



Common Market for Eastern  
and Southern Africa

CCC/AB/PD/2/2022

**APPEALS BOARD SECOND PRACTICE DIRECTION, 2022**

**Reference:** CCC/APPEAL/JR/3/01/2022

**Applicant:** Confédération Africaine de Football (CAF)

**Interested Parties:** COMESA Competition Commission (Commission)  
Sportfive EMEA (Sportfive)

**In the matter:** Application for Judicial Review by CAF against the decisions of the Committee Responsible for Initial Determinations (CID) dated 29 June 2021 and 2 September 2021. The decisions concern agreements concluded between CAF and Sportfive relating to the commercialization of commercial rights of CAF competitions ("the matter").

**ON BEHALF OF CAF**

Tarek Badawy (Partner, Shahid Law Firm)  
Salma Abdelaziz (Senior Associate, Shahid Law Firm)  
Ismael Lamie (Associate, Shahid Law Firm)  
Felix Majani (Director of Legal Affairs & Compliance, CAF)  
Nadim Magdy (Legal Counsel, CAF)

**ON BEHALF OF THE COMMISSION**

Dr Willard Mwemba (Director & Chief Executive Officer)  
Mary Gurure (Manager, Legal Services & Compliance)  
Alexia Waweru (Legal Officer)  
Siboniselizulu Maseko (Senior Analyst)  
Sandya Booluck (Senior Analyst)

**ON BEHALF OF SPORTFIVE**

Mark Griffiths (Director, Norton Rose Fulbright Africa (Pty) Ltd)

**SECRETARY OF THE APPEALS BOARD**

Meti D. Disasa (Registrar)

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1. Pursuant to Article 13 of the COMESA Competition Commission (Appeals Board Procedure) Rules, 2017 (Appeals Rules), the Appeals Board with the presence of the representatives of the Applicant and interested parties held a Pre-Judicial Review Conference in the matter on 17 August 2022 during which the applicant and the interested parties were given an opportunity to make submissions on the following issues:

- a. Status of Sportfive as an Interested Party.
- b. Application for Condonation on filing of a Statement of Response by Sportfive.

**A. STATUS OF SPORTFIVE AS AN INTERESTED PARTY**

2. The Appeals Board took note of the written and oral submissions made by the parties as summarised below.

**Submissions by CAF**

3. The Appeals Board considered the submission of CAF to the effect that Sportfive should not be considered an interested party for the Judicial Review which was based on the following reasons:

3.1. That the Scope of the Judicial Review is: (i) whether or not the CID was in order to reject the undertakings agreed between CAF and the Commission; and (ii) the only matter before the 76<sup>th</sup> and 77<sup>th</sup> meetings of the CID was whether to close the investigation in respect of the agreement based on the Undertakings offered by CAF on a voluntary basis. In this regard, CAF contended that Sportfive would not be affected since the CID did not conduct a hearing on the merits of violation of the Regulations or make a determination on the merits of the alleged violation of the Regulations.

3.2. That admitting Sportfive as an interested party is premature given that the CID decision (if not overturned) means that both CAF and Sportfive will need to participate in a hearing on merits relating to the Agreements.

3.3. That Sportfive does not meet the objective criterion of an interested party as observed in the precedence of other jurisdictions such as, the EU Regulations 1/2003 (Preamble and Article 27 (4)) and further the Competition and Market Authority's (CMA) which presupposed that a third party should establish that they are directly and materially affected by the adjudicative body's decision. In light of the precedence of objective criterion, CAF argued that Sportfive did not meet the objective criterion based on the foregoing.

4. In view of the above submissions, CAF pleaded that Sportfive should not be considered as an interested party.



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### **Submissions by Sportfive**

5. The Appeals Board also considered the submission and contention of Sportfive in response to CAF's submission on its status as an interested party to the Judicial Review which was as follows:
  - 5.1. That the Appeals Board directed that it was an interested party in the Practice Direction of 10 February 2022 and this matter was already settled.
  - 5.2. That CAF's reiteration of the matter that the Appeals Board overturns its decision on the status of Sportfive as an Interested party is delaying the proceedings.
  - 5.3. That the case references made by CAF were not relevant to the case in point as they concerned a 'third party' and not an 'interested party'.
  - 5.4. That CAF did not dispute that they are an interested party in the substantive matter and that they were addressees in the CID decision of June 2021 which is the basis of the Judicial Review.
  - 5.5. That CAF's anticipation that as a result of the June decision (if not overturned) both CAF and Sportfive would participate in the hearing. In this regard, Sportfive indicated that it has a vested interest, similar to that of CAF, in the overturning of the June Decision.
  - 5.6. That when Sportfive filed a request for review of the June CID decision, CAF expressed that they were an interested party in the request submitted by Sportfive. Sportfive argued that it should similarly be deemed an interested party in the application for Judicial Review submitted by CAF.
  - 5.7. That in the event the case is considered on its merit both CAF and Sportfive would be exposed to similar risk regarding financial penalties and thus both have a vested interest in the outcome of the Judicial Review.
6. In view of the above submissions, Sportfive pleaded that the Appeals Board upholds its Decision on its status as an interested party.

### **Submissions by the Commission**

7. The Appeals Board further considered the Commission's submission on the Status of Sportfive EMEA as an interested party which was as follows:
  - 7.1. That the matter had already been determined and settled by the Appeals Board in its February 2022 Practice Direction and submitted that it believes Sportfive should be an interested party to the Judicial Review.



- 7.2. That from the commencement of the investigation in 2017, Sportfive was actively involved in the matter when they made representations to the Commission regarding the investigation. Upon further investigations, the Commission identified Sportfive, being a party to the Long Form Agreement (2007) and Full Form Agreement (effective 2015), as one of the respondents in the investigation and duly served them with a notice of investigation.
  - 7.3. That during the 76<sup>th</sup> meeting of the CID, Sportfive had submitted a letter which was considered by the CID when determining whether the undertakings concluded between CAF and the Commission should be accepted.
  - 7.4. That during the 77<sup>th</sup> meeting of the CID, Sportfive submitted an application to the CID for the decision to be reconsidered and the CID rejected this request. CAF also submitted a request for the decision of the 76<sup>th</sup> meeting of the CID to be reconsidered, which request was not granted by the CID.
  - 7.5. That both requests by CAF and Sportfive sought for a reconsideration of the same decision, being the decision of the 76<sup>th</sup> CID.
  - 7.6. That CAF requested for a copy of the decision of the 77<sup>th</sup> meeting of the CID following Sportfive's request for the decision of the 76<sup>th</sup> meeting of the CID to be reviewed, and in its request CAF indicated that they are an interested party to this application by Sportfive.
  - 7.7. That in view of the foregoing Sportfive has always been an interested party to the Judicial Review as any outcome in the matter will affect both Sportfive and CAF.
8. In view of the above submissions, the Commission pleaded that the Appeals Board upholds its decision on the status of Sportfive as an interested party.

#### **Determination by the Appeals Board**

9. The Appeals Board observed that the oral submissions made by the parties on 17 August 2022 were aligned with the filings and written submissions made earlier regarding the status of Sportfive as an interested party. In this regard, the Appeals Board noted that there were no substantial new issues submitted from CAF on the matter.
10. The Appeals Board also observed that the investigations pertaining to this matter and the consecutive CID decisions at its 76<sup>th</sup>, 77<sup>th</sup> and 78<sup>th</sup> meetings were consistent in implying both CAF and Sportfive are interested parties in the matter. As a result, the Appeals Board was convinced that both parties will be affected with the outcome of the Judicial Review.



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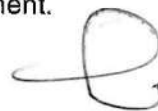
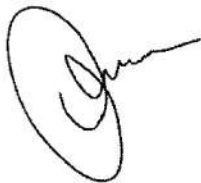
11. The Appeals Board considered CAF's presupposition that Sportfive was not a party to the Undertakings and the Scope of the Judicial Review does not affect Sportfive. However, the Appeals Board observed that in the event that the decision of the CID was upheld, and the case was heard on merits, Sportfive will be directly and materially affected on the matter. This is because the facts and the submissions made demonstrated that Sportfive will be materially and directly affected by the Judicial Review. The Appeals Board determined that the direct and material effect of the Judicial Review on Sportfive is evident since Sportfive was a party to the agreement which forms the basis of the Judicial Review and it is also supported by the communications and involvement of both CAF and Sportfive in the investigations and the three consecutive decisions of the CID referred to above.
12. In this regard the Appeals Board determined that there was no new information to warrant any reconsideration of its earlier directive that Sportfive is an interested party. Therefore, the Appeals Board upheld its Practice Direction of 10 February 2022 that Sportfive is an interested party to the Judicial Review.

#### **B. CONSIDERATION OF THE APPLICATION FOR CONDONATION ON LATE SUBMISSION OF STATEMENT OF RESPONSE BY SPORTFIVE**

13. The Appeals Board took note that Sportfive had filed the Statement of Response out of time, on 8 August 2022, whereas they were required to file on 7 July 2022 (within 30 working days from the date they were served on the Statement of Judicial Review by CAF i.e 25 May 2022) in accordance with Article 18 of the Appeals Rules. The Appeals Board noted that Sportfive filed an application for condonation for the late submission of the Statement of Response and heard the submissions of all parties on this issue.

#### **Submissions by Sportfive**

14. The Appeals Board heard the submission by Sportfive that:
  - 14.1. There was a potential miscommunication from the parties involved in the proceedings since Sportfive was not privy to the Decisions of the Appeals Board delivered on 8 March and 25 May 2022.
  - 14.2. Their understanding was that the Practice Direction anticipated a pre-hearing within 6 weeks and they were expecting further communications to this effect. However, they realized late on 14 July 2022 that the Decision of 8 March 2022 guided CAF to raise their concern on the status of Sportfive as an interested party at the Pre-Judicial Review Conference.
  - 14.3. They do not have intention to delay the matter in any way and following the February Practice Direction of the Appeals Board they were acting in good faith waiting for further communication to file their statement.



14.4. Sportfive apologized for the inconveniences the delayed filing may have caused.

#### **Submissions by CAF**

15. The Appeals Board noted that CAF indicated that they do not oppose the condonation of Sportfive's late submission of the Statement of Response notwithstanding their objection on the status of Sportfive as an interested party. In this regard, the Appeals Board noted CAF's statement that Sportfive should not be penalized for submitting the Statement of Response out of time since the Appeals Board Decisions of 8 March, 16 May and 25 May 2022, which provided the time period within which parties were expected to file, were not notified to Sportfive.

#### **Submission by the Commission**

16. The Appeals Board further considered the Commission's submission that it did not believe Sportfive was not aware of their obligations to file the Statement of Response in accordance with Article 18 of the Appeals Rules and that the failure to file was due to negligence of Sportfive. The Appeals Board also noted the Commission's observation that condoning the late filing of the Statement of Response by Sportfive shall not result in any of the parties suffering harm or prejudice. The Appeals Board took note of the Commission's statement that in order not to delay the proceedings and to prevent application of robotic justice, the condonation be granted.

#### **Determination by the Appeals Board**

17. Having considered the submissions from the parties, the Appeals Board made its determination as follows:
- 17.1. That Sportfive filed its Statement of response out of time despite clear guidance given in its Practice Direction.
  - 17.2. That none of the parties suffered any harm or were prejudiced due to the delay in the filing of the Statement of Response.
  - 17.3. That pursuant to Article 3 (2) (a) of the Appeals Rules, they should ensure the just, efficient and expeditious resolution of proceedings.
  - 17.4. That pursuant to Article 3 (2) (a) of the Appeals Rules and insofar as it appears appropriate, they should avoid strict formalities that may delay its proceedings.
  - 17.5. That pursuant to Article 34 of the Appeals Rules, the Appeals Board may give any directions it considers appropriate to cure an omission in the event the omission does not prejudice any of the parties.



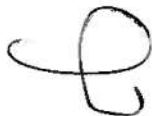
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18. In view of the above submissions from the parties and the stated provisions, the Appeals Board grants Sportfive the condonation to file its Statement of Response out of time and accepts the English version of the Statement of Response filed on 8 August 2022. The Appeals Board noted that Article 6 of the Appeals Rules requires all documents to be filed with the Appeals Board should be translated into official language of COMESA that is Arabic and French. In this regard, the Appeals Board directs that Sportfive should file the Arabic and French version of its Statement of Response by 9 September 2022 and serve it on the applicant and interested parties.
19. Notwithstanding its decision to grant condonation, the Appeals Board cautioned Sportfive to be mindful of the time periods provided under the Appeals Rules and respect its Practice Directions. The Appeals Board only granted the condonation because the late submission of the Statement of Response did not materially harm or prejudiced any of the parties to the Judicial Review.

#### **Scheduling of the Date and Venue of the Hearing of the Judicial Review**


20. The Appeals Board took note that in accordance with Article 19 of the Appeals Rules, once the Record of Proceedings, the Applicant's Statement of Judicial Review, the Statement of Response and all the relevant documentation are received, the subsequent process to follow is to schedule the date of the hearing of the Judicial Review after consulting the Appeals Board members and the parties. In this regard, the Appeals Board consulted the parties to have the Judicial Review hearing on 10-12 October 2022 in Lilongwe, Malawi. All the parties confirmed their availability in relation to the date and venue of the Judicial Review proposed by the Appeals Board.
- 21. NOW THEREFORE, PURSUANT TO Articles 3, 6, 13, 19, 34 and 37 of the COMESA Competition Commission (Appeals Board Procedure) Rules, 2017 and in an effort to address the above issues, the Appeals Board determines as follows-**
- 21.1. **The Appeals Board upholds its decision that Sportfive is an interested party.**
- 21.2. **The Appeals Board grants Sportfive the condonation to file its Statement of Response out of time and therefore accepts the English version of the Statement of Response filed on 9 August 2022.**
- 21.3. **The Appeals Board directs Sportfive to file the Arabic and French version of its Statement of Response in accordance with Article 6 of the Appeals Rules by 9 September 2022 and serve it on CAF and the Commission.**
- 21.4. **The Appeals Board directed that no further filing shall be accepted and that filing of pleadings is closed.**




21.5. The Appeals Board cautioned Sportfive to be mindful of the time periods provided under the Appeals Rules and respect its Practice Directions

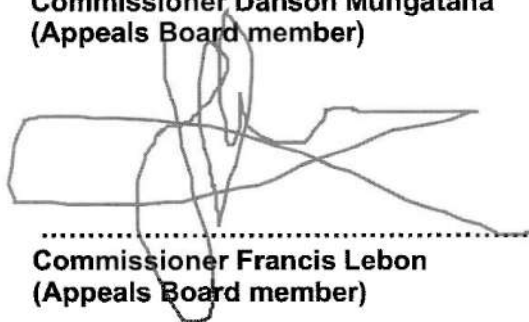
21.6. The Appeals Board directed that the Hearing of the Judicial Review shall be held on 10 – 12 October 2022 in Lilongwe, Malawi.

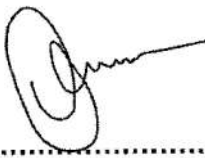
ISSUED THIS 19<sup>TH</sup> DAY OF AUGUST 2022 IN LUSAKA, ZAMBIA

  
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**Commissioner Lloyd Vincent Nkhoma**  
(Chairperson of the Appeals Board)

  
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**Commissioner Danson Mungatana**  
(Appeals Board member)

  
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**Commissioner Beatrice Uwumukiza**  
(Appeals Board member)

  
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**Commissioner Francis Lebon**  
(Appeals Board member)

  
.....  
**Commissioner Islam Tagelsir Ahmed Alhasan**  
(Appeals Board member)