



EUROPEAN COMMISSION

Brussels, 19 January 2005

Commission Decision

of 19 January 2005

relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53(1) of the
EEA Agreement

**(Case COMP/C-2/37.214 – Joint selling of the media rights to the German
Bundesliga)**

(Only the German text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty¹, in particular to Article 9(1) thereof,

Having regard to the Commission Decision of 22 October 2003 to initiate proceedings in this case,

After giving interested third parties the opportunity pursuant to Article 27(4) of Regulation (EC) No 1/2003 to submit their observations²,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions³,

Having regard to the report of the Hearing Officer⁴,

WHEREAS:

1. SUBJECT MATTER

1. The decision concerns the *Liga-Fußballverband e.V.* (“League Association”) in Germany. The subject matter of the procedure is the central marketing of the media exploitation rights in respect of matches in the first and second national football divisions for men (*Bundesliga* and *2.Bundesliga*). In a preliminary assessment, the Commission noted that the exclusive selling of the commercial broadcasting rights by the League Association could restrict competition between the clubs and companies in the first and second divisions. However, it now came to the conclusion that, in view of the commitments given by the League Association following the preliminary assessment and the observations submitted by interested third parties, there are no grounds for it to take action.

2. PARTIES

2. The League Association is a registered association and ordinary member of the *Deutscher Fußballbund* (“DFB” - German Football Association). Its members are

¹ OJ L 1, 4.1.2003, p. 1; last amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

² OJ C 229, 14.9.2004, p. 15.

³ OJ C 130, 27.5.2005, p. 4.

⁴ OJ C 130, 27.5.2005, p. 2.

the licensed clubs and companies in the first and second national football divisions (“the clubs”). However, the clubs are not direct members of the DFB. For its part, the League Association is the sole shareholder in *Deutsche Fußball Liga GmbH* (“DFL”), which conducts the operational business of the League Association.

3. JOINT MARKETING SCHEME

3. Under the DFB's articles of incorporation, the League Association is entitled to organise league football competitions leased by the DFB and to exploit them exclusively in its own name, to the exclusion of the clubs.
4. Section 16a(1)(2) of the articles of incorporation reads as follows: “*It [the League Association] shall be entitled to exploit exclusively in its own name marketing rights resulting from paragraph 1. [...].*” Section 16a(1)(1) reads as follows: “*It [the League Association] shall determine the German football champion of the DFB through matches played in the DFB's licensed leagues and the participants in the European competitions from the licensed leagues [...].*” Sections 6(2)(a), 17(2)(d) and 19(2), indents 3 and 4, of the League Association’s articles of incorporation as well as the preamble to, and Sections 1 and 9(1) of, the League’s Statute/Rules, which set out the arrangements for the exploitation of commercial rights, restate the League Association's aforementioned entitlement and, in addition, govern the division of labour between the League Association and *Ligaverbands-GmbH*, now the DFL, as well as between individual bodies of the League Association. Sections 3(2) and 11(1)(b) of the League Association's articles of incorporation stipulate that the articles of incorporation and rules of the DFB are directly binding on the League Association and its members, i.e. the licensed clubs. In addition, as regards the issuing of licences in accordance with Section 1(2) of the League Association’s Statute/Section containing licensing rules, the clubs contractually comply with the articles of incorporation, statutes and rules of the DFB and the League Association.
5. As it itself stated on 29 July 2004, the DFB does not have or exercise any influence over the League's marketing arrangements.
6. The joint marketing covers all types of broadcasting right, and in particular free-TV, pay-TV, pay-per-view TV, terrestrial broadcasting, cable or satellite broadcasting, live or deferred broadcasting, showing of the entire event, of extracts or of compiled highlights, and radio. It also covers rights for all kinds of existing and future technical facilities, such as UMTS, the internet or business TV.

4. PROCEDURAL STEPS UNDER REGULATION NO 17

7. By letter of 25 August 1998, the DFB had, in accordance with Articles 2 and 4 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty⁵, applied for negative clearance or, failing this, an

⁵ OJ L3, 21.2.1962, p. 204/62; last amended by Regulation (EC) No 1216/1999 (OJ L 148, 15.6.1999, p. 5).

individual exemption under Article 81(3) of the EC-Treaty in respect of the central marketing of television and radio broadcasting rights and any other technical forms of exploitation for matches in the first and second national football divisions for men. In the meantime the League Association was founded in 2001 and has taken over the task of marketing from the DFB. By letter of 19 February 2003, the League Association adopted the DFB's amended notification as its own.

8. On 9 January 1999 the Commission, in a notice published in the Official Journal of the European Union, invited third parties to submit their observations.⁶ By decision of 22 October 2003, it initiated proceedings under Article 9(3) of Regulation No 17. On 30 October 2003 it announced its intention of giving a positive assessment of the amended joint marketing arrangements in a notice published in the Official Journal of the European Union⁷ and subsequently received observations from interested third parties.
9. One German club was in favour of the revised joint marketing arrangement and stressed the co-ownership between the league, the home and the away club with regard to the media rights and hence the need to co-operate. Several bigger clubs considered that joint selling should be exempted but with lesser restrictions for the clubs. According to these clubs, the respective home clubs were the sole owner of the media rights under German national law. More club rights in respect of television and new media would lead to greater consumer benefits. Some operational restrictions would need to be removed, such as the embargo for the fall-back clause. One stakeholder in several English football clubs argued against joint selling per se.
10. According to one rights agency, the previous joint marketing arrangement did not raise any competition concerns. The proposed new marketing arrangement would therefore be disproportionate and risk jeopardising the value of the traditional TV rights by granting too many rights to the individual clubs, in particular in the field of the new media. The design of the different league packages would interfere with existing contractual rights.
11. One pay-TV operator was concerned about the lessening of exclusivity for pay-TV and the balance between joint and individual selling with too much emphasis being put on individual selling. In contrast, one free-TV operator requested a different design of the main TV packages in order to facilitate the commercialisation for free-TV as well as a shorter transition period.
12. One telecom operator noted that mobile phone rights should be marketed without any restrictions and the main league mobile rights package should only be marketed by the league on a non-exclusive basis. The secondary league mobile package was of less interest to the market. Regulation would need to be put in place preventing club rights from being commercialised in competition with the jointly sold rights. One Internet provider argued in favour of more club rights with regard to the internet, for instance shorter embargoes and fewer operational

⁶ OJ C 6, 9.1.1999, p. 10.

⁷ OJ C 261, 30.10.2003, p. 13.

restrictions which should be made available in parallel with the jointly marketed internet rights.

13. Several national competition authorities submitted comments. The first competition authority was of the opinion that the advantages of the proposed marketing model did not outweigh the competition concerns. As a matter of principle, joint selling would not be indispensable for the branding of a league product. There would be a risk that newcomers to the TV markets could be foreclosed and that, in particular, a further splitting of the main TV packages would be necessary. The clubs' internet and mobile rights were more limited than in the UEFA Champions League case. The second national competition authority agreed with the Commission that joint selling could, in principle, be exempted. It noted that it is important for the clubs to present themselves to their fans. The scope and impact of most packages and in particular of the TV packages would not be entirely clear. Concerning the new media rights, the club rights were welcomed but should be extended. A third national competition authority highlighted the difference between a knock-out tournament, such as the UEFA Champions League, and a national league competition. This difference would make it difficult to apply the same reasoning as in the UEFA Champions League case.
14. The observations of the interested third parties prompted the Commission to seek further changes to its marketing rules from the League Association, which duly complied. Changes were made in respect of a number of issues, in particular with a view to achieving a more equitable balance between club and league rights. For instance, the access to content for internet and mobile operators has been strengthened.
15. With the entry into force of Council Regulation (EC) No 1/2003 on 1 May 2004, the application made by the League Association lapsed in accordance with Article 34(1) of that Regulation. However, in accordance with Article 34(2) of Regulation (EC) No 1/2003, the initiation of proceedings under Article 9(3) of Regulation No 17 by Commission Decision of 22 October 2003, which corresponds to that under Article 2(1) of the Commission Regulation 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 Treaty⁸, continued to have effect.
16. Accordingly, with effect from 1 May 2004, the Commission, acting on its own initiative, continued with the proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003.

5. PRELIMINARY ASSESSMENT

17. On 18 June 2004 the Commission came to a preliminary assessment in accordance with Article 9(1) of Regulation (EC) No 1/2003 that was made available to the League Association and the DFB. In its preliminary assessment, it assumed that the joint marketing raised concerns in three market segments that corresponded to those concerned by the Commission Decision 2003/778/EC relating to a

⁸ OJ L 123, 27.4.2004, p. 18.

proceeding pursuant to Article 81 of the Treaty of 23 July 2003 (COMP/C.2-37398 - Joint selling of the commercial rights of the UEFA Champions League).⁹

18. Accordingly, the following could be materially affected: the upstream programme procurement market, the downstream media exploitation markets related to programme procurement and, lastly, the emerging upstream and downstream markets in the new media and in particular those for transmission to second- and third-generation mobile phones (e.g. GPRS and UMTS) and internet rights.
19. From a geographical viewpoint, media rights for football matches such as those in the first division are marketed at national level. The geographic markets for programme procurement seem to be separate from other markets as a result of the applicable national law, the language and cultural characteristics. In addition, the upstream and downstream markets seem to be limited to the territory of Germany and to German-speaking areas as a result of the close interrelationship between upstream programme procurement and downstream exploitation through the acquisition of advertisers and subscribers. Essentially, the question as to whether the markets for advertising-financed television and pay-TV could possibly extend beyond Germany to all German-speaking areas could remain open. Even assuming this, the assessment would not have changed. The same geographical demarcation would also seem to apply to the upstream and downstream markets in the new media.
20. The Commission further took the preliminary view that the joint marketing rules would raise competition concerns within the meaning of Article 81(1) of the EC-Treaty and Article 53(1) of the EEA Agreement.
21. Irrespective of their legal form, the clubs seem to be undertakings within the meaning of competition law because they engage in a variety of economic activities by selling tickets for the matches, transferring players, selling merchandise, concluding advertising and sponsorship agreements, and selling broadcasting rights. For its part, the League Association seems to be an association of undertakings and, in so far as it is itself economically active, an undertaking. It follows that the League Association carries out itself or through the DFL a gainful activity, e.g. in negotiating broadcasting rights contracts or in the area of merchandising and sponsorship.
22. According to the Commission's preliminary assessment, the competition concerns consist in the transfer of the media rights to the first and second division matches from the clubs to the League Association and in the subsequent central marketing of those rights. In the marketing agreements, the League Association determines the price and the nature and scope of exploitation. Through the joint marketing agreement and the subsequent joint marketing, the clubs are prevented from dealing independently with television and radio operators and sports-rights agents and from marketing their rights independently. The clubs seem to be prevented in particular from taking independent commercial decisions about the price.

⁹ OJ L 291, 8.11.2003, p. 25.

23. In addition, according to the preliminary assessment, joint marketing could have an adverse effect on the relevant downstream television markets and markets in the new media since the possibility of supplying football content plays an important role in competition between programme providers for advertising revenues and subscribers or pay-per-view customers.
24. According to the Commission's preliminary assessment, the League Association seems not to have provided the proof required of it under Article 2 of Regulation (EC) No 1/2003 to show that the conditions specified in Article 81(3) of the EC-Treaty and Article 53(3) of the EEA Agreement would have all been fulfilled on the basis of the previous, unconfined joint marketing. Possible efficiencies of joint selling, such as facilitating the branding of a league product and a lowering of transaction costs would be outweighed by the possible restrictive effects.

6. COMMITMENTS BY THE LEAGUE ASSOCIATION

25. By letter of 6 August 2004, the League Association confirmed the amended commitments reproduced in the Annex in respect of the central marketing arrangements as commitments within the meaning of Article 9(1) of Regulation (EC) No 1/2003.
26. The commitments are briefly summarised in what follows:
27. The league rights are offered in several packages in a transparent, non-discriminatory procedure. The duration of the agreements concluded with both the agents and the sublicense holders will not exceed three seasons.
28. Live broadcasts of the Bundesliga and the 2. Bundesliga are offered by the League in particular in two packages, both for free TV and for pay TV programme suppliers. A third package entitles the acquirer of the live broadcast to at least two Bundesliga matches and to deferred highlight first coverage on free TV. A fourth package covers live games of the 2. Bundesliga and the rights to deferred highlight first coverage on free TV. Second and third exploitation rights are offered in a fifth package. Packages 3 to 5 can each be sold to several exploiters.
29. Package 6 contains the right to broadcast Bundesliga and 2. Bundesliga matches live and/or near-live on the Internet. From 1 July 2006, the package contains the right to broadcast the matches live and near-live. The League Association will, on every day on which games are held, offer a total of at least 90 minutes live coverage of the matches on the Internet, e.g. in the form of a conference channel. A seventh package comprises deferred highlights coverage. Package 8 contains the right to broadcast Bundesliga and/or 2. Bundesliga matches live and/or near-live and/or after the event on mobile phones. Package 9 confers the right to the deferred broadcast of excerpts from Bundesliga and/or 2. Bundesliga matches on mobile phones.
30. Every club can sell its home games to a free-TV broadcaster 24 hours after the match for one-off free-TV broadcasting of up to the full match within the EEA.
31. One and a half hour after the end of a match, every club can exploit a summary of its home and away games of up to 30 minutes on the Internet. From 1 July 2006,

after the end of the match every club can cover its home and away games on its homepage or that of a third party without restriction as to length. Every club can sell the coverage of its home games on mobile phone networks within the EEA to the operators of those networks. Every club can exploit its home games on free-to-air radio after the end of the match without restriction. In the case of live transmissions, exploitation may not exceed ten minutes per half.

32. The above-mentioned rights may not be sold in such a way that a product can be devised by an exploiter which clashes with the interests of the DFB and the League Association or the acquirers of packages 1 to 9 in having a uniform product and jeopardises the advantages of branding and the one-stop shop.
33. According to the parties' proposal, unused rights may be exploited by the clubs. However, the League Association remains entitled to parallel, non-exclusive marketing of the corresponding package. This applies when the Association has failed to sell certain rights covered by the joint selling procedure. If, 14 days after the first match day of the football year, no agreement with an exploiter is reached about one of the packages mentioned in paragraphs 28 and 29 in accordance with the rights defined therein, the clubs may, from that time until the end of the season, exploit their home games themselves in accordance with the rights covered by the unused exploitation package. Clubs are also entitled to sell rights where the holder of those rights, for no objective reason, fails to use them.
34. The changes relating to television and, as set out, partly relating to the Internet, will enter into force on 1 July 2006. All other changes apply from 1 July 2004. The transitional stage makes it possible to take gradual account of competition concerns without jeopardising the operation of the Bundesliga and the 2. Bundesliga. .
35. Future licence agreements are not covered by the marketing model presented. A separate examination under Community law cannot be ruled out in this respect, in particular where several centrally marketed packages with exclusive exploitation rights are cumulatively acquired by one exploiter.

7. COMMISSION NOTICE PURSUANT TO ARTICLE 27(4)

36. On 14 September 2004 the Commission, in a notice published pursuant to Article 27(4) of Regulation (EC) No 1/2003¹⁰, invited interested third parties to submit observations within one month of the publication of the notice.
37. Compared with the observations following the notice of 30 October 2003 mentioned in paragraph 8, the observations by third parties did not contain any significant new information and did not make the Commission reconsider its concerns as stated in the preliminary assessment.
38. Three telecom operators submitted observations, emphasising the importance of Bundesliga content for new media and highlighting the importance of the commitments by the League Association for a market opening in this sector. They

¹⁰ OJ C 229, 14.9.2004, p. 15.

stressed the need for a flexible and transparent marketing of the new media rights. Some of the operators reiterated their view that all league rights should be sold on a non-exclusive basis and voiced concerns about the scope of the main mobile rights package. Some of the operators requested more rights for the clubs, in particular the possibility to market both the home and away games regarding mobile rights.

39. One national competition authority reiterated its general doubts as to the possibility of efficiencies being brought about by joint marketing arrangements and repeated its concerns about the design of the main television packages.

8. CONCLUSION

40. The market test pursuant to Article 27(4) of (EC) Regulation No 1/2003 did not make the Commission reconsider its concerns as stated in the preliminary assessment.
41. Upon preliminary assessment by the Commission and without having conducted a full investigation of the case, the League Association's commitments seem to introduce competition in the marketing of Bundesliga and 2. Bundesliga rights between the league and the clubs and allow for new, in particular club branded products. The commitments reduce the scope and duration of future marketing deals and provide a transparent and non-discriminatory marketing procedure. They improve the accessibility of content for TV, radio and new media operators, make sure that all rights are being made available to the market and thereby contribute to innovation and dampen the concentration tendencies in the media markets.
42. In order to allow for a meaningful implementation of the commitments and in light of the transition period for some commitments until July 2006, the commitments shall be binding on the League Association until 30 June 2009, i.e. at least one additional period of three seasons following the transition period.
43. In light of the commitments offered, the Commission considers that there are no longer grounds for action by the Commission and, without prejudice to Article 9(2) of (EC) Regulation 1/2003, the proceedings in the present case shall be brought to an end -

HAS ADOPTED THIS DECISION:

Article 1

The commitments as listed in the Annex shall be binding on the Liga-Fußballverband e.V.

Article 2

This decision shall be applicable until 30 June 2009.

Article 3

The proceeding in the present case shall be brought to an end.

Article 4

This decision shall be addressed to the:

Liga-Fußballverband e.V.
Otto-Fleck-Schneise 6
D-60528 Frankfurt/Main.

Brussels,

For the Commission

Member of the Commission

Annex

Commitments of the League Association

“2 Principles for the award of exploitation rights

2.1 *Under the League’s statutes (Article 9 Rules for the exploitation of commercial rights), the League Association is entitled to conclude contracts on the television and radio coverage of matches within its sphere of responsibility. The same applies for all video- and phonograms, future technical facilities of all kinds and in any form of programme or exploitation. In derogation from this, exploitation rights are defined in section 5 which may be sold individually by the clubs and corporations of the Bundesliga and the 2. Bundesliga. All other related exploitation rights shall be sold by the League Association. Section 4 defines the exploitation right packages available to the League Association for selling to third parties (marketers and exploiters).*

Given that future technical developments in the new media (i.e. the Internet, mobile telecommunications and other future exploitation rights not yet considered in this proposed solution) cannot be anticipated at the current time, the European Commission reserves the right to subject the arrangements relating to them, which are basically not available, to a single examination before 30 November 2005 with effect from 1 July 2006.

2.2 *The exploitation rights of the League Association shall be offered by the Association itself or a marketing partner in the form of packages. An applicant may apply for several of these individual packages at the same time. The exploitation rights packages shall be sold by the rights owner, taking into account the needs of consumers, the broadcasting plan and the strategic significance of the partnership with the exploiter for professional football, the further development of technical forms of exploitation and, not least, economic payment.*

2.3 *Those responsible for the sale of exploitation rights and forms shall ensure that exploitation contracts do not last for more than a maximum of three seasons. Care will also be taken in this respect to see that negotiations for following seasons are not restricted by options and preemptive rights, etc. The clubs and corporations of the Bundesliga and the 2. Bundesliga shall also ensure that their contracts do not exceed the duration of the central exploitation contracts.*

2.4 *The exploitation rights available to the clubs and corporations of the Bundesliga and the 2. Bundesliga under section 5 shall not be sold in such a way that a product can be devised by the exploiter which presents the Bundesliga and/or the 2. Bundesliga in their entirety or in substantial parts (ban on bundling). The same applies to cases where unused exploitation packages of the League Association are exercised by the clubs and corporations in accordance with section 6. More extensive bundling of exploitation rights than that formulated below is thus ruled out.*

The clubs and corporations, or the marketing agencies commissioned by them, should ensure in respect of the individual selling of exploitation rights that an exploiter can exploit at most two Bundesliga and/or 2. Bundesliga matches per

match day. In the case of all exploitation rights sold by the clubs and corporations it shall be guaranteed that the resulting programme or offer is made clearly recognisable to the consumer as coming from the club or corporation concerned.

When selling exploitation rights for coverage with any time delay, the clubs and corporations should also ensure that the coverage of the Bundesliga and/or 2. Bundesliga (match scenes, interviews, pre- and post-match coverage, statistics, etc.) should take up a maximum of 30% of a broadcast or an offer. This shall not apply to programmes and offers which are broadcast or offered on the exploitation platform of the club or corporation concerned, e.g. club TV channel or club radio. In such cases, the coverage in a broadcast or an offer may be devoted 100% to the Bundesliga and/or the 2. Bundesliga. In the case of programmes and offers which relate exclusively to a club or corporation, e.g. club TV magazine or club radio show, and are broadcast or offered on a third party's platform, up to 50% of the total extent of the programme or offer may be devoted to coverage about the Bundesliga and/or the 2. Bundesliga.

2.5 *In the field of the traditional (TV, radio, etc.) and the new electronic media (Internet in its different forms and image-playing mobile telecommunications) the League Association may produce its own supply and offer this to the final consumer via its own technical platform or in cooperation with a partner. The basis for this is that this own supply can also be offered by other exploiters or that no contract in line with market principles can be concluded for the corresponding exploitation rights of the League Association.*

2.6 *The economic value added of the exploitation rights sold by the clubs and corporations of the Bundesliga and the 2. Bundesliga is subject within the League's articles of association to the arrangements in section 18 of the Order on the exploitation of commercial rights (OVR). Where clubs and corporations are compensated by the contracting partners in non-cash benefits or services, these shall be assessed in accordance with objective, i.e. normal commercial, financial terms.*

For practical reasons, the related exploitation contracts shall be negotiated and effectively concluded with third parties in each case by the home club in the Bundesliga or 2. Bundesliga match concerned. Together with any amendments or supplementary clauses, they shall be disclosed without undue delay to the League Association as the (joint) beneficiary of the exploitation rights. The League Association shall then have the right, within two weeks of receiving the signed exploitation contract, to raise objections on objective grounds, i.e. on account of an infringement of this proposed solution. To this end, each exploitation contract shall contain a provision whereby it is subject to conditions precedent should the League Association object to provisions of the exploitation contract on objective grounds.

2.7 *Because of the significance of the "League's branding", only the League Association shall be entitled to produce or have produced a moving video signal of Bundesliga and 2. Bundesliga matches. In this respect it shall ensure that the latter is made available to the clubs and corporations of the Bundesliga and 2. Bundesliga for the exploitation contracts which they have concluded, with*

reimbursement of any extra technical costs. The clubs or corporations shall not participate therefore in the costs generated by the production of the basic signal.

Should the League Association not produce a moving video signal or have one produced, the club or corporation concerned shall be entitled to produce this or have it produced from its home games. In such cases, the clubs and corporations shall undertake that the moving video signal/material shall be made available to the League Association, with compensation for any extra technical costs, for exploitations for League purposes. In such cases, therefore, the League Association shall not be liable for the costs associated with the production of the basic signal.

- 2.8 *The form of the exploitation packages described in section 4 and the exploitation content set out in section 5 may be altered by the European Commission only at the request of the League Association, if changed circumstances or the requirements of sensible marketing make this seem appropriate.*

3. Principles for the award procedure

- 3.1 *The League Association shall define technical conditions and qualitative criteria which are to be met and guaranteed by exploiters when covering the Bundesliga and the 2. Bundesliga for the purposes of “quality assurance” and “branding”. “Technical conditions” shall include, for example, the technical range of television broadcasters and production expenditure on generating the signal. Examples of qualitative criteria are the audience share of a television broadcaster, its broadcasting plan, the start of coverage and the proposed amount of broadcasting per day. Technical conditions and qualitative criteria shall be checked at regular intervals as the market changes to see if they need to be updated.*
- 3.2 *The League Association shall be able to sell the exploitation rights as a whole or in substantial blocks to a marketing partner, or to conclude agreements direct with exploiters. The direct sale of exploitation rights by the League Association to exploiters shall be by an official public invitation to tender. Should the League Association sell the exploitation rights to a marketing partner, it must ensure that the award procedure which applies to it is used by its marketing partner.*
- 3.3 *The League Association shall ensure that the official tender for the exploitation rights is advertised on its homepage www.bundesliga.de at least four weeks before the start of the procedure.*
- 3.4 *All marketers and exploiters that meet the technical conditions and qualitative criteria in paragraph 3.1 shall be allowed by the League Association without discrimination to bid for the respective rights packages. All interested parties shall be entitled in this respect to request the appropriate tender documents from the League Association.*
- 3.5 *The League Association shall ensure that the invitation to submit a bid (public invitation to tender) contains all the relevant information about the content of the available rights packages and the terms and conditions which an applicant must satisfy when acquiring the exploitation rights.*

- 3.6 *The League Association shall ensure that all marketers and exploiters who meet the technical conditions and qualitative criteria in accordance with paragraph 3.1 are allowed a period of at least four weeks in which to submit a bid. In addition, all interested parties may, on written request, have the individual exploitation rights packages and the sale procedure explained to them by the League Association or its rights marketers in good time.*
- 3.7 *The agreements shall be concluded with the individual bidders by the League Association or where appropriate its marketing partner on the basis of the bids submitted. The content of the bids submitted shall be treated in confidence.*
- 3.8 *The League Association shall agree to arbitration in the event of disputes with third parties over the award procedure. Similarly, it shall oblige a rights marketer to do so, if the latter uses the award procedure after acquiring the exploitation rights. The basis for this is that all interested parties submit to an arbitration procedure when they submit a bid. All such disputes shall be decided without appeal according to the arbitration rules of the German Institute for Arbitration (DIS). Arbitration proceedings shall take place at the headquarters of the League Association. The applicable law shall be German law. The arbitration proceedings shall be conducted in German.*

4. Substantive exploitation packages of the League Association

Package 1 and Package 2

Live transmissions of the Bundesliga and the 2. Bundesliga on TV in Germany

These exploitation rights shall be divided into packages 1 and 2, to reflect the future market reality. As the future development of the market is uncertain, it shall be possible for the League Association, where market conditions change, to adapt the exploitation rights covered by packages 1 and 2 in conformity with market trends, provided that there are still two independent valid packages. Where account is taken in the award procedure of the aspects mentioned in paragraph 2.2 and a market structure exists which basically corresponds to the current one, the packages may also be sold to one exploiter.

Future licensing agreements for exploitation rights to Bundesliga and 2. Bundesliga matches are not the subject of these proceedings. A separate examination under Community law cannot be ruled out in this respect, in particular where several centrally marketed packages with exclusive exploitation rights are acquired by one exploiter. Licensing agreements which have already been concluded, including the phasing-in components in accordance with the introductory remark on page 4, are the subject of these proceedings.

4.1 Package 1 (from 1 July 2006)

Live transmission of the Bundesliga and 2. Bundesliga main match days on TV in Germany

This part-package covers the right to the parallel, full-length live transmission of all Bundesliga games on the main match day, currently Saturday, on TV. It also covers the right to the parallel, full-length live transmission of all games of the 2.

Bundesliga on its main match day, which is currently Sunday. Another component of this part-package is the parallel live transfer in the form of a conference channel of all matches on the current secondary match days of the Bundesliga (Sunday) and the 2. Bundesliga (Friday). The part-package may also contain the right to exploit all or selected games of the Bundesliga and the 2. Bundesliga in the form of deferred highlights coverage with priority scheduling (first report) on pay-TV or pay-per-view. Further, post-match coverage rights without priority scheduling for all Bundesliga and 2. Bundesliga games may be covered by this part-package.

4.2 Package 2 (from 1 July 2006)

Live transmission of the Bundesliga and the 2. Bundesliga secondary fixture schedule on TV in Germany

This part-package covers the right to the parallel full-length live transmission of all Bundesliga games on TV on the secondary match day, currently Sunday. It also contains the right to the parallel, full-length live transmission of all games of the 2. Bundesliga on its secondary match day, which is currently Friday. Another component of this part-package is the parallel live transfer in the form of a conference channel of all matches on the current main match days of the Bundesliga (Saturday) and the 2. Bundesliga (Sunday). The part-package may also contain the right to exploit all or selected games of the Bundesliga and the 2. Bundesliga in the form of a deferred highlights report with priority scheduling (first report) on pay-TV or pay-per-view. Further, post-match coverage rights without priority scheduling for all Bundesliga and 2. Bundesliga games may be covered by this part package.

4.3 Package 3 (from 1 July 2006)

Live transmissions and deferred first exploitation of the Bundesliga in Germany on free-TV

The acquirer of the exploitation rights shall be entitled to transmit at least two live, full-length Bundesliga matches per season on free-TV, to be agreed with the League Association. The package also contains the right to be able to transmit Bundesliga matches on free-TV in Germany as deferred highlight coverage with priority scheduling (first report). It also covers the right to use the said matches to a defined extent for subsequent exploitation on the acquirer's own programme. The package may be acquired by an exploiter in accordance with paragraph 2.2 or may be granted to several exploiters in a manner to be agreed.

4.4 Package 4 (from 1 July 2006)

Live transmissions and deferred first exploitation of the 2. Bundesliga in Germany on free-TV

This package covers the right to the live, full-length transmission of a number to be defined of 2. Bundesliga games per season on free-TV. It also contains the right to be able to transmit 2. Bundesliga matches on free-TV in Germany as deferred highlight coverage with priority scheduling (first report). It also covers the right to use the said matches to a defined extent for subsequent exploitation

on the acquirer's own programme. The package may be acquired by an exploiter in accordance with section 2.2 or may be used by several exploiters in a manner to be agreed.

4.5 *Package 5 (from 1 July 2006)*

Secondary/tertiary exploitation rights to the Bundesliga and/or 2. Bundesliga for free-TV in Germany

The League Association has the right to sell secondary and/or tertiary exploitation rights in the Bundesliga and/or 2. Bundesliga to television exploiters in Germany. In view of the differences between individual free-TV broadcasters in Germany as regards programme orientation, programme schedules, coverage and economic impact, the League Association shall be entitled as regards the extent of the rights and the ordering of priorities of both timing and scope to make individual adjustments to the rights packages.

4.6 *Package 6 (to 30 June 2006 /from 1 July 2006)*

Live- and/or near-live transmission of the Bundesliga and the 2. Bundesliga on the Internet

Until 30 June 2006 this package, to be more fully described by the League Association in the invitation to tender, contains the right to be able to transmit Bundesliga and 2. Bundesliga games as chosen by the League Association live and/or near-live, in full or as extracts on the Internet; from 1 July 2006, the package contains the right to be able to transmit Bundesliga and 2. Bundesliga games live (with up to five minutes' deferment for technical or editorial reasons) and near-live, in full or as extracts on the Internet. From 1 July 2006 the League Association will, on every day on which games are held, offer a total of at least 90 minutes live coverage (with up to five minutes' deferment for technical or editorial reasons) of matches on the Internet, e.g. in the form of a conference channel. Coverage per game will not be less than five minutes and will contain all important match events, e.g. goals, penalty kicks and substitutions. Also covered is the right to report on the said matches in a defined context after the event and using extracts without priority scheduling (subsequent exploitation). The package may be acquired by an exploiter in accordance with paragraph 2.2 or may be used by several exploiters in a manner to be agreed.

4.7 *Package 7 (from 1 July 2004)*

Highlight coverage of the Bundesliga and the 2. Bundesliga on the Internet

This package contains, with due regard to the priority of package 6, the right to exploit the matches of the Bundesliga and/or the 2. Bundesliga on the Internet as deferred highlight coverage (subsequent exploitation). The League Association is entitled to sell the package to different exploiters and to agree individual performance content, e.g. extent and time of exploitation, with them.

4.8 *Package 8 (from 1 July 2004)*

Live/near-live/deferred transmission of the Bundesliga and the 2. Bundesliga via mobile phones

This package, to be defined in more detail by the League Association in the invitation to tender, contains the right to have the matches of the Bundesliga and/or 2. Bundesliga as chosen by the League Association transmitted live and/or near-live and/or after the event, in full and/or using extracts, by mobile phone network operators. The League Association shall be authorised to let this package be used with due regard to paragraph 2.2 by one or more mobile phone network operators. Should several operators of mobile phone networks use this package, the League Association shall be entitled to agree individual performance content, e.g. extent and time of exploitation, with them.

4.9 *Package 9 (from 1 July 2004)*

Highlight coverage of the Bundesliga and the 2. Bundesliga via mobile phones

This rights package covers, with due regard for the priority of package 8, the exploitation, after the event and using extracts, of Bundesliga and/or 2. Bundesliga matches by mobile phone network operators. The package may be sold, on the basis of individually agreed performance content, to different mobile phone network operators.

4.10 *Package 10 (from 1 July 2004)*

Other exploitation rights/parallel use rights/other forms of exploitation

This package contains all the media exploitation rights to the Bundesliga and/or the 2. Bundesliga, which are not assigned to packages 1 to 9 (paragraphs 4.1 to 4.9) and exploitation rights 1 to 8 (paragraphs 5.1 to 5.8). By these are meant inter alia moving video exploitations as part of public presentations, for computer-aided game or player analyses, in advertising and in the form of video/phonograms for final consumers (video, DVD, CD-Rom, etc.), audio exploitation rights and other exploitation rights in the Bundesliga and the 2. Bundesliga. The League Association is entitled to sell the exploitation rights on the basis of individually agreed performance content, to different exploiters.

5. Essential exploitation content of the clubs and corporations

5.1 *Exploitation right 1 (from 1 July 2006)*

Deferred coverage on free-TV in States of the European Economic Area

Every club or corporation shall be entitled to grant free-TV broadcasters on a non-exclusive basis and for one-off transmission in States of the European Economic Area (EEA) the right to the deferred coverage of its home games 24 hours or more after the end of the game, up to the full length of the match. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

5.2 *Exploitation right 2 (to 30 June 2006/from 1 July 2006)*

Deferred coverage over the Internet on the club homepage

Up to 30 June 2006, every club or corporation may exploit on its homepage, on a non-exclusive basis, 90 minutes or more after the end of the game a summary of its home and away games lasting a maximum of 30 minutes. Twenty-four hours or more after the end of the game, the club or corporation may exploit on its homepage, on a non-exclusive basis, its home and away games up to their full length. Alternatively, clubs or corporations may exploit the abovementioned rights by outsourcing them exclusively to the homepage of a third party. From 1 July 2006 every club or corporation may cover, on a non-exclusive basis after the end of the game and without restriction as to length, its home and away games on its homepage or on those of third parties. A general condition of exploitation on one's own homepage or on those of third parties is that the exploitations are made clearly recognisable as an individual club-related offer or a programme of the club concerned. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

5.3 Exploitation right 3 (from 1 July 2004)

Coverage on mobile phone networks in States of the European Economic Area

On a non-exclusive basis, the clubs and corporations may conclude agreements for the coverage of their home games only for mobile phone networks in States of the European Economic Area (EEA) with their operators. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

5.4 Exploitation right 4 (from 1 July 2004)

Coverage on stadium TV at home games

In the case of "stadium TV" every club or corporation may, on a non-exclusive basis, transmit before the start of play up to three minutes' footage of past games in the current encounter and up to three minutes' footage of matches in the current season. During the game, goals from the current match may be reshown for up to ten seconds directly following the interruption of play after the successful goal. Up to three minutes' footage from the current match may be shown at half time, and up to five minutes at the end of the game. At the earliest 15 minutes after the end of the game, up to three minutes' footage from any other, freely chosen game on that day may be shown. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

5.5 Exploitation right 5 (from 1 July 2004)

Use of moving video material for computer-assisted game and player analyses

On a non-exclusive basis, every club or corporation may use for its own purposes available video material of its home and away games, or cause it to be used, for computer-assisted game and player analyses. In the case of its home games, the club or corporation may also record the relevant game with a camera specially for that purpose and use the video material obtained in the above form, or cause

it to be so used. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

5.6 *Exploitation right 6 (from 1 July 2004)*

Use of moving video material for advertising

Every club or corporation shall have the right on a non-exclusive basis to use video material from its home and away games for a maximum of 30 seconds per match for its own advertising measures, or cause it to be used for advertising by its stadium sponsor, chief sponsor and equipment supplier, e.g. TV and cinema spots and exhibition appearances. Any rights of third parties, e.g. other clubs involved or their players, shall require prior clearance. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

5.7 *Exploitation right 7 (from 1 July 2004)*

Use of moving video material for video-/phonograms for final consumers

Clubs and corporations may, on a non-exclusive basis, use video material of their home and away games, or cause it to be used, to produce exclusively club-related video-/phonogram products for final consumers, e.g. video, DVD and CD-Rom. The video material of a match may however be used for such purposes at the earliest after the end of the next match day, but at any rate after 14 days. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

5.8 *Exploitation right 8 (from 1 July 2004)*

Use of audio exploitation rights

Every club or corporation may grant free-to-air radio broadcasters in States of the European Economic Area (EEA) the right to be able to report its home games after the end of the game without restriction of the scope of exploitation. Radio broadcasters may be authorised by clubs or corporations to make live transmissions, if it can be guaranteed that, in coverage containing several extracts, these are not exploited for more than a maximum of ten minutes per half.

Every club or corporation may, on a non-exclusive basis, report in audio form its own games live and after the event at up to full length on its own homepage. Alternatively, clubs and corporations may exploit the abovementioned rights by outsourcing them exclusively to the homepage of a third party. This is conditional on the exploitation being made clearly recognisable as an individual club-related offer or a programme of the club concerned.

On a non-exclusive basis, clubs and corporations may conclude agreements for the audio coverage of their home games with the operators of mobile telephone networks in States of the European Economic Area (EEA). From the start of the game until two hours after the end, exploitation shall consist of an unlimited number of deferred clips. During the game, i.e. from kick-off to final whistle, clips may not be longer than a maximum of 60 seconds each. More than two hours after the end of the game, the match may be broadcast at up to full length.

The League Association undertakes when selling its packages to point out the restriction on exclusiveness.

6. Procedures for “unused exploitation packages” of the League Association

An exploitation package of the League Association shall be deemed to be “used”, if an agreement has been concluded with at least one exploiter concerning the defined scope of its rights (see section 4). An exploitation package of the League Association shall be deemed to be “unused”, if on more than two days per season an exploiter does not exploit the number of matches it is allowed, does not report them in the agreed form of exploitation (live, near-live or after the event) or seriously falls short of the amount of exploitation agreed. Exceptions are superior grounds with, for example, technical or editorial causes.

If the League Association or its marketing partners do not use one or more of its packages listed in section 4, i.e. do not or cannot sell it to an exploiter (“unused exploitation package”), the following procedure shall apply to the unused exploitation rights.

- 6.1 *If the League Association or its marketing partners have not concluded an agreement with an exploiter for an exploitation package within 14 days following the first day of a football year, the exploitation rights covered thereby may be sold from that time until the end of the football year on a non-exclusive basis by the home clubs of the respective Bundesliga or 2. Bundesliga encounter in accordance with paragraph 2.6. Mobile telephony rights (paragraphs 4.8 and 4.9) are excluded from this, since they are at any rate available to clubs and corporations on a large scale under paragraph 5.3. Accordingly, clubs shall have a free hand, but must respect the respective restrictions arising out of the principles for the sale of exploitation rights (section 2) and the essential exploitation rights of the League Association (paragraphs 4.1 to 4.10).*

The procedure laid down in paragraph 6.1 shall not prevent the League Association or its marketing partners from selling an exploitation package to an exploiter after 14 days following the first day of the football year. The exploitation package offered or sold by it cannot grant any exclusivity, however, until the end of the football year concerned, on account of the parallel exploitation rights offered by the home clubs.

- 6.3 *For the sake of completeness, exploitation rights not listed under sections 4 and 5 shall be subject to central marketing by the League Association. The League Association will assign such exploitation rights either to an exploitation package in section 4 or design a separate exploitation package for them.*
- 6.4 *If an exploiter does not exercise the exploitation rights granted to it on more than two days in a season, this shall not prejudice the further effectiveness of the agreement. The exploiter will be obliged to inform the League Association or its marketing partners of the situation immediately, so that the Association can inform the clubs and corporations without delay. The exploitation rights covered by the agreement may then be sold on a non-exclusive basis until the end of the respective football year by the home clubs concerned in the Bundesliga and 2. Bundesliga matches in accordance with paragraph 2.6. They shall also be obliged in such cases to respect restrictions resulting from the principles for the*

sale of exploitation rights (section 2) and the fundamental exploitation rights of the League Association (paragraphs 4.1 to 4.10).”