

**COMESA COMPETITION COMMISSION FIRST APPEALS BOARD PRACTICE
DIRECTION, 2022**

Appeal Reference: CCC/APPEAL/11/01/2021

In the Appeal lodged by: Confédération Africaine de Football (CAF)

In the matter regarding the appeal against the decisions of the Committee Responsible for Initial Determinations (CID) dated 29th June and 2nd September 2021 involving the agreements concluded between CAF and Sportfive EMEA (formerly known as Lagardere Sports SAS) relating to the commercialization of commercial rights of CAF competitions.

1. The Appeals Board upon receipt of the filed Notice of Appeal observed the following issues which require procedural directions to be given before the matter can be heard:
 - a. Who is the Respondent in the Appeal?
 - b. Service of Notice of Appeal on Respondents and other Parties; and
 - c. Parties to be invited to the First Pre-Hearing Conference.

A. WHO IS THE RESPONDENT IN THE APPEAL?

2. The Appeals Board noted that the Notice of Appeal cited the CID as the Respondent. The Appeals Board recalled that it is not a common practice to have a lower adjudicative body like the CID to be cited as a Respondent in an appeal against its decision. The Appeals Board noted that once the lower court has given its decision, it becomes *functus officio* and its official duty ends there. Hence, the Appeals Board noted that the CID should not be a party to the proceedings of the Appeal as the CID was sitting as a lower adjudicative body. To this effect, the Appeals Board noted that this is a matter where the parties should approach a higher adjudicative body only making reference to the decisions being appealed against and stating the grounds of Appeal.
3. The Appeals Board observed that the Commission being the investigative body may not be the Respondent since it had discussed and agreed with the undertakings submitted by CAF. The Appeals Board further noted that an application for leave to intervene in the Appeal was submitted by Sportfive EMEA as an interested party. The Appeals Board considered that Sportfive EMEA was an interested party because it was a party to the agreement which formed the basis of the CID decision being appealed against. Therefore,



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any decision on the matter under appeal may have implications on Sportfive EMEA. To this effect, the Appeals Board observed that the interested parties in this matter are the Commission and Sportfive EMEA.

B. SERVICE OF NOTICE OF APPEAL ON RESPONDENTS AND OTHER PARTIES

4. The Appeals Board noted that pursuant to Articles 10 and 11 of the Appeals Rules, the Notice of Appeal was deemed as duly filed once a Notice of Appeal was received and Appeals filing fee was paid in full. The Appeals Board further noted that the Registrar certified that the Appeal was duly filed with the Appeals Board on 22nd November 2021, and following this process, the Appellant did not serve the Notice of Appeal on the Respondent and Interested parties within 14 days in accordance with Article 12 of the Appeal Rules and the period for complying with this expired on 10th December 2021.
5. The Appeals Board noted that in an email dated 2nd December 2021, the Registrar informed the Appellant that the duly filed Notice of Appeal is to be served on the Respondent and the interested parties as required by Article 12 of the Appeal Rules and in response the Appellant sought the following clarification from the Registrar:

"On a separate note, since the scope of the appeal is limited to the CID decision rejecting the undertakings proposed by the Commission and signed by CAF, CAF deems the CID to be the only other party to the appeal. Does the Appeals Board expect the CID and/or the Commission to be served with another copy of the Notice of Appeal received electronically on 1 November 2021?"

6. The Appeals Board noted the issue raised by the Registrar on who is the Respondent in this matter and whether the Appellant has failed to serve the Notice of Appeal in accordance with Article 12 of the Appeals Rules; and the consequences for failing to serve the Notice of Appeal. The Appeals Board discussed that it is important not to delay consideration of the substantive matter due to technicalities and guide this defect would be addressed in the Practice Directions.

C. PARTIES TO BE INVITED TO THE FIRST PRE-HEARING CONFERENCE

7. The Appeals Board guided that the parties to be invited to the Pre-hearing Conference be CAF, Sportfive EMEA, the Commission and the Registrar.

D. DIRECTIONS OF THE APPEALS BOARD

8. **In view of the issues observed above**, the Appeals Board notes that, by citing the CID as a Respondent, which is contrary to normal practice in similar matters, the Notice of Appeal filed by the Appellant was defective. However, for purposes of ensuring that substantive justice is not frustrated by this technical error on the part of the Appellant, the Appeals Board agreed to give procedural directions to guide the proceedings in this matter.





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NOW THEREFORE, IN EXERCISE of the powers conferred upon the Appeals Board by Articles 3 (3), 13 and 37 of the COMESA Competition Commission (Appeals Board Procedure) Rules, 2017 and in an effort to address the above issues, the Appeals Board gives the following Practice Directions-

- a. That there is no Respondent.
- b. That the Notice of Appeal filed stands withdrawn.
- c. That the Application for Joinder stands withdrawn.
- d. The party that served the Notice of Appeal should file with the Registrar an application for judicial review within 14 working days from the date of the communication of these Practice Directions.
- e. After filing the application for judicial review, the party that served the Notice of Appeal, should serve the application for judicial review on the interested parties, to wit, the Commission and Sportfive EMEA.
- f. The party that served the Notice of Appeal and the interested parties should follow the process as per the Appeal Rules *mutatis mutandis*.
- g. Upon submission of the application for judicial review, no filing fees should be paid by the applicant.
- h. Pursuant to Article 31 (2) of the Appeals Rules, the filing fees paid for filing the Notice of Appeal shall not be refunded since it stands withdrawn.
- i. The first Pre-Appeal Conference shall be attended by the Appeals Board, CAF, the Commission, Sportfive EMEA and the Registrar.
- ii. In an effort to expeditiously finalise the proceedings of the judicial review, the Pre-Hearing Conference should be held by mid- March 2022.

ISSUED THIS 10TH DAY OF FEBRUARY 2022 IN SALIMA, MALAWI


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Commissioner Lloyd Vincent Nkhoma
(Chairperson of the Appeals Board)


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Commissioner Danson Mungatana
(Vice-Chairperson of the Appeals Board)


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Commissioner Deshmuk Kowlessur
(Appeals Board member)


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Commissioner Beatrice Uwumukiza
(Appeals Board member)


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Commissioner Islam Tagelsir Ahmed
Alhasan (Appeals Board member)


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Meti Demissie Disasa (The Registrar)