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**ROUNDTABLE ON COMPETITION AND SPORTS**

**Note by the delegation of Egypt**

*This note is submitted by the delegation of Egypt 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 Egypt --

### 1. Background and Introduction

1. Prior to 2002, the Arab States Broadcasting Union (“The Union”) was the negotiating agent on behalf of Arab broadcasters. The Union was the exclusive contractual counterparty to the various sports federations and leagues. The Union would negotiate for the broadcasting rights to all sports events and, in turn, distribute the rights to the channels that would air them.

2. ART is a pay-TV channel owned by Arab Media Corporation. The distribution system remained in place, until ART split-off from the Union and independently entered the bidding for the broadcasting rights of the World Cup 2002. Other channels proved unable to bid given ART’s considerable financial strength, which eclipsed even the Union. ART subsequently bid for the broadcasting rights in the Middle East for practically all major football championships retaining the rights for many years. For all practical purposes, given the duration of the agreed-upon contract, the Union has no chance to bid.

3. ART’s dominance was seemingly threatened by Al Jazeera Channels (JSC). In 2003, JSC launched a new free sport channel. However, JSC did not have access to major football championships. Some federations and leagues require that the broadcasting of their events must be through subscription. JSC sports responded by switching some of its channels to a pay TV system in 2005.

4. Over time, JSC sports channel acquired the rights to broadcast all major football championships in the Middle East and North Africa as well as European leagues games and cups. These actions eroded ART’s dominance. Nonetheless ART still owned the rights of the World Cups and some regional championships like the Cup of African Nations (CAN).

5. In 2009, ART sold their broadcasting rights of all the major sports events to JSC sports. In effect, JSC sports became the sole owner of all rights to practically all important football events under an agreement that extends to 2016. ART remains a major broadcaster of movies and entertainment programs. It also carries the JSC sports channel along for events other than major sport events *i.e.* CAF and world cup.

6. Claims and counterclaims of abuses of competitions during the negotiations over the broadcasting rights of recent events - including the 2010 World Cup - brought the controversy to the attention of the Egyptian Competition Authority (ECA). IN 2010 the ECA opened an investigation to examine the competitive nature of the matter.

### 2. Elements of a Possible Market Definition

7. According to article 3 of the Egyptian competition law, “The relevant market, in the application of the provisions of this Law, is the market that consists of two elements, namely, the relevant products and the geographic area. Relevant products are products considered to be practical and objective substitutes to each other. The geographic area means a certain geographic territory where competition conditions are homogenous while taking into consideration the potential opportunities for competition, all in accordance

with the criteria set out by the Executive Regulations in a manner consistent with the objectives and provisions of this Law.”

8. There are at least two scenarios in defining possible relevant product markets:

- In the upstream broadcasting rights market, would competitors consider alternative leagues as substitutes to the league that they would like to place their bids on? Secondly, should we consider potential competition in the advertisement market? In other words, do other carriers (sub license) of the broadcast rights create a threat for license owner in the advertisement market?
- The second scenario: In the downstream market, do viewers consider various programs and bundled offers including sport and non sport events, offered by different channels as substitutes? In other words, to what extent do sports channels compete with other forms of sports and non-sports premium programming?

9. According to the preliminary investigation done by the Egyptian Competition Authority (ECA) the primary findings, in both scenarios, are that viewers don't find any other sport event or any football match as a substitute for the CAN 2010, as Egypt has been the champion for the last three leagues. In other words, the Egyptian soccer team was able to grab the viewer's attention by winning 3 tournaments in a row making it difficult for the viewers to accept other events as a substitute to the CAN.

10. Through this investigation conducted to date, it has been proven that primary live sports events broadcasted on TV are a separate market from the following:

- Other broadcasted programs (drama, music, movies, etc.);
- Pod casting and radio broadcasting;
- Recorded matches, summaries, football programs.

11. In the next stage, the question that was raised is how much all sports events are considered to be in the same relevant market and how much the advertisement revenues fluctuate? The following indications show how much a sport event can be a distinct market from the others:

- The participation of the Egyptian national team: The Egyptian viewer considers the sport event where the Egyptian national team is participating as a distinct product from any other event;
- The revenues from the advertisements and the “rates of viewing.”

12. ECA concluded that the relevant product in this case is the live broadcasting of CAN 2010, where ERTU wants to purchase the rights to broadcast. Every championship is a distinct product for the Egyptian viewer, especially if Egypt is a participant. Moreover, the market could have been subdivided into only the matches where the Egyptian team is participating, or even the most important matches. However, as the JSC owns the whole championship, there was no need to subdivide the CAN into several products.

13. As for the geographical area, due to the exclusivity contracts, the selling of broadcasting rights outside the specified geographic area is not allowed. The regional and international football events are sold by zones, Egypt is part of the Middle East and North Africa zone. The Egyptian viewers cannot subscribe outside Egypt, thus the latter is considered to be the geographic area for World cups and regional championships for the Egyptian viewers.

### **3. Competition Concerns**

14. In the broadcasting rights markets, ECA has competition concerns related to the position of JSC sports (and ART channels) in the market, regarding possible anticompetitive unilateral conduct.

#### **3.1 Barriers to Entry**

15. According to the to the Egyptian competition law the stakeholders in the broadcasting rights are subject to the competition law, including leagues, federations and original owners of these rights.

16. The broadcasting rights to several CAN championships are sold in one bid to a single channel. In the case in point, the JSC channels purchased the CAN championships along with other events, such as the Champions League, the Confederation Cup and the Super Cup, for the time period 2009 - 2014.

17. Article 7 of the Egyptian competition law stipulates that: "Agreements or contracts between a Person and any of its supplier or clients are prohibited if they are intended to restrict competition." Article 12 of the Executive regulations of this law adds that: "The evaluation of whether or not the agreement or contract between a person and any of its suppliers or clients would restrict competition is based on the inquiry made by the Authority on a case by case basis in light of the following factors:

- The effect of the agreement or contract on the freedom of competition in the market;
- The existence of benefits accrued to the consumer from the agreement or contract;
- The considerations of preserving the quality of the product, its reputation, safety, and security requirements, in a manner that do not harm competition;
- The extent of compliance of the conditions of the agreement or the contract with established commercial customs in the activity subject to examination."

18. The concern raised is whether the exclusivity period for the aforementioned championships stipulated in the agreement between the CAF and the JSC could be considered as anticompetitive, and consequently, renders the latest contract to be a violation to the Egyptian competition law?

19. In order to answer this question, the ECA is examining whether this long period affects the entry conditions for potential competitors in the market. Specifically, the ECA will examine whether the duration of the existing contract is – on balance – anticompetitive. Long term contracts – all else equal – have both anti and pro competitive elements. The CAF argues that historically it was suffering from payment non-compliance by their national African TV counterparties. The CAF hired a marketing company to manage the deals with African channels; in addition, they extended contracts to facilitate the financial commitments of the undertaker. Moreover, the undertaker of long term contracts due to financial and economic strength provides better events coverage before and after the matches, *i.e.*, interviews with coaches and players, analysis studios...and more spread customer service centres.

#### **3.2 Dominant Position**

20. After a huge, largely unflattering, press campaign against Aljazeera alleging high-handedness on their part during the negotiation for broadcasting rights to the Cup of African Nations (CAN) 2010, the ECA opened an inquiry to examine whether the aforementioned channel holds a dominant position and consequently the likelihood of any anticompetitive behaviour in this market. Such allegations were raised during the negotiations between JSC sports and the Egyptian Radio and Television Union (ERTU) (the government agent that owns the terrestrial channels in Egypt).

21. The negotiations between both parties began with an offer of 10 matches chosen by the JSC sports for 10 million dollars, a price considered excessive by the ERTU – alluding to the fact that ERTU stood to gain considerably less than 10 million dollars in advertising revenue. The negotiations lasted for 2 weeks between both parties. Subsequent JSC offers - at a seemingly lower price - were conditioned with unusual modifications and unorthodox elements. For example, demands were made soliciting access to all the ERTU archives and licenses of Egyptian championships owned by the Egyptian Federation of Football. The final offer was 8 million dollars for 10 matches, 6 chosen by the ERTU. No conditions were imposed. However, the ERTU refused the final offer and the deal was not concluded.

22. According to article 52 of the Confederation of African Football (CAF) statutes, the CAF is the rightful owner of the broadcasting rights of 7 regional competitions and all other continental and intercontinental competition. These events include mainly the CAN, the Champions League, the Confederation Cup and the Super Cup.

23. The purchase of these rights from the CAF is done via an intermediary: a marketing company known as Sport 5. The broadcasting rights to the regional sport events mentioned above are sold to a sole channel that has a geographic and linguistic broadcasting exclusivity right. For JSC, the exclusivity is for the Middle East and North Africa zone, in Arabic.

24. ECA has tentatively set forth that the relevant product in this case could be the live broadcasting of CAN 2010, where ERTU wants to purchase the rights to broadcast. Indeed, it is possible that every championship is a distinct product for the Egyptian viewer, especially if Egypt is a participant. Moreover, the market could have been subdivided into only the matches where the Egyptian team is participating, or even the most important matches.

25. JSC has an exclusive right for broadcasting CAN 2010 for North Africa and Middle East zone. In order for ERTU to broadcast the championship in Egypt, it had to acquire the sublicense from JSC, and is not allowed to buy it from any channel in another geographical zone. On that basis, the geographical area we are considering is defined as North Africa and the Middle East.

26. In terms of article 8 of the Egyptian competition law, a market player must have a dominant position to be incriminated for any of the anticompetitive unilateral conducts stipulated in the law. According to article 4 of the aforementioned law, *“In the application of the provisions of this Law, dominance in a relevant market is the ability of a Person, holding a market share exceeding 25% of the aforementioned market, to have an effective impact on prices or on the volume of supply on it, without his competitors having the ability to limit it.”*

27. JSC is the sole market player that owns the broadcasting rights for CAN 2010, which makes it in a position to control the prices and the volume of supply, with the absence of competitors in the market there is no ability to limit their market power. In principle, JSC is in a dominant position in the relevant market.

28. The potential challenge to JSC dominance in the relevant market is the informal competition in the downstream market. The introduction of pay TV in the Egyptian markets opened the floor for new profitable, albeit illegal, activities. As not everyone can afford the cost of subscriptions, people have resorted to other alternatives. Rebroadcast of channels through illegal networks has taken two major forms. First, through cables, where mainly the infringer subscribes to the most popular channels with other free channels and delivers it to unlimited number of illegal users. The other form is through the purchase of a ‘smart’ card which breaks the codes of decoders through the internet. Market studies proved that 90% of the market is using illegal cables and smart cards rather than subscriptions.

29. These activities could, at first glance, erode JSC’s dominant position in the downstream broadcasting market to the Egyptian viewer. However, our preliminary analysis showed that the revenues

of JSC depend primarily on the advertisements, secondly; the subscription fees. To the extent that the pirated broadcast transmits the JSC's advertising content, illegal activities increase the rate of advertisements and enhance JSC's impact and associated revenues. Consequently, the informal sector could have a minimal effect on the dominant position of JSC Sports in the downstream market.

30. This conduct of JSC vis-à-vis ERTU raised a potential concern on which ECA opened an investigation. The primary potential concern is the refusal to deal. Article 8 of the Egyptian competition law stipulates that: "*A Person holding a dominant position in a relevant market is prohibited from carrying out any of the following: (...) b) Refraining to enter into sale or purchase transactions regarding a product with any Person or totally ceasing to deal with him in a manner that results in restricting that Person's freedom to access or exit the market at any time (...)*". The Executive regulations in article 13/b stipulates the following: "*Refraining from entry into sale or purchase transaction regarding a product with any Person or totally ceasing to deal with it in a manner that results in restricting that Person's freedom to access or exit the market at any time, which includes imposing financial conditions or obligations or abusive contractual conditions or conditions that are unusual in the activity subject matter of dealings.(...)*"

31. ECA identified two potential markets in this case, the upstream broadcasting market where ERTU is purchasing the sublicense of the relevant product. On the other hand, the downstream broadcasting market where ERTU and JSC sports are competitors. The preliminary investigations showed that the behaviour of JSC led to restrict ERTU from entering the market to live broadcast CAN 2010. An economic and legal analysis is in progress to determine whether this behaviour constitutes a refusal to deal according to the provisions of the Egyptian law.

### **3.3 Tying**

32. The ECA received a complaint against ART, accusing it of tying two different products. Tying by a dominant firm is a *per se* violation according to the Egyptian competition law.

33. Before the deal between ART and JSC took place, ART offered three packages to its subscribers. A "package" constitutes a grouping or bundle of thematically related channels. The first package was the Family package (drama, music, movies; mostly entertainment), the second was the Sport package (all the sport channels), and the third was the full – or combined - package (Family and Sports).

34. ART subsequently decided to cancel the Sports package. It is not clear what drove ART's decision. However, any viewer who only wanted to subscribe to the Sports channels alone could not do so. To acquire the sports offerings a viewer was obliged to subscribe to the Family package.

35. The ECA did not open a formal investigation into this matter largely because the behaviour occurred for only a couple of months; it, in effect, ceased when JSC bought all broadcasting rights from ART.

36. As discussed above, there are indications that suggest that sports events are a distinct product from any other program broadcasted on TV. Also, at this stage of the investigation we hold that each championship is possibly a distinct market. At the time this conduct occurred, ART owned the broadcasting rights of CAN, which, as stated earlier, was believed to be a distinct product.

37. Article 8 of the Egyptian competition law incriminates tying, by stipulating that "*A Person holding a dominant position in a relevant market is prohibited from carrying out any of the following: (...) c) To impose as a condition, for the conclusion of a sale or purchase contract or agreement of a product, the acceptance of obligations or products unrelated by their very nature or by commercial custom to the original transaction or agreement. (...)*".