

New Trade Regulation Applicable to the Marketing of Football Broadcasting Rights. A Competitive Outcome?

You may be forgiven for thinking that broadcasting of football (soccer) events in Spain is big business. With some world class football clubs, broadcasting rights owned by Spanish football clubs are big cash generators, and the great popularity of football has historically caught the attention of the authorities.

On May 1st, the Spanish Government has published Royal Decree-Law 05/2015, of urgent measures in relation to the distribution of the exploitation rights of audiovisual contents of professional football competitions (**RDLF**). The approval and entry into force of the RDLF puts an end to long and complex negotiations between all stakeholders including the Spanish Football League (comprising all professional football clubs), the Spanish Football Federation and the Government.

Before the entry into force of the RDLF, each football club used to negotiate and sell its broadcasting rights individually, since the owner of the broadcasting rights of each match is the home playing team. This led to great differences between the incomes of the most popular teams (mainly Real Madrid and Barcelona) and the rest of the teams (because most matches played by the most popular clubs were priced highly, whereas only the few games played by the least popular clubs against the most popular clubs were priced highly). Prior to the RDLF, the visiting team had to provide its consent to the broadcast of each particular match, which could entail considerable discussion and complexity when the licensee of the broadcasting rights of the home team and the licensee of the rights of the visiting team was not the same (in the last few years, two entities were particularly active in acquiring these rights, Mediapro and Sogecable). The marketing system hitherto in place has been in force during years of fierce competition between Mediapro and Sogecable, two entities that have rivalled for ownership of the football broadcasting rights (and some of which business practices have been subject to antitrust scrutiny overtime).

The system reached a critical point with the antitrust review by the Spanish Competition Authority (**SCA**) of the system of long-term exclusive licensing arrangements in force between football clubs and buying entities, particularly Mediapro and Sogecable. A new regulatory framework for the media industry, the General Audiovisual Communication Act 7/2010 (**GACA**), was approved on 31 March 2010, establishing a maximum duration of four years for exclusive licensing of football broadcasting rights, without prejudice to the application of competition law. A few days after the entry into force of the GACA, the SCA specified that the maximum duration of exclusive licensing agreements of football broadcasting rights was limited to three years, in what the SCA argued (and the courts upheld) was an individual decision not contradictory with the GACA and justified on the particular grounds of the economics of the football broadcasting rights market.

Amongst other things, the RDLF's goal is to redistribute income from the sale of broadcasting rights by establishing and regulating the collective sale of broadcasting rights of professional football competitions, namely the Primera División (first division or *Liga BBVA*), the second division (*Liga Adelante*), *Copa del Rey* (King's Cup), and *Supercopa de España* (Spanish Super Cup).

Under the RDLF, the ownership of the television rights still belongs to the football clubs participating in professional football competitions. Football clubs, however, will in the future assign their broadcasting rights to a pool managed by an organizing entity (*i.e.* the Spanish Football League regarding the first and second division competitions, or the Spanish Football Federation regarding the *Copa del Rey* and *Supercopa de España*). The organizing entity will implement (*i*) the joint selling (through licensing agreements not lasting for longer than three years, following the SCA practice, see above) and (*ii*) the distribution, pursuant to the regulated criteria contained in the RDLF, of the income generated by the joint selling of rights. According to the income distribution criteria of the RDLF, the difference between the club that receives least and the club that receives most income shall not be greater than 4.5 times.

Editorial board:

Pedro Callol García (pedro.callol@callolcoca.com)
Jorge Manzarbeitia Pérez (jorge.manzarbeitia@callolcoca.com)
Manuel Cañadas Bouwen (manuel.canadas@callolcoca.com)
Santiago Roca Arribas (santiago.roca@callolcoca.com)
Santiago de la Rubia (santiago.delarubia@callolcoca.com)

More information at: www.callolcoca.com

**The information contained in this alert must not be applied to particular cases without prior legal advice.*