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Key Developments and the Latest Cases

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1. INTRODUCTION

Ladies and gentlemen,

It is a great pleasure for me to be back here today and to give a review of the most important events in the sports media business in Europe from an EC Competition Law perspective.

I spoke at the C5 conference about a year ago on EC Competition Law and sports media. At that time I focussed on the UEFA Champions League case from July 2003 and the German Bundesliga decision that had just been adopted by the College of Commissioners on 19 January 2005.² I also mentioned some of the national cases from Denmark, the Netherlands and France.

Now, after a year's intermission let us see what the play time I have been given for a second half may offer.

We have seen the outcome of the German Bundesliga tender in December. Belgacom, the Belgian telecom's operator has surprised everybody by buying the Belgian football rights and as you will know the European Commission published a notice pursuant to Article 19(3) of Regulation 17 regarding the English Premier League in April 2004.³ I will have a look at where we are with that case. Finally, the European Commission terminated its sector inquiry into sports content for 3G mobile telephony.⁴

However, before we look at these latest cases, let me provide you with an overview of the rules of the "competition law game" and what aspects of sports are not in the focus of EC Competition Law. I will review the basic principles we apply to joint selling of media rights as well as to exclusive media rights deals.

2. "THE RULES OF THE GAME": WHAT ASPECTS OF SPORTS ARE EXCLUDED FROM THE EU COMPETITION RULES

The liberalisation of the TV markets in the 1980-1990s has led to the proliferation of TV channels. Later, new media services have been added to the scenario. New opportunities have been created for private operators in the media markets resulting in unprecedented demand for sports media rights, as it seems that the possession of a minimum portfolio sports rights is crucial for most media operators.

² See the Commission press release, IP/05/62 and MEMO/05/16 of 19 January 2005. For a summary of the Commitment decision, see OJ L134 of 27.5.2005, p.46 and for a non-confidential version of the commitment decision see: <http://europa.eu.int/comm/competition/antitrust/cases/decisions/37214/en.pdf>

³ OJ C 115 of 30.4.2006, p. 3.

⁴ See IP/04/134 of 30 January 2004: "*Commission launches sector inquiry into the sale of sports rights to Internet and 3G mobile operators*". The Commission's concluding report on the 3G Sector Inquiry: http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/new_media/3g/

I am sure that you are well aware of the incredible rise in the value of sports media rights over the past years. As a result, sports associations and clubs derive a major part of their income directly from TV revenues alongside ticket sales and sponsoring. The European Commission cannot therefore close its eyes to the economic aspects of sports - and in particular the fact that sports media rights has a major impact on the media markets.

The concentration of the valuable media rights in the hands of very few sports federations reduces the number of rights available. This concentration is often a consequence of agreements among the parties involved. Availability of media rights is reduced still further by rights contracts being concluded on an exclusive basis for a long duration. The rights often comprise all or most of an event or a tournament and for all modes of exploitation. This is generally to the advantage of the largest broadcasters and strengthens their market position significantly, because they are the only operators who are able to bid for these large packages. As a consequence, we see anti-competitive restrictions, such as output restrictions, foreclosure effects or hampered development of new services in neighbouring markets.

The European Commission is fully aware of and supports that sports has an important social and cultural function in society. The European Commission therefore recognises the specificity of sports as outlined in the Nice Declaration on the value of sports, which was made by the French Presidency at the European Council.⁵ There are however, limits to this recognition of sport's specificity in the Treaty.

The Court of Justice has ruled that, having regard to the objectives of the European Community, sport is subject to Community law to the extent it constitutes an economic activity within the meaning of Article 2 of the Treaty.⁶

EC competition law will therefore not apply to all rules and practices applied by the sports bodies and associations. The European Commission's competence under Articles 81 and 82 of the EC Treaty is restricted to the economic activities of the sports bodies.

Football clubs and associations engage in economic activities⁷ and they are considered to be undertakings within the meaning of Article 81 of the EC Treaty. For example, they sell tickets, they transfer players, they sell merchandising articles and they conclude advertising and sponsorship agreements as well as selling broadcasting rights contracts,

⁵ CONCLUSIONS DE LA PRÉSIDENTICE CONSEIL EUROPÉEN DE NICE, 7-9 DÉCEMBRE 2000.

⁶ See judgements of the Court of Justice in Case 36/74, *Walrave v Union Cycliste Internationale*, [1974] ECR 1405, paragraph 4; Case 13/76, *Donà v Mantero*, [1976] ECR 1333, paragraph 12; Case C-415/93, *URBSF v Bosman*, [1995] ECR I-4921, paragraph 73; Joined Cases C-51/96 and C-191/97, *Christelle Delière v Ligue francophone de judo et disciplines associées ASBL, Ligue belge de judo ASBL, Union Européenne de judo (C-51/96) and François Pacquée (C-191/97)* [2000] ECR 2549, paragraphs 41-42; Case C-176/96, *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, [2000] ECR 2681, para. 32-33.

⁷ The size of the undertaking does not matter and the concept does not presuppose a profit-making intention. See opinion of Advocate General Lenz in Case C-415/93, *URBSF v Bosman*, [1995] ECR I-4921, paragraph 255 referring to the judgment in Joined Cases 209 to 215 and 218/78, *Van Landuyck v. Commission* [1980] ECR 3125, paragraph 88.

etc. Moreover, notwithstanding the fact that some of these entities are non-profit making bodies, sports associations, such as UEFA and the national football associations, are considered being undertakings within the meaning of Article 81 of the EC Treaty since they also undertake economic activities.

The European Commission is not concerned with “genuine sports rules” that are applied in an objective, transparent and non-discriminatory manner.

The European Commission decides on a case-by-case basis what must be regarded as a genuine sports rule. The Court follows this approach. For example, in the *Meca-Medina*-ruling⁸, the CFI agreed with the European Commission that the anti-doping rules do not fall under Article 81 and 82 of the EC Treaty because they are pure sporting rules. In a more recent judgement in the *PIAU*-case⁹ about FIFA’s rules on players’ agents the CFI held that the issuing of rules for players agents is an economic activity.

3. THE EUROPEAN COMMISSION'S EC COMPETITION LAW ENFORCEMENT ACTIVITIES IN THE SPORTS MEDIA FIELD

Let me now turn to the European Commission’s investigations of joint selling of the TV rights by football clubs via their national or international football associations. We have also made a stint into Formula One¹⁰ but this case has particular features and I do not find it relevant to discuss the case any further here. There is the ongoing case regarding the joint buying of sports media rights by the European public service broadcasters in the context of the European Broadcasting Union. However, since this is an ongoing un-concluded investigation, I cannot discuss the details of that investigation here.¹¹

3.1. Joint selling of sports media rights and Article 81 of the EC Treaty

Let me now turn to joint selling of sports media rights.

⁸ Judgment of the Court of First Instance in Case T-313/02 *David Meca-Medina and Igor Majcen v Commission of the European Communities* of 30 September 2004 appealed to the Court of Justice and registered under C-519/04 P, OJ C57 of 5.3.2005, p. 16.

⁹ “The Court observes...The object of the occupation of players' agent is, for a fee and on regular basis, to introduce a player to a club with a view to the conclusion of a contract of employment, or to introduce two clubs to one another with a view to the conclusion of a transfer contract. It is therefore an economic activity for the provision of services, which does not fall within the special nature of sport as defined by the case-law.” PRESS RELEASE No 08/05 of 26 January 2005. Judgment of the Court of First Instance in Case T-193/02 *Laurent Piau v Commission of the European Communities* of 26 January 2005.

¹⁰ See IP/03/1491 of 31 October 2003, Commission ends monitoring of FIA/Formula One compliance with 2001 settlement. See also Notice published in the Official Journal, C 169 of 13 June 2001, pp 5-11. See also press release IP/01/1523 of 30 October 2001.

¹¹ See Commission Decision of 10 May 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case IV/32.150 — Eurovision), OJ L 151, 24.06.2000, p. 18-41. This exemption decision was annulled by the judgment of the Court of First Instance on 8 October 2002 in Joint Cases T-185/00, T-216/00, T-299/00 and T-300/00 *Télévision and Others v Commission* [2002] ECR II-3805.

3.1.1. *The relevant market*

Any starting point in an anti-trust investigation is defining the relevant market. The starting point is normally the test as set out in the European Commission's notice on the definition of the relevant market for the purposes of EC Competition Law.¹² It is basically a test of substitutability of products. Although the application of this test is difficult to apply to the media sector, we consider that the test remains a valid framework for defining markets in competition cases relating to the media sector.

In the media sector, products and services are not always clearly identifiable and separable. Questions arise to what extent technological convergence affects the European Commission's analysis with regard to the market definition in the media field.

However, in plain language a viewer who wants to see a given sports event is unlikely to be satisfied with coverage of another event. This applies in particular in respect of top sports events. In determining the relevant product market we have used the criteria of ability to attract a particular audience, brand image and advertising revenues. The evolution of the European Commission's practice has led to the definition of markets as narrow as a market for the acquisition of TV rights of football, which is played regularly throughout every year.¹³ This gives the holder of such TV rights a market power that competing broadcasters cannot easily rival.

Sports can be consumed via different distribution modes each displaying their own characteristics. Here I think about free-TV, pay-TV, Internet and mobile platforms. If a sports fan has the time and opportunity to watch a match in his home cinema installation, he is not going to be satisfied with the screen of a mobile handset.

The European Commission has therefore delineated the content rights markets into two market levels:

¹² Published in the Official Journal: OJ C 372 on 9/12/1997.

¹³ In BIB/Open (Case IV/36.531 OJ 1999 L 312/1, 28) the Commission defined separate markets for the wholesale supply of film and sports channels observing that movies and sports are "key sales drivers" for pay-TV operators.

In TPS I (Case IV/ 36.237 OJ 1999 L 90/6, 34) the Commission found it universally acknowledged that film and sports are the most popular television products are able to achieve high viewing figures and reach an identifiable audience, which is especially targeted by certain advertisers.

In the UEFA Broadcasting Regulations case (Case IV/37.576 OJ 2001 L 171/12) hinted that a separate market for the broadcasting (and new media) rights for football events played regularly throughout every year could exist.

This view was confirmed in the cases Newscorp/Telepiu (Case COMP/M.2876), EC — TPS (OJ L 90, 2.4.1999, p. 6), Canal+/RTL/GJCD/JV (COMP/M.2483)(IP 01/1579), COMP/C.2-37.398 - Joint selling of the commercial rights of the UEFA Champions League, Commission decision of 23 July 2003, OJ L 291, 8.11.2003, p. 25. COMP/C.2-37.214 - Joint selling of the media rights to the German Bundesliga, Commission decision of 19 January 2005, OJ L 134, 27.05.2005, p. 46. Notice published pursuant to Article 19(3) of Council Regulation No 17 concerning case COMP/C.2/38.173 and 38.453 - joint selling of the media rights of the FA Premier League on an exclusive basis, OJ C 115, 30.04.2004, p. 3-6.

- upstream product markets for the acquisition of media rights, and
- downstream product market where the acquired rights are used to compete for advertising and subscription revenues

The European Commission is moreover distinguishing between free-TV and pay TV-services as separate product markets. It considers that Internet services and mobile services each constitute separate product markets. It should be noted that due to technological developments, market definitions may evolve in the future, warranting careful and continued market research on the accuracy of the market definition for each case.

3.1.2. How does joint selling restrict competition?

Joint selling describes the situation where clubs assign the selling of their media rights to their association. Traditionally, the association would sell all media rights in one large bundle and to a single broadcaster on an exclusive basis in each territory.

A joint selling arrangement is a horizontal agreement and is caught by the prohibition in Article 81(1) of the EC Treaty, as it prevents the individual clubs or constellation of clubs from individually competing in the sale of media rights.

Joint selling can also facilitate other restrictive practices at the vertical level as we have seen that rights are generally sold on an exclusive basis and often for a long duration.

In the cases we have investigated, we have typically identified the following types of restrictions causing consumer harm:

- Foreclosure: A joint selling entity sells all media rights on an exclusive basis to one single operator in a certain downstream market. Other retailers in this downstream market and in neighbouring markets are foreclosed from accessing the product.
- Output restrictions. Occurs when joint selling entities withhold certain parts of the jointly sold media rights from the market as certain rights may be given preferential treatment at the expense of another. This may for example hamper the development of new media services in neighbouring markets as it may prevent players in neighbouring markets from acquiring meaningful rights.

3.1.3. Do joint selling arrangements create efficiencies?

Yes, the European Commission considers that joint selling arrangements do create efficiencies and that the conditions of Article 81(3) could be fulfilled where there is a balance between the negative effects of the restrictions created by the joint selling arrangement and its pro-competitive effects.

The joint selling of sports rights may have pro-competitive effects when it leads to efficiency gains in the marketing of rights and when it offers consumers a complete overview of the competition in question. A joint selling arrangement has the potential of improving production and distribution to the advantage of football clubs, broadcasters and viewers. The European Commission has in particular identified three types of benefits:

- The creation of a single point of sale provides efficiencies by reducing transaction costs.
- Branding of the output creates efficiencies as it helps in the media products getting a wider recognition and hence distribution.
- A league product is a product, which is focused on the competition as a whole, and not the individual football clubs participating in the competition. Many viewers wish to have the opportunity to follow the development of the competition as such rather than an individual club. Enabling the creation of a league media product via a joint selling arrangement seems to be the most efficient way of achieving this.

3.1.4. Remedies to address competition concerns

The European Commission applies a number of standard remedies when addressing competition concerns resulting from joint selling arrangements. These may be intensified if required by the concrete market situation:

3.1.4.1. Remedy foreclosure by tendering

In order to prevent the risk of foreclosure effects in the downstream markets the European Commission is likely to require the joint sales body on the upstream market to organise a competitive bidding process under non-discriminatory and transparent terms *i.e.* “non-discriminatory and transparent tendering”. This was the case in the UEFA Champions League and the DFB cases.

3.1.4.2. Remedy foreclosure by limiting duration of exclusive vertical contracts

Whilst the European Commission acknowledges the need for a certain degree of exclusivity to protect the value of sports rights, the risk of long-term market foreclosure is addressed by requiring the collective selling entity to limit the duration of the exclusive rights offered in vertical contracts to no more than 3 seasons (“sun setting”). Longer contract duration would risk creating a situation where a successful buyer would be able to establish a dominant position on the market reducing the scope for effective *ex ante* competition in the context of future bidding rounds. While 3 seasons were accepted in the UEFA Champions League and the DFB cases, 3 seasons or 3 years is not an absolute. In the SkyItalia case the merged entity undertook to buy football media rights for no longer than 2 seasons at the time.¹⁴

3.1.4.3. Remedy foreclosure by limiting scope of exclusive vertical contracts

In UEFA Champions League and the DFB cases the European Commission sought to limit the risk that a single buyer would acquire all the valuable rights by obliging the joint selling entity to unbundle the media rights in separate packages, thereby limiting the scope of the exclusivity. More specifically the European Commission required:

¹⁴ Case No COMP/M.2876 – Newscorp/Telepiu’, Commission Decision of 2 April 2003.

- A reasonable amount of different and independently valid rights packages. Too long embargoes and similar restrictions on the exploitation of the rights are not acceptable.
- No combination of big and small packages: This avoids that a big operator in one of the downstream markets gobbles up all the available packages with a view to acquire total exclusivity.
- Earmarked packages for special markets/platforms. Due to the strong asymmetric value of rights for different distribution platforms access to sports rights may be foreclosed to market operators in certain evolving market platforms (for example mobile networks or Internet markets). By earmarking the packages for certain distribution platforms in the UEFA Champions League and the DFB cases mobile operators and Internet Service Providers were enabled to acquire rights.
- If necessary, this approach could be supplemented with the additional requirement of “blind selling”. This means the imposition of an obligation on the joint selling body of accepting only stand-alone unconditional selling per package (*i.e.* no conditional bids or cumulated reserve price). Such blind selling would prevent a powerful buyer wanting to acquire the most valuable package(s) from offering a bonus on condition that all the valuable rights are sold to him, thus inciting initial rights owners not to sell at least some packages to competitors in the same market or operators in neighbouring markets.

3.1.4.4. Remedy output restrictions by fall-back option

In order to limit the risk of output restrictions caused by joint selling of exclusive rights, the European Commission required in the UEFA Champions League and the DFB cases that there should be no unused rights. This means that rights that are not sold by the joint selling entity within a certain time span shall fall back to the individual clubs (“no hoarding”). The club is then at liberty to sell the rights to any interested buyer.

In addition, in the UEFA Champions League case, the European Commission ensured market availability of less valuable rights such as deferred highlights and new media rights by imposing the parallel exploitation of these rights by the individual clubs and UEFA.

3.1.4.5. Intensified approach: No single buyer obligation

In some cases an intensified approach may be required in order to prevent that all packages of valuable rights are sold to a dominant player in one of the downstream markets. Such a remedy could be an obligation imposed on the joint selling body of not accepting a single buyer for all or certain types of rights.

The imposition of a no single buyer requirement upon the seller would generally only be justified where at the time of the tender a serious foreclosure risk already exists *ex ante* due to the presence of a dominant undertaking on the downstream market or where selling the rights to a single buyer would secure the winner a dominant position extending beyond the duration of the contract in question. In these circumstances the standard approach used thus far is insufficient to ensure that effective competition is maintained on the market.

It would also be possible to address the single buyer issue on the basis of Article 82 of the EC Treaty where a dominant buyer would foreclose the market.

3.1.4.6. Intensified approach: Limitation of exploitation platform

Although this is not as such a joint selling remedy, let me remind you about the European Commission's decision in the *SkyItalia* case. In this case the European Commission considered that a limitation of the maximum duration of contracts with football right owners of two years was appropriate. This was so in view of the situation whereby the merged entity would combine for a long time an unparalleled portfolio of exclusive rights contracts related to premium content, including key sports events. Third parties would thereby be foreclosed from accessing premium content needed to establish a competing pay-TV offer downstream. The European Commission moreover limited the scope of the exclusive football rights to be exploited by SkyItalia to DTH transmission.¹⁵

3.1.4.7. Intensified approach: Sublicensing

Where dominant downstream players have acquired exclusive rights for neighbouring markets full sublicensing of such rights would be a feasible solution. However, where sublicensing is non-exclusive vis-à-vis the powerful downstream player the effectiveness of the remedy is diminished because the available non-exclusive rights may not be commercially attractive to third parties.

In the *SkyItalia* case a system of "wholesale offer" of premium content was put in place, whereby SkyItalia had to sublicense acquired "premium content" rights on a non-exclusive basis to third parties active on means of transmission other than DTH.

4. THE LATEST CASES

There have been a few cases during the past year:

4.1. DFB – The German Bundesliga case

I would like to start with the German Bundesliga case where the European Commission adopted a commitments decision pursuant to Article 9 of Regulation 1/2003¹⁶ last year on 19 January 2005. The decision made the commitments given by the German football association binding on them.¹⁷

¹⁵ See case COMP/M.2876 – Newscorp/Telepiu, Commission decision of 2 April 2003, §231, that records that Newscorp undertook in respect of ongoing exclusive contracts to waive exclusivity and other protection rights for non-DTH transmission for football and other sport events. This will allow operators competing on other means of transmission (for example, cable, Internet and UMTS.) to have direct and immediate access to premium sport contents. Regarding future exclusive contracts §233 records as regards football rights, the limitation of the duration of future exclusive contracts for DTH transmission with football teams to two years and the unilateral termination right granted to football right owners are effective undertakings, in that they will make premium football contents contestable on the market at regular intervals.

¹⁶ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, *OJ L 1, 04.01.2003, pages 1-25*.

¹⁷ OJ L 134, 27.05.2005, p. 46.

The DFB case concerned a classical joint selling arrangement where the clubs of the 1st and 2nd division of the German club football tournament sell their media rights via a joint selling company, DFL, which was originally notified to the European Commission.

During the investigation of the case, DFL proposed commitments to the European Commission about the future selling policy which was a variation of the UEFA Champions League theme but adapted to the German market at the time.

The proposal of the DFL contained the classical way of segmenting the rights into separate rights packages for TV broadcasting, Internet and mobile platforms. Rights were to be disposed of using a public tendering procedure on fair reasonable and non-discriminatory terms. Exclusive rights contracts were not to exceed 3 years. So the classical remedies as I have outlined above. We considered that an intensified approach was not necessary in view of the market situation in Germany.

According to what I have read in the press, the first tender procedure under the new regime has just been terminated. From the European Commission's point of view the result seems satisfying. The European Commission decision seems to have been respected. The tender procedure seems to have produced the desired result of creating a fair competition for the rights and it has led to a good distribution of the rights on the German market.

The Bundesliga decision therefore seems to be working as well as the UEFA Champions League decision where there have been two tenders since the European Commission decision in 2003 and where the European Commission's impression is that the outcome has produced the desired results.

4.2. The FAPL case

The remaining joint selling case which is currently on the European Commission's agenda is the English Premier League case. However, I need to recall that this is an ongoing procedure and that the European Commission has not yet adopted any formal decision in this case. Therefore, I will be restricted in commenting on the European Commission's perspective on this case. I can essentially only refer you to the notice, which was published in the Official Journal pursuant to Article 19(3) of Regulation 17.¹⁸

The case began as an own initiative case in 2001. The European Commission issued a statement of objections to the FAPL in December 2002. In its reply to the statement of objections the FAPL denied that the arrangements restricted competition on any market. Notwithstanding this the European Commission and the FAPL began settlement discussions. This led to a number of changes being put in place in June 2003 when the FAPL presented a preliminary outline of a possible new commercial policy for the exploitation of all media rights of the FA Premier League.

In July 2003 the FAPL issued an invitation to tender for a number of media rights for the 2004-2007 seasons, most notably four packages of live TV rights, all four of which were

¹⁸ Notice published pursuant to Article 19(3) of Council Regulation No 17 concerning case COMP/C.2/38.173 and 38.453 - joint selling of the media rights of the FA Premier League on an exclusive basis. OJ C 115, of 30.4.2004, p. 3.

ultimately won by BSkyB. The European Commission raised certain concerns about the rights that were offered, as well as the conduct and the outcome of the tender procedure. Further settlement discussions took place in the second half of 2003, culminating in a provisional agreement involving commitments from both the FAPL and BSkyB in December 2003. For the results, I refer you to the European Commission's press release of 16 December 2003.¹⁹ The provisional results were market tested in the aforementioned Article 19(3) notice in April 2004 and were following the standard approach:

- The league rights are offered in several packages in a transparent, non-discriminatory procedure for TV, Internet, mobile and radio services. The duration of the agreements will not exceed three seasons.
- Clubs will exercise certain television, internet and mobile rights on a deferred basis.²⁰
- Unused or unexploited rights will revert to the clubs for their exploitation.²¹

The comments received in reaction to the market test led to a new round of negotiations that were terminated in November last year. The main substantive elements where the commitments are improved relate to:

- Explicit no single-buyer provision for live TV rights.
- The rights will be sold to the highest standalone bidder.
- The sales process will be overseen by a Monitoring Trustee.

The first time the amended sales process will come into practical test will be for the 2007/2010 football seasons. Let us wait and see what happens.

4.3. National cases

As you know, in the spirit of modernisation, the European Commission puts emphasis on corporation with national competition authorities in the framework of the new anti-trust procedures that are applied as of 1 May 2004. The European Commission encourages national competition authorities to intervene in cases where they seem better placed to do so and they have done so in a number of cases. The European Commission and the national authorities are discussing the handling of these cases with a view to ensure that their outcome is generally in line with the European Commission precedents.

¹⁹ IP/03/1748.

²⁰ Essentially, clubs can: (i) exploit their matches on their own club TV channels a certain period after the match has been played (depending on when the match is played); (ii) exploit their matches on club web-sites from midnight of the day of the relevant match; and (iii) offer mobile clips on club mobile subscriptions (from 12 hours following the end of the relevant match).

²¹ Essentially, in case any of the live TV packages remains unsold at the beginning of the season, then the relevant matches can be exploited by clubs.

Coordination among authorities is among others ensured in the context of the European Competition Network's working groups. It is foreseen that the Media Subgroup will hold bi-annual meetings. The European Commission held its first meeting in the Media Subgroup on 5 December 2004 where joint selling of media rights of sports featured on the agenda.

4.3.1. *Belgium*

One of the exciting national cases was the sale of the Belgian football rights in 2005. The Belgian League organised a tender procedure for the sale of six different television rights packages for three seasons. Belgacom, the Belgian telecoms operator bought up all rights with a view to launch a new IP based TV service. However, Belgacom has sub-licensed a number of rights to free-TV operators which give all Belgian citizens the opportunity to view the Premier League football matches. I am not so worried about Belgacom acquiring all rights this time around. Belgacom is a newcomer in the market. Therefore no *ex ante* dominance exists.

I know that some of the bidders are unhappy of the conduct of the tender procedure. There is currently litigation before the Belgian courts, so it would not be pertinent for me to speculate further in this from this podium.

4.3.2. *The Netherlands*

If we turn to the Netherlands you will remember that in 2002, the Dutch competition authorities prohibited the joint selling by the “*Eredivisie*” of all exclusive live rights to the pay-TV operator Canal+. The competition authorities found that the efficiency gains of collective selling were small and that the restricted number of the matches broadcast (maximum 52 out of 306) limited consumer choice. The Dutch League appealed the decision and in the meantime submitted a renewed proposal to the competition authorities proposing to divide the rights into six smaller packages. Two of the packages were destined specifically for free-to-air broadcasting. In December 2004, the Dutch competition authorities agreed with the League on the new proposal.²² In March 2005, the 2002 prohibition decision of the competition authorities was eventually annulled by the Court of Rotterdam.

4.3.3. *France*

Finally, I should mention the French football league. The ‘*Ligue de Football Professionnel*’ (LFP) sold its live TV rights of all 380 matches of the ‘*Ligue 1*’ for three seasons together with a magazine programme to Canal+ on 10 December 2004.

The French case is a bit special. The LFP is executing a public service according to French legislation²³ in organising *i.a.* the *Ligue 1*. Only the LFP is authorised to sell the media rights on behalf of the clubs to whom ownership was transferred by the very same legislation. The rights must be sold in the manner prescribed by the law as inspired by the UEFA Champions League decision: in different live and slightly deferred packages and magazine programmes. The contracts are of a limited duration and are awarded following a tender procedure. There is no ban on selling the rights to a single buyer in French legislation.

²² 18 November 2004: http://www.nmanet.nl/en/nieuws_en_publicaties/persberichten/0426.asp

²³ Loi no. 2003-708 of 1 August 2003 – *Loi Lamour and décret no 2004-699 of 15 July 2004*.

The European Commission took note of the outcome of the case as it was investigated by the French competition authorities. Nobody complained to the European Commission. The European Commission has several times been asked about the coherence in its approach. To that I can only say that you need to take into account the facts of the different markets in question. For example in France at the time there were two competing pay-TV broadcasters which is not the case for example in the UK.

5. SECTOR INQUIRY

Let me finally mention the sector inquiry into the availability of sports content for 3G mobile devices, which the European Commission launched in January 2004.²⁴

The first stage of the sector inquiry was completed in August 2004 with a first wave of questionnaires to a sample of 50 major 3G operators, rights holders and television channels. The second stage involved 235 operators.

In a public discussion held in Brussels on the 27th of May 2005 the preliminary findings of the Sector Inquiry were presented to interested parties, which were given the possibility to make statements and to submit written comments during a four-week period. Comments were received from 22 organisations. Meanwhile, the European Commission discussed the preliminary findings with National Competition Authorities in the framework of the European Competition Network.

The Sector Inquiry is now concluded.²⁵ The Sector Inquiry concluded that there are general characteristics that make the viewer experience of sports content watched over mobile devices fundamentally different from TV, such as cost of usage, the content available – in particular the length of time that consumers want to spend viewing the content and the ability to personalise the viewing experience. It seems that mobile platforms will be used when the viewer has no access to TV as the viewer generally prefers watching the action on a bigger screen.

The Sector Inquiry found four main bottleneck problems that may risk limiting the access to sports content on mobile devices:

1. Cross-platform bundling - which refers to practices where a rights owner sells bundled audiovisual rights for various retail platforms to one or a few operators.
2. Overly restrictive conditions - A second business practice that was reported by mobile service operators as limiting their business opportunities concern coverage limitations that are put upon mobile sports rights in terms of the length of the event that can be transmitted (full broadcast or only highlights) or the timing of the coverage (live, or deferred).
3. Joint selling – while both rights owners and mobile operators reported positive aspects of joint selling, mobile operators also voiced concerns that joint selling result in less supply when all mobile rights to a sports event or competition remain unsold by the joint selling body.

²⁴ Commission decision of 30 January 2004, see IP 04/134.

²⁵ http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/new_media/3g/

4. Exclusive access - The last business practice that the Sector Inquiry has highlighted is that of exclusivity. The exclusive sale of rights to a certain market may be pro-competitive. However, anti-competitive effects could arise when exclusive access to attractive sports content contributes to 3G operators obtaining or protecting positions of market power.

The Sector Inquiry has enabled the European Commission, the EFTA Surveillance Authority and National Competition Authorities to get a clearer view on the market developments with regard to mobile sports services and the prevailing commercial behaviours of the different market players active in the value chain of sports content for mobile platforms.

In order to maximise consumer choice, encourage innovation and foster competition, the European Commission advocates a competition policy that assures that access to sports rights for distribution over mobile platforms is not unduly restricted through anti-competitive practices resulting in output limitations.

Therefore, in the spirit underlying Regulation 1/2003 market players are invited to address possible anti-competitive conduct and effects resulting from their business practices. The European Commission will take account of the findings of the Sector Inquiry in future proceedings in this area and it will review, together with the National Competition Authorities concerned, potentially harmful case situations identified during the Sector Inquiry.

6. CONCLUSION

Let me conclude.

Sport is of key importance for the media markets as well as media is of key importance for sports.

This is raising many new issues for the application of EC Competition Law. Recent case law is setting signposts that should provide the necessary guidance for the undertakings operating in the sports media markets. The European Commission is aware that technological convergence is likely to raise new issues. In dealing with this our objective will be to contribute to maintain open and competitive media markets and a level playing field for all parties, so as to maintain a culture where innovation can thrive to the benefit of consumers, business and the sports.

I hope that you can sympathise with our approach.

Thank you for your attention.