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**ROUNDTABLE ON COMPETITION AND SPORTS**

**Note by the delegation of Spain**

*This note is submitted by the delegation of Spain to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16 - 17 June 2010*

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## ROUNDTABLE ON COMPETITION AND SPORTS

-- Note by Spain --

### 1. Introduction

1. When discussing the relationship between sports and competition law in Spain, the first thing to take into account is that sports always mean football (soccer) in Spain.
2. Many sports are played in Spain, some of them have a significant number of supportive fans and with the proliferation of free terrestrial digital TV channels, and there are more opportunities for them to be broadcasted.
3. Moreover, some events, like the Olympic Games, can attract wide audiences for a significant number of sports. Even so, Olympic Games take place once every four years, for just fifteen days. And people only want to watch those minority sports during the Olympic Games in case a medal is won.
4. Notwithstanding, in Spain there is only one sport that can attract a huge fan base of avid viewers that are ready to pay important sums just to watch one game of its home team or its main rivals. And that is football.
5. The economic sums that surround football do not cease to increase every year, climbing to even more astronomical heights. Last year, a team was ready to pay 96 million euro for a player. This record will only hold for a few years. Football teams are huge machines for making (and losing) money, and one of their main feeders are TV broadcasters.
6. The increasing economic importance of football has gone hand to hand with the introduction and development of pay TV and a huge array of TV channels. Mutual dependence between football teams and TV broadcasters has grown over the years.
7. For pay TV broadcasters, football was from the start the mainline for attracting a wide base of subscribers with a high ARPU (average revenue per user). Therefore, competition for football broadcasting rights has always been a symptom of intense competition in the pay TV market.
8. This competition, which on occasions has been fierce, has created the so-called "football wars", where competition authorities have played an important part, although many times in uncharted waters, where it was difficult to assess the possible effects of a decision.
9. The number of competition issues raised in those cases is elevated. However, this written submission will only discuss the most interesting.

10. Firstly, a brief summary on the evolution of football and competition cases during the last 20 years in Spain will help to give some background. Secondly, we will provide a more detailed assessment of some interesting themes:

- Relevant markets definition
- Effects of exclusive broadcasting rights on consumers
- Effects of individual sales of broadcasting rights by football teams
- Effects of pooling agreements on competition

## **2. Evolution of Football and Competition Cases in Spain**

11. The first major case involving football in which competition law was applied took place in 1990, just after the introduction of the first private national TV broadcasters in Spain.

12. This case started after a complaint from two private TV broadcasters, Antena 3 and Telecinco, who were unable to broadcast matches and summaries of those football league matches played in Spain because the owner of these rights, the Spanish Football League, had sold them in exclusivity to Canal+ (the third private national TV broadcaster in Spain, in terrestrial pay TV) and FORTA (an association of regional public TV broadcasters in Spain), for eight years and with English clauses at the end of the contracts.

13. The Spanish Competition Authority issued a decision<sup>1</sup> declaring:

- The Spanish Football League had committed an abuse of dominant position in the wholesale market of football broadcasting rights, by impeding the access of Antena 3 and Telecinco to the broadcasting rights of summaries of Spanish League matches.
- The agreements between the Spanish Football League on the one hand, and Canal+ and FORTA on the other, were anticompetitive and void due to their excessive duration and their English clauses.

14. In 1996 Spanish League broadcasting rights in Spain suffered a major transformation. In particular, the joint selling system that existed before was changed into an individual sales system, where each team sold individually its own broadcasting rights for the Spanish Football League.

15. This change had an immediate effect on the market, because several TV operators (Sogecable/Canal+, Antena 3 and TV Cataluña) bought the broadcasting rights of different football teams. That caused inflation in the prices paid by each TV operator for the broadcasting rights of each team, and allowed a spectacular rise in the expenditures of football teams in Spain in acquisition and salaries of football players.

16. The confluence of different buyers raised some doubts, mainly because it was unknown whether you needed the broadcasting rights of both teams to show a match, or just those of the home team (arena system). Moreover, if there was no co-ordination between the different buyers when setting the day and time of matches, there was a risk of not recouping what was paid to football teams.

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<sup>1</sup> See case 319/92: [http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=33091&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=33091&Command=Core_Download&Method=attachment).

17. At the same time, in 1997 both Sogecable and Telefónica were launching their pay TV satellite platforms, so there was an opportunity to broadcast all Spanish League matches (on PPV or on different channels), and use those Spanish League matches to attract subscribers.

18. This controversy was solved by the creation in December 1996 of AVS, a joint venture used to pool the Spanish League broadcasting rights bought by Sogecable, Antena 3 and TV Cataluña, in exchange of shares (40%, 40% and 20% respectively). Within AVS an agreement was reached (AVS I) in order to establish a system that allowed to assign the matches broadcasted by each operator in each competition day of the Spanish League: 2 on free TV (one by FORTA, where TV Cataluña participated, and the other by Antena 3), 1 on pay TV (by Sogecable), and 7 on PPV (initially only by Sogecable on its pay TV satellite platform).

19. In 1997 Telefónica bought Antena 3 shares in AVS, and in 1998 the AVS agreement was changed (AVS II) in order to accommodate Telefónica: 1 match of each Spanish League competition day would be broadcasted on free TV (FORTA), 1 on pay TV (by Sogecable), and 8 on PPV (by Sogecable and Telefónica in their satellite pay TV platforms).

20. The AVS I and AVS II agreements were notified to the European Commission. After the objections raised by the European Commission against AVS II, the broadcasting on PPV matches was open in 1999 to all pay TV operators (mainly, regional cable operators).

21. In 2002, Telefónica decided to sell its satellite pay TV platform to Sogecable, a merger which was initially notified to the European Commission, but later referred to the Spanish Competition authorities. Within this operation, Sogecable also acquired Telefónica's shares in AVS.

22. The merger Sogecable / Vía Digital was authorised with conditions by the Spanish Competition authorities.<sup>2</sup> Among the conditions imposed, in force for five years, some addressed competition problems detected concerning football broadcasting rights. In particular, Sogecable and AVS could not acquire Spanish League broadcasting rights from teams for more than three years, could not use English clauses of prior contracts, and at least should maintain the existing access to Spanish League broadcasting rights by free TV and PPV operators.

23. In 2006, when Sogecable / Vía Digital conditions were still in force, Mediapro started to acquire Spanish League broadcasting rights from teams for five years, benefiting from the limits Sogecable had, which did not allow this company to match Mediapro's offers. In July 2006, Sogecable, Mediapro and TV Cataluña signed a new pooling agreement, within AVS, of Spanish League broadcasting rights acquired by Mediapro and Sogecable (AVS III). This agreement also stated that Sogecable would acquire sole control of AVS (by modifying voting rules within AVS) and that Mediapro would acquire 25% of AVS's shares (including TV Cataluña's 20%). Moreover, Sogecable, Mediapro and TV Cataluña signed a non-competition clause in the acquisition of Spanish League broadcasting rights from teams.

24. AVS III gave place to a merger (Sogecable/AVS), which was examined by the Spanish Competition authorities and subject to some conditions.<sup>3</sup> In particular, Sogecable had to ensure access to

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<sup>2</sup> See case N-280 and report C-74/02 [http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=26684&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=26684&Command=Core_Download&Method=attachment) and [http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=34583&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=34583&Command=Core_Download&Method=attachment).

<sup>3</sup> See case N-06094 and report C/102/06 [http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=26490&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=26490&Command=Core_Download&Method=attachment) and [http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=33708&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=33708&Command=Core_Download&Method=attachment).

Spanish League broadcasting rights by TV operators following objective, transparent and non-discriminatory conditions, with contracts of no more than three years.

25. This agreement was also examined under an antitrust investigation, which covered not only AVS III, but also the contracts between football teams and media operators (like Mediapro and Sogecable) for the sale of Spanish League broadcasting rights, and other joint pooling agreements of Spanish League broadcasting rights between Mediapro and regional Spanish TV operators.

26. In April 2010, the Spanish Competition Authority issued a decision<sup>4</sup> on this investigation that declared:

- Acquisition contracts of Spanish League broadcasting rights between football teams and media operators can only have a maximum term of three seasons from the signing date, although exceptionally, those contracts were allowed until the end of season 2011/2012. English clauses and automatic extensions are not allowed.
- Joint pooling agreements of Spanish League broadcasting rights are only allowed for a maximum of three seasons.
- Non competition clauses for the acquisition of Spanish League broadcasting rights from teams are prohibited.

27. Prior to this decision, the Spanish Competition Authority published a market study<sup>5</sup> about Spanish League broadcasting rights, which examined the competitive effects of the existing framework of agreements between football teams and media operators, and of its possible alternatives. Downstream agreements between media operators for the broadcasting of Spanish League football matches in different windows were also studied.

28. The conclusions of this study issued several non-binding voluntary recommendations, which could help to configure a framework for the commercialisation of Spanish League football media rights, fully respectful of competition law.

29. Finally, there is an on-going investigation (case S/0153/09), which was opened in September 2009 and analyses whether Mediapro's commercial activity with TV operators in Spain, involving Spanish League broadcasting rights, has violated competition law.

### **3. Relevant Market Definition**

30. A central element in the above mentioned competition cases is the definition of the relevant markets, in particular, relevant product markets. In the case of the relevant geographical markets, it is evident that sport and TV preferences, among others for linguistic and cultural reasons, are national.

31. Although a proper relevant product market definition should start the other way round, in order to facilitate the exposition we will start from a wide market definition, analysing the reasons from a demand side substitutability point of view that justify the narrower market definition used in the above mentioned cases.

<sup>4</sup> See case S/0006/07 [http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=36085&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=36085&Command=Core_Download&Method=attachment).

<sup>5</sup> See [http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=34755&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Administracion/GestionDocumental/tabid/76/Default.aspx?EntryId=34755&Command=Core_Download&Method=attachment).

32. The widest product market definition in this kind of cases would cover the whole array of media contents that can be broadcasted by a TV operator. Films, TV series, documentaries, news programs, shows and sports are some of the candidates.

33. However, sports have a particular characteristic that differentiates them from other TV contents. People want to watch them live, and a difference of minutes in its broadcasting greatly reduces their value. Another particularity is that the most attractive sports (*i.e.* football), are able to attract an audience which is usually much higher than the average audience of the TV channel. These reasons, among others, justify a narrower definition.

34. The second question is whether football broadcasting rights have clear substitutes among other sports from the point of view of TV operators and final consumers.

35. If we take into account audiences, many sports (basketball, tennis, golf, handball, etc.) have reduced audiences that cannot be compared with football's audiences. Nevertheless, there are some sports or sporting events (Formula 1, Motorcycle races, Olympic Games, etc.) that are able to attract wide audiences, although they are usually not as high as football.

36. Even so, we have to keep in mind that those events are episodic (*i.e.* Olympic Games) or do not have enough appeal, as to attract enough paying customers.

37. From the point of view of a pay TV operator in Spain, football is an essential element of its offer in order to attract or retain subscribers. Moreover, past experience in Spain shows that a pay TV channel (like Canal+ since the early 90's; Gol TV or Canal+Liga since 2009) can attract a significant number of subscribers thanks to the appeal of football, which is not equalled by any other TV content.

38. Once we reach the conclusion that football does not have substitutes among other sports from the point of view of pay TV operators, we have to analyse if all football events are within the same market.

39. In this case, we have to analyse the differences between Spanish League and King's Cup matches, concerning Spanish teams, and other football matches, whether matches of the European competitions (Champions League; European League) or matches of the Spanish national team (World Cup, European Cup, classificatory rounds and friendly matches).

40. The particularity of Spanish League and King's Cup matches is that they take place almost once a week during nearly ten months, include a huge number of matches (more than 400 a year) and always involve Spanish teams. These characteristics allow pay TV operators to develop significant commercial strategies to attract and retain subscribers.

41. European competitions also involve a significant number of matches, although the number of those concerning Spanish teams is much lower. In addition, there is an uncertainty about what will be the exact number of matches played by each Spanish team, because they could be eliminated in the early stages of the European competition. Those issues make those matches less attractive for pay TV operators.

42. In the case of matches involving the Spanish national team, they are quite episodic and their number is reduced during the year. Moreover, the national team may not qualify to the international competition, aggravating the uncertainty for the pay TV operator, which would have problems to develop a commercial strategy using broadcasting rights for those matches.

43. Another point to take into account is that the Spanish law states, since 1997, that a certain number of football matches are of general interest and should be broadcasted on free TV. In particular, during the 2009/2010 season the following football matches were declared of general interest:<sup>6</sup>

- One match per competition day in the First Spanish Football League
- Official and friendly matches of the Spanish national team
- King's Cup Final
- One match per competition day or round involving Spanish teams since eighth finals round of the Champions League, and the final in any case
- Europa League Final involving a Spanish team

44. All those limitations significantly decrease the value of the matches of the Spanish national team or of the Champions League for a pay TV operator. In the case of the Spanish Football League this detriment is less important, because there are other nine matches within the same competition round.

45. Finally, we have to underline supply side differences between the broadcasting rights of the Spanish League and the King's Cup, which are sold individually by each team, and broadcasting rights of matches of the Spanish national team (sold by the Spanish Football Federation or by International Football Federations) or of the Champions League / European League (mostly sold by UEFA).

46. In conclusion, there are several reasons that justify a narrow product market definition in Spain, which would be limited to broadcasting rights of the Spanish Football League and King's Cup.

47. In addition, within this definition we have to differentiate two vertically related markets.

- An upstream market, where football teams are suppliers and media operators are buyers. This market does not exist in countries where broadcasting rights are sold by the Leagues themselves.
- A downstream market, where the pooling agreement or the media operator who has directly or indirectly acquired the broadcasting rights of the Spanish Football League and King's Cup of all teams (nowadays Mediapro), is the seller, and TV operators are the buyers.

48. It can also be possible to differentiate an emerging market for new modalities of commercialisation of Spanish Football League and King's Cup media rights (mobile phone, Internet, cinema, etc.). However, this issue has not been really explored by the Spanish Competition Authorities.

49. Other sports' fields where Spanish Competition Authorities lack as much experience defining relevant product markets and where interesting questions are raised are:

- Spanish national team football matches: are all its matches within the same product market, or each competition is a relevant market? Other matches played by other national teams are in the same product market?

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<sup>6</sup> <http://www.csd.gob.es/csd/documentacion/01GabPr/Noticias/aprobado-el-catalogo-de-acontecimientos-deportivos-de-interes-general-22-07-2009>.

- Other regular sports events: is each sport a different product market, or could they be included within the same product market if they share the same sector (*i.e.* motor sports, like Formula 1 and Motorbike championships) or they have similar audiences?

#### **4. Effects of Exclusive Agreements on Consumers**

50. One of the most important debates when assessing the above mentioned cases was deciding if downstream exclusive agreements, especially those involving pay TV, which give exclusive broadcasting rights of some football matches to just one TV operator, are positive or harmful for final consumers.

51. On the one hand, exclusive agreements generate incentives among pay TV operators to compete between them, and reduce the probability of tacit co-operation in the pay TV market.

52. However, the risks are:

- The confluence of several exclusive agreements involving different pay TV operators will force consumers to subscribe several pay TV offers if they want to watch all matches played by their favourite team.
- The existence of one pay TV operator with exclusive access to all Spanish League football matches broadcasted on pay TV does not allow other pay TV operators to compete effectively, as Spanish League football is an essential driver to gain and maintain subscribers on pay TV.

53. Spanish Competition authorities have reached a tentative equilibrium on this issue, by:

- Allowing a pay TV operator to exclusively acquire one match per competition day of the Spanish League and the King's Cup.
- Establishing the obligation of giving access to other pay TV operators, following transparent, objective and non-discriminatory conditions, to other matches of the Spanish League and the King's Cup broadcasted on pay TV.

54. With this solution, incentives remain to compete in the differentiation of pay TV offers and consumers may subscribe with one pay TV operator to have access to all Spanish League and the King's Cup matches. At the same time, a minimum access to those broadcasting rights is ensured for other pay TV operators, allowing them to exert a competitive pressure on the pay TV operator who has exclusive rights on some matches.

#### **5. Effects of Individual Sale of Broadcasting Rights by Football Teams**

55. One particularity of Spanish Football League and King's Cup broadcasting rights is that they are sold individually by football teams.

56. Apparently, this characteristic is pro-competitive, because it offers TV operators several alternatives when acquiring broadcasting rights.

57. Even so, there are several issues that significantly reduce the possible pro-competitive effects:

- The most attractive teams are Real Madrid and Barcelona, who have a huge following in Spain, in comparison to other Spanish football teams.



- Football teams have an agreement within the Spanish Football League, which requires TV operators to have broadcasting rights of both teams in order to broadcast a match.
- Consumers risk not having access to all Spanish League and King's Cup matches, or all matches played by their favourite team, by subscribing with just one pay TV operator.
- For the same reasons, national sales of broadcasting rights of summaries of matches and international sales of Spanish League matches are put in risk.

58. These characteristics may generate competition problems, among others:

- Giving an unfair advantage to the media operator who has the broadcasting rights of the majority of the Spanish League teams, especially Real Madrid and Barcelona.
- Making pooling agreements unavoidable, in order to define (at least) the time and day when each match is played and broadcasted.
- Risking foreclosure of the minor teams, whose rights are only attractive to the media operator who holds the broadcasting rights of the majority of the Spanish League teams, and who may decide not to acquire them until the last minute, in order to obtain better economic conditions when buying those rights.

59. Moreover, as a way to compensate their reduced negotiation power, several minor teams have reached a joint selling agreement of their broadcasting rights, which reduces the apparent wide offer of the Spanish system.

## **6. Effects of Pooling Agreements**

60. As stated above, pooling agreements between acquirers of football teams' Spanish League broadcasting rights may be unavoidable in order to ensure an efficient exploitation of those rights.

61. Nevertheless, we cannot forget that those acquirers are usually vertically integrated, so they have incentives to define a downstream broadcasting windows system that unduly favours them, impeding a downstream access by pay TV operators outside the pooling agreement following transparent, objective and non-discriminatory conditions.

62. Moreover, those pooling agreements may produce significant anticompetitive effects, by generating co-ordinated effects in the upstream market between the parties of the pooling agreement.

63. In order to minimise those negative effects, the Spanish Competition authority has limited to three years the duration of pooling agreements, has prohibited any non-competition clauses in the upstream market, and has established an obligation of access by third parties to a significant part of the broadcasting rights in the downstream market, following transparent, objective and non-discriminatory conditions.