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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

ROUNDTABLE ON COMPETITION AND SPORTS

Note by the delegation of Turkey

This note is submitted by the delegation of Turkey to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16 - 17 June 2010

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ROUNDTABLE ON COMPETITION AND SPORTS

-- Note by Turkey --

1. The experience of the Turkish Competition Authority (TCA) with respect to the application of competition law to professional sports has been confined to the issue of broadcasting rights in football. In Turkey, for any given sport there is a national federation that has complete authority in terms of regulating that sport. That federation acts as a subordinate to international associations like UEFA.

2. The Turkish Football Federation (TFF) is the relevant body for the regulation of football and Law No. 5894¹ sets out the principles and procedures regarding the establishment, organisational structure, duties and powers of the TFF. According to Article 13, the TFF Executive Board is exclusively entitled to broadcast all the football matches in Turkey regardless of the medium. With the second paragraph of the mentioned article the TFF assumes the power to market broadcasting rights centrally and to distribute the proceeds derived from such rights to Member Clubs in such manner as may be decided by the relevant bodies of the TFF.

3. In Statutes of the TFF, issued by the General Council as stipulated by Law No. 5894, two paragraphs of Article 74 (Authorisation for Broadcasting) are of importance for the subject matter:

6 Any agreement signed between a club and a broadcasting company shall be subject to the TFF's supervision and approval. Any such agreement not approved by the TFF shall not be binding on the TFF. No match shall be broadcast on TV, radio, the Internet and all other similar sound and data carriers, unless the required license therefore has been received from the TFF.

9 The TFF shall be entitled to draw up specifications, hold tenders and sign agreements on behalf of clubs with regard to licenses for broadcasting league matches on TV and radio. The TFF may consult with the Clubs' Union regarding the broadcasting rights of the Super Lig.

4. Consequently, TFF is given a legal monopoly status not only for the technical regulation of football, but also for the economic activities involved. The legal classification for selling of football media rights is sale by a single entity holding exclusive rights rather than a joint selling action. It should be mentioned that the Statutes and the Regulations adopted by the relevant organs of the TFF do not explain the way by which TFF will use above mentioned rights in terms of scope and duration.

5. When cases that are brought to the TCA are assessed, it is seen that all three tenders of TFF for live broadcasting rights of Turkish First Division Football League ("Super Lig") have been challenged. Apart from that there have been applications for exemption or clearance with regard to the sale/licensing of media rights.

6. The TCA's approach to these cases has been consistent in terms of considering TFF as an undertaking with respect to competition law notwithstanding the fact that the body is designated as the sole

¹ Law on the Establishment and Duties of the Turkish Football Federation.

authority for the regulation of football. Also, the relevant market definition has been stable. It is broadly defined as the market for broadcasting rights of Turkish First Division Football League implying that as a valuable premium content, football broadcasting rights are considered not substitutable by any other content for TV operators.

7. The practice of exclusive selling of broadcasting rights by TFF to a single broadcaster has not been questioned in any of the decisions taken by the TCA. It is asserted that TFF is entitled to design the sale in any manner because of the recognition of the conduct as use of a public authority granted by legislation.

8. Another point asserted in the TCA's decisions is that the auction terms are based on the Statutes which are powered by the Law and the Broadcasting Regulations which are powered by the Statutes. But it should be stressed that as those pieces of legislation are acts of TFF as an enterprise subject to private law, the rules adopted in them should not be in violation of principles of competition law.

9. The durations of exclusive contracts between TFF and the broadcasters have consecutively been 3 years in the agreement signed with the broadcaster named Cine5, 2 years in the agreement signed with the broadcaster named Teleon, 3 years in the first agreement signed with the broadcaster named Digiturk, 4+2 years in the second one, and 4+1 years in the latest auction won by Digiturk.² In the second agreement with Digiturk, one of the two digital platforms in Turkey, the contract was covering years 2004-2008 and in 2005 the parties' application for an extension of two years between 2008 and 2010 was cleared by the TCA. The justification for the clearance was on the facts that i) Digiturk had failed to achieve the critical subscriber base ii) the competitors lacked interest iii) the clubs supported the extension.

10. The latest initiative of the TCA for exclusive selling of broadcasting rights has been issuing of an opinion for the 2010 auction on the conditions of the contract as proposed by TFF. In the opinion it is stated that TFF should consider the competitive concerns with regard to the duration of contract (4+1 years).

11. On the broadcasting rights a final remark should be made that the TCA has been sensitive on two issues: Assuring delivery of deferred highlights to TVs in a timely and non-discriminating manner and not selling the highlights as a whole but individually for each game. Following the related decisions taken by the TCA, these principles are embedded by the TFF in the terms of the contract list that must be agreed upon by potential bidders before tender. This is considered to be an effective way of removing at least some of the possible competitive concerns arising from the practice of selling media rights exclusively.

12. A different discussion point which has not been a subject for a competition case is the nationality restriction in Turkey. In case of football there is a rule of 6+2, meaning that a football team can field 6 foreign players and bench 2 others in a given match. There could be at least four arguments against this rule. Firstly, the rule distorts competition between clubs by hindering the functioning of supply and demand mechanism for player services. Second, it could be suggested that Turkish clubs are put at a competitive disadvantage against clubs coming from countries where there is not such a restriction, with regard to international competitions. Thirdly, the rule results in an artificial increase in the price for professional service of Turkish players. And finally, the consumers are worse-off because of the fact that the clubs are impeded from signing the best players with the money available; hence the quality of the product deteriorates. As that rule is not a legal stipulation but a regulation of the TFF, arguably it can be challenged before the TCA. Although it generally is a subject of labour law, the rule can be considered to have a competition law dimension as it concerns player services and player recruitment markets.

² 1996-1999 Cine5, 1999-2001 Teleon, 2001-2004 Digiturk, 2004-2010 Digiturk, 2010-2014 Digiturk.