

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

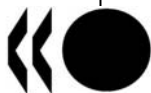
ROUNDTABLE ON COMPETITION AND SPORTS

Note by the delegation of Austria

This note is submitted by the delegation of Austria 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

-- Contribution by Austria --

1. The Austrian Federal Competition Authority (FCA) has dealt with several cases relating to sport. In this contribution the FCA focuses on the two following issues suggested for consideration in the present roundtable:

- Exclusive broadcasting rights
- Certification and exclusivity

1. Exclusive Broadcasting Rights: ORF / ÖSV Ski World Cup

1.1 Facts of the Case

2. The case was initiated by a complaint to the Austrian Federal Competition Authority (FCA) by a Pay TV operator in Austria in 2005.

3. The complaint concerned the agreement concluded in 2001 between ÖSV and ORF in order to confer on ORF exclusive media rights for transmission of all Ski World Cup events in Austria for a period of ten years (seasons 2002/3 until 2011/12). The rights conferred cover live TV- and radio transmission in Austria. Competitors had no opportunity to participate in tender procedures.

4. When dealing with the case it was relevant to consider that TV and radio broadcasting activities have been liberalised in Austria only in 2002. ORF - the former public law broadcaster - still had a very high market share in the TV advertising market with competitors far behind. ÖSV - the national association of regional and local skiing clubs - is acting as single seller of media rights relating to Ski Worldcup events organised in Austria. The events affected by the agreement represent 10-20% of Worldcup events organised annually by the International Ski Federation. In addition, ski events are by far the most popular sports events in Austria. Live transmissions of those events traditionally reach extraordinary coverage. Thus media rights of top ski events belong to the most valuable sport rights in Austria.

1.2 Observed Problems for Competition

5. The long duration and exclusivity of the treaty between ÖSV and ORF had the effect of foreclosing the new competitors completely from the valuable media rights of top ski events held in Austria.

6. Competitive constraints have been identified particularly in the Austrian market for media rights relating to Ski Worldcup events (Alpine, Nordic, free style etc) and related aftermarkets such as the market for trading of those media rights in Austria and markets for Pay TV and for TV advertising. However, also trade between EU Member States was affected as Ski Worldcup events are organised in several countries and are marketed on a country by country base by different international enterprises. Thus, both European (Art 101 TFEU) and national law were applicable.

1.3 Procedure and Commitments

7. In 2006 the FCA informed ORF and ÖSV that several clauses of the contract were considered to violate Art 81 EC (now 101 TFEU) and started negotiating on commitments. In July 2006 a formal procedure at the Cartel Court was opened by the FCA with the aim of reaching binding commitments by ÖSV and ORF. In February 2008 the Cartel Court made the commitments agreed upon by decision binding on ORF and ÖSV. The decision has been co-ordinated with the European Commission according to Art 11 para 4 Reg 1/2003.

8. As part of the commitment the parties agreed to abolish exclusivity granted by the treaty concluded by ORF and ÖSV in 2002/3: ÖSV agreed to immediately tender non exclusive pay TV rights, parallel rights for TV Highlight coverage and rights for radio transmission for the seasons 2008/9 to 2011/12. This first phase of the commitments was intended to allow competitors to gain know how and develop a marketing strategy in the field of broadcasting ski events.

9. Moreover, ÖSV agreed to certain conditions for the tender procedure scheduled in 2010 for awarding the media rights *after* the expiration of the original treaty between ÖSV and ORF for the seasons 2012/3 onwards: Most importantly, the ÖSV agreed to tender media rights only for a period of five years, to offer several smaller packages of media rights and to abide to a no single buyer rule. Thus, other broadcasting operators have the opportunity to participate in the tender procedure for the Ski Worldcup media rights. In addition, several procedural rules have been agreed to safeguard a transparent and non-discriminatory tender procedure.

1.4 Key Issues

10. One of the key issues addressed in the procedure was the question what duration of media rights agreements would be acceptable to competition law. At that time EC case law - mainly dealing with media rights in football events - only allowed allotment for three years. The organiser made very clear that a long duration of contracts on media rights was in its interest of safeguarding best public awareness of the events which is the key factor for fund raising through sport sponsoring and advertising. Since on European or worldwide level skiing is much less commercially attractive than football, it was considered appropriate to confine the duration to five years.

11. Furthermore, there was an exhaustive discussion on the extent of exclusivity of broadcasting rights that should be allowed. This topic mainly concerned the exclusivity granted to ORF by the contested licensing agreement and mechanisms to safeguard that after the expiration of this agreement there is a realistic chance of other TV operators to have access to at least some media rights in the field of Ski Worldcup events.

12. For the first period until the expiration of the agreement between ÖSV and ORF the commitments aimed to open the markets for competitors by a duty of ÖSV to tender parallel rights. For the new allotment after season 2012/3 the commitments laid down a no single buyer rule and the duty to tender several smaller right packages. This should ensure that the extent of exclusivity attainable by a single bidder (or bidding consortium) would be limited.

13. Also the extent of exclusivity of broadcasting rights was challenged by competitors. They expressed the view that it would not be commercially attractive for them to bid for Ski Worldcup rights unless they would be allotted an attractive range of exclusive rights.

14. This argument was particularly raised by the complaining Pay TV operator who asked for exclusive Pay TV rights or at least a relevant time window to show live transmissions before any Free TV licensor. The FCA did not support the demand of the Pay TV operator. EC case law never required the

tendering of exclusive rights packages for Pay TV and for Free TV operators. EC decisions rather left the matter of allotting the rights between those two operators to the discretion of organisers and operators participating in a tendering procedure. Given the major effects such a decision may have on the financing of sports events it was not considered appropriate to oblige an organiser of sports events to give preferential exclusive rights to Pay TV operators.

2. Certification of Particular Brand: Karting and Bike Regulations

15. In January 2004 a complaint against several organisers of national karting championships as well as the Austrian National Sporting Authority (i.e. Oberste Nationale Sportkommission, hereafter referred to as OSK) was lodged with the FCA. It was argued that by introducing a one branded tyre rule by various organisers (approved by the OSK) for national karting championships, competition between the suppliers of tyres, on the level of such championships, is being impeded. The one branded tyre rule obliged participants to buy tyres only of one specific brand for a specified price with a specific distributor or the organiser.

16. Organisers of national karting events regularly adopt sporting rules (i.e. the rules under which participating drivers compete) and technical rules (i.e. the conditions equipment must satisfy to be admissible for the races) they consider necessary for national championships. These rules are thereafter approved by the OSK which controls and develops the sporting and touring aspects of motoring and governs motor sport at a national level.

17. After thorough investigation the FCA found that the organisers had allotted sponsorship agreements for the supply of tyres unilaterally, without any objective selection criterion. At the FCA's request, the organisers changed their practice and adopted an open procedure for calls for tender with objective conditions open for all tyre suppliers as from 1 January 2005. The selection is monitored and organised by the OSK. Additionally, it was agreed with the OSK that this practice is to be applied also to national bike championships.