



**EUROPEAN COMMISSION**

DG Competition

Information Technology, Communication and Media  
**Media**

Brussels,  
C-2 D(2004)

**Commitments of the Ligaverband in Case COMP/C.2/37.214 —  
Joint selling of the media rights to the German Bundesliga**

*(Text with EEA relevance)*

## 1. COMMITMENTS

### (1) “2 Principles for the award of exploitation rights

- (2) 2.1 Under the League’s statutes (Article 9 Rules for the exploitation of commercial rights), the League Association is entitled to conclude contracts on the television and radio coverage of matches within its sphere of responsibility. The same applies for all video- and phonograms, future technical facilities of all kinds and in any form of programme or exploitation. In derogation from this, exploitation rights are defined in section 5 which may be sold individually by the clubs and corporations of the Bundesliga and the 2. Bundesliga. All other related exploitation rights shall be sold by the League Association. Section 4 defines the exploitation right packages available to the League Association for selling to third parties (marketers and exploiters).
- (3) Given that future technical developments in the new media (i.e. the Internet, mobile telecommunications and other future exploitation rights not yet considered in this proposed solution) cannot be anticipated at the current time, the European Commission reserves the right to subject the arrangements relating to them, which are basically not available, to a single examination before 30 November 2005 with effect from 1 July 2006.
- (4) 2.2 The exploitation rights of the League Association shall be offered by the Association itself or a marketing partner in the form of packages. An applicant may apply for several of these individual packages at the same time. The exploitation rights packages shall be sold by the rights owner, taking into account the needs of consumers, the broadcasting plan and the strategic significance of the partnership with the exploiter for professional football, the further development of technical forms of exploitation and, not least, economic payment.
- (5) 2.3 Those responsible for the sale of exploitation rights and forms shall ensure that exploitation contracts do not last for more than a maximum of three seasons. Care will also be taken in this respect to see that negotiations for following seasons are not restricted by options and preemptive rights, etc. The clubs and corporations of the Bundesliga and the 2. Bundesliga shall also ensure that their contracts do not exceed the duration of the central exploitation contracts.
- (6) 2.4 The exploitation rights available to the clubs and corporations of the Bundesliga and the 2. Bundesliga under section 5 shall not be sold in such a way that a product can be devised by the exploiter which presents the Bundesliga and/or the 2. Bundesliga in their entirety or in substantial parts (ban on bundling). The same applies to cases where unused exploitation packages of the League Association are exercised by the clubs and corporations in accordance with section 6. More extensive bundling of exploitation rights than that formulated below is thus ruled out.
- (7) The clubs and corporations, or the marketing agencies commissioned by them, should ensure in respect of the individual selling of exploitation rights that an exploiter can exploit at most two Bundesliga and/or 2. Bundesliga matches per

*match day. In the case of all exploitation rights sold by the clubs and corporations it shall be guaranteed that the resulting programme or offer is made clearly recognisable to the consumer as coming from the club or corporation concerned.*

- (8) *When selling exploitation rights for coverage with any time delay, the clubs and corporations should also ensure that the coverage of the Bundesliga and/or 2. Bundesliga (match scenes, interviews, pre- and post-match coverage, statistics, etc.) should take up a maximum of 30% of a broadcast or an offer. This shall not apply to programmes and offers which are broadcast or offered on the exploitation platform of the club or corporation concerned, e.g. club TV channel or club radio. In such cases, the coverage in a broadcast or an offer may be devoted 100% to the Bundesliga and/or the 2. Bundesliga. In the case of programmes and offers which relate exclusively to a club or corporation, e.g. club TV magazine or club radio show, and are broadcast or offered on a third party's platform, up to 50% of the total extent of the programme or offer may be devoted to coverage about the Bundesliga and/or the 2. Bundesliga.*
- (9) *2.5 In the field of the traditional (TV, radio, etc.) and the new electronic media (Internet in its different forms and image-playing mobile telecommunications) the League Association may produce its own supply and offer this to the final consumer via its own technical platform or in cooperation with a partner. The basis for this is that this own supply can also be offered by other exploiters or that no contract in line with market principles can be concluded for the corresponding exploitation rights of the League Association.*
- (10) *2.6 The economic value added of the exploitation rights sold by the clubs and corporations of the Bundesliga and the 2. Bundesliga is subject within the League's articles of association to the arrangements in section 18 of the Order on the exploitation of commercial rights (OVR). Where clubs and corporations are compensated by the contracting partners in non-cash benefits or services, these shall be assessed in accordance with objective, i.e. normal commercial, financial terms.*
- (11) *For practical reasons, the related exploitation contracts shall be negotiated and effectively concluded with third parties in each case by the home club in the Bundesliga or 2. Bundesliga match concerned. Together with any amendments or supplementary clauses, they shall be disclosed without undue delay to the League Association as the (joint) beneficiary of the exploitation rights. The League Association shall then have the right, within two weeks of receiving the signed exploitation contract, to raise objections on objective grounds, i.e. on account of an infringement of this proposed solution. To this end, each exploitation contract shall contain a provision whereby it is subject to conditions precedent should the League Association object to provisions of the exploitation contract on objective grounds.*
- (12) *2.7 Because of the significance of the "League's branding", only the League Association shall be entitled to produce or have produced a moving video signal of Bundesliga and 2. Bundesliga matches. In this respect it shall ensure that the latter is made available to the clubs and corporations of the Bundesliga and 2. Bundesliga for the exploitation contracts which they have concluded, with reimbursement of any extra technical costs. The clubs or corporations shall not participate therefore in the costs generated by the production of the basic signal.*

- (13) *Should the League Association not produce a moving video signal or have one produced, the club or corporation concerned shall be entitled to produce this or have it produced from its home games. In such cases, the clubs and corporations shall undertake that the moving video signal/material shall be made available to the League Association, with compensation for any extra technical costs, for exploitations for League purposes. In such cases, therefore, the League Association shall not be liable for the costs associated with the production of the basic signal.*
- (14) *2.8 The form of the exploitation packages described in section 4 and the exploitation content set out in section 5 may be altered by the European Commission only at the request of the League Association, if changed circumstances or the requirements of sensible marketing make this seem appropriate.*
- (15) **3. Principles for the award procedure**
- (16) *3.1 The League Association shall define technical conditions and qualitative criteria which are to be met and guaranteed by exploiters when covering the Bundesliga and the 2. Bundesliga for the purposes of “quality assurance” and “branding”. “Technical conditions” shall include, for example, the technical range of television broadcasters and production expenditure on generating the signal. Examples of qualitative criteria are the audience share of a television broadcaster, its broadcasting plan, the start of coverage and the proposed amount of broadcasting per day. Technical conditions and qualitative criteria shall be checked at regular intervals as the market changes to see if they need to be updated.*
- (17) *3.2 The League Association shall be able to sell the exploitation rights as a whole or in substantial blocks to a marketing partner, or to conclude agreements direct with exploiters. The direct sale of exploitation rights by the League Association to exploiters shall be by an official public invitation to tender. Should the League Association sell the exploitation rights to a marketing partner, it must ensure that the award procedure which applies to it is used by its marketing partner.*
- (18) *3.3 The League Association shall ensure that the official tender for the exploitation rights is advertised on its homepage [www.bundesliga.de](http://www.bundesliga.de) at least four weeks before the start of the procedure.*
- (19) *3.4 All marketers and exploiters that meet the technical conditions and qualitative criteria in paragraph 3.1 shall be allowed by the League Association without discrimination to bid for the respective rights packages. All interested parties shall be entitled in this respect to request the appropriate tender documents from the League Association.*
- (20) *3.5 The League Association shall ensure that the invitation to submit a bid (public invitation to tender) contains all the relevant information about the content of the available rights packages and the terms and conditions which an applicant must satisfy when acquiring the exploitation rights.*
- (21) *3.6 The League Association shall ensure that all marketers and exploiters who meet the technical conditions and qualitative criteria in accordance with*

*paragraph 3.1 are allowed a period of at least four weeks in which to submit a bid. In addition, all interested parties may, on written request, have the individual exploitation rights packages and the sale procedure explained to them by the League Association or its rights marketers in good time.*

(22) 3.7 *The agreements shall be concluded with the individual bidders by the League Association or where appropriate its marketing partner on the basis of the bids submitted. The content of the bids submitted shall be treated in confidence.*

(23) 3.8 *The League Association shall agree to arbitration in the event of disputes with third parties over the award procedure. Similarly, it shall oblige a rights marketer to do so, if the latter uses the award procedure after acquiring the exploitation rights. The basis for this is that all interested parties submit to an arbitration procedure when they submit a bid. All such disputes shall be decided without appeal according to the arbitration rules of the German Institute for Arbitration (DIS). Arbitration proceedings shall take place at the headquarters of the League Association. The applicable law shall be German law. The arbitration proceedings shall be conducted in German.*

(24) **4. Substantive exploitation packages of the League Association**

(25) *Package 1 and Package 2*

(26) ***Live transmissions of the Bundesliga and the 2. Bundesliga on TV in Germany***

(27) *These exploitation rights shall be divided into packages 1 and 2, to reflect the future market reality. As the future development of the market is uncertain, it shall be possible for the League Association, where market conditions change, to adapt the exploitation rights covered by packages 1 and 2 in conformity with market trends, provided that there are still two independent valid packages. Where account is taken in the award procedure of the aspects mentioned in paragraph 2.2 and a market structure exists which basically corresponds to the current one, the packages may also be sold to one exploiter.*

(28) *Future licensing agreements for exploitation rights to Bundesliga and 2. Bundesliga matches are not the subject of these proceedings. A separate examination under Community law cannot be ruled out in this respect, in particular where several centrally marketed packages with exclusive exploitation rights are acquired by one exploiter. Licensing agreements which have already been concluded, including the phasing-in components in accordance with the introductory remark on page 4, are the subject of these proceedings.*

(29) 4.1 *Package 1 (from 1 July 2006)*

(30) ***Live transmission of the Bundesliga and 2. Bundesliga main match days on TV in Germany***

(31) *This part-package covers the right to the parallel, full-length live transmission of all Bundesliga games on the main match day, currently Saturday, on TV. It also covers the right to the parallel, full-length live transmission of all games of the 2. Bundesliga on its main match day, which is currently Sunday. Another component of this part-package is the parallel live transfer in the form of a conference*

*channel of all matches on the current secondary match days of the Bundesliga (Sunday) and the 2. Bundesliga (Friday). The part-package may also contain the right to exploit all or selected games of the Bundesliga and the 2. Bundesliga in the form of deferred highlights coverage with priority scheduling (first report) on pay-TV or pay-per-view. Further, post-match coverage rights without priority scheduling for all Bundesliga and 2. Bundesliga games may be covered by this part-package.*

(32) 4.2 Package 2 (from 1 July 2006)

(33) ***Live transmission of the Bundesliga and the 2. Bundesliga secondary fixture schedule on TV in Germany***

(34) *This part-package covers the right to the parallel full-length live transmission of all Bundesliga games on TV on the secondary match day, currently Sunday. It also contains the right to the parallel, full-length live transmission of all games of the 2. Bundesliga on its secondary match day, which is currently Friday. Another component of this part-package is the parallel live transfer in the form of a conference channel of all matches on the current main match days of the Bundesliga (Saturday) and the 2. Bundesliga (Sunday). The part-package may also contain the right to exploit all or selected games of the Bundesliga and the 2. Bundesliga in the form of a deferred highlights report with priority scheduling (first report) on pay-TV or pay-per-view. Further, post-match coverage rights without priority scheduling for all Bundesliga and 2. Bundesliga games may be covered by this part package.*

(35) 4.3 Package 3 (from 1 July 2006)

(36) ***Live transmissions and deferred first exploitation of the Bundesliga in Germany on free-TV***

(37) *The acquirer of the exploitation rights shall be entitled to transmit at least two live, full-length Bundesliga matches per season on free-TV, to be agreed with the League Association. The package also contains the right to be able to transmit Bundesliga matches on free-TV in Germany as deferred highlight coverage with priority scheduling (first report). It also covers the right to use the said matches to a defined extent for subsequent exploitation on the acquirer's own programme. The package may be acquired by an exploiter in accordance with paragraph 2.2 or may be granted to several exploiters in a manner to be agreed.*

(38) 4.4 Package 4 (from 1 July 2006)

(39) ***Live transmissions and deferred first exploitation of the 2. Bundesliga in Germany on free-TV***

(40) *This package covers the right to the live, full-length transmission of a number to be defined of 2. Bundesliga games per season on free-TV. It also contains the right to be able to transmit 2. Bundesliga matches on free-TV in Germany as deferred highlight coverage with priority scheduling (first report). It also covers the right to use the said matches to a defined extent for subsequent exploitation on the acquirer's own programme. The package may be acquired by an exploiter in accordance with section 2.2 or may be used by several exploiters in a manner to be agreed.*

- (41) 4.5 *Package 5 (from 1 July 2006)*
- (42) ***Secondary/tertiary exploitation rights to the Bundesliga and/or 2. Bundesliga for free-TV in Germany***
- (43) *The League Association has the right to sell secondary and/or tertiary exploitation rights in the Bundesliga and/or 2. Bundesliga to television exploiters in Germany. In view of the differences between individual free-TV broadcasters in Germany as regards programme orientation, programme schedules, coverage and economic impact, the League Association shall be entitled as regards the extent of the rights and the ordering of priorities of both timing and scope to make individual adjustments to the rights packages.*
- (44) 4.6 *Package 6 (to 30 June 2006 /from 1 July 2006)*
- (45) ***Live- and/or near-live transmission of the Bundesliga and the 2. Bundesliga on the Internet***
- (46) *Until 30 June 2006 this package, to be more fully described by the League Association in the invitation to tender, contains the right to be able to transmit Bundesliga and 2. Bundesliga games as chosen by the League Association live and/or near-live, in full or as extracts on the Internet; from 1 July 2006, the package contains the right to be able to transmit Bundesliga and 2. Bundesliga games live (with up to five minutes' deferment for technical or editorial reasons) and/or near-live, in full or as extracts on the Internet. From 1 July 2006 the League Association will, on every day on which games are held, offer a total of at least 90 minutes live coverage (with up to five minutes' deferment for technical or editorial reasons) of matches on the Internet, e.g. in the form of a conference channel. Coverage per game will not be less than five minutes and will contain all important match events, e.g. goals, penalty kicks and substitutions. Also covered is the right to report on the said matches in a defined context after the event and using extracts without priority scheduling (subsequent exploitation). The package may be acquired by an exploiter in accordance with paragraph 2.2 or may be used by several exploiters in a manner to be agreed.*
- (47) 4.7 *Package 7 (from 1 July 2004)*
- (48) ***Highlight coverage of the Bundesliga and the 2. Bundesliga on the Internet***
- (49) *This package contains, with due regard to the priority of package 6, the right to exploit the matches of the Bundesliga and/or the 2. Bundesliga on the Internet as deferred highlight coverage (subsequent exploitation). The League Association is entitled to sell the package to different exploiters and to agree individual performance content, e.g. extent and time of exploitation, with them.*
- (50) 4.8 *Package 8 (from 1 July 2004)*
- (51) ***Live/near-live/deferred transmission of the Bundesliga and the 2. Bundesliga via mobile phones***
- (52) *This package, to be defined in more detail by the League Association in the invitation to tender, contains the right to have the matches of the Bundesliga and/or 2. Bundesliga as chosen by the League Association transmitted live and/or*

*near-live and/or after the event, in full and/or using extracts, by mobile phone network operators. The League Association shall be authorised to let this package be used with due regard to paragraph 2.2 by one or more mobile phone network operators. Should several operators of mobile phone networks use this package, the League Association shall be entitled to agree individual performance content, e.g. extent and time of exploitation, with them.*

(53) 4.9 Package 9 (from 1 July 2004)

**(54) Highlight coverage of the Bundesliga and the 2. Bundesliga via mobile phones**

(55) *This rights package covers, with due regard for the priority of package 8, the exploitation, after the event and using extracts, of Bundesliga and/or 2. Bundesliga matches by mobile phone network operators. The package may be sold, on the basis of individually agreed performance content, to different mobile phone network operators.*

(56) 4.10 Package 10 (from 1 July 2004)

**(57) Other exploitation rights/parallel use rights/other forms of exploitation**

(58) *This package contains all the media exploitation rights to the Bundesliga and/or the 2. Bundesliga, which are not assigned to packages 1 to 9 (paragraphs 4.1 to 4.9) and exploitation rights 1 to 8 (paragraphs 5.1 to 5.8). By these are meant inter alia moving video exploitations as part of public presentations, for computer-aided game or player analyses, in advertising and in the form of video/phonograms for final consumers (video, DVD, CD-Rom, etc.), audio exploitation rights and other exploitation rights in the Bundesliga and the 2. Bundesliga. The League Association is entitled to sell the exploitation rights on the basis of individually agreed performance content, to different exploiters.*

**(59) 5. Essential exploitation content of the clubs and corporations**

(60) 5.1 Exploitation right 1 (from 1 July 2006)

**(61) Deferred coverage on free-TV in States of the European Economic Area**

(62) *Every club or corporation shall be entitled to grant free-TV broadcasters on a non-exclusive basis and for one-off transmission in States of the European Economic Area (EEA) the right to the deferred coverage of its home games 24 hours or more after the end of the game, up to the full length of the match. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

(63) 5.2 Exploitation right 2 (to 30 June 2006/from 1 July 2006)

**(64) Deferred coverage over the Internet on the club homepage**

(65) *Up to 30 June 2006, every club or corporation may exploit on its homepage, on a non-exclusive basis, 90 minutes or more after the end of the game a summary of its home and away games lasting a maximum of 30 minutes. Twenty-four hours or more after the end of the game, the club or corporation may exploit on its homepage, on a non-exclusive basis, its home and away games up to their full length. Alternatively, clubs or corporations may exploit the abovementioned*

*rights by outsourcing them exclusively to the homepage of a third party. From 1 July 2006 every club or corporation may cover, on a non-exclusive basis after the end of the game and without restriction as to length, its home and away games on its homepage or on those of third parties. A general condition of exploitation on one's own homepage or on those of third parties is that the exploitations are made clearly recognisable as an individual club-related offer or a programme of the club concerned. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

(66) 5.3 *Exploitation right 3 (from 1 July 2004)*

**(67) Coverage on mobile phone networks in States of the European Economic Area**

(68) *On a non-exclusive basis, the clubs and corporations may conclude agreements for the coverage of their home games only for mobile phone networks in States of the European Economic Area (EEA) with their operators. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

(69) 5.4 *Exploitation right 4 (from 1 July 2004)*

**(70) Coverage on stadium TV at home games**

(71) *In the case of "stadium TV" every club or corporation may, on a non-exclusive basis, transmit before the start of play up to three minutes' footage of past games in the current encounter and up to three minutes' footage of matches in the current season. During the game, goals from the current match may be reshown for up to ten seconds directly following the interruption of play after the successful goal. Up to three minutes' footage from the current match may be shown at half time, and up to five minutes at the end of the game. At the earliest 15 minutes after the end of the game, up to three minutes' footage from any other, freely chosen game on that day may be shown. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

(72) 5.5 *Exploitation right 5 (from 1 July 2004)*

**(73) Use of moving video material for computer-assisted game and player analyses**

(74) *On a non-exclusive basis, every club or corporation may use for its own purposes available video material of its home and away games, or cause it to be used, for computer-assisted game and player analyses. In the case of its home games, the club or corporation may also record the relevant game with a camera specially for that purpose and use the video material obtained in the above form, or cause it to be so used. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

(75) 5.6 *Exploitation right 6 (from 1 July 2004)*

**(76) Use of moving video material for advertising**

(77) *Every club or corporation shall have the right on a non-exclusive basis to use video material from its home and away games for a maximum of 30 seconds per match for its own advertising measures, or cause it to be used for advertising by its stadium sponsor, chief sponsor and equipment supplier, e.g. TV and cinema*

*spots and exhibition appearances. Any rights of third parties, e.g. other clubs involved or their players, shall require prior clearance. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

(78) 5.7 *Exploitation right 7 (from 1 July 2004)*

**(79) *Use of moving video material for video-/phonograms for final consumers***

(80) *Clubs and corporations may, on a non-exclusive basis, use video material of their home and away games, or cause it to be used, to produce exclusively club-related video-/phonogram products for final consumers, e.g. video, DVD and CD-Rom. The video material of a match may however be used for such purposes at the earliest after the end of the next match day, but at any rate after 14 days. The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

(81) 5.8 *Exploitation right 8 (from 1 July 2004)*

**(82) *Use of audio exploitation rights***

(83) *Every club or corporation may grant free-to-air radio broadcasters in States of the European Economic Area (EEA) the right to be able to report its home games after the end of the game without restriction of the scope of exploitation. Radio broadcasters may be authorised by clubs or corporations to make live transmissions, if it can be guaranteed that, in coverage containing several extracts, these are not exploited for more than a maximum of ten minutes per half.*

(84) *Every club or corporation may, on a non-exclusive basis, report in audio form its own games live and after the event at up to full length on its own homepage. Alternatively, clubs and corporations may exploit the abovementioned rights by outsourcing them exclusively to the homepage of a third party. This is conditional on the exploitation being made clearly recognisable as an individual club-related offer or a programme of the club concerned.*

(85) *On a non-exclusive basis, clubs and corporations may conclude agreements for the audio coverage of their home games with the operators of mobile telephone networks in States of the European Economic Area (EEA). From the start of the game until two hours after the end, exploitation shall consist of an unlimited number of deferred clips. During the game, i.e. from kick-off to final whistle, clips may not be longer than a maximum of 60 seconds each. More than two hours after the end of the game, the match may be broadcast at up to full length.*

(86) *The League Association undertakes when selling its packages to point out the restriction on exclusiveness.*

**(87) *6. Procedures for “unused exploitation packages” of the League Association***

(88) *An exploitation package of the League Association shall be deemed to be “used”, if an agreement has been concluded with at least one exploiter concerning the defined scope of its rights (see section 4). An exploitation package of the League Association shall be deemed to be “unused”, if on more than two days per season an exploiter does not exploit the number of matches it is allowed, does not report*

*them in the agreed form of exploitation (live, near-live or after the event) or seriously falls short of the amount of exploitation agreed. Exceptions are superior grounds with, for example, technical or editorial causes.*

- (89) *If the League Association or its marketing partners do not use one or more of its packages listed in section 4, i.e. do not or cannot sell it to an exploiter (“unused exploitation package”), the following procedure shall apply to the unused exploitation rights.*
- (90) *6.1 If the League Association or its marketing partners have not concluded an agreement with an exploiter for an exploitation package within 14 days following the first day of a football year, the exploitation rights covered thereby may be sold from that time until the end of the football year on a non-exclusive basis by the home clubs of the respective Bundesliga or 2. Bundesliga encounter in accordance with paragraph 2.6. Mobile telephony rights (paragraphs 4.8 and 4.9) are excluded from this, since they are at any rate available to clubs and corporations on a large scale under paragraph 5.3. Accordingly, clubs shall have a free hand, but must respect the respective restrictions arising out of the principles for the sale of exploitation rights (section 2) and the essential exploitation rights of the League Association (paragraphs 4.1 to 4.10).*
- (91) *The procedure laid down in paragraph 6.1 shall not prevent the League Association or its marketing partners from selling an exploitation package to an exploiter after 14 days following the first day of the football year. The exploitation package offered or sold by it cannot grant any exclusivity, however, until the end of the football year concerned, on account of the parallel exploitation rights offered by the home clubs.*
- (92) *6.3 For the sake of completeness, exploitation rights not listed under sections 4 and 5 shall be subject to central marketing by the League Association. The League Association will assign such exploitation rights either to an exploitation package in section 4 or design a separate exploitation package for them.*
- (93) *6.4 If an exploiter does not exercise the exploitation rights granted to it on more than two days in a season, this shall not prejudice the further effectiveness of the agreement. The exploiter will be obliged to inform the League Association or its marketing partners of the situation immediately, so that the Association can inform the clubs and corporations without delay. The exploitation rights covered by the agreement may then be sold on a non-exclusive basis until the end of the respective football year by the home clubs concerned in the Bundesliga and 2. Bundesliga matches in accordance with paragraph 2.6. They shall also be obliged in such cases to respect restrictions resulting from the principles for the sale of exploitation rights (section 2) and the fundamental exploitation rights of the League Association (paragraphs 4.1 to 4.10).”*