

APPLYING COMPETITION RULES IN THE MEDIA SECTOR - ROCA JUNYENT

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The media sector is undergoing structural change and this means a greater need to fine-tune the competition law policy affecting it

The Spanish media sector is one in transition and where competition issues are having a transformative effect on established ways of doing business, says Pedro Callol, Head of Competition at Roca Junyent in Madrid.

"Indicative has been the CNC's decision to declare illegal certain agreements entered into by La Liga football clubs, television broadcasters and right's accreditors. It has ruled that exclusive broadcast rights may not last more than three years, bringing contractual and economic uncertainty for both sides of existing agreements."

The broadcasters and football clubs are apposing the decision, in a number of cases of appeals in which Callol is active, but which the CNC is defending on the grounds that extended agreements act as a barrier to new market players.

"Football broadcast rights are clearly attractive and valuable assets, but the legitimacy of the CNC's position is in question also because it contradicts new legislation (media act) that stipulates a four-year limit." The issue raises concerns as to how "joined-up" are the competition regulators and legislature.

"We have seen mismatches between the actual regulation and the way policy is enforced but also a lack of co-ordination between regulators – it means increased legal uncertainty, expense and the potential for, inconsistency in the commercial exchanges."

The CNC may be making greater efforts to influence new legislation and increase communication with other regulatory bodies, but competition concerns continue to arise. A number of cable and pay TV channels are now challenging the implications of last year's Media Act, and the levy placed on media companies following the withdrawal of commercial advertising from the national broadcaster TVE.

"No-one doubts the role competition law can play in encouraging efficient markets, and the media sector is undergoing rapid change, but there can also not be grey areas of interpretation. Legislation and regulation have to be fine-tuned."