II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 October 1992

relating to a proceeding under Article 85 of the EEC Treaty

(IV/33.384 and IV/33.378 — Distribution of package tours during the 1990 World Cup)

(Only the French and Italian texts are authentic)

(92/521/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Article 3 thereof,

Having regard to the application made by Pauwels Travel BVBA on 28 November 1989, in accordance with Article 3 of Regulation No 17, for a finding that Article 85 had been infringed,

Having regard to the Commission's decision of 22 January 1991 to initiate a proceeding in this case,

Having given the undertakings concerned the opportunity to make known their 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) and (2) of Council Regulation No 17 [2],

After consulting the Advisory Committee on Restrictive Practices and Dominant positions,

Whereas :

I. THE FACTS

A. Subject of the Decision

(1) On 28 November 1989, the Commission received a complaint from the travel agency Pauwels Travel BVBA ('Pauwels Travel') against :

— FIFA Local Organizing Committee Italia '90,

— 90 Tour Italia SpA,

— NV CIT Belgique.

(2) The complaint, based on the provisions of Article 3 of Regulation No 17, related to the ticket distribution system applied during the FIFA World Cup held in Italy in 1990.

(3) Pauwels Travel wanted to put together and sell in Belgium World Cup package tours comprising transport, accommodation and entrance tickets to the stadia in which the various matches were to be played. However, it found that the ticket distribution system that had been decided on did not allow travel agencies to acquire stadium entrance tickets for the purpose of putting together package tours.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No 127, 20. 8. 1963, p. 2268/63.

(4) The attempts made by Pauwels Travel to sell such package tours by procuring entrance tickets through parallel channels resulted in an action to cease and desist being brought before the Belgian national courts by the travel agency authorized by the World Cup organizers to sell package tours in Belgium.

(5) This Decision does not relate to the whole of the ticket distribution system, but only to the contracts through which the World Cup organizers conferred on the company 90 Tour Italia world exclusive rights for the supply of stadium entrance tickets for the purpose of putting together package tours.

(6) The market on which the effects of the contracts must be assessed is thus that for the sale of package tours to the World Cup held in Italy.

In accordance with the case law of the Court of Justice, in particular in Case 23/67, Brasserie de Haecht v. Wilkin (1), however, the whole of the distribution system must be examined and the contracts must be assessed in the context within which they operated.

B. General organization of the World Cup

(7) On 5 August 1983, the International Federation of Association Football (Fédération internationale de football association — FIFA) drew up the specifications and conditions for the federation organizing the 1990 World Cup.

The specifications and conditions, signed by the General Secretary of FIFA, state that the World Cup is a FIFA competition and that FIFA is to appoint one of the national associations affiliated to FIFA as the organizer (executive agent) of the World Cup.

(8) Under Article 1.1 of the specifications and conditions, the national association appointed may carry out its task directly itself or it may request FIFA to appoint a local organizing committee comprising representatives of the national association concerned and of FIFA.

(9) The specifications and conditions also stipulate that the national association appointed and its local organizing committee are placed under the control of the FIFA World Cup organizing committee, which has the last word in all matters.

(10) On 19 May 1984, FIFA appointed the Federazione italiana gioco calcio (FIGC) as organizer of the 1990 World Cup.

(11) In accordance with the FIFA specifications and conditions for the organization of the World Cup, FIFA and the FIGC agreed to set up a local organizing committee on 3 December 1984.

(12) The document establishing the local organizing committee provides that the committee is to comprise a maximum of 15 members, including five from FIFA and 10 from Italy, and that its head office will be in Zurich under the auspices of FIFA, with a branch office in Rome.

(13) In fact, the number of members was limited to 11, i.e. two from FIFA and 9 from the FIGC.

(14) The setting up of the local organizing committee was ratified by the FIFA executive committee at a meeting held in Zurich on 28 April 1985, and on 11 June 1985 FIFA drew up the regulations governing the organization and operation of the local organizing committee for the 1990 World Cup.

(15) The function of the local organizing committee is specified in Article 3 of the regulation as being to perform all activities relating, directly or indirectly, to the technical and logistical organization of the World Cup in Italy in 1990, in compliance with the operating limits laid down in the specifications and conditions drawn up by FIFA and the 1990 FIFA World Cup regulations.

(16) Amongst such activities, the local organizing committee is in particular required to propose to FIFA the plan for distributing and setting entrance tickets and to deal subsequently with the implementation of the plan.

(17) Lastly, a number of aspects of relations between FIFA and the local organizing committee were covered in a document entitled 'Agreement between FIFA and the local organizing committee Italia 90', signed by the administrative director of the local organizing committee and the General Secretary of FIFA.

With regard to the sale of tickets, the document stipulates that the directives governing the sale of tickets and their prices must be approved by FIFA (a requirement which FIFA considered essential).

C. The parties concerned

(18) FIFA is a federation of national football associations from 158 countries and is based in Zurich. Its object is to promote football and, for this purpose, to organize the World Cup every four years.

(1) ECR 407 [1967].

FIFA's revenue derives from the dues paid by its members and from a percentage of revenue from international matches and world championships.

(19) The Federazione italiana gioco calcio (FIGC) represents the various Italian football associations.

It is based in Rome and has a Chairman and a General Secretary.

(20) The Compagnia italiana turismo SpA (CIT) is a subsidiary of the Ente ferrovie dello Stato.

It is one of the main travel agencies in Italy.

CIT Italia also has subsidiaries in other European countries, including Belgium, France and the United Kingdom.

(21) Italia Tour SpA (Italia Tour) is a subsidiary of Alitalia — Linee Aeree Italiana SpA, which also carries out travel agency activities within and outside Italy.

(22) 90 Tour Italia SpA (90 Tour Italia) is a company created jointly by CIT and Italia Tour for the purpose of marketing package tours to the 1990 World Cup. Its existence is closely bound up with the organization of the 1990 World Cup.

D. The financing of the World Cup

(23) The expenditure involved in establishing the infrastructure required for the World Cup was borne by the organizing federation or the organizing country. This applied to the work involved in converting grounds, improving roads, hotels, etc.

(24) The organizing federation received the following revenue :

(a) some 15 % of net competition profits, calculated as follows :

— proceeds from television rights plus the sale of tickets,

— minus the expenses entailed in organizing the World Cup ;

(b) the commercial exploitation in Italy of the 1990 World Cup emblem, created by the organizing federation ;

(c) a proportion of match revenue to cover the reimbursement of State, provincial and municipal taxes and the hire of grounds ;

(d) a percentage of ticket revenue, to be determined with FIFA as a contribution towards the organization expenses proper.

(25) Contracts relating to advertising and the commercial exploitation of emblems and television contracts were concluded directly by FIFA.

(26) Estimated total World Cup revenue was Sfr 220 million, made up as follows :

— Sfr 75 million from the sale of tickets,

— Sfr 55 million from the sale of advertising rights,

— Sfr 90 million from the sale of television rights.

E. The general ticket distribution system

(27) The general ticket distribution system covered a total of some 2 700 000 tickets broken down as follows :

— 12 % distributed in Italy by the national football associations,

— 4 % distributed in Italy by the official World Cup sponsors,

— 34 % distributed in Italy by the Banca Nazionale del Lavoro ('BNL'),

— 15 % distributed outside Italy by the national sport associations,

— 5 % distributed outside Italy by the main European football association,

— 5 % distributed outside Italy by BNL or its representatives,

— 25 % distributed outside Italy by 90 Tour Italia as part of package tours.

F. The conditions governing distribution of tickets not included in package tours

(28) The distribution of tickets by the football associations was subject to restrictions set out in a FIFA circular sent on 23 October 1989 to all the national FIFA associations, the main provisions of which were as follows :

— ticket sales were intended only for the associations themselves,

— sale to travel agencies or other bodies was prohibited. If the national association intended to organize a trip through the intermediary of a travel agency normally used by it, it was asked to contact 90 Tour Italia in order to ensure that such arrangements were coordinated, and

— sales were to take place only in the country itself.

(29) The distribution of tickets by BNL and its agents was also subject to certain restrictions. BNL could not sell tickets to travel agencies, nor could BNL agents resell their tickets to travel agencies.

In addition, each spectator could acquire no more than a maximum of four series, so as to prevent any parallel procurement by travel agencies.

BNL agents could sell such tickets only in their own countries and had to inform BNL of the identity of those acquiring tickets.

These requirements were also set out in a letter which BNL sent on 16 March 1989 to the Crédit communal de Belgique as its agent for the sale of tickets in Belgium.

G. The distribution of tickets as part of package tours

(30) On 26 June 1987, a contract was concluded between the local organizing committee, on the one hand, and CIT and Italia Tour, on the other, the main provisions of which are as follows:

— the local organizing committee entrusted CIT and Italia Tour with the task of providing, through the intermediary of 90 Tour Italia, a joint company to be created, all the tourist, hotel and transport services requested by the local organizing committee in connection with the 1990 World Cup in order to meet its requirements and the requirements of FIFA, referees, official delegations and teams, journalists and any persons specified by the local organizing committee,

— the local organizing committee also conferred on 90 Tour Italia exclusive world rights for the organization of:

  — the various 1990 World Cup package tours and any services connected with the World Cup during the period 1987 to 1990, and

  — an appropriate network for distributing such services both in Italy and in the rest of the world,

— the local organizing committee granted 90 Tour Italia exclusive world rights for the issue of stadium entrance tickets to be included in package tours and assured it of a number of tickets at least equal to 30 % of the capacity of the stadia,

— in return for the concession of the abovementioned rights, 90 Tour Italia was to pay to the local organizing committee a percentage of the turnover achieved under the contract throughout its period of validity, such percentage being equal to 0,5 % of the gross turnover, or Lit 700 million, whichever sum was the higher,

— in carrying out its tasks, 90 Tour Italia was authorized to present itself as the exclusive authorized agent of the local organizing committee in the area of tourism and to use the title 'tour operator for the local organizing committee Italia '90',

— CIT and Italia Tour were jointly responsible together with 90 Tour to the local organizing committee,

— the contract was valid until 31 December 1990.

(31) A second contract was concluded on 11 February 1988 between the local organizing committee and 90 Tour Italia, with the counter-signature of the chairman of CIT SpA and Italia Tour SpA.

This contract reiterates that CIT and Italia Tour have declared themselves willing to provide the local organizing committee with all the tourist services which the local organizing committee requires in connection with the World Cup and to put together package tours including entrance tickets to the various World Cup matches, package tours which would be marketed on an exclusive basis throughout the world.

The contract then goes on to repeat the provisions of the contract concluded on 26 June 1987 between the local organizing committee on the one hand and CIT and Italia Tour on the other, notably as regards:

— the supply of tourist, hotel and transport services by 90 Tour Italia to the local organizing committee,

— the world exclusive rights granted to 90 Tour Italia by the local organizing committee for the issuing of tickets as part of package tours,

— the world exclusive rights granted to 90 Tour Italia to acquire, exclusively for the package tours sector, all or some of any tickets still available when the local organizing committee has fulfilled its other engagements. This agreement was valid until 31 December 1990.

(32) For the purpose of marketing its package tours, 90 Tour Italia concluded contracts with travel agencies in the various countries.

As far as the Member States were concerned, 90 Tour Italia concluded a contract with one agency in Ireland and one in Belgium/Luxembourg. In the other Community countries, contracts were concluded with a number of agencies.

(33) In all cases, the agencies approved by 90 Tour Italia undertook to resell the package tours at retail level only on their own territories. The agencies could if they wished resell the package tours at the wholesale level, but only to :

— agencies selling at the retail level which were established on their respective territories and which undertook to resell the package tours at the retail level,

or

— agencies selling at the wholesale level which were established on their respective territories and which undertook to resell the package tours to agencies selling at the retail level which were themselves established within the relevant territory.

(34) The authorized agencies were not in any circumstances allowed to resell the entrance tickets separately from the package tours.

(35) The relevant contracts related to a total of some 540 000 tickets to be included in the package tours.

The prices of the package tours differed considerably depending on aspects such as the number of days, the type of accommodation, the type of transport, distance and the meals included.

The prices of the package deals sold in Belgium by the agency authorized by 90 Tour Italia, for example, ranged from ECU 143 to ECU 840.

H. The question of safety

(36) The organization of the World Cup raises problems relating to safety that have to be taken into account. Such problems were outlined during the course of the proceeding by the deputy procurator of the Republic (sostituto procuratore della Repubblica Italiana), responsible for coordinating the organization of safety arrangements during the World Cup, and by the representatives of the local organizing committee and may be summarized as follows.

(37) The main problem for the organizers was to ensure that opposing groups of supporters were kept separate from one another and did not clash in or around the grounds. It was therefore necessary to ensure that spectators were grouped together by nationality within the grounds.

(38) For this purpose, the organizers carried out work within the grounds that would in particular allow all spectators to be seated.

(39) In addition, a central computerized system managed by BNL was set up with the aim of identifying the nationality of all the spectators and allowing seats to be allocated on the basis of nationality. The tickets distributed by BNL and its agents were sold only on presentation of an identity document, and the relevant information was entered in the central BNL computer.

(40) The procedure was the same for package tours; each person purchasing a package tour had to provide evidence of his identity, which was entered in the BNL computer via a computerized subsystem managed by 90 Tour Italia. Each person travelling on a package tour thus received a ticket corresponding to his nationality.

(41) The organizational arrangements still left open the possibility that individual supporters could purchase tickets not intended for them, notably on the black market.

However, according to the organizers, such practices were not widespread and posed little risk in terms of safety. The main problem was the formation of 'groups' of supporters close to or among opposing supporters.

(42) According to the organizers, it had therefore to be ensured that independent travel agencies not controlled by the local organizing committee could not acquire tickets. Such travel agencies would have been able to resell such tickets, either separately or as part of package tours, to supporters of a different nationality than that for which they were intended, thus jeopardizing spectator safety.

II. LEGAL ASSESSMENT

A. The concept of undertaking

(43) In accordance with the case law of the Court of Justice, any entity carrying on activities of an economic nature, regardless of its legal form, constitutes an undertaking within the meaning of Article 85 of the EEC Treaty (see in particular Cases 36/74 of 12 December 1974, Walrave v. Union Cycliste Internationale [1] and C-41/90 of 23 April 1991, Höfner v. Elser/Macrotron [2]).

An activity of an economic nature means any activity, whether or not profit-making, that involves economic trade (see Case 41/83 of 20 March 1985, Italy v. Commission (British Telecommunications) [3]).

[1] ECR 1405 [1974].
[2] ECR I-1979 [1991].
[3] ECR 873 [1985].

(44) *Regarding the commercial nature of the World Cup*

The World Cup is indisputably a major sporting event.

However, it also involves activities of an economic nature, notably as regards :

— the sale of 2 700 000 entrance tickets for matches, more than 20 % of which are included in package tours comprising hotel accommodation, transport and sightseeing,

— the conclusion of contracts for advertising on panels within the grounds,

— the commercial exploitation of the FIFA emblems, the World Cup, the FIFA fair-play trophy and the World Cup mascot,

— the commercial exploitation by the local organizer of a specific emblem for the 1990 World Cup, and

— the conclusion of television broadcasting contracts.

(45) The economic value of the World Cup is, moreover, acknowledged in Article 3.4 of the specifications and conditions laid down by FIFA for the organizing federation.

(46) The economic value of the World Cup was also acknowledged by FIFA representatives at the hearing (see page 126 of the hearing record).

(47) *FIFA*

FIFA is a federation of sports associations and accordingly carries out sports activites.

However, FIFA also carries out activities of an economic nature, notably as regards :

— the conclusion of advertising contracts,

— the commercial exploitation of the World Cup emblems, and

— the conclusion of contracts relating to television broadcasting rights.

(48) In the case of the 1990 World Cup, the sale of advertising and television broadcasting rights by FIFA accounted for some 65 % of total World Cup revenue, estimated at Sfr 220 million.

(49) It must therefore be concluded that FIFA is an entity carrying on activities of an economic nature and constitutes an undertaking within the meaning of Article 85 of the EEC Treaty.

(50) *The Federazione Italiana Gioco Calcio (FIGC)* is the national Italian football association, appointed by FIFA to organize the 1990 World Cup.

(51) The FIGC was accordingly responsible for the entire organization of the event in accordance with the provisions of the 1990 World Cup regulations and had in particular the task of ensuring that grounds were in order, press facilities provided, parking spaces laid out, etc.

(52) For the purpose of financing such expenditure, the FIGC had a share in the net profits of the competition and was able to exploit commercially in Italy the 1990 World Cup emblem, which it had itself created.

(53) The FIGC thus also carries on activities of an economic nature and is consequently an undertaking within the meaning of Article 85 of the EEC Treaty.

(54) *Local organizing committee*

The local organizing committee is a body set up jointly by FIFA and the FIGC for the purpose of carrying on all activities relating directly or indirectly to the technical and logistical organization of the World Cup.

The local organizing committee's tasks included the establishment and implementation of the ticket distribution arrangements.

(55) The local organizing committee's revenue derived partly from television rights, advertising rights, the sale of tickets and the commercial exploitation in Italy of the World Cup emblem.

(56) The exclusive rights granted to 90 Tour Italia resulted in remuneration for the local organizing committee, in accordance with the provisions of Article 5 of the contract of 26 June 1987.

(57) It must therefore be concluded that the local organizing committee was a body carrying on activities of an economic nature and consequently constituted an undertaking within the meaning of Article 85.

(58) *The Compagnia Italiana Tourismo SpA (CIT)* is an Italian company engaged in travel agency activities. It is therefore an undertaking within the meaning of Article 85.

(59) *Italia Tour SpA* is a company carrying on an activity similar to that of CIT and is thus also an undertaking within the meaning of Article 85.

(60) *90 Tour Italia SpA* is a company established under Italian law by CIT and Italia Tour for the purpose of putting together and marketing package tours to the 1990 World Cup. It is therefore an undertaking within the meaning of Article 85 of the EEC Treaty.

B. The contracts

(61) The conditions under which 90 Tour Italia was active in marketing the package tours derive from two contracts:

— a contract concluded on 26 June 1987 between the local organizing committee on the one hand and CIT SpA and Italia Tour on the other, and

— a contract concluded on 11 February 1988 between the local organizing committee and 90 Tour Italia reiterating the main provisions of the abovementioned contract.

(62) These two contracts were for an identical term of validity, ending on 31 December 1990. The contract concluded on 11 February 1988 does not contain any provision cancelling or replacing the contract concluded on 26 June 1987.

(63) It should also be noted that the contract concluded on 11 February 1988 between the local organizing committee and 90 Tour Italia was countersigned by CIT and Italia Tour which, under Article 8 of the contract, declared themselves jointly responsible with 90 Tour Italia *vis-à-vis* the local organizing committee.

(64) Consequently, contrary to the statements made by the representatives of CIT during the proceeding, it cannot be argued that any anti-competitive effect of the contract between the local organizing committee and 90 Tour Italia cannot be blamed on CIT and Italia Tour. The two abovementioned contracts must therefore be taken into account in this proceeding.

C. On the responsibility of FIFA and FIGC

(65) The two contracts which are the subject of this proceeding were concluded between the local organizing committee on the one hand and 90 Tour Italia, CIT and Italia Tour on the other. The contracts were not signed by FIFA or the FIGC.

(66) However, it should be borne in mind that the local organizing committee, although having a separate legal personality, did not have any real autonomy as regards its conduct. Such lack of autonomy is due in particular to the following aspects.

(67) The local organizing committee was set up jointly by the FIGC and FIFA specifically for the purpose of carrying on all activities relating directly or indirectly to the technical and logistical organization of the 1990 World Cup in Italy, in compliance with the operating constraints laid down in the specifications and conditions established by FIFA and the 1990 World Cup regulations (Article 3 of the local organizing committee regulations of 14 August 1985).

(68) The existence of the local organizing committee was consequently closely linked to the organization of the 1990 World Cup and was to end once the 1990 World Cup was over.

(69) The local organizing committee comprised 9 representatives of the FIGC and the President and General Secretary of FIFA. These 11 members, meeting in plenary session, had full powers of decision over the committees' activities.

(70) The lcoal organizing committee's restricted executive committee, which included FIFA's General Secretary, could be drawn only from the local organizing committee's own members.

(71) As a result of the presence of their representatives within the local organizing committee's decision-making body, the FIGC and FIFA directly and effectively controlled the whole of the committee's activities on a joint basis, notably as regards ticket distribution.

In this area, the local organizing committee was subject to the instructions of FIFA and the FIGC.

(72) In addition, in accordance with the provisions stipulated in the specifications and conditions, FIFA had the last word in all decisions of principle in all matters, including the ticket distribution system, which was a key element in the organization of the World Cup.

(73) The ticket distribution system had in any case to be approved by FIFA. Thus, the contracts concluded on 26 June 1987 between the local organizing committee and CIT/Italia Tour and on 11 February 1988 between the local organizing committee and 90 Tour Italia regarding the distribution of tickets to be included in package tours included a suspensory clause to the effect that the policy on ticket sales had to be approved by FIFA.

(74) All in all, it must be concluded that the local organizing committee was not in a position to determine in a really autonomous manner its behaviour on the market and that the conclusion of the above-mentioned contracts of 26 June 1987 and 11 February 1988 is attributable jointly to the local organizing committee, the FIGC and FIFA.

D. The concept of agreement

(75) The two contracts of 26 June 1987 and 11 February 1988 constitute agreements between undertakings within the meaning of Article 85 of the EEC Treaty.

E. On the nature of the contracts in question

(76) During the proceeding, some of the parties stated that the purpose of the contracts was to entrust to 90 Tour Italia the function of carrying out a task which the local organizing committee was not in a position to perform.

It might be concluded from this that 90 Tour Italia acted solely as an agent and that the contracts in question were not caught by the provisions of Article 85 of the Treaty.

(77) Such an analysis cannot be accepted for the following reasons:

— 90 Tour Italia was able to acquire entrance tickets to the grounds from the local organizing committee, but subsequently it provided different services, namely package tours, of which the tickets were only one element; the package tours were marketed at the prices and on the conditions set by 90 Tour Italia,

— 90 Tour Italia had to undertake to acquire, and did actually acquire, a considerable number of tickets for matches whose appeal to spectators was heavily dependent on the qualification of their team and hence unpredictable, and

— 90 Tour Italia thus accepted a high commercial risk, as the representatives of CIT pointed out at the hearing (see pages 60 and 70 of the hearing record).

(78) Accordingly, the functions of 90 Tour Italia went well beyond those of a mere agent, and the contracts are therefore caught by Article 85 of the Treaty.

F. Effect on competition

(79) The purpose of this Decision is solely to establish the effect on competition produced by the two abovementioned contracts concluded between the local organizing committee, 90 Tour Italia, CIT and Italia Tour.

However, in assessing the object and effects of the contracts in the light of Article 85 (1) of the Treaty, it is necessary to take into account the context within which they operated, notably entire ticket distribution system as described above.

(80) Under the two contracts of 26 June 1987 and 11 February 1988, the local organizing committee:

— conferred on 90 Tour Italia world exclusive rights in organizing the various package tours to the World Cup and in establishing an appropriate network for the distribution of such package tours in Italy and in the rest of the world,

— allowed 90 Tour Italia to present itself as the exclusive agent of the local organizing committee and to use the description 'Tour Operator for Italia 90', and

— within this framework, also granted 90 Tour Italia world exclusive rights to issue ground entrance tickets for inclusion in package tours and made available to it a number of tickets at least equal to 30 % of the capacity of the grounds.

(81) These exclusive rights were not granted by the local organizing committee free of charge, but entailed remuneration by 90 Tour Italia in accordance with the provisions of Article 5 of the contract of 26 June 1987.

(82) 90 Tour Italia subsequently authorized agencies in the various countries to sell its package tours.

(83) The result of these exclusive rights was that 90 Tour Italia was the only tour operator able to acquire ground entrance tickets from the local organizing committee for the purpose of putting together and selling package tours that included such tickets.

(84) Other tour operators, and travel agencies as well, were not able to acquire ground entrance tickets from the local organizing committee or from other sources of supply such as the sports associations or BNL because of the restrictions imposed on the sale of such tickets, and in particular the ban on resale to travel agencies.

(85) Consequently, the only package tours including ground entrance tickets available on the market were those put together by 90 Tour Italia. Other tour operators were able to offer only package tours that did not inlude ground entrance tickets.

(86) Obviously, for anyone wishing to go to Italy for the World Cup, it was crucial to have a package tour that did include ground entrance tickets.

Consequently, tour operators that were not able to offer such package tours were at a considerable competitive disadvantage *vis-à-vis* 90 Tour Italia.

(87) The world exclusive rights granted to 90 Tour Italia thus had the effect of restricting competition between tour operators in the Community.

(88) Furthermore, travel agencies wishing to sell package tours that included match entrance tickets were able to obtain such package tours from only one tour operator.

If world exclusive rights had not been granted to 90 Tour Italia, travel agencies would have been able to choose between a number of tour operators and possibly obtain more favourable terms, thus enabling them to gain a competitive edge over other travel agencies.

(89) Consequently, the world exclusive rights enjoyed by 90 Tour Italia also had the effect of restricting competition between travel agencies within the Community.

(90) During the proceeding, the parties argued that tour operators could sell package tours without ground entrance tickets and ask their customers to obtain the tickets from BNL or from the football associations.

(91) This cannot regarded as a valid option. In such a situation, a customer buying a package tour without tickets would have to go to a BNL branch or agent to obtain tickets corresponding to the dates of the package tour. Given the time and effort this would entail, potential customers would obviously give preference to the travel agencies authorized by 90 Tour Italia to sell package tours with tickets.

(92) A second possibility suggested by the parties during the proceeding was that potential customers could book a package tour without tickets at a travel agency and ask the travel agency to purchase the ground entrance tickets for them.

(93) This approach similarly cannot be regarded as a satisfactory alternative solution.

Such a procedure would have meant that, for each package tour sold, a travel agency not authorized by 90 Tour Italia would have to go to the BNL branch or agent with the customer's identity papers in order to obtain the ground entrance tickets.

This procedure would have meant extra work and hence extra costs for the non-authorized travel agency and would still have left some doubt in the mind of the customer as to the real chances of obtaining the entrance tickets.

This sort of procedure thus placed agencies that did not have tickets at a competitive disadvantage *vis-à-vis* the agencies authorized by 90 Tour Italia, which were the only ones that were able to state in their advertising that they were able to guarantee entrance tickets.

(94) Account must also be taken of the fact that, by fax dated 26 January 1990, BNL instructed all its sales outlets outside Italy to stop selling entrance tickets as from 31 January 1990.

(95) As a result, as from 1 February 1990, tour operators other than 90 Tour Italia were unable to sell package tours for which their customers were supposed to purchase the tickets from BNL branches or agents.

(96) All in all, by granting exclusive rights to 90 Tour Italia to supply entrance tickets to be included in package tours, alternative sources for the procurement of tickets not being available, the agreements concluded between, on the one hand, the local organizing committee in its capacity as a body belonging jointly to FIFA and the FIGC and, on the other, 90 Tour Italia, CIT and Italia Tour had the effect of restricting competition in the Community within the meaning of Article 85 (1) of the Treaty between our operators and between travel agencies on the market for the sale of package tours to the 1990 World Cup. The conditions of Article 85 (1) are thus met.

G. Commission Regulation (EEC) No 1983/83 [1]

(97) During the proceeding, the parties argued that the agreements could have been exempted under Regulation (EEC) No 1983/83 on the application of Article 85 (3) of the Treaty to categories of exclusive distribution agreements.

(98) Regulation (EEC) No 1983/83 was adopted by the Commission pursuant to Council Regulation (EEC) No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices [2].

(99) Article 1 (1) of Regulation (EEC) No 19/65/EEC explicitly limits the Commission's power to adopt an exemption regulation to agreements relating to goods only.

This restriction is also evident in the wording of the Article, which covers transactions in which one party purchases a good for resale.

[1] OJ No L 173, 30. 6. 1983, p. 1.
[2] OJ No 36, 6. 3. 1965, p. 533/65.

(100) Such purchasing and reselling transactions cannot be applied to services.

(101) It must therefore be concluded that services are excluded from the scope of Council Regulation (EEC) No 19/65/EEC.

(102) Regulation (EEC) No 1983/83 is thus bound to have the same scope of application, defined as 'agreements to which only two undertakings are party and whereby one party agrees with the other to supply certain goods for resale within the whole or a defined area of the common market only to that other'.

(103) In point 11 of its Notice concerning Regulation (EEC) No 1983/83 [1], the Commission stipulated that 'exclusive agreements for the supply of services rather than the resale of goods are not covered by the Regulation'.

(104) The agreements to which this proceeding relates concern the supply on an exclusive basis of entrance tickets to grounds for the purpose of putting together package tours comprising transport, accommodation and meals.

(105) It is thus obvious that the agreements relate to the supply of services and do not fall within the scope of application of Regulation (EEC) No 1983/83.

(106) Even if the package tours in question had been deemed to be goods within the meaning of Article 1 of Regulation (EEC) No 1983/83, the conditions for exemption set out in Article 3 of the Regulation were not met.

Thus, contrary to the provisions of Article 3 (c), users could obtain the package tours with match entrance tickets in the contract territory only from the exclusive distributor or its representatives and had no alternative source of supply outside the contract territory, the contract territory being the entire world.

(107) With regard to the exclusive rights enjoyed by 90 Tour Italia, the representatives of the local organizing committee stated during the proceeding that such exclusive rights were *de facto* exclusive rights resulting from the lack of any other tour operator interested in concluding a contract with the local organizing committee.

(108) This argument cannot be accepted for the following three reasons:

— if the parties did not wish to conclude an exclusive contract, there is no reason why they should have incorporated such a clause in the contract,

— the first contract between the local organizing committee and CIT/Italia Tours, signed on 26 June 1987, already provided for such exclusivity. As from that date, the local organizing committee was thus not in a position to conclude a contract with any other interested tour operator,

— if exclusivity had not been desired by the parties, there is no reason why the parties should have provided by contract for the financial consideration in respect of such exclusivity.

H. The question of safety

(109) During the proceeding, the parties claimed that any restrictions of competition were justified by safety requirements.

The separation of spectators within the grounds by nationality and the need for safety arrangements around the grounds, it was claimed, meant that only one tour operator could be authorized to put together the package tours comprising entrance tickets for sale at world level.

(110) From the legal point of view, the parties argued that such restrictions of competition had to be examined in the light of Article 36 of the Treaty, whose provisions took precedence over the competition rules laid down in Article 85. The parties referred in this respect to the judgment of the Court of Justice in Case 40/70 *Sirena* v. *Eda* [2].

(111) With regard to the application of Article 36 of the EEC Treaty, the court of Justice held, in its judgment in Case 40/70 referred to by the parties, that 'Article 36, although it appears in the chapter of the Treaty dealing with quantitative restrictions on trade between Member States, is based on a principle equally applicable to the question of competition, in the sense that even if the rights recognized by the legislation of a Member State on the subject of industrial and commercial property are not affected, so far as their existence is concerned, by Articles 85 and 86 of the Treaty, their exercise may still fall under the prohibitions imposed by those provisions'.

[1] OJ No C 101, 13. 4. 1984, p. 2.

[2] ECR 69 [1971].

(112) It must be deduced from this judgment that, as in the case of the rules governing the free movement of goods, the competition rules may set limits to the exercise of industrial property rights. The argument put forward by the parties takes the oppposite line in that it claims that Article 36 sets limits to the application of the competition rules.

(113) At all events, even if this principle were accepted, it would be necessary to ensure that, in accordance with the provisions of Article 36, the practices in question did not constitute disguised restrictions of competition and that they were indispensable to the attainment of their objective.

(114) In his evidence on the problems of safety, the deputy procurator of the Republic, who was responsible for the coordination of safety arrangements during the World Cup, did not mention the need to establish world exclusivity for the distribution of package tours inclusive of entrance tickets to the grounds.

(115) During the hearing, a representative of the local organizing committee stated, with regard to the package tours, that all the tour operators willing to create a computerized subsystem and ensure its coordination with that of BNL could have been selected. The local organizing committee's representative stated in particular that 'two, fifteen or twenty' tour operators could have been selected (see page 89 of the hearing record).

(116) It must therefore be concluded from the statements of the local organizing committee's representative himself that the world exclusive rights granted to 90 Tour Italia were not essential in order to ensure safety during the World Cup.

Consequently, even if the principle of Article 36 of the Treaty could be applied to the present case, the world exclusive rights granted to 90 Tour Italia were disproportionate to the objective pursued and cannot therefore be justified by the need to maintain safety.

(117) With regard to package tours inclusive of tickets, strict control of ticket distribution was necessary. It was particularly important that a tour operator putting together such package tours should be able to make sure that the travel agencies distributing them downstream complied with the distribution conditions imposed by the tour operator.

(118) For this reason, the Commission considers it justified that travel agencies not controlled by the organizers, such as the agency which has brought the complaint in this case, should not have been able to acquire blocks of entrance tickets with a view to putting together package tour that would have been sold in a way that was not controlled.

(119) However, the Commission considers that a number of tour operators imposing the same distribution conditions on travel agencies authorized to sell their package tours could have competed on the market without jeopardizing spectator safety.

(120) The Commission notes that this possibility was acknowledged by the representatives of the local organizing committee during the hearing when they stated that any tour operators fulfilling the same criteria as 90 Tour Italia could have been selected.

I. Article 85 (3)

(121) The agreements in question were not notified to the Commission with a view to exemption under Article 85 (3) of the EEC Treaty.

(122) In any case, the Commission considers that the agreements did not fulfil the conditions required for the granting of such exemption.

(123) Even if it had been considered that the agreements could contribute to improving the distribution of tickets and package tours, the Commission takes the view that the agreements imposed restrictions that were not indispensable to the attainment of the objectives pursued and, moreover, afforded the undertakings the possibility of eliminating competition in respect of a substantial part of the services in question.

J. Effect on trade between Member States

(124) The contracts related to the exclusive distribution of package tours inclusive of tickets in the Community and the rest of the world, without any possibility of alternative sources of supply. The contracts thus appreciably affected trade between Member States, since, if they had not been concluded, trade on the market for such tours could have been expected to have been greater.

K. Imposition of fines

(125) It must be borne in mind that this is the first time that the Commission has taken action on the distribution of tickets for a sporting event.

Furthermore, this case involved undoubted complicating factors in view of major safety aspects.

Lastly, the infringement came to an end with the completion of the 1990 World Cup.

Consequently, the Commission considers that fines should not be imposed on the parties to the agreements.

(126) However, the Commission considers that a Decision is necessary in order to clarify the legal position and prevent the same or any similar infringement from being committed in future. In accordance with the case law of the Court of Justice (Case 7/82, *GVL* v. *Commission*(1)), the Commission therefore has a legitimate interest in finding that the contracts infringed Article 85 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

FIFA, the FIGC, the local organizing committee Italia '90, CIT SpA, Italia Tour SpA and 90 Tour Italia SpA have infringed Article 85 (1) of the EEC Treaty as regards the provisions of the contracts of 26 June 1987 and 11 February 1988 concluded between the local organizing committee Italia '90 and CIT SpA and Italia Tour SpA, on the one hand, and 90 Tour Italia SpA, on the other, which provided for the exclusive supply at world level to 90 Tour Itaia SpA of ground entrance tickets for the purpose of putting together package tours to the 1990 World Cup. Such tickets formed part of a general system for the distribution of ground entrance tickets developed and implemented by the local organizing committee Italia '90 in accordance with the instructions of the FIGC and FIFA, after approval by FIFA, a system which prohibited the sale of tickets for the putting together of such package tours, thus making it impossible for other tour operators and travel agencies to find sources of supply other than 90 Tour Italia SpA.

Article 2

This Decision is addressed to:

— 90 Tour Italia SpA
Via Laura Mantegazza, 75
I—Roma,

— Col Italia/Italia '90
Via Po, 36
I—00198 Roma,

— Compagnia Italiana Turismo spA
Piazza della Repubblica 68
I—00185 Roma,

— Federation internationale de football association
PO Box 85
Hitzigweg 11
Ch—8030 Zurich,

— Federazione italiana gioco calcio
Via Po 36
I—00198 Roma,

— Italia Tour SpA
Piazzale Schuman 78
I—Roma.

Done at Brussels, 27 October 1992.

For the Commission
Leon BRITTAN
Vice-President

(1) ECR 483 [1983].