



The Romanian Competition Council addresses new developments on the joint selling of commercial rights for football broadcasting (Romanian Football Federation)

In an investigation against the Romanian Football Federation (RFF) and the Professional Football League (FPL) and its members, the Romanian Competition Council (RCC) concluded that the joint selling agreement of commercial rights of football matches could lead to market foreclosure and that competition between football clubs was restricted due to the joint selling of commercial broadcasting rights. However, the RCC accepted a number of commitments offered by the parties that address competition concerns.

Original case

In 2011, an investigation launched on the national market of media rights over football competitions brought the first case¹ in which the investigated parties proposed commitments based on the new guidelines on commitments adopted by the Romanian Competition Council (“**RCC**”) in the same year.

The RCC opened an investigation against Romanian Football Federation (“**RFF**”) and Football Professional League (“**FPL**”) and its members regarding a potential breach of Article 5 (1) of the Romanian Competition Law and of Article 101 TFEU by the joint selling agreement of commercial rights of football matches.

The RCC concluded such joint selling could lead to market foreclosure and that competition between the football clubs was restricted due to the joint selling of commercial broadcasting rights.

In that context, the commitments² advanced by the RFF and the FPL in the decision were accepted by the Competition Council as providing a solution for the competition concerns at the source of the investigation, thus ending the investigation without any sanctions.

The relevant product market

The RCC considered the following relevant product markets:

- (i) the selling of broadcasting rights for football competitions taking place regularly each year; and
- (ii) the sales market of advertising and publicity rights over competitions taking place regularly each year.

The geographic market was considered as being national in scope. The RCC observed that joint selling could also affect competition between EU Member States, as the entire national territory is affected and it represents a substantial part of the common market.

The RCC followed European case law and stated that such joint selling applies to the whole territory of Romania; it therefore has, by its very nature, the effect of reinforcing the partitioning of markets on a national basis, thereby hindering the kind of economic inter-penetration between states which the Treaty is designed to bring about. This applied all the more so to this case, as the alleged restriction of competition create a barrier to entry.

¹ Romanian Competition Council Decision no. 13 from 19.04.2011.

² The main commitments were related to:

- (i) Open, non discriminatory and transparent tendering procedure for the sale of commercial rights;
- (ii) The limited period of the contracts related to the sale of commercial rights (the duration of such contracts should not exceed three years)
- (iii) The applicability of the “no single buyer principle”, etc.



New commitments related to the collective selling of commercial broadcasting rights

In 2012, following the submission of a request by RFF aiming to amend the commitments proposed and accepted under the aforementioned decision of 2011, the RCC reopened the investigation in order to assess the RFF's request.

However, the RCC noted that joint selling amounts to price fixing, which is forbidden under Article 5 (1) of the Romanian Competition Law.

Initially, in the 2011 commitments, the media rights were unbundled into six packages. The RFF amended its initial commitments and divided the media TV rights packages into sub-packages and established that for each package right an individual offer needed to be submitted.

However, the new commitments stipulate that only three of the five packages containing commercialisation broadcasting rights for certain matches may be acquired by a single broadcaster (the applicability of the "no single buyer" principle).

The "no single buyer principle" is aimed at ensuring that no single purchaser will be able to buy all live TV rights and was defined in FPL commitments³ according to which "the FPL shall ensure, and shall specify in the Invitation to Tender in respect of the Live Audio-Visual Packages, that no single Bidder (including a Bidder acting on its own for some Live Audio-Visual Packages and as part of a Consortium or Consortia for each of the others) shall be awarded all of the Live Audio-Visual Packages exclusively by the FPL."

Other commitments assumed by the RFF similar to those from 2011 are the following: (i) open, non-discriminatory and transparent procedure for offering all commercial broadcasting rights; (ii) the conclusion of contracts for selling commercial broadcasting rights for a maximum duration of three years; (iii) no automatic renewal clause in respect of the aforementioned contracts; (iv) no pre-emption right or first option refusal for future editions; (v) the buyer has the right to assign the commercial broadcasting rights, subject to compliance with the "no single buyer" principle etc.

The RCC decided to accept the amendment of the commitments in the form proposed by the RFF and to close the reopened investigation. The commitments will be applicable for the next three football seasons.

The decision renders the commitments from the RFF legally binding. Failure to comply with the commitments may lead to fines of between 0.5 per cent and 10 per cent of the turnover of the previous year, fines in the event of the late implementation of the commitments, or the reopening of the investigation.

Conclusions

The collective sale of commercial rights for football broadcasting raises some serious competition concerns. The main remedies applied in this case are the following: unbundling of broadcasting rights into several packages, an open, non-discriminatory and transparent tendering procedure, a limitation on the length of contracts regarding the sale of commercial broadcasting rights, and the applicability of the "no single buyer" principle. It remains to be seen what the impact of the amended remedies will be on the relevant markets in Romania and whether the current commitments will last for the whole period of three football seasons.

³ C(2006)868/22.03.2006.



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