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**- Contribution from Brazil -**

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The attached document from Brazil is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 28-29 September 2023 to be held in Quito, Ecuador.

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## *Session III – Competition and Sports*

### *Sports media rights: Brief considerations on the market and the performance of CADE*

#### *- Contribution from Brazil<sup>1</sup> –*

## **1. Introduction**

1. The sporting events market moves a significant portion of the Brazilian economy and corresponds to up to 2% of the world GDP<sup>2</sup>. A 2020 study produced by Ernst & Young at the request of the Brazilian Football Confederation (CBF) showed that, throughout the value chain, the Brazilian football market represents 0.72% of the Brazilian GDP, amounting to a value of BRL 52.9 billion<sup>3</sup>. Regarding sports media rights only, the specialised outlet SportBusiness Media presented a study<sup>4</sup> indicating that the Brazilian media rights market was estimated to be worth USD 810 million in 2020. That year, such a market was placed as the 11th most valuable worldwide, accounting for 1.8% of the global sports media rights market, estimated at USD 44 billion.

2. Broadcasting rights negotiation became essential to the sporting industry and the respective economies, generating substantial revenue for sports leagues, broadcasters and sports teams. In this article, we focus on addressing the complexities of such a dynamic market, presenting how CADE has been handling a related case.

## **2. Sports broadcasting: Media rights**

3. Sports media rights refer to negotiations that grant broadcasting companies the right to transmit sporting events. These agreements set the specific territories, duration, and mediums for sports broadcasting. Media rights evolved significantly throughout the years upon the technological advances making way for new means of broadcasting and sources of revenue.

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<sup>1</sup> This document was written by Vitor Silva Martins Costa and Bráulio Cavalcanti Ferreira of the International Cartels Investigation Unit. The English version is the work of the in-house translators of the International Unit of CADE: it was translated into English by Izabel Brum, Nathália Oliveira and Maria Paula Andrade and revised and edited by Arianne Mesquita and Bruna Assunção.

<sup>2</sup> MALAGON, Javier. Sports and investment: allies with a promising future. Mapfre, 2022. Available at <https://www.mapfre.com/en/insights/economy/sports-investment-allies-with-a-promising-future/>

<sup>3</sup> Levantamento Financeiro dos Clubes Brasileiros de 2020: Ernst Young Brasil. Available at [https://www.ey.com/pt\\_br/media-entertainment/levantamento-financeiro-dos-clubes-brasileiros-2020](https://www.ey.com/pt_br/media-entertainment/levantamento-financeiro-dos-clubes-brasileiros-2020) access in 11/05/2023

<sup>4</sup> Brazil Market report 2021. Available at <https://media.sportbusiness.com/2021/02/free-brazil-market-report-2021/>. Retrieved on 15 May 2023.

4. The major players operating in this market and driving the industry are sports leagues, sports marketing agencies, and broadcasters.

- Sports organisations—i.e. sports leagues and their respective teams—control and hold sporting events. They negotiate and commercialise broadcasting rights aiming at maximising their revenue.
- Specialized sports media rights agencies, in turn, operate intermediating the sale and negotiation of media rights. They may purchase broadcasting rights and sublicense them to broadcasters or work on behalf of the sports organisations to ensure an efficient sale of rights, maximising the profit of agreements.
- Broadcasters, for their part, play a crucial role in acquiring sports broadcasting rights. They include satellite and cable television networks, radio stations and, increasingly, online streaming platforms. The broadcasters compete for exclusive or non-exclusive media rights to reach a large audience and generate revenue through advertisements and subscriptions.

**Figure 1. Market Dynamics**



Source: Office of the Superintendent-General of CADE

5. This market operates based on procurement processes, direct negotiations, revenue distribution, and the segmentation of rights, territories and markets. As a rule, sports leagues are the ones to initiate procurement processes, to which interested parties (specialized sports media rights agencies or broadcasters) submit their bids to acquire broadcasting rights. These rights can be exclusive—granting a sole organisation the exclusive right to broadcast a sporting event in a given region—or non-exclusive—allowing several broadcasting organisations to transmit the same event. So, media rights are often divided per region, allowing for territory-based sales.

6. Sports leagues, or those representing them, usually hold competitive bidding processes to sell rights<sup>5</sup>, more precisely for selling a bundle of rights<sup>6</sup>. Such rights are then negotiated with audio-visual producers, marketing agencies or broadcasters to transmit the sporting events on free-to-air, pay-tv, pay-per-view, streaming services or other means. Thus, it represents a relevant source of revenue for sports organisations.

7. There are also related rights to broadcasting rights, such as the granted party committing to operate as a licensee in exchange for commission; therefore, marketing agencies would act only as intermediates connecting potential buyers to right holders. Other possible related rights may regard specialised consulting to find the most appropriate buyers and commercial arrangements.

### 3. Brazilian market: Brief considerations

8. In Brazil, domestic football holds a significant share of the sports broadcasting market, especially regarding the media rights of the *Série A* league of the Brazilian Football Championship (also known as *Brasileirão*). However, the Brazilian demand is also considerable for international football tournaments and other sports modalities such as, and in particular, volleyball, basketball, combat sports, motor racing and tennis<sup>7</sup>.

9. Regarding sports competitions held in Brazil, Law 9615/1998 regulates media rights negotiation. According to Article 42 of said law, sports organisations are the original holders of media rights, which consist of the "exclusive prerogative to negotiate, authorise or forbid media capture, hosting, transmission, retransmission or reproduction, by any means, of sporting events images" of said organisations. Internationally, each jurisdiction adopts its own regulations, and the ownership or disposition of rights may vary due to legal or contractual specificities.

10. In other words, there is no standard that rule negotiation, neither regarding its scope nor the involved parties. One may reach agreements individually with each individual sports entity (e.g. media rights negotiated by the broadcasters with each team separately as in the *Série A* league of the *Brasileirão*) or in a centralised manner (e.g. in the *Série B* league of the *Brasileirão* championship, the sports league creates a committee with the Brazilian Football Confederation (CBF), and the individual rights of the sports teams are negotiated together). Around the globe, the rule is negotiating media rights directly with the sports leagues (regardless of whether for domestic or international consumption).<sup>8</sup>

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<sup>5</sup> Although common, competitive bidding is not the only means of selling rights. Negotiation occurs on a case base and may involve direct negotiation with the interested parties.

<sup>6</sup> The bundle of rights offered vary according to the commercial decisions of the sports leagues. They can be based on territories, number of transmissions, broadcasting of a given weekly sporting event, etc.

<sup>7</sup> Nielsen's World Football Report 2022 indicates that 65% of the Brazilian audience shows interest in football, followed by 50% in volleyball and 42% in extreme sports. <Available <https://www.nielsen.com/wp-content/uploads/sites/2/2022/07/Nielsen-World-Football-Report-2022.pdf> Retrieved on 15 May 2023.

<sup>8</sup> The most recent negotiation regarding *Brasileirão* occurred in 2020 when GSMR acquired the free-to-air, pay-tv, pay-per-view and streaming broadcasting rights until 2023. As to media rights regarding streaming for betting, another broadcaster acquired it.

### 3.1. CASE NO. 08700.002012/2021-26

11. The most recent case example under the scrutiny of CADE regarding the negotiation of media rights is Administrative Proceeding no. 08700.002012/2021-26<sup>9</sup>, which probes into alleged collusive behaviour in the international market for the acquisition of rights for broadcasting big tournaments. The practice would have started in 2008 and lasted at least until 2017.

12. The investigated conduct would have affected the international market for acquiring sports media rights and rights associated with sporting events and the provision of consulting services<sup>10</sup>. Therefore, it potentially affected Brazil due to negotiations regarding global or multi-territorial broadcasting.

13. Thus, CADE is currently investigating eight business groups and 37 individuals who are current or former employees of these companies for practices possibly related to said collusion.

14. The main practices under scrutiny regard (i) bid and price coordination; (ii) market division provided by cover biddings, bid suppression and joint-bid agreements; and (iii) sharing of competitively sensitive information.

15. In sum, the alleged conduct would have affected collective sports entities (e.g. federations, leagues, etc.) and individual sports entities (e.g., sports clubs) and other right holders<sup>11</sup> that posted bid invitations<sup>12</sup> (i) for sports media rights and other related rights or (ii) for the appointment of brokers, advisers, and consultants to sell the rights along with their owners.

16. Additionally, it may have affected domestic broadcasters and audio-visual producers directly, as well as the Brazilian audience indirectly, considering that the negotiations regarded the acquisition of rights relating to global or multi-territorial broadcasting primarily, with a possible grant of rights to interested parties in Brazil. Besides, investigations show some of the events involved in these media rights negotiations may have taken place in Brazil, harming Brazilian market players.

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<sup>9</sup>[Administrative Proceeding no. 08700.002012/2021-26](#) (Separate case of restricted access no. 08700.002015/2021-60). Claimant: CADE ex officio. Defendants: BE4 S.A.R.L. Lussemburgo e B4 Italia Srl - in liquidazione (currently B4 Capital AS) ("BE4" / "B4"); Dentsu Inc.; European Broadcasting Union ("EBU"); Infront Sports and Media A.G. ("Infront"); Media Partners & Silva ("MP Silva"); UFA Sports GmbH (currently U! Sports GmbH) ("UFA"); Telefónica de Contenidos SAU ("Telefonica"); WME IMG LLC. ("IMG"); and others.

<sup>10</sup> In general, the selling of rights may include media and consulting services rights—the latter related to the selling of broadcasting and sponsorship rights.

<sup>11</sup> Right holders are organisations that hold rights associated to sporting events such as federations, associations, clubs, and other organisations. In Brazil, the sporting organisations hold the media rights, as put by Law 9615/1998.

<sup>12</sup> Recently, the English Football League (EFL), responsible for the second and third divisions of the English football, promoted a request for proposal for granting media rights of its matches (amounted to more than USD 240 million per year). (Report: DAZN bids for all EFL rights in UK and abroad, Sportpromedia, 2023. Available at <[https://www.sportpromedia.com/news/dazn-efl-uk-global-streaming-rights-bid-3pm-blackout/?zephyr\\_sso\\_ott=21FUcz](https://www.sportpromedia.com/news/dazn-efl-uk-global-streaming-rights-bid-3pm-blackout/?zephyr_sso_ott=21FUcz)>. Retrieved on 22 May 2023.)

#### 4. Course of the case and next steps

17. CADE launched the case investigation on 2 February 2022 based on strong evidence in the case files indicating the described facts.

18. As of now, defendants are being notified abroad so they can file their answers and indicate witnesses and other evidence. It is worth noting that cases involving different jurisdictions usually pose challenges to the course of proceedings due to the notification stage.

19. If convicted, companies are to pay fines ranging from 0.1% to 20% of their gross sales revenue in the field of activity it affected in the year before the launching of the proceedings. The fines are not to amount to less than the competitive advantage the practice gave the parties, as per the provisions of the Brazilian Competition Law<sup>13</sup>.

#### 5. Final Remarks

20. As noted, international sports media broadcasting is a complex and relevant market with potential effects in Brazil. The Office of the Superintendent-General of CADE, i.e. the investigative arm of CADE, continues observing possible business practices that may harm Brazilian consumers and audiences. The aim is to protect free competition and promote a competitive environment in the country to all markets, including the sporting events broadcast.

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<sup>13</sup> [https://www.planalto.gov.br/ccivil\\_03/ato2011-2014/2011/lei/112529.htm](https://www.planalto.gov.br/ccivil_03/ato2011-2014/2011/lei/112529.htm).

## APPENDIX I - OECD QUESTIONS

### **Are broadcasting rights to sports events sold individually by each club or collectively? Are there competitive tenders to award those rights?**

Rights can be sold by each sporting club/team/organisation individually or collectively (through confederations/federations/leagues or similar) and it will depend on who the right holders are and which are the most favourable commercial agreements. Therefore, there is no standard in the market, but the most common practice is collective negotiations.

In Brazil, for instance, the law establishes that football home teams hold media rights. Teams of *Série A* (i.e. first division of the *Brasileirão* championship) negotiate their rights individually, whilst those of *Série B* (second division)—although also holders—negotiate it collectively through a committee with the Brazilian Football Confederation, CBF.

Internationally, we observe some variation.

In the United States, the National Football League negotiates broadcasting rights for national championships collectively; as for regional matches, teams negotiate them separately.

In England, the Premier League make negotiations on behalf of its 20-member league clubs through agreements with the Football Association.

In Spain, as per law, *La Liga* also trades media rights collectively.

In Portugal, we observe an exception to the rule of other European leagues, where teams of the NOS League negotiate rights separately. However, legislative changes are taking place to centralise negotiations.

As to the means for granting such rights, there is no market standard—meaning the commercial conditions define it. It can occur through requests for proposals and direct negotiation between right holders and interested parties.

### **Are broadcasting rights to sports events sold through an exclusivity agreement? If yes, are there any conditions (e.g., competitive tendering and maximum term contracts)?**

The selling of packages of rights varies as it is case-based. Some rights can be reserved, and free-to-air, pay-tv, pay-per-view and streaming services can be negotiated separately. Any commercially viable combination is possible. However, exclusivity of a particular bundle of rights is a common practice.