

**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**

(2004/C 115/02)

(Text with EEA relevance)

**1. THE NOTIFICATION**

1. The Football Association Premier League Limited (FAPL) is a private limited company incorporated in 1992 and registered in the United Kingdom register of companies under company number 02719699. Its registered office is in London. The FAPL is governed in accordance with its Articles of Association and the Rules and Regulations adopted by it. The shareholders of the FAPL are those clubs which from season to season participate in the FA Premier League.

2. The Board of the FAPL comprises a Chief Executive and non-executive Chairman, both of whom are appointed by a resolution of the clubs in general meeting. The powers of the Board are governed by the Articles of Association. Article 48 limits the power of the Board to enter into any broadcast contract without the prior approval by resolution of the clubs in a general meeting<sup>(1)</sup>. A resolution of the clubs requires two thirds of the votes cast.

3. On 23 June 2001, the Commission opened an own initiative investigation into the joint selling arrangements surrounding the FA Premier League competition. After contact with the FAPL, the latter notified its arrangements on 21 June 2002. The FAPL applied for a negative clearance under Article 81(1) of the EC Treaty or, failing this, an exemption under Article 81(3) of the EC Treaty in respect of its arrangements for the joint selling of the media rights of the FA Premier League. The media rights are sold by the FAPL on behalf of those clubs which are, from time to time, its members. The FAPL is therefore an association of undertakings, and action taken in relation to the media rights is therefore a decision of an association of undertakings.

**2. The Statement of Objections**

4. The notified arrangement provides that the FAPL is granted the exclusive right to sell the media rights of the FA Premier

League. This prevents clubs from taking independent commercial actions regarding the exploitation of these rights. Consequently, the FAPL negotiates and concludes contracts pertaining to the exploitation of the media rights of the FA Premier League.

5. In December 2002 the Commission issued a statement of objections addressed to the FAPL. The statement of objections analysed the horizontal agreement to sell rights jointly, and the manner in which that agreement was implemented in practice.

6. The arrangements restrict competition in the upstream markets for the acquisition of media rights of football. These markets are closely linked with the downstream markets on which those rights are used to provide services to consumers. The most commercially important of these markets are the television markets, where, for example, free-TV broadcasters compete for advertisers and pay-TV broadcasters compete for subscribers: the restrictions therefore affect the downstream markets as well. Football has proven to be a driving force not only for the development TV services but is also an essential programme item for free TV broadcasters.

7. The statement of objections stated that any possible efficiencies and benefits that joint selling could provide in the media markets were negated by the commercial policy pursued by the FAPL. This is because the joint and exclusive sale of large packages of media rights created barriers to entry, various restrictions on the output of the FAPL limited the development of products and markets, and generally the sales policy led to foreclosure on downstream markets. The restrictions therefore led to further media concentration and hampered competition between media operators.

8. On 18 March 2003, the FAPL submitted its formal reply to the statement of objections, denying that the arrangements restricted competition on any market.

<sup>(1)</sup> Article 48 of the Articles of Association of the FAPL provides that: 'The Board shall not in relation to any dealings relating to television, broadcasting, sponsorship or like transactions or other matters materially affecting the commercial interests of the Members enter into any contract or agreement or conduct themselves in any way as would bind the FAPL to any contract or agreement without the prior authority or approval by Resolution of the Members.'

9. Several third parties asked and were admitted as interested third parties to the proceedings. Several others also submitted observations on the notified arrangements. These observations added no new arguments in favour of the notified arrangement to those submitted by the FAPL in its notification. These relate essentially to solidarity, the social and economic aspects of sport, and the balance in sport competition between rich and poor clubs and associations. Some third parties argued, however, that the solidarity measures were currently insufficient and should be improved, were an exemption to be granted. Other third parties argued that although joint selling was an efficient means to sell some products, the importance of the FAPL on various media markets meant that in practice the joint selling had negative consequences on those markets.

10. Notwithstanding the FAPL's belief that the arrangements did not restrict competition, the Commission and the FAPL began settlement discussions following their reply to the statement of objections. This led to a number of changes being put in place in June 2003. The FAPL presented a preliminary outline of a possible new commercial policy, including a new rights segmentation table for the exploitation of all media rights of the FA Premier League, including radio, television, Internet, and UMTS, and physical media rights (such as DVD, VHS, CD-ROM, etc.).

11. This was followed in July 2003 by the FAPL issuing an invitation to tender for a number of media rights for the 2004 to 2007 seasons, most notably four packages of live TV rights, all four of which were ultimately won by BSkyB.

12. The 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.

13. The present notice invites comments on the commitments offered by the FAPL, which were designed to address the Commission's concerns set out in the December 2002 statement of objections. The commitments offered by BSkyB address the separate concerns resulting from the bid and award of the live TV packages to BSkyB. As such they fall outside the

scope of the present Notice and were part of a separate consultation exercise with potential buyers of those rights.

### 3. The Revised Rights Proposals

14. The revisions to the FAPL joint selling arrangements will take effect in two stages. The first, already largely implemented, apply to the rights for the 2004 to 2007 seasons. The second stage begins with the tender process for the 2007 season onwards.

15. In respect of all of the rights packages exploited centrally by the FAPL, in the event that any rights packages are not sold by the FAPL, or are sold but core rights remain unexploited, the rights will revert to the clubs for individual exploitation.

#### 3.1. Television broadcasting rights

##### *General Principles*

16. The FAPL will award the TV rights of the FA Premier League following a public invitation to broadcasters to bid. The TV rights contracts shall be concluded for a period not exceeding three FA Premier League seasons.

17. The FAPL maintains that there is a need to maintain a certain number of matches on Saturday afternoons, to maintain the traditional character of the FA Premier League competition. Some matches will continue to be played at 15.00 on Saturday. In light of the Football Association's decision not to authorise the broadcasting of football matches played during its main fixture on Saturday afternoons<sup>(1)</sup>, live television coverage of these matches will not be possible. The FAPL will continue to comply with other objective scheduling constraints such as the requirements of the police, and constraints caused by the participation of FA Premier League teams in other competitions.

18. The FAPL will offer its TV rights in several packages, although the precise number of rights in each package may vary over time. Near-live packages of rights for those matches not broadcast live will be made available. The FAPL will also offer one or more packages of terrestrial highlights, to be made available to free to air broadcasters only.

<sup>(1)</sup> As allowed by Article 48 of UEFA's Statutes and Article 3 of UEFA's Broadcasting Regulation on 'blocked hours'.

19. As of midnight Sunday for Saturday matches, and midnight the same day for all other matches, both the FAPL and the football clubs can exploit the deferred TV rights. FAPL exploitation shall be related to action from the whole of the FA Premier League; the individual football clubs exploitation shall be in relation to matches in which they participate, it must be 'club branded' and must not be bundled with rights of other clubs to create a competing FA Premier League programming offer, save that football clubs may under certain circumstances combine their TV rights with a view to sharing costs of production or distribution. These club rights can only be exercised on dedicated club channels.

20. In addition, however, each club which chooses not to exploit TV rights via a club channel can sell its home games to a broadcaster from midnight on the day after the match for a one-off free-TV or pay-TV broadcast of the full match at any time prior to the start of the next full fixture programme of Premier League matches. These club rights may not be sold in such a way as to allow a user to produce a product which runs counter to the interests of the FAPL or of the holders of the centrally marketed packages through the production of a bundled product or which otherwise undermines the benefits of central branding and/or marketing. Therefore, no more than two clubs may sell to the same broadcaster its home match out of any full fixture programme of 10 Premier League matches. Further, broadcasters must ensure that in any programme, based to any extent on rights sold by the clubs, the broadcast of a single club's home match does not exceed 30 % of the total duration of that programme and that the broadcast of the home matches of any two clubs does not exceed 50 % of the total duration of that programme.

21. Contrary to its previous practice, the FAPL will always require separate bids for each package of media rights relating to the United Kingdom and Ireland. In addition, the FAPL will make available one additional live match to be broadcast each Saturday at 15.00 for the market in Ireland for the current contract round, and will keep the situation under review in the future to determine if more matches should be made available.

#### *2004 to 2007*

22. More live rights have been made available under the new contracts than were made available in the past. For the 2004 to 2007 seasons, 138 matches per year will be broadcast live, as compared to 106 matches per year under the previous contract. All four live packages were bought by BSKyB: BSKyB's bids and the outcome of the bids raised separate competition concerns and led to commitments from BSKyB. The Commission conducted a separate consultation exercise with parties specifically interested in the BSKyB commitments.

23. The near live TV rights were sold in a single package of 242 matches. On weekends, this package is currently made

available in two stages: on Saturdays, the first match will be available as of 20.30 on the day of the match, otherwise, the remaining matches are available at the earlier of 22.00 or the end of the first run of the terrestrial highlights package.

#### *2007 onwards*

24. Beginning with the rights for the 2007 season, the FAPL will specify that no single buyer is able to acquire exclusively all of the centrally marketed live rights packages: the packages will continue to be balanced, reflecting prevailing market conditions and taking into account the requirements of broadcasters and the object of showcasing the Premier League competition.

25. The FAPL and the Commission will jointly commission an independent economic study to evaluate, in the context of the market situation in the United Kingdom, the parameters within which a variable financial bid for a package of live rights (i.e. a bid whose financial terms varies depending on what other packages of rights are also awarded) by a dominant bidder may be justified by reference to the economic and commercial value of the relevant rights packages to the bidder in question.

### **3.2. Internet**

26. Both the FAPL (in respect of all matches) and the clubs (in respect of matches in which they participate) will have a right to provide video content on the Internet as of midnight on the night of the match.

27. As with all other rights, these embargoes will be kept under review.

### **3.3. Wireless 3G/UMTS product**

28. Both the FAPL (in respect of all matches) and the clubs (in respect of matches in which they participate) will have a right to provide audio/video content via UMTS services. The FAPL will (to the extent that the FA's implementation of Article 48 of the UEFA Statutes permits) sell an effectively live mobile clips package to all games (any delay being limited to the technical need to repurpose the clips). The clubs will be able to provide mobile content as of midnight on the day following the match.

29. As with all other rights, these embargoes will be kept under review.

### **3.4. Radio broadcasting rights**

30. The FAPL has increased the number of radio rights available, and has allowed for two matches to be broadcast live, nationally, on Saturday afternoons. As radio capacity increases over the next years, the number of matches made available will be kept under review.

**THE COMMISSION'S INTENTIONS**

31. On the basis of the foregoing, and once Regulation (EC) No 1/2003 has become applicable, the Commission intends to adopt a decision making the commitments offered by the FAPL legally enforceable and subsequently close the file.

32. The full text of the FAPL's commitments is available by email from Kevin.Coates@cec.eu.int.

33. Before adopting any such decision, the Commission invites third parties to send their observations within one month of

the publication of this notice to the following address quoting the reference COMP/38.173 - Joint selling of the media rights to the FA Premier League on an exclusive basis:

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