
THE COMPETITION LAW ON THE CHALLENGES AGAINST ABUSE OF A DOMINANT POSITION IN THE MARKETING OF AUDIOVISUAL RIGHTS IN ALBANIA

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Abstract: The competition law in Albania is raised according to the international agreement ratified by the Albanian parliament. This bench of law regulates a better functioning of the market. It is a fact that the European Union is the initiator and the founder of this branch of right, referred to the Treaty on the Functioning of the European Union. The Albanian law “On protecting the competition”, also regulates the market in the sports sector. That is because in this category, the sport generates economic activities, so the competition law aims to manage, the conduction between the companies, in that market. This article talks about the decision of the Competition Authority in Albania for finding the case of banning abusive behaviour by a firm dominating a market, of the Albanian Federations of Football, related to the economic activities, indicated and implemented by the “Competition Law”. The television rights are part of the scope of the Albanian competition law. The decision of Competition Authority is an example, how the European Union legal framework are succeeding in extending the effect of their power on issues of protection of the competition law. Obviously, it is not only on the terms of harmonization of Albanian legal framework with the Eu one’s, but it is also manifested in the aspect of decision-making of the relevant legal authorities, according to the principal intention of the EU legislation, to bane abusive, conduction, in the market. The television right is mostly related to the right that certain subjects have to broadcast on their channels, the matches, played on the National League, in different categories. The Albanian Football Federation according to the provision of the Albanian Law is the only entity, which has the right, to organize, arrange, develop, sports activities, inside, and outside the territory of the Republic of Albania, as far as it concerns the sport activities. Having this legal power, AFF (Albanian Football Federation) can be considered as the only owner of the broadcast of sports activities. This entity may sell, the audio-visual rights to the economic operators, which will enable the transmission to the public. Based on the Competition law, the activity, of the AFF, in terms of broadcasting television rights, should be carried out through public competition, to avoid any action or conduction, that result in abuse of a dominant position. Furthermore, AFF, has a legal monopoly on all the competition right, including the competition rights, or audio-visual financial right, as well as reproducing, broadcasting, and marketing rights, or publicity. As a result of this legal monopoly, this entity may abuse with its dominant positions. That kind of economic activity carried out by the ALF is subject to the regulation of the law, “On Protection of the competition”. The investigation carried out by the Albanian Competition Authority based on the best practices of the European Countries, revealed violation of competition law.

Keywords: Abusive conduction, Competition Authority, Competition Law, sport sector, television right’s,

1. INTRODUCTION

This article makes brief research on issues related to the competition law, in the Republic of Albania. Competition law is a relatively new bunch of right in Albania. It is evident that the dynamic of developing the markets. In Albania, it is in constant effort to develop the free market. The reforms undertaken to upgrade the new standards of the changes in the economy, require a modern and harmonized legal framework of the European Union also in terms of protection of fair competition. The Competition Authority is responsible for improving the conductions of the economic operators in the market. The job of the authority is substantial because it is the regulator of market conduction, behavior, and the indicator of economic development, and the overall well-being of all, actors, and consummators in the market. Albanian law has given some operators the legal monopoly to organize and control the assured market. In our case, the AFF (The Albanian Football Federation) is the legitime operator to arrange the sports activities, ticket sales, sponsorship, and selling the right to broadcast events, sports in which matches of the superior category, the first category, the national cup, etc. In its activity are included the cup of Albania, as well as the tournament of the National teams. This entity, according to the Albanian law, has legal monopoly status for economic activities as well. The trading of audiovisual rights in the broadcasting of superior and the first category tournaments, the Albanian cup matches, is the right that law and the statue of the association have given to that entity. This paper provides a brief overview of the activity of the Competition Authority while analyzing the actions, and mechanisms used by a legal monopolist, for dominating the trade, by its economic activity. It is fundamental to understand the instruments or behaviors that make clear what does a dominant position means, and what is the authority role in investigating such a case.

2. MATERIALS AND METHODS

In the methodology used to assess in present case are a series of laws, and normative acts, which we refer to. Occurring in the conditions when the issue has to do with the competition law in, mostly in the sale of audiovisual law, we must first refer to activities, we must first refer to the activity carried out by the Albanian Association. The question is what is the form of organization of the Albanian Football Federation? What are its competencies in the geographical market? Where do we have to focus on to derive the results of the investigation conducted by the competition authority? What is considered an abusive practice under the Albanian competition law?

Based on the competition law is crucial to understand the prohibited practices which are identified by the law as abuse of a dominant position. The [Law no.9121 date 28.07.2003](#)¹⁷⁴ “*On protecting the competition*”, has foreseen that: “Imposing directly or indirectly, unfair purchase prices, or sale or other unfair trading conditions, restrictions of prediction, markets or technical development, the application of unequal conditions for the same commercial transactions with the parties by imposing them those in unfavorable state of competition, setting situations for terminating contracts, with other parties, for the latter to accept additional obligations which, by nature or according to commercial practices are not relevant with the object of the contacts¹⁷⁵”. The Albanian Federation generate incomes by selling media rights, publicity, etc according to the Competition law¹⁷⁶. To understand the competences of the ALF, and how it is established we need to refer to [the Statute of Albanian Football Federation 15 April 2019](#) determined that the Albanian Football Federation is a legal entity, an association created under the provisions of the [Law no.8788 date 07 may 2001 “For non-profit organization”](#), which represent the union volunteer of football sports associations and clubs in the Republic of Albania¹⁷⁷. There are also defined the exclusive competencies of the federation, as far as it concerns the media rights.

The AFF and its member are the unique owners of all rights from the competition and other events arising from their respective jurisdiction. These means that all rights participate among others, include any set of fiscal rights, and audiovisual rights¹⁷⁸. Referred to [Law no.79/2017 “On Sports”](#) has provided that, no legal person, private or public can exercise any of the powers exclusive to the federations, only if they have been formally granted by it¹⁷⁹. That proves the fact that the law, charged the AFF with the exclusivity for trading the media rights on broadcasting the football competitions. Having a legal monopoly, let us think that the probability for abusing with the dominant position can be evident. To prove such prohibited practices, is required the intervention of Competition Authority, as the only entity according the Albanian law to make an in-depth investigation into the AFF economic activity, mostly on the sale of audiovisual rights. To resolve the issue correctly, due to the principles of fair trial process, it is crucial to be based on law and the best international practices. It is fundamental to highlight the conclusions of the, [UNCTAD 2018 On Competition issues in the sale of audiovisual rights for major sporting events for the role of competition authorities](#)¹⁸⁰.

Under the United Nations point of view, “*Competition authorities play an important role in the sale of audiovisual rights. They need to monitor both the criteria applied to the sale of such rights and the duration of contracts, to allow for a rotation in access to content by the broadcaster in the market*¹⁸¹. In the matter of selling the audiovisual rights, in the broadcasting of leagues should not be sold with an exclusive right. Being suitable and equitable to trade the audiovisual rights must be divided into packages. The division of the rights into television packages makes it possible to reserve for any interested economic operator. That would avoid the exclusively selling audiovisual right and may affect directly to fair competition between the operators. That was the conclusion held by the European Commission [Decision of 19 January 2005 Joint selling of the media rights to German Bundesliga](#)”¹⁸². However, the term of contract, must not be more than three years, because according to the UEFA Champions League, practices, the European Commission a long-term contract for a wider range of its rights may limit the competition by excluding other operators in the downstream. Giving absolute exclusivity in terms of scope and duration of the transmission right to a single buyer may limit the market¹⁸³. As it is aforementioned, above the Albanian

¹⁷⁴ (Law no.9121 date 28.07.2003 On Protection of the Competition (updated), 2003) accessed in 2020

¹⁷⁵ Referred to the Article 9 of Law no.9121 date 28.07.2003 On Protection of the Competition (updated), 2003)

¹⁷⁶ (Authority, Decision no.693 date 20.06.2020 "For ascertaining the abuse of the dominant position of the Albanian Football Federation, concerning to the economic activity it carries out, and the provision of conditions and obligations") paragraph 31

¹⁷⁷ Refer to the Article 1 of (Federation, 2019); (Law no.8788, datë 7.5.2001 “For non-profit organization”, 2001)

¹⁷⁸ Refer to the Article 55 of the Statute of Albanian Football Federation.

¹⁷⁹ Refer to the Article 18 of the (Law no.79/2017 "On Sports")

¹⁸⁰ (United Nations, 2018) accessed in 2020.

¹⁸¹ (United Nations, 2018)

¹⁸² (Commission, 2005)

¹⁸³ Referred to (Authority, Decision no.693 date 20.06.2020 "For ascertaining the abuse of the dominant position of the Albanian Football Federation, concerning to the economic activity it carries out, and the provision of conditions and obligations"),

Competition law is harmonized under the provisions made by the Treaty on Functioning the European Union. According to the line provided by the Treaty, and the European Court of Justice, the activity performed by the ALF is considered economic activity, and it falls under the rules of Treaty (TFEU)¹⁸⁴ therefore the terms of competition law must be adjusted. According to the Law 79/2017 “On Sport, Albanian Federation as the sole owner of the media rights, sold the television rights of the Superior Category, and Albania Cup, in Albania for three years terms, in 2015-2018 and for four years terms 2018-2022. According to the contracts, it was only one company which won the exclusivity right to broadcast the Superior Category, and Albania Cup, which was divided into two packages (The important tournament) and (the other games). The Authority had to make an investigation. The question is, how could the Competition Authority.

As it was aforementioned above, the Competition Authority, has decided twice to change the decision of its-self, concerning the opening of a preliminary investigation procedure against the AFF, concerning its economic activity. At the first decision in 2018, it did not require the investigation concerning the period from 2015 to 2019. In the second decision in January 2019, it just postponed the deadline for sending the documentations in April 2019. In June 2019, the Authority took into consideration the fact that the period of investigation has to involve the period from 2015 to 2019, and the final decision was on 14 May 2020¹⁸⁵.

3. RESULTS

The Competition Authority following a “long-term” investigation process, found the AFF in violation of the Competition Law. The Authority concluded that the Superior Category and Albania Cup are two different tournaments. The division made by the Federation in to offer packages titled “The important tournaments”, which comprise both tournaments and “The other games”, which include the matches that are not part of the substantial tournament, found the AFF, in violation of the Article 9/2 of the Law no.9121/2003¹⁸⁶. The Competition authority concluded that, it was a form of abusing with the dominant position, by not offering another alternative¹⁸⁷. The action taken by the federation concerning the centralization of the media rights, as well as the publicity of the competitors companies of the AFF sponsors, would not be published. This term of contract between the Federation and the Private Company, contains elements of limitation of the rights of every enterprise for marketing their business, despite the fact that they could be the competitors of the AFF sponsors, are considered by the authority as unfair conditions of marketing, referred to the Albanian Competition law.

4. DISCUSSIONS

While writing this article, I notice the long-term of investigation, made by the Competition Authority. Is it fair enough? Conformity to my opinion, the timeline of the inspection, would not be such extended in unlimited time, because that damage the competition, and the decision of Authority would not have such a power. In two years, delay, the concurrence is formally limited. The fact that the competition authority put off eight months to change the decision to start an in-depth investigation for the subject and after approximately eleven months decides by declaring a violation of what the competition law concerning the abusing with the dominant position, simple delay the rehabilitation of the trade. This paper interprets the concrete case, makes us discuss what should be the role of the Competition Authority when it comes to exercising control over the entities classified legal monopolist? In my opinion, the decision of the competition authority should not have a purely declarative and ascertaining effect, but also the competition authority and its decision should play a regulatory role when are dealing with such cases.

5. CONCLUSION

In the conclusion of this article, we managed to draw some assumption. The study and investigation of abusive performance legal monopolist, especially in terms of the sale of audiovisual rights, makes us understand that the inspections conducted by the competition authority despite the reservation I may have with the in-depth investigation procedure, or deadlines, it has been appropriate. So, when an entity has a legal monopoly on the market, audiovisual rights may be appeared or displayed in forms and mechanisms that undermine competition. By

¹⁸⁴ Article 101 of the Treaty on Functioning of the European Union (Union, 2012)

¹⁸⁵ Interpretation concerning, (Authority, Decision no.632, Dated 20.06.2019 "For a change in the decision of the Competition Commission no. 607, dated 01.04.2019 "On the opening of the in-depth investigation procedure against the Federation Albanian Football, 2019), (Authority, Decision no.583 date 17.01.2019 For a change in the decision of the Competition Commission no. 564, dated 25.10.2018 "On the opening of the preliminary investigation procedure against the Federation, 2019)

¹⁸⁶ Refer to Article 9/2 of the law no 9121/2003 "On protection of the competition"

¹⁸⁷ Ibidem, Interpretation of the paragraph 54 of the Decision.

studying the case law concerning the selling of the audiovisual rights we understood some problems and, instruments of the monopolist while intending to intervene in other issues related to it. It is substantial to add the fact that when trading media rights, the competition authority has to be vigilant, and verify the “TV” packages of these rights, whether they are reasonably divided or not. Television rights packages must at least have similarities to each other, in the sense of its content. Their competitors must have the same content and equal value. The Competition Authority over its decisions has to determine commitments for the entity which violate the competition right. It should not be enough just taking the engages for respecting the competition law. During, the selection process of competitors which have applied for the acquisition of media rights, should be avoided any conflict of interest that may be evident.

The conflict of interest is an element that it must be taken into consideration, whether or not any of the members of the monopolist has direct or indirect property interest in the operator, or anyone attempting to purchase audiovisual rights. It should be taken into consideration whether or not a member of the monopolist, has any property interests in the sponsors of the monopolist. That is crucial because may exist the risk that the monopolist can influence to the terms of a contract by tasking the economic operator to not advertising any publicity, of the sponsor's competitors during the broadcasting of the monopolist audiovisual rights.

Although the competition authority has to be well informed about the terms of the contract of sale of audiovisual rights. Accords made by parties have to avoid any clause which prevents the economic operator from bounding the marketing, of the other business for which the monopolist does not have any interest. The sale of television rights does not mean direct or indirect interference to the deals which the operator has with other business for marketing their business.

For addition, the role of the competition authority guarantying a fair competition between the actors in the market is fundamental. That is the reason that it is crucial to mention that as far as it concerns the prices of audiovisual rights, the competition authority has to control to play a regulatory role, on this aspect. If the Authority doesn't do that, the monopolist is justified naturally to exaggerate the prices of these rights.

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