

Football Rights Licensing in Spain under Competition Law

Pedro Callol

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Football Rights Antitrust Review

- Decision of 20 April 2010, *Football agreements*, S/0001/07, the SCA
 - First division football clubs licensed their rights related to the broadcasting of football events to a limited number of purchasers
 - Sogecable
 - Mediapro
 - First division football: “essential” content
 - Sogecable/Via Digital (2002)
 - Licensing of those rights on an exclusive basis and for a long-term to a single operator was considered to be forbidden by Articles 1 LDC and 101 TFEU

Network of Agreements

A term of five years was considered excessive in the football rights marketing because, amongst other factors:

- There is a trend towards concentration in the market and there is a presence of dominant operators confirmed overtime.
- The totality of the market was covered by a network of parallel exclusive agreements having foreclosing effects
- The purchasers of media broadcasting rights did not need to incur any specific investments for each broadcasting right.
- Market reality and precedent indicates that a term of three years was enough to generate the required economic efficiencies.

Circumstances

- What we had
 - Long term exclusivity
 - Rights of first refusal
 - In practice: MFNs, English clauses, fidelity rebates
- Media Act: four-year limitation
- Decision: condemns excess three years
- Vested rights
 - Transition provision: prohibition affects only contracts in force fine even if lasting more than three seasons provided they do not go beyond third season after Decision (i.e., 2009/10-2011/2012)
- Contradicting precedents *ONO v. Hollywood Majors*

Outcome: Regulation

- Urgent Royal Decree-Law 5/2015, 1 May
- Prior to Decree:
 - Individual licensing
 - Owner of rights: home playing team: more revenue for more popular teams
 - Authorisation of visiting team required. Complex negotiations
- Intervention justified on reasons of general interest

Royal Decree Law 5/2015

- Outcome: statutory joint selling
 - Licensing to a pool (Football League/Football Fed.)
 - Award of rights must be in FRAND tender conditions
 - Awards no longer than three years
 - Equitable distribution. Difference between club that receives most and club that receives less shall not exceed 4.5 times
 - Percentage on equal terms (50% First Division League)
 - Ranking in the competition the prior year

Questions?

Pedro.Callol@CallolCoca.com