

**DECISION OF THE APPEALS BOARD ON THE APPEAL  
AGAINST THE DECISION OF THE COMMITTEE RESPONSIBLE  
FOR INITIAL DETERMINATIONS DATED 4 DECEMBER 2023  
WITH REGARD TO THE MEMORANDUM OF UNDERSTANDING  
BETWEEN LAGARDERE SPORTS SAS AND SUPERSPORT  
INTERNATIONAL (PTY) LIMITED**

18 DECEMBER 2024

*Handwritten signature and initials*



**Appeal Reference:** CCC/APPEAL/3/1/2024

**Appellant:** Confédération Africaine de Football ("CAF")

**Respondent:** COMESA Competition Commission (the "Commission")

**In the matter:** Appeal against the decision of the Committee Responsible for Initial Determinations ("CID") dated 4 December 2023 with regard to the Memorandum of Understanding between Lagardere Sports SAS and SuperSport International (Pty) Limited

#### **APPEALS BOARD MEMBERS**

Commissioner Lloyds Vincent Nkhoma (Chairperson)  
Commissioner Emmanuel Adelbert Booto Nkaimana  
Commissioner Beatrice Uwumukiza  
Commissioner Luyamba Kizito Mpamba  
Commissioner Cicilia Mashava

#### **ON BEHALF OF CAF**

Tarek Badawy (Meysan)  
Salma Abdelaziz (Meysan)  
Ismael Lamie (Meysan)  
Felix Majani (Director of Legal Affairs & Compliance, CAF)

#### **ON BEHALF OF THE COMMISSION**

Dr Willard Mwemba (Director & Chief Executive Officer)  
Boniface Makongo (Director Competition)  
Alexia Waweru (Principal Legal Officer)  
Yonas Anteneh Abebe (Senior Legal Officer)  
Griven Stasion Kangwa (Senior Legal Officer)  
Barnabas Andiva (Senior Analyst)

*[Handwritten signatures]*

*[Handwritten initials]*



## I. INTRODUCTION

1. On 13 March 2024, in accordance with Articles 9 and 10 of the COMESA Competition Commission (Appeals Board Procedure) Rules 2017 (the "Appeal Rules"), the Confédération Africaine de Football ("CAF") filed a Notice of Appeal against the decision of the Committee Responsible for Initial Determinations (the "CID"), dated 4 December 2023, with regard to the Memorandum of Understanding between Lagardere Sports SAS ("**Lagardère Sports**") and SuperSport International (Pty) Limited ("**SuperSport**"). The main ground of appeal is whether the CID erred by unilaterally amending the undertakings<sup>1</sup> agreed by CAF and the COMESA Competition Commission (the "**Commission**") in respect of the award of future media rights to broadcasters.
2. Following the filing of the Notice of Appeal, on 20 May 2024, the Commission filed the Record of the Proceedings of the CID in accordance with Article 16 of the Appeal Rules. On 12 July 2024, CAF filed a Statement of Appeal pursuant to Article 17 of the Appeal Rules. On 23 August 2024, the Commission filed its Statement of Response. A hearing was held on 8 November 2024 in accordance with Article 20 of the Appeal Rules.
3. The matter under appeal concerns the investigation of the two Memoranda of Understanding ("**MOUs**") entered between Lagardère Sports (acting on behalf of CAF) and SuperSport for the commercialisation of media rights for competitions organised by CAF (the "**SuperSport Agreements**")<sup>2</sup>. The gravamen of the investigation was aimed at determining whether certain provisions contained in the SuperSport Agreements are in violation of the Regulations. The alleged competition concerns identified by the Commission were the following:
  - a) *the award of exclusive media rights for CAF competitions to SuperSport in the absence of an open and competitive tender process;*
  - b) *the long-term duration of the SuperSports Agreements which granted exclusive media rights of CAF competitions to SuperSport; and*
  - c) *the bundling of media rights across platforms, transmission modes and competitions.*

<sup>1</sup> For the purpose of this Decision, the terms "undertaking" and Commitments are used interchangeably.

<sup>2</sup> The two Memorandum of Understanding (MOUs) are the MOU between Lagardere Sports and SuperSport dated 18<sup>th</sup> June 2014, and the Amendment Agreement relating to the MOU Lagardere Sports and SuperSport entered into on 18<sup>th</sup> June 2014, dated 10<sup>th</sup> December 2014, together referred to as "SuperSport Agreements".

*Handwritten signature and initials*

*Handwritten initials*



4. Following the investigation, the Commission concluded that certain provisions contained in the SuperSport Agreements contravened Article 16 (1) of the Regulations as they affected trade between Member States, and had as their effect, the restriction of competition in the Common Market. In the course of the investigation, CAF terminated its agreement with Lagardere Sports which subsequently resulted in the termination of the SuperSport Agreements, and in turn led the Commission to conclude that the competition concerns it identified in relation to the SuperSport Agreements would no longer manifest in the relevant market. Further, with a view to address potential competition concerns in respect of future broadcasting agreements, the Commission recommended, to the CID, the following remedies which were agreed with CAF (herein after referred to as the “**Agreed Undertakings**”):
- a) *CAF undertakes to award all future exclusive broadcasting agreements relating to CAF competitions within the Common Market on the basis of an open, transparent, and non-discriminatory tender process, based on a set of objective criteria which shall be shared with the Commission prior to launching the tender. CAF shall continue to publish the results of all tender exercises conducted on its website, subject to redaction of confidential information; (“Agreed Undertaking No. 1”)*
  - b) *CAF shall not to enter into new exclusive agreements for the exploitation of media rights of CAF competitions within the Common Market for a duration that exceeds four years. Where CAF has justifiable grounds to enter into a future agreement for the exploitation of media rights of CAF competitions within the Common Market for a duration which exceeds four years, CAF shall notify the Commission for authorisation of such agreement pursuant to Article 20 of the Regulations; (“Agreed Undertaking No. 2”) and*
  - c) *CAF shall offer the various media rights as separate, commercially viable packages, having regard to the media platform and transmission mode. No single undertaking shall be allowed to purchase all the media packages. Where CAF has justifiable grounds to grant all the media packages to a single purchaser, it shall duly inform the Commission. (“Agreed Undertaking No. 3”)*
5. Having regard to the termination of the Agreements, the Commission recommended that the investigation of the SuperSport Agreements be closed upon confirmation of the Agreed Undertakings by the CID.

*Handwritten signatures and initials: CM*

*Handwritten initials: BJ*



## II. THE PROCEEDINGS BEFORE THE CID

6. After the hearing of the matter, the CID determined that the investigation into the SuperSport Agreements be closed as the Agreements had been terminated. Furthermore, as the case record shows, the CID considered the Agreed Undertakings, which were submitted by the parties in respect of the award of future media rights, in light of Section 17 (3) of the COMESA Competition Guidelines on Settlement and Commitment Procedures, 2022 ("**Commitment Guidelines**"), which empowers the CID to take the following actions upon receiving proposed undertakings:
- a) *give or withhold its confirmation. However, withholding confirmation should be in cases where there are blatant and unfair commitment terms; or*
  - b) *return the matter to the Commission with an indication of any changes that need to be made to the commitment decision before the Committee confirms it; or*
  - c) *make any other determination as necessary given the circumstances.*
7. In considering the Agreed Undertakings, as shown in the case record, the CID analysed each of the aforementioned undertakings and the determinations of the CID on each undertaking were set out as follows:

### **First Agreed Undertaking - Open, Transparent and Non-Discriminatory Tender**

8. With regard to Agreed Undertaking No. 1, the CID held the view that the undertaking offered by CAF to award future media rights through an open, transparent, and non-discriminatory tender process was sufficient and proportionate. The CID observed that the wording of the proposed undertaking was not expressly clear on whether the open, transparent and non-discriminatory criteria would be widely publicised on different platforms including CAF's website. Further, the CID noted that the reading of the proposed undertaking suggested that CAF was only obliged to publish the outcome of the tender process and not the tender process itself. In view of the foregoing, the CID made the following order with respect to the first proposed undertaking which reflects the necessity of publicising tender criteria on different platforms:

*CAF shall award all future exclusive broadcasting agreements relating to CAF competitions within the Common Market on the basis of an open, transparent, and non-discriminatory tender process, based on a set of objective criteria which shall be shared with the Commission prior to launching the tender and shall thereafter be widely publicized on different platforms including CAF's website. CAF shall*

*Handwritten signature and initials: cm*

*Handwritten initials: BJ*



*continue to publish the results of the winning bidders on its website, subject to redaction of confidential information.*

### **Second Agreed Undertaking- Duration of the Agreement**

9. With regard to Agreed Undertaking No. 2, the CID observed that reference to Article 20 of the Regulations was irrelevant since applications for authorisation under this provision are voluntary. The CID considered issuing an order, pursuant to its powers under the Regulations and Section 17 (3) (c) of the Commitment Guidelines, which shall compel CAF to notify the agreement to the Commission for its consideration and determination. The CID further considered that the award of CAF's media rights was time sensitive and therefore, the consideration and determination by the Commission should be made within sixty (60) calendar days from the date of notification i.e. after submission of complete information as determined by the Commission. In view of the foregoing, the CID made the following order with respect to the second undertaking which provides a time period within which the Commission shall finalise its assessment of an application for authorisation to be submitted by CAF:

*CAF shall not enter into new exclusive agreements for the exploitation of media rights of CAF competitions within the Common Market for a duration that exceeds four years. Where CAF has justifiable grounds to enter into a future agreement for the exploitation of media rights of CAF competitions within the Common Market for a duration which exceeds four years, CAF shall, before implementation, notify such an agreement to the Commission for its consideration and determination within 60 calendar days from the date of notification i.e. after submission of complete information as determined by the Commission.*

### **Third Agreed Undertaking- Bundling of Media Rights**

10. With regard to Agreed Undertaking No. 3, the CID observed that the obligation on CAF to inform the Commission, when it intends to grant all the media packages to a single purchaser, did not impose a requirement on CAF to notify the Commission for the latter's consideration and determination. The CID further noted the parties' justifications in relation to the practical challenges of the obligation to notify under the authorisation process. In particular, the CID noted that the award of the media rights was time sensitive, and the time taken to assess the requests for authorisations could present some delays.
11. The CID noted the concerns raised on potential delays associated with the authorisation process. However, the CID was not convinced that CAF's obligation to

*Handwritten signatures and initials: "cm" and a circle with a dot.*

*Handwritten initial "B".*



inform the Commission in the event that the media rights are offered to a single purchaser was a sufficient remedy as it would allow CAF the ability to engage in the conduct of concern and the Commission would have adequate time to investigate whether there were justifiable grounds to award the rights to a single purchaser. In view of the foregoing, the CID determined that CAF should be under the obligation to notify the Commission an agreement granting all media packages to a single purchaser for the latter's consideration and determination within sixty (60) calendar days from the date of notification before its implementation.

12. The order made regarding the third Agreed Undertaking is provided as follows:

*CAF shall offer the various media rights as separate, commercially viable packages. No single undertaking shall be allowed to purchase all the media packages. Where CAF has justifiable grounds to grant all the media packages to a single purchaser, before implementation, CAF shall notify the agreement to the Commission for its consideration and determination within 60 calendar days from the date of notification i.e. after submission of complete information as determined by the Commission. This order shall be enforced for a period of four years. The Commission shall review the order after four years based on prevailing market conditions.*

13. The CID further determined that the above Orders regarding the three proposed undertakings are proportionate, adequate and sufficient to address the concerns identified in relation to the manner in which future media rights will be awarded.

14. It is against the foregoing determinations that CAF lodged an appeal in a manner set out below.

### III. CAF'S GROUNDS OF APPEAL AND THE COMMISSION'S RESPONSE

#### CAF's Grounds of Appeal

15. CAF's grounds of appeal are centered on the allegation that the CID erred by unilaterally amending the Agreed Undertakings without offering CAF the opportunity to comment on the alleged amendments which, according to CAF, should not have taken place without returning the matter back to the Commission as per Section 17 (3) (b) of the Commitment Guidelines. CAF contended that despite the agreement of the Parties on the wording of the undertakings, following years of discussion, the CID introduced amendments to some of the undertakings that were neither proposed by CAF nor offered to the parties for comments before the CID issued its decision. In

Handwritten signature and initials, possibly "C.M."

Handwritten symbol, possibly a stylized "E" or "B".

Handwritten letter "B".



particular, CAF advanced three (3) grounds of appeal which are summarised as follows:

- a) the CID made unilateral amendments in a manner which is in direct contradiction to the Regulations and Rules 29 and 49 of COMESA Competition Rules (the 'Rules') which recognise parties' right to be heard;
- b) the CID misinterpreted Section 17 (3) (c) of the Commitment Guidelines; and
- c) The CID deviated from the relevant Appeals Board precedent which directs the CID to entertain undertakings in the form they have been presented and render a decision after hearing the parties concerned.

16. CAF further alleged that such unilateral amendments resulted in the imposition of unrealistic, impractical and commercially unfriendly requirements which include:

- a) Regarding the Order on undertaking No. 1 - Ordering CAF to publicise its tenders on several platforms;
- b) Regarding the Order on undertaking No. 2 - Ordering CAF to notify the Commission of any broadcasting agreements that exceed a term of four (4) years for its consideration and determination within sixty (60) calendar days from the date of notification; and
- c) Regarding the Order on undertaking No. 3 - With respect to bundling of media rights and offering to one broadcaster, obliging CAF to notify to the Commission for its consideration and authorisation within sixty (60) calendar days from the date of notification before its implementation.

17. CAF submitted that it was not given an opportunity to be heard on the amendments made to the Agreed Undertakings and that the amendments were never presented to CAF for discussion at the CID hearing while Rules 29 (1) and Rule 49 (1) of the Rules, quoted below, emphasize the need for a party to be heard:

*Rule 29 (1)*

*"...Recommendations and/or decisions shall be only based on matters on which the parties concerned have been able to comment."*

*Handwritten signature and initials*

*BJ*





Rule 49 (1)

*"...the Commission [and a fortiori the CID] shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission has taken objection."*

18. CAF further contended that it was never given the opportunity to present its views or provide its comments on the commercial viability of the amendments unilaterally imposed by the CID.
19. Secondly, CAF argued that the CID misinterpreted Section 17 (3) (c) of the Commitment Guidelines in a manner that deprives this section of its intended purpose. According to CAF, the CID can only invoke Section 17 (3) (c) of the Commitment Guidelines in situations which are not covered by Section 17 (3) (a) and Section 17 (3) (b) of the same Guidelines as evidenced by the reference of the word "other" in Section 17(3) (c). CAF further submitted that the changes made by the CID in the instant case are covered by Section 17 (3) (b) and that the CID should not have amended the undertakings without returning the matter back to the Commission.
20. Thirdly, CAF submitted that by unilaterally amending the Agreed Undertakings without offering the former the opportunity to be heard or comment, the CID deviated from the principles set by the Appeals Board's decision in the matter concerning the application by CAF against the Decision of the CID dated 29 June 2021<sup>3</sup> which, among others, pronounced the following:
- "any decision of the CID on accepting or rejecting undertaking in the form they have been presented should be undertaken after hearing the CCC and the concerned parties. Further the CID may return the undertakings to the Commission for changes to be effected."*
21. CAF emphasised that the CID Decision, if adopted by the Appeals Board, will unreasonably delay the contract awarding process, which will discourage competent broadcasters from investing in CAF's content and reduce the quality of content offered to consumers. Further CAF indicated that the decision of the CID on Agreed Undertaking No.1 and No. 2 will burden the Commission with additional responsibilities that are not contemplated by applicable statutes.

22. In its Statement of Appeal, CAF sought the following reliefs:

---

<sup>3</sup> Decision of the Appeals Board on the Application for Judicial Review by CAF against the Decisions of the CID, dated 16 December 2022, CCC/Appeal/JR/ 03/01/2022

*Handwritten signatures and initials: "Hm", "c.m.", "E", "B"*



*Primary Relief Sought*

- a) Quash the decision of the CID of 4 December 2023
- b) Accept the undertakings offered by the Commission and CAF as provided in the initial proposed undertaking; and
- c) Order the closure of investigation into Supersports Agreement.

*Alternative Relief Sought*

- a) Quash the CID decision of 4 December 2023
- b) Should the Appeals Board be minded to find that the undertakings agreed to by CAF and the Commission do not address the competition concerns, return the matter to the Commission for an assessment of alternative undertakings as provided in Section 17 (3) (b) of the Commitment Guidelines.


23. In its Statement of Appeal, CAF further made reference to the Decision of the CID in the matter concerning the Memorandum of Understanding between Lagardere Sports and Canal+,<sup>4</sup> wherein the CID upheld the undertakings agreed by the parties in respect of the award of future media rights which are inconsistent with the one adopted in the CID Decision against which the Appellant lodged an appeal even though both cases had similar facts and allegations. CAF highlighted the importance of ensuring consistency in the procedures and mechanisms of tendering that should be adopted by it across the Common Market. CAF submitted that should the CID's amendments be upheld by the Appeals Board, it will be compelled to adopt different tendering mechanisms and programs across the Common Market which will inevitably be cumbersome and unpredictable and will prejudice broadcasters operating in these jurisdictions.

24. In its oral submission, CAF submitted that the Appeals Board should adopt the undertakings agreed by the parties and approved by the CID in the **Canal + decision**<sup>5</sup> as follows:

---

<sup>4</sup> Case No: CCC/RFA/01/01/2017/R4 (7 June 2024), Decision of the 104<sup>th</sup> meeting of the Committee Responsible for Initial Determinations regarding the License Agreements for Media Rights of CAF Competitions between Confederation of African Football, represented by Lagardère Sports SAS, and Canal+ Overseas and Canal+ International.

<sup>5</sup> Case No: CCC/RFA/01/01/2017/R4 (7 June 2024), Decision of the 104<sup>th</sup> meeting of the Committee Responsible for Initial Determinations regarding the License Agreements for Media Rights of CAF Competitions between Confederation of African Football, represented by Lagardère Sports SAS, and Canal+ Overseas and Canal+ International.

  
cm

 B)



*In relation to the award of future exclusive agreements relating to the exploitation of media rights of CAF competitions within the Common Market:*

- a) CAF shall award all future exclusive media rights on the basis of an open, transparent, and non-discriminatory tender process, based on a set of objective criteria which shall be shared with the Commission prior to launching the tender. CAF shall continue to publish the results of all tender exercises conducted on its website, subject to redaction of confidential information;*
  - b) CAF shall not enter into new exclusive agreements for a duration that exceeds four (4) years. Where CAF has justifiable grounds to enter into a future agreement for a duration which exceeds four years, CAF shall notify the Commission for authorisation of such agreement; and*
  - c) CAF shall offer the various media rights as separate, commercially viable packages. No single undertaking should be allowed to purchase all the media packages. Where CAF has justifiable grounds to grant all the media packages to a single purchaser, it shall inform the Commission.*
25. CAF thus urged the Appeals Board to adopt the above proposed undertakings, which were adopted in the Canal+ decision so that there is consistency in the undertakings approved by the CID.

#### **Commission's Submission**



26. In its Statement of Response, the Commission submitted that the parties are not in dispute regarding the question of whether the relief sought by the Appellant should be accepted by the Appeals Board. The Commission unequivocally indicated that it does not hold any dissenting position regarding the relief that is primarily sought by CAF in its Statement of Appeal, i.e., the closure of the investigation by adopting the Agreed Undertakings submitted to the CID in this matter. Notwithstanding the foregoing, the Commission disagreed with some of the submissions of CAF concerning the question of whether the CID unilaterally amended the Agreed Undertakings; that CAF was denied the opportunity to be heard; and that the CID misread section 17 (3) of the Commitment Guidelines. In particular, the Commission advanced the following arguments:

---

*Handwritten signatures and initials: a stylized signature, the initials 'C.M.', and other scribbles.*



- a) The characterization of the additions contained in CID's orders as unilateral amendments by CAF is unwarranted;
  - b) CAF's outright denial that it was not given the opportunity to comment and be heard is unsubstantiated; and.
  - c) CAF miscomprehended the power of CID as regards commitments and misinterpreted Section 17 (3) of the Settlement and Commitment Guidelines.
27. During the oral hearing, the Commission also agreed with the submission of CAF which requested the Appeals Board to adopt the set of agreed undertakings which mirrors the undertakings agreed in the matter of Canal+ and confirmed by the CID in its Canal+ decision. The Commission submitted the adoption of the undertakings which were agreed in the Canal+ case and later adopted in the CID decision is essential in order to have a consistent approach in the treatment and monitoring of the CAF's behaviour in respect of future agreements for broadcasting of media rights.
28. With regard to CAF's argument that the CID unilaterally amended the Agreed Undertakings, the Commission began its submission by denying the characterization of CID's orders as unilateral amendments. According to the Commission, the additions contained in the CID orders are just meant to clarify the content of the Agreed Undertakings and do not deviate from the intended purpose and spirit of the Agreed Undertakings. The Commission further argued that some of the additions contained in the CID orders are mere reinstatements and explicit recognitions of the relevant applicable legal rules. In this regard, the Commission gave an example of undertaking No. 2 which empowers the Commission to consider and make determinations on applications for authorisation and contended that the act of explicitly recognizing the aspect of consideration and determination of applications for authorisation, concerning agreements exceeding a duration of four (4) years within 60 calendar days, should not be construed as a unilateral amendment on the part of CID as such procedure shall be implemented in all authorisation proceedings regardless of the CAF's undertakings.
29. With respect to the determination which grants the power to the Commission to make a determination on authorisation applications, concerning agreements exceeding four (4) years, within the sixty (60) days period, the Commission submitted such addition was in fact intended to safeguard the interest of CAF (as opposed to the Commission) by imposing a maximum time period within which the Commission should conclude its assessment, considering the time sensitive nature of the award of media rights, which time period could be shorter than what would otherwise be as per the applicable rules.

  
c.m. 



According to the Commission, Article 20 of the Regulations stipulate that authorisation is granted within the time period provided under the relevant provisions of the Rules which in some cases may even take longer than sixty (60) calendar days (especially where a public hearing is requested by any interested party and extension of the time period is sought by the Commission).

30. With respect to the allegation that CAF was never given the opportunity to be heard or provide comments on the alleged CID's amendments, the Commission submitted that CAF was indeed given the opportunity to present its views on matters which the CID made its determinations. The Commission stated that the CID, before making its determinations, in relation to undertaking No. 2 and undertaking No. 3, asked the parties to explain the rationale for adopting different wordings in its order concerning such undertakings. Particularly, the Commission indicated that the CID sought clarification on why granting all media packages to a single purchaser would only be for the information of the Commission, implying that the Commission would have no say in the matters. The Commission further submitted that, in response to CID's interrogation, CAF responded as follows:

*"I am not sure, or there aren't that many broadcasters that can provide the service in a quality that is acceptable to CAF and more importantly, that is acceptable to consumers. And in those circumstances, CAF will seek the approval, pre-approval, and that's the key, the pre-approval of the Commission on being able to tender the contract for a longer period, a period that is longer than four years." (the response in relation to undertaking 2)*

*"But just on this matter, the reasonable conclusion that was reached was that if the Commission finds that there are reasonable alternatives or undertakings that could provide the service in a bundled format, then they have the power to come to CAF and say listen, we do disagree with you, and we have to break up the service in this part of the jurisdiction. The Commission still enjoys that right..." (the response in relation to undertaking 3)*

31. The Commission, by relying on the facts stated above, argued that CAF's argument that the contested issues were never presented to it for discussion at the hearing is unsubstantiated.
32. With respect to the interpretation of Section 17 (3) (c) of the Commitment Guidelines, the Commission submitted that CAF's argument that the CID misread the Guidelines effectively ignores the power the CID possesses as regards commitments including the power to issue any appropriate order and any other necessary determination

*Handwritten signatures and initials: "A.H.", "c.m.", and a large stylized "E" with a horizontal line extending to the right.*



dependent on the circumstances of the case, as enshrined under Section 17(2) which stipulates the following:

*upon considering the settlement or commitment submissions and confirming that they are satisfactory to address the likely competition harm, the Commission shall submit a Settlement Agreement or Commitment Decision to the Committee for confirmation or consideration or issuance of appropriate order.*

33. The Commission submitted that the determinations on undertakings No.2 and No.3 were made after the parties were afforded the opportunity to respond to the query posed by the CID regarding the essence of the undertakings in view of the latter's concern on whether such undertakings, in the way they were worded, are sufficient remedies. The Commission further submitted that the CID, in its assessment, noted few issues that should be considered in confirming the offered undertakings which includes; (i) the need to have a system that compels the Appellant to notify exclusive agreements exceeding 4 years to the Commission for its consideration and determination as opposed to making it voluntary as per Article 20 of the Regulations; and (ii) concerns on whether the Appellant's mere obligation of informing the Commission (as opposed to notifying), in case of awarding rights to a single purchaser, is a sufficient remedy.
34. According to the Commission, it is such circumstances which prompted the necessity of taking a determination or an appropriate order under Section 17 (3) (c) of the Commitment Guidelines that would provide sufficient safeguard mechanisms which ensures that competition concerns are sufficiently remedied. The Commission argued that the CID has role and discretionary power to consider proposed commitments, analyse the sufficiency of the undertakings offered to address the competition concerns identified by the Respondent and make any appropriate order or determination which it deems necessary having heard the submission of the parties, pursuant to Section 17 (3) (c) of the Commitment Guidelines. The Commission further argued that the CID has final authority to give effect to commitments as it was affirmed by the Appeals Board decision in the matter concerning the application by CAF against the Decision of the CID dated 29 June 2021.
35. Notwithstanding the aforementioned areas of divergences, the Commission submitted that it had no objection if the Appeals Board accepts the primary relief that was sought by CAF since the competition concerns it identified during its investigation would be sufficiently remedied through the proposed undertakings agreed and that the acceptance of the such undertakings by the Appeals Board would not jeopardise the

*Handwritten signatures and initials: A signature, a signature with 'C.M.' below it, and a large letter 'B'.*



Commission's broader goal of addressing the competition concerns it identified in the relevant markets.

#### IV. APPEALS BOARD DETERMINATION

36. The Appeals Board, after considering the written and oral submissions from the parties, notes that the following are the legal and/or factual issues in dispute which require its consideration:
- a) Whether or not the CID made a unilateral amendment to the Agreed Undertakings without giving CAF an opportunity to be heard; and
  - b) Whether or not Section 17 (3) (c) of the Commitment Guidelines was misrepresented by the CID.
37. Notwithstanding the above contentious issues, the Appeals Board notes that the parties were in agreement that the Appeals Board accepts the primary relief that was sought by CAF i.e. the Agreed Undertakings.
38. The Appeals Board further notes that, during the oral hearing, the parties submitted that the Appeals Board should adopt the set of new proposed undertakings similar to the ones adopted in the Canal+ decision.<sup>6</sup> The Appeals Board observes that these new proposed undertakings deviate from the undertakings initially proposed to the CID i.e. the Agreed Undertakings and the Order of the CID dated 4 December 2023 which are now a subject of the appeal.
39. In view of the foregoing, the main issue before the Appeals Board is whether it has power to consider the new set of proposed undertakings, similar to the ones adopted in the Canal+ Decision, which were presented by the parties during the oral hearing.
40. This consideration is premised on the fact that the parties have revised the relief that forms the basis of the appeal as set out in the Statement of Appeal and agreed on the new set of undertakings. The Appeals Board also notes that the new set of undertakings which were submitted to it during the oral hearing were never considered by the CID. The Appeals Board further notes that the Canal+ Decision was rendered after the CID had made a determination in the matter in *casu*.

---

<sup>6</sup> Case No: CCC/RFA/01/01/2017/R4 (7 June 2024), Decision of the 104<sup>th</sup> meeting of the Committee Responsible for Initial Determinations regarding the License Agreements for Media Rights of CAF Competitions between Confederation of African Football, represented by Lagardère Sports SAS, and Canal+ Overseas and Canal+ International

*Handwritten signatures and initials:*  
A signature, the initials "C.M.", and a large letter "B".

*Handwritten initials:* B



41. In considering the issue of whether the Appeals Board has the power to consider and pronounce itself on the new set of undertakings submitted during the oral hearing, the Appeals Board determines that such an issue should be examined in light of the relevant provisions of the Regulations and the Appeals Rules. The Appeals Board, in particular, considers Article 15 (1) of the Regulations which provides as follows:

*Article 15*

*Functions of the Board*

1. *The Board may:*

*(a) issue determination on any conduct prohibited in terms of Part 3 of these Regulations;*

*(b) adjudicate on any other matter that may, in terms of these Regulations, be considered by it and make an order provided for in these Regulations;*

*(c) hear appeals from, or review any decision of, the Commission that may, in terms of these Regulations, be referred to it;*

*(d) hear appeals from initial determinations made by the committee responsible for determination;*

*(e) make any ruling or order necessary or incidental to the performance of its functions in terms of these Regulations; and*

*(f) delegate any of its functions to another COMESA agency established to co-ordinate and regulate a specific sector.*

42. The Appeals Board notes that Article 15 (1) of the Regulations vests it with a wide array of powers in determining an appeal, including adjudicating on any matter arising under the Regulations and making any ruling or order as may be necessary or incidental to the appeal.

43. Further, Article 3 (2) of the Appeals Rules provides as follows:

*In applying these Rules, the Appeals Board shall-*

*(a) ensure the just, efficient and expeditious resolution of proceedings; and*

*HL*  
*CM*  
*B*





*(b) insofar as it appears appropriate, avoid strict formalities that may delay its proceedings.*

44. In view of the foregoing, therefore, the Appeals Board has the requisite mandate to consider the new proposed set of undertakings having regard to the length of the investigation of the matter, judicial economy, and in the interest of achieving an expeditious resolution of the matter. Further, considering that the agreement, that is the subject matter of this appeal, has already been terminated, referring the matter to the CID would be futile other than delaying the determination of the matter.
45. In considering whether to adopt the new proposed undertakings, the Appeals Board is satisfied that the competition concerns identified by the Commission in its investigation will be addressed by the new proposed undertakings.
46. With regard to the contentious issues referred to in paragraph 36 (a) and (b), the Appeals Board determines that it is not necessary to dwell on them since their determination would no longer affect the outcome of the appeal. Accordingly, the Appeals Board has not pronounced itself on the issues where the parties are in dispute.

#### ORDERS OF THE APPEALS BOARD

47. Premised on the above, the Appeals Board hereby sets aside the CID decision dated 4 December 2023 and ORDERS as follows:
- a) CAF shall award all future exclusive media rights on the basis of an open, transparent, and non-discriminatory tender process, based on a set of objective criteria which shall be shared with the Commission prior to launching the tender. CAF shall continue to publish the results of all tender exercises conducted on its website, subject to redaction of confidential information;
  - b) CAF shall undertake not to enter into new exclusive agreements for a duration that exceeds four years. Where CAF has justifiable grounds to enter into a future agreement for a duration which exceeds four years, CAF shall notify the Commission for authorisation of such agreement;
  - c) CAF shall offer the various media rights as separate, commercially viable packages. No single undertaking should be allowed to purchase all the media packages. Where CAF has justifiable grounds to grant all the media packages to a single purchaser, it shall inform the Commission; and


*[Handwritten signatures and initials]*

*[Handwritten initials]*




- d) CAF shall, within forty-five (45) calendar days of each anniversary of this decision, for a period of three (3) years, submit to the Commission an affidavit from a senior official from CAF confirming compliance with the orders provided in the aforementioned sub-paragraphs (a)- (c).
48. The investigations pertaining to the Memorandum of Understanding between Lagardere Sports SAS and SuperSport International (Pty) Limited in relation to media rights of competitions organised by the Confédération Africaine de Football, be closed in view of the termination of these Agreements.
49. These Orders shall take effect from the date of the decision of the Appeals Board.


ISSUED THIS 18<sup>TH</sup> DAY OF DECEMBER 2024 IN LUSAKA, ZAMBIA.

  
Commissioner Lloyds Vincent Nkhoma  
(Chairperson)

  
Commissioner Emmanuel Adelbert  
Booto Nkaimana (Member)

  
Commissioner Beatrice Uwumukiza  
(Member)

  
Commissioner Luyamba Kizito Mpamba  
(Member)

  
Commissioner Cicilia Mashava  
(Member)

