

Sale of Serie A Broadcasting Rights, the Regional Administrative Court of Lazio Annuls the Decision of the Italian Competition Authority

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On 23 December 2016, the Regional Administrative Court of Lazio (the TAR) annulled the decision of the Italian Competition Authority (the Authority), against Sky Italia S.r.l. (Sky); Reti Televisive Italiane S.p.A. (and its subsidiary Mediaset Premium S.p.A.) (RTI); the Italian Football League (Lega Calcio); and Infront Italy S.r.l. (Infront), concerning an alleged violation of Article 101 Treaty on the Functioning of the European Union (TFEU) on the sale of broadcasting rights of the Italian Premier League “*Serie A*” for the years 2015–2018. According to the TAR, the Authority failed to observe the mandatory time-limit to contest the alleged conduct. The TAR highlighted that the Authority erred in considering the alleged conduct as a market sharing agreement. Furthermore, the Authority also erred in considering the agreement as a restriction “by object.” In particular,, according to TAR, the Authority has not carried out a thorough analysis of the relevant market and has not followed the recent European case law, according to which “in order to determine whether an agreement between undertakings reveals a sufficient degree of harm that it may be considered a ‘restriction of competition by object’ within the meaning of Article 101(1) TFEU, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms part” (see Court of Justice of the European Union, case C-373/14 P, *Toshiba Corporation v European Commission*, 20 January 2016).

The broadcasting rights for the Italian Premier League “*Serie A*” are allocated, according to Legislative Decree No. 9 of 9 January 2008, through a tender issued by the Lega Calcio. In the 2014 tender, regarding the broadcasting rights for the years 2015–2018, Sky submitted the best bids for the two most relevant lots (A and B). However, considering the conditional bids presented by RTI and the possible creation of a dominant position in the market, the Lega Calcio, advised also by Infront, decided to allocate the relevant lots between Sky (lot A) and RTI (lots B and D). Then, after having received the authorization of both the Authority and the Italian Communication Authority, RTI granted to Sky the sub license of lot D. However, on 13 May 2015, the Authority opened an investigation on the decision-making process for the allocation of the broadcasting rights, and with decision of 19 April 2016, fined RTI of € 51,4 million, Infront of € 9,04 million, Sky of € 4 million and the Lega Calcio of approximately € 2 million for alleged market sharing in breach of Article 101 TFEU.

Gabriele Giunta contributed to this post.

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