BFM TV’s broadcast of Champions League final contravened its licence

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In March 2019, the Altice media group, which holds the exclusive rights to broadcast football’s UEFA Champions League final, announced its intention to transmit the match live on 1 June 2019 not on RMC sport, which had shown the other matches in the competition, but free-to-air on BFM TV, which it also owned. On 3 April 2019, the national audiovisual regulatory authority (*Conseil Supérieur de l’Audiovisuel* - CSA) warned the group that such a broadcast would not fall under any of the programme categories that the channel was authorised to show and would breach its agreement with the CSA. Article 3-1-1 of the agreement stated that BFM TV, which was “dedicated to news”, “provides programmes that are updated in real time and cover all areas of current affairs”, and that “its programmes may include, on Saturday and Sunday, broadcasts of major sports events no more than 3 hours 30 minutes in duration between 6am and 10pm.” Such broadcasts should not constitute a total of more than 10% of the channel’s weekly airtime. Since BFM TV nevertheless broadcast the match live, the CSA, on 5 June 2019, issued a formal notice requiring it to comply with the provisions of its agreement in future. BFM TV requested the annulment of both these CSA decisions.

The *Conseil d’Etat* began by examining the CSA’s decision to dismiss the request for the annulment of its first decision of 3 April 2019, which was notified to BFM TV in a letter from the CSA president. It ruled that, although this decision had not taken the form of a formal notice or a general, binding provision, it had reflected the CSA’s view, prior to the event, that the broadcast planned by BFM TV was incompatible with the provisions of its agreement. This statement of the CSA’s position, which had also appeared on its website, must be regarded, in this case, as having been intended to significantly influence the channel’s conduct. In view of its scope and the circumstances in which it had been taken, the decision in question was an act that could be appealed against on grounds of abuse of authority. The CSA’s refusal to consider the request was therefore quashed.

The Conseil d’Etat then noted that, according to Article 20-2 of the Law of 30 September 1986, “Events of major importance may not be broadcast on an exclusive basis if a large proportion of the public is denied the opportunity to watch them live or delayed on a freely accessible television service. The list of events of major importance is fixed by decree by the Conseil d'État (…).” The

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Champions League final is an event of major importance under Article 3(6) of the decree of 22 December 2004, issued in application of the aforementioned Article 20-2.

Furthermore, while Article 3-1-1 of the agreement, which stated that the news channel offered “programmes that are updated in real time and cover all areas of current affairs”, entitled the channel to cover sports news of any kind, it could not, contrary to the company’s claim, be interpreted as meaning that it could broadcast sports events in their entirety. Therefore, even though it was an event of major importance and fell within the scope of news categories covered by BFM TV, the Champions League final could not be broadcast by the channel in this way without infringing Articles 1-1 and 3-1-1 of the agreement of 19 July 2005. On these grounds, the applicant could not reasonably argue that the decision to stop it showing the match had violated its editorial freedom.

Beschlüsse Nr.°431164 und Nr.°432634 des Staatsrats, 5. und 6. Kammer, 31. Dezember 2019

Conseil d'Etat, 5th and 6th chambers combined, decision nos. 431164 and 432634, 31 December 2019

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