

The impact of Coronavirus on Italian football media rights

07 APRIL 2020

Paolo Macchi

SENIOR ASSOCIATE | IT

CATEGORY:

ARTICLE



[Click here](#) to read more insights on how we can weather the coronavirus outbreak with you.

The current COVID-19 ("Coronavirus") pandemic has affected the staging of sporting events around the world, leading to the cancellation or rescheduling of numerous events as well as to athletes withdrawing from notable tournaments.

The suspension of football matches is having consequences on all tiers supporting the business of football in Italy: production and distribution of media rights, sponsorship, ticketing and in-stadium corporate hospitality.

The current pandemic situation is a huge blow for broadcasters, rights holders and content providers. Broadcasters worldwide pay billions of dollars for the right to transmit live sports events to fill schedules, attract viewers and sell advertising.

Today, the issue at stake in Italy is whether broadcasters/licensees (traditional TVs or OTT platforms) may withdraw payments to Serie A in light of the final cancellation (rather than a temporary suspension) of the remaining matches of the season – 124 matches, worth around EUR 350 million – due to the Coronavirus outbreak.

There is no doubt that the crisis will result in dramatic economic consequences in the world of sports, an industry around which an enormous amount of money moves yearly. According to analysts, the global sports market generates approximately USD 756 billion annually. The US alone is responsible for USD 420 billion and Europe for another USD 250 billion.

As in other nations, Italian football is in the midst of a crisis because of Coronavirus and the government's decision to suspend all sporting events in the country. The measures undertaken are having major effects on Lega Serie A, the Italian football league, whose cancellation of events is posing the risk that the entire top flight football system may collapse. Such a scenario would be unprecedented in the history of the sport in Italy.

Big money is at stake in Italy when it comes to football. Serie A estimates a loss of EUR 720 million, most of which is due to loss in revenues from non-delivery of live matches to broadcasters.

Within this context, the cancellation of Italian football matches has raised discussions over the application of the so-called Melandri Law (i.e. Legislative Decree no. 9 of 2008) which governs the collective sale of Serie A media rights. The Melandri Law applies to all sports recognised by the Italian Olympic Committee (CONI) and is an important piece of legislation in relation to the ownership of broadcasting rights, especially football.

When it entered into force in 2008, the Melandri Law marked the transition to a system characterized by the co-ownership of audiovisual rights between (i) the football clubs (who are, from a copyright perspective, the authors – strictly speaking – of the sporting event) and (ii) the body in charge of the organization of the sports competitions (i.e. Lega Serie A).

By way of the Melandri Law, Serie A has thus been entrusted with the exclusive task of licensing the relevant media rights, on behalf of the clubs, to broadcasters and platforms operating in the national and international market.

As of the current sport season, upon sale to broadcasters Serie A distributes the proceeds to its football clubs in accordance with the following criteria:

- (i) 50% equally between the clubs;
- (ii) 30% based on sporting results; and
- (iii) 20% based on the target audience.

The current collective sale of Serie A media rights is in contrast with the individual sale of rights in force before 2008. The previous system allowed each football club to license their rights directly to broadcasters, but was deemed by many to be a mechanism that favoured only the largest clubs in the country.

With reference to the period between 2018 and 2021, the rights to Serie A matches were sold domestically for EUR 1.37 billion. Sky Italia, the main licensee, offered EUR 780 million a season, whereas over-the-top (OTT) subscription sports streaming service DAZN offered EUR 173 million. This is in addition to the rights to broadcast the matches internationally (i.e. in all countries of the world other than Italy), acquired by international sports marketing agency IMG in consideration of EUR 371 million.

The license agreements in place between the League and the broadcasters may not contain provisions regulating the occurrence of an unforeseeable force majeure event like the Coronavirus outbreak or the application of liquidated damages. Therefore, as is the case for many license agreements, the parties would have to resort to the applicable law.

Nevertheless, there is an important difference.

If Serie A were to cancel all remaining matches of the season (a quite unlikely move from the League), we could infer a breach of contract between the League and its broadcasters, resulting in the latter having the option to sue and request monetary damages.

On the other hand, should the Italian government decide to cancel the remaining matches through the enactment of a decree, the decree itself would be considered an act of force majeure, and thus the League would not be deemed in breach of contract.

The broadcasters, unable to transmit the cancelled events, could resort to a reduction of the fee agreed to be paid for the rights relating to the 2019/2020 season and, if applicable, request a refund of a portion of the instalments already paid to the League.

In any case, the initiation of a legal dispute between Serie A and the current holders of the media rights would not be useful to anyone. This is especially true if we consider that the same parties/broadcasters will soon be knocking on the door of the League and bidding for the rights to the upcoming 2021-2024 seasons.

Regardless of the above, the current wording of the Melandri Law continues to spark debate.

Several scenarios are being discussed regarding the possible amendment of this notorious piece of legislation, namely:

- (i) the proposal, put forward by Lega Serie A and other parties, to remove from the Melandri Law the ban on the exclusive sale to a single broadcaster (the so-called “no single buyer rule”). This proposal would be aimed at enhancing the revenues generated from the sale of rights to the highest bidder, but would run the risk of being non-compliant with Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) on antitrust matters; and
- (ii) the proposal to return to individual (pre-2008) sale of rights (instead of the current collective sale), from each club to the broadcasters. This anachronistic scenario would seriously damage the minor clubs and, from a purely commercial standpoint, would distance Serie A even further from the Premier League and La Liga.

In the weeks to come, this pandemic is likely to continue to affect the operation of professional football clubs, leagues and sports-related entities across the world. All parties involved (whether players, clubs, leagues or rights holders) should review their existing contracts and license agreements. The relevant terms and conditions should be carefully evaluated in order to consider whether force majeure provisions would apply, while taking measures to contain the financial consequences that the outbreak of the virus has posed.

[Click here](#) to read more insights on how we can weather the coronavirus outbreak with you.

Authors

Paolo Macchi

SENIOR ASSOCIATE | MILAN

Corporate

 +39 02 8821 4211

 paolo.macchi@withersworldwide.com