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Common Market for Eastern
and Southern Africa

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

Decision¹ of the Seventy-Eighth (78th) Committee Responsible for Initial Determination Regarding the Submission by Confederation African de Football (CAF) dated 29th July 2021 seeking a Reconsideration of the Decision of the Seventy-Sixth (76th) CID regarding Agreements concluded between CAF and Sportive EMEA relating to the Commercialisation of Commercial Rights of CAF Competitions

ECONOMIC SECTOR: Sports

2nd September 2021

¹ 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 Where possible, the information omitted has been replaced by ranges of figures or a general description.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 29th June 2021, the Committee responsible for Initial Determination (the “CID”) at its Seventy Sixth (76th) Meeting 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 of 2004 (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 29th July 2021, the CID received a request from CAF for reconsideration of the said Decision.

CAF’s Submissions to the CID

3. CAF submitted that:

3.1 The purpose of undertakings is to address competition concerns and restore competition in the market; not to reach a finding of guilt

- (a) Undertakings were proposed by the Commission and signed by CAF following negotiations between the parties. Only when the Commission found that the terms address its competition concerns to its full satisfaction, was CAF requested to sign the Undertakings thus committing to them. In other words, the Commission finds that the Undertakings restore competition in the market and achieve the purpose for which they were designed.
- (b) The CID appears to dismiss the fact that the Undertakings signed by CAF acknowledge that the Commission already established that the scrutinized conduct for which the Undertakings were signed breached the Regulations.
- (c) CAF is perplexed by the CID’s conclusion that it “*was not convinced that the regulations have not been breached*”, since this matter is not contested by CAF (and the general purpose of undertakings is precisely to remedy actual or potential violations of the Regulations).
- (d) Further, nowhere in the signed Undertakings did the words “*on a no-admission of guilt basis*” feature. It follows that the CID may not base its decision on information that was not contained in the very Undertakings it was scrutinizing.

3.2 “No admission of guilt basis”

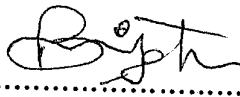
- (a) Without prejudice to CAF’s position outlined above, the term “*admission of guilt*” only arises in the context of criminal investigations, whereas the Regulations and sanctions imposed thereunder are not of a criminal nature.

- (b) CAF referred the CID to the Commission's own publications, which clearly indicate that "*The Regulations, however, do not provide for criminal sanctions for cartels or above of dominance conduct*"² (or breaches of Part 3 of the Regulations in general). The foregoing is also in line with what the Commission's former Director and Chief Executive Office, Dr. George K. Lipimile, explicitly indicated to the Global Competition Review, when he stated that "the COMESA Competition Regulations do not provide for criminal enforcement" (attached as Exhibit 2 in CAF's submissions). Even if the Undertakings included the words "no-admission of guilt basis", the use of these words should not affect the validity of the Undertakings, nor should CAF be required to admit such guilt.
- 4 In light of the foregoing, CAF requested the CID to reconsider its Decision and adopt the Commission's recommendation to accept the Undertakings and close the investigation.

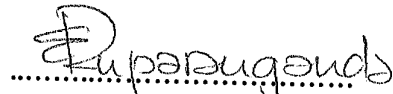
Determination

- 5 The CID took note of the submissions by CAF. The CID determined that the parties did not provide compelling reasons which were not before the CID at the time of their initial Decision.
- 6 In view of the foregoing, the CID declined CAF's request to reconsider its Decision that the case be heard on merits. The CID concluded that if CAF is dissatisfied with its determination, it may appeal to the full Board of Commissioners in accordance with Article 15(1)(d) of the Regulations as read together with Rule 24(e) of the COMESA Competition Rules of 2004.

Dated this 2nd day of September 2021



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Commissioner Brian M. Lingela (Chairperson)



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Commissioner Ellen Rugaranganda

² https://www.comesacompetition.org/?page_id=267