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Recently, the Competition Authority in Albania has issued the Decision No. 693, dated 14.05.2020 "*On determining the abuse of the dominant position of the Albanian Football Federation, regarding the economic activity it carries out, and giving terms and obligations*" (hereinafter referred to as the "*Decision*").

The Secretariat of the Competition Authority, pursuant to law no. 9121, dated 28.07.2003 "*On the Protection of Competition*", as amended (hereinafter referred to as "*Competition Law*"), has started monitoring the football sports sector, as a market in which economic activity is carried out based on the practices addressed by the European Commission and the Competition Authorities in the EU, by where it turned out that *in the European Union there is a broad practice on competition intervention to regulate the market in the football sports sector*, as it is considered that the entities that exercise this activity, are subject to competition law as entities that conduct economic activity.

As for the above, the Competition Commission with Decision no. 564, dated 25.10.2018, decided to open the preliminary investigation procedure against the Albanian Football Federation (hereinafter referred to as "*AFF*") regarding the economic activity that it exercises for the period 2015-2018.

In virtue to the Competition Law, during the investigation period the necessary inspections were carried out at AFF. *At the end of the preliminary investigation, the Competition Commission concluded that from the analysis of the behavior of AFF in the respective markets is observed the following:*

- (i) The selling of audiovisual rights to a single operator for a long period of 7 years, including in a single package all exclusive rights, becoming exclusive to other operators;*
- (ii) High ticket sales prices compared to the region, not based on an approved methodology, which may limit competition.*

As for the above, the Competition Commission (hereinafter referred to as the "*Authority*"), with Decision no. 607, dated 01.04.2019, decided "*On the opening of the in-depth investigation procedure against the Albanian Football Federation*" to see whether or not there are signs of restriction of competition, for the period 01.01.2015 to 31.12.2018.

*Some of the most important findings are as follows:*

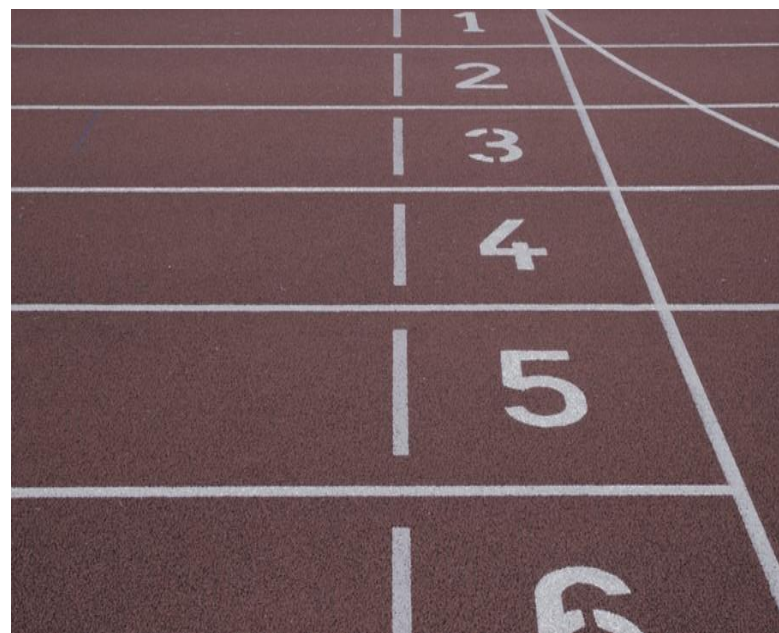
- *Analysis*

From the performed analysis, the Authority provides that the relevant geographical market is defined as: a relevant geographical market which includes the area in which the respective enterprises are involved in the supply and demand of goods or services, in which the conditions of competition are sufficiently homogeneous and can be distinguished from neighboring areas because the conditions of competition have been assessed differently in these areas. Thus, although AFF sells in Kosovo, this area is distinguished by consumer preferences, the importance of national preferences, information on price variations and sales by area, how much it costs customers to search for products supplied by other geographical areas, differences and prices at the national level, as well as if the parties' customers shift their orders to enterprises located elsewhere in a short period of time and without a considerable cost.

In conclusion, the Authority specifies that the relevant geographical market is the entire territory of Albania as this product is traded throughout the territory under the same conditions.

Meanwhile, referring to the Decision, in virtue on law no. 79/2017 "*On Sports*" (hereinafter referred to as "*Law on Sports*"), the Authority provides that AFF is the only entity to which the state has delegated the right to organize and develop sports, national and international activities, in the sport of football, in accordance with this law. AFF, as the organizer of sports activities, is the owner of the right to broadcast football activities inside and outside the territory of the Republic of Albania, with public competition.

As for the above, according to the Authority, AFF is given a legal monopoly status not only for the organization and administration of football activity, but also for economic activities involved, as the sale by a single unit that owns the exclusive rights. This enterprise in virtue of Law on Competition has a dominant position where it owns 100% of the respective market.



- *Broadcasting rights*

AFF, as the owner of the right to broadcast sports activities organized by it, based on Law on Sports has sought to sell the television right for "*Superior Category*" and "*Albanian Cup*", within the territory of the Republic of Albania for a period of 3 years for the period 2015-2018 and a period of 4 years for the period 2018- 2022.

*A broadcasting operator has won the right to broadcast the official matches of "Superior*

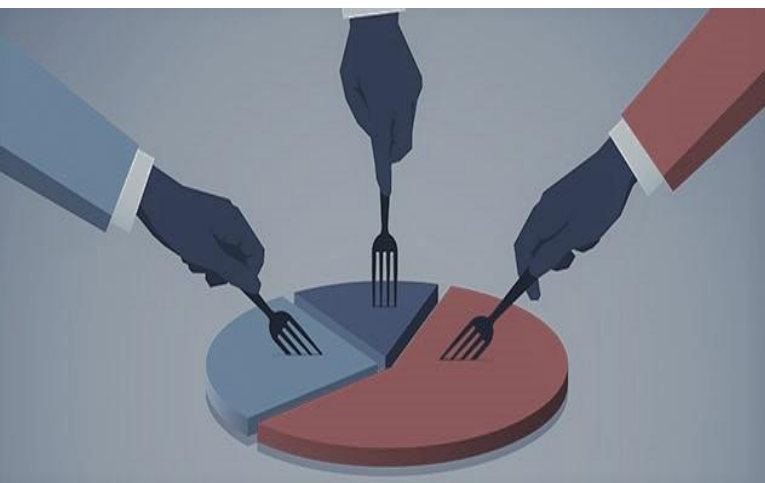
*Category" and "Albanian Cup" inside and outside the territory of the Republic of Albania for the seasons/period 15.08.2015-15.05.2018.*

*Also, the same operator has won the right to broadcast "Superior Category" and "Albanian Cup" in the territory of the Republic of Albania for the seasons/period 01.06.2018-01.06.2022.*

According to the Authority, the licensing contract granted for 3 and 4 years (to the same operator) runs counter to international practices.

The European Commission has defined several remedies against the violation of the rights of exclusive contracts in two ways:

- (i) the exclusive rights must be reduced to scope; and
- (ii) the duration of the exclusivity.



In the practice of the UEFA Champions League and in the cases of Deutscher Fußball-Bund (DFB) - (German Football Federation) it has been seen that the Commission has accepted *contracts lasting 3 years in a context where rights have been divided and are sold to various operators.*

The exclusivity of a longer duration and for a wider range of rights can limit competition by excluding other operators in the downstream market, all the more so when dealing with operators with a dominant position in both markets. Giving absolute exclusivity in terms of scope and duration of broadcasting rights to a single buyer limits the market.

The broadcasting rights set forth in the licensing contract have been licensed to the operator on an exclusive basis, which means that under the terms of this contract, the Licensor will not grant such rights to any third party and will not exercise these rights itself, until the conclusion of this contract in any known broadcast format. In the 3-year contract (15.08.2015-15.05.2018), AFF also provided for the obligation to transfer exclusive rights, but keeping the right to income in a certain percentage for the contracts that the operator will enter into for other European or world countries, including not only television, but also the Internet, mobile, online betting platforms, thus imposing a binding condition on the party to the contract.

The Authority explains that AFF owns the television rights to all matches of the Albanian national team. The federation and the participating clubs have formally agreed to centralize the sale of the television rights to the Albanian Football League and have also agreed to be part of a generated income scheme.

The implementation of the Law on Competition for audiovisual law is mainly related to the "collective/joint sale" of the right to broadcast and covering sports events.

"Collective sale" without the presence of a third party limits competition in two main ways:

- (i) Giving a market power to AFF to determine the price of audiovisual rights, leading to inflated prices as in the upper

stream for broadcasters, as well as downstream for consumers;

(ii) Strengthening the market position of transmitters in the downstream market, as they may be the only operators capable of offering all rights to a package.

"Joint sale" without the presence of the clubs participating in the activity prevents each of the clubs from having the right to decide on the sale of audiovisual rights and as a result on the income that it may benefit from this contract.

*The Authority emphasizes that the European Commission has highlighted that the sale of separate audiovisual rights packages increases the possibility for more broadcasters, including small and medium-sized companies, to gain the right to broadcast and therefore has a positive effect on consumers.*

The contracts concluded between AFF and the broadcast operator are "exclusive contracts" which include "Superior Category" and "Albanian Cup" with the difference in offer with package A (main matches, important) and B (other matches).

AFF does not make clear in its position why the bid for the sale and joint broadcasting of the two competitions has been made, despite the fact that these competitions are divided between them. The division that has been made in the offer with package A and B, but which includes both competitions, in virtue of Competition Law is a form of abuse of the position that AFF has to sell them together (bundle) by not offering alternatives in its offer.

The division in the offer for the sale of television rights between the "Superior Category" and the "Albanian Cup" makes more effective the participation of other entities interested in broadcasting them, perhaps making offers that do not include exclusive rights. *Differentiation in supply can*

*stimulate the demand for participation of enterprises operating in the transmission of sports activities and consequently the competition between them.*



- *Sale of matches highlights*

The authority also clarifies that another aspect of revenue generation from AFF is the sale of matches "Highlights". "Highlights" are not the main element of contracts concluded between AFF and the operator, but they are complementary and as such should not necessarily be included in its exclusivity. *Highlights are an opportunity to include other audiovisual entities that show interest in their display, thus increasing the participation of entities that can promote sports and increase competition between enterprises in this market.*

This additional given exclusivity limits the competition, as it removes the opportunity for enterprises operating in the audiovisual market to participate, and constitutes an abuse of a dominant position.

- *Sponsorships*

Furthermore, with regard to sponsorships, AFF in accordance with the provisions of Law on Sports, law no. 8788, dated 7.5.2001 "On non-profit organizations", as well as the Statute, must achieve the legal and statutory goals of providing income through clear and transparent procedures for "vetting" operators interested in sponsoring Albanian football.

The Authority specifies that sponsorships constitute one of AFF's legal revenues, which must be open to any entity wishing to support the national team without any restrictions. The Law on Sports stipulates that the organizers of sports activities enjoy the right to use the visible areas of sports facilities, where they carry out sports activities or competitions, for the advertising of various companies, based on the contractual agreement with them. As noted in this wording, the law does not provide for any other procedure, competition or formality other than the expression of a common will and agreement.



Contracts concluded between AFF and the operator state: *“Advertisements of the operator's customers, who are direct competitors of the general sponsors of AFF, do not have the right to be broadcast during*

*the first part and the second part of the match. While the advertising block of clients who do not compete, the general sponsors of AFF will be broadcast in a special advertisement block”.*

This provision, according to the Authority, constitutes a restriction on the advertising of the activity of enterprises that are competitors of AFF sponsors, by imposing unfair trading conditions.

According to the Authority, from the administered materials, there is an existing connection between the subjects that sponsor AFF and their participation in property rights in the operator's company.

- *Professional League*

*The Authority further states that the establishment of the Professional League according to the model of European countries is necessary to have transparency between the clubs and the Federation. The Professional League is an organization in which the Presidents of the clubs that are represented in the competition such as the "Superior Category" and the "Albanian Cup" participate. The league is the one that protects the interests of the clubs and monitors the decisions that AFF gives and that affects their economic or sports interests.*

During the investigation it turned out that the Professional League does not exist. The establishment of this League, with an active role in the negotiation and sale of television rights and in the transparency of the distribution of funds or investments between clubs, is necessary to limit the possibility of AFF abusing its dominant position, as it is the AFF itself which represents the collective interest of clubs in selling audiovisual rights.

Furthermore, the Authority clarifies that AFF does not have a methodology for determining ticket prices in order to orient itself towards

the cost of service. By comparing the prices of tickets approved by AFF with the prices of tickets in the region, it turned out that they are higher than Macedonia, Kosovo, Croatia, and Montenegro as countries with a level of Gross Domestic Product (*GDP*) and revenues per capita comparable to Albania (e.g. Macedonia). *This behavior of AFF, by applying high prices, constitutes an abuse of the dominant position, according to the Authority.*

As for the above, the Authority has decided:

1. To determine the abuse of the dominant position of AFF as the only entity to which the state has delegated the right to organize and develop sports, national and international activities in the sport of football, in relation to the economic activity it conducts, in terms of sales of television broadcasting rights; selling match tickets to national teams; sponsorships and advertising.
2. Giving the following terms and obligations to AFF in order to stop the abuse of its dominant position:
  - a. The obligation of AFF to reduce in the future the joint sale of television rights, as an exclusive right, to the scope and duration of the franchise, in a period of not more than 3 (three) years, where the rights are separate and to be sold to various operators.
  - b. The obligation of AFF in the future to divide the procurement of the two categories "*Superior Category*" and "*Albanian Cup*", with the difference in the offer with package A (main, important matches) and B (other matches), so that they do not belong to a single operator, ensuring the greatest possible participation of audiovisual operators.
  - c. Removing the exclusivity in the future in the sale contracts of audiovisual rights "*Highlights*" and creating the opportunity for wider participation for audiovisual operators.

3. Involvement of the Professional League by giving it an active role in any decision-making, which has to do with the "*joint sale of television rights*", as well as other rights arising from it.

4. The obligation of AFF to distribute the revenues with destination determined by UEFA, FIFA, etc., in a transparent and correct procedure, in the presence of the Professional League, in order to maintain fair and effective competition in the market. This procedure should be made public on the official website of AFF - [www.fshf.org](http://www.fshf.org).

5. The obligation to implement a transparent procedure for the selection of the main sponsor and other sponsors, enabling wider participation of enterprises in the market. This procedure should be made public on the official website of AFF - [www.fshf.org](http://www.fshf.org).

6. The obligation of AFF to avoid any kind of direct or indirect property connection, between its sponsors and property representation at the company of the transmission operator, links which affect the restriction or distortion of competition, created due to its dominant position.



7. The obligation of AFF to avoid any kind of direct or indirect property connection, between its legal representatives and property representation at the company of the transmission operator, links which affect the restriction or distortion of competition, created due to its dominant position.

8. The obligation of AFF that in the future to enter into any contract that establishes exclusive rights or special rights in the territory of the Republic of Albania, for certain enterprises or products, by carrying out transparent, non-discriminatory procurement procedures without setting restrictive criteria and exclusion in the relevant market. These contracts should be brought for preliminary evaluation to the Competition Authority.



9. The obligation of AFF to draft a methodology for determining ticket prices, with the aim of orienting the cost of service and ticket price. This methodology should be brought for preliminary evaluation of the methodology at the Competition Authority.

10. The obligations set out in points 3, 4, 5, 6, 7, 9 must be met within 120 days from the day this decision is notified.

11. In case of non-fulfillment of the terms and obligations defined in this decision, AFF shall be punished with a fine of up to 5% of the average daily turnover for serious violation of competition.

12. Monitoring the implementation of this decision, for a period of 2 years.

*This decision has entered into force immediately.*

#### ❖ Conclusion

As seen from the above, the Competition Authority in Albania seems to be taking the right steps in order to ensure the implementation of the competition legislation in the country. Moreover, it can also be seen that the Authority has taken the necessary time to reach a conclusion on the matter. It is important to highlight the fact that lately, the Authority has been actively involved in various investigations regarding economic areas in Albania that are mainly dominated by big companies and the competition may be easily obstructed. Such is the example of the investigation in the telecommunication field where the Authority has taken measures to ensure that competition is not restricted.

*In a fragile economy such as that of Albania, it is very important to have a Competition Authority that ensures that the progress continues smoothly, however slow it may be. Seems like, in this regard, the recent Decision of the Authority has the looks of a stepping stone for the future.*



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The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law office, we also like to help our clients with mediation services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania's leading law offices, we are grounded in the essence of "who" we are and "where" we started. We understand the importance of family, hard-work, and dedication.

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