

COMMISSION

COMMISSION DECISION

of 20 July 1999

relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement
(Case IV/36.888 — 1998 Football World Cup)

(notified under document number C(1999) 2295)

(Only the French text is authentic)

(Text with EEA relevance)

(2000/12/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 EC Treaty ⁽¹⁾, as last amended by Regulation (EC) No 1216/1999 ⁽²⁾, and in particular Article 15(2) thereof,

Having regard to the Commission Decision of 25 August 1998 to initiate a proceeding in this case,

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission, pursuant to Article 19(1) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) of Regulation No 17 ⁽³⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions.

Whereas:

I. THE FACTS

A. SUBJECT OF THE DECISION

- (1) This Decision concerns arrangements relating to the sale to the general public in 1996 and 1997 of entry tickets for the 1998 Football World Cup finals tournament by the officially appointed local organising committee.

B. THE CFO

- (2) The Comité français d'organisation de la Coupe du monde de football 1998 (CFO) was established as a non-profit making organisation on 10 November 1992 by the Fédération Française de Football (FFF) with the agreement of the Fédération Internationale de Football Association (FIFA), specifically for the purpose of carrying on all activities relating to the technical and logistical organisation of the 1998 World Cup finals tournament in France, in compliance with various operational constraints laid down by FIFA.

⁽¹⁾ OJ L 13, 21.2.1962, p. 204/62.

⁽²⁾ OJ L 148, 15.6.1999, p. 5.

⁽³⁾ OJ L 127, 20.8.1963, p. 2268/63.

C. TOURNAMENT

- (3) The 1998 World Cup finals tournament involved the participation of 32 football teams representing countries from around the world. The tournament took place following the conclusion in 1997 of a preliminary qualifying competition involving the participation of 172 representative teams. Both Brazil, as winners of the previous tournament in 1994, and France, as host nation, were exempt from the requirement to qualify and as such did not take part in the preliminary qualifying competition.
- (4) In the first phase of the finals tournament, commencing 10 June 1998, teams were divided into eight groups of four teams each. The composition of those groups was determined by a 'group draw' which took place on 4 December 1997. Each team played a total of three matches against other teams in the same group.
- (5) Teams finishing either first or second in each of the eight first-phase groups qualified for the second-phase. The second phase therefore involved the participation of 16 teams, the first round of which was known as the 'Round of 16'. This was followed by four quarter-final matches, two semi-final matches, a match to determine the third and fourth-placed teams and, on 12 July 1998, the World Cup final itself.
- (6) Ten stadiums, each located in France, were used to host World Cup finals football matches. Each of a team's first-phase matches was played in a different stadium. According to the CFO, this guaranteed that each stadium would host at least two teams finishing top of their group in the first phase. In relation to second-phase matches, each of the 10 World Cup stadiums hosted at least one match taking place in the Round of 16 or one quarter final match.

D. TICKETING ARRANGEMENTS

- (7) As holder of all rights relating to World Cup tournaments, FIFA establishes regulations outlining the general organisational framework of both preliminary and finals competitions. In relation to organisational arrangements relating to the 1998 Football World Cup finals tournament, FIFA established regulations providing that the CFO, subject to approval of the overall arrangements by FIFA ⁽⁴⁾, was responsible for all matters relating to the price, distribution, and sale of entry tickets for finals matches ⁽⁵⁾.

E. TICKET DISTRIBUTION — GENERAL

- (8) In total, some 2 666 500 entry tickets were made available by the CFO for subsequent distribution either directly or through officially-appointed sales channels. Tickets were distributed as follows:
 - 28,12 %, distributed by the CFO to the general public,
 - 23,33 %, distributed by national football federations to the general public,
 - 6,58 %, distributed by official tour operators to the general public worldwide,
 - 13,48 %, distributed by the CFO to members of the 'Famille du Football Français' ⁽⁶⁾,
 - 13,15 %, distributed by the CFO to sponsor organisations,
 - 7,51 %, distributed by the CFO as Prestige/hospitality products principally to corporate bodies,
 - 4,07 %, distributed by the CFO for miscellaneous purposes ⁽⁷⁾,
 - 2,86 %, distributed by the CFO to public entities,
 - 0,70 %, distributed to the handicapped,
 - 0,20 %, unsold.
- (9) Income derived from ticket sales represented 60 % of total CFO receipts.

F. TICKET SALES TO THE GENERAL PUBLIC

- (10) A total of 1 547 300 match tickets relating to all finals matches were made available exclusively for sale to the general public, representing 58,03 % of all tickets distributed, and comprising ticket sales by the CFO (28,12 %), by FIFA-affiliated national football federations (23,33 %) and by officially appointed tour operators throughout the world (6,58 %), including tour operators selling within Europe.

⁽⁴⁾ Such approval did not, however, concern the arrangements at issue in this Decision.

⁽⁵⁾ Article 34 of FIFA Regulation 'Coupe du Monde de la FIFA 1998' of 31 May 1995.

⁽⁶⁾ Made up of football licence holders and club members in France.

⁽⁷⁾ For example, youth programmes.

- (11) Tickets were sold to the general public either on an individual basis or as a package comprising five or six separate entry tickets marketed under the name 'Pass France 98'. This Decision concerns exclusively arrangements relating to the sale by the CFO in 1996 and 1997 of Pass France 98 and individual entry tickets for World Cup finals matches.

Breakdown of sales

- (12) The general breakdown of ticket sales to the general public, which took place both before and after the group draw of 4 December 1997, can be summarised as follows.

Table 1

Sales of World Cup match tickets to the general public

| | Quantity | % ⁽¹⁾ |
|--|------------------------|------------------|
| Sales by the CFO before 4. December 1997 to consumers providing an address in France: | | |
| — Pass France 98 | 393 200 ⁽²⁾ | 14,75 % |
| — individual tickets | 181 000 | 6,79 % |
| Sales by the CFO 4. December 1997 to consumers providing an address in the European Economic Area: | | |
| — individual tickets | 175 500 | 23,33 % |
| Sales by national football federations after 4.12.97 ⁽³⁾ : | | |
| — individual tickets | 622 150 | 23,33 % |
| Sales by authorised tour operators after 4.12.97 ⁽³⁾ : | | |
| — individual tickets | 175 450 | 6,58 % |
| Total | 1 547 300 | 58,03 % |

⁽¹⁾ Figures reflect the percentage of total tickets distributed/sold for all finals matches.

⁽²⁾ Figures represent the total number of individual entry tickets sold through Pass France 98.

⁽³⁾ Figures reflect sales on a worldwide basis.

Timing of sales

- (13) The specific dates and sequence of ticket sales to the general public by each of the official distribution channels was:

27 November 1996 to 27 May 1997: 393 200 tickets were sold direct by the CFO to members of the general public able to provide an address in France through Pass France 98. All Pass France 98 were sold by 27 May 1997;

18 September to 18 October 1997: applications from the general public able to provide an address in France could be lodged with the CFO for 181 000 individual entry tickets relating to the opening match, quarter and semi-finals, third and fourth-place play-off and the final;

from 4 December 1997 (date of group draw): Following the group draw, individual entry tickets for finals matches were allocated to national football federations by FIFA. Ticket sales to the general public by national football federations relating to first-phase matches commenced shortly thereafter. The majority of second-phase ticket sales by national federations took place during the course of the tournament when the identities of teams participating in second-phase matches became known. A total of 622 150 tickets relating to all finals matches were allocated in varying quantities to national football federations worldwide;

from 15 December 1997: individual tickets relating to finals matches were allocated to official tour operators authorised to sell tickets within the UEFA⁽⁸⁾ zone (hereinafter referred to as 'European tour operators')⁽⁹⁾. Of the total number of entry tickets allocated to official tour operators worldwide, an initial allocation of approximately 79 150 entry tickets was made available by the CFO to European tour operators. Further entry tickets were made available by the CFO to European tour operators following the return at a later date of unsold tickets by national football federations. This additional allocation increased the total allocated to European tour operators by approximately 25 %;

from 22 April 1998: 175 500 entry tickets relating to first phase and round of 16 matches were sold direct by the CFO on an individual basis to the general public able to provide an address within the EEA.

Tickets sold 'blind' to the general public

- (14) Before the group draw of 4 December 1997 it was not possible to know the composition of the eight first-phase groups and hence the identities of teams participating in specific first-phase matches. For each first-phase match, therefore, only the date of the match and the venue at which it would take place was known. In relation to all second-phase knock-out matches, the identities of participating teams only became known following completion of the relevant matches in the round immediately preceding.
- (15) With the exception of the opening match, therefore, which was certain to involve the participation of Brazil as winners of the previous finals tournament in 1994, consumers purchasing entry tickets for first-phase matches before the group draw of 4 December 1997 did so on a so-called 'blind' basis, that is, at the time of purchase, the identities of teams participating in the matches concerned were not known.
- (16) In relation to sales of tickets relating to second-phase matches, consumers purchasing tickets before the completion of the relevant matches in the immediately preceding round also did so on a blind basis.

Effect of the group draw of 4 December 1997

- (17) The group draw of 4 December 1997, which allowed the general public to ascertain the identities of competing teams for all first-phase matches, had a profound effect in certain European countries on the level of interest in the tournament and, more particu-

larly, on the demand for tickets relating to certain matches which the quotas reserved by FIFA for certain national football federations were unable to satisfy.

G. DIRECT SALES BY THE CFO TO THE GENERAL PUBLIC

Sales of Pass France 98

- (18) Pass France 98 comprised a group of five or six separate match tickets. Other than for matches taking place at three of the 10 World Cup stadiums, Pass France 98 entitled the holder to attend matches taking place at a single stadium involving all first-phase matches and a match in the round of 16⁽¹⁰⁾. First-phase and round of 16 matches took place over a period of between 13 and 20 days, depending on the venue in question.
- (19) In the event, Pass France 98 was marketed and sold exclusively by the CFO to members of the general public able to provide an address in France, such sales taking place well in advance of the group draw of 4 December 1997 and therefore before the identities of teams participating in specific first-phase matches were known. Sales of Pass France 98 before the group draw were considered necessary by the CFO in order, on the one hand, to ensure as far as was possible that all first-phase and Round of 16 matches were played in front of capacity crowds regardless of the identities of participating teams and, on the other, to provide necessary financing for the CFO in the run-up to the tournament.
- (20) A total of 393 200 blind entry tickets were sold by the CFO through Pass France 98 to the general public between 27 November 1996 and 27 May 1997, representing approximately 15 % of the total number of tickets available for finals matches and 6 % of the CFO's total ticketing income. While figures varied from stadium to stadium, between 71 % and 91 % of all Pass France 98 sold by the CFO were bought either by the general public living in the Département in which a host stadium was located or in the immediately surrounding Départements.

Sales of individual entry tickets

- (21) Individual entry tickets were sold to the general public by the CFO in two separate tranches.

⁽⁸⁾ UEFA (l'Union des associations européennes de football) organises various football competitions in Europe. Its members include (*inter alia*) all national football federations in the EEA.

⁽⁹⁾ Relating exclusively to matches involving the participation of at least one representative team based in the UEFA zone.

⁽¹⁰⁾ Pass France 98 relating to matches taking place at the Saint-Denis stadium did not entitle the purchaser to attend the opening match of the tournament. Pass France 98 for matches taking place at the Lyons and Nantes stadiums allowed access only to all first-phase matches given that no round of 16 matches took place in those stadiums.

First tranche (18 September to 18 October 1997)

- (22) In its first tranche of sales, the CFO invited the general public able to provide an address in France to apply for approximately 181 000 match tickets relating to the opening match, quarter and semi-finals, the third and fourth-place play-off and the final.
- (23) Applications for those tickets had to be lodged with the CFO between 18 September 1997 and 18 October 1997. Following receipt of some 1 043 million applications, a lottery draw took place on 19 December 1997 to determine the identities of successful applicants. Sales of individual entry tickets in 1997 represented approximately 7 % both of total tickets available for finals matches and of the CFO's total ticketing income.

Second tranche (from 22 April 1998)

- (24) In a second tranche of sales commencing 22 April 1998, the CFO sold some 175 500 individual entry tickets to the general public able to provide an address in the EEA, relating to all first-phase and round of 16 matches (other than the opening match). At the time of those sales, the identities of teams participating in all first-phase matches were known, while teams participating in each round of 16 match could be identified from a list of no more than eight teams participating in the first phase.
- (25) For reasons of security, no more than approximately 10 % of entry tickets sold by the CFO in this second tranche could be assigned to supporters of teams participating in any given match, taking into account the limited number of seats which at that time remained available for sale to the non-neutral public (see recital 57). All remaining entry tickets were sold exclusively to 'neutral' spectators who could be allocated seats reserved specifically for that sector of the public.
- (26) Approximately 45 % of entry tickets made available in this second tranche of sales were purchased by the general public in the EEA providing addresses outside France, while some 38 % of all tickets sold were purchased by consumers from countries whose teams had qualified for the finals competition ⁽¹¹⁾.

H. TICKET SALES TO THE GENERAL PUBLIC BY OTHER DISTRIBUTION CHANNELS (EUROPEAN TOUR OPERATORS AND NATIONAL FOOTBALL FEDERATIONS)

- (27) European tour operators and national football federations sold all entry tickets distributed to them by the CFO on an individual basis after the group draw of 4

December 1997, when the identities of teams taking part in each first-phase match were known. As such, neither of those distribution channels sold Pass France 98 to the general public.

Sales of individual entry tickets to the general public by European tour operators**Selection of tour operators**

- (28) Following meetings with the Commission in March 1997, the CFO submitted a notification on 11 June 1997 relating to its proposed system for the selection of tour operators authorised to sell entry tickets for finals matches in the UEFA zone (including, *inter alia*, all countries within the EEA). Given the stated urgency of the notification, and following an assessment by the Commission of the CFO's specific proposals, those arrangements were approved by way of comfort letter on 30 June 1997.
- (29) Although the notification outlined in broad terms the arrangements for the sale of entry tickets for finals matches generally, at no time was the Commission informed by the CFO of its intention to implement the arrangements at issue in this Decision.
- (30) On 24 November 1997 the CFO announced publicly, by way of a press release, that 17 tour operators had been appointed to sell tickets worldwide, of which five were granted the exclusive right to sell tickets in the UEFA zone.

CFO sales to European tour operators

- (31) European tour operators ordered the maximum number of tickets initially made available to them by the CFO, representing some 79 150 in total. The CFO made additional allocations to European tour operators at a later date, thereby increasing this initial figure by approximately 25 %.

Orders of Pass France 98

- (32) As distributor of all entry tickets to finals matches, the CFO offered European tour operators the opportunity to purchase 100 Pass France 98 relating to games taking place at each of the 10 World Cup stadiums. Taking all venues together, this amounted to a maximum offer to each European tour operator of some 5 500 individual entry tickets. European tour operators were free to decide whether to order Pass France 98 before or after the group draw of 4 December 1997.

⁽¹¹⁾ As confirmed by the CFO in its letter of 4 June 1998 (Annex 3), responding to the Commission's formal request for information of 15 May 1998.

(33) By the time of their appointment, and well after the conclusion of sales of Pass France 98 by the CFO, European tour operators had already confirmed to the CFO their intention to order the maximum number of tickets made available through Pass France 98 after the group draw of 4 December 1997, representing some 27 500 entry tickets in total. That being so, and notwithstanding the fact that European tour operators could have ordered and sold match tickets for first-phase matches before the group draw, all such tickets were made available to the general public at a time when the identities of the teams participating in first-phase matches were known.

(34) Each European tour operator was permitted to sell tickets making up Each Pass France 98 package on a desegregated, individual basis. In the event, European tour operators chose to sell all entry tickets allocated to them through Pass France 98 on such a basis.

Orders of individual tickets

(35) In addition to orders of Pass France 98, the CFO offered European tour operators the opportunity to purchase entry tickets for first and second-phase matches on an individual basis. In the event, each of the five European tour operators ordered the maximum number of individual entry tickets initially made available by the CFO for first and second-phase matches. Taking orders by European tour operators together, a total of 33 950 and 17 700 individual entry tickets were ordered for first and second-phase matches respectively.

Sales by European tour operators

(36) The majority of first and second-phase entry tickets offered for sale by European tour operators to the general public were marketed as part of a package, including, in addition to the ticket itself, the provision of other services, including access to hospitality facilities and, in relation to particular matches, the provision of accommodation and travel services as well. Prices therefore reflected both the charge for the ticket and that for the provision of additional services, thereby increasing significantly the overall cost to consumers wishing to purchase tickets from European tour operators. The

decision of each European tour operator to package ticket sales with those of other services was taken independently and without any interference from the CFO.

Sales of individual entry tickets to the general public by national football federations

(37) Individual match tickets sold by national football federations to the general public were distributed to those federations at the discretion of FIFA. FIFA reserved for itself an allocation of up to 20 % of all available entry tickets (excluding hospitality boxes and prestige tickets) for subsequent distribution to national football federations. In the event, the CFO made some 25.2 % of entry tickets available to FIFA for this purpose (representing 622 150 tickets in total).

(38) The overwhelming majority of tickets assigned by FIFA to national football federations were sold to the general public at a time when the identities of participating teams were known.

(39) Of the 622 150 entry tickets allocated to FIFA, those relating to first-phase matches were distributed to national football federations throughout the world after the group draw of 4 December 1997. At the same time FIFA distributed a small proportion of their allocation of tickets for second-phase matches to national football federations. Distribution by FIFA to national football federations of the significant majority of tickets for second-phase matches commenced only after the conclusion of the first phase of the competition on 26 June 1998 as and when the identities of teams involved in each stage of the second-phase became known.

(40) National football federations therefore sold all tickets relating to first-phase matches after the group draw at a time when the identities of teams participating in those matches were known. Similarly, in relation to second-phase matches, national football federations receiving a significant allocation of entry tickets⁽¹²⁾ were not in a position to sell most of those tickets to the general public until after the identities of participating teams became known.

(41) Table 2 reflects, *inter alia*, approximate ticket allocations by FIFA to national football federations located within the EEA prior to the beginning of the finals tournament on 10 June for all first and second-phase matches. Figures relating to second-phase entry tickets represent the maximum number which could have been sold by those federations to the general public on a blind basis⁽¹³⁾. For purposes of illustration only, the table includes details of FIFA ticket allocations to the French, English, Italian and Scottish football federations.

⁽¹²⁾ Only federations whose teams qualified for second-phase matches received significant allocations of tickets. Such allocations could only take place after the identities of teams participating in second-phase matches became known.

⁽¹³⁾ The figures do not therefore reflect FIFA's allocation of tickets made after the completion of the first phase of the competition on 26 June 1998.

Table 2

FIFA allocations to EEA national football federations prior to the finals tournament

| | EEA federations | France | England | Italy | Scotland |
|---------------------------------|-----------------|--------|---------|--------|----------------------|
| Opening match | 6 152 | 5 | 35 | 21 | 5 423 ⁽¹⁾ |
| First phase (excluding opening) | 153 983 | 13 355 | 16 840 | 14 113 | 5 926 |
| Round of 16 | 5 000 | 0 | 320 | 510 | 5 |
| Quarter finals — Final | 5 966 | 70 | 340 | 790 | 64 |
| Total allocated | 169 927 | 13 430 | 17 535 | 14 320 | 11 388 |

⁽¹⁾ Scotland played Brazil in the opening match and consequently the Scottish federation's ticket allocation for that game was considerably greater than for other federations.

I. CONDITIONS APPLYING TO THE GENERAL PUBLIC PURCHASING ENTRY TICKETS DIRECT FROM THE CFO

CFO sales in 1996 and 1997

- (42) Before the group draw, the CFO sold 574 200 entry tickets direct to the general public in 1996 and 1997, comprising sales of Pass France 98 (393 200) and individual tickets relating to the opening match, quarter and semi-finals, third and fourth-place play-off and the final (181 000). All such tickets, other than those relating to the opening match, were sold blind by the CFO.
- (43) In relation to those sales, the general public could purchase tickets subject to the condition that they provided a postal address in France to which the tickets could be delivered.
- (44) The CFO informed the Commission in January 1998 ⁽¹⁴⁾ that the general public was not required to indicate French nationality or prove residence in France in order to purchase entry tickets sold direct by the CFO, and that the condition was imposed in order to facilitate their safe delivery. In June 1998 ⁽¹⁵⁾, the CFO added to the reasoning for imposing such a condition by stating that the obligation was also imposed to ensure that entry tickets were sold only to 'neutral' spectators. This resulted from the CFO's decision to consider all members of the general public providing an address in France as 'neutral' ⁽¹⁶⁾.
- (45) The CFO derived no commercial advantage by requiring members of the general public wishing to purchase entry tickets in 1996 and 1997 to provide an address in France. Revenue from CFO sales of Pass France 98 and

individual tickets in 1996 and 1997 represented some 8 % of the CFO's overall turnover.

CFO sales in 1998

- (46) In relation to sales of individual entry tickets from 22 April 1998, the CFO had originally intended to sell those tickets under arrangements similar to those already described. Following intervention by the Commission, however, the CFO undertook to sell 175 500 entry tickets to the general public on condition that purchasers provided an address in the EEA ⁽¹⁷⁾.

J. CONDITIONS APPLYING TO THE GENERAL PUBLIC PURCHASING ENTRY TICKETS FROM NATIONAL FOOTBALL FEDERATIONS AND TOUR OPERATORS

National football federations

- (47) Although entry tickets were allocated to national football federations by FIFA, the CFO imposed conditions on those federations relating to their resale (conditions générales de vente). Those conditions included, *inter alia*, the requirement to make tickets available for sale to all members of the general public subject only to restrictions resulting from reasons of security. The CFO did not, however, seek to influence the commercial decisions taken by national football federations relating to the means by which such tickets were sold.
- (48) To the CFO's knowledge, only the English Football Federation restricted sales to the general public, choosing to offer tickets exclusively to members of a supporters' club in order to prevent their purchase by football hooligans.

⁽¹⁴⁾ See CFO response of 27 January 1998 to the Commission's request for information of 15 January 1998.

⁽¹⁵⁾ See CFO response of 4 June 1998 to the Commission's request for information of 15 May 1998.

⁽¹⁶⁾ See point (b) at page 3 of the CFO's letter to the Commission of 11 June 1998.

⁽¹⁷⁾ See Commission letter of 20 February 1998 to the CFO asking it to bring an end to what the Commission considered abusive practices under Article 82 of the EC Treaty.

European tour operators

(49) In relation to the sale of tickets by European tour operators, and at the request of the Commission following the submission of the CFO's notification in June 1997⁽¹⁸⁾, the CFO implemented arrangements which permitted each to sell entry tickets throughout the EEA. Furthermore, the CFO allowed European tour operators to sell entry tickets in any manner they chose, and accordingly did not seek to influence any commercial decisions taken by them. The Commission is not aware that any European tour operator restricted the sale of tickets to the general public, either territorially or otherwise.

K. MEANS OF RESERVING TICKETS SOLD BY THE CFO TO THE GENERAL PUBLIC IN 1996 AND 1997

(50) Subject always to the requirement that a purchaser provided a postal address in France, the means by which the general public could purchase Pass France 98 and individual entry tickets direct from the CFO in 1996 and 1997 were as follows:

- (a) *written reservation (Pass France 98 and individual tickets)*: Pass France 98 and individual entry tickets could be reserved from the CFO in writing. For individual entry tickets sold by the CFO via the draw on 19 December 1997, the return of a special application form, available from branches of Credit Agricole in France, was obligatory;
- (b) *reservation by Minitel (Pass France 98 only)*: Pass France 98 could be reserved using the electronic Minitel system, available widely in France. The general public outside France could benefit from this means of reservation only by subscribing to the Minitel service through the Internet at an additional cost of FRF 350;
- (c) *reservation by telephone (Pass France 98 only)*: Pass France 98 could be reserved over the telephone. The telephone number provided for this purpose was not accessible to the general public wishing to call from outside metropolitan France;
- (d) *reservation through branches of Credit Agricole (Pass France 98 only)*: Pass France 98 could be reserved using Minitel services provided in 2 500 branches of Credit Agricole located in France.

L. INFORMATION PROVIDED BY THE CFO TO THE GENERAL PUBLIC OVER THE WOLDWIDE WEB

(51) On 6 May 1997 the CFO opened a website dedicated to providing information and advice to the general public

in and outside France concerning, *inter alia*, the means by which entry tickets for finals matches could be obtained.

(52) Information made available to consumers outside France stated expressly that tickets would not be sold by the CFO to members of the non-French public⁽¹⁹⁾. Those consumers were advised instead to contact either an authorised tour operator or their respective national football federation in order to purchase entry tickets for finals matches⁽²⁰⁾. On 6 May 1997, when the website was opened, the overwhelming majority of Pass France 98 had already been sold by the CFO to the general public able to provide an address in France⁽²¹⁾.

M. SECURITY**European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (1985)**

- (53) The organisation of the World Cup raises issues relating to security which must be taken into account.
- (54) In this respect the CFO sought to implement a security policy which would give effect to the principles established by the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (1985) (hereinafter referred to as 'the 1985 Convention'). The 1985 Convention requires that measures be taken to prevent or control violence or misbehaviour at sporting events. Such measures as referred to in the 1985 Convention include the effective segregation of rival groups of supporters and, in order to ensure such segregation, a strict control over the sale of match tickets⁽²²⁾. The 1985 Convention does not, however, prescribe specific measures to be adopted in order to achieve such segregation and control.
- (55) The CFO also took note of guidelines agreed in 1996 by the Permanent Committee to the 1985 Convention relating specifically to the control of ticket sales for high-risk football matches. Those guidelines reiterate the importance of maintaining a strict control over ticket sales in order to ensure segregation of rival groups of supporters at football matches⁽²³⁾.

⁽¹⁹⁾ See Internet document <http://www.france98.com/english/tickets/faq.html> of 13 August 1998, at question 10. These arrangements were reaffirmed in various CFO press releases which indicated that CFO sales in 1996 and 1997 were aimed specifically at the general public resident in France.

⁽²⁰⁾ See Internet document http://www.france98.com/english/tickets/out_france.html of 31 August 1998.

⁽²¹⁾ As of 1 April 1997, all Pass France 98 relating to matches taking place at eight of the 12 World Cup stadiums had been sold. Only a limited number of Category 1 Pass France 98 for matches taking place at the Montpellier and Saint-Etienne stadiums remained available for sale. All such remaining tickets were sold by 27 May 1997.

⁽²²⁾ See Article 3(4)(b) and (c), of the 1985 Convention.

⁽²³⁾ 'Recommandations relative à des lignes directrices pour le contrôle de la vente des billets lors de rencontres à haut risque (adoptée à la 5^e réunion du Comité permanent de la convention européenne sur la violence les débordements de spectateurs lors de manifestations sportives et notamment de matches de football 1985)', Groupe de travail ad hoc sur les problèmes pratiques (Strasbourg, 14 novembre 1996).

⁽¹⁸⁾ See recital 28.

Security considerations relating to purchasers of blind tickets

- (56) The CFO has informed the Commission of the opinion of experts who consider that blind Pass France 98 and blind tickets generally are purchased by peaceful spectators who do not present a specific security risk. Conversely, the CFO considers that sales of entry tickets in relation to which the identities of participating teams are known attract supporters presenting a significantly greater security risk ⁽²⁴⁾.

Segregation of supporters by the CFO through ticket sales

- (57) With the provisions of the 1985 Convention in mind, the CFO sought to implement arrangements which ensured that supporters of teams participating in any given match were placed at opposing ends of any given stadium. Seats located in such areas were classified by the CFO as 'low risk'. Consequently, all tickets made available to national football federations whose teams took part in the tournament, and which were intended for resale to the general public, related to low-risk seats. As a general rule, seats which were not classified as low risk were reserved for 'neutral' spectators, who were deemed not to support either of the teams participating in a given match. For security purposes and in accordance with arrangements adopted by tournament organisers previously, the CFO considered members of the general public from the host nation (in this case France) as neutral spectators for the purposes of seat allocation for all finals matches.

CFO sales in 1996 and 1997

- (58) In relation to blind sales to the general public of Pass France 98 and individual tickets by the CFO in 1996 and 1997, the CFO regarded as neutral spectators all consumers able to provide an address in France ⁽²⁵⁾.

CFO sales in 1998

- (59) For sales of individual entry tickets to the general public after 22 April 1998 relating to first-phase matches (those which therefore took place at a time when the identities of participating teams were known), the CFO distinguished between applicants whose addresses were located in one of the two countries whose representative team was participating in the match for which the ticket was required, and those whose addresses were located elsewhere within the EEA. Those in the former category were deemed to be supporters of one of the two partici-

pating teams and were accordingly attributed tickets relating to seats in the stadium reserved specifically for that group of supporter. Those in the latter category were deemed to be neutral spectators and as such were allocated seats reserved specifically for that group of public.

Sales by European tour operators and national football federations

- (60) In relation to ticket sales by European tour operators, the CFO required each tour operator to provide it with information relating to the nationality of customers to whom tickets had been sold, as well as the team supported. In relation to ticket sales by national football federations, the CFO required each to retain information relating to the identity of each purchaser including his/her name, address, and details of the team supported.

Other security measures

- (61) In addition to the abovementioned arrangements, the CFO took other measures to ensure, as far as was possible, the effective maintenance of security at football matches. Some 35 500 match tickets remained deliberately unsold by the CFO in order to ensure, where appropriate, a strict separation of supporters of participating teams. Measures intended to prevent black-market ticket sales and to avoid the counterfeiting of tickets were also taken by the CFO in this context.

N. ARGUMENTS OF THE CFO RELATING TO THE FACTS

- (62) During the course of the oral hearing the CFO suggested that the total number of tickets allocated to the general public included 359 500 entry tickets sold specifically to members of the Famille du Football Français through Pass France 98 and 18 550 entry tickets sold to handicapped spectators.

- (63) The Commission does not accept such a view. Individual consumers throughout the EEA were required to fulfil specific conditions in order to qualify as members of each of those groups which were different from those required of consumers to which this Decision refers. Thus, tickets made available to the general public cannot properly include Pass France 98 reserved specifically for sale to members of the Famille du Football Français and individual entry tickets reserved for sale to handicapped spectators. The Commission notes that the CFO had itself always distinguished between ticket sales to the general public and those to the Famille du Football Français and handicapped spectators in previous dealings with the Commission.

⁽²⁴⁾ See CFO letter of 4 June 1998 (point 24), responding to the Commission's formal request for information of 15 May 1998.

⁽²⁵⁾ See letter from the CFO to the Commission dated 11 June 1998 (page 3, point (b)).

II. LEGAL ASSESSMENT

A. TERMS OF ARTICLE 82 OF THE EC TREATY AND ARTICLE 54 OF THE EEA AGREEMENT

- (64) Pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement, any abuse by an undertaking of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States. Such abuse may, *inter alia*, consist of direct or indirect imposing of unfair trading conditions or limiting markets to the prejudice of consumers.

B. UNDERTAKING

- (65) Any entity carrying on activities of an economic nature, regardless of its legal form, constitutes an undertaking within the meaning of Article 82 of the EC Treaty and Article 54 of the EEA Agreement. An activity of an economic nature means any activity, whether or not profit-making, that involves economic trade. Given that it was responsible for the distribution of over 2,6 million match tickets of which approximately 1,55 million were sold to the general public, the CFO was carrying out activities of an economic nature and as such is an undertaking for the purposes of Article 82 of the EC Treaty and Article 54 of the EEA Agreement.

C. RELEVANT PRODUCT MARKETS

- (66) The relevant product market can be determined by considering the extent to which an undertaking's competitors, if they exist, are capable of constraining its behaviour and preventing it from acting independently of competitive pressures. In determining the scope of the relevant product market and the extent to which undertakings are able to act independently on such a market it is necessary to consider, *inter alia*, the manner in which consumers are likely to react to changes in the price of the product or service in question. In this context, a relevant product market will usually be limited to a single product or service if a small but significant increase in the price of that product or service (for example, 10 %) does not lead to any measurable change in consumer demand in favour of substitutable products or services.
- (67) With regard to ticket sales by the CFO in 1996 and 1997 it is therefore necessary to consider the extent to which (a) adequate substitutes existed for sales of World Cup match tickets to the general public, (b) adequate substitutes existed for the sale in 1996 and 1997 by the CFO of blind Pass France 98 to the general public, and (c) adequate substitutes existed for the sale in 1997 by the CFO of blind individual entry tickets to the general public.

Substitutes for Football World Cup finals entry tickets

- (68) The nature of the World Cup finals competition is such that an increase of at least 10 % in the price of match tickets would not have resulted in a significant

switch in demand by the general public to otherwise competing products. This is principally due to the following:

(a) The popularity of football throughout Europe and the world, over and above other sports

While other sports command strong regional interest from the general public, only football is able to generate a broad, sustained and loyal support on a European and worldwide scale. Furthermore, sports are different, and the general public interested in one will not necessarily be followers of others. Members of the general public seeking to attend World Cup finals matches are accordingly unlikely to have considered attendance at international events involving sports other than football as adequate substitutes, whether or not the price of tickets for World Cup football matches was increased by (at least) 10 %.

(b) The significance of the Football World Cup finals competition, over and above other football tournaments

Football is played in many, if not all, European countries at both national and international level. At the national level, local teams usually play one another on a weekly basis from one year to the next. At the international level, the best players from each qualifying nation participate in the European Football Championships, the finals of which take place every four years. While both national and European tournaments are often well attended, however, only the finals competition of the Football World Cup provides the general public with an opportunity to watch and assess the best players and the best teams in the world in the course of a single tournament.

(c) The timing of the Football World Cup finals competition vis-à-vis other football competitions in Europe

Even if, in the minds of the general public, entry tickets for European Football Championship matches represented identical products to those of the finals competition of the Football World Cup, attendance at one cannot be considered as substitutable for attendance at the other, given that the tournaments take place two years apart.

(d) Evidence relating to demand for Football World Cup finals entry tickets vis-à-vis the available supply

Where the demand for match tickets significantly exceeds available supply, consumers are unlikely to change their behaviour in the event of a small but significant rise in the price of those tickets. Given that some 1 043 million applications were made by the general public able to provide an address in France for 181 000 individual tickets sold by the CFO in 1997, it can be assumed that the demand generally for entry tickets would remain unaffected notwithstanding an increase in price of at least 10 %.

Substitutes for the sale by the CFO to the general public of blind Pass France 98 in 1996 and 1997

- (69) Pass France 98 sold by the CFO in 1996 and 1997 related to matches for which the identities of participating teams were unknown. The demand for Pass France 98 was therefore limited to spectators who were not concerned to watch a particular team or teams, but who nevertheless wanted to attend a series of finals matches taking place in a single stadium. Such sales were in marked contrast to those by national football federations and European tour operators, who sold individual entry tickets after the group draw, at a time when interest in and demand for entry tickets for finals matches had increased significantly.
- (70) In view of the limited number of entry tickets made available on an individual basis at a much later date by each national football federation, members of the general public wishing to purchase blind Pass France 98 are unlikely to have regarded tickets sold by those federations as substitutable products for blind Pass France 98 sold direct by the CFO in 1996 and 1997.
- (71) In relation to sales by European tour operators, similar considerations apply. Furthermore, even if European tour operators had chosen to sell some or all of their limited allocation of tickets as Pass France 98, they are likely to have sold most if not all of those products with other services, thereby increasing significantly the price at which Pass France 98 could be obtained. That being so, the general public would not, at the time of CFO sales of Pass France 98 in 1996 and 1997, have considered the uncertain prospect of future sales by European tour operators as in any way substitutable for those sold earlier by the CFO ⁽²⁶⁾.

Substitutes for the sale by the CFO to the general public of blind individual entry tickets in 1997

- (72) In relation to 181 000 individual tickets sold by the CFO to the general public in 1997 for the opening match, quarter and semi-finals, third and fourth-place play-off and the final, only a very limited number of tickets for those high-profile matches were made available to all national football federations. Only those federations whose teams progressed from one stage of the second phase to another received significant additional alloca-

⁽²⁶⁾ Although no explanation is given, the CFO arrived at a similar conclusion in relation to ticket sales by European tour operators in its notification to the Commission of 11 June: '[Les tour-opérateurs] forment un marché spécifique ... Le marché peut donc, selon le CFO, être défini comme le marché de la vente de billets pour la Coupe du Monde 1998 par les professionnels du tourisme' (at section 6.1).

tions, most of which were sold to the general public wishing to support the participating teams. In view of this limited supply, consumers wishing to purchase tickets for those matches in 1997 are unlikely to have regarded national football federations as a suitable alternative source of supply to the CFO.

- (73) In relation to sales of second-phase entry tickets by European tour operators, similar considerations apply given the limited number of tickets made available to them. Furthermore, European tour operators sold most if not all of such tickets with other services, thereby increasing significantly the price at which they could be obtained. Consequently, the general public would not at the time of CFO sales of 181 000 blind second-phase entry tickets in 1997, have considered the prospect of ticket sales at a later date by European tour operators as in any way substitutable for those sold earlier by the CFO ⁽²⁷⁾.

Conclusion on the relevant product markets

- (74) On the basis of the foregoing analysis, the relevant product markets for the purposes of this Decision are:
- (a) the market for the sale in 1996 and 1997 by the CFO to the general public of 393 200 blind Pass France 98, and
 - (b) the market for the sale in 1997 by the CFO to the general public of 181 000 blind individual entry tickets relating to the opening match, quarter and semi-finals, third-place play-off and the final.

Arguments of the CFO relating to the relevant product markets

- (75) The CFO considers that the relevant product markets for the purposes of ticket sales to the general public for the 1998 World Cup finals competition are (a) the market for sales of Pass France 98, and (b) the market for sales of individual entry tickets by the CFO, national football federations and tour operators relating to all finals matches, whether sold blind or at a time when the identities of participating teams were known. This differs from the Commission's conclusion in so far as it makes no distinction between sales of individual entry tickets by the CFO in 1997 and those in 1998 by each of the three official distribution channels.

⁽²⁷⁾ See also footnote 26.

(76) The relevant markets as referred to in this Decision explicitly recognise the different characteristics of Pass France 98 vis-à-vis individual tickets. Nevertheless, the CFO's argument that blind sales of individual entry tickets by the CFO in 1997 are substitutable for sales by the CFO and other outlets at a later date is not accepted. The objective of defining relevant product markets is to identify the actual competitors of an undertaking that are capable of constraining the behaviour of that undertaking and of preventing it from behaving independently of effective competitive pressure. An analysis of the conditions under which sales took place of individual entry tickets relating to second-phase matches in 1997 by the CFO confirms that the CFO was able at that time to act in an environment free from any such competitive pressure. Those tickets related to prestigious matches for which the number of applications from consumers able to provide an address in France exceeded almost six times the available supply, notwithstanding the fact that the identities of participating teams were unknown at the time of sale⁽²⁸⁾. In view of such demand levels, and because consumers are unlikely in 1997 to have considered national football federations and European tour operators as realistic alternative sources of supply, the CFO was clearly able to operate, in relation to its sale of such tickets, as a de facto monopolist free from any competitive pressure from other undertakings.

D. RELEVANT GEOGRAPHIC MARKET

(77) In view of the widespread demand for tickets throughout the EEA⁽²⁹⁾, the geographic market relating to the sale by the CFO to the general public of Pass France 98 and individual entry tickets in 1996 and 1997 comprises at least all countries within the EEA. Notwithstanding the widespread demand for those tickets, the CFO's conditions of sale artificially limited sales to members of the general public either resident or able to provide an address in France.

Arguments of the CFO relating to the scope of sales of Pass France 98

(78) In its response to the Commission's Statement of Objections and during the oral hearing, the CFO argued that, in relation to sales in 1996 and 1997 of Pass France 98, the requirement to provide a postal address in France had no effect on consumers outside France and that the

geographic market did not, therefore, extend beyond France. According to the CFO, only the general public living close to World Cup stadiums would have wished to purchase Pass France 98, given the unknown identity of teams participating in matches to which those tickets gave entry as well as the constraints imposed by such a product on the purchaser (notably the requirement either to secure accommodation near a stadium for a significant period of time or to make as many return trips as were necessary between one's place of residence and the stadium in order to attend all matches).

(79) In support of this argument, the CFO referred the Commission to evidence suggesting that between 71 % and 91 % of Pass France 98 were bought either by the general public living in the Département in which a host stadium was located or in the immediately surrounding Départements. The CFO also referred the Commission to the decision by European tour operators not to offer Pass France 98 to the general public, as well as those of national football federations not to package the sale of tickets into Pass France 98 type products, as evidence that demand outside France for Pass France 98 was non-existent and that the geographic market was therefore limited to residents local to World Cup stadiums in France.

(80) The Commission rejects these arguments. In relation to sales of Pass France 98, it cannot be ruled out that a significant number of consumers outside France would have wished to purchase such tickets, given the Europe-wide interest that the finals competition generated. This is supported in part by an assessment of the purchasing habits of consumers outside France in relation to individual ticket sales for first phase and round of 16 matches by the CFO from 22 April 1998, which demonstrates that consumers outside France were not exclusively interested in watching matches involving the participation of their national team⁽³⁰⁾.

(81) Had consumers outside France been given the opportunity to purchase Pass France 98 from the CFO, it is quite probable that a significant number would have chosen to make as many return trips as were necessary to allow them to watch all the matches to which Pass France 98 allowed access. While this applies notably to Pass France 98 sold for matches taking place in Lens, in view of its proximity to the Belgian border, it is reasonable to assume also that consumers in other countries would have been prepared to travel to other venues given the ease with which those venues could be accessed (stadiums located in Bordeaux and Toulouse, for example, were easily accessible to consumers from Spain while the stadium in Marseille was accessible to consumers from Italy).

⁽²⁸⁾ Blind sales of such tickets can be contrasted with those of tickets relating to first-phase matches which, in order to maximise the participation of supporters, were packaged as Pass France 98.

⁽²⁹⁾ Evidenced by the outcome of CFO sales to EEA countries from 22 April 1998 when 45 % of tickets were sold to consumers outside France.

⁽³⁰⁾ See recitals 25 and 26, while some 38 % of individual entry tickets sold by the CFO after 22 April 1998 were purchased by the general public providing addresses outside France but in countries whose teams had qualified for the finals competition, only 10 % of entry tickets sold after this date could be purchased by supporters of teams participating in any given match. As such, a significant proportion of the general public outside France were interested to attend matches not involving the participation of their national team.

- (82) Furthermore, and notwithstanding the statistics referred to by the CFO, it is entirely foreseeable that a significant number of consumers outside France might have wished to make arrangements to stay in or near the town in which a host stadium was located for the duration of the first phase and (where necessary) Round of 16 competition, thereby combining guaranteed attendance at a series of finals matches with an extended stay in what is well known to be a popular destination for foreign visitors.
- (83) The decision by European tour operators to sell tickets distributed to them through Pass France 98 on a desegregated, individual basis cannot be interpreted as suggesting a lack of demand for Pass France 98 outside France. Such a practice, involving as it did the sale of individual tickets together with that of other services, was likely to have been motivated instead by a desire to maximise revenues which sales of Pass France 98 would not have achieved. In relation to sales by national football federations, the Commission does not consider their failure to sell Pass France 98-type products as relevant, given the nature of tickets allocated to them⁽³¹⁾ and the lack of any economic incentive for them to do so.

E. DOMINANT POSITION

- (84) The CFO represented the sole outlet for blind sales to the general public in 1996 and 1997 of Pass France 98 and individual entry tickets. As such, and in view of its ability to act independently and, therefore, free from competitive restraint, the CFO held a dominant position on the relevant markets.

Responsibilities of the CFO as dominant undertaking on the relevant markets

- (85) In accordance with the case-law of the Court of Justice and the Court of First Instance of the European Communities, an undertaking in a dominant position has a special responsibility not to allow its conduct to impair undistorted competition on the common market. The actual scope of that special responsibility must be considered in the light of the specific circumstances of the case, reflecting a weakened competitive situation⁽³²⁾.
- (86) The scope of the parties' responsibility must therefore be considered in relation to the degree of dominance held by the parties and to any special characteristics of the market which might affect the competitive situation.
- (87) Taking particular account of the significant difference between the demand for and supply of Pass France 98 and individual tickets sold by the CFO to the general public in 1996 and 1997, the CFO was, as a de facto monopolist, under a *prima facie* obligation to ensure that entry tickets sold in 1996 and 1997 for finals matches were made available to the general public under non-discriminatory arrangements throughout the EEA, even though demand from consumers outside France for certain ticket products may have been relatively small as against the demand from the general public in France. While exceptions to this general principle may apply, each must be considered on its individual merits and in the light of an objective assessment of what is the minimum necessary to achieve the stated aims.

F. ABUSE

- (88) In view of (a) the conditions of sale which applied in relation to CFO sales of blind tickets in 1996 and 1997, (b) the sales information made available by the CFO on its official World Cup website and on which the general public outside France could have reasonably been expected to rely, and (c) the restrictive means made available to the general public outside France for reserving entry tickets, the CFO abused its dominant position on the relevant markets because its behaviour had the effect of imposing unfair trading conditions on residents outside France which resulted in a limitation of the market to the prejudice of those consumers.

⁽³¹⁾ Which would have made the bundling of anything other than a very small number of tickets into Pass France 98 type-products impossible.

⁽³²⁾ Judgment of the Court of First Instance in Case T/83/91 *Tetra Pak II* [1994] ECR II-755, at paragraphs 114 and 115. In Case 7/82 *GVL* [1983] ECR 483, the Court of Justice had previously acknowledged the scope of a monopolist's special responsibility in relation to discriminatory conduct on grounds of nationality or residence. The Court had stated (*inter alia*): 'Such a refusal [to manage rights] by an undertaking having a de facto monopoly to provide its services for all those who may be in need of them but who do not come within a certain category of persons defined by the undertaking on the basis of nationality or residence must be regarded as an abuse of a dominant position within the meaning of the first paragraph of Article 86 of the Treaty' (at paragraph 56).

Requirement to provide a postal address in France

- (89) The general public outside France were free to purchase entry tickets direct from the CFO on condition that they provided a postal address in France to which the tickets could be delivered ⁽³³⁾.
- (90) At the time of CFO sales of Pass France 98 and individual tickets, the general public resident in France had little difficulty in providing an address to which tickets could be delivered. However, only by entering into wholly arbitrary, impractical and exceptional arrangements ⁽³⁴⁾ could most of the general public resident outside France have obtained tickets direct from the CFO in 1996 and 1997 ⁽³⁵⁾. While it is questionable whether the general public outside France had ever been adequately informed that tickets could be purchased direct from the CFO, the effect of the requirement to provide a postal address in France was to discriminate specifically against the general public resident outside France, given that those resident in France were significantly better placed to meet that requirement.
- (91) This discrimination amounted in practice to an imposition by the CFO of unfair trading conditions on residents outside France and resulted in a limitation of the market to the detriment of those consumers in relation to CFO sales of 393 200 tickets through Pass France 98 and 181 000 tickets relating to the opening match, quarter and semi-finals, third and fourth-place play-off and the final, contrary to Article 82 of the EC Treaty and Article 54 of the EEA Agreement.

Sales information provided by the CFO

- (92) From 6 May 1997 the CFO provided information on its official World Cup website relating to the means by which the general public in and outside France could obtain match tickets for the finals competition. Members of the general public resident outside France were advised to obtain tickets either from authorised tour operators or national football federations. No indication was given that entry tickets could be obtained direct from the CFO. Furthermore, information was provided to the effect that the CFO would not sell tickets direct to the non-French public, and that accordingly a non-French citizen visiting France and wishing to purchase entry tickets for finals matches would be obliged to contact a national football federation or tour operator.
- (93) The effect of such advice was to limit the demand for blind CFO sales of individual tickets in 1997 either exclusively to French citizens or to the general public resident in France. Conversely, that advice would have deterred the non-French public or, at the very least, those not resident in France, from seeking to purchase individual entry tickets direct from the CFO. This resulted in a strict limitation of the market by the CFO to the prejudice of the general public resident outside France in relation to CFO sales of 181 000 tickets for the opening match, quarter and semi-finals, third and fourth-place play-off and the final itself, contrary to Article 82 of the EC Treaty and Article 54 of the EEA Agreement.

Channels available for reserving entry tickets direct from the CFO

- (94) Of the different means by which tickets could be reserved by the general public from the CFO, only that of applying in writing was available to consumers resident outside France. Telephone reservations could be made only from within metropolitan France, while reservation by Minitel (an information system used by and designed specifically for those living in France) was available only to residents outside France via connection to the Internet, and then only at an additional cost of FRF 350. Similarly, ticket reservations through branches of Crédit Agricole could only be made in France.
- (95) Given the anticipated high level of demand for Pass France 98 in relation to their limited supply, the need to reserve tickets quickly would have been of paramount importance to the general public. Thus, consumers for whom the only means of reserving tickets was by written request would have been at a disadvantage vis-à-vis those who were able to avail themselves of other, quicker means of ticket reservation.
- (96) In relation to individual entry tickets sold direct by the CFO in 1997, the general public was required to submit applications between 18 September and 18 October 1997. Although such tickets were not allocated on a first-come-first-served basis, members of the general public resident in France were favoured over those resident elsewhere in the EEA, given that application forms were made available only through branches of Credit-Agricole based in France.

⁽³³⁾ Responding to the Commission's formal request for information of 15 January 1998.

⁽³⁴⁾ Examples include use of poste restante or embassy services.

⁽³⁵⁾ Given the emphasis which the CFO placed in its sales information on the requirement to be resident in France and the advice given to the general public that it would not supply to the non-French public, it is open to doubt whether residents abroad would have been permitted by the CFO to avail themselves of these alternatives in practice.

- (97) Consequently, the means by which Pass France 98 and individual tickets could be obtained direct from the CFO in 1996 and 1997 discriminated against the general public resident outside France.

Arguments of the CFO as to abuse

- (98) In its response to the Commission's Statement of Objections, the CFO argued that, on the basis of previous Commission practice and the case-law of the Court of Justice, the CFO could not have abused a dominant position, given that certain of the conditions necessary for the application of Article 82 of the EC Treaty ⁽³⁶⁾ were not fulfilled.

Conduct having an effect on the structure of competition

- (99) The CFO argued that conduct in breach of Article 82 must affect the structure of competition in a given market to the detriment of a dominant undertaking's competitors, given that the provision is not intended to protect, in a direct manner, the interests of consumers ⁽³⁷⁾. The CFO contends therefore that its conduct does not fall within the scope of Article 82, as the requirement to provide an address in France for ticket sales in 1996 and 1997 did not affect the structure of competition on the relevant markets.
- (100) The Commission rejects such an interpretation of Article 82. While the application of Article 82 often requires an assessment of the effect of an undertaking's behaviour on the structure of competition in a given market, its application in the absence of such an effect cannot be excluded. Consumers' interests are protected by Article 82, such protection being achieved either by prohibiting conduct by dominant undertakings which impairs free and undistorted competition or which is direct prejudicial to consumers. Accordingly, and as has been expressly recognised by the Court of Justice ⁽³⁸⁾, Article 82 can properly be applied, where appropriate, to situations in which a dominant undertaking's behaviour directly prejudices the interests of consumers, notwithstanding the absence of any effect on the structure of competition.

Commercial advantage

- (101) The CFO argued that an undertaking abuses its dominant position only if it makes use of the opportunities arising out of its dominant position in such a way as to reap trading benefits which it would not have reaped if there had been normal and sufficiently effective competition. The CFO derived neither a financial nor competitive advantage by requiring consumers to provide an address in France for ticket sales in 1996 and 1997, and thus derived no trading benefits as a result of its actions.
- (102) The Commission rejects such an argument. While evidence that a dominant undertaking has secured for itself a financial or competitive advantage as a result of its actions may support a conclusion of abuse, it is not essential to a finding of abuse ⁽³⁹⁾. In this case, the effect of the CFO's behaviour was to discriminate against residents outside France, which indirectly amounted to a discrimination against those consumers on grounds of nationality, contrary to fundamental Community principles. Such conduct cannot, in this case, be considered to fall outside the scope of Article 82 on the grounds that the CFO, as a dominant undertaking, failed to derive a commercial or other advantage from its actions.

⁽³⁶⁾ All comments by the CFO in this regard are equally pertinent to the application of Article 54 of the EEA Agreement.

⁽³⁷⁾ In this context, the CFO argued that Article 82 must be read in the light of Article 3(g) of the EC Treaty, which requires that competition in the internal market is not distorted.

⁽³⁸⁾ Case 6/72 *Continental Can* [1973] ECR 215 at paragraph 26: The Court held that Article 82 'is not only aimed at practices which may cause damage to consumers directly, but also at those which are detrimental to them through their impact on an effective competition structure'.

⁽³⁹⁾ For example, cases concerning excessive pricing require an assessment of the extent to which (if at all) a dominant undertaking charged a price which was excessive in relation to the economic value of the product or service. Hence, the extent to which that undertaking was able to obtain a commercial advantage, which it otherwise would not have been able to obtain under conditions of normal competition, must usually be determined before any conclusions concerning excessive pricing can be drawn.

Limitation of markets

- (103) The CFO contests the Commission's view that it abused its dominant position under Article 82(b) by limiting the market for sales of Pass France 98 and individual tickets to the prejudice of consumers outside France, for the following reasons:
- (a) Had European tour operators decided to sell Pass France 98 as foreseen by the CFO, no such limitation of the market would have occurred, since consumers outside France would have been able to obtain Pass France 98 without being required to provide an address in France. In relation to sales of individual tickets, the CFO's conduct did not limit the market, since tickets were offered to the general public throughout the EEA at various times by each of the three distribution channels;
 - (b) According to the case-law of the Court of Justice ⁽⁴⁰⁾, an undertaking abuses its dominant position through a limitation of the market under Article 82(b) only where it benefits from the absence of competitive pressure by failing to improve its performance which it would have otherwise been required to do. Given that the number of match tickets was necessarily limited and that CFO sales arrangements had no effect on the quality of the product consumed, the CFO argues that the existence of competitive pressure in the market would not have resulted in any such improvement in performance by the CFO, and that as such its conduct cannot be qualified as abusive under Article 82(b).
- (104) The Commission rejects each of those arguments. As the dominant undertaking on the relevant product markets, the CFO was under an obligation not to artificially limit ticket sales, whether or not other economic operators could or did sell such tickets. In relation to the CFO's arguments concerning the scope of application of Article 82(b), the requirement to provide an address in France had the undeniable effect of limiting the geographic market for the sale of entry tickets by the CFO in 1996 and 1997 to the prejudice of consumers resident outside France. The implementation of those arrangements represents an abuse of the CFO's dominant position in accordance with the specific wording of Article 82(b), a conclusion which is in no way inconsistent with the case-law of the Court of Justice to which the CFO has referred ⁽⁴¹⁾. The CFO's argument that it could not have improved its performance under conditions of competition is, therefore, irrelevant.

G. SECURITY

- (105) Ensuring effective security at football matches is essential and may, in particular circumstances, justify the implementation of special ticket sales arrangements by tournament organisers. Nevertheless, in order to determine whether and, if so, to what extent, security considerations may justify ticketing arrangements which would otherwise be deemed to infringe Community law, each set of arrangements must be considered on their individual merits in the light of an objective assessment of what is necessary to achieve reasonable security objectives.

Security at football matches

- (106) The principal concern of the CFO was to ensure, in compliance with the provisions of the 1985 Convention, that rival groups of supporters of teams participating in any given match were separated from one another in each of the World Cup stadiums.
- (107) The CFO sought to achieve such a segregation through the allocation to national football federations whose teams were participating in a given match of tickets relating to seats located at opposite ends of the stadium. Thus, tickets reserved for rival groups of supporters were not sold blind by the CFO but were made available at a time when the identities of participating teams were known.
- (108) Tickets sold blind by the CFO in 1996 and 1997 related to seats reserved for neutral spectators. The CFO sold such tickets exclusively to members of the general public able to provide an address in France, who were classified in relation to all matches as neutral spectators. The CFO has, however,

⁽⁴⁰⁾ Cases cited by the CFO: Case 41/90 *Hofner* [1991] ECR 1979 and Case 179/90 *Merci* [1991] 5889.

⁽⁴¹⁾ See footnote 40.

previously referred the Commission to expert opinion which considers that consumers purchasing blind tickets generally are peaceful spectators who do not represent a specific security risk. Such an analysis appears reasonable, given that consumers purchasing such tickets are evidently doing so because they wish to attend a football match irrespective of the teams involved, and are not therefore motivated by their support for any particular team.

- (109) It follows therefore that any consumer, regardless of nationality, purchasing entry tickets on a blind basis should not, in principle, be regarded as a supporter of any particular team for purposes of security. Accordingly, such consumers should not, in principle, be subject to arrangements relating to the segregation of rival groups of supporters as envisaged under the 1985 Convention. The obligation to provide a postal address in France, imposed on consumers wishing to purchase blind tickets from the CFO in 1996 and 1997, was therefore excessive and failed to contribute in any material way to maintaining or improving security at football matches.

Arguments of the CFO relating to security

- (110) In its response to the Commission's Statement of Objections and during the oral hearing, the CFO sought to justify its discriminatory sales arrangements on security grounds. According to the CFO, if it had sold tickets in 1996 and 1997 to the general public throughout the EEA, supporters of participating teams are likely to have found themselves located in those parts of the stadium reserved for neutral spectators. That being so, the CFO considers that for the purposes of ticket sales in 1996 and 1997 it was unable to treat all spectators throughout the EEA as neutral without at the same time contravening the provisions of the 1985 Convention as well as the relevant guidelines, which required an effective separation of rival groups of supporters of participating teams.
- (111) The CFO also argued (a) that it was not possible to sell tickets on a blind basis in 1996 and 1997 and to determine the placement of ticket holders at a later date when the identities of participating teams were known, and (b) that no comparison could be made between CFO sales in 1996 and 1997 to the general public able to provide an address in France and CFO sales in 1998 to the general public able to provide an address within the EEA, given that sales in 1998 took place after the group draw when the identities of participating teams in first-phase matches were known.
- (112) The CFO's argument that it could not have treated all members of the general public in the EEA in 1996 and 1997 as neutral is rejected. The 1985 Convention refers specifically to the need to ensure an effective segregation of rival groups of supporters through (*inter alia*) a strict control over ticket sales. While the CFO considered it necessary to treat all members of the general public other than those able to provide an address in France as a potential rival supporter in 1996 and 1997 for the purposes of ticket sales, such a policy was excessive because it failed to take into account the generally peaceful nature of consumers purchasing tickets at a time when the identities of participating teams are not known. As the CFO has itself previously confirmed⁽⁴²⁾, consumers purchasing tickets on a blind basis would not have represented a specific security risk. Thus, the CFO was wrong to have considered members of the general public who were unable to provide an address in France but who wished to purchase tickets from it in 1996 and 1997 as potential rival supporters for the purposes of security.
- (113) In any event, even if consumers purchasing tickets on a blind basis could properly have been considered to represent a specific security risk (which is not accepted by the Commission), it is unlikely in the extreme that anyone, having purchased a ticket on a blind basis (thereby entitling admission to that part of the stadium reserved specifically for the neutral public) and having by chance found himself attending a match involving the participation of his home team, would be located next to or within the vicinity of supporters of the opposing team, given that at the very least the latter must also have been fortunate enough, having purchased tickets on a blind basis, to find themselves also attending a match involving the participation of their home team in that part of the stadium reserved for the neutral public. Hence, any risk that the CFO might have breached the terms of the 1985 Convention by implementing non-discriminatory sales arrangements in 1996 and 1997 was, in statistical terms, insignificant.

⁽⁴²⁾ See CFO letter of 4 June 1998 (point 24), responding to the Commission's formal request for information of 15 May 1998.

- (114) In view of the above, the CFO's supposed inability to determine the siting of blind ticket holders after the identities of participating teams became known, as well as its contention that sales arrangements implemented in 1998 cannot be compared with those adopted previously, are irrelevant for the purposes of this Decision (see recital 111).

H. SUBSTANTIAL PART OF THE COMMON MARKET

- (115) Since the CFO held a dominant position on the relevant markets, and since it determined the conditions under which consumers within the whole of the EEA could purchase Pass France 98 and individual tickets in 1996 and 1997, the CFO's dominant position extended to at least the whole of the EEA, and, accordingly, a substantial part of the common market for the purposes of Article 82 of the EC Treaty.

I. EFFECT ON TRADE BETWEEN MEMBER STATES

- (116) In relation to ticket sales on the relevant product markets, the CFO imposed conditions of sale on the general public which had the effect of denying the overwhelming majority of residents outside France access to those markets. Thus, the requirement to provide an address in France for sales of Pass France 98 and individual entry tickets in 1996 and 1997 appreciably affected trade between Member States.

Arguments of the CFO relating to effects on trade

- (117) The arguments put forward by the CFO concerning the effect of its conduct on trade between Member States are considered above in recitals 78 to 83.

J. THE NOTIFICATION OF 11 JUNE 1997

- (118) In its response to the Statement of Objections, the CFO argued that as the general arrangements for the distribution of tickets were explained to the Commission at the time of the notification in June 1997, any objections relating to those arrangements should have been raised at the time. The CFO argues further that as no such objections were raised by the Commission it was entitled to assume that its general ticketing arrangements were in compliance with Community law. The CFO considers therefore that the Commission's decision to initiate proceedings against the CFO represented a breach of the principle of legitimate expectation as defined by the Court of Justice.
- (119) The Commission rejects the CFO's assertions in this regard. While it accepts that in the notification the CFO explained the means by which tickets would be sold through each of the officially appointed distribution channels, the Commission was not made aware, at the time, of the requirement obliging consumers to provide a postal address in France for CFO sales in 1996 and 1997⁽⁴³⁾. Indeed, the CFO expressly told the Commission that Pass France 98, while intended principally for sale to football supporters and the local and regional public, would in fact be accessible to all⁽⁴⁴⁾.
- (120) Furthermore, an undertaking which notifies specific agreements or arrangements cannot, as a matter of principle, be permitted to argue at a later date that it was legitimately entitled to assume that agreements or arrangements which did not form part of the notification but which may have been communicated to the Commission at the time of the notification were in accordance with the competition provisions of the EC Treaty. As the CFO's notification concerned exclusively arrangements relating to the proposed system for the selection of tour operators authorised to sell entry tickets for finals matches in Europe, the Commission was under a legal obligation to consider those arrangements only, and cannot therefore be criticised at a later date for deciding to initiate proceedings in relation to other arrangements upon which it was not formally requested to take a view.

K. FINES

- (121) In accordance with Article 15 of Regulation No 17, the Commission may, by decision, impose on an undertaking which either intentionally or negligently infringes Article 82 of the EC Treaty and Article 54 of the EEA Agreement, a fine of between EUR 1 000 and EUR 1 million, or a sum in excess thereof but not exceeding 10 % of the undertaking's turnover in the preceding business year.

⁽⁴³⁾ It should be noted further that at the time of the notification the CFO had already sold all Pass France 98 to the general public under the arrangements in question.

⁽⁴⁴⁾ At section 4.1(ii) of the CFO's notification of 11 June 1997.

- (122) The abusive conduct to which this Decision refers, the effect of which was to discriminate in favour of consumers able to provide an address in France, indirectly amounts to discrimination on grounds of nationality, since ticket sales were artificially and predominantly limited by the CFO to residents located within a single Member State. Such conduct represents a breach of fundamental Community principles.
- (123) The Commission notes that the ticketing arrangements as implemented by the CFO were similar to those adopted for previous World Cup finals tournaments, and that the issues raised in relation to the application of EC competition rules are of such a specific nature as not to enable conclusions to be easily drawn from previous Commission decisions or case-law of the Court of Justice. The Commission has therefore concluded that the CFO was not, at the time, aware that its sales arrangements in 1996 and 1997 were in breach of Community law.
- (124) The Commission acknowledges further that the CFO took positive steps to ensure, to the extent that it considered it necessary, that ticketing arrangements for the 1998 Football World Cup complied with Community and national law through formal and informal contacts with the Commission and competition authorities in France. The Commission notes also the decision taken by the CFO, at the former's request, to amend its sales arrangements in order to give consumers throughout the EEA the chance to reserve 175 500 individual entry tickets directly from the CFO in 1998.
- (125) Every abuse of a dominant position should normally be penalised by a fine varying in accordance with the gravity and duration of the infringement. In view of the foregoing arguments, however, the Commission considers it appropriate to impose only a symbolic fine on the CFO of EUR 1 000. This does not, however, represent a policy to be adopted in all future similar cases,

HAS ADOPTED THIS DECISION:

Article 1

The Comité français d'organisation de la Coupe du monde de football 1998 (CFO) has infringed Article 82 of the EC Treaty and Article 54 of the EEA Agreement by applying discriminatory arrangements in 1996 and 1997 relating to the sale to the general public of entry tickets for World Cup finals matches. Those arrangements involved the imposition of unfair trading conditions on consumers outside France which resulted in a limitation of the market to the prejudice of those consumers in relation to the sale of 393 200 tickets through Pass France 98 and 181 000 tickets relating to the opening match, quarter and semi-finals, third and fourth-place play-off and the final.

Article 2

A fine of EUR 1 000 is hereby imposed on the CFO in respect of the infringement referred to in Article 1.

Article 3

The fine shall be paid in euro within three months of the date of notification of this Decision to the following account:

Account No 310-0933000-43
European Commission

Banque Bruxelles-Lambert
Agence Européenne
Rond Point Schuman/Schumanplein 5
B-1040 Brussels.

After three months, interest shall automatically be payable at the rate applied by the European Central Bank to its repo operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points.

Article 4

This Decision is addressed to:

Comité français d'organisation de la Coupe du monde de football 1998 (CFO)
23-25 Rue de Berri
F-75008 Paris.

This Decision is enforceable pursuant to Article 256 of the EC Treaty.

Done at Brussels, 20 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission
