[IT] Court annuls Italian Competition Authority's EUR 66M fine for an alleged cartel in the assignment of Serie A football TV rights.

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On 23 December 2016, the Regional Administrative Tribunal for Lazio (TAR) annulled a decision of the Autorità Garante della Concorrenza e del Mercato (Italian Competition Authority - AGCM), which imposed fines totalling EUR 66 million on the broadcasters Mediaset and Sky Italy, the Italian Football League (IFL) and the latter's advisor Infront for rigging an auction for the assignment of the rights of TV Series A football for seasons from 2015 to 2018.

On 19 April 2016, the AGCM found that Sky Italy, RTI/Mediaset, IFL and Infront had breached Article 101 TFEU on the prohibition of anticompetitive agreements by negotiating a scheme for the allocation of the rights for the audiovisual reproduction of the Series A matches of seasons 2015-2018, thus altering the natural outcome of the statutory tender procedure, held in 2014, for the assignment of the said rights.

Sky Italy placed the highest bids for the two most valuable packages (namely, A and B). Packages A and B granted exclusive rights to broadcast 65% of the Series A matches, including the matches of the 8 most followed teams, on, respectively, the satellite (DTH) and digital terrestrial (DTT) platforms, plus Internet and mobile. Notably, Sky Italy operates a satellite platform and historically has held the dominant share of the Italian pay-tv market. RTI/Mediaset - which is the second Italian pay-tv operator with the DTT platform Mediaset Premium - placed the highest bid on package D, which granted exclusivity on the remaining 35% of matches for all platforms. However, Mediaset conditioned the validity of the bid for D to the assignment of either A or B. IFL and Infront raised concerns as to the compatibility of such an outcome with the no-single-buyer rule set out in Legge Melandri, therefore IFL assigned A (exclusive rights for DTH) to Sky, and B (exclusive rights for DTT) and D to RTI/Mediaset, which then sub-licensed D to Sky with the required AGCM's authorisation.

Nonetheless, the AGCM argued that such an arrangement restricted competition "by object", as the parties intentionally substituted the natural outcome of the statutory tender with a concerted allocation of the rights. Instead they should have resorted to a new tender to possibly overcome competition concerns. Consequently, the authority maintained to be under no duty to provide evidence

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of actual anticompetitive effects to substantiate a breach of Article 101 TFEU in this circumstance.

In annulling the decision and the fines, the TAR stated, inter alia, that the AGCM failed to provide evidence of actual adverse effects for competition in the relevant markets since, considering the overall legal and economic context, the private arrangement did not restrict competition "by object". According to the TAR, the assignment of both A and B to Sky Italy would have been, at a first look, either incompatible with the statutory limitations to dominant positions set forth in Legge Melandri or, in any case, more harmful for competition than the allocation made by IFL. The TAR further argued that the AGCM's decision lacked a proper analysis of the "counterfactual" scenario: the authority should have substantiated that it was "plausible" that a new auction might have generated a more favourable outcome for competition and consumers than that generated by the private arrangement.

Autorità Garante della Concorrenza e del Mercato, Provvedimento n. 25966 del 19 aprile 2016, I790 - VENDITA DIRITTI TELEVISIVI SERIE A 2015-2018

http://www.agcm.it/concorrenza/intese-e-abusi/open/41256297003874BD/5D7467EF6EF317B0C1257FA100583822.html

Italian Competition Authority, Resolution no. 25966 of 19 April 2016, I790 - SALE OF SERIE A TELEVISED RIGHTS 2015-2018

Tribunale Amministrativo Regionale per il Lazio, sentenza n. 12816/2016

https://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=PYRBYBUFSMZDHKXG7YTNF444L4&q=12816/2016

Regional Administrative Tribunal for Lazio, decision no. 12816/2016

Tribunale Amministrativo Regionale per il Lazio, sentenza n. 12814/2016

https://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=GKGE6SGMH5RCSSIH3PDTRAFM44&q=12814/2016

Regional Administrative Tribunal for Lazio, decision no. 12814/2016

Tribunale Amministrativo Regionale per il Lazio, sentenza n. 12812/2016

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https://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=K7MWI75QB2H5XHMLAZBN7RR4MQ&q=12812/2016

Regional Administrative Tribunal for Lazio, decision no. 12812/2016

Tribunale Amministrativo Regionale per il Lazio, sentenza n. 12811/2016

https://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=RTQYKVHQYFLIHKVOUYVNA2DX4A&q=12811/2016

Regional Administrative Tribunal for Lazio, decision no. 12811/2016

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