



**COMESA Competition Commission**

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**Common Market for Eastern  
and Southern Africa**

**REF: CCC/CEI/7/2/2019**

**CALL FOR EXPRESSION OF INTEREST**

**SUPPORT FOR COMMITTEE RESPONSIBLE INITIAL  
DETERMINATION IN THE MATTER INVOLVING  
CONFÉDÉRATION AFRICAINE DE FOOTBALL AND OTHERS**

**JULY 2019**

## A. INTRODUCTION

The COMESA Competition Commission (the “Commission”) is an international body corporate established under Article 6 of the COMESA Competition Regulations (“the Regulations”). The Regulations are promulgated pursuant to Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (“the COMESA Treaty”).

The Commission is responsible for enforcing the Regulations, whose purpose is promoting and encouraging competition by preventing restrictive business practices and other restrictions that deter the efficient operations of markets, thereby enhancing the welfare of consumers in the Common Market and protecting consumers from offensive conduct by market actors. The Commission is composed of two enforcement institutions:

- (a) The Secretariat which is headed by a Director appointed under Article 9 of the Regulations. The Secretariat is also composed of staff members appointed by the Director with the approval of the Board. The Secretariat is responsible for carrying out investigations and advocacy work of the Commission among other things. The Commission’s Secretariat commenced its operations on the 14<sup>th</sup> of January 2013 and is located in Lilongwe, Malawi. The Commission’s Secretariat has so far 15 staff members; and
- (b) The Board of Commissioners which is established and appointed under Articles 12 and 13 of the Regulations respectively, is mandated with issuing determinations, performing adjudicative functions on any matter considered by it and hearing appeals among others. Pursuant to Article 13 (4) of the Regulations, the Chairperson of the Board may assign three of the Commissioners to constitute a Committee responsible for Initial Determinations of matters brought before it.

## B. BACKGROUND OF THE COMMISSION’S CASE AGAINST CONFÉDÉRATION AFRICAINE DE FOOTBALL AND OTHERS

On 13<sup>th</sup> February 2017, the Commission commenced an investigation, pursuant to Article 22 of the COMESA Competition Regulations (“Regulations”), into a possible violation of Part 3 of the Regulations, specifically Article 16 by the Confédération Africaine de Football (“**CAF**”).

The investigation relates to the agreements entered into between CAF and Lagardère Sports S.A.S (“Lagardere Sports”) in 2007 for the intermediation of the media and marketing rights for CAF competitions for the periods 2009 to 2016 (“**CAF/LS Agreements**”); which agreements were renewed in 2015 for the period 2017 to 2028.

Pursuant to the CAF/LS Agreements, Lagardere Sports entered into agreements with specific broadcasters and sponsors for the commercialisation of the media and marketing rights. Specifically, the agreements were entered into by CAF and/or Lagardere Sports with three broadcasters (Canal + Overseas; beIN Sports; SuperSport International (Pty) Ltd) and two sponsors (Orange Brand Services Limited; and, Total SA) for the commercialisation of the media and marketing rights respectively (collectively, the “**Commercial Agreements**”).

The Commission's investigation report has led to the conclusion that provisions contained in the CAF/LS agreements and the commercial agreements relating to the above issues, 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.

Article 8, Rules 21, 29 and 49 of the Regulations and Rules respectively provide that the Commission shall have regard to the principles of natural justice in conducting its investigations. Both the Commission and the Board in conducting their hearings and making recommendations and/or determinations shall give the undertaking(s), which are the subject of the proceedings the opportunity of being heard.

After completing its investigations, the Commission is of the view that there is need to conduct a hearing before the Committee Responsible for Initial Determination (CID).

For this purpose, the Commission intends to engage the services of a consultant in terms of Rule 25(8) and (10) of the Regulations to provide support to the CID before, during and after the hearing and specifically in the legal and economic analysis regarding violations of Article 16 of the Regulations by CAF and other Respondents.

### **C. OBJECTIVES**

The objective of this consulting assignment is to provide a comprehensive legal, procedural and economic guidance to the CID into possible violations of Article 16 of the Regulations. Specifically, the consultant will provide support to the CID in assessing the evidence used by the Commission in arriving at its findings of the possible violation of the Regulations involving CAF and other Respondents. Further, the consultant will assess the defenses presented by the respondents on the said violations.

### **D. SCOPE OF WORK**

The overall scope of the assignment is to undertake analysis on the anticompetitive conduct involving CAF and other Respondents. Specifically, the assignment will involve the following tasks. The consultant will support the CID as follows:

- a. Provide guidance on the jurisdictional and procedural analysis to evaluate the alleged anticompetitive practices;
- b. Provide guidance on the elements of the alleged breach of competition Regulations;
- c. Provide detailed interpretation of Article 3 of the Regulations on appreciability;
- d. Provide guidance on the Legal and economic tests that will be used;
- e. Prepare for the oral hearing including:

- i. The list of questions on which the respondents are required to make their views known;
  - ii. Focal areas for debate or disputed areas; and
  - iii. Specific issues which need to be clarified.
- f. Address any questions that may be raised regarding the jurisdiction of the Commission on the case;
- g. Advise on Article 16(4) submissions-What to take into account in the assessment and for better appreciation of the meaning of the terms;
- h. Review information received from parties to the case;
- i. Conduct relevant legal, jurisdictional, procedural and economic analysis;
- j. Provide briefing notes on each of the alleged anticompetitive conduct;
- k. Evaluate potential anticompetitive effect of the alleged anticompetitive conduct;
- l. Provide guidance on potential remedies for the assessed case; and
- m. Provide guidance for the preparation of the report of the hearing.

The consultant is expected to fully participate before, during and after the hearing and work closely with the CID. The specific schedule for the hearing will be defined in coordination with the Commission.

#### **E. EXPECTED OUTPUTS AND DELIVERABLES**

The consultant under the guidance of the Chairperson of the CID is expected to sit in the hearing in order to provide briefs and guidance on the proceedings of the hearing as stipulated under the scope of the assignment above.

The consultant shall undertake activities and payment will be made against deliverables to be submitted by him or her on completion of the specific deliverable of the assignment. The specific activities include:

- i. Hold preparatory meetings with the Commission and prepare report to the CID to communicate the position on the adequacy and relevance of available information;
- ii. Hold preparatory meetings with the CID and prepare notes on the results of the analysis and tests conducted to evaluate the alleged anticompetitive practices and notes on potential remedies for the assessed case;
- iii. Sitting through the actual hearing; and
- iv. Hold post hearing meetings with the CID and prepare a report of the hearing.

## F. COMPETENCE AND RELEVANT EXPERTISE

The consultant must have experience in advising competition agencies on effective competition law enforcement. Specifically, analysis of anticompetitive practices and experience in conducting economic analysis and in sports broadcasting and marketing or related field. Possession of expertise in the adjudication of sports related matters will be highly desirable.

## G. SELECTION

The service will be awarded to the successful individual based on the *most economically advantageous tender* on factors such as quality of the proposed service and the indicative costs.

## H. APPLICATION

Responses to this call for expression of interest should include the following:

- A proposal for the consultancy service;
- A brief cover letter indicating relevant experience and any information about availability
- Curriculum Vitae or profile of the Consultant;
- Costs (in USD): The service providers should identify their rates which should be valid for the entire length of the assignment.

## I. TIME PERIOD

The service will have three phases:

First phase- The Consultant shall hold preparatory meeting with the Commission, prepare and submit a report to the CID on the adequacy and relevance of the available information and Prepare notes on analysis and tests conducted and notes on potential remedies for the assessed case and hold preparatory meetings with the CID-11 days;

Second phase- The Consultant will sit through the actual hearing and hold post hearing meeting with CID-5 days

Third phase- The Consultant will draft and submit a hearing report to the CID- 5 days

The Consultancy is envisaged to take 21 person days.

## J. SUBMISSION

Responses to this request for proposal (in PDF formats only) must be submitted to the Commission **by 5<sup>th</sup> August, 2019** through the email [compcom@comesa.int](mailto:compcom@comesa.int) **or posted directly to:**

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