



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 July 2013\*

(Appeals — Television broadcasting — Directive 89/552/EEC — Article 3a — Measures taken by the United Kingdom concerning events of major importance for the society of that Member State — Football World Cup — Decision declaring the measures compatible with European Union law — Statement of reasons — Articles 43 EC, 49 EC and 86 EC — Right to property)

In Case C-205/11 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 27 April 2011,

**Fédération internationale de football association (FIFA)**, represented by A. Barav and D. Reymond, avocats,

appellant,

the other parties to the proceedings being:

**European Commission**, represented by E. Montaguti and N. Yerrell, acting as Agents, assisted by M. Gray, Barrister, with an address for service in Luxembourg,

defendant at first instance,

**Kingdom of Belgium**, represented by C. Pochet, J.-C. Halleux, acting as Agents, assisted by A. Joachimowicz and J. Stuyck, advocaten,

**United Kingdom of Great Britain and Northern Ireland**, represented by S. Ossowski and J. Beeko, acting as Agents, assisted by T. de la Mare QC,

interveners at first instance,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts, E. Juhász, J. Malenovský (Rapporteur) and D. Šváby, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 13 September 2012,

\* Language of the case: English.

after hearing the Opinion of the Advocate General at the sitting on 12 December 2012,  
gives the following

### Judgment

- 1 By its appeal, the Fédération internationale de football association (FIFA) requests the Court of Justice to set aside the judgment of 17 February 2011 of the General Court of the European Union in Case T-68/08 *FIFA v Commission* [2011] ECR II-349 ('the judgment under appeal'), by which the General Court dismissed its application for partial annulment of Commission Decision 2007/730/EC of 16 October 2007 on the compatibility with Community law of measures taken by the United Kingdom pursuant to Article 3a(1) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 2007 L 295, p. 12) ('the contested decision').

### Legal context

- 2 Article 3a of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), as inserted by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Directive 89/552/EEC (OJ 1997 L 202, p. 60) ('Directive 89/552'), provided:

'1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the Committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the *Official Journal of the European Communities* and at least once a year the consolidated list of the measures taken by Member States.

3. Member States shall ensure, by appropriate means, within the framework of their legislation that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with the preceding paragraphs via whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.'

3 Recitals 18 to 22 in the preamble to Directive 97/36 were worded as follows:

- (18) Whereas it is essential that Member States should be able to take measures to protect the right to information and to ensure wide access by the public to television coverage of national or non-national events of major importance for society, such as the Olympic games, the football World Cup and European football championship; whereas to this end Member States retain the right to take measures compatible with Community law aimed at regulating the exercise by broadcasters under their jurisdiction of exclusive broadcasting rights to such events;
- (19) Whereas it is necessary to make arrangements within a Community framework, in order to avoid potential legal uncertainty and market distortions and to reconcile free circulation of television services with the need to prevent the possibility of circumvention of national measures protecting a legitimate general interest;
- (20) Whereas, in particular, it is appropriate to lay down in this Directive provisions concerning the exercise by broadcasters of exclusive broadcasting rights that they may have purchased to events considered to be of major importance for society in a Member State other than that having jurisdiction over the broadcasters; ...
- (21) Whereas events of major importance for society should, for the purposes of this Directive, meet certain criteria, that is to say be outstanding events which are of interest to the general public in the European Union or in a given Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to that event;
- (22) Whereas for the purposes of this Directive, “free television” means broadcasting on a channel, either public or commercial, of programmes which are accessible to the public without payment in addition to the modes of funding of broadcasting that are widely prevailing in each Member State (such as licence fee and/or the basic tier subscription fee to a cable network).’

### **Background to the dispute**

4 The background to the dispute was set out by the General Court in paragraphs 6 to 16 of the judgment under appeal, as follows:

- ‘6 [FIFA] is an association of 208 national football associations and is the world governing body of football. Its objectives are, inter alia, to promote football globally and to organise its international competitions. FIFA’s primary source of income is the sale of television broadcasting rights to the finals of the football World Cup (“[the final stage of] the World Cup”), which it organises.
- 7 By decision of 25 June 1998, the Secretary of State for Culture, Media and Sports of the United Kingdom of Great Britain and Northern Ireland (“the Secretary of State”), acting pursuant to Part IV of the Broadcasting Act 1996, drew up a list of events of major importance for the society of that Member State, including [the final stage of] the World Cup.
- 8 The adoption of that list was preceded by a consultation of 42 different bodies launched by the Secretary of State in July 1997 concerning the criteria in the light of which the importance of various events for United Kingdom society was to be assessed. That procedure led to the adoption of a list of criteria contained in a document from the Ministry of Culture, Media and Sports dated November 1997, which the Secretary of State was to apply for the purpose of drawing up a list of events of major importance for United Kingdom society. According to that document, an event is particularly liable to be included in the list when it has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned.

According to that same document, in order to qualify as such, a national or international sport must be pre-eminent or involve the national team or athletes from the United Kingdom. Of the events which fulfil those criteria, those which command large television audiences or which are traditionally broadcast live on free television channels stand a greater chance of being included in the list. For the purposes of the assessment, the Secretary of State also takes into account other factors relating to the consequences for the sport concerned, such as the suitability of live broadcasting of an event in its entirety, the impact on income for the sport in question, the consequences for the broadcasting market and whether there are arrangements to ensure that access to the event is available by means of delayed coverage or radio commentary.

- 9 Subsequently, the Secretary of State launched a consultation procedure pursuant to section 97 of the Broadcasting Act 1996 concerning which specific events to include in the list. During that consultation procedure, the Secretary of State sought the views of a number of bodies and interested parties and of holders of television broadcasting rights, such as FIFA. Moreover, the Advisory Group on listed events, established by the Secretary of State, delivered its opinion on the events to be included, proposing with respect to [the final stage of] the World Cup the inclusion of the final, the semi-finals and matches involving the national teams of the United Kingdom.
- 10 Under section 98 of the Broadcasting Act 1996, as amended by the Television Broadcasting Regulations 2000, broadcasters are divided into two categories. The first category includes broadcasters providing a free service which, in addition, can be received by at least 95% of the population of the United Kingdom [“broadcasters operating free television channels”]. The second category includes broadcasters which do not fulfil those conditions [and covers, inter alia, broadcasters operating pay television channels].
- 11 Moreover, under section 101 of the Broadcasting Act 1996, as amended by the Television Broadcasting Regulations 2000, a television programme provider coming within one of those categories can broadcast live all or part of an event included in the list only if a provider coming within the other category can broadcast live, in whole or in part, the same event in the same, or essentially the same, region. If that condition is not fulfilled, a broadcaster wishing to broadcast all or part of the event in question must obtain prior authorisation from the Office of Communications.
- 12 According to section 3 of the Code on Sports and Other Listed and Designated Events, as in force in 2000, the events included in the list of events of major importance for society are divided into two groups. “Group A” includes events which cannot be covered live on an exclusive basis if certain criteria are not met. “Group B” includes events which may be broadcast live on an exclusive basis only if arrangements have been made to ensure deferred broadcast.
- 13 Under section 13 of the Code on Sports and Other Listed and Designated Events, an authorisation may be granted by the Office of Communications for listed “Group A” events, which includes [the final stage of] the World Cup, where the relevant broadcasting rights have been openly offered on equitable and reasonable terms to all television broadcasting bodies and no body in the other category has expressed its interest in acquiring them.
- 14 By letter of 25 September 1998, the United Kingdom provided the Commission of the European Communities with the list of events drawn up by the Secretary of State, as required by Article 3a(2) of Directive 89/552, together with other information concerning the United Kingdom legislation adopted pursuant to Article 3a(1) of the same Directive. Following an exchange of correspondence between the United Kingdom and the Commission and a fresh notification of measures on 5 May 2000, the Director-General of the Directorate-General (DG)

Education and Culture informed the United Kingdom, by letter of 28 July 2000, that the Commission would not raise objections to the United Kingdom measures, which would, accordingly, be published shortly thereafter in the *Official Journal of the European Communities*.

15 By judgment of 15 December 2005 in Case T-33/01 *Infront WM v Commission* [2005] ECR II-5897, the General Court annulled the decision contained in the letter of 28 July 2000, on the ground that it constituted a formal decision within the meaning of Article 249 EC that the College of Commissioners itself ought to have adopted (*Infront WM v Commission*, paragraph 178).

16 Following [that judgment], the Commission adopted [the contested decision].’

### **The contested decision**

5 Article 1 of the contested decision states:

‘The measures taken pursuant to Article 3a(1) of Directive [89/552] and notified by the United Kingdom to the Commission on 5 May 2000, as published in the *Official Journal of the European Communities* C 328 of 18 November 2000, are compatible with Community law.’

6 In accordance with Article 3 thereof, the contested decision ‘shall apply as from 18 November 2000’.

7 Recitals 3 to 6, 18 to 21 and 24 and 25 of the contested decision are worded as follows:

‘(3) In its examination, the Commission took into consideration the available data on the UK media landscape.

(4) The list of events of major importance for society included in the [United Kingdom] measures was drawn up in a clear and transparent manner and a far-reaching consultation had been launched in [the United Kingdom].

(5) The Commission was satisfied that the events listed in the [United Kingdom] measures met at least two of the following criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance; and (iv) the fact that the event has traditionally been broadcast on free television and has commanded large television audiences.

(6) A significant number of the events listed in the [United Kingdom] measures, including the summer and winter Olympic Games as well as the World Cup Finals and the European Championship Finals tournaments, fall within the category of events traditionally considered to be of major importance for society, as referred to explicitly in recital 18 of Directive [97/36]. These events have a special general resonance in the [United Kingdom] in their entirety, as they are particularly popular with the general public (irrespective of the nationality of the participants), not just with those who usually follow sports events.

...

(18) The listed events, including those to be considered as a whole and not as a series of individual events, have traditionally been broadcast on free television and have commanded large television audiences. Where, exceptionally, this has not been the case (the listed matches of the Cricket

World Cup), the listing is limited (as it includes the final, semi-finals and matches involving national teams) and requires only adequate secondary coverage, and, in any case, fulfils two of the criteria considered to be reliable indicators of the importance of events for society ...

- (19) The [United Kingdom] measures appear proportionate so as to justify a derogation from the fundamental EC Treaty freedom to provide services on the basis of an overriding reason of public interest, which is to ensure wide public access to broadcasts of events of major importance for society.
- (20) The [United Kingdom] measures are compatible with ... [the] competition rules [of the European Community] in that the definition of qualified broadcasters for the broadcasting of listed events is based on objective criteria that allow actual and potential competition for the acquisition of the rights to broadcast these events. In addition, the number of listed events is not disproportionate so as to distort competition on the downstream free television and pay television markets.
- (21) The proportionality of the [United Kingdom] measures is reinforced by the fact that a number of the events listed require adequate secondary coverage only.

...

- (24) It follows from the judgment [of the General Court in *Infront WM v Commission*] that the declaration that measures taken pursuant to Article 3a(1) of Directive [89/552] are compatible with Community law constitutes a decision, which must therefore be adopted by the Commission. Accordingly, it is necessary to declare by this Decision that the measures notified by the [United Kingdom] are compatible with Community law. The measures, as set out in the Annex to this Decision, should be published in the *Official Journal of the European Union* in accordance with Article 3a(2) of Directive 89/552 ...
- (25) In order to guarantee legal certainty, this Decision should apply as from the date of the first publication in the *Official Journal of the European Union* of the measures notified by the [United Kingdom].'

### **The procedure before the General Court and the Judgment under appeal**

- 8 FIFA brought an action against the contested decision before the General Court, on the ground that, in that decision, the Commission approved the designation of the final stage of the World Cup, in its entirety, as an event of major importance and thus accepted the inclusion of all the matches in that tournament in the list of events of major importance established by the Secretary of State. According to FIFA, that Member State could designate as such an event only so called 'prime' or 'gala' matches, namely the final, the semi-finals and the matches involving the United Kingdom national teams ('gala matches'). Accordingly, it claims that that list should not have included the other matches of the World Cup ('non-gala matches').
- 9 In support of its application for partial annulment of the contested decision, FIFA put forward six pleas in law. Those pleas concerned, first, failure to state reasons; secondly, infringement of Article 3a(1) of Directive 89/552; thirdly, infringement of FIFA's right to property; fourthly, infringement of the Treaty provisions on the freedom to provide services; fifthly, infringement of the Treaty provisions on competition; and, sixthly, infringement of the Treaty provisions on freedom of establishment.
- 10 By the judgment under appeal, the General Court rejected each of FIFA's pleas and dismissed the action in its entirety.

- 11 It also rejected a request for measures of organisation of procedure, by which FIFA asked the General Court to invite the Commission to produce a number of documents.

## **The appeal**

### *Preliminary observations*

- 12 First of all, the Court of Justice notes that, by Article 3a(1) of Directive 89/552, the European Union legislature authorised the Member States to designate certain events which they consider to be of major importance for society in the Member State concerned ('event of major importance') and expressly authorised, in accordance with the discretion it is granted by the Treaty, obstacles to the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property, which are an unavoidable consequence of such a designation. As is apparent from recital 18 in the preamble to Directive 97/36, the legislature considered that such obstacles are justified by the objective of protecting the right to information and ensuring wide public access to television coverage of those events.
- 13 The legitimacy of pursuing such an objective has also been recognised by the Court, which has stated that the marketing on an exclusive basis of events of high interest to the public is liable to restrict considerably the access of the general public to information relating to those events. However, in a democratic and pluralistic society, the right to receive information is of particular importance, and its importance is all the more evident in the case of such events (see Case C-283/11 *Sky Österreich* [2013] ECR, paragraphs 51 and 52).
- 14 Secondly, the Court notes that, pursuant to Article 3a(1) of Directive 89/552, it is for the Member States alone to determine the events which are of major importance; they have a broad discretion in that respect.
- 15 Instead of harmonising the list of such events, Directive 89/552 is based on the premiss that considerable social and cultural differences exist within the European Union in so far as concerns their importance for the general public. Consequently, Article 3a(1) of that directive provides that each Member State is to draw up a list of designated events 'which it considers to be of major importance' for society in that State. Recital 18 in the preamble to Directive 97/36 also underlines the discretion accorded to the Member States, in stating that it is 'essential' that they be able to take measures to protect the right to information and to ensure wide access by the public to television coverage of events of major importance.
- 16 The significance of that margin of discretion is further apparent from the fact that Directives 89/552 and 97/36 do not set out detailed criteria for its exercise. In fact, the only criteria which they lay down for the Member State concerned to be able to designate an event as being of major importance are referred to in recital 21 in the preamble to Directive 97/36, namely that they must be extraordinary events which are of interest to the general public in the European Union or in a given Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to that event.
- 17 Given their relatively imprecise nature, it is for each Member State to give substance to the criteria and to assess the interest of the general public in the events concerned, taking account of the social and cultural particularities of society in that Member State.
- 18 Thirdly, the Court notes that, pursuant to Article 3a(2) of Directive 89/552, the Commission has the power to examine the legality of national measures designating events as being of major importance, which enables it to reject any measures which are incompatible with European Union law.

- 19 In the context of that examination, the Commission is required, in particular, to verify whether the following conditions are satisfied:
- The event concerned has been added to the list provided for in Article 3a(1) of Directive 89/552 in accordance with a clear and transparent procedure in due and effective time;
  - Such an event may validly be regarded as being of major importance;
  - The designation of the event concerned as being of major importance is compatible with the general principles of European Union law, such as the principles of proportionality and non-discrimination, with the principles of the freedom to provide services and the freedom of establishment, and with the rules of free competition.
- 20 None the less, such a power of review is limited, in particular in so far as concerns the examination of the second and third conditions set out in paragraph 19 above.
- 21 First, it is apparent from the significance of the discretion accorded to the Member States, referred to in paragraph 14 above, that the Commission's power of review must be limited to determining whether the Member States have committed any manifest errors of assessment in designating events of major importance. In order to verify whether such an error of assessment has been committed, the Commission must therefore, inter alia, examine, carefully and impartially, all the relevant facts of the individual case, facts which support the conclusions reached (see, by analogy, Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14, and Case C-77/09 *Gowan Comércio Internacional e Serviços* [2010] ECR I-13533, paragraphs 56 and 57).
- 22 Secondly, as regards, more specifically, the third condition referred to in paragraph 19 above, it is undeniable that a valid designation of an event as being of major importance leads to inevitable obstacles to the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property, obstacles which the European Union legislature has considered and regards, as noted in paragraph 12 above, as justified by the objective in the general interest of protecting the right to information and ensuring wide access by the public to television coverage of those events.
- 23 In order to ensure the effectiveness of Article 3a of Directive 89/552, it must thus be found that, if an event has validly been designated by the Member State concerned as being of major importance, the Commission is required to examine only the effects of that designation on the freedom to provide services, the freedom of establishment, the freedom of competition and the right to property which exceed those which are intrinsically linked to the inclusion of that event in the list provided for in Article 3a(1).

### *The first ground of appeal*

#### Arguments of the parties

- 24 The first ground of appeal comprises in essence six parts. By the first part, FIFA submits that the General Court gave inconsistent reasoning as regards the true character, according to it, of the final stage of the World Cup.
- 25 By the second part of the first ground of appeal it alleges that the General Court seems to have taken inconsistent and irreconcilable views in stating, on the one hand, that by nature the World Cup is a single event and, on the other hand, that specific factors may show that it is not.



- 26 The third part of the ground of appeal concerns paragraph 113 of the judgment under appeal, pursuant to which the notifying Member State is not required to provide specific reasons for including the entire final stage of the World Cup in its list of events of major importance. In coming to that conclusion, the General Court prevents the Commission from carrying out a thorough verification and a detailed assessment of the compatibility of the notified measures with European Union law.
- 27 In the context of the fourth part of the first ground of appeal, FIFA argues that, contrary to what was found in the judgment under appeal, the Commission is required to substantiate before the General Court its conclusion that the matches in the final stage of the World Cup, in their entirety, constitute a single event of major importance. Thus, it is not for FIFA, or any other interested party, to demonstrate by specific factors that that is not the case.
- 28 By the fifth part of the first ground of appeal FIFA submits that, in giving reasons not contained in the contested decision, the General Court exceeded the ambit of the judicial review which it is required to carry out.
- 29 By the sixth part of this ground of appeal it claims that the General Court erred in considering that the Commission provided sufficient grounds for including the final stage of the World Cup in its entirety in the United Kingdom's list of events of major importance.
- 30 The Commission, the Kingdom of Belgium and the United Kingdom contest the validity of the first ground of appeal raised by FIFA in support of its appeal.

#### Findings of the Court

- 31 Given the importance for the General Court's reasoning of the findings in paragraph 113 of the judgment under appeal, the third part of the first ground of appeal needs to be examined first of all.

#### – The third part of the first ground of appeal

- 32 The Court notes, at the outset, that the General Court found, in paragraph 70 of the judgment under appeal, that the World Cup is a competition which may reasonably be regarded as a single event as a whole rather than as a series of individual events divided up into 'gala' and 'non-gala' matches. Moreover, as is apparent from paragraph 6 of the judgment under appeal, it understood the term 'World Cup', referred to in recital 18 in the preamble to Directive 97/36, as including only the final stage of that competition.
- 33 However, neither that recital nor any other part of Directives 85/552 or 97/36 contains any indication that the term 'World Cup' includes only the final stage of that competition. Thus, the term must, in principle, also include the initial stage of the competition, that is to say all the matches in the qualifying stage. It is not disputed that the qualifying matches prior to the final stage do not, in general, attract a level of interest from the general public of a Member State which is comparable to that generated during the final stage. Only certain specific qualifying matches, namely those involving the national team of the Member State concerned or those of other teams in the same qualification group as that team, are likely to generate such interest.
- 34 In addition, it cannot reasonably be disputed that the importance of 'gala' matches is, in general, superior to that accorded to matches in the final stage of the World Cup which precede them, namely matches in the group stage. It can thus not, a priori, be submitted that the importance accorded to matches in the group stage is equivalent to that of 'gala' matches and, therefore, that all the matches in the group stage, without distinction, form part of a single event of major importance, just like 'gala' matches. Thus, the designation of each match as being an event of major importance may differ from one Member State to another.

- 35 It follows from the foregoing considerations that the European Union legislature did not intend to specify that the ‘World Cup’, within the meaning of recital 18 in the preamble to Directive 97/36, is limited to only the final stage and that it constitutes a single and indivisible event. On the contrary, the World Cup must be regarded as an event which is, in principle, divisible into different matches or stages, not all of which are necessarily capable of being characterised as an event of major importance.
- 36 It should be pointed out, however, that such an erroneous reading by the General Court of recital 18 in the preamble to Directive 97/36, in particular of the notion of ‘the World Cup’, did not have any bearing in the present case.
- 37 As regards, first of all, the exclusion of qualifying matches from the definition of the World Cup, suffice it to note that the Secretary of State did not include those matches in the list of events of major importance and that, consequently, the contested decision does not concern such matches.
- 38 Next, the Court of Justice finds that the General Court examined, in paragraphs 120 to 129 of the judgment under appeal, on the basis of the information provided by FIFA and in the light of the actual perception of the United Kingdom public, whether all the matches in the final stage of the World Cup actually attract sufficient attention from that public to form part of an event of major importance. In concluding that that was the case, the General Court was legitimately able to find that all the matches which take place in the final stage of the World Cup could be considered, in the United Kingdom, to be a single event of major importance. Ultimately, its assessment was thus in line with what this Court has found in paragraph 35 above.
- 39 Finally, it is apparent from the considerations set out in paragraph 67 below that the erroneous reading of recital 18 in the preamble to Directive 97/36 did not affect the General Court’s conclusion that the grounds for the contested decision satisfied the conditions laid down in Article 253 EC.
- 40 That said, in following the reasoning set out in paragraph 32 above, the General Court concluded, in paragraph 113 of the judgment under appeal, that no Member State is required to communicate to the Commission the specific reasons justifying the designation of the entire final stage of the World Cup as a single event of major importance in the Member State concerned.
- 41 However, given that the final stage of the World Cup cannot validly be included in its entirety in a list of events of major importance irrespective of the interest generated by the individual matches in the Member State concerned, that State is not freed from its obligation to communicate to the Commission the reasons justifying the designation, in the specific context of the society of the Member State concerned, of the final stage of the World Cup as a unique event which must be regarded in its entirety as being of major importance for that society, rather than a compilation of individual events divided into matches of different levels of interest.
- 42 Consequently, the General Court erred in law, in paragraph 113 of the judgment under appeal, in finding that the Commission could not consider the inclusion of matches in the final stage of the World Cup in a list of events of major importance to be contrary to European Union law on the ground that the Member State concerned did not notify it of the specific reasons justifying their being an event of major importance for society in that State.
- 43 In those circumstances, it needs to be examined whether, in the light of that error, the judgment under appeal must be set aside.
- 44 In that regard, it is apparent from the case-law of the Court of Justice that an error of law committed by the General Court does not invalidate the judgment under appeal if its operative part is well founded on other legal grounds (see, to that effect, Case C-367/95 P *Commission v Sytraval and Brink’s France* [1998] ECR I-1719, paragraph 47, and Case C-352/09 P *ThyssenKrupp Nirosova v Commission* [2011] ECR I-2359, paragraph 136).

- 45 In the present case, it should be noted, first of all, that, for the Commission to be able to exercise its power of review, the statement of reasons which led a Member State to designate an event as being of major importance may be succinct, so long as it is appropriate. Thus, it cannot be required, in particular, that the Member State provide, in the actual notification of the measures concerned, detailed information and figures regarding each element or part of the event which has been notified to the Commission.
- 46 In that regard, the Court points out that, if the Commission has doubts, on the basis of the evidence at its disposal, in relation to the designation of an event as one of major importance, it is required to seek clarification from the Member State which designated the event as such (see, by analogy, judgment of 29 March 2012 in Case C-505/09 P *Commission v Estonia* [2012] ECR, paragraph 67).
- 47 In the present case, it is clear, in particular from the communication of the measures taken by the Secretary of State, which were notified to the Commission on 5 May 2000 and annexed to the contested decision, that the Secretary of State designated the matches in the final stage of the World Cup, in their entirety, as an event of major importance, on the grounds that all of the matches in that stage, thus including ‘non-gala’ matches, had special general resonance at national level and were also of specific interest for those who do not generally follow football, that there would undoubtedly be a large number of television viewers and that all those matches were traditionally broadcast direct on free television channels.
- 48 In providing such information, in accordance with the requirements of Article 3a(2) of Directive 89/552, the United Kingdom enabled the Commission to exercise its power of review and to seek, where it deemed necessary or appropriate, additional clarification from that Member State or request the submission of more information in addition to that provided in its notification.
- 49 Secondly, there is nothing to indicate that the Commission did not exercise its limited power of review and that it failed to examine, in the light of the grounds referred to in paragraph 47 above, whether the Secretary of State had committed a manifest error of assessment in designating the matches in the final stage of the World Cup, in their entirety, as an event of major importance.
- 50 In that regard, it is apparent, first of all, from recital 6 the contested decision, that the Commission did verify whether the whole of the final stage of the World Cup, thus including ‘non-gala’ matches, had a special general resonance in the United Kingdom, that is to say whether the matches in that tournament were very popular for the general public and not only viewers who generally follow football matches on television. Similarly, it is apparent from recital 18 of that decision that the Commission took account of the fact that the tournament taken as a whole, thus including ‘non-gala matches’, had traditionally been broadcast on free television channels and had commanded large television audiences.
- 51 Next, it is apparent from the file that, before the General Court, the parties annexed statistical data to their pleadings, on which the Commission had relied to assess whether the measures notified by the United Kingdom were lawful, including those which emanated from that Member State. Those documents showed, inter alia, the viewing figures for matches in the final stages of the World Cups of 1994 and 1998 and pointed out the average viewing figures, mentioning, by way of example, the viewing figures of several ‘gala’ and ‘non-gala’ matches. Moreover, those documents also contained a survey, according to which 76% of United Kingdom inhabitants considered that the entire final stage of the World Cup should be broadcast on a free television channel.
- 52 FIFA did not dispute that such documents constituted the basis of the contested decision.

- 53 Finally, FIFA cannot reasonably claim that the Commission's supposedly inadequate review resulted from the fact that the figures in those documents related to the period prior to 2000 and that the Commission failed to take account of the information relating to 2000-2007, whereas it should have based the contested decision on the information available at the time of adoption of the decision, namely on 16 October 2007.
- 54 It that regard, the Court points out that such a head of claim was not raised at first instance. Before the General Court, FIFA merely criticised the grounds of the contested decision, claiming that the decision was silent on the nature and the date of the information relating to the 'United Kingdom media landscape' as taken into account by the Commission. FIFA thus did not criticise the Commission's supposedly inadequate review, which is a head of claim relating to the substance of the case. In accordance with settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court would in effect allow that party to bring before the Court a wider case than that heard by the General Court. In an appeal, the Court's jurisdiction is, as a general rule, confined to a review of the assessment by the General Court of the pleas argued before it (see judgment of 19 July 2012 in Joined Cases C-628/10 P and C-14/11 P *Alliance One International and Standard Commercial Tobacco v Commission and Commission v Alliance One International and Others* [2012] ECR, paragraph 111 and the case-law cited). Consequently, the head of claim referred to above must be dismissed as inadmissible.
- 55 Thirdly, it was open to FIFA to show before the General Court that the Commission should have concluded that the Secretary of State had committed a manifest error of assessment in designating the matches in the final stage of the World Cup, in their entirety, as an event of major importance.
- 56 To that end, FIFA submitted to the General Court figures relating, inter alia, to viewing figures during the final stages of the World Cup between 1994 to 2006, and submitted that those figures showed that the 'non-gala' matches did not have special general resonance in the United Kingdom among television viewers who do not follow football on a regular basis.
- 57 The General Court examined those figures in paragraphs 122 to 129 of the judgment under appeal, but did not confirm the assessment proposed by FIFA.
- 58 It concluded, in paragraphs 130 and 134 of the judgment under appeal, that FIFA had not shown that the findings in recitals 6 and 18 of the contested decision and referred to in paragraph 50 above are vitiated by error, nor that, as a result, the Commission should have concluded that the Secretary of State had committed a manifest error of assessment in designating the matches in the final stage of the World Cup, in their entirety, as an event of major importance.
- 59 It follows from the foregoing that the error of law committed by the General Court is not such as to invalidate the judgment under appeal, since its operative part is well founded on other legal grounds. Consequently, the third part of the first ground of appeal must be rejected as ineffective.

– The other parts of the first ground of appeal

- 60 In so far as concerns the first and second parts of the first ground of appeal, the Court notes that the question whether the grounds of a judgment of the General Court are incoherent is indeed a question of law which may be raised on appeal, since the statement of the reasons on which a judgment is based must clearly and unequivocally disclose the General Court's reasoning (see, to that effect, order of 29 November 2011 in Case C-235/11 P *Evropäiki Dynamiki v Commission*, paragraphs 29 and 30, and judgment of 19 December 2012 in Case C-314/11 P *Commission v Planet* [2012] ECR, paragraphs 63 and 64).

- 61 However, the obligation that the statement of the reasons must be coherent does not constitute an objective in itself, but seeks to enable the persons concerned to ascertain the reasons for the decision taken (see, to that effect, *Evropäiki Dynamiki v Commission*, paragraph 30, and *Commission v Planet*, paragraph 64).
- 62 In the present case, the Court notes that the grounds criticised in the context of the first and second parts were intended to support the findings set out in paragraphs 70 and 113 of the judgment under appeal. However, having concluded in paragraphs 32 to 42 above that those findings were erroneous, the Court then substituted grounds which justify the decision taken.
- 63 Thus, since the grounds criticised are ancillary to findings considered to be erroneous by the Court, which has substituted other grounds for them, they no longer constitute the basis for the decision taken, with the result that it is no longer necessary to examine their alleged incoherency.
- 64 In order to respond to the fourth part of the first ground of appeal, the Court notes that the contested decision and the national measures annexed to it set out the reasons why the matches in the final stage of the World Cup, in their entirety, were designated as an event of major importance. Thus, given that acts of the European Union institutions are presumed to be lawful (Case C-177/06 *Commission v Spain* [2007] ECR I-7689, paragraph 36), and having regard to the limited review carried out by the Commission and the General Court, it was for FIFA to dispute those reasons before the General Court and to demonstrate that the Commission should have concluded that the United Kingdom had committed a manifest error in including all of those matches in the list of events of major importance. Moreover, FIFA has unsuccessfully tried to challenge those reasons (see paragraphs 55 to 58 above).
- 65 Accordingly, the fourth part of the first ground of appeal cannot succeed.
- 66 As regards the fifth part of the first ground of appeal, the Court notes that FIFA has not set out the precise reasons why it considers that the General Court went beyond the judicial review which it is required to exercise. Moreover, it has not stated the precise paragraphs of the judgment under appeal containing the grounds which it criticises. In accordance with the Court's settled case law, that part must be rejected as inadmissible (see Case C-202/07 P *France Télécom v Commission* [2009] ECR I-2369, paragraph 55, and order of 2 February 2012 in Case C-404/11 P *Elf Aquitaine v Commission*, paragraph 15).
- 67 As for the sixth part of the first ground of appeal, it is apparent from the general considerations set out in paragraphs 107 to 111 of the judgment delivered today in Case C-201/11 P *UEFA v Commission*, that the grounds of the contested decision satisfy the conditions laid down in Article 253 EC. In the light of those considerations, it is sufficient that recitals 6 and 18 of that decision set out succinctly the reasons why the Commission considered that the matches in the final stage of the World Cup, in their entirety, could validly be included in the list of events of major importance for United Kingdom society, given that those reasons enable FIFA to understand the justification for the measure taken and the General Court to review the merits of that assessment.
- 68 In the light of the foregoing, the first ground of appeal must be rejected as being partly inadmissible and partly unfounded.

### *The second ground of appeal*

#### Arguments of the parties

- 69 The second ground of appeal consists, in essence, of two parts. By the first part FIFA claims that the General Court made an error of law in holding that the Commission did not err in finding that the inclusion of the 'non-gala' matches in the list of events of major importance in the United Kingdom

list was made in a clear and transparent manner. In particular, contrary to what was held by the General Court, the fact that certain officials or advisory bodies, in the course of their duties, suggested to the Secretary of State that only 'gala' matches be included in the list does give rise to an obligation for the Commission to explain why the Secretary of State did not err in adopting a different position.

- 70 By the second part of that ground of appeal FIFA claims that the General Court could not have found that the Commission was entitled to find that this inclusion was made in a clear and transparent manner when the United Kingdom, in its notification to the Commission of 5 May 2000, justified the inclusion, on 25 June 1998, of the 'non-gala' matches in its list of events of major importance, by reference also to viewing figures which were only available as from 12 July 1998. According to FIFA, the Commission was, it is true, entitled to take into account circumstances subsequent to the date of the making of that list. However, it could not find that such circumstances could be relied upon by the United Kingdom in order to justify the choice made by it on 25 June 1998.
- 71 The Commission, the Kingdom of Belgium, and the United Kingdom contend that the second ground of appeal is unfounded.

#### Findings of the Court

- 72 As regards the second part of the second ground of appeal, the Court points out that the obligation of clarity and transparency, laid down in the third sentence of Article 3a(1) of Directive 89/552, transposes the Court's case-law which seeks to prevent conduct on the part of the competent national authorities from negating the effectiveness of provisions of European Union law relating to a fundamental freedom. In the light of that case-law, the designation of an event as being of major importance must be made in accordance with objective criteria known in advance, so as to limit the discretion vested in the Member States so that it is not exercised arbitrarily (see, by analogy, Case C-250/06 *United Pan-Europe Communications Belgium and Others* [2007] ECR I-11135, paragraphs 45 and 46).
- 73 For the same reasons the national procedure must determine, in advance, the authority responsible for that designation and fix the conditions under which interested parties or, where appropriate, certain advisory bodies may submit observations to it before it makes its decision. In that regard, given the impact of such a decision on the broadcasting rights to an event, it is necessary, in particular, that the broadcasters concerned and the holders of those rights have the possibility of submitting observations to that authority.
- 74 None the less, the requirement of clarity and transparency requires that those interested parties and advisory bodies be able to submit observations in relation only to the essential elements on the basis of which that authority is required to make its decision. Consequently, there is nothing to preclude a Member State from submitting, at a later point in time, additional information to the Commission which confirms that decision and which may also relate to a period after the date of adoption of the list of events of major importance.
- 75 That was precisely the procedure followed in the present case.
- 76 In those circumstances, the second part of the second ground of appeal must be rejected as unfounded.
- 77 In so far as concerns the first part of this ground of appeal, it is apparent from paragraph 14 above that the national authority in charge of designating events as being of major importance enjoys a broad margin of discretion. Accordingly, it is not required to follow the advice of the advisory bodies which it consulted prior to making its decision. It is clearly also not required to follow the advice of certain national civil servants.

- 78 In so far as concerns the reasons why such advice was not followed by that authority, it is true that, as is required of the European Union institutions when adopting measures (see Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala* [2008] ECR I-4951, paragraph 166), that authority must disclose the reasons for designating an event as one of major importance in such a way as, on the one hand, to make the persons concerned aware of the reasons for the measure and thereby enable them to defend their rights and, on the other, to enable the Commission and the competent Courts to exercise their power of review.
- 79 However, contrary to what FIFA submits, in order to achieve that objective, the authority does not have to set out the specific reasons for not following the advice of certain advisory bodies even in circumstances where it is not required to follow such advice. The fact that that advice comes from several advisory bodies which all adopt the same approach is irrelevant in that respect.
- 80 In those circumstances, the first part of the second ground of appeal must be rejected, as must the ground of appeal in its entirety.

### *Third ground of appeal*

#### Arguments of the parties

- 81 The third ground of appeal comprises, in essence, four parts. By the first part, FIFA submits that the General Court erred on the ground that it did not indicate whether the legality of the contested decision had to be assessed by reference to the facts and circumstances existing on 16 October 2007, namely the date of adoption of that decision, or on 28 July 2000, namely the date on which the Commission adopted its first decision in the area, which was annulled by the judgment in *Infront WM v Commission*, and replaced seven years later by the contested decision.
- 82 Moreover, the General Court should have considered that the terms ‘the available data on the United Kingdom media landscape’, referred to in recital 3 of that decision, did not satisfy the requirement that sufficient grounds be given, since they do not make it possible to identify either the nature or the date of the information which the Commission claims to have taken into account in adopting that decision.
- 83 By the second part of that ground of appeal, FIFA claims that the General Court based its findings, in paragraphs 70 and 117 of the judgment under appeal, on reasons not appearing anywhere in the contested decision when it held that the matches in the final stage of the World Cup, in their entirety, may be regarded as a single event and that the Commission was not required to provide further grounds to justify its decision to approve the inclusion of that tournament in the list of events of major importance for the United Kingdom.
- 84 By the third part of the third ground of appeal, FIFA accuses the General Court of having erred in law in refusing to give any importance to the practice of other Member States which have not included ‘non-gala’ matches in their lists of events of major importance.
- 85 The fourth part of the third ground of appeal relates to the interpretation and application of the criteria on the basis of which the matches in the final stage of the World Cup, in their entirety, were found to constitute an event of major importance. FIFA considers that the General Court erred in approving the Commission’s finding that, in the United Kingdom, all those matches fulfilled the criterion of ‘special general resonance’ and in considering that the Commission had given sufficient and adequate reasons for that finding. In this respect, FIFA claims that the General Court in particular assimilated the criterion of the ‘special general resonance’ of an event to that of its popularity. However, the ‘popularity’ of an event is not a relevant criterion and is insufficient for

considering it to be an ‘outstanding event’, as required by recital 21 in the preamble to Directive 97/36. Moreover, the General Court misapplied Article 253 EC in considering that the Commission gave sufficient and adequate reasons for its finding relating to the ‘special general resonance’ criterion.

- 86 Moreover, FIFA submits that the General Court erred in endorsing the Commission’s findings that the matches in the final stage of the World Cup, in their entirety, satisfied the requirements of the criterion referred to in recital 18 of the contested decision, relating to the traditional broadcasting in the past of all those matches and large television audiences commanded by ‘non-gala’ matches. According to FIFA, the findings of the General Court are unfounded and contradicted by the facts. Moreover, the General Court wrongly considered that the Commission gave sufficient and adequate reasons for its conclusion that those requirements were satisfied.
- 87 In that regard, FIFA submits that the General Court presented viewing figures of a non-representative sample of those matches and ignored matches with lower viewing figures. In addition, it should have found that the viewing figures for ‘non-gala’ matches in the United Kingdom did not constitute ‘very large audiences’. Likewise, it erred in its explanations of the small viewing figures of certain ‘non-gala’ matches.
- 88 According to the Commission, the third ground of appeal is partly inadmissible and partly ineffective. Moreover, it contends that this ground of appeal is entirely unfounded, a conclusion shared by the Kingdom of Belgium and the United Kingdom.

#### Findings of the Court

- 89 As regards the first part of the third ground of appeal, it is settled case-law of the Court of Justice that the General Court is not required to address exhaustively and one by one all the arguments put forward by the parties to the case. Consequently, the reasoning may be implicit on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review. In particular, the General Court is not required to respond to the arguments of a party which are not sufficiently clear and precise, in that they have not been expanded upon or accompanied by a specific line of argument intended to support them (see, to that effect, Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others v Council and Commission* [2008] ECR I-6513, paragraphs 91 and 96, and Case C-263/09 P *Edwin v OHIM* [2011] ECR I-5853, paragraph 64).
- 90 In the present case, FIFA did not raise before the General Court, in a sufficiently clear and precise manner, an autonomous plea alleging that the contested decision was unlawful on the ground that the Commission adopted that decision by reference to the facts existing in 2000, whereas it should have based that decision on those existing in 2007, or that the Commission adopted that decision by reference to the facts existing in 2007, whereas it should have based that decision on those existing in 2000. As has been found in paragraph 54 above, FIFA in fact mentioned that aspect in the context of a plea relating to the grounds of the contested decision, submitting that the decision was silent on the nature and the date of the information relating to the United Kingdom media landscape as taken into account by the Commission.
- 91 In those circumstances, the General Court was not required to specify, in the judgment under appeal, whether the legality of the contested decision had to be assessed by reference to the facts which existed in 2000 or in 2007.
- 92 Next, as regards the plea raised before the General Court regarding the reference to the type and dates of the data taken into account in the contested decision, it is apparent from the considerations set out in paragraph 67 above that the Commission was not required to specify, in that decision, the type and dates of such data.



- 93 In those circumstances, it is not necessary to examine – as has been held in paragraphs 60 to 63 above – whether the General Court sufficiently responded to FIFA’s argument regarding the reference to the type and dates of that data.
- 94 Consequently, the first part of the third ground of appeal cannot be upheld.
- 95 In so far as concerns the second part of the third ground of appeal, the Court points out that, in the context of the review of legality provided for in Article 263 TFEU, the General Court cannot substitute its own reasoning for that of the author of the contested act and cannot fill, by means of its own reasoning, a gap in the reasoning in that act in such a way that its examination does not relate to any assessment carried out in that act (see, to that effect, *Case C-73/11 P Frucona Košice v Commission* [2013] ECR, paragraphs 87 to 90 and the case-law cited).
- 96 However, in the present case, the considerations set out in paragraph 70 of the judgment under appeal do not fill a gap in the reasoning of the contested decision, but seek to determine the required level of that reasoning in the light of the requirements of the European Union legislation in the area. As for the considerations set out in paragraph 117 of that judgment, they relate to the assessment made in recital 6 of the contested decision. Thus, the General Court did not substitute its own reasoning for that of the author of the contested decision, but merely reviewed the legality thereof as is required of it.
- 97 Consequently, the second part of the third ground of appeal must be rejected as unfounded.
- 98 In so far as concerns the third part of that ground of appeal, the Court notes that, before the General Court, FIFA did not raise a plea claiming that, in assessing whether ‘non-gala’ matches were of major importance for United Kingdom society, account needed to be taken of the practice of other Member States. In its initial application FIFA merely made reference to that practice without submitting that the contested decision was unlawful on the ground that the Secretary of State and the Commission did not attach any importance to such a practice.
- 99 In accordance with the case-law cited in paragraph 54 above, the third part of this ground of appeal must therefore be rejected as inadmissible.
- 100 In the context of the fourth part of the third ground of appeal, FIFA raises, first of all, a series of arguments by which it seeks to show that the parameters for ‘non-gala’ matches did not satisfy the criteria set out in recitals 6 and 18 of the contested decision and fixed by the Secretary of State for the purposes of designating events as being of major importance.
- 101 However, by those arguments, FIFA, in reality, requests the Court of Justice to substitute its own assessment of the facts for that of the General Court, without having claimed that the General Court distorted the facts and evidence submitted to it. In accordance with the settled case-law of the Court of Justice, those arguments must therefore be rejected as inadmissible (see *Case C-397/03 P Archer Daniels Midland and Archer Daniels Midland Ingredients v Commission* [2006] ECR I-4429, paragraph 85, and *ThyssenKrupp Nirosta v Commission*, paragraph 180).
- 102 Next, as regards the argument alleging that the ‘special general resonance’ criterion for an event was assimilated to that of its popularity, the Court points out that FIFA did not raise such a plea before the General Court. In accordance with the case-law cited in paragraph 54 above, that argument must be rejected as inadmissible.
- 103 Finally, in so far as concerns the complaints alleging that the formal aspects of the grounds for the contested decision were insufficient, those complaints overlap, in reality, with the sixth part of the first ground of appeal and must therefore be rejected for the reasons given in paragraph 67 above.

104 Having regard to the foregoing considerations, the third ground of appeal must be rejected as partly inadmissible and partly unfounded.

*The fourth ground of appeal*

Arguments of the parties

105 The fourth ground of appeal comprises, in essence, eight parts. By the first part, FIFA submits that the General Court erred, in paragraphs 161 and 162 of the judgment under appeal, in considering, on the basis of reasons which it had itself advanced, that the contested decision established the proportionality of the restrictions on the freedom to provide services and the right of establishment which arise from the notified measures. According to FIFA, it was for the Commission, and not the General Court to assess such restrictions. Hence, the General Court could not have found that, since the World Cup was 'by nature, a single event', the Commission, which did not rely on that alleged nature, was dispensed from the obligation to show that the restrictions entailed by the contested decision were necessary, appropriate, and proportionate.

106 According to the second part of the fourth ground of appeal, the General Court erred in holding, in paragraphs 51, 52 and 158 of the judgment under appeal, that the objective of ensuring wide public access to televised events of major importance for society and the right to information justified the restrictions entailed by the contested decision. Wide public access is not limitless access. Thus, the right to information does not encompass the right to watch on free television all the matches in the final stage of the World Cup, nor does it justify the prohibition on broadcasting any of those matches on an exclusive basis by any broadcaster other than broadcasters operating free television channels.

107 By the third part of that ground of appeal, FIFA considers that the General Court should have held that the Commission was bound to explore whether less restrictive measures than those approved in the contested decision allowed the attainment of the objective pursued by Article 3a of Directive 89/552.

108 By the fourth part of the third ground of appeal, FIFA submits that the Commission could not carry out a limited verification of the compatibility of the notified measures with European Union law. The General Court should have ruled that the Commission was bound to undertake a thorough verification and conduct a detailed assessment.

109 By the fifth part of that ground of appeal, FIFA claims that the General Court erred in ruling that the Commission had given sufficient reasons for its findings concerning the proportionality of the restrictions on the freedom to provide services.

110 By the sixth part of this ground of appeal, FIFA submits that the General Court should have held that the Commission was bound to explore whether measures less destructive of property rights than those approved of in the contested decision allowed the attainment of the objective pursued by Article 3a of Directive 89/552. Where two fundamental rights are concerned, restrictions on the exercise of one should be subject to a balancing operation, which, in the contested decision, the Commission did not undertake and which, in the judgment under appeal, the General Court did not consider.

111 By the seventh part of the third ground of appeal, FIFA submits that it was by relying on insufficient grounds that the General Court considered that the restrictions on the freedom to provide services, the freedom of establishment and the right to property were justified.

112 By the eighth part of its ground of appeal, FIFA submits that the General Court made errors of law in its analysis of the rules of European Union competition law.

- 113 First, it claims the General Court erred in holding, in paragraph 173 of the judgment under appeal, that, since the effects produced by the measures notified by the United Kingdom are an unavoidable consequence of the restrictions on the freedom to provide services, which the General Court considered justified, the Commission did not have to conduct a more in-depth analysis of those consequences than that which it conducted and, therefore, did not err in finding that those measures were compatible with European Union competition law, the absence of market definition notwithstanding. According to FIFA, the General Court infringed competition law, because the assessment of restrictions on the exercise of the freedom to provide services, on the one hand, and on the competition rules, on the other hand, are two distinct operations.
- 114 Secondly, FIFA claims that the General Court erred in finding the measures notified by the United Kingdom did not grant special rights, within the meaning of Article 86(1) EC, to the BBC and ITV. According to FIFA, that finding was based on purely formalistic and theoretical considerations. The factual circumstances and the economic reality should have been taken into consideration by the General Court, which should have found that, since those measures, as approved in the contested decision, actually give to the BBC and ITV more favourable treatment than to their competitors, special rights have been granted to those two undertakings.
- 115 According to the Commission, the Kingdom of Belgium and the United Kingdom, the fourth ground of appeal is unfounded.

#### Findings of the Court

- 116 The first part of the fourth ground of appeal is based on an erroneous reading of paragraphs 161 and 162 of the judgment under appeal. The General Court did not consider that the contested decision had established that the restrictions on the freedom to provide services and on the freedom of establishment which resulted from the measures notified by the United Kingdom were proportionate. The General Court rejected FIFA's plea as being based on an erroneous premiss, since it alleged that, to be proportionate, the list of events of major importance should have been limited to the inclusion of 'gala' matches, since those are the only matches of major importance for United Kingdom society. The General Court was legitimately able to rule as it did since it found, in paragraphs 116 and 134 of the judgment under appeal, that the matches in the final stage of the World Cup, in their entirety, could be regarded as being of major importance for United Kingdom society.
- 117 Therefore, the first part of the fourth ground of appeal must be dismissed as unfounded.
- 118 As regards the second part of that ground of appeal, the Court notes that, in paragraphs 51, 52 and 158 of the judgment under appeal, the General Court did not conclude that the objective of ensuring broad public access to television broadcasts of events of major importance and the right to information justified the specific restrictions brought about by the contested decision. It ruled on that issue in a general context, finding that, given that they concern events of major importance, the measures envisaged in Article 3a(1) of Directive 89/552 may be justified by that objective and by the right to information, provided that they are appropriate for giving effect to them and do not go beyond what is necessary in order to do so. In the light of the principles referred to in paragraphs 12 and 13 above, that finding cannot be criticised.
- 119 Moreover, it is apparent from what has been found in paragraphs 12, 22 and 23 above that, contrary to what FIFA submits, the General Court was not required to reconcile those objectives with the requirements relating to the freedom to provide services and the freedom of establishment.
- 120 In those circumstances, the second part of the fourth ground of appeal cannot be upheld.

- 121 In so far as concerns the third part of this ground of appeal, it is apparent from recital 19 of the contested decision that the Commission examined whether the measures notified by the United Kingdom were proportionate. Such an examination of proportionality necessarily involves an assessment of whether the public interest objectives could be attained by measures which are less restrictive of the freedoms of movement. In those circumstances, FIFA cannot submit that the Commission completely omitted to assess whether it was possible to rely on such measures. In that regard, it is irrelevant that recital 19 merely refers to the freedom to provide services, since the examination of proportionality is not substantially different in relation to the restrictions on the freedom of establishment brought about by the notified measures and those measures will affect that freedom only exceptionally.
- 122 Consequently, the third part of that ground of appeal must be rejected as unfounded.
- 123 As regards the fourth part of the third ground of appeal, it is evident from paragraphs 20 and 23 above that the Commission is required to carry out a limited review when it approves national measures designating events as being of major importance. Thus, FIFA is wrong to consider that the General Court should have held that the Commission was required to carry out a ‘thorough’ verification and a ‘detailed assessment’ of the compatibility of the notified measures with European Union law.
- 124 The fourth part of the fourth ground of appeal cannot therefore succeed.
- 125 As regards the fifth part of that ground of appeal, the Court finds that, in the light of the general considerations set out in paragraphs 107 to 111 of the judgment in *UEFA v Commission*, the grounds for the contested decision are sufficient, with the result that that part of the ground of appeal must be rejected as unfounded.
- 126 As regards the sixth part of the fourth ground of appeal, it is clear from the considerations set out in paragraphs 12, 22 and 23 above, first, that FIFA’s property rights were affected already by Article 3a of Directive 85/552 and that that effect may, in principle, be justified by the objective of protecting the right to information and ensuring wide access by the public to television coverage of events of major importance. Secondly, given that the matches in the final stage of the World Cup, in their entirety, were validly designated by the Secretary of State as an event of major importance, the Commission was required to examine only the effects of that designation on FIFA’s property rights which exceeded those intrinsically linked to the inclusion of that event in the list of events designated by the Secretary of State.
- 127 In the present case, FIFA did not produce before the General Court any evidence enabling it to find that the effects on FIFA’s right to property of the designation of the matches in the final stage of the World Cup, in their entirety, as an event of major importance were excessive.
- 128 Accordingly, the sixth part of that ground of appeal must be rejected as unfounded.
- 129 As regards the seventh part of the fourth ground of appeal, suffice it to note that, in paragraphs 140 to 146 and 156 to 163 of the judgment under appeal, the General Court provided FIFA with sufficient grounds to enable it to understand why it did not uphold its arguments and the Court of Justice with sufficient information to exercise its power of review.
- 130 Consequently, that part of the fourth ground of appeal cannot be upheld.
- 131 In so far as concerns the first argument of the eighth part of the fourth ground of appeal, it is clear from the considerations set out in paragraphs 22 and 23 above that, if an event is validly designated as an event of major importance, the Commission is required to examine only the effects of that designation on the freedom of movement which go beyond those which are intrinsically linked to the inclusion of the event concerned in the list of designated events. In the present case, FIFA did not

produce before the General Court any evidence enabling it to find that the effects on freedom of competition of the designation of the matches in the final stage of the World Cup, in their entirety, as an event of major importance were excessive.

- 132 As regards the second argument of the eighth part of that ground of appeal, it is common ground that the wording of Articles 98 and 101 of the Broadcasting Act 1996, as amended by the Television Broadcasting Regulations 2000, does not draw any distinction between the different categories of broadcasters and, in particular, does not grant broadcasters operating free television channels protection which would be refused to those operating pay television channels, since all those broadcasters are in particular free to acquire non-exclusive broadcasting rights for events of major importance and to broadcast them on a non-exclusive basis.
- 133 It is true that it cannot be ruled out that, in practice, only certain broadcasters operating free television channels, such as the BBC and ITV, will ultimately broadcast in the United Kingdom all of the matches in the final stage of the World Cup after gaining authorisation from the Office of Communications, since broadcasters operating pay television channels are interested only in broadcasting on an exclusive basis and, as a result, will not submit offers to acquire the relevant rights.
- 134 However, as the General Court essentially found in paragraph 180 of the judgment under appeal, such an effect is the result of the commercial strategy of broadcasters operating pay television channels, which have opted for a business model focusing on exclusive rights, with the result that they are less likely to agree to non-exclusive broadcasts of events of major importance than broadcasters operating free television channels. That effect is thus primarily the result of the commercial choice of broadcasters operating pay television channels and can thus not be attributed to the United Kingdom legislation.
- 135 In those circumstances, the eighth part of the fourth ground of appeal must be rejected.
- 136 In the light of the foregoing, the fourth ground of appeal must be rejected as being partly inadmissible and partly unfounded.
- 137 As none of the four grounds of appeal relied on by FIFA in support of its appeal can be upheld, the appeal must be dismissed in its entirety.

## **Costs**

- 138 In accordance with Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those Rules, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against FIFA, and as the latter has been unsuccessful, FIFA must be ordered to pay the costs of these proceedings.

On those grounds, the Court (Third Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders the Fédération internationale de football association (FIFA) to pay the costs.**

[Signatures]