



DG Competition  
European Commission

Your reference	Your correspondence of	Our reference	Date
		MLS/HSE	18 November 2016

### **Public Consultation on the Preliminary Findings on the E-commerce Sector Inquiry**

Dear Sirs,

This document sets out UEFA's observations and comments in connection with DG Competition's public consultation on the European Commission's Preliminary Report on the E-commerce Sector Inquiry (SWD(2016) 312 final) published on 15 September 2016. UEFA participated in the E-Commerce Sector Inquiry as a major sports governing body and rights owner/licensor in the sports media rights sector.

UEFA is also a member of the Sports Rights Owners' Coalition ("SROC") and we are aware that a separate submission has also been made by SROC, which we also endorse.

Set out below are both UEFA's general observations and remarks as well as specific responses and observations on each of the Key Preliminary Findings relating to Digital Content as set out in the Preliminary Report. The questions and issues raised by the findings of the Preliminary Report on the E-commerce Sector Inquiry are of great significance to UEFA due to the potential negative impact of weakening the principle and reality of the exclusive territorial licensing model for sports media rights. While the specifics of UEFA's comments and observations are set out below in more detail, they can be summarised briefly as follows:

- Media rights are offered by UEFA to the market by way of open competitive tender processes in every EU/EEA member state with rights packaging relevant to that national market. This has been required by the European Commission to ensure that competition amongst broadcasters is maintained and that all players in the market should be afforded the same opportunity to compete to acquire relevant rights.
- This has encouraged and driven both competition and also investment in improved production/broadcast technologies and ultimately better coverage for consumers.
- The exclusive territorial licensing model has encouraged investment by broadcasters into the production of coverage which is tailored for the national audience, reflecting the national nature of the consumer demand.

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- Exclusive territorial licensing is not a division of the European media landscape artificially imposed by UEFA but is essentially driven by licensee demand, and reflects the national interest and orientation of the relevant geographic markets.
  - The impact of digital online technology has been different for live sport compared to other common media content (eg. films, TV entertainment, music etc) – the live aspect negates much of the disruptive aspects of an inherently on-demand environment such as the Internet, meaning that for live sports, the Internet is largely just another transmission technology (although certainly enabling the concurrent transmission of complementary additional media).
  - “Traditional” media organisations have not stood still and consumers are being offered an ever increasing variety of online options to view sports coverage. They are therefore not being denied that choice. UEFA is able to encourage and indeed push its broadcast partners to offer such choices through the value to the broadcaster of the exclusive territorial licensing framework.
  - There is no evidence (whether through UEFA’s own experience or through independent surveys) that demonstrates the existence of any material demand for cross-border access to sports content. Therefore, to propose intervention on the basis of a minimal level of demand is not justified.
  - If (where licences are acquired on an exclusive basis) the current practice of requiring geo-blocking of transmission of sports content to within licensed territories was to be prohibited, the impact of this will be to also prohibit exclusive territorial licensing as a whole in relation to the Internet, leading in practice to pan-European licensing of Internet rights. This would materially and negatively impact on the competitive media landscape in Europe and encourage generic (rather than audience tailored) coverage to be produced – both to the detriment of consumers in Europe.

### **General Background and Observations**

The manner in which media rights to sports events (and particularly UEFA’s) is licensed has been regulated at national and EU level for some time.

The European Commission, in its exemption decision in 2003 (*COMP/C.2-37.398 —Joint selling of the commercial rights of the UEFA Champions League*, the “**Decision**”) addressed, in the specific context of the UEFA Champions League, many similar, if not the same, questions as are being asked now, including the existence of barriers to entry to the market, difficulties on the part of media organisations in acquiring rights (even knowing where to acquire rights from), how to meet market and consumer demand, together with consideration of the benefits for both consumers and broadcasters.

The requirements set out in the Decision in respect of the offer to market of “premium” sports rights (for UEFA, these being football events taking place regularly throughout every year) are relatively clear and those obligations have been followed and applied by UEFA not just for the specific competition for which the Decision was granted but in relation to all of its major competitions (including UEFA’s

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national team football competitions (such as the EURO and European Qualifiers) even though they do not fall within the market definition identified in the Decision). These requirements include:

- national market by market open competitive bidding processes/tenders for rights;
- packaging/offering of rights which are accessible and relevant to all qualified broadcasters in the relevant market; and
- promoting progress in the use of new improved production and transmission technologies.

The benefits of centralised selling of media rights in this way have been extensively debated and form the core of the exemption decision and certain characteristics were expressly recognised by the European Commission at that time, namely, that:

- *"the downstream television markets can be viewed as national or regional in scope, in particular for cultural and linguistic reasons";*
- *"sale of rights in separate packages by means of a public bidding procedure should enhance the possibility for more broadcasters, including small and medium-sized companies, to obtain...content";*
- *"The sale of the UEFA Champions League media rights in separate packages by means of a public bidding procedure should enhance the possibility for more broadcasters, including small and medium-sized companies, to obtain UEFA Champions League content. The UEFA Champions League joint selling arrangement also ensures that companies interested in new media and deferred media rights and archives will have the opportunity to bid for such content rights.";*
- Benefits through sale of media rights through centralisation included benefits for broadcasters and consumers – *"...allow media operators to invest more in new improved production and transmission technologies, quality television coverage, quality production and presentation, etc. It is also likely to lead to a more intensive and innovative exploitation of the rights to the benefit of the consumer.";* and
- *"The Commission also considers that viewers get access to better quality media coverage of the UEFA Champions League product allowing them to watch all premium matches of every match day over the course of the entire season which are of particular interest to them. Viewers also benefit from a facilitation of access to deferred media content and archive material, which may be of special interest to them."*

UEFA therefore prioritises the following general principles in offering media rights to the market and licensing its media partners:

- market by market open competitive bidding processes – recognising that the downstream market (broadcasters and consumers) are in fact national.
- technology/platform neutral grant of rights – no limitation is placed on the technologies which a licensee can use.

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- contractual obligations to exploit on Internet and mobile services – ensuring that both rights are not warehoused and that consumers are provided with choices as to how they wish to view the content.
  - all matches are to be broadcast in each country – No EU/EEA consumers are denied access to coverage of all matches of UEFA's competitions.
  - UEFA does not dictate whether rights can be acquired exclusively or non-exclusively – exclusivity is invariably required by broadcasters and platforms.
  - Broadcasters can request whatever languages and similar aspects of rights that they wish to acquire - if there is a language offering or other cultural specific offering which is not available to consumers in a specific market, it is not because of any decision (conscious or otherwise) to deny such consumers but rather it is a reflection of what the market has asked for in terms of rights to be acquired.

At this point, it is important to highlight one of the particular specificities of sport, namely the live dimension. Unlike the other common media content types, the core interest, value and demand for sport is in the live transmission. Unlike films, TV entertainment or music, live sport is not sold or consumed in the same way, there is no way to repeatedly watch sport live. While numerous digital platforms have been, and continue to be, developed to serve Internet-delivered media, this is largely in the area of non-live streaming or download. Without dwelling on the technological aspects, live streaming is a much more demanding endeavour from the perspective of technical infrastructure and costs.

Since the early 2000s, many within the sports industry expected/hoped that telecommunications companies would emerge as the next new significant buyers of media rights, particularly with packages of rights being offered that were tailored towards shorter form content (clips) suitable for mobile device viewing. While there was a brief spell that supported this hope, it is safe to say now that that development simply has not occurred. Instead, those telcos which now step forward and acquire rights are doing so as part of their development of full Pay-TV broadcast businesses (usually operating television platforms (whether cable or IPTV) as well as channels). Sports, certainly "premium sports" has been widely recognised as one of the main drivers for growth in Pay TV in Europe and worldwide and what can be observed is that for the proper exploitation of sports rights, a certain degree of production capability is required in order to produce and offer to your consumer, the kind of tailored and consumer relevant content that can generate demand and interest in your overall media/television service, particularly as a paid for service – this production investment increases significantly when addressing live television.

### **Digital Platforms**

From UEFA's experience, there are not a material numbers of "new players" that have or are emerging in the sports media sector in Europe. Traditional media organisations have however not stood still in the face of new transmission and viewing technology. If one of the objectives of the European Commission at the time of the Decision was to encourage the utilisation and exploitation of rights on new technologies, this has certainly happened. Today, it is largely indispensable for any "traditional"

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television channel to also have Internet and mobile services that complement the traditional linear service – however, the fact that sports is “live” largely negates the relevance/convenience of an “access content whenever you like” environment such as the Internet as you still have no choice but to watch the sport at that specific moment in time, thereby removing the largest element of differentiation with “traditional linear TV”.

This does not mean that UEFA has simply stood still and remained static in its approach to the market commercially. Although live sport is the primary driver of interest and value, it is undeniable that consumers are increasingly looking to have the freedom to choose to view content on different screens, even if ultimately the vast majority of viewers of live sports choose to do so by watching the biggest screen available at that time instead of necessarily mobile devices. UEFA encourages and indeed contractually requires that this choice be made available by its broadcast partners.

To overcome arguments of technical inability on the part of individual broadcasters, UEFA has invested in and operated its own streaming platform which is used by UEFA itself and also forms the backbone of a white-label streaming solution offered to its broadcasters. This has not been done on a commercial profit or revenue generation basis but as a strategic decision by UEFA to ensure that its live content would be available to consumers throughout the world, including in particular the EU/EEA.

UEFA is continuously working with its broadcast partners to support them in their evolving digital strategies which in recent years of course is dominated by UGC and social media – eg. Youtube, Facebook, Twitter etc. A particular point to note is that we are in regular contact with these platforms but there has been little indication to date of any serious intent to participate in any of UEFA’s required competitive bidding processes to acquire rights – on the contrary, it is often stated that they do not wish to be rights-holding licensees with significant rights fee obligations and other legal and operational obligations, preferring to act as mere technical platforms. In addition, although UEFA continues to experiment and trial such platforms with broadcasters and directly ourselves, we run into frequent difficulties and are limited significantly by the contractual legal frameworks which these platforms require. As well as of course the elephant in the room that is often overlooked when discussing the digital/Internet landscape, namely piracy (both on these platforms and third parties’) and the lack of effective tools with which to fight it.

UEFA has adapted its use of technology and is generally adopting 2 approaches to innovation in media content:

- 1 investing in new content production and technologies designed for consumption digitally (eg. live VR, 360deg video, 4K, multi-angle second screen applications) utilising UEFA’s access to unique filming in and around our matches.
- 2 enabling access to UEFA’s unique archive of European football material – eg. UEFA.tv on Youtube.

The focus is on the creation of content which individual broadcasters can tailor for their local audiences as well as historical content which consumers may not otherwise be able to see. To do otherwise would be to interfere with the commercial ecosystem and demand in a way that would potentially damage

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competition and reduce incentives for broadcasters to bring innovative tailored content to their audiences (the football fans in Europe).

### **National nature of sports and relevant consumer demand**

Specific further detail is set out in UEFA's position paper regarding the Digital Single Market previously provided to DG Connect (a copy of which is attached), however in brief, it is a fundamental characteristic of sport and the nature of the interest in sports media content that they are of a national nature – ie. sports is both organised along national lines (in football, national associations, domestic leagues, clubs and development of grassroots on a national basis) and the interest in sports media coverage is predominantly also national. This is highlighted by both viewing figures and in the variation in licence fees which are offered by broadcasters when participating in UEFA's media rights tenders, for example, the value of the matches of the Romanian national team are greatly higher in Romania than in any other country. Another indicator of consumer interest is of course statistical survey information. In this regard, the Flash Eurobarometer survey commissioned by the European Commission (DG Connect) and published in August 2015 (Flash Eurobarometer 411 – Cross-Border Access to Online Content) presents some very clear statistics, including:

- 59% of respondents have “at least once in the preceding 12 months” accessed (non-sport) AV content but only 35% have accessed sport content online (not distinguishing between live and non-live) at least once in preceding 12 months.
- When considering consumers who frequently access sport content online – only 19% did so at least once a week and only 8% did so daily. Of the various types of content in the survey, sport was the type of content least likely to have been paid for only 19% of the 35% of respondents, ie. 7% of total respondents. The most likely to have paid for content were the most infrequent users who accessed sports content less frequently than once a month (16% of consumers who accessed sports content online).
- 81% of respondents stated that they could “usually” or “always” find the sports content they were looking for (43% saying “always” – second highest behind music).
- Only 2% have tried to access sport content intended for another country – of these 54% were able to access the content they wanted, ie - **only 1%** were not able.
- 53% of all respondents were looking for specific content not available in their country – however, it should be noted that UEFA licenses all of its matches in every country in the EU/EEA.
- 54% of all respondents were not interested in content from another country and 51% thought that there is sufficient choice in their own country.
- Only 15% of those who did not try to access any content online intended for another country might be interested in sport – 47% said no content would interest them.

These figures speak for themselves in highlighting that the reality of consumer demand for cross-border access to sport content is that what demand there is, is too low to reasonably justify regulation

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in this area and secondly, that the willingness of consumers to pay for sports content online is extremely low.

### **Key Preliminary Findings of the E-commerce sector Inquiry**

Set out below are further detailed specific comments in relation to the individual preliminary findings of the e-commerce sector enquiry in relation to the licensing of digital content. For ease of reference, the following uses the headings and paragraph numbering of the Preliminary Report. In addition, non-paragraph specific comments are set out below in blue italics.

*As an overall comment, the statistics prepared from the findings are not really a valid analysis of revenues derived by UEFA from its sports media rights. One of the main factors is the time period analysed. Taking a calendar year (in this case 2014), is of limited relevance for UEFA given that the majority of UEFA's revenues derived from media rights are not in relation to a competition which starts and finishes in the same calendar year, nor are all of the licence fees for a competition necessarily payable within any one calendar year. Therefore the assessment of the 8 largest contracts is materially flawed in this instance, as, for example, it precluded, by definition, all agreements which UEFA entered into in relation to EURO 2016 and/or the European Qualifiers as the fees under those contracts were either entirely or the majority thereof were payable outside of that calendar year.*

*The foregoing highlights a related element, which is the duration of contracts UEFA enters into, for example:*

- an agreement for media rights to UEFA EURO 2016 is ostensibly a 4 year agreement, however, in reality this is not 4 years of repeated rights delivery, exploitation and revenue generation. The duration of the agreement is determined by the fact that EURO takes place once every 4 years (with the qualifying draw and final draw ceremonies taking place respectively 3 years and 6 months in advance).*
- each edition of the European Qualifiers (qualification for EURO and the FIFA World Cup) currently takes place over a period of roughly 15 months (the first ever edition having been held from September 2014 to November 2015). Contracts for European Qualifier media rights in 2014 were therefore largely contracted before 2014 and provided for payment instalments split on an annual basis and covered 2 editions of the competition (one EURO and one FIFA World Cup qualification).*
- UEFA's club competitions (UEFA Champions League and UEFA Europa League) are licensed for cycles of 3 years (with no automatic renewal, extensions, matching rights or any other similar or equivalent mechanism). This duration was determined by the European Commission as being the appropriate maximum length of contract to provide broadcasters with sufficient time to leverage their investment, while not denying competitors the opportunity to acquire rights for too long a period.*

*Given the tendering requirements that have been observed and the length of contracts which are necessary, it is not surprising perhaps that in certain territories, broadcasters have been able to win rights in successive tender processes – this however, has not precluded new entrants (or existing competitors)*

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*from winning rights and bringing about a change in licensed broadcaster – eg. Sky UK had been the relevant Pay-TV rights holder in the UK for the UEFA Champions League since almost the competition's inception (having won the relevant rights being tendered on each occasion) and indeed was the incumbent during 2014. However, for the 2015-2018 UEFA Champions League season/cycle, Sky UK was displaced by BT Sport who won the tender and contracted in 2013 but without payments due in 2014. The changes in licensed broadcaster are not however a reflection of simple choice by UEFA but is the end result of the open competitive bidding tender.*

## 2.1 Licensing of rights: A key factor for competition in online digital content services

- (924) In relation to the sports media rights sector, the core “attractive content” and main driver for competition is the live coverage of the sports event. Various UEFA football competitions have been considered by national competition authorities and the European Commission to fall within the category of “premium” content which helps materially to drive the take up of Pay-TV subscriptions.
- (925) If “digital content providers effectively translate users’ demand for certain services into a wholesale demand for the rights that enable them to make the content available to users” (a statement which we do not dispute), it must be recognised that UEFA receives very few requests for live content from dedicated digital content providers, which on the basis of the Commission’s finding must translate to there being very little user demand for such dedicated or alternative digital services in the context of sports. This can be compared against the importance placed by broadcasters on the acquisition of rights to transmit and exploit (both as simulcast and individually) sports media rights on their digital platforms.
- (926-7) As already observed, unlike other media content (such as films, TV entertainment or music), the manner in which UEFA is able to offer its media rights to the market place is clearly prescribed and therefore there is little, if any leeway available to UEFA to adopt other distribution or marketing models. Within the required competitive tendering process, UEFA offers all available rights to the market place, both by design but also as required by the Decision.

In addition to the impact of competitive tendering of rights, if live media rights were to be acquired by a digital platform directly from UEFA for one of its competitions, it is a practical reality that they would have to undertake the host broadcast production (for club competitions for example) or at the least produce their own tailored programming coverage (eg. where a multilateral signal is produced by UEFA directly, eg. EURO) as unlike, say film, TV entertainment or music, the license granted is not necessarily to a finished and ready to air/sell product but rather the right to produce programming and to communicate that to the relevant public. This inevitably makes it more difficult for digital platforms to in fact exploit rights, even if they were to acquire them.

As we have commented above, UEFA has also seen that the digital audio-visual platforms (eg. video sharing or social media platforms) are reluctant to either bear such additional cost or to take responsibility, legally and operationally, for such production.

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## 2.2 Contractual restrictions in relation to transmission technologies, timing of releases and territories

(929) UEFA licenses its rights on a technological platform-neutral basis while applying, to some limited extent, time windows (eg. live, highlights/non-live). This means that no technological means are excluded from the grant of, for example, live rights meaning that a licensee, is therefore authorised to transmit live coverage using any technological means (similarly for highlights/non-live licensees). Any exclusivity is the result of the demand of the winning bidder(s) as part of our competitive tenders. Rights are not however actually licensed by "time window" in its usual sense as the "windows" are merely recognition of the fact of live (or not) occurrence of the events in question at the time of transmission and are not an artificial segmentation of rights.

It should be clear therefore that UEFA applies no limitation on the use of technologies, nor applies artificial windows of exploitation. While, UEFA does limit the grant of rights to within specific territories, the territories which any bidder may acquire are limited only by their own choice to participate or not within the competitive market-by-market tender processes which UEFA is required to operate.

(932) As stated above, UEFA adopts a platform neutral approach to rights licensing which means that once rights are acquired for content, there are no limitations on the technologies able to be used to transmit, deliver or receive/view that licensed content. In a constantly evolving technological landscape, UEFA believes that it is of particular importance to enable flexibility and not to impose artificial obstacles to the development and operation of new viewing propositions. UEFA does however oblige its licensed broadcasters to transmit licensed programming using Internet and mobile service platforms so as to ensure that a variety of viewing choices will be available for all consumers.

(933-4) UEFA does not pursue any artificial limitation on the availability of rights. As has already been highlighted, UEFA operates competitive tenders for the marketing of its media rights in compliance with the Decision – this has required individual country by country tenders of all rights (being made available in relevant packages).

Given such requirement, and UEFA's adherence thereto, there is no particular difficulty for any new entrant to have equal opportunities with the rest of the market to participate in the open tender processes and to therefore compete to acquire: (i) the rights in which they may be interested in, and (ii) to compete in all of the markets in which they may be interested as each national tender is open to all interested parties who are able to broadcast and transmit programming in the relevant country for that country's audience irrespective of whether they are based in the tender country or not. Given the administrative barrier that prevents the running of simultaneous tenders in all EU/EEA markets, it is inevitable that rights become available for acquisition at different times, however, the media rights for each 3 year cycle are all marketed and sold within a period of 18 to 24 months from start to finish and therefore it is generally known when

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rights will be available (particularly as the launch of tenders is publicised on UEFA's website, also as required in the Decision).

- (935) As a consequence of the market-by-market availability of UEFA's media rights, when concluding a licence for one territory, given that UEFA is not able to determine in advance who will be the successful bidder in any later tender, it is of course an unavoidable necessity at the time of contracting to respect the rights exclusivity which is asked for by the winning bidder. As the nature of the exclusivity granted by UEFA is that we will not license any third party in the successful bidder's territory, it is of course also necessary to ensure that the contractual mechanisms respect that limitation and therefore the requirement of geo-blocking is no more than a requirement to respect the limits of the rights that have in fact been bid for and acquired. To do otherwise, would prejudice all other bidders in all other tenders by changing the factual availability of licensed competing offerings either after rights have been acquired (therefore diluting the commercial balance of exclusivity and competition considered in their bid) or before a later rights tender by reducing the possible factual commercial exclusivity available to bidders in that later territory. It should be recognised that in valuing the rights as part of the competitive tender process, a bidder will assess the value in relation to a fixed set of facts known at that time, including the state of the competitive market, otherwise it would be impossible to determine the level at which they should bid. This is only possible if the geographic area being considered is known as it correlates directly to the market (both competitors and consumers).

The impact of not being able to offer and licence media rights on a national market by market basis has been frequently discussed with the European Commission and UEFA has already presented its views in connection with the impact of the Digital Single Market initiative (please see the accompanying copy of our submission to DG Connect earlier in the DSM initiative). In summary however, if national tenders (which inevitably lead to national grants of rights) were not possible, UEFA would anticipate that there would be only a handful of media groups who would be able to even consider acquiring such broad European rights and even they would struggle to exploit those rights in anything other than a greatly more generic fashion than the national model currently allows and encourages. The need to grant territorial rights is compounded by the existence of "listed events" regulations across Europe. While only 11 EU member states have notified their national lists to the EC (we understand that approval of Lithuania's list is pending), 1 EEA member state has a national list, 10 other EU member states have their own national legislation and 4 others currently have draft regulation going through their legislative process. We are aware of only 3 member states (Estonia, Greece and Luxembourg) which do not have a national list of any kind. As these lists all differ and each require differing events to be licensed (with different conditions) to free-to-air broadcasters in their respective territories, without the ability to licence on a territorial basis, there would be no way to avoid the inherently huge anti-competitive impact of such legislation across the entire EU/EEA.

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A further aspect which is of significant importance in respect of UEFA's less high-profile competitions (namely those which are not commercially attractive enough to be licensed in every country, eg. UEFA Youth League, UEFA Under 17 and Under 19 competitions, UEFA Futsal Championship and Futsal Cup etc) is that the use of geo-blocking or geo-targeting allows UEFA itself to be able to offer coverage of matches in those countries where no broadcaster was interested to acquire the relevant rights, without negatively impacting on those markets where there was sufficient interest to attract broadcast licensees. This enables UEFA to offer coverage to ensure that fans are nevertheless not denied the possibility to watch the competitions because of a lack of commercial interest. This has been implemented by UEFA in recent years both through UEFA's own website and also via third party platforms such as Youtube. This is a model which is also adopted widely across a variety of sports in order to encourage interest and development of the sport in terms of both participation and media interest. This is of course not visible in relation to UEFA's most commercially attractive properties, but nevertheless, represents a key aspect of UEFA's mandate, which is the growth and development of the sport of football in Europe.

### 2.3 Duration of the agreements

(936-8) UEFA grants rights in the EU/EEA on either a maximum 3 or 4 year basis, depending on the competition - a maximum 3 year contractual term for club competition rights, while for UEFA's other competitions, the contractual terms applied varies but reflects the factual length of individual competitions (eg. only UEFA European Championship (EURO) is held every 4 years, in between each EURO, 2 European Qualifiers competitions are held (one EURO and one FIFA World Cup qualification) and have therefore been licensed for a maximum term also of 4 years). The term length for UEFA Champions League media rights (3 years) was determined by the Decision. It is therefore difficult to see how these term lengths could be considered either long-term or otherwise present "difficulties in accessing rights", particularly as, without exception, UEFA entertains no first-negotiation, automatic renewal or other similar rights (such rights being of course wholly incompatible with the obligation to conduct open competitive tenders).

### 2.4 Payment structure

(939-43) UEFA's media rights agreements all require payment of a fixed licence fee payable in instalments agreed at the time of contracting. The level of licence fee is not however fixed by UEFA. Due to all media rights being offered to the market by way of open competitive tender processes, the level of licence fee that each bidder is able and willing to pay is set by the bidder themselves. Given that media rights are also, as per the Decision, offered in packages of rights to ensure suitability for all interested bidders, the relevant value will also inevitably vary between packages. In this context, several aspects need to be borne in mind:

- a. In operating open competitive tenders, UEFA must be able to compare bids in a fair and objective manner – if the financial models being offered were to be based, for

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example, upon actual viewership or potential consumer subscriptions (ie. actual consumption as per music), such offers would be impossible to compare against offers based on a more traditional fixed licence fee model, let alone any other more “innovative” model. How therefore could UEFA maintain a competitive bidding process between, for example, FTA and Pay broadcasters when FTA broadcasters are not subject to the same metrics to measure or define commercial “success” or return (FTA having no subscriptions, nor accurate means to measure consumer uptake), let alone with digital-only service providers proposing a more “flexible” financial model.

- b. The vast majority of revenues generated by UEFA’s competitions are distributed to the participating teams/UEFA member national associations and to other teams/NAs (through solidarity payments) during or immediately after the competitions to which the payments relate. The need to distribute licence fee revenues to stakeholders in this way is directly as a consequence of such distribution representing a very significant, and in some instances, effectively the sole significant source of income for the relevant recipient organisations. That being the case, UEFA cannot rely on projected future revenue, nor be exposed to variable revenues which cannot be accurately anticipated as this would lead directly to there being no certainty of revenues for the teams and National Associations, thereby making it extremely difficult, if not impossible for those organisations to organise and plan their activities (let alone pay staff and meet day-to-day expenses).
- c. The costs of organising UEFA’s competitions are also met directly out of the revenues which are generated for that season/edition of the competition. Payments are in fact in principle received in the immediate run up to and/or during the relevant competition for which the payment is being made. Alternative payment structures, for example one reliant upon measuring viewership would mean that licence fees would not only be unknown until after the competition has taken place but also would mean that UEFA could not receive the licence fee until well after the conclusion of the competition to which the payment relates, jeopardising the organisation and holding of the competition in the first place.
- d. For more than a decade, it has been standard practice for UEFA to require payment security (eg. by way of bank guarantee) to be provided by each of its broadcasters in order to be able to ensure that the expected contracted revenues are in fact received (linked to the need for certainty of distributed revenues as stated above). The importance of this, particularly in light of the financial uncertainties which we all face in recent years, is only increasing, however, alternative variable payment structures would make it extremely difficult, if not impossible to assess the credit risk that a particular bid would present.
- e. It should also be recognised that sports media content is not viewed/purchased by consumers on a commoditised basis – a live sports event cannot be viewed live multiple times by the same consumer – and cannot therefore be readily valued in advance in order to apply payment models which may commonly be used for other

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media content (such as film, other TV programmes or music – which is by definition bought on a unit/commoditised basis, such as cinema tickets/DVD/download purchase, rental or stream).

- f. The suggestion has been made at the European Commission’s recently held event that sports bodies should consider monetising our content on the basis of radically different monetisation models, such as the collection and exploitation of “valuable” data. Unfortunately this is a revenue model which is wholly inappropriate for a number of reasons, including, for data to be “valuable”, there would need to be either a buyer (which immediately raises questions regarding data gathering, protection and privacy of consumers) or that the “value” of data be reflected in a stock market or investor valuation which would translate to an equity financed operating model, neither being relevant to organisations such as UEFA. Other models such as advertising-funded models (eg. freemium) may also be prevalent in relation to other media content services, however, given the important role played by sponsors for UEFA’s competitions and the need to grant exclusive rights of association to those sponsors, any advertising funded model would inevitably conflict fundamentally with the sponsorship model or otherwise be materially limited by the sponsor exclusivities which would need to be respected.
- g. The restrictions placed upon UEFA by the fact of the nature of its organisation, remit and responsibilities must also be considered in that while it may be established business practice for fully commercial businesses (who’s objectives are to generate a commercial profit for the benefit of shareholders) to, for example, fund its operating business on the basis of debt or some other operating capital raising financial mechanism, it must be accepted that for UEFA to rely on, for example, debt financing in order to meet operating costs is whole incompatible with UEFA’s role, remit and responsibilities as the governing body of football in Europe. In particular, given the nature of UEFA’s Financial Fair Play requirements towards clubs competing in European competitions which essentially requires clubs to operate within the limits of their income and restricts the use of debt financing, it would be wholly unacceptable for UEFA to do the opposite.

To conclude, UEFA wholly supports the recognition by the European Commission that the exclusive territorial licensing framework for the licensing of sports content, while bearing basic similarities to the rest of the digital content sector, cannot be treated in the same way as other digital content such as films, TV entertainment, music and software. We further urge the European Commission to recognise:

- the specificities of sport and that licensing of sports media rights on an exclusive territorial basis as currently practised continues to be beneficial for competition in the media sector as well as for consumers, in particular, by encouraging the continued production of content tailored to the tastes of viewers and broadcast innovation.
- that the use of geo-blocking in the context of the licensing of sports content is not an artificial mechanism to divide the landscape and indeed enables sports bodies to offer a wider

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availability of content to grow the sport (in countries where content has not been able to be licensed, for example) on a basis that fully respects the commercial need for exclusivity of its broadcast partners.

- that weakening the current exclusive territorial licensing framework for the licensing of sports media content would have a material and fundamentally negative impact on the funding of sport and UEFA's ability to fulfil our remit to govern the sport of football in Europe and to financially support our members (being the national football associations).

We of course remain at your disposal to provide any further clarification or information that may be needed.

Yours faithfully,

**U E F A**



Seong Sin Han  
Head of Marketing Legal Services  
Legal & Business Affairs

Enclosure(s)

- UEFA submission to DG Connect re: The EU Digital Single Market and Territorial Exclusivity
- Appendices A, B and C to the above submission (CONFIDENTIAL)