

COMMISSION

COMMISSION DECISION

of 19 April 2001

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

(Case 37.576 — UEFA's broadcasting regulations)

(notified under document number C(2001) 1023)

(Only the English text is authentic)

(Text with EEA relevance)

(2001/478/EC)

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 No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by Regulation (EC) No 1216/1999 ⁽²⁾, and in particular Article 2 thereof,

Having regard to the application for negative clearance and the notification with a view to an exemption registered on 19 July 1999, as amended on 5 April 2000 pursuant to Articles 2 and 4(1) of Regulation No 17,

Having regard to the summary of the notification ⁽³⁾ published pursuant to Article 19(3) of Regulation No 17,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

1. FACTS

- (1) This decision relates to the rules of the Union des Associations Européennes de Football (UEFA) which regulate the broadcasting of football matches. The rules are the 'Regulations governing the implementation of Article 47 of the UEFA statutes, 2000 edition' (broadcasting regulations), which implement Article 47 of UEFA's Statutes. Within the territories of UEFA's member associations, the broadcasting regulations enable national football associations to block a very limited number of hours during which football may not be broadcast on television. The object of the broadcasting regulations is to provide national football associations with a limited opportunity to schedule domestic football fixtures at times when they are not liable to be disrupted by the contemporaneous broadcasting of football to the detriment of stadium attendance and amateur participation in the sport.

⁽¹⁾ OJ L 13, 21.2.1962, p. 204/62.

⁽²⁾ OJ L 148, 15.6.1999, p. 5.

⁽³⁾ OJ C 121, 29.4.2000, p. 14.

- (2) UEFA is an international organisation of 51 national football associations. It has its seat in Nyon in Switzerland. Membership of UEFA is open to all European national football associations. As a rule, there is a single association in each Member State of the EEA, which organises the sport at national level, except for the United Kingdom, where for historical reasons England, Wales, Scotland and Northern Ireland each have their own association. Recognised as the European confederation by FIFA (Fédération Internationale de Football Association), UEFA is the governing body for European football. UEFA also organises international football competitions and tournaments at European level such as the UEFA European Football Championships, the UEFA Champions League and the UEFA Cup.
- (3) UEFA first introduced broadcasting rules in 1988. These rules, which were notified to the Commission on 19 May 1992 ⁽⁴⁾, were amended on several occasions over the years and have been the subject of complaints from a number of broadcasters ⁽⁵⁾. The complainants found that the rules restricted competition, a concern that was shared by the Commission. The Commission sought to find, with the parties, an amicable solution that would also be compatible with EC competition law. A mediator was appointed in 1994 who concluded in 1996 that a compromise solution could not be found.
- (4) On 16 July 1998, the Commission therefore issued a statement of objections finding that the broadcasting regulations applicable at that time infringed Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement and that they were not eligible for exemption under Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement.
- (5) In its reply to the statement of objections on 15 October 1998, UEFA presented a proposal for new broadcasting regulations. Based on this proposal, UEFA adopted new broadcasting regulations on 2 July 1999 replacing the ones, which had been the subject of the statement of objections and notified them to the Commission on 19 July 1999. At that occasion UEFA also withdrew its notification of 1992.
- (6) Having examined UEFA's new broadcasting regulations of 2 July 1999, the Commission considered that further amendments were necessary. By letter of 14 February 2000, the Commission insisted that UEFA should further reduce the scope for national associations to block the broadcasting of football. In particular, Article 3(3) of the broadcasting regulations and its application gave rise to difficulties. Article 3(3) required national associations to provide proof that the hours blocked according to Article 3(1) actually correspond to the main domestic fixture schedule. The reason for the difficulty was that the broadcasting regulations did not define the main domestic fixture schedule precisely. This made verification of the national associations' compliance with the obligation to block hours corresponding only to the main domestic fixture schedule very difficult.
- (7) The Commission therefore requested UEFA to clearly define the main domestic fixture schedule. It also requested the introduction of a clear and unambiguous rule that the blocked hours should correspond to the main domestic fixture schedule. The Commission insisted that the main domestic fixture schedule is traditionally played during one day of the weekend, Saturday or Sunday. A football match lasts 2 x 45 minutes with a 15 minutes break in the middle, in total nearly two hours. The Commission therefore only accepted that national associations were authorised to block hours on Saturday or Sunday and only for two and a half hours, which gives spectators sufficient time for transport to and from the stadiums and to watch the football match in the stadiums without being concerned about missing football on TV. The Commission requested these amendments because the presence of a clear rule regarding the main domestic fixture schedule together with a strict enforcement of the requirement of the provision of proof by the national associations, eliminates the problem of excessive blocking of hours. Moreover, the Commission found that the close link with

⁽⁴⁾ Registered as Case IV/C-2/34.319.

⁽⁵⁾ The complainants were originally: Case IV/33145 — Independent Television Association Limited (ITVA), complaint of 5 April 1989; Case IV/33734 — Gestelevision, complaint of 24 October 1990; Case IV/34199 — British Sky Broadcasting Limited (BSkyB), complaint of 28 January 1992; Case IV/34784 — Channel Four Television, complaint of 13 July 1993; Case IV/34790 — Canal+ SA, complaint of 16 July 1993; Case IV/34948 — Telepiù srl., complaint of 13 December 1993; Case IV/35001 — CWL Telesport, complaint of 16 February 1994; Case IV/35048 — Telecinco SA, complaint of 22 March 1994; Case IV/37350 — Association of Commercial Television in Europe (ACT); complaint of 16 December 1998; Case IV/37461 — Channel 5 Broadcasting Limited, complaint of 6 April 1999.

the main domestic fixture schedule, which is a static schedule, means that national football associations would block the same hours from year to year and provide stable conditions for the broadcasting of football.

- (8) UEFA accepted the Commission's request and informed the Commission by letter of 5 April 2000 of the amendment of Article 3 of the broadcasting regulations in accordance with the Commission's request. The letter of 5 April 2000 also constituted a formal notification of the amendment of Article 3. According to Article 9 of the broadcasting regulations, they were approved by the UEFA Executive Committee on 31 March 2000 and came into force on 1 August 2000.

1.1. UEFA's rules on the broadcasting of football

1.1.1. 2000 Edition of UEFA's Statutes

- (9) The substantive UEFA rules on broadcasting are found in the broadcasting regulations. UEFA's Executive Committee issues these broadcasting regulations on the basis of Article 47(2) of UEFA Statutes. This Article empowers the UEFA Executive Committee to issue regulations implementing the rights of UEFA and member associations, pursuant to Article 47(1), to authorise the broadcasting of football:

'1. UEFA and the Member associations shall have the exclusive rights to authorise audio-visual and sound broadcasting transmissions, as well as any other use and dissemination by picture and sound, either live or recorded, in whole or as excerpts, of matches which come within their jurisdiction.

2. The Executive Committee shall issue regulations governing the implementation of these rights.'

1.1.2. The broadcasting regulations of 31 March 2000

- (10) The purpose of the broadcasting regulations is to ensure that spectators are not deterred from attending local football matches of any kind and/or participating in matches at amateur and/or youth level on account of transmissions ⁽⁶⁾ of football matches which may create competition with these matches ⁽⁷⁾. Since some of the national associations do not fear this possible negative effect from broadcast football, the broadcasting regulations do not oblige national associations to block hours within their territories. However, the national associations are obliged to observe the blocked hours of other national associations when selling their broadcasting rights to football events into the territories of national associations which have actually blocked hours ⁽⁸⁾.
- (11) According to Article 3(1), each member association may decide that the broadcasting of football be prohibited within its territory for two and a half hours on a Saturday or on a Sunday. The prohibition applies only to intentional transmissions ⁽⁹⁾. Pursuant to Article 3(3), these two and a half hours must correspond to the main domestic fixture schedule of the member association. The main domestic fixture schedule is defined in Article 3(4) as being the time when the majority (i.e. 50 % or more) of the weekly football matches in the top two domestic leagues in the country are played. These matches can be either amateur or professional. The main domestic season begins with the first match of the national league championship and ends with the last match of the national league championship. For the avoidance of any doubt, any prohibition of football pursuant to Article 3(1) may apply only during the football season as notified to UEFA. The requirement that the national associations should only block hours during the season when football is actually played in their territory means that, if for instance, football is not played during the winter season in a given country for climatic reasons, that national football association cannot prohibit the broadcasting of football on television during that period.

⁽⁶⁾ Article 1(2) of the broadcasting regulations refers to 'Any transmission or reproduction of a football match by any actual or future transmission technique (including, but not limited to Internet)'.

⁽⁷⁾ Article 2(1) of the broadcasting regulations.

⁽⁸⁾ Article 5 of the broadcasting regulations.

⁽⁹⁾ UEFA defines the notion 'intentional broadcast' as meaning broadcasts which are specifically produced for a given territory, e.g. in terms of language and/or content.

- (12) If the Member Associations decide to use the possibility of blocking the broadcasting of football within their territory, Article 3(2) obliges the national associations to adopt such a decision at the latest one month before the beginning of its domestic season. Any modification of the blocked hours can only be decided upon with effect from the following football season and at least one month before that new season begins. Pursuant to Article 3(3), all decisions of the national football associations concerning blocked hours must be reported to UEFA in writing at the time of the decision which publishes relevant information⁽¹⁰⁾. The national associations must, according to Article 3(5), at the latest one month before the beginning of the domestic football season, provide UEFA with a copy of the relevant domestic fixture lists) which justifies the selected blocked hours and specifies the beginning and the end of the domestic football season. Should the Member Association fail to inform UEFA within the time-limit of its decision regarding 'blocked hours', no restriction will apply to television broadcasts of football during that season for that Member Association.
- (13) The provisions regarding blocked periods do not apply to the transmission of football during non-sporting programmes, such as news programmes which may include short (recorded) excerpts of football matches pursuant to Article 3(6)⁽¹¹⁾.
- (14) A few select football matches can be broadcast during the blocked periods⁽¹²⁾. Member associations must notify UEFA at least 45 days in advance of the dates and kick-off times of the matches to be exceptionally broadcast during blocked hours⁽¹³⁾. Given the exceptional character of the matches falling within the scope of this provision, it only finds extremely limited practical application⁽¹⁴⁾. If a Member Association allows the broadcast of a match, including those falling within the above categories, it cannot object to the incoming transmission of any other match played in the territory of another football association.
- (15) The national associations are required not to discriminate against football from other countries and these broadcasting regulations apply equally to transmissions of domestic and foreign matches⁽¹⁵⁾. It is the responsibility of the national football associations to ensure that all parties adhere strictly to the provisions contained in the broadcasting regulations⁽¹⁶⁾. UEFA's Control and Disciplinary Body may impose disciplinary measures or directives on member associations, which are found to be in breach of the broadcasting regulations. In addition, UEFA may impose administrative measures according to the current taxation systems agreed on by the member associations⁽¹⁷⁾.

1.2. Comments submitted by interested third parties

- (16) The Commission published a notice in the *Official Journal of the European Communities* pursuant to Article 19(3) of Regulation No 17⁽¹⁸⁾ which prompted reactions from seven interested third parties. The gist of the comments submitted by the complainants and interested third parties may be summarised as follows:

⁽¹⁰⁾ UEFA has published such information on its Internet home page: <http://www.uefa.com/>.

⁽¹¹⁾ UEFA has clarified this to mean news magazines, entertainment, and biographical and retrospective programmes that may include short excerpts of football matches.

⁽¹²⁾ Article 4(2) of the broadcasting regulations:

1. matches involving the senior national representative team;
2. matches required to be broadcast live according to national legislation; and
3. any other match of national importance.

⁽¹³⁾ Article 4(3) of the broadcasting regulations.

⁽¹⁴⁾ During the 1999/2000 season only three national associations applied the exception in respect of nine matches. For the 2000/2001 season, no national association has notified any match (on 18 October 2000).

⁽¹⁵⁾ Article 2(2) of the broadcasting regulations.

⁽¹⁶⁾ Article 5 of the broadcasting regulations.

⁽¹⁷⁾ Article 7 of the broadcasting regulations.

⁽¹⁸⁾ OJ C 121, 29.4.2000, p. 14. Only ACT, Canal+, Gestevision Telecinco SA, Channel Four Television and Channel 5 Broadcasting Limited maintained their complaints after having been invited by letter to react to the notice in the Official Journal pursuant to Article 19(3) of Regulation No 17. The remaining complainants, who have not come forward, are therefore considered to have lost their status as complainants.

- (17) While they acknowledged ⁽¹⁹⁾ that the broadcasting regulations of 31 March 2000 are an improvement compared to earlier versions, third parties continue to consider that they restrict competition within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement, and claim that UEFA has not provided evidence to justify an exemption pursuant to Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement, i.e. UEFA has not shown that there is a negative impact from the televising of football on stadium attendance or on amateur participation in the sport. It is argued that the broadcasting regulations should not apply to pay-TV, owing to the still low number of subscribers and consequently the low impact of pay-TV.
- (18) Moreover, it is argued that the broadcasting regulations make the acquisition of live broadcasting rights to football more risky since national associations only have to decide on blocked hours one month before the beginning of the football season. It is considered to be a particular problem since broadcasters are required to contract in respect of future years when there is no guarantee that football associations will not switch their main fixtures and relevant blackout period from one period to another.
- (19) British broadcasters argue that they face a particular problem due to the fact that there are four national associations in the United Kingdom who are not obliged to coordinate their blocking of hours and who could each block separate hours, thereby making the broadcasting of football in the United Kingdom very difficult. There is also concern that British broadcasters will not be able to benefit from Article 4 which serves to attenuate the restriction in Article 3 by providing for an exception to the blocked hours in respect of games of national importance. British broadcasters argue that since each of the four areas in the United Kingdom has individual interests and although one national association may give dispensation from the blocked hours for the broadcasting of a match, this dispensation will not apply to the other national associations rendering broadcasting impossible in those other areas.
- (20) Some broadcasters argue that technological developments will mean that broadcasters will soon broadcast to all of Europe. In the worst case, broadcasters will have to comply with different local blocked hours in several different jurisdictions, making transnational broadcasts cumbersome. Moreover, new services delivered via the Internet, TV on demand, pay-per-view-TV and other multimedia services would also be affected by the broadcasting regulations. Unlike traditional television, broadcasts of football matches via the Internet could be received on demand around the clock and not just during the programme hours. They argue that the reception of Internet transmission is geographically unlimited. Thus, they argue, in order to comply with the broadcasting regulations, an Internet service provider would have to observe all different blocked periods of all member associations. Consequently, the provider would have to lock the broadcasts during the blocked periods of each member association and unlock the broadcasts during the free periods. It is not economically sensible for Internet providers to follow this procedure. In addition, it is detrimental to the technical progress of multimedia services in Europe and would severely restrict the development of broadcasting sports by means of new services such as the Internet.

2. LEGAL ASSESSMENT

2.1. The relevant product market

2.1.1. UEFA's submission

- (21) UEFA did not offer any definition of relevant product markets in its notification. UEFA only stated that the broadcasting rules have 'an effect on football and on broadcasting'.

2.1.2. Potentially affected markets

- (22) The Commission considers that the following markets could potentially be affected by UEFA's broadcasting regulations:

⁽¹⁹⁾ As illustrated by Canal+'s website in August 2000 where Canal+ stated that it is no less than 'world-news' that Canal+ is now able to broadcast live English Premier League in Denmark on Saturday afternoon, which has been blocked for more than 30 years. Canal+ attributes this new development to several years of dialogue with DBU, UEFA and the EU, which has led to less restrictive broadcasting rules. Canal+ will therefore broadcast live Premier League football on Saturday, Sunday and Monday.

- the upstream market(s) for the acquisition of free-TV and pay-TV broadcasting rights,
- the downstream markets on which broadcasters compete for audiences, for advertising revenue dependent on audience rates, and for pay-TV subscribers.

- (23) The Commission moreover considers that Internet transmission rights and Internet content services could potentially be affected by UEFA's broadcasting regulations. However, at this stage, streaming of video feeds on the Internet is not a real alternative or supplement to television broadcasting of football matches. The technology for the transmission of video streams over the Internet for consumers is still immature and the economic value is still rather limited. The Commission does not know of any service that provides live full coverage streaming of football matches, or intends to provide such a service in the near future. There is consequently no service at this stage for which the broadcasting regulations could imply an appreciable restriction. Although this situation may change in the future if the necessary transmission capacity becomes widely available, it is not currently necessary for the purpose of this decision to consider Internet rights to football more closely, nor is it necessary to consider retailing of Internet content services or advertising in connection therewith.

2.1.3. *The upstream market for the acquisition of broadcasting rights to football events*

- (24) Viewer preferences are decisive for all types of broadcasters in their programme acquisition policy and thus determine the value of a programme to broadcasters ⁽²⁰⁾. The Commission notes that all broadcasters are actual or potential consumers of broadcasting rights to football events and that football is equally important to them all whatever the market ⁽²¹⁾. Public service broadcasters acquire programmes in order to obtain a wide following in accordance with their public service obligations. Free-to-air broadcasters that are financed fully or partially by advertising revenues buy programmes to attract large audiences and they sell the opportunity to get exposure to this audience to advertisers. Pay-TV operators buy programmes to entice people to subscribe to their services.
- (25) While all broadcasters compete for broadcasting rights to football events, the trend is that more and more live full-length coverage broadcasting rights are sold to pay-TV broadcasters and that free-TV broadcasters acquire rights for deferred coverage or highlights of football matches. The reason is that pay-TV broadcasters are generally able to afford to pay more for the broadcasting rights than free-TV broadcasters as the latter have stronger budgetary restraints. Although in previous decisions ⁽²²⁾ the Commission has defined pay-TV as a separate market, it is not necessary for the purpose of this case to analyse the free-TV or pay-TV markets separately to measure the effects of the broadcasting regulations on the broadcasting market, since all types of broadcasting of football fall within the scope of the broadcasting regulations.

⁽²⁰⁾ In a similar way as the consumers' substitutability determines the upstream market of the supply of digital interactive television services by service providers to content providers as the Commission decided in its decision of 15 September 1999 — Case 36.539 — British Interactive Broadcasting/Open (OJ L 312, 6.12.1999, p. 1).

⁽²¹⁾ Commission Decision of 20 September 1995, RTL/Veronica/Endemol (OJ L 134, 5.6.1996), p. 32) and Commission Decision of 3 March 1999, TPS (OJ L 90, 2.4.1999, p. 6).

⁽²²⁾ See the following Commission Decisions:

Commission Decision of 2 August 1994 (ICV/M.410 — Kirch/Richmond/Telepiù) (OJ C 225, 13.8.1994, p. 3),

Commission Decision 94/922/EC of 9 November 1994 (IV/M.469 — MSG media Service) (OJ L 364, 31.12.1994, p. 1),

Commission Decision of 3 August 1999 (COMP/M.1574 — Kirch/Mediaset) (OJ C 255, 8.9.1999, p. 3),

Commission Decision of 21 March 2000 (COMP/JV.37 — BSkyB/KirchPay TV), (OJ C 110, 15.4.2000, p. 45),

Commission Decision in RTL/Veronica/Endemol: see footnote 21,

Commission Decision in TPS: see footnote 21,

Commission Decision of 12 May 2000 (IV/32.150 — Eurovision), OJ L 151, 24.6.2000, p. 18).

- (26) The ambit of the market for broadcasting rights can be delimited by the number of programmes that can achieve a desired purpose. Substitutability can therefore be tested by analysing to what extent other programmes achieve this purpose. If a specific type of programme can regularly attract high audience numbers, specific audiences or provide a brand image, which cannot be achieved by other programmes, then it may be considered that these programmes constitute a separate relevant market as there are no programmes which place a competitive restraint on the rights holders' ability to determine the price of these TV rights.
- (27) Hitherto, the Commission has not defined broadcasting rights to football events as constituting a separate relevant product market. Recently, in the TPS case, the Commission found that it is universally acknowledged that films and sporting events are the two most popular pay-TV products and it suggested that there might exist a separate market for rights to broadcast sports events⁽²³⁾. In the Eurovision⁽²⁴⁾ case, the Commission found that there could be separate markets for the acquisition of some major sport events which do not take place regularly but from time to time, most of them international, such as the football World Cup. The Commission found that sports programmes have particular characteristics; they are able to achieve high viewing figures and reach an identifiable audience which is especially targeted by certain advertisers. The Commission concluded however, that it is not necessary for the purposes of this case to exactly define the relevant product markets.
- (28) The Commission's investigation in the present case has gathered evidence that there may exist a separate market for broadcasting rights to football events. The Commission has also found some evidence suggesting the existence of a separate market for the broadcasting rights to football events that do not take place regularly throughout every year such as the football World Cup and which are not substitutable with broadcasting rights to regular football events. In any event, the Commission considers that the restrictions of competition created by the UEFA broadcasting regulations would not be appreciable even on a market defined as narrow as the market for the broadcasting of football events played regularly throughout every year and which would in practice mainly concern national first and second league and cup events as well as the UEFA Champions League and UEFA Cup.
- (29) Although the Commission's investigation has identified a number of elements that suggest the existence of this market and which are explained below, it is not necessary for the purposes of this case to exactly define the relevant product markets.

2.1.3.1. Brand image

- (30) Football is important to broadcasters owing to its ability to act as a developer of a brand image of a channel. Football has a distinct high profile among desirable viewers and it generally provides high audience figures. Football produces events which take place regularly throughout most of the year⁽²⁵⁾ and viewers are attracted not only to one match but also to the tournament as a whole. Football tournaments therefore provide guaranteed viewership for long periods. Football helps to induce viewers to regularly make an appointment to view a particular channel and to associate it with football. This contributes to developing a channel's brand image.
- (31) The development of a brand image is increasingly important in a Television industry where the number of channels among which viewers can choose increases rapidly and in which products are generally homogenised⁽²⁶⁾. With a wider choice available to viewers, it becomes increasingly difficult for Television channels to attract and maintain audience loyalty. Branding encourages audiences to schedule their viewing habits to make appointments to view a particular channel. However, such loyalty is achieved only by offering a 'differentiated' product including eye-catching programmes and by strongly associating the channel with these programmes. If a channel usually broadcasts certain programmes such as the UEFA Champions League, viewers will develop the habit of screening that channel as their first port of call in determining their viewing choices. The creation of a brand loyalty to a channel encourages viewers to use the channel as a 'point of reference' for their viewing. This has beneficial effects on other programmes transmitted by the channel.

⁽²³⁾ Commission Decision in TPS: see footnote 21.

⁽²⁴⁾ Commission Decision in Eurovision: see footnote 22.

⁽²⁵⁾ For example, in England, the Premiership commences in August and ends in May. There are about 380 games played of which full live broadcasts of 60 take place.

⁽²⁶⁾ In its answer 2d of 26 November 1999 to the Commission's request for information, VMM (Vlaamse Media Maatschappij) states that: 'The acquisition (and broadcasting) of sports rights (programmes) is, in general not a profitable investment as such. However, the broadcasting of sports programmes, especially popular sport such as football and cycling, are important for the image and the branding of the channel'.

- (32) While the ability to build up brand loyalty to a particular channel is important to all types of channels, it is not least important for advertising funded Television channels. They must be able to present audiences to advertisers for all its broadcasts, otherwise it will not be able to sell its advertising space. Football is particularly attractive in that respect, because it has a wide following with continuously high audience figures. Viewers wanting to watch a particular match may often switch to that channel well in advance of the match and may 'hang on' after the match to see whether the following broadcast is interesting. It is suggested that in some cases this is reflected in the advertising rates that are high not only in the advertising slots immediately before and after the match but also in respect of the programmes that are broadcast before and after the match.
- (33) The Commission's investigation has confirmed that the development of a brand image is important for broadcasters in determining whether to acquire football rights ⁽²⁷⁾. Broadcasters consider that football enables them to create a brand image without which their channels would not be able to develop. The availability of alternative programming does not alter their interest in, or demand, for broadcasting rights to football events ⁽²⁸⁾. Richard Russell Associates have described sport as a 'driver' for BSkyB's 10-year old business ⁽²⁹⁾.
- (34) One of the particular values of football in brand-building is its regularity. Unlike many other sporting events, football is characterised by tournaments which are played regularly throughout most of the year. Football, unlike other sports, therefore allows broadcasters to achieve high viewing figures on a regular, sustained and continuous basis ⁽³⁰⁾. Although there are league events for other sports, these are generally not as numerous and regular and whilst such sports may produce large audience figures, they do not achieve the same continued viewing figures as football. This is of a significant value for the branding of a channel, since it can only be achieved over a sustained period ⁽³¹⁾.
- (35) The quest for a brand image is so strong that broadcasters in certain circumstances do not mind losing money on individual programmes if the programme is of such quality that it can pull viewers to the channel. For some broadcasters, football could be considered as a kind of loss leader ⁽³²⁾.
- (36) These features of the broadcasting rights to football make broadcasters willing to pay higher prices for broadcasting rights to football events than for any other events, including the most exceptional sporting events such as the Olympic Games and Formula One ⁽³³⁾. The table in Annex I shows that

⁽²⁷⁾ In its answer 2k of 15 November 1999 to the Commission's request for information of 20 September 1999, RTL considers that 'The actual prices for football rights are so high that they cannot be covered by the revenues generated with football programming'. If such rights are still acquired anyway, it is for branding purposes.

⁽²⁸⁾ ONdigital in its reply 2j of 23 November 1999 to the Commission's request for information of 20 September 1999: 'Our interest in football is not affected by the availability of other film, series, game shows or other content again, because of the unique market position football holds in the United Kingdom and partly because football is likely to appeal to a different market segment'.

NOS in its reply 2i of 16 November 1999 to the Commission's request for information of 21 September 1999 considers that: 'Only to a limited extent NOS' interest in football is affected by the availability of Television rights for other sports because it is the No 1 sports in the Netherlands ... football plays a key role in NOS' sports programming ... providing other sports broadcasts by NOS with an audience they would not normally attract.' In reply 3e, NOS states that: '... football is a unique product in a "league of its own". No other sport has audience figures/market share that come close to those of football ... enhance the image of NOS'.

⁽²⁹⁾ Richard Russell Associates, 'Sports television: The ever changing face', 16 February 1999, pp. 10 and 12.

⁽³⁰⁾ See footnote 25.

⁽³¹⁾ This conclusion is justified by broadcasters' responses to Article 11 letters; in particular replies of Eurosport, RTBF, VMM, VRT, France 2 and 3, and NOS.

⁽³²⁾ In its reply 2k of 26 November 1999 to the Commission's request for information of 21 September 1999 VMM states that 'Actually, acquisition of TV rights for sport (especially football) is not a profitable operation as such ... However, the branding of VMM's channels will be the decisive parameter for deciding the acquisition of TV rights for football games'. For instance, ONdigital, which has recently acquired the television rights to the UEFA Champions League and provides these rights on a promotional basis free to subscribers, states in its reply 2d of 23 November 1999 to the Commission's request for information of 20 September 1999 that 'In the early stages of platform growth building the subscriber base is considered to be more important than pure profit'. Further in its reply 2l of 23 November 1999 to the Commission's request for information of 20 September 1999, ONdigital states that 'ONdigital believes that the brand image and value attached to its consumer offer is directly by the sports content available on the platform'.

⁽³³⁾ Kagan Euro TV Sports, 26 July 1996.

in the years from 1992 to 1996, 14 of the top 21 sports rights deals in Europe in terms of money paid concerned football. ONdigital states that 'Football rights are the most expensive of any sport ...' ⁽³⁴⁾. The total expenditure on sports as a whole has seen substantial increases in the recent periods. Football accounted for the single highest proportion of television channels total sports expenditure. The European average was 44,6 % ⁽³⁵⁾. The high percentage dedicated to the acquisition of football rights reflects the importance which broadcasters attach to football compared to the acquisition of the broadcasting rights to other sporting events.

2.1.3.2. A particular audience

- (37) Broadcasters wish to attract audiences. Broadcasters will therefore seek to have a balanced schedule with a range of different programmes in order to reach the widest possible audience. Catering to a wide audience is part of the public service remit for public service broadcasters. Pay-TV broadcasters wish to cater to the tastes of as many people as possible in order to sell subscriptions. For commercial broadcasters the reason is that they generally sell 'packages' of advertising slots spread across various programmes instead of individual slots during particular programmes ⁽³⁶⁾. Producers wishing to advertise during the Premier League, for example, will therefore also purchase slots during other types of programmes. This reflects the optimum strategy for an advertiser whose aim is to reach as large a proportion of its potential customers as possible, which is best done by showing adverts across a range of carefully selected programmes, each one of which will be watched by a different group of potential customers ⁽³⁷⁾. The fact that football is a regular and frequent event, which attracts high viewing figures, enhances the value of football programmes as part of an advertising package, because it allows the advertiser to make frequent contact with a potential customer with a distinct profile.
- (38) In deciding on a 'package', advertisers will not randomly pick programmes during which to show their adverts. The profile or type of audience, which a programme attracts, is of crucial importance to advertisers. This reflects the *raison d'être* of advertising: companies essentially advertise in order to attract new customers or to maintain existing ones. In order for an advert to fulfil this purpose, those who have at least a potential interest in the product being shown must see it ⁽³⁸⁾.
- (39) Not all types of viewers are of equal value to broadcasters (and advertisers). Some people watch more television than others do. People have different spending powers and patterns. Amongst the most sought-after target audience are men with an above-average spending power and who are in the age group of 16 and 35, because that group is generally considered to have a less fixed spending pattern compared to older people. They are therefore more likely to try new products and services. The problem for broadcasters and advertisers is that this group contains a high proportion of 'light viewers' ⁽³⁹⁾, who do not, as a rule, watch much television ⁽⁴⁰⁾. It is therefore much harder for advertisers to pass on their message to this target group via television advertising compared to other groups of the population such as women aged 55 or over, who on average watch a great deal more television. The attractiveness and elusiveness of the target group make programmes watched by them of significant value to broadcasters and they are thus keen to have programmes which attract this target audience.

⁽³⁴⁾ ONdigital in its reply 2e of 23 November 1999 to the Commission's request for information of 20 September 1999.

⁽³⁵⁾ Kagan Euro TV Sports, 26 July 1996.

⁽³⁶⁾ ITV's reply 6f of 12 November 1999 to the Commission's request for information of 10 September 1999.

⁽³⁷⁾ Thus, a football boot producer will, for example, reach a larger number of potential buyers by showing one advert during the final of a football tournament, when 'aficionados' are likely to be watching, and another during a feature film, when the weekend player may be watching, than showing two adverts during the football final. In this way a larger number of potential buyers will be contacted.

⁽³⁸⁾ For example, whilst a breakfast cereal producer may have a less specific target audience, a meat producer is unlikely to wish to place an advert during a programme dedicated to vegetarian issues, even if this programme is very popular. Thus if broadcasters wish to have the business of meat producers, they can not only show programmes about vegetarianism, they must also televise programmes which are watched by people who are at least willing to eat meat (even if the programmes attract fewer viewers).

⁽³⁹⁾ Channel 5's reply 5c of 19 November 1999.

⁽⁴⁰⁾ For example in 1998, in the United Kingdom, television-viewing per day reached 81 % of the adult population aged 16 and over. This group also watched on average 241 minutes of television per day. In contrast in the same period, television only reached 73 % of the 16 to 34-year-old population. This group only watched a total of 182 minutes of television per day.

- (40) The Commission's investigation has shown that football is the programme which seems to be the most effective tool for addressing this particular group of the population. Two thirds of the viewers are male and in the appropriate age groups ⁽⁴¹⁾. As a result, broadcasters are able to charge higher rates for advertising in connection with football compared to other programmes, and the price of advertising slots during the transmission of football is higher than during the transmission of other sports. For instance, the Premier League and the UEFA Champions League allow British broadcasters to charge premiums of between 10 and 50 % depending on the teams involved and the stage of the tournament ⁽⁴²⁾.
- (41) The attraction of programmes and hence the level of competition for the broadcasting rights to them varies according to the type of sport and the type of event. Mass sports like football generally attract large audiences. By contrast, minority sports achieve very low ratings. International events tend to be more attractive for the audience in a given country than national ones, provided the national team or a national champion is involved, while international events in which no national champion or team is participating can often be of minor interest ⁽⁴³⁾. In most Member States, football constantly achieves the highest audience figures. In 1997, football accounted for 21 of the top 25 European sports broadcast. The popularity of football is also expressed in the number of hours dedicated to the broadcast of sport. Between 1996-1997, the number of hours dedicated to football transmission was 13 936. The second most transmitted sport was tennis which achieved less than half this at 5 115 hours ⁽⁴⁴⁾. These figures led the authors of Kagan Euro TV Sports to comment that 'the TV sports hours breakdown illustrates soccer's position as the most valuable sport to cover' ⁽⁴⁵⁾. Such views are also expressed in the replies to Article 11 letters: for example ONdigital states that 'In the United Kingdom Premier League football viewing consistently manages to attract audiences in the millions, outperforming all other seasonal sporting fixtures' ⁽⁴⁶⁾.

2.1.3.3. Conclusion regarding the upstream market

- (42) In conclusion, the Commission's investigation shows that there is a likelihood that there is a separate market for the acquisition of broadcasting rights to football events played regularly throughout every year and which would in practice mainly involve national first and second league and cup events as well as the UEFA Champions League and UEFA Cup. A segmentation could be undertaken in respect of football events that do not take place on a regular basis throughout the year, such as the Football World Cup ⁽⁴⁷⁾, since the latter does not constitute an equally regular source of programming for broadcasters. However, since even on the market for the acquisition of broadcasting rights of football events played regularly throughout every year, as mentioned above, the UEFA broadcasting regulations do not appreciably restrict competition, it is not necessary for the purposes of this case to exactly define the relevant product markets.

⁽⁴¹⁾ For example Young & Rubicam Europe, reply 2e of 21 October 1999 to the Commission's request for information of 8 October 1999: product 'categories targeting female consumers are unlikely to advertise in sports programmes'. McCann-Erikson's reply 4a of 3 November 1999 to the Commission's request for information of 8 October 1999. Channel 5, reply 5c. ITV stated in its reply 5c of 12 November 1999 to the Commission's request for information of 10 September 1999 that the audiences to the UEFA Champions League 'are more male in profile than the average, younger than the average and more upmarket than the average.' McCann-Erikson's reply 2e of 3 November 1999 to the Commission's request for information of 8 October 1999 supports this. RTL considers in its reply 6d(i) of 15 November 1999 to the Commission's request for information of 20 September 1999 that it 'would lose advertising revenue if it substituted the UEFA Champions League by other football events or other sports events. Even if the viewer profile would be the same, the viewing times for these events would be much less because these sports events are less attractive'.

⁽⁴²⁾ McCann-Erikson's reply 3a of 3 November 1999 to the Commission's request for information of 8 October 1999.

⁽⁴³⁾ Recital 40 of the Eurovision decision: see footnote 22.

⁽⁴⁴⁾ Kagan Euro TV Sports, 26 July 1996, p. 8.

⁽⁴⁵⁾ Kagan Euro TV Sports, 26 July 1996, p. 163.

⁽⁴⁶⁾ ONdigital in its reply 2i of 23 November 1999 to the Commission's request for information of 20 September 1999.

⁽⁴⁷⁾ Recitals 42 and 43 of the Eurovision decision: see footnote 22.

2.1.4. *The downstream markets on which broadcasters compete for advertising revenue dependent on audience rates and pay-TV subscribers*

- (43) As was explained above, the acquisition of broadcasting rights to football events has a strong impact on the downstream television markets in which the football events are broadcast as part of the broadcasters' competition for advertisers and/or subscribers. The broadcasting regulations do not restrict broadcasters' ability to compete for advertisers and/or subscribers. It is therefore not necessary to establish whether there are separate markets confined to the broadcasting of football events on the downstream markets because the broadcasting regulations do not raise competition concerns even on the narrowest market.

2.2. **The relevant geographic market**

- (44) The UEFA broadcasting regulations reflect the fact that the market for broadcasting rights to football events is **national** since such broadcasting rights are generally sold on a national basis — even for pan-European events such as the UEFA Champions League.
- (45) Also, the downstream television markets can be viewed as national or regional in scope, in particular for cultural and linguistic reasons ⁽⁴⁸⁾.

2.3. **Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement**

- (46) Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement prohibits 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 the Contracting Parties to the EEA Agreement and which have as their object or effect the prevention, restriction or distortion of competition within the common market and within the territory covered by the EEA Agreement.

2.3.1. *Agreements between undertakings and decisions by associations of undertakings*

- (47) The Court of Justice has ruled that, having regard to the objectives of the Community, sports are subject to Community law **only in so far as they constitute an economic activity** within the meaning of Article 2 of the Treaty ⁽⁴⁹⁾. Professional football clubs engage in economic activities ⁽⁵⁰⁾ and they are undertakings within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. Individual national football associations are consequently associations of undertakings within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. They are also undertakings in so far as they themselves engage in economic activity ⁽⁵¹⁾. UEFA is therefore an association of associations of undertakings and it is itself an undertaking to the extent it is engaged in economic activities such as the selling of the commercial rights to UEFA tournaments. UEFA, the national associations and the member football clubs are therefore undertakings within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement, notwithstanding the fact that some of these entities are non-profit making bodies and apart from any cultural or social activities they may pursue.

⁽⁴⁸⁾ See Commission decisions in Cases: M.779 — Bertelsmann/CLT of 7 October 1996 (OJ C 364, 4.12.1996, p. 3); RTL/Veronica/Endemol: see footnote 21.

⁽⁴⁹⁾ See judgments of the Court of 12 December 1974, Case 36/74, *Walrave v Union cycliste internationale*, [1974] ECR 1405, paragraph 4, of 14 July 1976, Case 13/76, *Donà v Mantero*, [1976] ECR 1333, paragraph 12, of 15 December 1995, Case C-415/93, *URBSF v Bosman*, [1995] ECR I-4921, paragraph 73, of 11 April 2000, Cases C-51/96 and C-191/97, *Christelle Delière v Ligue Francophone de Judo et Disciplines Asbl and Others* [2000] ECR I-2549, paragraphs 41 and 42, and of 13 April 2000, Case C-176/96, *Jyri Lehtonen and Others v Fédération Royale Belge des Sociétés de Basket-ball ASBL (FRBSB)*, [2000] ECR I-2681, paragraphs 32 and 33.

⁽⁵⁰⁾ For example selling tickets, transferring players, distributing merchandising articles, concluding advertising and sponsorship contracts, selling broadcasting rights, etc. The size of the undertaking does not matter and the concept of 'undertaking' does not presuppose a profit-making intention. See opinion of Advocate-General Lenz in Case C-415/93, *URBSF v Bosman*, [1995] ECR I-4921, paragraph 255 referring to the judgment in Joined Cases 209 to 215 and 218/78, *Van Landewyck v Commission* [1980] ECR 3125, paragraph 88.

⁽⁵¹⁾ Opinion of Advocate-General Lenz in Case C-415/93, *URBSF v Bosman*, [1995] ECR I-4921, paragraph 256. See also Commission Decision of 27 October 1992 relating to a proceeding under Article 85 of the EEC Treaty (IV/33.384 and IV/33.378 — Distribution of package tours during the 1990 World Cup) (OJ L 326, of 12.11.1992, p. 31) paragraph 49 ('... FIFA is an entity carrying on activities of an economic nature and constitutes an undertaking within the meaning of Article 85 of the EEC Treaty') and paragraph 53 ('The [Federazione Italiana Calcio = the national Italian football association] also carries on activities of an economic nature and is consequently an undertaking within the meaning of Article 85 of the EEC Treaty') and judgment of the Court of First Instance of 9 November 1994 in Case T-46/92, *Scottish Football Association v Commission*, [1994] ECR II-1039, from where it can be concluded that the Scottish Football Association is an undertaking or an association of undertakings within the meaning of Articles 81 and 82. See also Joined Cases C-51/96 and C-1291/97, *Christelle Delière v Ligue Francophone de Judo et Disciplines Asbl and Others*, reference given above, at paragraphs 52 to 57.

- (48) The broadcasting regulations are laid down in the internal rules of UEFA. The competent organs of UEFA have adopted these regulations. This is a decision of an association of associations of undertakings within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement ⁽⁵²⁾.

2.3.2. The broadcasting regulations do not restrict competition appreciably

- (49) According to UEFA, the broadcasting regulations provide national associations with a limited possibility for scheduling their domestic football fixtures at times that do not coincide with football on television. UEFA argues that while this may sometimes result in situations where broadcasters are unable to broadcast football when they wish, the broadcasting regulations do not result in any appreciable restriction of competition, because the period when the broadcasting of football may be restricted is extremely limited in scope and time.
- (50) From the outset, the Commission notes that the broadcasting regulations may not be considered as having any anti-competitive object within the meaning of Article 81(1) of the EC Treaty or Article 53(1) of the EEA Agreement. The object is not to restrict in a commercial sense broadcasters' possibilities of acquiring broadcasting rights to football events or to restrict broadcasters' possibilities of competing for advertising revenues or subscribers. The object is to promote the development of football and the variety of the competition.
- (51) Nevertheless, the broadcasting regulations may under certain circumstances potentially result in situations where broadcasters are unable to broadcast football events live when they wish. This is caused by the fact that the national associations are obliged to ensure that, when broadcasting rights from their territories are sold into a territory with blocked hours, these blocked hours are respected and that the football events in issue are not actually broadcast during these hours. However, this effect of the broadcasting regulations cannot be qualified as constituting an appreciable restriction of competition within the meaning of Article 81(1) of the EC Treaty or Article 53(1) of the EEA Agreement.
- (52) The Commission has reached the following conclusion, taking the features of the UEFA broadcasting regulations into account.
- (a) The broadcasting regulations make it possible for the national football associations to block the intentional broadcasting of football within their own territories no more than two and a half hours on either a Saturday or a Sunday.
 - (b) These blocked hours must correspond strictly to the main domestic fixture schedule as defined by the broadcasting regulations, which is the time when the majority (i.e. 50 % or more) of the weekly football matches in the top two domestic leagues in the country are played.
 - (c) This requirement prevents arbitrary decisions as to when to block hours, and the blocking of hours in any excessive manner or when no football is played, such as during holiday periods.
 - (d) If the main domestic fixture schedule is spread out too much, so that 50 % or more of the weekly football matches in the top two domestic leagues in the country are not played on Saturdays or Sundays, the national football associations cannot block any hours.
 - (e) The close link to the main domestic fixture schedule also provides that the blocked hours will largely remain the same over the years. Furthermore, once the blocked hours have been fixed, the national football associations have no further influence on their application through any authorisation procedures. On this basis, the national associations and broadcasters are able to schedule football events well in advance to take place at hours not conflicting with broadcast games — a feature which is important for the rescheduling of football matches for broadcasting purposes. This feature is designed to meet broadcasters' concerns about the risk they may incur from the fact that football associations could switch their main fixtures and relevant blackout period from one period to another. The perceived risk stems from the fact that broadcasters are often required to contract for broadcasting rights in respect of future years.

⁽⁵²⁾ If they were categorised as agreements between undertakings, this would not change the situation since Article 81 of the EC Treaty and Article 53(1) of the EEA Agreement apply in the same way to both those forms of coordination. See opinion of Advocate-General Lenz in Case C-415/93, *URBSF v Bosman*, [1995] ECR I-4921, paragraph 258.

- (f) If national football associations allow the broadcasting of football events during the blocked hours within their territories, they can not object to the broadcasting of any other football event.
- (g) The blocked periods do not apply to the transmission of non-sporting programmes, which may include short (recorded) excerpts of football matches.
- (53) In analysing the market, the Commission has taken note that for the 2000/2001 season only 10 out of 21 national football associations have applied the broadcasting regulations and blocked hours (six on Saturday and four on Sunday), as can be seen in the table in Annex II. While three of four national football associations in the United Kingdom⁽⁵³⁾ have introduced blocked hours, they have, as in the past, done so in a coordinated manner. British broadcasters' concern, namely that there are four national football associations in the United Kingdom which are not obliged by the broadcasting regulations to coordinate their blocking of hours which could lead to each national football association blocking separate hours and thus making the broadcasting of football in the United Kingdom technically more difficult (but technically still possible) because the broadcaster would have to replace its football transmission with some other programme, is therefore theoretical and unfounded in practice.
- (54) Another concern pointed out by British broadcasters is that they would not be able to benefit from a single British national football association applying Article 4 which is an attenuation of the restriction in Article 3 by providing for an exception to the blocked hours in respect of games of national importance⁽⁵⁴⁾. They argue that each of the four national football associations in the United Kingdom have individual interests and although one national association may give dispensation from the blocked hours for the broadcasting of a match, this dispensation will not apply to the other national associations, thus rendering broadcasting impossible in those areas. The Commission notes that Article 4 is advantageous for broadcasters because it provides for an exception from the blocking and diminishes the blocked hours applicable in respect of certain, however infrequent, football matches. The provision provides that a football match can be broadcast during blocked hours where there would otherwise be a ban against the broadcasting of football. Moreover, application of the dispensation has the effect that the member association that applies the provision must also accept the transmission of any other match in its territory during the same period. Article 4 thus provides an advantage to the general rule by attenuation of the restriction in Article 3. Furthermore, none of the UEFA national football associations apply the provision in the 2000/2001 season. During the 1999/2000 season where there were significantly more blocked hours, the provision was only applied in respect of nine football matches. The English and the Scottish Football Associations applied the provision three times. One time was in respect of the same hours. It is therefore considered that the provision, which provides a dispensation possibility from the blocked hours, has little practical importance.
- (55) Broadcasters further argue that the broadcasting regulations pose problems in respect of transfrontier broadcasts. Broadcasters argue that technological developments will mean that broadcasters will soon broadcast to all of Europe. Broadcasters will therefore have to comply with different local blocked hours in several different jurisdictions making transnational broadcasts more cumbersome. While it is correct that broadcasters must comply with the blocked hours in the territories into which they broadcast intentionally, it is currently considered that this fact does not make the possible restrictions caused by the broadcasting regulations appreciable. The Commission has not learnt of any cases where the effects of the broadcasting regulations have caused problems. For the purposes of the broadcasting regulations, 'intentional transmission' is defined as a situation in which a broadcaster transmits in the local language. Where pan-European broadcasters transmit as encrypted television services, there is the possibility of cutting out the countries for which blocked hours apply. In free-to-air transmission, pan-European channels such as Eurosport have the possibility of not transmitting football with commentary in a given language in order to avoid the application of the regulations. That a differentiation between countries is possible is illustrated by the example of Eurosport which already 'tailors' programming for regional or local audiences. Furthermore, Eurosport as the only pan-European sports channel available in all Member States of the EU and the EEA does, in general, as far as national European leagues are concerned, not use live rights,

⁽⁵³⁾ The existence of four associations in the United Kingdom has historical reasons.

⁽⁵⁴⁾ The possibility of derogating from the blocked hours provided for by Article 4 of the broadcasting regulations is coherent with the approach in Article 3(a)(1) of Council Directive 89/552/EEC (OJ L 298, 17.10.1989, p. 23), which aims at ensuring that a substantial proportion of the public is not deprived of the possibility of following such events via live live coverage or deferred coverage.

but broadcasts this football deferred. Since the broadcasting regulations apply only to intentional transmissions as defined above and since most broadcasters transmit intentionally only into the territory of a single national football association, the problem does not seem to be significant or appreciable at this stage. If these facts change in the future, the Commission may have to review the situation.

- (56) Broadcasters finally express concern about the impact of the broadcasting regulations on new services delivered via the Internet. In contrast to traditional television, broadcasts of football matches via the Internet could be received on demand round the clock and, more importantly, the reception of Internet broadcasts is geographically unlimited. Thus, in order to comply with the broadcasting regulations, an Internet service provider would have to observe all the different blocked periods of all member associations and the provider would have to lock the broadcasts during the blocked periods to users in each member association and unlock the broadcasts during the free periods. While technically possible for an Internet service provider, it is not economically sensible for Internet providers to follow this procedure and such a requirement could act as a barrier to the development of new, innovative services. However, the Commission shares the view of one of the third parties that have commented that the technology for the transmission of video streams over the Internet is still immature and the economic value of such services is still rather negligible. The Commission's current view is therefore that it cannot establish that the broadcasting regulations appreciably restrict the possibilities of providing football video streams over the Internet. The Commission does not know of a service that provides live full coverage streaming of football matches or intends to provide such a service in the near future. However, this view may change in the future: in particular, if developments are brought to the attention of the Commission which indicate that the broadcasting regulations have become a barrier to the development of new Internet services, it will reconsider this Decision in the light of these new circumstances.
- (57) With these facts in mind, the Commission has examined the fixtures for the first and second division football leagues in a number of the national football associations. The Commission has taken note that the traditional fixed fixtures — which according to the broadcasting regulations have to correspond to the blocked hours — vary in the different countries (see table in Annex II) and that the fixtures are increasingly spread — in particular in the leagues from the big football nations (e.g. England, France, Germany, and Spain) that have a foreign market outside their domestic market. In most of those leagues matches are played over several days of the week and at different and varying hours. The combination of the various fixtures will therefore only rarely result in situations where broadcasters would be prevented from broadcasting football of a particular origin and thus the acquisition of broadcasting rights of that origin ⁽⁵⁵⁾. Therefore, while broadcasters may not always be able to broadcast a particular match live, there are nevertheless plenty of other opportunities to broadcast other matches live from the same particular tournament. If a broadcaster wishes to broadcast live football from a particular country or tournament, it is consequently not, or only very rarely, prevented from doing so because of the broadcasting regulations. In addition, broadcasters also have the opportunity to broadcast live football matches from other national or pan-European tournaments, which are played at different times. Consequently, regardless of the existence of the broadcasting regulations, broadcasters are always able to acquire commercially interesting broadcasting rights to football events.
- (58) In addition, it should not be forgotten that broadcasters often also rely on the broadcasting of excerpts and highlights on a deferred basis in sports magazines programmes, etc. These programmes can easily be programmed so that they do not clash with blocked hours. Moreover, news coverage in non-sporting programmes is not blocked by the broadcasting regulations.
- (59) Since the Commission has found that the broadcasting regulations **have no appreciable restrictive effect on the broadcasting market**, it is not necessary for the purpose of this Decision to substantiate whether and to what extent there is a negative impact on stadium attendance and amateur participation in the sport due to the televising of football no matter whether it is on free-TV, pay-TV or streaming via the Internet.

⁽⁵⁵⁾ For example Canal+ is broadcasting English Premier League football into Denmark on Saturdays, Sundays and Mondays.

- (60) The present decision does not in any way prejudice the assessment of the joint selling of broadcasting rights to football events under Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.
- (61) On the basis of these facts, the Commission has reached the conclusion that the UEFA broadcasting regulations cannot be considered to constitute an appreciable restriction of competition within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement in this market,

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the facts in its possession the Commission has **no grounds for action** under Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement in respect of Article 47 of UEFA's Statutes as implemented by the broadcasting regulations.

Article 2

This Decision is addressed to:

Union des Associations Européennes de Football
Route de Genève 46
CH-1260 Nyon 2

Done at Brussels, 19 April 2001.

For the Commission

Mario MONTI

Member of the Commission

ANNEX I

Top 21 European sports deals during 1992 to 1996 ⁽¹⁾

	Sport	Broadcaster	Fee in million USD	Fee in million ECU	Run date
1.	World Cup Soccer	Kirch	2 360	2 572	2002
2.	Olympic Games	EBU	1 440	1 570	1996
3.	English Premier League Soccer	BSkyB	955	1 041	1996
4.	Dutch Premier League Soccer	Sport7	648	706,32	1996
5.	Italian Serie A/B Soccer	RAI	356	388,04	1996
6.	German Premier League Soccer	Sat1	314	342,26	1997
7.	German Premier League Soccer	Sat1	293	319,37	1994
8.	Olympics 1996	ARD/ZDF	287	312,83	1996
9.	German European Cup Soccer	Sat1/RTL	251	273,59	
10.	UK Five Nations Rugby	BSkyB	227	247,43	1996
11.	Spanish Premier League Soccer	Forta	164	178,76	
12.	French Premier League Soccer	Canal+	150,3	163,83	1996
13.	Super Rugby League	BSkyB	137,2	149,55	1996
14.	Italian PPV Premier League Soccer	Telepiù	125	136,25	1997
15.	UK Super Rugby League	BSkyB	118,4	129,06	
16.	English Premier League Soccer highlights	BBC	115,2	125,57	1996
17.	International Amateur Athletics	EBU		125	5 years
18.	Formula One	ITV	96,4	105,08	1996
19.	Danish Super League Soccer	DR/TV2	89,2	97,228	1996
20.	English FA Cup Soccer	BSkyB	86,9	94,721	1996
21.	English Premier League	BSkyB	62	67,58	1992

⁽¹⁾ Source: Kagan Euro TV Sports, 26 July 1996.

ANNEX II

**Broadcasting regulations (Article 3): Decision on 'blocked hours' by the national associations
(2000/2001 season — All local time)**

	Blocked hours	Traditional full fixture	Period
	Saturday	Sunday	
Austria	14h00 to 16h30		until 3.12.2000, 3.3. to 27.5.2001
Belgium	19h30 to 22h00		12.8. to 21.12.2000, 20.1. to 20.5.2001
Denmark		14h15 to 16h45	23.7. to 26.11.2000 and 11.3. to 17.6.2001
England	14h45 to 17h15		12.8.2000 to 19.5.2001
Finland			
France			
Germany			
Greece			
Ireland			
Iceland			
Italy			
Lichtenstein			
Luxembourg		14h30	August 16h00, September 15h30, October 15h00, November 14h45/14h30, December 14h30, February to March 15h00, April to May 15h30, June 16h00
Netherlands		14h45 to 17h15	until 18.12.2000, 28.1 to 28.5.2001
Northern Ireland			
Norway	17h30 to 20h00		(17h30 to 20h00: 20 to 27.8.2000, 15h30 to 18h00: 10 to 24.9.2000, 14h30 to 17h00: 1 to 15.10.2000, 13h30 to 16h00: 22.10.2000)
Portugal		16h00 to 18h30	until 11.6.2001
Scotland	14h45 to 17h15		29.7.2000 to 2.1.2001, 27.1 to 26.5.2001
Spain			
Sweden			
Wales	14h30 to 17h00		until 6.5.2001