

**Case summary**

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Joint selling of media rights for the games of the 1st and 2nd German football leagues (*Bundesliga*) from the 2013/2014 season onwards

Sector: Joint selling of media rights

Ref: B 6 – 114/10

Date of Decision: 12 January 2012

The Bundeskartellamt has concluded its examination proceedings on the joint selling of media rights for the games of the 1st and 2nd German football leagues (*Bundesliga*) from the 2013/2014 season onwards. The proceedings could be concluded following commitments under Section 32 b of the German Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*).

The TV broadcasting rights for the games of the two football leagues in Germany have always been jointly sold by the league. The members of the league assign their marketing rights almost exclusively to the league association (*Die Liga - Fußballverband e.V.*, hereinafter the League), which in turn, uses the services of the *Deutsche Fußball Liga GmbH*, (hereinafter DFL) for the marketing.

The corresponding agreements between the football clubs and the League fall under the prohibition of cartels under Section 1 GWB and, respectively, Article 101 TFEU, because (apart from a few exceptions) the individual clubs do not market the media rights for their (home) matches autonomously. On account of the upcoming marketing of the media rights for the seasons 2013/2014 to 2016/2017, the Bundeskartellamt has examined in detail the marketing model of DFL for its compatibility with the provisions governing the prohibition of cartels. A final decision on this issue was not necessary because DFL offered commitments which made it possible to terminate the proceedings in accordance with Section 32b GWB.

In the course of its investigations, the Bundeskartellamt first defined the relevant product and geographic market on which DFL sells the media rights. The investigations showed that the market should be defined rather narrowly. Media rights for matches of the 1st and 2nd

Bundesliga do not belong to the same product market as, for example, broadcasting rights for (Hollywood) blockbusters. Media broadcasting rights that do belong to the same product market are the media rights for year round competitions in which clubs of the 1st and 2nd *Bundesliga* participate. These include, in addition to the matches of the two leagues, the DFB Cup, the UEFA Champions League and those matches of the UEFA Europa League in which a German team participates. The Bundeskartellamt has left open whether the media rights for competitions that are not all year round (such as the FIFA World Cup and its qualifying matches) or for Formula 1 races should also be included in the relevant product market. In any case, the League/ DFL hold high market shares of well over 50% in the relevant German market.

The Bundeskartellamt's decision under Section 32 b GWB thoroughly analyses the specifics of media rights for league matches and their effects on competition conditions. This aspect was also the focus of the authority's investigations. One specific feature is that the media rights for individual matches and individual clubs are barely interchangeable from a buyer's perspective. In particular for buyers who want to offer a comprehensive coverage of the league matches, the rights for matches of individual clubs are to a large extent complementary. In its decision, the Bundeskartellamt therefore differentiates (in theoretical terms) between the 'individual value' of a match and its 'partial value' as part of the full league coverage. The value of a match depends both on the attractiveness of the home team and the away team, and on the significance of the match within the league season ('partial value'). The decision leaves open the somewhat related question of whether under civil law the individual clubs or the League own the media rights. Not least because the individual rights for the matches are largely complementary for the league coverage, the joint selling of the media rights is, ultimately, a special form of a horizontal competition restraint. It does not, however, constitute a classic 'hard core cartel'. Nonetheless, due to the great significance the ownership of these media rights has for content providers, the joint selling of such rights constitutes a significant competition restraint.

In its assessment of whether the proposed marketing model qualified for exemption from the prohibition of cartels, the Bundeskartellamt had to consider the possible market conditions and outcomes that would result from an individual marketing of the media rights by the respective clubs. These considerations were hypothetical since this type of marketing has never been practised in Germany. The fact that there was no empiric data on the effects of individual marketing in Germany was one of the reasons why the proceedings were terminated by way of settlement.

The main efficiency gain of a joint selling of the rights is that it offers a comprehensive league product to the buyers. How significant this efficiency gain is depends on the preferences of end consumers. These, in turn, determine the preferences of the buyers of the media rights. According to the latter, about 75% of the viewers find coverage of all league matches highly important. This tendency was confirmed by an analysis of viewer numbers achieved with different TV formats (e.g. individual match vs. conference) offered by the pay TV channel "Sky". The investigations showed that buyers tend to be sceptical that interesting league products, such as live conferences and highlight coverage, would also be offered under an individual marketing model. A comprehensive coverage of league events can raise the quality and range of the coverage and make popular forms of reporting, such as live conferences, possible.

Without conclusively deciding whether the exemption provisions of Section 2 GWB and Art. 101 (3) TFEU apply, the Bundeskartellamt expects the new marketing model, which is part of the commitments, to be able to offer consumers a fair share of the benefits (consumer participation). For this it must in principle be possible for all interested parties to acquire the broadcasting rights for the league season. This requires in the first place transparent and non-discriminatory award procedures. In addition, there has to be a broad range of broadcasting rights packages on offer. In principle, buyers of different types of broadcasting and transmission channels have to be able to bid for the rights. The joint selling model does not have to ensure, however, that the business model of each buyer is served and in the form preferred by the buyer. A specific market result is also not necessary for adequate consumer participation.

Against this background, the Bundeskartellamt examined a number of individual aspects. It considered in particular the two scenarios which the marketing model provides for highlight coverage on free TV. The first scenario envisages the broadcast of a highlight package on Saturday nights at 18:30h via the transmission path "Broadcast" (cable, satellite, terrestrial). The second scenario provides for free highlight coverage on Saturday nights via the transmission path "Netcast II", i.e. via the Internet. In this scenario, the highlight coverage via the transmission path "Broadcast" would only be available as of 21:45h. The Bundeskartellamt holds the view that both scenarios can provide for adequate consumer participation. Other aspects that were debated were, for example, the necessity of a so-called "no-single-buyer" rule, the separation or bundling of transmission paths, the extent of obligations to fully exploit the purchased rights and the requirements placed on a transparent and non-discriminatory award procedure.

One reason why the proceedings were terminated by way of commitments under Section 32 b GWB was that the proposed marketing model offered a broad, competitively organised access to league products via different transmission types and channels. Such access could not have been assured by means of an individual marketing of the broadcasting rights. A decision under Section 32 b GWB makes it possible to allow for this option while at the same time monitoring adherence to the mandate of transparency and non-discrimination.