General Court: FIFA and UEFA v Commission

IRIS 2011-3:1/3

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On 17 February 2011 the General Court of the European Union issued its ruling in cases T-385/07 and T-68/08 (FIFA v Commission) and case T-55/08 (UEFA v Commission). The cases involved the list of events of major importance for society submitted by the United Kingdom and Belgium to the Commission. The two organisations sought to annul the approving decision of the Commission.

Article 3a(1) of the Television without Frontiers Directive (now replaced by Article 14 of the Audiovisual Media Services Directive) allows Member States to prohibit the exclusive broadcasting of events they judge to be of major importance for society where such broadcasting would deprive a substantial proportion of the public of the possibility of following those events on free television. The list drawn up and sent to the Commission by Belgium included all match of the football World Cup finals, while that of the UK all matches of the World Cup and the European Football Championship finals.

FIFA and UEFA argued before the Court that the entire final tournament cannot be considered to be of major importance. The Commission, conversely, pointed out that the football World Cup is quoted in the Recitals to the Directive as an example of such an event and that a wide margin of discretion is afforded to the Member States to determine which events are to be considered of major importance in their own society.

The Court found that the Commission acted correctly in approving the lists of events of the UK and Belgium. The Court found that “prime” and “gala” matches and matches involving a Member State’s national team must be accepted as being events of major importance for the public of that Member State and may be added to the corresponding list. As regards other matches, the Court observed that it is impossible to predict in advance which will prove to be decisive for the outcome of the competition or the fate of the national team. Consequently, a decision of a Member State declaring all matches to be of major importance for society is justifiable. In fact, the Court noted that viewing figures for such matches in the most recent World Cup and European Championship tournaments drew in large numbers of viewers. Finally, the Court held that, although the categorisation of the full competitions as events of major interest for society are likely to affect the price which FIFA and UEFA will obtain for the grant of broadcasting rights, FIFA and UEFA are not obliged to sell these on whatever conditions may be obtained. Accordingly, the tournaments retain significant commercial value. Restrictions on

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the freedom to provide services and the freedom of establishment may be justified when counterbalanced by the right to information.

Judgement of the General Court, Case T-385/07, 17 February 2011

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Judgement of the General Court, Case T-68/08, 17 February 2011

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Judgement of the General Court, Case T-55/08, 17 February 2011

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