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Competition - Portugal

Sale terms of pay television sport channel lead to fine

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Introduction

In June 2013 the Portuguese Competition Authority imposed penalties on Sport TV Portugal SA, a provider of pay television premium-content sports channels to national television operators. This antitrust infringement case concerned Sport TV's apparent abuse of dominant position in the national market of pay television channels with premium sports content sold to television subscription operators.⁽¹⁾

The authority's action was triggered by a complaint lodged in 2010 by Cabovisão, a television subscription provider that acquired premium sport pay television channels from Sport TV.

Findings

According to the authority, Sport TV's abusive conduct was based on the discriminatory nature of the commercial conditions that it imposed in its distribution agreements with subscription television operators for the sale of premium television sports channels.

Sport TV's remuneration system, which was in force from January 1 2005 to April 1 2011, allegedly led to the systematic application of dissimilar commercial conditions to equivalent services, thereby limiting production, distribution, technical development and investments.

According to the authority, the conduct during the aforesaid period benefited the main national subscription television provider to the detriment of all other television subscription operators, which were not given access to such favourable commercial conditions. The authority also considered that the defendant produced no reasonable and objective economic justification for the dissimilar conditions applied to the television subscription providers, notably in terms of economies of scale.

Sport TV was therefore given a €3.7 million fine, which is still subject to judicial review, with suspensive effect in relation to the applied misdemeanour penalty.

Comment

The authority's decision is a clear-cut example of the application of the European courts' reasoning in previous cases regarding abuse of dominant position.⁽²⁾ Under such settled jurisprudence, the application by a dominant company of dissimilar commercial conditions on economic agents without objective justification (validated by a competition authority) can almost *per se* constitute a breach of antitrust rules.

Finally, as Sport TV is also the main acquirer of national professional football league television broadcasting rights, this punitive decision may materially enhance the position of the Portuguese Professional Football League Association, which – pursuant to the European Commission decisions in *Champions League*, *Premier League* and *Bundesliga*⁽³⁾ – intends to implement in Portugal a model for the joint sale of national premier league football broadcasting rights with football clubs (one of the main resources for any pay television premium sports content channel).

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Endnotes

- (1) See the authority's press release of June 20 2013.
- (2) Notably in *Michelin II* and *Portugal v Commission* (Cases T-203/01 and C-163/99, respectively).
- (3) Cases C.37.398 (*UEFA Champions League*), C.37.214 (*Bundesliga*) and C.38.173 (*Premier League*).

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