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**Common Market for Eastern
and Southern Africa**

CASE FILE NO: CCC/RFA/01/01/2017/R2

DECISION OF THE 99TH MEETING OF THE COMMITTEE RESPONSIBLE FOR INITIAL DETERMINATIONS REGARDING 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

ECONOMIC SECTOR: SPORTS MEDIA RIGHTS



4 DECEMBER 2023

Reference: CCC/RFA/01/01/2017/R2

In the matter: 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.

Parties: COMESA Competition Commission Secretariat
Confederation of African Football
SuperSport International (Pty) Limited

INTRODUCTION

1. On 13th February 2017, the COMESA Competition Commission Secretariat ("**Commission**") initiated an investigation, pursuant to Article 22 of the COMESA Competition Regulations ("**Regulations**"), into a possible violation of Part 3 of the Regulations by the Confédération Africaine de Football ("**CAF**"). On 16th April 2019, the Commission issued notices of investigation against Lagardère Sports S.A.S ("**Lagardère Sports**") and SuperSport International (Pty) Limited ("**SuperSport**").
2. The investigation was concerned with the two Memoranda of Understanding ("**MOUs**") entered into between Lagardère Sports and SuperSport for the commercialisation of media rights for competitions organised by CAF (collectively, the "**SuperSport Agreements**"). Specifically, the concerned MOUs are:
 - a) MOU between Sportfive¹ and Supersport International (Pty) Ltd, dated 18th June 2014 ("**2014 Agreement**"); and
 - b) Amendment Agreement relating to the MOU between Sportfive and SuperSport entered into on June 18th 2014, dated 10th December 2014 ("**Amendment Agreement**").
3. The aim of the investigation was to allow the Commission to determine whether or not certain provisions contained in the agreements are in violation of the Regulations. The alleged competition infringements assessed concern:
 - a) the award of media rights for CAF competitions in the absence of an open and competitive tender process;

¹ Lagardere Sports previously operated as Sportfive. See section below on Parties.

- b) the long-term duration of contract for the award of media rights of CAF competitions to broadcasters; and
 - c) the bundling of media rights across platforms, transmission modes and competitions.
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. However, the SuperSport Agreements was terminated, and the Commission and CAF agreed on the following undertakings² to address the identified competition concerns in relation to the award of future media rights:
- 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;
 - 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 exceed 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; 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.
5. Having regard to the termination of the agreements and the undertakings stated above, the Commission recommended that the investigation into the agreements be

² The term 'undertaking' in this decision means 'firms/companies' as provided under Article 1 of the Regulations or 'commitments offered by companies', as the context may be. For avoidance of doubt, where reference is made to commitments, the term "undertaking" shall be used and where reference is made to a firm/company, the term "Undertaking" shall be used.

closed. The parties also supported the recommendation of the Commission that the investigation be closed and that the above undertakings be adopted.

6. Pursuant to Article 13 (4) of the Regulations, there is a Committee Responsible for Initial Determinations (“**CID**”). Pursuant to Rules 23(2), 24, 29 (1) and 49 of the COMESA Competition Rules, the parties concerned were given the opportunity to make oral representations on the undertakings. Pursuant to the COMESA Competition Guidelines on Settlement and Commitment Procedures, 2022 (“**Commitment Guidelines**”), the CID considered the investigation report of the Commission and the proposed undertakings in line with Section 17(3) of the Commitment Guidelines which empowers it to:
 - 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. The decision of the CID is as set out below.

THE PARTIES

CAF

8. The MOUs relate to the commercialisation of media rights of competition organised by CAF. Article 1 of the CAF Statutes provides that CAF is an international non-governmental organisation with its own legal persona, founded in 1957 in Khartoum, Sudan. The headquarters of CAF is located in Cairo, Egypt. CAF is the governing body of football in Africa and has fifty-four (54) Member Associations, which are the national football associations of the African countries, and two (2) Associate Members (Reunion Island and Zanzibar).
9. At the time of the investigation, CAF had exclusive rights to organize eleven (11) competitions³, namely:

³ Article 58 of the CAF Statutes.

For national teams

- a) Africa Cup of Nations (“AFCON”);
- b) African Nations Championship “(CHAN”);
- c) U-20 AFCON;
- d) U-17 AFCON;
- e) U-23 AFCON;
- f) Women’s AFCON;
- g) Futsal AFCON;
- h) Beach Soccer AFCON;

For Clubs

- a) CAF Champions League;
- b) CAF Confederation Cup; and
- c) CAF Super Cup

10. Further, CAF has the exclusive right to organize any other continental or intercontinental football competitions.

11. The executive body of CAF is the Executive Committee and consists of the President, thirteen (13) members and one (1) female member. The Executive Committee is responsible for implementing the policies and decisions of the General Assembly, and the management and the administration of CAF. It is the supreme authority for all matters concerning CAF competitions⁴.

12. According to Article 59 of the CAF Statutes, CAF and the national football associations of African countries are the legal owners of all rights arising from competitions and other events which fall under their respective areas of responsibility. These rights include, among others, all kinds of pecuniary rights, audio-visual recording rights, reproduction and broadcasting rights, multimedia rights and marketing and promotional rights, copyright as well as intellectual property rights; for example, covering emblems. The Executive Committee is responsible for determining how and to what extent these rights are exploited. Under the CAF Statutes, it is provided that the Executive Committee is sovereign in relation to the exploitation of these rights and that it can exploit them either directly, or with third parties, or delegate their exploitation totally or partially. The investigation report provided that CAF is thus entitled to make decisions pertaining to the exploitation of

⁴ Article 23 of the CAF Statutes.

the media and marketing rights, and in so doing, it may choose to delegate these powers to any third party, such as Lagardère Sports.⁵

SuperSport

13. SuperSport is the major funder and broadcast aggregator of sporting content across the African continent on the DStv platform. SuperSport is a wholly owned subsidiary of the MultiChoice Group Limited, an entity listed on the Johannesburg Stock Exchange.⁶ The MultiChoice African business provides multi-channel pay television and subscriber management services in 48 countries in Sub-Saharan Africa and the adjacent Indian Ocean islands. The group has ownership interests through MultiChoice Africa in joint ventures operating in Kenya, Ghana, Uganda, Nigeria, Tanzania, Zambia, Namibia and Botswana. In other Sub-Saharan African countries, MultiChoice Africa operates through agents or franchisees⁷.

AGREEMENTS SUBJECT TO THE INVESTIGATION

14. The 2014 Agreement was concluded between Lagardere Sports (formerly Sportfive SAS) and SuperSport International (Pty) Ltd on 18 June 2014. Pursuant to Clause 1 of the 2014 Agreement, the media rights meant the exclusive rights to transmit the competitions, in full or in part, live and/or delayed, and for an unlimited number of runs in all languages. The 2014 Agreement specifies that no exclusivity is granted for the exploitation of clips and exploitation on a non-linear basis by pay-TV, Lagardère Sports undertook not to authorise, on behalf of CAF, the following parties (who are competitors of SuperSport) to exercise or exploit any broadcast of Clips on a pay basis, nor any non-linear broadcast on a pay TV basis within the territories: StarTimes, Zuku, Azaam, Zap, StarSta, Setanta and Fox. The Agreement further provided that where CAF concluded third party agreements with the competitors identified above for free-to-air broadcast, CAF undertook not to authorise the live broadcast of the matches on their pay broadcast platforms.
15. Further, the Amendment agreement was concluded between Sportfive and SuperSport on 18 June 2014. Section A of the recital of the Amendment Agreement recognized that SuperSport and Lagardere Sports [then operating as Sportfive]

⁵ At the time of investigation, Lagardère Sports belonged to the Lagardère Group (i.e. Lagardère SCA and any entity directly or indirectly controlled by Lagardère SCA), which described itself as the global leader in content publishing, production, broadcasting and distribution, whose powerful brands leverage its virtual and physical networks to attract audiences. The Lagardère Group sold its sport business (including Lagardère Sports SAS and IFAP Sports) to H.I.G Capital in April 2020 (retaining only a minority, non-controlling interest in the divested entities) at which point Lagardère Sports SAS and IFAP Sports ceased to form part of the Lagardère Group. Subsequent to this transaction, Lagardère Sports has been re-named Sportfive EMEA.

⁶ <https://www.supersport.com/about>

⁷ <https://www.biztechafrika.com/press/multichoice/item/multichoice/45/>

entered into an agreement, pursuant to which Lagardère Sports agreed to grant SuperSport with a license related to certain media rights regarding the following competitions:

- a) Qualifiers for the AFCON 2017, 2019, 2021, 2023;
- b) AFCON 2017, 2019, 2021, 2023;
- c) CAF Champions League 2017 to 2024;
- d) CAF Confederation Cup 2017 to 2024;
- e) African Nations Championship 2018, 2020, 2022, 2024;
- f) African U-20 Championship 2017, 2019, 2021, 2023; and
- g) CAF Super Cup 2017 to 2024.

16. The Member States covered are Burundi, Comoros, Democratic Republic of Congo, Ethiopia, Eritrea, Kenya, Madagascar, Malawi, Mauritius, Uganda, Rwanda, Seychelles, Eswatini (formerly Swaziland), Zambia and Zimbabwe.

17. The CID observed that the 2014 Agreement and the Amendment Agreement form the operational agreements between CAF and SuperSport for the exploitation of the above rights by SuperSport.

COMMISSION'S SUBMISSIONS TO THE CID

18. The Commission's investigation report provided that in accordance with the cumulative elements required under Articles 16 (1) and (2) of the Regulations, it established that:

- a) there existed an agreement between Undertakings namely, CAF, Lagardere and SuperSports;
- b) the agreement was implemented within the Common Market;
- c) the agreement had the effect of preventing, restricting or distorting competition within the Common Market; and
- d) the agreement affected trade between Member States.

19. The investigation established that:

- a) the relevant markets were the national markets for the acquisition of TV broadcasting rights for CAF competitions in Burundi, Comoros, DRC, Ethiopia,

Eritrea, Kenya, Madagascar, Malawi, Mauritius, Uganda, Rwanda, Seychelles, Eswatini, Zambia and Zimbabwe.

- b) the duration of the 2014 Agreement, coupled with the lack of competitive tender processes and the extensive scope of exclusivity granted to SuperSport was likely to lead to a significant restriction of competition in the relevant markets in the Common Market.
 - c) 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.
20. The investigation further established that on 8th November 2019, CAF issued a statement announcing the immediate termination of its agreement with Lagardere Sports, citing the judgement issued by the Cairo Economic Court and the preliminary findings of the Commission as the basis for the termination. SuperSport subsequently terminated its agreement for the exploitation of the CAF rights, citing the termination of the CAF/LS agreement and the absence of a formal agreement between SuperSport and CAF.
21. The Commission and CAF agreed on undertakings in respect of future agreements for media rights as follows:
- 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;
 - 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 exceed 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; 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.

22. Having regard to the termination of the SuperSport Agreements and the undertakings provided by CAF in respect of future agreements for media rights, the Commission considered that the competition concerns identified from the SuperSport Agreements would no longer manifest themselves in the relevant markets and there was therefore not necessary for the Commission to intervene. To this end, the Commission recommended that the investigation into the SuperSport Agreements be closed in view of the termination of the SuperSport Agreements and the undertakings provided by CAF in relation to future media rights.

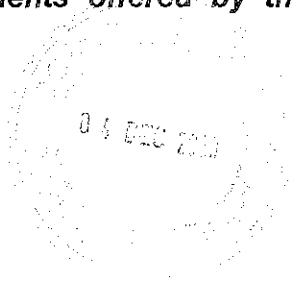
CAF'S SUBMISSIONS

23. CAF submitted that the CID should restrict itself to the determination of whether the undertakings proposed by the Commission are sufficient. CAF referred to the CCC RBP-Practice note 1 of 2023, which defines undertakings as follows:

“[u]ndertakings” shall be the commitments which respondents, that are subject to proceedings under Part 3 of the COMESA Competition Regulations, 2004 (the “Regulations”), can negotiate with the Commission to address competition concerns identified by the Commission from the parties’ conduct in order to reach a speedy conclusion of the proceedings.”

24. CAF also made reference to the European Commission (EC) Competition Policy Brief of March 2014 that undertakings (also referred as commitment decisions by the EC) have quicker impact on markets. CAF further submitted that undertakings are less burdensome and avoid lengthy procedures as referred to in the Decision of the Appeals Board on the Application for Judicial Review by CAF against the Decisions of the Committee Responsible for Initial Determination dated 29 June 2021 and 2 September 2021 (Case number: CCC/APPEAL/JR/03/01/2022) of 19 December 2022 (hereinafter referred to as “the Appeals Board Decision”) and Court of Justice of the European Union (“CJEU”) **Case C-441/07P, 29 June 2010, EC v. Alrosa Company Ltd Judgment** (the “Alrosa Judgment”) which stated as follows:

“Under Article 9 of Regulation No 1/2003, where the Commission intends to adopt a decision requiring an infringement to be brought to an end, it may make the commitments offered by the undertakings concerned



binding if they meet the competition concerns expressed in its preliminary assessment. This is a new mechanism introduced by Regulation No 1/2003 which is intended to ensure that the competition rules laid down in the EC Treaty are applied effectively, by means of the adoption of decisions making commitments, proposed by the parties and considered appropriate by the Commission, binding in order to provide a more rapid solution to the competition problems identified by the Commission, instead of proceeding by making a formal finding of an infringement”

25. Whereas the Appeals Board Decision states that:

“... the essence of requiring that undertakings be examined/considered by the CID is to provide checks and balances on the negotiations carried out by the CCC. To this effect, the conditions in which the CID rejects undertakings should be narrowly interpreted such that once undertakings are recommended to the CID, it is expected to uphold such undertakings unless there are blatant errors in the CCC’s assessment or investigation; or where there are blatantly unfair settlement terms imposed on the parties.”

26. CAF submitted that the undertakings were the result of an extensive consultation with the Commission, since 2019 and the MOUs had since been terminated. CAF submitted that the requirements for the undertakings were met and that it had made all efforts to address the concerns raised by the Commission. As such, it is providing open, public and transparent tenders, limiting such tender for four years; and providing separate packages, where appropriate. CAF submitted that in 2021, it carried out tenders for the award of media rights in sub-Saharan Africa for AFCON and that it had two successful bidders, and a second tender cycle is currently ongoing.

27. CAF submitted that if the undertakings were disregarded this would prolong the investigations, thereby defeating the purpose of undertakings as defined under Practice Note of April 2021. This would also discourage the parties investigated from cooperating with the Commission for such undertakings.

28. Therefore, CAF submitted that the investigation be closed on the basis that the concerns no longer subsist.

SUPERSPORT’S SUBMISSIONS

29. SuperSport made the following submissions in response to the Commission's investigation report:

- a) The legal requirements needed to be satisfied as well as the economic analysis required to reach the conclusions that the CCC sought to reach;
- b) The fact that SuperSport acquires rights as sold by CAF;
- c) The fact that the CCC had not dispensed with the onus to prove that the agreements had the object or effect of preventing, restricting and distorting competition; and
- d) The agreements had economic benefit.

30. SuperSport submitted that its substantive response to the report adequately addressed all the allegations raised and that it did not concede that the 2014 Agreements and the Amendment Agreements violated any provision of the Regulations. SuperSport, nevertheless, supported the Commission's recommendation to close the investigation without a full hearing to adjudicate the matter on the merits. SuperSport submitted that if the CID considered it necessary to decide on the merits of the Commission's investigation and its findings, this would necessitate that the matter be stood down to allow the parties to prepare for a full hearing of the matter.

31. SuperSport submitted that the Commission's recommendation that the investigation be closed was appropriate and was in line with the Appeals Board Decision which found that CAF's undertakings sufficiently and proportionately addressed the identified competition concerns, and that the recommendation of the Commission be upheld. Particularly, this is because the agreements before the Appeals Board also related to the commercialisation of commercial rights of CAF competitions.

32. SuperSport submitted that the SuperSport Agreements investigated were conditional upon the existence of a valid agreement/s between CAF and Lagardère Sports such that once the latter agreement/s were terminated by CAF, the SuperSport Agreements would consequently terminate. As such, SuperSport subsequently terminated the SuperSport Agreements, as a direct result of the termination of the Long-Form Agreements. This was made possible in part by the fact that there was no agreement in place between SuperSport and CAF.

33. Hence, SuperSport submitted that the investigation be closed since the status quo had changed and the offending clauses were no longer present once the Agreements were terminated. SuperSport submitted that while the undertakings are

between CAF and the Commission, it will in future acquire CAF sports rights on the basis on which they are offered or made available in the market by the rights holders, including CAF.

CID DELIBERATIONS

Deliberations on undertakings

34. The CID considered the relief sought by the Commission that the investigation be closed, the proposed undertakings be accepted and that the respondents were agreeable to the recommendations of the Commission. Therefore, the CID in deliberating on this matter did not delve into the issue of whether or not there was an infringement of Article 16 of the Regulations, but rather considered the undertakings in respect of future agreements of media rights which CAF and the Commission agreed upon namely:
- 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;
 - b) 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 exceed 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; 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.
35. The CID considered whether the above undertakings sufficiently addressed the competition concerns established by the Commission as follows:

Open, Transparent and Non-Discriminatory Tender

36. With respect to the concern on the manner in which the rights were awarded, the CID considered that a commitment by CAF to award the rights through an open, transparent, and non-discriminatory tender process was sufficient and proportionate. The CID noted that tender processes were standard practices for other international football organisers such as UEFA⁸ and FIFA.⁹ Specifically, in the EC's decisions in seminal cases such as the UEFA¹⁰ and the FA Premier League¹¹, it was held that potential restrictive effects of a joint selling arrangement could be offset by introducing new rules for the sale of these rights, notably the award of exclusive rights through tenders in multiple packages and for a limited duration.
37. Further, the CID noted that the standard practice for the award of sports broadcasting rights through tender process was implicitly recognised in the EC's decision in *Liberty Global/Ziggo*, stating that "***Licenses for sports broadcasting rights are typically granted through tenders on an exclusive basis for a specific geography and for a limited period***"¹².
38. The CID considered that the undertaking provided by CAF to award future media rights by way of an open, transparent, and non-discriminatory tender was sufficient to address the competition harm identified by the Commission. However, the CID observed that the wording of the 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 reading of the undertaking suggested that CAF was only obliged to publish the outcome of the tender process and not the tender process itself. In this regard, the CID determined that the first undertaking should reflect as follows:

“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 and shall thereafter be widely publicized on different platforms including CAF's website. CAF shall continue to

⁸ Available at [UEFA launches bidding processes for official National Sponsorship packages for UEFA EURO 2020™ | Inside UEFA | UEFA.com](#)

⁹ Available at <https://www.fifa.com/about-fifa/who-we-are/news/fifa-launches-invitation-tender-for-sports-equipment-supplier-94107>

¹⁰ European Commission, Case COMP/C.2-37.398 – Joint selling of the commercial rights of the UEFA Champions League (2003/778/EC), 23 July 2003, available online at:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:291:0025:0055:EN:PDF>

¹¹ O EC decision of 22 March 2006, Case C-2/38.173, Joint selling of media rights to the FA Premier League

¹² COMP/M.700 Liberty Global/Ziggo Paragraph 35.

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

Duration of the Agreement

39. With respect to the concern on the duration of the agreements, the CID observed that the proposed undertakings were for CAF to limit future agreements to a period of 4 years, coupled with the possibility of extending such agreements to a longer period provided that such agreements would be notified to the Commission for its consideration and determination.
40. The CID observed that a duration of 4 years for media rights would be in line with the extensive jurisprudence on the optimal maximum length of exclusive agreements for the acquisition of football media rights based on the cycle of the tournaments.¹³ Given that CAF competitions are played annually or every two years, the grant of exclusivity for a maximum period of four years would be sufficient to allow the commercial partners to recoup their investment for the viable operations of the CAF competitions while not disproportionately foreclosing competition. As such a period of 4 years would include two editions of CAF's most popular tournament, i.e. the AFCON, in addition to four editions of the annual tournaments.
41. The CID further observed that reference to Article 20 of the Regulations was irrelevant in this particular undertaking because applications of authorisation thereunder are voluntary. In this regard, the CID considered issuing an order pursuant to its powers under the Regulations and Section 17 (3) (c) of the Commitment Guidelines that shall compel CAF to notify the agreement to the Commission for its consideration and determination.
42. The CID further considered that the award of rights was time sensitive and therefore, the consideration and determination by the Commission should be made within 60 calendar days from the date of notification i.e after submission of complete information as determined by the Commission. In this regard, the CID determined that the second undertaking should reflect as follows:

“CAF shall not enter into new exclusive agreements for the exploitation of media rights of CAF competitions within the Common Market for a duration not exceeding four years. Where CAF has justifiable grounds to enter into a future agreement for the exploitation of media rights of CAF competitions

¹³ See European Commission Decision of 23 July 2003, (COMP/C.2-37.398 - Joint selling of the commercial rights of the UEFA Champions League) and also COMP/C.2-38.173 — Joint selling of the media rights to the FA Premier League, Commission Decision of 22/III/2006.

within the Common Market for a duration exceeding four years, before implementation, CAF shall 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.”

43. The CID considered that such an undertaking is sufficient to address the competition harm arising from long term agreements.

Bundling of Media Rights

44. With regard to the bundling of the media rights, the CID made the following observations, that the undertaking was a commitment by CAF:

- a) to offer various media rights as separate commercially viable packages having regard to the media platform and transmission modes;
- b) that no single Undertaking shall be allowed to purchase all the packages; and
- c) where CAF has justifiable grounds to grant all the media packages to a single purchaser, it shall duly inform the Commission.

45. The CID noted that the Commission in its report held that:

“Bundling is not considered a restriction by object; economic literature has identified efficiencies which can arise from the integrated supply of products, such as reduced search costs for consumers, reduced costs of distribution and marketing which are passed on to consumers. However, the award of rights as a bundled service may have anticompetitive effects by restricting the ability of certain buyers to compete for the bundle, thus indirectly restricting competition among buyers. It is therefore necessary to consider the prevailing economic and legal context in which the products are offered as a bundle to determine the effects on the relevant markets.”¹⁴

46. The CID observed the following from the report of the Commission:

- a) The bundling of media rights may constitute a barrier to entry or expansion and it may give larger broadcasters an advantage over smaller broadcasters in acquiring the media rights due to larger financial capacity.

¹⁴ Investigation Report, Page 32, Paragraph 113.

- b) The media rights awarded to the pay-TV broadcaster cover TV, internet broadband, and mobile transmissions.
 - c) The TV rights are bundled such that live broadcasts, delayed broadcasts, and highlights are all sold as one package.
 - d) The concern that such bundling would deny potential rival pay-TV broadcasters and other platform providers the opportunity to acquire some of those rights. This would especially be true for the providers who cannot afford to bid for full live broadcasts which are more expensive.
 - e) Unbundling of the exclusivity rights granted would allow more players to compete for the market, thus enhancing the competitive process and may result in more efficient exploitation of the various rights.
47. The CID recognised that other football organisers such as UEFA and FIFA have awarded rights on a platform/technology neutral basis in recognition of certain benefits arising from it and having regard to emerging technologies. The CID noted the Commission's submission that broadcasting a match across more than one platform by the same operator could create a more holistic package to consumers in light of the changing patterns in consumer behaviour. In view of this, the CID considered that the requirement on unbundling the media rights should not relate to the platforms.
48. The CID further observed that the obligation for CAF to inform the Commission as part of the undertaking did not impose a requirement on CAF to notify the Commission for the latter's consideration and determination. The CID noted the Commission and CAF's justifications in relation to the practical challenges of the authorisation process. In particular, it was noted that the award of the rights were time sensitive and the time taken to assess the requests for authorisations could present some delays. For efficiency purposes, the Commission and CAF thus, agreed to an undertaking which would require CAF to inform the Commission rather than apply for authorisation. The CID also noted the Commission's position that it maintains the power to investigate if, on the basis of the information submitted, it has reasonable grounds to believe that the conduct would have an anti-competitive effect.
49. The CID noted the concerns raised on potential delays associated with the authorisation process. The CID was, however, not convinced that CAF's obligation to inform the Commission in the event that the 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 before the Commission would have adequate time to investigate whether there were justifiable grounds to award the rights to a single purchaser. Being cognisant of the time sensitivity of the tournaments, the CID therefore considered that CAF should be under the obligation to notify the Commission for its consideration and determination within 60 calendar days from the date of notification before its implementation.

50. The CID noted that the above position does not constitute withholding of its confirmation of undertakings from CAF. Based on Section 17 (3) (c) of the Commitment Guidelines, the CID is empowered to make any other determination as necessary given the circumstances of the undertakings proposed. In this regard, the CID determined that the third undertaking should reflect that:

“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 Undertaking, 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.”.

Deliberation on the Closure of Investigation

51. Having analysed the undertakings and the submissions from the parties, the CID determined that the competition concerns identified in the SuperSport's agreements would no longer manifest themselves in the relevant markets since the two agreements have terminated. The CID also noted that all the parties concurred with the undertakings and that the competition concern pertaining to the tender process has been sufficiently addressed by the undertaking. Further, the competition concerns pertaining to the duration of future exclusive agreements unbundling of media rights and the no single purchaser obligation would be sufficiently addressed by the requirement for CAF to notify the agreements to the Commission for its consideration and determination before implementation. In addition, the CID observed that the matter had lasted for more than 4 years and that it was in the best interest of all parties concerned that the matter be concluded. Therefore, the CID resolved that the matter regarding 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 subject to the signing of the undertaking and compliance by CAF with its orders.

DETERMINATION AND ORDER

52. **NOW THEREFORE**, in exercise of the powers conferred upon the CID, by the Regulations, and Section 17 (3) (c) of the Commitment Guidelines, the CID hereby makes the following **ORDERS**:

- a) **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 continue to publish the results of the winning bidders on its website, subject to redaction of confidential information.**
- b) **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.**
- c) **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.**

53. The CID was satisfied that the above Orders are proportionate, adequate and sufficient to address the concerns identified in relation to the manner in which future media rights will be awarded.
54. On the matter 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, the CID hereby resolves that the investigation into the SuperSport Agreements be closed in view of the termination of these Agreements.
55. Pursuant to the Regulations, failure to comply with the above orders shall constitute a breach of the Regulations and parties shall be liable to a fine and/or any such penalties as may be assessed.
These Orders shall take effect from the date of the decision of the CID.
56. A party aggrieved by the decision of the CID may refer the matter to the Appeals Board within 60 days of the decision being made, failing which the decision of the CID shall be final and binding.

Issued this 4th day of December 2023 in Nairobi, Kenya

Commissioner Ellen Ruparanganda

Commissioner Brian Muletambo Lingela

Commissioner Vipin Naugah

