STATUTORY INSTRUMENTS

2021 No. 1148

COMPETITION

The Competition Act 1998 (Football Broadcasting Rights) (Public Policy Exclusion) Order 2021

Made - - - - at 10.50 a.m. on 14th October 2021

Laid before Parliament at 2.00 p.m. on 14th October 2021

Coming into force - - 7th November 2021

The Secretary of State, in exercise of the powers conferred by paragraph 7(1), (2), (3), (4) and (5) of Schedule 3 to the Competition Act 1998(**a**), makes the following Order.

The Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I prohibition (as defined in section 2(8) of the Competition Act 1998) ought not to apply to, or ought to be deemed never to have applied in relation to, agreements or decisions of the description specified in this Order, and why the Chapter II prohibition (as defined in section 18(4) of that Act) ought not to apply to, or ought to be deemed never to have applied in relation to, conduct in the circumstances specified in this Order.

Citation, commencement and extent

1.—(1) This Order may be cited as the Competition Act 1998 (Football Broadcasting Rights) (Public Policy Exclusion) Order 2021 and comes into force on 7th November 2021.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In this Order—

"2022 to 2025 football broadcasting rights" means rights to exploit in the United Kingdom the broadcasting of association football matches played as part of the 2022 to 2023, 2023 to 2024 and 2024 to 2025 Premier League football seasons;

"broadcast rights holder" means any of the following—

(a) Amazon Media EU S.A.R.L., a company registered in Luxembourg (company number 112767) or Amazon Digital UK Limited, a company incorporated in England and Wales (company number 06528297);

(b) the British Broadcasting Corporation, a Royal Charter company (company number RC000057);

(**a**) 1998 c. 41.

(c) British Telecommunications Public Limited Company, a company incorporated in England and Wales (company number 01800000);

(d) Sky UK Limited, a company incorporated in England and Wales (company number 02906991);

"the Football Association Premier League" means the Football Association Premier League Limited, a company incorporated in England and Wales (company number 02719699);

"football broadcasting rights agreement" means any of the following—

(a) the agreement dated 6th June 2018 between the Football Association Premier League and the British Broadcasting Corporation in relation to the Free-to-Air Highlights Package for exploitation in the United Kingdom during the 2019 to 2020, 2020 to 2021 and 2021 to 2022 Premier League football seasons;

(b) the agreement dated 14th June 2018 between the Football Association Premier League and Sky UK Limited in relation to Live Packages B, C, D and E for exploitation in the United Kingdom during the 2019 to 2020, 2020 to 2021 and 2021 to 2022 Premier League football seasons;

(c) the agreement dated 14th June 2018 between the Football Association Premier League and Amazon Media EU S.A.R.L. in relation to Live Package F for exploitation in the United Kingdom during the 2019 to 2020, 2020 to 2021 and 2021 to 2022 Premier League football seasons;

(d) the agreement dated 19th June 2018 between the Football Association Premier League and British Telecommunications Public Limited Company in relation to Live Package A and Live Package G for exploitation in the United Kingdom during the 2019 to 2020, 2020 to 2021 and 2021 to 2022 Premier League football seasons;

(e) the agreement dated 19th February 2019 between the Football Association Premier League and Sky UK Limited in relation to the Near Live Package for exploitation in the United Kingdom during the 2019 to 2020, 2020 to 2021 and 2021 to 2022 Premier League football seasons;

"Free-to-Air Highlights Package" means the package of audio-visual rights to association football matches played as part of a Premier League football season which principally includes the right to broadcast and make available on a free-to-air basis programmes featuring edited highlights of association football matches;

"Live Package A" means the package of live and associated audio-visual rights to 32 association football matches each Premier League football season played at weekends as part of the season and selected by the licensee using the pick priorities in the package;

"Live Packages B, C, D and E" means the packages of live and associated audio-visual rights, each of which includes rights to broadcast 32 association football matches each Premier League football season played at weekends or on Friday or Monday evenings as part of the season and selected by the licensee using the pick priorities in each of those packages;

"Live Package F" means the package of live and associated audio-visual rights to 20 association football matches each Premier League football season played as part of one midweek and one bank holiday fixture programme included in the season;

"Live Package G" means the package of live and associated audio-visual rights to 20 association football matches each Premier League football season, at least 15 of which are played as part of two midweek fixture programmes included in the season;

"Near Live Package" means the package of audio-visual rights which principally includes—

(a) the right to make delayed and on-demand long-form transmission of 180 association football matches played as part of each Premier League football season which are not included in any of Live Package A, Live Packages B, C, D and E, Live Package F or Live Package G, and

(b) the right to make available clips of all 380 association football matches played as part of each Premier League football season by means of the internet;

"Premier League club" means a football club which is for the time being a member of the Football Association Premier League;

"Premier League football season" means an association football competition, generally running from August in one year to May in the next, in which each Premier League club usually plays each other Premier League club twice, once at their own home ground and once at the home ground of the other Premier League club.

Chapter I prohibition

3.—(1) The Chapter I prohibition does not apply to an agreement or decision to the extent that it is—

(a) an agreement between two or more Premier League clubs or between one or more Premier League clubs and the Football Association Premier League,

(b) a decision by the Football Association Premier League as an association of undertakings, or

(c) an agreement between the Football Association Premier League and any one or more broadcast rights holders,

to renew a football broadcasting rights agreement so that it applies on the same or substantially the same terms to 2022 to 2025 football broadcasting rights without the Football Association Premier League carrying out a competitive tender process or auction for the sale of those rights.

(2) The Chapter I prohibition is to be deemed never to have applied in relation to an agreement or decision to the extent that it was an agreement or decision referred to in paragraph (1) which was entered into or made during the period beginning with 13th May 2021 and ending with the day before the day on which this Order comes into force.

Chapter II prohibition

4.—(1) The Chapter II prohibition does not apply to the renewal of a football broadcasting rights agreement so that it applies on the same or substantially the same terms to 2022 to 2025 football broadcasting rights without the Football Association Premier League carrying out a competitive tender process or auction for sale of those rights.

(2) The Chapter II prohibition is to be deemed never to have applied in relation to conduct referred to in paragraph (1) which was engaged in during the period beginning with 13th May 2021 and ending with the day before the day on which this Order comes into force.

Expiry

5. This Order expires at the earlier of the end of—

(a) the period of fourteen days beginning with the day after the last association football match played in the 2024 to 2025 Premier League football season, or

(b) July 2025.

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

At 10.50 a.m. on 14th October 2021

EXPLANATORY NOTE

(This note is not part of the Order)

This Order excludes from the Chapter I prohibition in the Competition Act 1998 (c. 41) specified agreements or decisions relating to the renewal of existing football broadcasting rights agreements between the Football Association Premier League Limited ("the Premier League") and broadcasters, and excludes from the Chapter II prohibition conduct relating to the renewal of those agreements. The Chapter I prohibition precludes agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. The Chapter II prohibition precludes conduct on the part of one or more undertakings which amounts to abuse of a dominant position in a market if it may affect trade within the United Kingdom. The Secretary of State, where satisfied that there are exceptional and compelling reasons of public policy for doing so, may exclude an agreement, decision or concerted practice, or an agreement, decision or concerted practice of a particular description, from the Chapter I prohibition, and specified conduct from the Chapter II prohibition.

Article 3 of the Order excludes from the Chapter I prohibition an agreement or a decision to the extent that it is—

— an agreement between Premier League clubs or between Premier League clubs and the Premier League, or

— a decision made by the Premier League, or

— an agreement between the Premier League and a broadcaster

to renew any of the existing agreements between the Premier League and a broadcaster relating to football broadcasting rights so that it applies on the same or substantially the same terms to broadcasting rights for the 2022 to 2023, 2023 to 2024 and 2024 to 2025 Premier League football seasons, without the Premier League carrying out a competitive tender process or auction for the sale of those rights. Article 3(2) applies the exclusion retrospectively to any such agreements or decisions which were entered into or made between 13th May 2021 and the day on which this Order comes into force.

Article 4 of the Order excludes from the Chapter II prohibition the renewal of any of the existing agreements between the Premier League and a broadcaster relating to football broadcasting rights so that it applies on the same or substantially the same terms to broadcasting rights for the 2022 to 2023, 2023 to 2024 and 2024 to 2025 Premier League football seasons, without the Premier League carrying out a competitive tender process or auction for the sale of those rights. Article 4(2) applies the exclusion retrospectively to any such conduct engaged in between 13th May 2021 and the day on which this Order comes into force.

Article 5 provides that the Order expires at the earlier of the end of the period of 14 days after the last match played in the 2024 to 2025 Premier League football season or the end of July 2025.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An explanatory memorandum has been published alongside this instrument at www.legislation.gov.uk.

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