

# THE ICA ASCERTAINS AN AGREEMENT AMONG SKY, RTI/MEDIASET PREMIUM, THE ITALIAN FOOTBALL LEAGUE (LEGA CALCIO) AND ITS ADVISOR INFRONT ON THE SALE OF THE SERIE A TV RIGHTS 2015-2018

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## 1. SUMMARY

On 19 April 2016, the Italian Competition Authority (ICA) concluded an investigation launched on 18 May 2015 regarding the sale of the Serie A TV 2015-2018 rights, ascertaining that Sky, RTI/Mediaset Premium, the Italian Football League (Lega Calcio) and its advisor Infront (jointly referred to as “Parties”) infringed Article 101 TFEU. In fact, the parties agreed to alter the outcome of the tender, after the presentation of their bids on 5 June 2014.

The ICA imposed fines for a total amount of 66 million Euros on Sky and RTI/Mediaset Premium - the two main television operators in the pay-tv market - and on the Italian Football League (Lega Calcio) and its advisor Infront.

## 2. REGULATORY FRAMEWORK AND RELEVANT MARKET

In 2008 Italy adopted a joint selling system of sport broadcasting rights (Law Decree n.9/2008): the event organizer has the mission to sell broadcasting rights. Therefore, Lega Calcio must offer broadcasting rights on a non-discriminatory basis to any operator and/or platform on behalf of football teams.

The Italian legislation is prompted by a previous EU case law<sup>2</sup> which sets 3 selling conditions:

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<sup>1</sup> Italian Competition Authority.

<sup>2</sup> *Inter alia* UEFA CL 37398 and German Bundesliga 37214

- i) broadcasting rights must be offered in several balanced packages;
- ii) rights must be granted after an open, transparent and non-discriminatory bidding process;
- iii) Rights are granted for not more than 3 or 4 years.

The case law also imposes the “no single buyer rule,” which precludes from selling all exclusive packages regarding live matches to a single broadcaster.<sup>3</sup> The “no single buyer rule” applies in Italy as well.

The ICA identified a relevant market of premium football sport broadcasting rights and other markets vertically linked to it.

With regard to the market of premium football sport broadcasting rights, sport events are not repeatable and they attract the attention of many consumers wanting to enjoy the events, especially the premium ones. Therefore, broadcasting sport events is rewarding for advertisers, clubs, federations and sport leagues. The conducts object of the ICA’s decision concern the Serie A TV rights. The Serie A is considered one of the best European football leagues and, as in other European leagues, broadcasting TV rights has become the main source of revenues for both clubs and the football federation (60-65% of football teams’ revenues). The value of the Serie A TV rights approximately amounts to €1 billion each year.

The vertically-connected markets are:

- i) The pay-TV market: acquiring exclusive broadcasting rights of major football events has been recognized as an essential content needed in order to enter and expand in the market. Sky is in a dominant position with a market share of 77.80%, compared to other players (RTI 19.10%; Others 3.20%)
- ii) The TV advertising market: the larger the audience share for a TV channel, the higher the advertising rates for advertisers (RTI 53%, Sky 6% and RAI 19%).

### 3. THE AGREEMENT

The investigation involved four Parties operating at different levels: the two main Italian pay-tv operators, that is Sky Italia and RTI/Mediaset Premium; the company of the Mediaset Group providing, *inter alia*, pay-tv audiovisual media services; Lega, the entity that sells football teams’ TV and media rights, on their behalf; and Infront, Lega’s advisor for the sale of TV and media rights.

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<sup>3</sup> FA Premier League 38173.

It is noteworthy to consider the peculiar structure of the agreement, as it is a horizontal agreement with the endorsement of subjects in a vertical position managing strategic drivers.

The tender of the Serie A rights started on 16 May 2014 and concerned 5 packages of TV rights:

- A. TV rights of 8 top clubs to be broadcasted on DTH (satellite), Internet, IPTV and mobile (65% of the events);
- B. TV rights of the same events of package A (8 top clubs) to be broadcasted on DTT (Digital Terrestrial Television), Internet, IPTV and mobile;
- C. Ancillary rights (i.e. interviews) of packages A and B;
- D. Exclusive TV rights of the remaining matches not included in packages A or B on any platform (35% of the events);
- E. TV rights on a choice of 3 optional matches among those played on Sundays to be broadcasted on the Internet.

The following table summarizes the bids submitted during the tender:

**Table 1**

Package	Position
A (Satellite-Top Clubs)	1) Sky
	2) RTI
B (Digital-Top Clubs)	1) Sky (Fox Sport/NewsCorp)
	2) RTI
C (Ancillary Rights)	No offers
D (Other Clubs)	1) RTI
	2) Sky
	3) Eurosport
E (Internet)	No offers

RTI submitted a conditional offer for package D. In other words, its offer for package D would have been confirmed only in case either package A or package B was awarded to RTI/MP. However, since SKY offered the highest bids for packages A or B, package D would not have been allocated to any operator.

The next table summarizes the final allocation endorsed by Lega:

**Table 2**

Package	Position	Winner
A (Satellite-Top Clubs)	1) Sky	Sky
	2) RTI	
B (Digital-Top Clubs)	1) Sky(Fox Sport/NewsCorp)	<b><u>RTI</u></b>
	2) RTI	
C (Ancillary Rights)	No offers	
D (Other Clubs)	1) RTI	<b><u>RTI-Sky</u></b>
	2) Sky	
	3) Eurosport	
E (Internet)	No offers	

By comparing Table 1 and Table 2, and according to the ICA's findings, instead of awarding the broadcasting rights to Sky (packages A and B) in line with the submitted bids received on 5 June, Lega Calcio – advised and supported by Infront – engaged in a negotiation with the bidders with the aim to alter the outcome of the tender.

The final outcome was reached on 26 June at the end of a gathering of Serie A football teams begun on 23 June.

Sky and RTI/Mediaset Premium engaged in negotiations for package D between 25 and 26 June, reaching the terms of an agreement before the final decision made on 26 June at the end of Lega's

gathering. The agreement had a wider scope than the sole package D and regarded the allocation of all TV Serie A rights 2015-2018.

Therefore, SKY, RTI, Lega and Infront entered into an anticompetitive agreement with the aim: (i) to assign package A to SKY; (ii) to assign package B and D to RTI; and (iii) in turn, Lega awarded package D to RTI, which was consequently sold to SKY.

The agreement consisted in the market sharing of the relevant market between two pay-tv incumbents, thus frustrating the objectives pursued by the legislator through the provision of a competitive selling procedure.

As a result of the agreement, both pay-tv incumbents were awarded television rights, while market entry was foreclosed as a result of the tender, since other operators such as Eurosport could no longer compete for the awarding of package D. Furthermore, the bid-rigging agreement affects future entries, since it has a negative impact on the credibility of future calls for tenders, thus discouraging entries in competition on the merit.

Since the Parties had different roles in the agreement, the ICA considered differentiated fines.

Lega and Infront did not allocate package A and B to Sky on the basis of a misleading implementation of the “single buyer rule.” In fact:

- i) A and B could be allocated to Sky, which was the final outcome
- ii) Other packages under tender (C, D and E) were not allocated.
- iii) Critical competition issues could be resolved with various remedies (such as carrying out a new tender) and with solutions less restrictive to competition.

On the basis of the bids, RTI/Mediaset Premium would not have been awarded any package. Therefore, it was ready to join the collusive agreement from the very outset.

Whereas, initially Sky strongly opposed the other Parties’ initiative, and eventually joined the market sharing agreement. Furthermore, during the proceedings, Sky kept a cooperative attitude *vis-à-vis* with the competition agency and it was thus recognized a reduction of the fine.

#### 4. SOME REMARKS

The ICA’s decision highlights that the anticompetitive agreement altered the outcome of the tender – hindering procedures set by Decree no. 9/2008 and frustrating its principles – and affected the allocation of strategic resources in the pay TV and advertising markets. Therefore, the agreement was deemed restrictive by object and very serious, in line with the national and European case law.

The decision also emphasizes that antitrust rules and the regulatory framework have the similar mission to guarantee an effective and dynamic competition among market players and to achieve an optimal allocation of strategic inputs.