

**Case summary**

22 February 2017

Title:	Joint selling of media rights to matches of the German Bundesliga
Sector:	Sports media rights
Ref:	B 6 – 32/15
Date of Decision:	11 April 2016

The Bundeskartellamt has concluded its examination proceedings on the joint selling of media rights to matches of the 1st and 2nd German leagues (*Bundesliga*) and the marketing model based on the joint selling of rights for the 2017/2018 seasons onwards. The proceedings could be concluded following commitments under Section 32 b of the German Competition Act, GWB.

The rights to the audiovisual coverage of the matches of the two football leagues have always been jointly sold by the German League Association. All the clubs of the 1st and 2nd leagues are members of the league association. By contract and under its articles of association the league association has the exclusive right to sell the audiovisual media rights concerned. The individual league clubs only have rights to delayed audiovisual coverage of the league matches of their team. The football association uses the services of its wholly-owned subsidiary, Deutsche Fußball Liga GmbH (DFL) for marketing the rights.

In its preliminary assessment the Bundeskartellamt found that the joint selling agreement and the marketing model based on the agreement for the 2017/18 season onwards restrict competition on the markets affected and therefore fall under the prohibition of cartels. One of the markets affected is the market for national media rights for year-round competitions in which clubs of the 1st and 2nd Bundesliga participate¹. The other is the downstream market for pay TV which, in view of the very specific demand for live coverage of Bundesliga matches, could possibly be divided further into a market for pay-video services for the live broadcasting of premium sports events or for the live coverage of Bundesliga matches. The Bundeskartellamt has left open the exact market definition because it has competition concerns about all the possible definition variations.

¹ see case summary of 12 January 2012 – ref. B6-114/10:

http://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2012/B6-114-10.pdf?__blob=publicationFile&v=4

In the Bundeskartellamt's view the joint selling of media rights to Bundesliga matches by DFL is not a horizontal hardcore restriction by object in the sense of an institutionalised joint selling of rights with joint pricing and revenue distribution. Even if rights were sold individually by the clubs, a minimum amount of coordination and aggregation would probably be necessary for the development of club and league products. However, in the authority's view the exclusive joint selling of league products compared to club products and in particular the possibilities and incentives created by the resulting market power to foreclose the downstream pay TV market are anti-competitive. The Bundeskartellamt has now attached greater importance to these factors than it did in its earlier decision in 2012². In view of market developments and the potential of the Internet, the authority meanwhile regards as more important the fact that an institutionalised coordination between the league association and the DFL is creating a seller of rights which, in the absence of potential competition on the relevant rights market, now has a quasi-monopoly or at least significant market power. The specific marketing model design enables the football association to use this position to limit access to the rights by reducing their supply and foreclosing the downstream markets. This is achieved by hindering the market entry of potential buyers of rights as the original model allows for the exclusive acquisition of live rights by a single buyer, thus extracting the buyer's maximum willingness to pay. With the growing technical and commercial possibilities provided by the Internet³ this foreclosure effect of joint selling also restricts competition in innovation on the Internet. This is particularly so because rights are usually granted for several years, in this case, four years. The Bundeskartellamt no longer considers the German television landscape, which is still predominantly characterised by free-to-air services, as a sufficiently corrective factor.

After its preliminary assessment of the case the Bundeskartellamt established that the principally possible exemption of the competition restraints caused by the joint selling could no longer be assumed in particular because the restraints were not indispensable and competition on the upstream and downstream market was possibly eliminated. In the authority's view the original marketing model could and would most likely have led to the acquisition of all the live rights to Bundesliga matches by a single buyer.

The commitments offered by DFL to dispel the concerns, which were declared binding by the Bundeskartellamt, include among other things the introduction for the first time of a 'no single

² see case summary of 12 January 2012 – ref. B6-114/10:
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³ OTT and IP TV

buyer' rule⁴. Under this rule a sufficient share of substantial live rights to Bundesliga matches is to be awarded to a second bidder. Each of the media rights packages covered by the 'no single buyer' rule allows the buyer, in addition to the live rights to the matches of individual clubs, the right to broadcast highlights of all the matches of a match day immediately after the final whistle, and thus overall coverage of the league dynamics.

According to the Bundeskartellamt's assessment, the commitments contain remedies, in particular the 'no single buyer' rule, to sufficiently prevent any restriction of competition in terms of innovation including competition from substitutes. On the basis of the market surveys and market test carried out, each of the relevant rights packages seems substantial enough to allow an alternative buyer to develop a competitive Bundesliga offer which would have sufficiently strong pro-competitive effects on the market. The 'no single buyer' rule does not mean that the Bundesliga live offer is to be split among several pay TV providers (each of which would have its exclusive share of the rights). In this case the end consumer would have to sign up to more than one subscription. The different offers for end consumers can be combined into one offer on a non-exclusive basis, e.g. by means of distribution or sub-licensing agreements. The 'no single buyer' rule only prohibits the exclusive broadcasting of all Bundesliga matches by one provider and the exclusion of its competitors from access to these rights for at least the duration of the licensing period.

The DFL issued its tender in compliance with its commitments and awarded all the live rights to matches of the 1st and 2nd football leagues to Sky. Here, in accordance with the 'no single buyer' rule, an exception was made for a package containing live rights to Bundesliga matches on Friday evenings and which DFL awarded to a second bidder, Discovery (Eurosport).

The commitment agreement was contested by Sky Deutschland before the Düsseldorf Higher Regional Court. The commitment decision is final. The appeal filed by Sky Deutschland was rejected by the Düsseldorf Higher Regional Court.

⁴ 'no single buyer' rule