23rd January 2003 : Broadcasting rights for French First League football matches - the Conseil de la concurrence hands down interim measures

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> Version française

On 18th November 2002, the company TPS submitted to the *Conseil de la concurrence* an official complaint, in which it accused the French Ligue de Football Professionel (Professional Football League or LFP) and the companies Canal Plus and Kiosque (hereinafter referred to as Canal Plus) of abusing their dominant position and entering into an anticompetitive agreement.

In a decision dated 23rd January 2003, the *Conseil de la concurrence* handed down interim measures.

It is reiterated that any decision to impose interim measures is merely provisional, and is in no way a substitute for a decision taken on the full merits of the case - which will only be taken once a full inter partes inquiry has been conducted. A decision to impose interim measures in no way prejudges the ultimate solution adopted by the Conseil.

Admissibility of the referral: the Conseil de la concurrence has observed elements sufficient to justify investigatory proceedings

Whenever requests for interim measures are submitted to the *Conseil de la concurrence*, they are accompanied by a referral on the merits of the case concerning the accusations. Firstly, the *Conseil* determines whether the referral on the merits of the case is admissible, and only then does it consider the request for interim measures and their possible application.

Initially, the *Conseil* observed that regular football competitions have the peculiarity of being able to attract and maintain television audiences on a long-

term basis, and that consequently their associated broadcasting rights may be seen as a distinct market. Given the specific features of the French First League Championship, it did not rule out the existence of a more narrow market covering broadcasting rights for that competition alone.

Next, the *Conseil* took the view that the LFP might in fact be considered to hold a dominant position in these markets for football broadcasting rights, and that similarly Canal Plus might be deemed to hold a dominant position in the pay-per-view television market.

Within this context, the *Conseil* noted a number of practices, the competitive legality of which merited a full inquiry (investigation "on the merits of the case"). In particular, it took the view that as the file stands and at this stage of the inquiry, there were no grounds to rule out the possibility that :

- broadcasting rights for French First League Championship matches constitute an essential product for pay-per-view television activity, or at the very least are crucial to its development, and that if they are granted exclusively to Canal Plus, an operator with a dominant position in the pay-per-view television market, competition might be restricted as a result ;

- uncertainties in the rules for consultation on the definition and admissibility of global bids, together with the way the rules are implemented, may have had the aim or the effect of creating discrimination between Canal Plus and TPS ;

- the bid put forward by Canal Plus, which holds a dominant position in the pay-per-view television market, combining very low lot-by-lot valuations and a very high exclusivity bonus, can be considered to be a bid aimed at completely forcing TPS out of the market ;

- Canal Plus and the LFP might have collaborated to give preference to bids by Canal Plus, given the contractual links between Canal Plus and football clubs whose Chairmen also sit on the LFP's Board of Directors.

All of these elements will be looked at closely when the referral on the merits of the case is examined.

Interim measures justified by serious and immediate harm to the plaintiff company, the sector concerned and consumer interests

- The *Conseil* noted that subscribers and prospective customers of pay-per-view television channels take account of announcements concerning changes to programme content when choosing their subscriptions.

  Consequently, given the constant flow of subscriptions and cancellations, the *Conseil* took the view that as soon as the public deemed it definitive, any announcement that Canal Plus had won exclusive rights to the First League Championship would cause immediate harm to conditions for marketing TPS subscriptions (acquiring new subscribers and renewing existing subscriptions).

  In this respect, the *Conseil* emphasised that the damage caused would be even more serious since the rigid nature of subscription mechanisms (annual duration, cancellation conditions, technical restrictions linked to a change of operator) will make it extremely difficult to compensate losses incurred by subscribers who are registered during this period.

- The *Conseil de la concurrence* also observed the risk for consumers of a return to a situation where Canal Plus has exclusive rights to broadcast the French First League Championship: the financing required for such exclusivity could result in an increase in the price of subscriptions, a possibility that Canal Plus has not ruled out before the *Conseil*.

- Finally, referring to the opinion of the CSA (Conseil supérieur de l'audiovisuel, French Broadcasting Regulator), the *Conseil* observed that the disappearance of one of the two satellite television operators would have significant consequences not only for the market concerned, but also for a number of markets further downstream and for all programme suppliers,

thereby reducing consumer choice.

Interim measures

The *Conseil de la concurrence* asked the LFP and Canal Plus and Kiosque to suspend the effects of the decision to grant broadcasting rights for First League football matches, which was taken by the LFP Board of Directors on 14th December 2002. The *Conseil de la concurrence* wished to see the suspension maintained until its decision on the merits of the case came into effect and, consequently, asked the LFP, Canal Plus and Kiosque to refrain from disclosing any information suggesting that the LFP's decision to grant rights was definitive. The Conseil also requested that they refrain from using the aforementioned decision for publicity or sales purposes when prospecting for new subscribers.

> Decision n° 03-MC-01 dated 23rd January 2003 relative to the referral and request for interim measures submitted by the company TPS

> See decision of the Paris Court of Appeal (29th April 2003)