[FR] Competition Authority Suspends Agreement Allocating Exclusive Broadcasting Rights For French Rugby Championship Matches to Canal Plus

IRIS 2014-8:1/21

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By a decision on 30 July 2014, the Competition Authority suspended the agreement between the national rugby league (*Ligue Nationale de Rugby* – LNR) and Groupe Canal Plus, which allocated exclusive broadcasting rights to the group for the matches in the French first division rugby championship ('Top 14') for five seasons, from 2014 to 2018. In December 2013, at the end of fruitless private negotiations with Canal Plus on upgrading television rights for the Top 14, the LNR decided on the early termination on the contract between it and Canal Plus, and announced the start of a tendering procedure for the broadcasting rights for the four seasons thereafter (2014/2015 to 2017/2018). Canal Plus reacted by referring the matter to the regional court in Paris under the urgent procedure, calling for the tendering procedure to be cancelled. Without waiting for the court's decision, the LNR then interrupted the tendering procedure and on 14 January 2014, after private negotiations, attributed to Canal Plus total exclusivity for five seasons (2014 to 2019). The channel beIN Sports, Canal Plus' main competitor for broadcasting sports events, contested the conditions under which the rights had been attributed and submitted a complaint to the Competition Authority, together with an application for interim protective measures (on the basis of Article L. 464-1 of the French Code of Commerce). On completing its investigation, the Authority noted that broadcasting the Top 14 attracted large numbers of subscribers to the pay-TV channels. The broadcasting rights for the competition could therefore be qualified as premium rights, meaning that marketing could be for a limited period only, and subject to transparent, non-discriminatory conditions, in accordance with case-law. The fact that the LNR and Groupe Canal Plus had successively engaged in private negotiations in the autumn of 2013 to extend Groupe Canal Plus' exclusivity, abandoned the tendering procedure without waiting for offers to be submitted, and resumed exclusive negotiations in January 2014 in order to conclude an agreement granting Groupe Canal Plus the entire rights for the Top 14 for a lengthy period (five years), were characteristic of counter-competition activity. Canal Plus' competitors, which include the applicant party beIN Sports, had not been allowed to take part in the attribution of the rights to broadcast the rugby championship and will not be able to obtain any of the rights for the next five years. The Authority found that this constituted a serious and immediate infringement of the interests of both the pay-TV sector and consumers, as the effect of allocating all the rights regarding the Top 14 to Groupe Canal Plus for

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five years would be to reserve the matches in the competition for those viewers capable of paying a monthly subscription of about EUR 40 and to bar even partial access for broadcasts to those consumers interested in a mid-range subscription at about EUR 12 per month, as offered by beIN Sports. The Qatari channel is deemed "the only newcomer likely to give rise to competition for pay-TV sports broadcasting". The audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* – CSA) was consulted on the justification for the provisions of Article R. 463-9 of the Code of Commerce, and on 23 May 2014 delivered an opinion in which it considered that the private negotiations between the LNR and Groupe Canal Plus had enabled the latter, without actually being exposed to competitive pressure from the beIN sports channels, to acquire all the rights for broadcasting the Top 14. According to the CSA, this could be equivalent to de facto pre-emption, giving Groupe Canal Plus the benefit of total exclusivity for particularly attractive rights for a period of eight years. The Competition Authority therefore decided to suspend enforcement of the agreement between Canal Plus and the national rugby league. So as not to disturb the championship, which will be starting shortly, the suspension will not take effect until after the 2014/2015 season has been broadcast. A new tendering procedure for allocating the rights for the following seasons, under transparent, non-discriminatory conditions, and for a length of time that is not inordinately long, will have to be organised by 31 January 2015 at the latest. The Authority also called on Groupe Canal Plus to stop all communication activities, whether external or directed at its subscribers, mentioning exclusive attribution for the next five seasons of the rights for the Top 14, through to the 2018/2019 season.

Autorité de la concurrence, décision n° 14-MC-01 du 30 juillet 2014 relative à la demande de mesures conservatoires présentée par la société beIN Sports France dans le secteur de la télévision payante

http://www.autoritedelaconcurrence.fr/pdf/avis/14mc01.pdf

Competition Authority, Decision no. 14-MC-01 of 30 July 2014 on the application for interim protective measures submitted by the company beIN Sports France in the pay-TV sector

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