



# Conflict on the reallocation of the football Ligue 1's TV rights: the French Competition Authority rejects Canal + complaint against the LFP

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**To quote this paper:** C. CIZERON, “Conflict on the reallocation of the football Ligue 1's TV rights: the French Competition Authority rejects Canal + complaint against the LFP”, *Competition Forum*, 2022, n° 0042, <https://competition-forum.com>.

**Resume:** *The dispute between the LFP and Canal+ over the reallocation of Ligue 1's television rights continues to be a topic of discussion. In this decision issued on 30 June 2022, The Paris Court of Appeal confirms the rejection by the French Competition Authority of the complaint lodged by the Canal+ group against the French Professional Football League (LFP). The audiovisual group alleged an abuse of a dominant position by the LFP.*

The issue of the relationship between competition law and the audiovisual media sector has become very topical in recent months. One of the major events in this field was the announcement made by Bouygues to withdraw its plan to acquire exclusive control of the Métropole Télévision group<sup>1</sup>. This decision follows the investigation carried out by the French Competition Authority (the Authority) with regards to the rules on merger control. However, the notion of abuse of dominant position is not left out. On the contrary, the Authority has, according to Professor David Bosco, left room for a "heterogeneous litigation" on this notion, "for the needs of its digital policy"<sup>2</sup>. This anti-

competitive practice is at the heart of the dispute about the reallocation of television broadcasting rights of the Ligue 1, the annual French soccer competition. This dispute follows the collapse of the Chinese-Spanish broadcaster Mediapro, which caused a period of great uncertainty in the world of professional French soccer.

In this context, the Paris Court of Appeal issues its decision of June 30, 2022. In this case, the professional football league (LFP) has an exclusive mandate to market the television broadcasting rights of the Ligue 1. The call for tenders for these rights, divided into several lots for the period 2020-2024,

<sup>1</sup> ADLC, Press release, “TF1/M6: The Autorité de la concurrence takes note of the decision to withdraw its planned acquisition”, September 16, 2022.

<sup>2</sup> D. BOSCO, “Abus de position dominante – Le conflit Canal + / LFP devant l’Autorité de la Concurrence”, LexisNexis – Contrats-Concurrence-Consommation n°8-9, Août 2021, comm. 141.

was launched in 2018. Lots 1 through 3 were the most attractive. In May 2018, the LFP announced in particular the award of lots 1 and 2 to Mediapro. The lot 3 was awarded to beIN Sports. Following the failure of Mediapro and the termination of its contract with the LFP in 2020, the latter launched a new call for tenders for lots 1 and 2 in 2021. In the meantime, the French audiovisual group Canal + was appointed emergency broadcaster for the last matches of the 2020-2021 season included in the lot 3.

On January 29, 2021, Canal + filed a complaint with the French Competition Authority against the LFP's decision to organize a call for tenders excluding lot 3. Canal + claimed that this decision reflects an abuse of dominant position. On June 11, 2021, the Authority rejected the complaint on the grounds that it was not supported by sufficient evidence<sup>3</sup>. Canal + filed an action for annulment of this decision and asked the Paris Court of Appeal (the Court) to find that the LFP abused its dominant position by discriminating against purchasers of Ligue 1 rights and by imposing unfair trading conditions on the marketing of rights returned by Mediapro.

The Court is called upon to examine to what extent can the decision to exclude a lot in a

call for tender constitutes an abuse of dominance.

On June 30, the Court responded unambiguously by rejecting the action for annulment filed by Canal+. In this case, the qualification of dominant position was not discussed, as the LFP had an exclusive mandate on the market defined as relevant. The debate then concerns the abusive nature of the LFP's behavior. On this point, the Court emphasizes the independence of lots in a call for tenders as an obstacle to the qualification of a discriminatory practice (I). As far as the allegation of unfair trading conditions is concerned, the Court reaffirms the right to defend its interests for a company in a dominant position (II).

### **I. The independence of lots in a call for tenders as an obstacle to the qualification of a discriminatory practice**

Article 102 of the Treaty on the Functioning of the European Union (TFEU) provides for the possibility of characterizing an abuse of a dominant position by "applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage". Under French law, discriminatory practices are also

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<sup>3</sup> A. REBOH, "Continuation and end of the conflict between the French Football league in France and the French audiovisual group Canal + concerning the reallocation of the broadcasting rights of the League 1

of Football after the Mediapro disaster", Competition Forum – French Insights, 2022, n° 0024, <https://competition-forum.com>.

explicitly referred to in Article L. 420-2 of the French Commercial Code. This article refers to "discriminatory sales conditions". The notion of discrimination is classically defined as the fact of treating objectively similar situations differently, or, conversely, as the fact of treating equally different situations<sup>4</sup>.

In this respect, Canal + alleges a different treatment between buyers of Ligue 1 rights depending on whether the lots were marketed in 2018 or 2021. According to the group, the allocation procedures were different, and Mediapro's bidding led to an overvaluation of lot 3 in 2018. This is therefore an allegation of so-called "second-degree" discrimination, since it affects competition between the dominant company's customers.

The Court held that Canal +'s claim was based on the indivisibility of the different lots. Indeed, applicant's arguments are based on a comparison between the 2018 and 2021 calls for tender, and on the LFP's decision not to include lot 3 in the latter. Following this finding, the Court relied on the Sports Code<sup>5</sup>, which explicitly provides for the independence of these lots. Thus, Canal+'s arguments disregard the very mechanism of the call for tenders, as provided for by law.

The Court also emphasizes the purpose of this legislation, as already described by the

Competition Council<sup>6</sup>. The very purpose of these provisions is to prevent the emergence of an overly powerful operator on the market for the allocation of Ligue 1 television broadcasting rights. At the same time, the legislation aims to stimulate competition on this market by encouraging the entry of new players. This pro-competitive purpose contradicts the position of Canal +, which argues that the LFP's behavior, justified by the independence of the lots, would constitute an abuse of a dominant position and therefore an anti-competitive practice.

In a more concrete way, the Court of Appeal refers to the very concept of successive auctions. Indeed, these auctions can create to a link between the different lots by an inflationary mechanism. On the other hand, it cannot be deduced from this statement the indivisibility of the lots. Moreover, this mechanism is once again justified by a pro-competitive purpose. Indeed, it favors the attribution of lots to different operators, because it allows them to adjust their offer if they have not been highest bidders on the first lots.

Besides, the regime of the specific call for tenders concerning the marketing of the Ligue 1's television rights was put in place in order to respond to the concerns of the

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<sup>4</sup> J.C RODA, M.A FRISON-ROCHE, « Droit de la concurrence », Dalloz, 2e édition, avril 2022, p.505, n° 605.

<sup>5</sup> Articles L.333-2, R.333-2 et R.333-3, Code du sport  
<sup>6</sup> Competition Council, Decision n° 03-MC-01, January 23, 2003.

Competition Council, when the company TPS denounced a marketing likely to favor Canal +<sup>7</sup>.

In any event, this independence of the lots renders ineffective the reasoning of Canal +, which cannot allege an objectively similar situation between the 2018 and 2021 candidates. Thus, the notion of discrimination can no longer be invoked.

Finally, the Court of Appeal considers that Canal + does not produce evidence to prove that Mediapro's auctions in 2018 distorted normal competition. Indeed, the failure of Mediapro is not sufficient to prove such an allegation, especially since other circumstances, including the health crisis, could have caused such a collapse. As a reminder, Mediapro obtained in 2018 the rights on lot 3 at a substantial amount<sup>8</sup>. At the same time, it was noted an increase in the price of television rights of Ligue 1 of 50% compared to the previous period<sup>9</sup>. At the time, Canal + already expressed concerns about the strength of Mediapro<sup>10</sup>. Despite this, its arguments failed to convince the Court of Appeal.

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<sup>7</sup> Paris Court of Appeal, pôle 5, chambre 5, June 30, 2022, n°21/13216, point 9.

<sup>8</sup> M. ALCARAZ, "Mediapro fait trembler le foot français", Les Echos, October 14, 2020.

<sup>9</sup> Paris Court of Appeal, pôle 5, chambre 5, June 30, 2022, n°21/13216, point 21.

Beyond these arguments, the decision of the LFP to exclude lot 3 in 2021 is, according to the Court, necessary and proportionate to LFP's objectives described in its statutes. This last argument is more fully developed in the answer to the second plea, accusing the LFP of imposing unfair trading conditions.

## **II. The reaffirmation of the right to defend its interests for a company in a dominant position**

Canal+'s second plea refers to the practice also mentioned in the non-exhaustive list in article 102: "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions".

According to Canal +, the LFP, by its decision to exclude lot 3 from the 2021 tender, wishes to maintain this lot at an "artificially high" price, which it would not have obtained under "normal conditions of competition"<sup>11</sup>. Moreover, the group claims that the binding force of the contract concluded with beIN Sports concerning the exploitation of this lot is irrelevant, since this co-contractor itself requested the re-sale of the lot. Finally, the LFP's decision cannot, according to Canal +, be justified by the defense of its interests in view of its statutes.

<sup>10</sup> R. KORDA, "Droits TV de la Ligue 1 : Mediapro, un coup de maître et des questions", Le Parisien, May 30, 2018.

<sup>11</sup> Paris Court of Appeal, pôle 5, chambre 5, June 30, 2022, n°21/13216, point 98 of the decision.

These statutes provide for the defense of the material interests of French professional soccer, which does not, according to Canal +, imply the maximization of its profits, especially since it is a public service delegation.

Regarding the contract concluded with beIN Sports, the Court stated that despite the latter's position, the LFP have no obligation to terminate the contract during its execution. This distancing from contractual issues was emphasized by Professor David Bosco in particular, who pointed out that "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>12</sup>.

Court of Appeal then refers to the protection of LFP's commercial interests. Indeed, the European Court of Justice has already ruled that "the fact that an undertaking is in a dominant position cannot disentitle it from protecting its own commercial interests if they are attacked, and that such an undertaking must be conceded the right to take such reasonable steps as it deems appropriate to protect its said interests, such behavior cannot be countenanced if its actual

purpose is to strengthen this dominant position and abuse it."<sup>13</sup>.

Although the objective of maximizing profits is not included in the LFP's statutes, the league is responsible for defending the material interests of French professional soccer. Thus, the Court noted that it cannot be disputed that this objective also includes "maximizing the revenues derived from the marketing of transmission rights for professional soccer competitions"<sup>14</sup>. In this respect, it concludes that the LFP's decision to exclude lot 3, which constitutes its main source of revenue, from the 2021 tender was necessary and proportionate in light of the interests it was intended to preserve and protect. It is therefore not exactly a question of preserving "its own commercial interests", as indicated in the United Brands judgment, but in a broader sense, of the third-party interests that the LFP protects.

Indeed, defending the interests of French soccer includes defending those of the professional clubs. The contract concluded between beIN Sports and the LFP also benefits these clubs, since a portion of the proceeds from the marketing of television transmission rights are paid to them. The preservation of the clubs' interests is even more important nowadays, especially because

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<sup>12</sup> D. BOSCO, "Abus de position dominante – Le conflit Canal + / LFP devant l'Autorité de la Concurrence", LexisNexis – Contrats-Concurrence-Consommation n°8-9, Août 2021, comm. 141.

<sup>13</sup> CJCE, United Brands, February 14, 1978, Case 27/76, point 189.

<sup>14</sup> Point 116.

of the health crisis, which has particularly affected the professional soccer world. In addition, the contract between beIN Sports and the LFP was the main source of income for the latter. It was therefore essential to keep it, especially since the revenues from the television rights are of great importance to the clubs<sup>15</sup>. To support the argument of protecting the interests of French soccer in this period, it is also possible to emphasize the economic repercussions of the emergency agreement reached with Canal + at the end of the 2020-2021 season: the LFP saw its revenues decrease significantly. At that time, the Ligue had already asked the French government for help<sup>16</sup>.

## Conclusion

Thus, in view of this decision in favor of the LFP, the 2021 tender should not be called into question. This one has seen the main lot of the Ligue 1 attributed to Amazon. According to Professor Alexandre Joux, this attribution reflects the LFP's will to distance itself from its historical broadcaster (Canal +), by favoring a numerical distribution of

matches. The same Professor also alerts to the significant drop in television broadcasting rights<sup>17</sup>.

Moreover, the LFP's decision not to include the lot 3 in the new call for tenders also affected beIN Sports. The latter wanted to remark the lot 3, which was obtained at a substantial amount in 2018. On 26 July 2021, beIN Sports sued the LFP before the Paris Judicial Court, seeking, primarily, the lapse of the contract relating to the lot 3 and, in the alternative, its termination. Uncertainties and concerns about club revenues due to television rights are therefore still relevant, despite this decision which seems to be in favor of material interests of French professional football.

New questions may also emerge: Vincent Labrune, president of the LFP, recently announced that the next call for tenders for the TV rights of the France championship over the period 2024-2028 will be organized in "autumn 2023"<sup>18</sup>.

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<sup>15</sup> Point 118.

<sup>16</sup> LFP, Press release, "La LFP demande un « plan de soutien « d'urgence »", February 9, 2021.

<sup>17</sup> A. JOUX, "Le foot français à la merci d'Amazon", *La revue européenne des médias et du numérique*, n°59, Autumn 2021.

<sup>18</sup> C. LEMAITRE, "Droits TV Ligue 1 2024-2028 – L'appel d'offres sera lancé à l'automne 2023", *Eurosport*, September 9, 2022.