



Continuation and end of the conflict between the French Football league and the French audiovisual group Canal + concerning the reallocation of the broadcasting rights of the Ligue 1 de Football after the Mediapro disaster

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***Resume:** In this decision issued on 11 June 2021, the French Competition Authority rejects the complaint lodged by the Canal+ group against the French Football League (LFP) in the matter of the reallocation of the broadcasting rights of the Ligue 1. The Authority considers that Canal+ has not provided sufficient evidence to support its allegations of abuse of a dominant position in relation to the LFP*

*Context :* The professional football league (LFP), which has an exclusive mandate from professional football clubs based in France to market the TV broadcasting rights of Ligue 1 and Ligue 2 matches, organised a tender in 2018 for the period 2020-2024. The rights for the Ligue 1 were divided into 7 lots. Five of these lots were awarded to Mediapro (lots 1, 2, 4, 5 and 7), one to beIN Sports (lot 3, which was later sublicensed to Canal + Group, and is therefore ultimately operated by the latter) and lot 6 to Free.

During the execution of the contract, Mediapro experienced serious financial difficulties and was unable to meet its payments. This led to the early termination of

the contract at the end of 2020. (Agreement approved by the Commercial Court of Nanterre on 22 December 2020). Subsequently, a new market consultation was formed on 19 January 2021 by the LFP for TV rights for the period from 5 February 2021 until the end of the 2023-2024 season. This consultation concerned the lots formerly held by Mediapro (lots 1, 2, 4, 5 and 7) and only these lots. Lot 3 was not included, which the Canal + Group (GCP) contests.

Thus, in parallel with a procedure before the commercial court which, on March 11, 2021, dismissed its claims, GCP referred the matter to the French competition authority, accusing the league of having imposed unfair

transaction conditions on it and of having discriminated against it in relation to other buyers of Ligue 1 rights. GCP is also requesting interim measures on the basis of Article L. 464-1 of the French Commercial Code in order to enjoin the LFP to organize a new call for tenders, this time for all League 1 rights (including lot 3), and to suspend the execution of any contracts resulting from the market consultation launched by the LFP.

*The arguments put forward by GCP :*

According to GCP, the LFP would have abused its dominant position on the upstream market for the acquisition of Ligue 1 rights, in violation of Article 102 TFEU and Article L. 420-2 of the French Commercial Code. The refusal to include lot 3 in this consultation would, firstly, constitute abusive discrimination and, secondly, would impose unfair trading conditions on GCP.

GCP's objective here is obvious: to challenge Lot 3 in order to reduce its cost three years after the 2018 tender. GCP raises here the question of the right of a dominant company to defend its commercial interests.

*Regarding the unfair trading conditions imposed by the LFP on GCP:*

After recognizing that the LFP is indeed in a dominant position on the market for the

marketing of audiovisual exploitation rights of the Ligue 1, as it is in a monopoly situation (which was not contested by the LFP), the Competition Authority stated that none of GCP's arguments are likely to demonstrate that the LFP's decision not to put Lot 3 back out to tender characterises the existence of unfair trading conditions.

The decision not to include Lot 3 in a new call for tenders is necessary and proportionate. It is indeed a contract in the process of being executed. The contract is binding and still in force.

Moreover, the LFP has no interest in calling this contract into question: it is necessary to safeguard its interests or those of professional football clubs. In this sense, it is even the very purpose of its mission = "to sell the competitions in the best possible conditions in order to maximise the league's revenue, which is used to irrigate all French sport".

Finally, if lot 3 had been included in the call for tenders, the lot would have been acquired at a significantly lower price than that paid by Beinsport in 2018, which in this particularly difficult period for clubs and French sport in general (significant drop in ticketing and sponsorship revenue) would have had harmful consequences for clubs.

*Regarding the abusive discrimination of GCP in relation to other companies:*

According to GCP, lots 1, 2 and 3 are inseparable. As a result, the invitation to tender relating only to Mediapro's lots would have the consequence of applying unequal conditions to equivalent services, thereby creating a competitive disadvantage for GCP. In addition, GCP argues that the competitive conditions between 2018 and 2021 have evolved and that the conditions for the award of lot 3 in 2018 would have been distorted by Mediapro's "exorbitant" bidding.

The Authority also rejects these allegations. It considers that the market consultation treated all candidates in an equivalent situation in the same way.

The French Authority underlines that in carrying out this consultation, the LFP marketed the rights of Ligue 1 following a procedure whose main principles follow the recommendations set out by the French Competition Council in its Opinion No. 04-A-09<sup>1</sup>. The consultations launched by the LFP, both in 2018 and in 2021, were specifically designed to ensure that they were transparent and non-discriminatory, with the definition of the lots meeting the

requirements and the bidding procedures (deadlines, conditions for bidding...) being identical for all potential candidates<sup>2</sup>.

Finally, it appears that the referral is not supported by sufficiently convincing evidence as to the existence of an abusive practice of discrimination.

In this decision, the Competition Authority therefore rejects the qualification of abuse of dominant position and more precisely the qualification of abuse of exploitation.

This notion of abuse of exploitation was very rarely used, but in recent years the Competition Authority has reaffirmed its application on several occasions, in particular to deal with digital issues (in particular in a decision of 19 December 2019 concerning practices in the online advertising sector linked to searches with regard to Google<sup>3</sup>, or in a decision handed down on 9 April 2020, concerning the dispute between Google and press publishers<sup>4</sup>). This is not the case in this decision.

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<sup>1</sup> Avis n° 04-A-09 du 28 mai 2004 relatif à un projet de décret sur la commercialisation par les ligues professionnelles des droits d'exploitation individuelle des compétitions ou manifestations sportives, et l'avis n° 07-A-07 du 25 juillet 2007 relatif aux conditions de l'exercice de la concurrence dans la commercialisation des droits sportifs

<sup>2</sup> Revue Lamy de la concurrence, N° 108, 1er septembre 2021

<sup>3</sup> C. COLLARD, "Google fined for an abuse of dominance in the online search advertising market!", *Competition Forum – French Insights*, 2021, art. n° 0009, <https://www.competition-forum.com/>.

<sup>4</sup> V. GIOVANNINI, "Interim measures confirmed against Google in the press publishers' case", *Competition Forum*, 2020, art. n° 0004, <https://www.competition-forum.com/>.

As D. Bosco says, "The Authority must keep its distance from contractual disputes that are only remotely related to what should be the core of its missions: the preservation of the competition process"<sup>5</sup>.

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<sup>5</sup> BOSCO D., « Le conflit Canal +/ LFP devant l'Autorité de la concurrence », *Cont. conc. consom.*, n°8-9, Juillet Août 2021