



**COMESA Competition Commission**  
Kang'ombe House, 5<sup>th</sup> Floor-West Wing  
P.O. Box 30742  
Lilongwe 3, Malawi  
Tel: +265 1 772 466  
Email: - [compcom@comesa.int](mailto:compcom@comesa.int)



**Common Market for Eastern  
and Southern Africa**

**Case File No. CCC/ RFA/01/01/2017**

**Decision<sup>1</sup> of the Seventy-Sixth (76<sup>th</sup>) Committee Responsible for  
Initial Determination Regarding Agreements concluded between  
the Confédération Africaine de Football and Lagardere Sports SAS  
relating to the Commercialisation of Commercial Rights of CAF  
Competitions**

**ECONOMIC SECTOR: Sports**

**29<sup>th</sup> June 2021**

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<sup>1</sup> In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

*[Handwritten signatures and initials]*

## **Information and Relevant Background**

1. On 13<sup>th</sup> February 2017, the COMESA Competition Commission (hereinafter referred to as the “**Commission**”) commenced an investigation, pursuant to Article 22 of the COMESA Competition Regulations, 2004 (the “**Regulations**”), into possible violation of Article 16 of the Regulations by the Confédération Africaine de Football (“CAF”) in relation to agreements relating to the commercialisation of media and marketing rights for CAF football competitions.
2. On 16<sup>th</sup> April 2019, following additional information gathered during the investigation, the Commission issued a Notice of Investigation against Lagardère Sports SAS (“Lagardère Sports”).
3. This decision is concerned with two agreements entered into between CAF and Lagardère Sports for the commercialisation of the media and marketing rights. Specifically, the concerned agreements are:
  - (a) Long Form Contract between CAF and Sportfive Relating to the Marketing and Media Rights for CAF Competitions, of 3rd October 2007 (the “2007 Agreement”); and,
  - (b) Full Form Agreement between CAF and Lagardère Sports Relating to Commercialisation of Commercial Rights of CAF Competitions signed on 28th September 2016 but took effect retroactively on 11<sup>th</sup> June 2015 (the “2015 Agreement”).
4. Pursuant to Article 13(4) of the Regulations, there is established a Committee responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

### ***The Parties***

#### ***CAF***

5. 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.
6. 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, broadcasting and marketing rights, copyright as well as intellectual property rights; for example, covering emblems.
7. The legislative body and supreme authority of CAF is the General Assembly. The General Assembly elects the President of CAF and the members of the Executive Committee and is the only body which can make amendments to the CAF Statutes and the Regulations Governing the Application of the Statutes. 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 competitions. 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.

8. All twenty-one (21) COMESA Member States are Member Associations of CAF.

#### ***Lagardere Sports***

9. At the time of initiation of the investigation, Lagardère Sports belonged to the Lagardère Group. The Lagardère Sports' division previously traded as Sportfive. In the sector of broadcasting rights, its role is to act as an intermediary between the original rights holders and the content users. Sportfive is involved in the management of marketing and media rights for sports, whose activities include negotiating TV rights at international level, advertising in stadiums, sponsorship and hospitality programmes.
10. Lagardère Group sold its sport business (including Lagardère Sports SAS and IFAP Sports) to H.I.G Capital in April 2020. Subsequent to this transaction, Lagardère Sports has been re-named Sportfive EMEA.

#### **Nature of the Agreements**

11. The 2007 Agreement granted Lagardère Sports [then operating as Sportfive] the exclusive right to commercialise media and marketing rights of the CAF competitions from 2008 to 2016. The 2007 Agreement covered the following competitions and editions:
- (a) Africa Cup of Nations 2010, 2012, 2014, 2016;
  - (b) CAF Champions' League from 2009 to 2016;
  - (c) Confederation Cup from 2008 to 2016;
  - (d) African Youth Championship 2009, 2011, 2013 and 2015
12. The Agreement contained a preferential right which would allow the Agreement to be extended for at least another 8 years. As a result of the preferential clause, the parties entered into a second agreement in 2015.
13. Through the 2015 Agreement, CAF appointed Lagardere Sports exclusively and on a worldwide basis for purposes of commercializing all the commercial rights. The agreement is in effect from 15<sup>th</sup> June 2015 to the end of the 2028 edition of the last phase of the CAF Confederation Cup.
14. The competitions covered include as a minimum:
- (a) Preliminary and Final Tournament of the AFCON (2017, 2019, 2021, 2023, 2025, and 2027)
  - (b) Final Phase of CAF Champions League (2017 to 2028)

- (c) Final Phase of CAF Confederation Cup (2017 to 2028)
  - (d) Preliminary and Final Tournament of African Nations Championship (2017, 2020, 2022, 2024, 2026 and 2028)
  - (e) Final Tournament of U-20 Africa Cup of Nations (2017, 2019, 2021, 2023, 2025, and 2027)
  - (f) CAF Super Cup (2017 to 2028); and
  - (g) Final Tournament of U-23 Africa Cup of Nations (2017, 2023, and 2027).
15. The 2015 Agreement provides that Lagardère Sports shall benefit from a 'first right of refusal' in relation to the future marketing of the commercial rights related to the competitions' editions held from 2029 to 2036, on the following terms:
- (a) CAF will notify Lagardère Sports of the proposed conditions for the renewal of the contract no later than 31<sup>st</sup> December 2026. Where the parties fail to agree on a renewed appointment of Lagardère Sports, CAF shall not appoint such third party on terms and conditions which are more favourable than those offered to Lagardère Sports.
  - (b) In the event that the terms and conditions would be changed by CAF in a more favourable way, CAF shall once again grant Lagardère Sports the benefits of the right of first refusal as described above.

### **Commission's Submissions to the CID**

16. The Commission presented its investigation report to the CID. The alleged competition infringements assessed in the report concerned:
- (a) the award of intermediation rights for CAF competitions in the absence of an open and competitive tender process;
  - (b) the long-term duration of the exclusive contract for intermediation rights for CAF competitions; and
  - (c) the inclusion of the right of first refusal clause in the Agreements.
17. The Commission presented the undertakings submitted by CAF to address the competition concerns identified. The following were the undertakings:
- (a) CAF undertakes to eliminate all right of first refusal clauses, or similar preferential renewal clauses, from its existing and future exclusive agreements relating to the intermediation of commercial rights of CAF competitions within the Common Market.
  - (b) CAF undertakes to award all future exclusive agreements relating to the intermediation of commercial rights of 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

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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.

- (c) CAF shall not enter into new exclusive agreements for the intermediation of commercial rights of CAF competitions within the Common Market for a duration that exceeds four years.
  - (d) Where CAF has justifiable grounds to enter into a future exclusive agreement for the intermediation of commercial rights of CAF competitions within the Common Market for a duration which exceeds a duration of four years, CAF shall notify the Commission for authorisation of such agreement pursuant to Article 20 of the Regulations.
  - (e) For purposes of monitoring CAF's compliance with the undertakings, CAF shall, within thirty (30) days of each anniversary of the CID's Decision for a period of three years, submit to the Commission an affidavit from a senior official from CAF confirming compliance by CAF with these Undertakings.
18. Further, the Commission reported that the parties' submissions were made on a no-admission of guilt basis, and therefore that the CID should not consider the matter on merits. Should the CID arrive at a different conclusion, the CID would afford the parties the opportunity to be heard.
19. The Commission recommended that in view of the termination of the 2015 Agreement, and the undertakings provided by CAF in relation to future agreements relating to intermediation rights, the CID accepts the undertakings on a no-admission of guilt basis, and that the investigation be closed.

### **Determination**

20. The CID rejected the submissions that the matter should be considered on a no-admission of guilt basis. The CID determined that the case should be determined on merits as it was not convinced that the Regulations have not been breached. Therefore, the CID decided that the parties to the agreement should be afforded an opportunity to be heard within thirty (30) days of receipt of this decision.

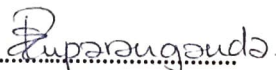
Dated this 29<sup>th</sup> day of June 2021



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**Commissioner Justice Charlotte Wezi Malonda (Chairperson)**



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**Commissioner Brian M. Lingela**



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**Commissioner Ellen Ruparanganda**