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Common Market for Eastern  
and Southern Africa

Case File No. CCC/ RFA/01/01/2017

**Decision<sup>1</sup> of the Seventy-Seventh (77<sup>th</sup>) Committee Responsible for Initial Determination Regarding the Application by Sportfive EMEA for a review of the Decision dated 29<sup>th</sup> June 2021 regarding Agreements concluded between the Confederation Africaine de Football and Lagardere Sports SAS relating to the Commercialisation of Commercial Rights of CAF Competitions**

**ECONOMIC SECTOR: Sports**

**13<sup>th</sup> July 2021**

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<sup>1</sup> In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

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## Information and Relevant Background

1. On 29<sup>th</sup> June 2021, the Committee responsible for Initial Determination (the “CID”) issued a decision in relation to agreements concluded between the Confederation Africaine de Football (“CAF”) and Sportfive EMEA (“Sportfive”, formerly known as Lagardère Sports SAS) relating to the Commercialisation of Commercial Rights of CAF Competitions, (the “CAF/LS Agreements”). Specifically, the CID rejected the submissions that the matter should be considered on a no-admission of guilt basis and determined that the case should be determined on merits as it was not convinced that the COMESA Competition Regulations (the “Regulations”) have not been breached. The CID decided that the parties to the agreement should be afforded an opportunity to be heard within thirty (30) days of receipt of the said decision.
2. On 6<sup>th</sup> July 2021, Sportfive submitted an application to the CID to reconsider its decision that the matter cannot be heard on a no-admission of guilt basis; or alternatively to provide an extension of the timeline for the conduct of the hearing on merits.

### Sportfive’s Submissions to the CID

3. Sportfive expressed its material disappointment in the decision, citing the fact that they have extensively and in good faith engaged over a considerable period with the COMESA Competition Commission (the “Commission”) to bring to an end the investigation in the most practical and pragmatic manner, and that they had been engaging with the Commission on commitment proceedings since late 2019.
4. Sportfive raised reservations regarding the compatibility of the Decision with the ‘commitment’ proceedings under the Regulations. Sportfive submitted that while they appreciate that this procedure is nascent, they submitted that the practice of international competition authorities provides useful guidance as to how commitments procedure should operate. In particular, Sportfive submitted that the practice of the European Commission provides useful guidance as to how ‘commitment’ proceedings are used.
5. Following the approach of the EU commitment proceedings, Sportfive submitted that it is not necessary for the CID to be convinced whether the Regulations had been infringed or not; but that it is only necessary to ascertain whether the termination of the Full Form Agreement between CAF and Lagardere Sports relating to the Commercialisation of Commercial Rights of CAF Competitions (the “FFA”) and the commitments offered by CAF unambiguously addressed the potential competition concerns identified by the Commission in its Staff Paper to the CID.
6. Sportfive submitted that on any reading of the Staff Paper, the termination of the FFA and the commitments offered by CAF fully address the potential concerns identified by the Commission. They thus submitted that it is not necessary for the CID to determine whether the potential concerns of the Commission are well-founded on the Regulations.

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7. Sportfive submitted that a CID decision not authorizing the closure of the investigation on a no-admission of guilt basis would also discourage all future respondents from cooperating with the Commission knowing that such cooperation could be futile as the CID is not likely to accept commitments agreed with the Commission.
8. In light of the above, with full reservation of rights, Sportfive requested that the CID reconsiders its decision with a view to accepting the recommendation of the Commission to close the investigation in respect of the CAF/LS Agreements.
9. Sportfive further requested that, to the extent that the CID elects to continue with the hearing of the investigation into the CAF/LS Agreements, they be granted an extension beyond the 30 days foreseen for the scheduling of the hearing in the decision. Sportfive submitted that they had materially engaged with the Commission since 2019 to close the Investigation on the basis of commitment proceedings. As a result of this engagement that continued until the decision itself, they are not prepared for a full hearing on the merits that will necessarily involve the submission of material economic and legal submissions given the nature of the potential concerns identified by the Commission in the Staff Paper. In addition, from a practical perspective, the availability of the legal and economic advisors of Sportfive would need to be ascertained and agreed in advance, consistent with matters of this nature.
10. Sportfive further submitted that additional time and clarity is required in order to ensure that its rights to a fair hearing are respected.
11. Further, Sportfive requested for clarity on the intended process for the hearing before the CID as there is a range of procedures potentially applicable to the hearing, such as the formulation of founding and answering papers and the appointment of experts. In this regard, Sportfive requested that the CID formulates a full and detailed practice note for how hearings will be conducted before the CID.
12. Sportfive requested that the hearing on the CAF/LS Agreements be held in mid to late September 2021 to allow for the preparation of the matter following access to file and the publication of a practice note on hearings.

### **Determination**

13. The CID took note of the application and submissions by Sportfive. It however noted that it is not best practice for it to revisit its decision in view of the fact that there should be finality in the decision-making process. Such practice is only done in exceptional circumstances and the CID determined that the grounds advanced by the parties were not exceptional.
14. The CID further considered that Sportfive did not submit compelling reasons warranting a reconsideration of its decision.
15. In view of the foregoing, the CID rejected Sportfive's request for the CID to reconsider its decision that the case be heard on merits.

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16. Further, the CID determined that Sportfive's request for an extension of the timeline for the hearing was reasonable under the circumstances. In this regard, the CID determined that the hearing into the CAF/LS Agreements will be held by 30<sup>th</sup> September 2021.

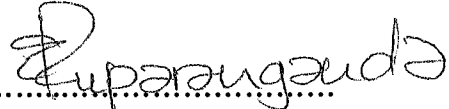
Dated this 13<sup>th</sup> day of July 2021



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**Commissioner Justice Charlotte Wezi Malonda (Chairperson)**



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**Commissioner Brian M. Lingela**



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**Commissioner Ellen Ruparanganda**