

UEFA, FIFA and their Challenges of Free Broadcasting Events
30 July 2008

This article was first published in the July 2008 issue of SportBusiness International

In separate actions, FIFA and UEFA have lodged complaints against the European Commission's decision to approve the lists of certain 'crown jewels' sporting events - the World Cup and the European Championships - drawn up by the UK.

The European Union's Television Without Frontiers Directive, as recently amended by the Audio Visual Media Services Directive, provides the legal basis for Member States to compile lists of designated events that are of major importance to society, so must be broadcast on free-to-air television. In the UK, only the BBC, ITV and channel 4 fall under the definition of free-to-air broadcasters. Of the three, Channel 4 historically has rarely bid for sports rights (bar cricket), reducing the effective list of bidders for the football matches to the BBC and ITV.

The lists must be provided to the Commission that then decides whether the events in question are of major importance to the Member State country and most importantly that the compilation of these lists complies with EC law. If the list complies with EC law, the Commission will approve it.

There is no obligation on Member States to introduce listed events legislation and supply a list to the Commission. Currently only Austria, Belgium, Finland, France, Germany, Ireland, Italy and the UK have a list system in place. The only constant event throughout the submitted lists are the World Cup and European Championships. Crucially the UK lists all of the World Cup and European Championship finals games collectively as of major cultural importance to the UK. UEFA have challenged the Commission's decision to approve the UK's listing of the entire UEFA European Championship final tournament, UEFA state that the Commission has erred in concluding that matches not involving England, Northern Ireland, Wales or Scotland in the European Championships could be considered as events of major importance for the UK.

FIFA have challenged the listing of World Cup games by both the UK and Belgium. FIFA contend that, in the UK's case, the Commission failed to state reasons for approving the inclusion of all 64 matches. Their argument includes the assertions for the approval of both the Belgian and UK lists that the procedure adopted was not clear or transparent, that not all matches are of importance to the UK or Belgian public and that the list system infringes competition law. FIFA

points to both lists preventing it from licensing new entrants who wish to use premium sports broadcasting to establish themselves in the European football broadcasting market.

This begs the question as to how many UK viewers would deem a European Championship finals match between Romania v France of cultural significance to the UK? However, if in the next World Cup Romania v France is the determining fixture to decide whether England goes through to the knock-out stages of the competition, there would certainly be an argument for that game being of cultural significance. The context of the game therefore becomes very important and something that could not be easily catered for before a tournament began. Similarly, the entitlement of a UK citizen to watch the complete tournament unravelling on a free-to-air, non-pay TV broadcast channel, to many, is viewed as an inherent right. The expectation of not having to pay for watching live football which UK viewers have traditionally watched for free does potentially hold some merit when one considers that the hugely popular Premier League and Champions League competitions are not protected under the UK list at all.

The Italian equivalent to the UK list is substantially more selective in relation to the World Cup and European Championships however, and includes only the final and all matches involving the Italian national team. However the Italian list is more restrictive in relation to the broadcasting of the Champions League; if an Italian team reaches the semi-finals and/or final the broadcast must be screened on free-to-air television. The UK list does not require any Champions League matches to be made available to free-to-air broadcasters even though ITV does screen such matches.

The issue is essentially a consideration of what events should be deemed of 'major importance to society'. It is difficult to anticipate the outcome of these cases as there are valid arguments on both sides. UEFA and FIFA appear to be playing hardball in using the European courts to attack the current Belgian and UK lists. By only launching actions against the two lists it must be that the organisations are satisfied that the other national submitted lists go no further to protect a smaller number of events, or that the Belgian and UK lists offer the best examples of lists which go beyond what the organisations feel is proportionate and necessary, unduly limiting a rights holders ability to maximise their revenues for highly lucrative competitions.

The ultimate aim will perhaps manifest in a compromise solution that may allow UEFA and FIFA to sell the rights to group games that do not include Belgian or England, Scotland, Wales and Northern Ireland games to interested pay-tv operators, whilst allowing all games involving England for example to appear live on their own country's free-to-air broadcasters.

