When the European Court of Justice (ECJ) delivered its judgment in Joined Cases C-403/08 and 429/08 Football Association Premier League Ltd and others v QC Leisure and others and Karen Murphy v Media Protection Services Ltd (2011) ECR I-9083, it was faced with a unique challenge: to balance the interests of competition and consumer protection in the context of sports broadcasting.

The Premier League, who was forced to renegotiate its agreements with all broadcasters in the EU, followed the CJ’s suggestion. Instead of the outright prohibition of passive sales, other contractual prohibitions were introduced:

1. Licensees are no longer allowed to offer an optional English language feed to their customers. They can only transmit Premier League matches in the country of the language of that country. The English language feed is now limited to UK and Irish licensees.
2. As a result of the Premier League blackout rule, English language feeds are now limited to UK and Irish licensees. Licensees are no longer allowed to offer an optional English language feed to their customers.
3. The Premier League blackout rule is no longer imposed on the basis of the country of the language of the broadcast. The English language feed is now limited to UK and Irish licensees.

These output limitations sought to take away one of the main benefits that British pub owners, like Karen Murphy, enjoyed by using imported decoders and subscriptions from elsewhere in Europe, namely the ability to show live Premier League matches during closed periods.

The case raised significant issues about the enforceability of the blackout rule in the EU. The European Commission examined the Premier League's broadcasting regulations, which allow national football associations to block broadcasting hours at the end of the 1980s. At that time, national football associations were given the right to block broadcasting hours during the main kick-off time on Saturday or Sunday. Consequently, the Commission concluded that the prohibition on the import, sale, and use of foreign equipment – giving access to satellite broadcasting services from another Member State – was not covered by a combination of public and private measures. First, national legislation prohibited foreign decoding equipment. Second, access to satellite broadcasting services from another Member State was only allowed if the equipment was imported, sold, and used in the UK. The CJ stressed that this constituted an unjustified restriction on the freedom to provide services prohibited by Article 57 TFEU. Second, the Premier League imposed a contractual prohibition on the sale and use of foreign equipment to its licensees. The CJ rejected this argument. It stressed that such a reduction of the rights of the fundamental freedoms could only be imposed through legal means, e.g. by incorporating a contractual limitation in the licence agreements with broadcasters, under which the license would be revoked if broadcasters sold, imported, and used foreign equipment.

The CJ did not question the Premier League's right to block broadcasting hours during the main kick-off time on Saturday or Sunday. Consequently, the Commission concluded that the restrictive effects of the blackout rule could be deemed inherent and unavoidable. The CJ rejected this argument. It stressed that such a reduction of the rights of the fundamental freedoms could only be imposed through legal means, e.g. by incorporating a contractual limitation in the licence agreements with broadcasters, under which the license would be revoked if broadcasters sold, imported, and used foreign equipment.

In conclusion, the CJ’s judgment has called into question whether the rules of the Premier League remain effective to ensure that the television coverage of matches during closed periods is prohibited. The CJ rejected this argument. It stressed that such a reduction of the rights of the fundamental freedoms could only be imposed through legal means, e.g. by incorporating a contractual limitation in the licence agreements with broadcasters, under which the license would be revoked if broadcasters sold, imported, and used foreign equipment.