive.
  - Thirdly, the tender process for granting such licences has been discriminatory and not conducted in an open, transparent, fair and non-discriminatory manner.
  - Finally, you argue that Panini has been imposing wide-ranging exclusive purchasing obligations on its own distributors and also on those distributors' downstream customers thereby preventing the latter from stocking other unofficial football collectibles.
- (6) With regard to Article 102 TFEU, you claim that UEFA, FIFA and the national football federations, which hold IPRs indispensable to create World Cup and EURO football collectibles collections, infringed Article 102 TFEU by:
- having consistently discriminated against Topps in favour of Panini by refusing to accept any form of a bid by Topps and/or treating it differently and unfairly when it was permitted to make an offer. As a result, Panini holds a dominant position on the market for collectibles for the World Cup and the EURO.

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<sup>2</sup> Collectibles are items like stickers, trading cards and models/figurines. For the sake of simplicity, as this case only concerns stickers and trading cards, this letter uses the term "collectibles" to refer to stickers and trading cards, unless expressly stated otherwise.

<sup>3</sup> Collective selling takes place when the right holders entrust an entity (association) to sell their rights on their behalf (e.g. a football association sells the rights of clubs on behalf of clubs).

- refusing to supply (license) the IPRs at issue to Topps.
- (7) You also claim that Panini has been charging excessive prices for football collectibles and therefore has caused consumer harm. In addition, you claim that Panini has been imposing wide-ranging exclusive purchasing obligations on its own distributors and also on those distributors' downstream customers thereby preventing the latter from stocking other unofficial football collectibles in breach of Article 102 TFEU.
  - (8) On 4 July 2011, the Commission sent a non-confidential version of the complaint to the Targeted Parties. The Commission issued a request for information under Article 18 of Regulation No. 1/2003 on 5 July 2011 to Panini, UEFA and FIFA, and on 8 July 2011 to AIC, FFF, RFEF and DFB. The Targeted Parties submitted their comments and their replies to the requests for information in November 2011. You made additional written submissions to the Commission by letters of 18 October 2011 and 8 February 2012.
  - (9) On 16 May 2012, the Commission asked for further information and you replied to that request on 6 June 2012. On 16 May 2012, the Commission also asked for further information from Panini, AIC and UEFA and their responses were received in the course of June 2012.
  - (10) On 28 September 2012, you provided the Commission with what you considered to be an update of the state of play in relation to on-going discussion between Topps and the national football associations. More particularly, you referred therein to negotiations between the [...] for the licensing of [...] rights for national league collectibles. In subsequent letters addressed to the Commission on 21 and 28 February 2013, you commented again on those negotiations. In those letters you admitted that in view of your initial submissions such negotiations would have an effect on an additional market not included within the scope of your complaint.
  - (11) By letter of 26 March 2013 ("the Article 7 (1) letter"), the Commission informed you of its intent to reject your complaint. In response, you made additional observations in your letter of 25 April 2013 ("the Reply"), stating that you did not agree with the Commission's assessment. In your view, a separate downstream market should be defined for the EURO and World Cup collectibles, and as to the upstream market, the Commission should have concluded that the rights are indispensable for market entry. Furthermore, you argue that the Commission failed to identify that the Targeted Parties discriminated against you and that their behaviour amounts to a refusal to supply. You take issue with the four-year duration of the contracts and claim that the Targeted Parties' described practices have led "de facto" to periods of long term exclusivity. You also argue that the Commission did not address your claims concerning Panini's exclusive purchase agreements and asked the Commission to reconsider its position.
  - (12) On 14 June 2013, the Commission sent a request for information to Panini to obtain its views concerning the exclusive purchasing agreements. On 1 July 2013, Panini provided answer to the request for information. On 16 August 2013, the Commission sent requests for information to some of Panini's importers concerning the alleged exclusive purchasing agreements. Panini's importers provided their answers on 4 September 2013.

- (13) On 11 July 2013, you provided further comments on the Article 7(1) letter. On 3 September 2013, and with your consent, the Commission sent Panini a non-confidential version of your submission of 11 July 2013. Panini submitted its comments on 26 September 2013.
- (14) On 27 September 2013, the Commission sent you a supplementary Article 7(1) letter regarding exclusively the infringement of Articles 101 and 102 TFEU which could result from the alleged exclusive purchase obligations imposed by Panini.
- (15) On 29 October 2013, you submitted comments on the supplementary Article 7(1) letter. On 4 December 2013, you commented on the responses of the RFEF and the FFF to the Commission's request for information. On 16 December 2013, you provided us with a copy of your letter to [...]. On 15 January 2014 Panini submitted additional information. On 21 March 2014, you submitted an additional letter, providing an update about the tender processes of [...].

## 2. ASSESSMENT

### 2.1. Priority setting and introductory remarks

- (16) The Commission is unable to pursue every alleged infringement of EU competition law which is brought to its attention and, according to the settled case law of the EU courts, it is not required to conduct an investigation of each complaint it receives<sup>4</sup>. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints.<sup>5</sup>
- (17) The EU courts have also recognized that the Commission has discretion in its treatment of complaints.<sup>6</sup> In particular, the Commission is entitled to give differing degrees of priority and refer to the EU interest in order to determine the degree of priority to be applied to the complaints brought before it.
- (18) When deciding which cases to pursue, the Commission takes various factors into account depending on the circumstances of each individual case. The EU courts have recognised that the number of criteria of assessment to which the Commission may refer is not limited, nor is the Commission required to have recourse exclusively to certain criteria. Where appropriate, the Commission may give priority to a single criterion for assessing the EU interest.<sup>7</sup>
- (19) In this regard, the Commission may take into consideration whether, on the basis of the information available, it seems likely that further investigation will ultimately result in

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<sup>4</sup> See case T-24/90, *Automec v Commission*, [1992] ECR II-223, para. 76

<sup>5</sup> OJ C 101, 27.04.2004, p. 65. See also the Commission's Report on Competition Policy 2005, p. 25-27.

<sup>6</sup> See cases C-119/97 P, *Ufex v Commission*, [1999] ECR I-1341, para. 88; T-193/02, *Laurent Piau v Commission*, paras. 44 and 80

<sup>7</sup> See Case C-450/98 P, *International Express Carriers Conference (IECC) c Commission*, [2001] ECR I-3947, paras 57-59.

the finding of an infringement. The Commission may also examine the scope of the investigation required. If it emerges that an in-depth investigation would be a complex and time-consuming matter and the likelihood of establishing an infringement appears limited, this will weigh against further action by the Commission.

- (20) In the present case, the Commission has undertaken an investigation of the Complaint, the results of which are set out further. It must be stressed that the *prima facie* assessment of the Complaint and your further submissions has not provided any convincing information on the basis of which it would be possible to conclude at this stage that there are likely infringements of competition law. It also seems unlikely that such infringements would be found after devoting additional investigatory resources. Further investigation therefore appears to be disproportionate.

## **2.2 The likelihood of establishing the existence of an infringement**

- (21) As aforesaid, the likelihood of establishing the existence of an infringement of Article 101 and/or 102 TFEU in this case appears limited.

### *2.2.1 Alleged violations of Article 101 TFEU*

- (22) The complaint raises several alleged breaches of Article 101 TFEU.
- (23) Firstly, you argue that the Targeted Parties entered into long-term exclusive agreements and therefore prevented entry in the relevant market. However, this allegation has not been confirmed by our preliminary investigation. The duration of the licensing agreements does not *prima facie* appear to be unreasonably long (typically they cover only one tournament, with some exceptions). With particular regard to the FIFA agreements, whose duration exceeds [...] years, the Commission cannot exclude that there may be legitimate business reasons for FIFA to have contracts with longer duration, especially since each renewal requires FIFA to deal with a large number of applicants globally.
- (24) In your Reply, you explain that even if the Targeted Parties' agreements are for 4 years (i.e. for one tournament played every 4 years), the practices of the Targeted Parties have led "de facto" to long-term exclusivity periods. More particularly, as regards the contract concluded between FIFA and Panini, which is longer than [...] years, you consider its length to be in contradiction with the Commission's position in the broadcasting markets. You presumably refer to the Commission's decisions concerning the collective selling of media rights regarding Champions League, the FA Premier League and Bundesliga<sup>8</sup>. However, you do not explain in detail how and to what extent the Commission's findings about the collective selling of football broadcasting rights would be relevant for the collectibles market. It must be noted that there are important differences in the market for the sale of media rights for football and the licensing of collectibles, in terms of characteristics of the market, entry barriers, the value of rights etc. Therefore, it seems unlikely that the findings of the Commission regarding the collective selling of football broadcasting rights could be automatically transferred to the collectibles market.

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<sup>8</sup> Case 37398, UEFA Champions league of 23 July 2003, OJ 2003 L 291/25 - Case 37214, Bundesliga of 19 January 2005, OJ 2005 L 134/46 – Case 38173, FA Premier League of 22 March 2006, OJ 2008 C 7/18.

- (25) On the basis of the above, it does not seem likely that the duration of the agreements as such will necessarily foreclose Panini's competitors in an anti-competitive manner.
- (26) Secondly, you also allege that the broad scope of the licences, which include the joint exploitation of varied collectible products, in particular stickers and trading cards, is anti-competitive.
- (27) It appears from the information provided by you and by the Targeted Parties that the described practice – i.e. rights holders selling rights for different kinds of collectibles together - seems to be the standard commercial practice (e.g. the FA English Premier League also licenses rights to cards and stickers together<sup>9</sup>). Further, IPRs licenses for trading cards and stickers both serve the same purpose of creating collectibles, which are eventually made by the same producers.
- (28) Furthermore, from the available evidence it seems rather unlikely that the joint selling of IPRs for the production of cards and stickers could be deemed anticompetitive. On the one hand, selling such specific rights in a single tendering procedure rather than in two separate procedures may be advantageous for the IPR holders, since it is more efficient in terms of cost and time, as compared to their value. On the other hand, as said above, producers of collectibles (including Topps) usually produce both stickers and cards. Moreover, it must be noted that other producers have also had the possibility of participating in the tender organised by the Targeted Parties.
- (29) Moreover, the fact that cards and stickers may form part of the same product market<sup>10</sup>, as will be examined below, weighs against the joint selling of those products being an anti-competitive strategy.
- (30) Thirdly, you claim that UEFA, FIFA and the targeted national football federations have been selling rights without a transparent, objective tender. However, this claim appears *prima facie* not sufficiently substantiated by your complaint. It seems that several associations (e.g. UEFA, DFB) sent calls for tender to the potentially interested undertakings, including you. We also noted that some of the associations (e.g. AIC) granted you rights for other types of collectibles.<sup>11</sup> On the basis of the information provided, including various tender processes and solutions, it does not seem likely that Article 101 TFEU would be automatically triggered by the absence of a large scale tender procedure.
- (31) Fourthly, you also argue that Panini, in breach of Article 101 TFEU, has been imposing wide-ranging exclusive purchasing obligations on its own distributors and also on those distributors' downstream customers thereby preventing the latter from stocking other unofficial football collectibles. In support of your statement, you provided the Commission, as Annex 10 Q.1 to your Complaint, with an unsigned letter on Panini's letterhead concerning the distribution of World Cup collectibles in Cyprus. In your Reply

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<sup>9</sup> Topps's predecessor, Merlin Publishing, won the Premier League rights in 1993.

<sup>10</sup> In this context it must be noted that stickers and cards are intended for the same consumers, launched at the same time, packaged in a similar manner and sold in the same outlets.

<sup>11</sup> E.g. football pocket collection (mini stickers), chips (small plastic disks).

you regretted that the Commission did not allegedly address your claims concerning Panini's exclusive purchase agreements and asked the Commission to reconsider its position.

- (32) The Commission examined Annex 10 Q.1 (as well as the explanations and evidence submitted by Panini and the responses given by Panini's importers). Panini explained that the letter was merely a draft which was sent to Panini's importer in Cyprus for discussion. Panini attached the cover email (Annex 1 to Panini's submission of 1 July 2013) and also the final signed version of this letter sent by Panini's importer, PATHIN Imports Exports, to its commercial partners (Annex 2 to Panini's submission). This final letter did not impose exclusive purchasing obligations on the wholesale distributors or retailers in Cyprus and was understood by PATHIN as not imposing such obligations. In the light of the above, the Commission considers that Panini's explanation that the letter in Annex 10 Q.1 of your complaint is a draft seems to be plausible. The cover email also indicated the main aim of that letter was to fight piracy.
- (33) Moreover, according to the information provided by Panini on its distribution system, any exclusivity arrangements are limited to the first level of distribution, involving Panini and its wholly-owned subsidiary or its national importer. There is no exclusivity at the wholesale or retail level. In addition, the Commission contacted some of Panini's importers<sup>12</sup> who confirmed that they do not impose exclusivity on their commercial partners by requiring them to purchase and market Panini's collectibles with exclusion of collectibles from other producers. Therefore, Panini's competitors have alternative channels to distribute their products, since wholesalers can market other producer's collectibles as well.<sup>13</sup> Earlier information also indicated that there were competing products at the points of sales and there was no indication that Panini's competitors are foreclosed at retail level<sup>14</sup>.
- (34) The Commission has also examined the additional information provided by you in your letters of 11 July and 29 October 2013 whereby you maintain that there are exclusivity arrangements in place which foreclose Panini's competitors from the distribution chain. However, you do not explain why the Commission should disregard the evidence collected from Panini's importers which indicates the absence of exclusivity arrangements at the downstream level. The evidence from Panini's importers does not indicate either that there is insufficient competition at the downstream level of trade due to exclusivity arrangements at the national importer level.
- (35) In view of the above, the Commission considers that there is a limited likelihood of establishing an infringement of Article 101 TFEU.

### *2.2.2 Alleged violations of Article 102 TFEU*

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<sup>12</sup> Notably in [...].

<sup>13</sup> For example, we understand that Topps has regional 'concessionari' in Italy with a network of wholesale and retail outlets (See Annex P.1. of the complaint, presentation by Topps "Euro 2008: Time for a change").

<sup>14</sup> E.g. the presentation to UEFA by TOPPS "Euro 2008: Time for a Change" (Annex P.1. of the complaint) shows that Topps reaches a very large number of points of sales throughout Europe.



- (36) In your Complaint you claim that the targeted football federations have breached Article 102 TFEU by (i) discriminating against Topps in favour of Panini by refusing to accept any form of bid by Topps and/or treating it differently and unfairly when it is permitted to make an offer, and (ii) refusing to license IPRs. You also claim that Panini violated Article 102 TFEU by (iii) applying excessive prices and (iv) imposing exclusive purchasing obligations on its own distributors.

#### 2.2.2.1 Relevant market

- (37) In your Reply, you allege that the Commission's market definition is flawed, since it artificially widens the downstream market. You contend that the supply of IPRs required for producing a collection for each national or international tournament, or each national football team, constitute distinct product markets. In this case, there would be two separate product markets, one for World Cup collectibles sold to children aged approximately 6 to 14 and another one for EURO collectibles sold to children aged approximately 6 to 14.
- (38) However, at this stage, in the light of the information provided in your complaint and of the Targeted Parties' submissions, the Commission takes the view that the relevant downstream market should not necessarily be defined in such a narrow way (i.e. two separate markets for collectibles for each football tournament, e.g. the World Cup and the EURO). Furthermore, the data provided to the Commission by Panini seems to indicate that there may be a degree of substitutability between different types of football collectibles in a given year (possibly depending on the performance of the national team).
- (39) Not only is there likely substitutability among different football-themed collectibles, but there may also be even broader substitutability among sport-themed collectibles and other collectibles. In the *Pokémon* case (case COMP/C-3/37.980 *Souris – Topps*) the Commission indicated that the relevant product market could be the market for collectibles sold (as such or in combination with candies) to children aged approximately 6 to 14. That market definition included both sport-themed and entertainment collectibles.<sup>15</sup> In the present case, the evidence available seems to suggest that there may be some degree of substitutability between sport-themed and entertainment collectibles.<sup>16</sup>
- (40) In your view the *Pokémon* case is not applicable since the Commission has left therein the market definition open and the approach taken towards the market definition was erroneous, since it started from the widest definition, instead of starting with the narrowest reasonable market definition. In your view, the Commission should have carried out the SSNIP test in order to arrive at the correct market definition. In addition, on 11 July 2013 you submitted further arguments concerning the relevant retail market, *inter alia* about the market definition, Panini's market position and pricing. Notably you submitted presentations<sup>17</sup> from two investment banks (Nomura and Bank of America

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<sup>15</sup> It should be noted that the Commission has left open the market definition in that case.

<sup>16</sup> See page 23 and Appendix 24 of Panini's preliminary observations dated 30 September 2011.

<sup>17</sup> Annex 4 and 5 of your submission dated 11 July 2013.

Merrill Lynch) which in your opinion show how Panini views its own market position and also indicate that the markets for collectibles related to the EURO and the World Cup are separate market from other football collectibles.

- (41) Firstly, the Commission notes that the SSNIP test is not the only tool for the purposes of defining the relevant market. Other tools, such a market studies and the assessment of consumers and other competitors' view point may be useful in this respect. Furthermore, the Commission does not follow a rigid hierarchy of different sources of information or types of evidence<sup>18</sup>, and in particular it is not obliged to start from the narrowest market definition. Instead, on the basis of the available information, it would broadly establish the possible market definitions and then usually it would decide on a few alternative possible relevant markets.<sup>19</sup> As indicated above, the market definition was left open in the *Pokémon* case; however, this decision still contains relevant information concerning a possible relevant market (i.e. the market could be defined as a market for collectibles sold to children aged approximately 6 to 14).
- (42) In your Reply and your further submissions of 11 July 2013 you provided some pricing information, claiming that World Cup and EURO collectibles are priced at different level than other types of collectibles. According to your view the price differentiation shows that the World Cup and EURO collectibles constitute separate markets. However, the Commission notes that the information submitted in your letter of 25 April 2013<sup>20</sup> is a selective list of different types of collectibles, compiled by you. The Commission did not get any other evidence about the prices (e.g. copies of stickers showing prices). Concerning the information submitted in your letter of 11 July 2013<sup>21</sup>, we note that this does not include evidence about the World Cup and/or EURO stickers, only about a selection of entertainment-themed collectibles. Nor is it clearly indicated therein on which date or in which time period were the stickers available at the given price. This evidence does not sufficiently substantiate your claim that the World Cup and EURO collectibles are priced at a different level than other types of collectibles.
- (43) In conclusion, on the basis of the information available to the Commission, therefore it does not seem likely that the World Cup and EURO collectibles would constitute separate retail markets.

#### 2.2.2.2 Upstream dominance

- (44) As to the upstream market, you claim that FIFA, UEFA and the national football federations hold dominant positions. In your view this dominant position results from the fact that FIFA, UEFA and the national associations individually hold an indispensable right required to produce football collectibles.<sup>22</sup> In this respect we note that in some cases

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<sup>18</sup> See paragraph 25 of the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03)

<sup>19</sup> See paragraph 26 of the Commission Notice on the definition of relevant market

<sup>20</sup> Annexes 1- 4 of your letter of 25 April 2013

<sup>21</sup> Annexes 6-9 of your letter of 11 July 2013

<sup>22</sup> In your complaint you explain that in order to produce collectibles, companies need to get licences for certain intellectual property rights which are held by various football associations.

an undertaking's position as "unavoidable trading partner" can be relevant to the dominance assessment<sup>23</sup> and therefore we looked at your indispensability argument in this context (separately, indispensability is also a condition for the abuse, as explained in paragraph 50 below). In your view, the relevant market is the licensing of IPRs for the reproduction of players' images in national regalia and of the official tournament logo for World Cup and EURO collectibles.

- (45) However, as explained above, it seems unlikely that there are separate markets for collectibles for each football tournament, e.g. the World Cup and the EURO. In addition, it appears that having all the licenses is not indispensable to produce collectibles (see paragraph 50 below).

#### 2.2.2.3 Panini's dominance

- (46) You claim that Panini is the dominant supplier of football collectibles on the vast majority of the relevant downstream markets, and habitually utilises its market position to impose wide-ranging exclusive purchasing obligations and excessive pricing.
- (47) Firstly, as explained above, it seems unlikely that the relevant market should be defined in such a narrow way as suggested by you (i.e. two separate markets for collectibles for each football tournament, e.g. the World Cup and the EURO). On the basis of the available evidence, it seems unlikely that Panini would hold a dominant position on a wider downstream market (i.e. a market including different types of collectibles). In this respect the Commission notes that on a wider downstream market there are significant competitors with a global presence, such as Konami Corporation (the publisher of the Yu-Gi-Oh! collectibles), the Wizards of the Coast LLC or Topps' parent company, The Topps Company, Inc.
- (48) Secondly, concerning the presentations from the investment banks (Annex 4 and 5 to your submission of 11 July 2013), the Commission notes that the purpose of such presentations is to make the company (i.e. Panini) as attractive as possible for potential buyers. The language used in these materials does not necessarily describe the market conditions or the market position of the parties in the context of a competitive analysis. Indeed, the expressions used (e.g. "world leader in thematic stickers and trade cards with highest market share") aim to make Panini's business look like an appealing investment opportunity. They are not decisive for the assessment of Panini's dominance.

#### 2.2.2.4 Alleged abuses of dominance

- (49) Firstly, even assuming that a dominant position by the Targeted Parties could be established, your claim on an alleged discrimination against Topps in favour of Panini appears *prima facie* not to be sufficiently proved. The correspondence between you and FIFA shows that FIFA had several meetings with you, and that you negotiated for several months about a possible contract.<sup>24</sup> Similarly, UEFA negotiated with you for EURO 2008 and EURO 2012.<sup>25</sup> Some of the national football federations also seem to have negotiated

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<sup>23</sup> Case 85/76 *Hoffmann La Roche* [1979] ECR 461 at para. 41.

<sup>24</sup> See Annex 10 (part O) of the complaint.

<sup>25</sup> See pages 14-15 of UEFA's observations, dated 30 August 2011; Annex 10 (part P) of the complaint.

with you about a possible contract.<sup>26</sup> In your observations of 4 December 2013, you provided comments on the observations of the FFF and the RFEF and submitted further documents concerning your correspondence with these two federations (one letter sent by fax and email on 16 January 2010 and a reminder sent to the general email address on 7 September 2010<sup>27</sup>). The Commission notes that this evidence (a letter and a reminder sent eight months later) does not seem to be sufficient to indicate that the federations refused to supply the rights. Usually it would be normal business practice to follow up with phone calls and letters after a short period of time after the first contact, asking for a meeting. You did not submit any evidence of this follow-up, such as call record or letters. In the light of the above, the Commission considers that the evidence and information submitted by you do not substantiate your claim that the FFF and the RFEF have refused to supply the rights.

- (50) Secondly, it must be borne in mind that, while stating that a refusal to supply/license a downstream customer could amount to an abuse of a dominant position, the European Courts held that in achieving a balance between the need to protect the economic freedom of the owner of a IPR and the protection of competition, the latter can prevail only where refusal to grant a license prevents the development of the secondary market to the detriment of the consumers and relates to a product that is indispensable to the exercise of a particular activity in a neighbouring/downstream market<sup>28</sup>. In this respect you claim that only the "official" collections, i.e. collections by companies which have secured all relevant rights, succeed commercially and therefore all rights are indispensable ("must-haves") to create collectibles. However, there is evidence indicating that non-official collectibles exist and may compete with official ones<sup>29</sup> on the downstream market, particularly if the producer of non-official collectibles secures the rights from national football federations. (e.g. when the company has the image rights for players, it can produce a non-official collection which does not feature the tournament organiser's logo.)
- (51) In addition, it must be also shown that the refusal to license prevents the appearance of a new product for which there is potential consumer demand or limits innovation capable of causing prejudice to consumers, and that there is a risk of eliminating effective competition on the market. In your Reply, you argue that Topps would introduce new products (such as e.g. autographed trading cards, i-Card collection, cards with pieces of match worn shirts). However, you did not substantiate as to why these products should be considered substantially as new products<sup>30</sup>. There is a difference between new products

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<sup>26</sup> E.g. the German DFB invited four companies, including Topps, to make offers for collectibles in 2011. In France, Promo Foot, the agency selling the rights asked Topps to give them an offer on 15 May 2008. Following a few email exchanges, at the end of June 2008 Topps said that they need a few months to give an offer. Promo Foot considered this too long and they decided to extend the contract with Panini (See E16 of Annex 10 of the complaint).

<sup>27</sup> Annex 1, 2, 4 and 5 of your observations of 4 December 2013.

<sup>28</sup> Case C-418/01 *IMS Health* [2004] ECR I-5039, para. 38; Case T-201/04 *Microsoft* [2007] ECR II-3601, para. 332; Case T-167/08 *Microsoft* [2012] ECR, not yet reported, para. 139.

<sup>29</sup> E.g. in Annex P4 of the complaint, in a presentation to UEFA, you indicated that if Topps had secured a license for EURO 2008, it would have competed against Panini's non-official collection on the market.

<sup>30</sup> See par. 647 – 665 in T-201/04 *Microsoft v. Commission* [2007] ECR II-03601

and new features of an existing product. The products described in your Reply seem to be a simple variation of the same product (the same product with new features) rather than a substantially new product. On this basis the information received does not indicate that the refusal to license would prevent the appearance of a new product.

- (52) Thirdly, regarding Panini you claim that it abuses its dominant position by increasing prices. However, this aspect of the complaint contains insufficient information, and, in any event, the preliminary investigation did not confirm the exploitative nature of the alleged price increases. The information that the Commission has received showed that the price of the Topps collections has also increased and that the changes in the currency exchange rates might have played a role in the price increase in Poland and in the UK. In your letter of 11 July 2013, you claimed that Panini raised prices for consumers by increasing the number of stickers per album; therefore it costs more for consumers to complete the albums. However, we note that the increase of stickers might have also been partly due to the increase of the number of participating teams and players<sup>31</sup>.
- (53) Fourthly, you claim that Panini abuses its dominance in breach of Article 102 TFEU by imposing wide ranging exclusive purchasing obligations. As explained above in point 2.2.2.1, it seems unlikely that the downstream market should be defined in such a narrow way as suggested by you and that Panini would hold a dominant position on this market. In addition, as indicated in paragraphs 31-35 in connection with Article 101 TFEU, there is insufficient evidence to substantiate your claim that Panini imposes wide reaching exclusive purchasing obligations, thereby distorting competition at the downstream levels.
- (54) On the basis of the available evidence, the Commission considers that the likelihood of establishing that the Targeted Parties breach Article 102 TFEU is limited.

### 3. CONCLUSION

- (55) As said above, the Commission considers that there is a limited likelihood that, on the basis of the available evidence, in particular the information provided by you, a finding of an infringement of the EU competition rules can be established. Moreover, an in-depth investigation would, among other things, require the Commission to conduct a complex factual and economic analysis, including an analysis as regards possible justification of the potential restrictions under Article 101(3) TFEU, involving a number of undertakings in several Member States. Such an investigation would, however, require considerable resources and appears disproportionate in view of the limited likelihood of establishing the existence of an infringement. Therefore, in view of the above considerations, the Commission, in its discretion to set priorities, has come to the conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringements and consequently rejects the complaint pursuant to Article 7(2) of Regulation No. 773/2004.<sup>32</sup>

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<sup>31</sup> E.g. the FIFA World Cup expanded to 24 participating teams in 1982 and to 32 in 1998.

<sup>32</sup> See also Case T-320/07 *Jones*, 23 November 2011, not yet reported, at paragraph 116: "It follows that, in order to reject a complaint on the ground that the conduct complained of does not infringe the competition rules or

#### **4. PROCEDURE**

##### **4.1 Possibility to challenge this Decision**

- (56) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 TFEU.

##### **4.2 Confidentiality**

- (57) The Commission reserves the right to send a copy of this Decision to the Targeted Parties. Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.<sup>33</sup> If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform Ágnes SZARKA (e-mail: agnes.szarka@ec.europa.eu). Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website or sent to the Targeted Parties.
- (58) The published version of the Decision may conceal your identity upon your request and only if this is necessary for the protection of your legitimate interests.

*For the Commission*

*Joaquín ALMUNIA  
Vice-President*

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does not fall within their field of application, the Commission is not as a rule obliged to take into account circumstances that have not been brought to its attention by the complainant and that it could have uncovered only by the investigation of the case (notice of 27 April 2004, point 47; Case T-319/99 *FENIN v Commission* [2003] ECR II-357, paragraph 43; and Case T-432/05 *EMC Development v Commission* [2010] ECR II-00000, paragraph 59)."

<sup>33</sup> See paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06.