



## **Collective Broadcast Sale Model: The legal and commercial implications of the new broadcast deal of the Nigeria Professional Football league.**

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Throughout the world, live coverage of major football and sports games has become one of the most popular forms of television broadcast and has become a veritable source of revenue for the broadcast rights holders, the Sporting Federations and the individual teams.

Before the launch of major TV platforms, the rights to major national and international competitions belonged to the National free to air broadcasters individually or collectively<sup>1</sup>.

Following the recent announcement of the Joint Venture between the Nigeria Premier League Ltd, GTI and Propel Sports Africa to stream Nigeria Premier League (NPL) games live, Propel Sports Ltd announced its deal with MTN Nigeria for the exclusive broadcast of the games on mobile devices on the MTN Network. The deal, concluded by Propel Sports Africa President, Edward Simons and MTN Chief Operating Officer Hassan Jabar, will include in-and-post-game highlights delivered in real time to MTN subscribers through the NPFL Live OTT platform. The thrust of this article is to examine the commercial and legal implications of this deal. We shall also endeavor to engage in a comparative analysis of this deal with some major broadcast deals in Spain, England, and Germany and suggest ways through which the commercial value of the deal can be enhanced.

The English Premier League has, through technological innovations and regulations maximized the revenue generated from awarding broadcast rights to the mainstream media. In the Bundesliga, for instance, commitments were offered that divided rights into separate packages for internet, TV and Mobile broadcasting. This system has been replicated in Spain, England and Italy and even some South American countries. The rights were to be disposed of by a public tendering process and rights contracts were not to exceed three years. Similarly, the FA Premier League in England bifurcated broadcast rights into packages for mobile, internet and radio, in addition to a rule against exclusivity.

The increase in foreign rights, revealed in new figures from SportBusiness Media, is slightly more than Premier League insiders had envisaged, and shows that 46 percent of all the League's broadcasting revenue now comes from overseas. The deals cement the Premier League's position as earning more money from overseas broadcasting than any other sports league in the world. However, this is just a part of the story. In 2020, just before the commencement of the 2019/2020 football season, Amazon acquired the internet broadcast rights of some Premier League matches which will be streamed on Amazon from the 2019/20 season after the US tech giant purchased one of the broadcasting rights packages in a landmark move for the game. The Premier League has

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<sup>1</sup> Nick De Marco, QC **Football and the Law** (2018) "the importance of football broadcast rights".



since entered into a new broadcast deal that would run through the 2022-2025 seasons although a few of the broadcast deals would extend beyond the 2024/2025 season.

Under the English Premier League, Sky Sports and BeIN Sport enjoy the ‘lion share’ of the broadcast deals after purchasing rights to over 160 matches for more than £4.5bn, but they will do so alongside Amazon, who will show 20 matches per season for an initial three-year period which lapsed in 2022 but has since been renewed for another 3 years. This arrangement has not only ensured the satisfaction of diverse customer needs of the viewing population but also ensured the revenue base of the league and the contracting clubs is fortified.

### **The collective sale of broadcast rights package and legal implications**

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Spanish football was for some years been enmeshed in a broadcast controversy that allowed the individual clubs to sell their TV rights. This enthroned some sort of duopoly which ensured that the ‘big two’; Barcelona and Real Madrid amassed a large chunk of the TV money with the other 18 teams lagging far behind<sup>2</sup>. Admittedly, the commercial brand of the two teams ensured this duopoly inured for a long time. This development ensured the rich clubs in the league became richer while the poor ones became poorer. To further elaborate on this development, it is reported that Real Madrid and Barcelona between themselves, accumulated TV rights money totaling over **480, 000, 000 Euros** for the 2014/2015 season which was shared between the two clubs with the other 18 teams forced to share whatever remained of the TV rights deal. Undoubtedly, this impacted on the purchasing power of the clubs. Protests by other clubs and a paradigm shift to collective sale of broadcast rights birthed the new dispensation which has seen all the teams collectively assign their commercial rights to broadcast deals to the Spanish Football Federation to negotiate on behalf of the teams and share the TV rights money to all participating clubs. This development puts an end, at long last, to a scandal that has besmirched Spanish football for years.

From 2016, individual clubs in the Spanish topflight were no longer permitted to negotiate their own television rights, as Barcelona and Real Madrid have done in the past. The practice meant that in 2017, the two clubs shared around €280 million between them, a figure that represented around a third of the money on offer from the broadcasters<sup>3</sup>.

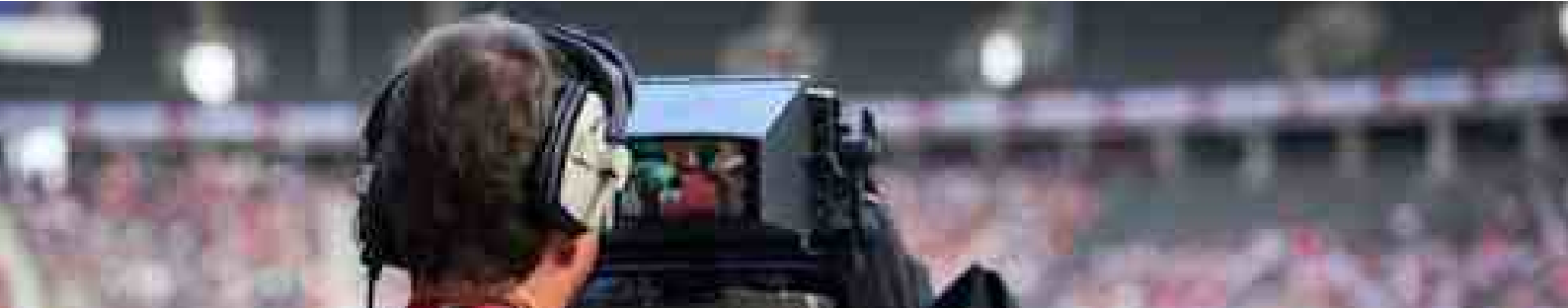
To put the matter into perspective, under the former system, Atletico Madrid—who finished champions of La Liga in the 2013/2014 season earned €42 million from TV rights. In contrast, Cardiff City, who were relegated after finishing bottom of the Premier

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<sup>2</sup> G Alcolea-Díaz (2003): La televisión digital en España. Sevilla: Comunicación social. G Alcolea-Díaz & MDM Blanco-Leal (2007): “Los derechos del fútbol en televisión en el Mundial de Alemania 2006”.

<sup>3</sup> Comunicación y pluralismo, España, 4, 105-118: <https://dialnet.unirioja.es/servlet/articulo?codigo=2720606> G Alcolea-Díaz & V García-Prieto (2017): “España: duopolio televisivo, cambio de liderazgo y nuevo equilibrio de fuerzas”.





League in England, received a whopping €74.5 million, according to Nick Bidwell of WorldSoccer.com. The above scenarios have diverse commercial implications for the participating clubs. Whilst the former model adopted by the Spanish Federation appears to encourage and reward brands, the English model is more egalitarian in outlook and seeks to reward on-field success<sup>4</sup>. Which model has been adopted by the Nigerian league and why?

The NPL has adopted a similar collective broadcast sale model that allows the regulators of the league to negotiate on behalf of the teams and sell to the highest bidder. But why does this deal elicit more questions than it has provided answers to the seemingly grey areas of the broadcast deal despite the promising commercial outlook? Was there a public auction and if so, who were the competitors that lost out in that deal or did the NPFL simply kowtow to the only available bidder for the broadcast rights? What should we expect from this deal in the next 5 years should it exceed the initial one-year duration? These are posers raised by this deal whose answers will only become clearer in the coming months.

### **The role of non-exclusive broadcasting.**

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In the race for contents, the concept of premium and its exclusive exploitation have been key. Combining premium and exclusive offers immediately results in a higher price and, given that it is produced from a dominant position, institutes barriers to competitors. This has undoubtedly led to the intervention of the competition bodies of many countries, which have conditioned the acquisition of rights, limiting their exclusivity and/or the periods of validity of contracts.


In Spain, exclusivity, both in the holding and the exploitation of La Liga matches in the national market, is limited by law (Royal Decree-Law 5/2015), which prevents the same person or entity from acquiring, directly or indirectly, exclusive rights to exploit contents corresponding to more than two lots in the auctions organized by the LNFP, both in the bidding process as at a later time, through acquisition or transfer, unless there were no bidders or equivalent offers<sup>5</sup>. The first auction of the broadcasting rights of all La Liga matches for the national market, fully applying the new regulations, occurred in 2015 for the 2016-2019 period even though Telefónica and Mediapro maintained the leading positions they had already enjoyed in the market and became the big winners.

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<sup>4</sup> Comunicación y pluralismo, España, 4, 105-118: <https://dialnet.unirioja.es/servlet/articulo?codigo=2720606> G Alcolea-Díaz & V García-Prieto (2017): “España: duopolio televisivo, cambio de liderazgo y nuevo equilibrio de fuerzas”.

<sup>5</sup> In Reig, R & Labio, A (eds.) El laberinto mundial de la información. Estructura mediática y poder. Barcelona: Anthropos, 119-140. J Bonaut-Iriarte (2010): “El eterno problema del fútbol televisado en España: una perspectiva histórica de la lucha por los derechos de retransmisión de la Liga de Fútbol Profesional (LFP)”.





The direct exploitation of broadcasts of premium, non-exclusive, audiovisual content by the leagues themselves is a system that has been operating for years in other sports<sup>6</sup>. It is worth noting the case of the NBA and its *NBA League Pass*. The NBA games can be viewed through cable and satellite television on the ESPN and ABC channels, as well as on TNT, who share more than 160 games per season, completing the broadcasting offer and the set of games through the NBA TV, a 24-hour television channel, launched in 1999 and produced by the NBA itself. However, the NBA League Pass streaming service, which was launched in the 2006-2007 season, as the NBA League Pass Broadband, was an extension to the Internet webcast, of the NBA League Pass TV channel launched in 1994. However, after years of producing its audiovisual contents (through NBA Entertainment) and selling through satellite and cable television, the NBA launched its streaming platform, with access to live games and multiple commentary services. The foregoing represents the diverse ways through which the commercial potential of the new broadcast deal can be maximized.

As already demonstrated in the Spanish model, such transactions are usually conducted by public auctions. Public auctions in this sphere are usually advertised to invite bidders for the broadcast rights. We are not sure this was the case with this deal. One can excuse the commercial challenges faced by the NPFL which just landed its first major broadcast deal in years. It is therefore understandable if Propel Sports Limited was the only bidder for this right. It is however suggested that this deal should go beyond livestreaming of NPFL games via mobile devices. There is an obvious limitation posed with the broadcast model as only MTN internet subscribers can have access to the live games. To put it bluntly, out of the over 92 million MTN Subscribers, only about 67 million are internet subscribers. The figure nosedives further when we consider the demography of the mobile internet users that would be interested in watching live NPFL matches especially when the major European leagues also compete for their attention. Notwithstanding the exclusivity clause in the contract which vests exclusive rights on Propel Sports Limited, the NPFL should find ingenious ways of broadening the market by perhaps launching another streaming platform to other countries in Sub-Saharan Africa and the Middle East which would enable another reputable media partner, possibly another Telco to live-stream a percentage of the games, similar to the arrangement between the English Premier League and Amazon. This ensures that a percentage of the foreign population gets to watch the Nigerian Premier League by conveniently live streaming a number of the games on their mobile devices and provide the long overdue visibility for the league. Propel Sports Limited, on its part, needs to unbundle some of the plenitude of the broadcast rights it has acquired in the deal. This not only enables it to meet its financial obligations to the NPFL, but it also ensures the commercial target of the deal is maximized as much as possible. Both MediaPro and Telefonica in Spain and BT Sports and Sky Sports are big entities that can afford solo sponsorship deals but have been able to coexist in multi-billion Euros deals. The NPFL can replicate such sponsorship

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<sup>6</sup> <https://blog.cnmc.es/2017/11/17/panel-de-hogares-cnmc-el-video-en-streaming-coge-el-vuelo-1-decada-4-hogares-con-internet-ya-lo-utilizan/> CNMC (2018): La facturación de los servicios audiovisuales y la banda ancha tiraron del sector de las telecomunicaciones en 2017.



masterstroke by exploiting the Arab and Middle East Market which has a large pool of Nigerian players plying their trade in the continent by interfacing with a cable or satellite television provider. It is inconceivable that Propel Sports Limited/MTN would livestream all 380 NPFL games each season. Accordingly, the goldmine in commercial TV broadcast rights in the league may never be unlocked until the NPL explores its options on this issue.

The legal implications of this deal are very straight forward. Nigeria passed the Federal Competition and Consumer Protection Act in 2020. The Act aims at promoting a competitive market and protecting consumer rights in Nigeria. Before the enactment of the Act, there was no single piece of legislation regulating competition in Nigeria. Thus, provisions of laws regulating competition were found in various legislation such as the ISA; the Nigerian Communications Act 2003; the Electric Power Sector Reform Act 2005 amongst other laws. However, the Act applies to all businesses in Nigeria and supersedes all laws on competition and consumer protection<sup>7</sup>.

The Act prohibits unfair business practices or abuse of dominant market position by any company, as well as an agreement to restrain competition such as agreements for price-fixing, price rigging, collusive tendering, etc. This legislation has far-reaching implications for this deal. For one, it ensures that this deal is subject to some regulatory mechanism that would keep the sponsors in check. It also gives aggrieved consumers the right to challenge any arbitrary increase in subscriptions. Above all, the law would facilitate competition and put both the NPFL and Propel Sports Limited on their toes to ensure the end-users of this deal get the most out of it. At any rate, time will tell whether the NPFL has made judicious use of the commercial potential of this deal.

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<sup>7</sup><http://www.mondaq.com/Nigeria/x/791502/Securities/The+Federal+Competition+And+Consumer+Protection+Act+2019+Regulatory+Implications+For+Merger+Transactions+In+Nigeria>



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