

### The Turkish Competition Board grants individual exemption to an agreement signed on broadcasting rights (Turkish Basketball Federation/ Digiturk)

**Turkey, Anticompetitive practices, Agreement, Exclusivity clause, Exemption (individual), Sports, Media**

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The Competition Board (“Board”) has granted individual exemption to the Media Rights Agreement (“Agreement”) signed by and between Turkish Basketball Federation (“TBF”) and Krea İçerik Hizmetleri ve Prodüksiyon A.Ş. (“Digiturk”) in accordance with Art. 5 of Act on the Protection of Competition No. 4054 (“Competition Act”) in its decision dated 20.11.2015 and numbered 15-41/678-240.

#### **Parties of the Transaction**

TBF is a self-regulated organization that conducts and supervises basketball organizations in Turkey.

Digiturk is a Turkish satellite television provider that markets content services of its platforms and sells memberships to its consumers.

#### **Sports Competitions in Terms of the Competition Law Practice**

Watching Turkish basketball is considered to be greater for Turkish basketball teams who win international victories, such as Galatasaray, the winner of Eurocup 2016. Hence, transference of the TV broadcasting rights of sports competitions gains importance day by day. This relies on the fact that the consumers’ watching habits have changed considerably, and it tends to be watched on demand. However, to the contrary, programs related to sports competitions are dependent on the broadcasting companies.

Since the broadcasting rights are exclusively sold, instead of a system where each sports club markets and sells its own media rights, individually, they are subject to the examination by the Competition Board in terms of their implementations that restrict competition. However, they may

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be granted individual exemption pertaining to their sales conditions.

In respect of the exemption assessment, the Board adopts certain parameters, such as whether the agreement includes exclusivity liabilities or not, whether the technical developments are prevented during the agreement period or not, the duration of the agreement, etc.

### **Agreement Subject to the Individual Exemption Request**

In accordance with the Agreement signed by and between TBF and Digiturk, the media rights of the Turkish Basketball League are granted to Digiturk for three seasons.

The Board has considered this Agreement to be different from the typical exclusive agreements on the transfer of media rights. Pursuant to the Board, one of the substantial differences brought with this Agreement is the obligation of broadcasting two of five live games on open channels each week of the season. Additionally, the Agreement allows signing a sub-license agreement following the signing of the Agreement. Thus, as per the Agreement, Digiturk undertakes to sub-license a company (A Yapım Radyo ve Televizyon Yayıncılığı A.Ş.). In this respect, the terms and conditions are regulated under the Agreement on how to share the broadcasting of basketball games between the licensor and sub-licensee.

### **Legal Framework of the Transaction**

The Board may decide to exempt agreements, concerted practices between undertakings, and decisions of associations of undertakings from the application of the provisions of Art. 4 of the Competition Act (Agreements, Concerted Practices and Decisions Limiting Competition) in case all of the following terms exist: (i) ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services, (ii) allowing the consumer to benefit therefrom, (iii) not eliminating competition in a significant part of the relevant market, (iv) not limiting competition more than what is compulsory for achieving the goals set out in (i) and (ii).

The Board has found the Agreement meets the condition that (i) since the joint sale agreements are independent from the self-interests of the clubs and launches a qualified product of a competent authority by enhancing distribution of rights, the Board stated that condition (ii) is also satisfied due to the fact that the Agreement does not include severe exclusivity regulations and provides benefits to the consumer. Also, the Agreement permits broadcasting the Turkish Basketball League games on open channels, and also allows the sub-licensee to broadcast a 26 minute long weekly summary program.

As per the Board, in terms of the national broadcasting market, broadcasting rights of basketball games raises less competitive concerns as compared to the broadcasting rights of football games, and the Agreement allows sub-licensing and broadcasting games on open channels. In light of the above stated circumstances, condition (iii) is satisfied, as well, since the Board stated that the competition is not eliminated in the relevant markets. Finally, taking into consideration the fact that the Agreement is limited to three seasons/years and includes the smooth provision of exclusivity as specified previously, the Board concluded that condition (iv) is also met.

### **Conclusion**

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As a result of its examination, the Board has decided to grant individual exemption to the Agreement signed by and between TBF and Digiturk due to the fact that it satisfies the conditions set out under Art. 5 of the Competition Act. Since the Agreement has softened exclusivity regulations and is signed for only three seasons, the Board concludes that this Agreement does not limit nor lessen the competition.

In the said decision, the Board stated that broadcasting rights of basketball games does not raise competitive concerns, as much as the broadcasting rights of football games. Nonetheless, the Board's competitive concerns in this issue have not been examined in detail. Therefore, the Board's concerns would have been clear if the relevant market is defined, and competitive concerns related to broadcasting rights are broadly examined.

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