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COMPETITION

COMESA's first ever fine for Anti-Competitive Business Practices

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The COMESA Competition Commission **("CCC")** is clamping down as they issue their first fine for alleged anti-competitive business practices. The Confédération Africaine de Football **("CAF")** and beIN Media Group LLC **("beIN")** have been fined USD 300 000 each for their alleged engagement in anti-competitive business practices in contravention of Article 16(1) of the COMESA Competition Regulations **("the Regulations")**.

The CCC's Committee of Initial Determination **("CID")** has, for the first time in the history of its existence, issued a fine to CAF and beIN for conduct which allegedly amounted to restrictive business practices.

The CAF, which is the governing body of football in Africa, exclusively granted long-term marketing and broadcasting rights to Lagardère Sports S.A.S **("Lagardère Sports")** for all the regional football competitions in Africa. Lagardère Sports granted these rights for an extended period to beIN, in terms of memoranda of understandings concluded in 2014 and 2016 **("MOUs")**. The outcome of this is that beIN had the exclusive broadcasting rights to the Africa Cup of Nations, the CAF Confederation Cup, the African Nations Championship and the CAF Champions League, amongst others.

At a high level, the CID took issue with the fact that –

- there was no open tender process for the award of the broadcasting rights for CAF competitions. According to the CID, this gave rise to a significant prevention, restriction and distortion of competition within the COMESA Common Market;
- the latitude of the media rights under the MOUs was excessive and would be likely to significantly prevent and distort competition in the relevant markets;
- the durations of the exclusive MOUs were unreasonably long (spanning over 12 years) especially when regard is had to the fact that CAF competitions are held annually or every two years; and
- the MOUs increased the probability of market foreclosure.

The CID subsequently ordered that –

- all media rights awarded to beIN under the MOUs cease on 31 December 2024, instead of 2029;
- CAF must conduct a non-discriminatory and transparent tender processes for exclusive media rights going forward;
- all exclusive agreements pertaining to media rights must be limited to four years (however extension of this period may be granted upon application to the CCC where there are justifiable grounds for extension); and
- the CAF must present media rights in distinct, commercially viable packages without favouring any single entity. No single entity is permitted to acquire all media packages. In cases where CAF has valid reasons to award all packages to a single entity, prior authorization must be sought from the CCC.

There is, however, a 60-day window within which CAF and / or beIN may appeal the CID's decision before it becomes final and binding.

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