

# Editorial

## A Flash of Light on Territorial Right

One of the main areas of impact of European Community Law has been the effect of Article 85 of the Treaty of Rome upon commercial contracts and arrangements. Article 85 seeks to eliminate anti-competitive practices. In essence it is simple, the text of its effective paragraph reading thus:

- (1) "The following shall be prohibited as incompatible with the common market: All agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development, or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts".

In practice, its very simplicity makes it hard for the legal practitioner to advise a client with any degree of certainty and accordingly paragraph 3 of the Article allows for the European Commission to issue

directives, known as block exemptions, which validate certain specific types of contracts which, in defined areas, restrict competition. There are however certain areas where no block exemption applies, one of which is that of copyright. In such areas one can only rely for guidance on such decisions as have been made by the European Commission when a restrictive contract has been referred to them.

An important Decision was made by the Commission, concerning a licence for copyright coupled with territorial restrictions, at the end of last year. The case, which concerned the re-transmission of recordings of horse race meetings, known as the *PMI-DSV* case (OJ 1995 L221/34) was referred to the Commission by disgruntled competitors, for negative clearance.

In its Decision the Commission ruled that the limitation of an exclusive copyright operating licence, limited to the pre-unification Federal Republic of Germany, was not an unlawful restriction. In so saying the EC has tacitly said that the owner of intellectual property rights remains free to choose a third party to whom to license these rights and the territory in which these rights may be exploited. The *PMI-DSV* Decision is, sadly, not reasoned in any detail. This would have been of great assistance, particularly as it distinguishes intellectual property from other assets in that exclusivity of territory is only permissible in relation to the distribution of goods by virtue of the block exemption provided by Regulation 1983/83.

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