25 July 2007: Marketing of sporting events broadcasting rights

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The Conseil is not in favour of a five year extension of rights purchasing contracts

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Following a malfunction in the operating of the take over bid for the acquisition of broadcasting rights for France 2002 football championship, which led to a suspension in the allocation of rights by the Conseil de la concurrence (decision 03-MC-01 of 23 January 2003 TPS vs. Canal Plus), both law and regulation intended to set rules relative to the allocating procedure conditions according to the law of 1 August 2003 and the decree of 15 July 2004, taken after the Conseil's opinion (opinion 04-A-09 of 28 May 2004).

In October 2006, putting forward substantial amendments in the competition conditions on the market of sporting rights following Canal Plus/TPS merger, the professional football league (LFP) requested the Government to consider removing Article 3 of Decree of 15 July 2004 which sets the terms of the take over bids relative to the marketing of sporting rights and more specifically removing the article which restricts contracts to three years.

Before analysing the request, the Minister of Economy, itself appealed by the Sports Ministry, submitted a referral to the Conseil de la concurrence, concerning, on the one hand, the ability of general competition law to remedy on its own to the malfunctions in the markets of sporting rights and, on the other hand, on potential justifications of a reduction in the sectoral regulation, more specifically the marketing of football rights and notably the duration of audiovisual rights.

The Conseil de la concurrence considers that a regulation of take over bids remains necessary and that the Decree's current provisions leave a substantial margin to adapt its application regulation to its needs and to market evolution

In a sector where the issues concerning both finance and sport are particularly important, an a priori regulation may constitute a more efficient solution than an a posteriori contentious intervention on bids, which have already been allocated. Current legislation on take over bids enables to limit the risks for competition linked to a centralized marketing of rights, introducing a transparency and non-discrimination obligation in the choice of rights holders. The regulation leaves the seller the power to specify its needs, to adapt its offer to technological evolutions, to set the details of the requirements imposed on the buyers, to indicate the different procedure stages and to retain criteria both on the quantity and the quality in the choice of the retained candidates.

The Conseil de la concurrence is thus favourable to the maintaining of an ex ante regulation of take over bids. The predictability of the resulting rules is also an incentive to apply for purchasing rights.

The Conseil de la concurrence is not in favour of a five year extension of contracts and neither a fortiori to the removing of any duration clause

The Conseil de la concurrence considers that a three year duration is satisfactory, as far as it does not close the market for a too long period while leaving enough time for the buyer to pay off its investment. The Conseil reminds that such a rule is indispensable to compensate for the competition restriction resulting from the centralisation of business negotiation of the most attractive football audiovisual rights (which actually belong to clubs and should therefore be sold by them). The Conseil de la concurrence otherwise observed that the extension of contract duration does not appear as an appropriate solution in the view of all alternative operators, which face other obstacles while entering the market.

The Conseil also estimates that other solutions, different from the extension of

rights may be sought to respond to the current market situation, such as notably the introduction of greater freedom to define market allotment and the bidding regulation, on the model which has been observed in other European countries.