

Comments of the Commission on a proposal for a friendly solution from the European Ombudsman

- Complaint by

-, ref. 2521/2011/JF

1. BACKGROUND

On 11 November 2009, the Commission received a complaint concerning possible preferential corporate tax treatment of the Spanish professional football clubs Real Madrid, FC Barcelona, Athletic Club Bilbao, and Club Atlético Osasuna. The Commission asked the Spanish government to comment on the complaint by letters of 15 February and 28 September 2010. Comments were received from the Spanish government on 23 March, 12 April and 15 December 2010. They were forwarded to the complainant on 15 April 2010 and on 24 January 2011. He submitted observations on these comments on 3 May 2010 and on 14 March 2011, respectively. The complainant submitted further information regarding the subject matter in mails of 10 February, 12 April, 8 July, 1 October, 29 October 2010, 18 January, and 18 July 2011.

On 20 December 2011 the complainant lodged a complaint against the Commission with the European Ombudsman.

The complainant submitted the following allegations

1. DG Competition did not comply with Sections 4 (acknowledgement of receipt) and 8 (time limit for investigating complaints) of the Commission communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law.
2. DG Competition did not comply with Section 7.2. (Indicative time frame and outcome of the investigation of a complaint) of the Code of Best Practice for the conduct of State aid control procedures.
3. DG Competition did not confirm the existence of the complaint to interested parties who approached it about it.
4. DG Competition requested clarifications regarding the identity of the complainant only on 11 March 2011.
5. DG Competition did not reply to the matters regarding basketball raised in the complainant's correspondence of 18 January and 14 March 2011.
6. The Commissioner for Competition has close ties with one of the clubs identified by the complaint as a beneficiary of State aid.

The complainant claimed in particular that DG Competition should adopt a decision in the matter or explain why it has not yet done so and reply to the matters raised by the complainant in his correspondence of 14 March 2011.

On 10 February 2012, the Ombudsman asked the Commission to comment on these allegations. These comments were sent to the Ombudsman on 5 June 2012. On 30 May 2013, the Ombudsman proposed a friendly solution.

2. THE OMBUDSMAN'S PROPOSAL

In his reaction of 30 May 2013 to the Commission's observations, the Ombudsman only retained the issues mentioned under 2, 5 and 6 above. He proposed a friendly solution in accordance with which the Commission could

- adopt a decision on the complaint or properly explain why it is not yet able to do so, paying particular regard to the need to avoid giving the impression of conflict of interest; and
- reply to the complainant's request as to whether the State aid investigation also includes the basketball activities of the professional sport clubs, as referred to in his letter of 14 March 2011.

3. THE COMMISSION'S POSITION

The Commission welcomes the Ombudsman's proposal for a friendly solution and is pleased to inform him that it accepts this proposal.

Regarding the first point of the proposal, the Commission would like to underline that until now it has not had the possibility to develop a case practice in the area of State aid to professional sport, also due to the fact that Member States have never notified such aid. Its experience is therefore limited to analysing the market related aspects of the sector and trying to devise general principles of State aid control in the sector. This approach is evident in the joint statement of the Commissioner in charge of competition policy, Vice-President Almunia, and the President of UEFA, Mr Platini, on Financial Fair Play rules and State aid control in professional football of March 2012¹ as well as in the letter of October 2012 sent by DG Competition to all Member States enquiring about their financial relations with professional football.

Subsequently, in March 2013, the Commission opened formal investigations regarding possible State aid to various Dutch football clubs². DG Competition will prepare as a next step a Commission decision with regard to the facts which are the subject of the complaint.

The second point of the Ombudsman's proposal suggests a clarification of the scope of the investigation. The Commission can confirm that a State aid investigation of tax advantages to professional sport clubs, which are not limited to a specific activity of these clubs, automatically covers all the commercial activities of these clubs.

¹ http://ec.europa.eu/competition/sectors/sports/joint_statement_en.pdf

² http://europa.eu/rapid/press-release_IP-13-192_en.htm

4. CONCLUSIONS

The Commission regrets the delay in taking a decision on the complainant's complaint regarding Spanish football clubs.

DG Competition will prepare a Commission decision shortly.

Furthermore, the complainant can be assured that the investigation regarding his complaint covers all economic activities of the clubs affected.