[IT] Italian Competition Authority approves, subject to licensing conditions, the award of all Serie A's broadcasting rights to Mediapro

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On 14 March 2018, the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato - AGCM or "ICA") agreed to Lega Nazionale Professionisti Seria A (the major Italian Football League, or the "IFL") awarding the broadcasting rights, on an exclusive basis on any platform, of all the Serie A football matches for seasons 2018 to 2021 to Mediapro Italia Srl ("Mediapro"). Legislative Decree No. 9/2008 - which is the law governing the marketing of football's TV rights in Italy - assigns to the ICA and to the Italian Communication Authority (AGCOM) ex ante powers to approve or reject the procedures and criteria for the assignment of the broadcasting rights, which must be mandatorily set out by the IFL and notified prior to execution.

Pursuant to Article 7(4) of Legislative Decree 9/2008, as an alternative to the awarding of rights packages to a number of licensed "operators of communications", the IFL can license all rights relating to the Serie A tournament to an "independent intermediary", provided that the intermediary is identified through a competitive tender and that such a solution is aimed at achieving the "best outcome" in marketing the audiovisual rights on the national market.

Operators of communications are defined in Legislative Decree 9/2008 as operators that have "editorial responsibilities" over the licensed content and provide audiovisual media or electronic communications services to customers (Article 2, paragraph 1, letter z of Legislative Decree 9/2008). The "no single buyer rule" only applies to such operators. Intermediaries, by contrast, are defined as operators that are not under the control of, nor are they intertwined with operators of communication or organisers of football matches. Article 7(4) also provides that the assignment of the rights to the intermediary is subject to the ICA's approval within 45 days of the IFL notifying the details and minutes of the tender and of its outcome. Moreover, Article 11(8) expressly provides that the intermediary must sub-license the licensed rights to operators of communications at Fair, Reasonable And Non Discriminatory (or "FRAND") terms and without modifying the packages as set out by the IFL, unless expressly authorised by the ICA.

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In the case at hand, before assigning the global package of rights to a single intermediary, the IFL had attempted to assign smaller packages (split as to contain the same matches for each broadcasting platform, namely, DTT, DHT and Internet/Mobile) on an exclusive basis to a number of operators of communications through an auction system. The IFL guidelines setting out the tender rules and the criteria for the formation and award of the packages had previously been approved by the ICA. However, both auctions organised by the IFL to this end in May 2017 and January 2018 fell through because the offerings by operators of communications were under the minimum amount required by the tender rules. Thus, once the second auction yielded no results, the IFL started the procedure for the intermediaries, in which only Mediapro participated. On 5 February 2018, the ICA designated Mediapro as assignee, since it accepted to pay the minimum threshold purchase price for the global package (that is, EUR 1.05 billion), and submitted the procedure to the ICA for approval under Article 7(4) of Legislative Decree 9/2008.

Against this background, the ICA has ascertained that Mediapro met the requirements to be characterised as a mere “intermediary” since it is neither controlled by nor intertwined with “communication operators” active in Italy. Furthermore, the ICA clarified that an intermediary, to be characterised as such under Legislative Decree 9/2008, cannot hold “editorial responsibilities” on the licensed content. Hence, the ICA approved the assignment of the rights to Mediapro on the condition that, for the whole duration of the licence, Mediapro: (i) acts and will continue acting in the Italian market as a mere upstream intermediary in the commercialisation of the broadcasting rights (without competing downstream in the markets for the wholesale or retail distribution of the rights); (ii) does not retain any editorial responsibility and will not carry out any activity entailing such responsibility over the licensed content; (iii) does not modify the packages of rights as originally awarded by the IFL (save for prior approval from the ICA); and (iv) does sub-license the broadcasting rights to operators of communications at FRAND terms.

Notably, as expressly stated by the ICA, the approval is without prejudice to the ICA’s power to intervene ex post, pursuant to Article 101 or 102 of the Treaty on the Functioning of the EU, against either the IFL, Mediapro or other parties involved in the process in case the actual implementation of the assignment process infringes Legislative Decree 9/2008 and/or competition rules, or does not fulfil the conditions attached to the ICA’s decision.

Autorità Garante della Concorrenza e del Mercato, Delibera del 14 marzo 2018 nella procedura SR33 - Diritti TV per la Seria A 2018/2021

http://www.agcm.it/component/joomdoc/allegati-news/SR33_%20linee%20guida_omi.pdf/download.html

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Italian Competition Authority, Resolution of 14 March 2018 on the assignment of Serie A audiovisual rights for seasons 2018/2021 to Mediapro and setting out conditions for compliance with competition and regulatory requirements

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