

Anticipated acquisition by CVC Capital Partners SICAV-FIS S.A. of a minority interest in Six Nations Rugby Limitedⁱ

Decision on relevant merger situation and substantial lessening of competition

ME/6930/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 14 July 2021. Full text of the decision published on 27 August 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. CVC Capital Partners SICAV-FIS S.A. and CVC Capital Partners Advisory Group Holding Foundation (collectively, **CVC**) have agreed to acquire, through Oval Bidco UK Limited a minority interest in Six Nations Rugby Limited (**SNRL**) (the **Merger**). CVC and SNRL are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
2. CVC has existing interests in the commercial rights of certain club rugby properties, ie Premiership Rugby Limited (**PRL**), European Professional Club Rugby (**EPCR**), and the PRO14 competition (**PRO14**). Through the Merger, CVC will acquire commercial rights relating to certain international rugby competitions, namely the Six Nations Rugby Championship (the **Six Nations**) and the Autumn International Series (the **Autumn Internationals**) and certain other rugby properties.^{1, ii}

¹ In addition to the Autumn Internationals and Six Nations' Senior Men's and Senior Women's matches, CVC will acquire (see endnote ii) rights to several related smaller games played by the Six Nations members' teams (including certain test matches, matches involving the second team, U20s or U18s and the Rugby World Cup warm-ups), the men's and women's All Ireland League matches, and certain games of the annual English Army vs Navy match. Parties' response to the CMA's request for information dated 4 May 2021, and Annex 116 (Appendix 7) of the Final Merger Notice submitted by the Parties on 26 May 2021 (**FMN**).

3. The CMA considered a range of evidence (including the Parties' internal documents and third-party views) to determine whether the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the United Kingdom (**UK**) as a result of: (a) horizontal unilateral effects in the sale of sports broadcasting rights or (b) conglomerate effects arising from the bundling of international and club rugby broadcasting rights. The CMA believes that the Parties do not compete closely in the sale of broadcasting sports rights in the UK, and that the Merged Entity will be constrained by a wide range of alternative sports rights. Moreover, the CMA believes that, to the extent that the Parties were to bundle their sports broadcasting rights post-Merger, the Merged Entity will not be able to foreclose rivals as a result.
4. The CMA therefore believes that the Merger will not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects or conglomerate effects.
5. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

6. The purchasing entity, Oval Bidco UK Limited, is owned by funds managed and advised by CVC.² CVC is a private equity and investment advisory firm that holds interests in a number of portfolio companies globally across a variety of industries.³ CVC's interests include the commercial rights of certain club rugby properties (ie PRL, Pro14, and EPCR) held through existing minority investments.⁴ CVC's portfolio companies generated approximately [§] in 2019,⁵ of which approximately [§] was in the UK.⁶
7. SNRL is a services company formed by the Six Nations Committee (an unincorporated members' association of six national rugby sporting

² CVC Capital Partners Fund VII is the CVC fund that will invest in Oval Bidco UK Limited. FMN, paragraphs 8.2-8.3.

³ CVC is active in industries such as chemicals, utilities, manufacturing, retailing and distribution, primarily in Europe, USA, and the Asia-Pacific region. FMN, paragraphs 8.1-8.2.

⁴ FMN, paragraph 1.2. CVC also currently holds minority interests in other sports rights: (i) commercial rights held by Federation International de Volleyball (FIVB) which is the governing body for global volleyball; and (ii) Two Circles and TGI, two marketing agency businesses focusing on the sports sector. CVC confirmed that [§]; CVC also submitted that [§] (FMN, footnotes 86 and 87). The CMA considers that: (i) CVC's ability to materially influence FIVB would not affect the CMA's assessment of the Merger due to negligible UK broadcaster spend on volleyball sporting rights; and (ii) Two Circles and TGI do not competitively interact with the Six Nations Business (defined below) and PRL/PRO14/EPCR. These entities are therefore not considered further in this decision.

⁵ CVC submitted that its 2019 turnover was the most accurate currently available consolidated turnover for CVC and its portfolio companies. Response to CMA's request for information dated 24 June 2021.

⁶ FMN, paragraph 13.2.

associations/governing bodies⁷ (**Unions**)) in 1999,ⁱⁱⁱ under the terms of the Six Nations Constitution.⁸ SNRL acts as an agent of the Unions for the commercialisation of media rights and sponsorship packages relating to the Six Nations, Autumn Internationals, and certain other commercial rights (together referred to as **Six Nations Business**).⁹ SNRL generated approximately [X] in worldwide turnover in the financial year ending 31 August 2020, of which at least [X] was in the UK.¹⁰

8. Pursuant to a transaction agreement dated 19 February 2021,¹¹ CVC agreed to acquire, through Oval BidCo UK Limited (the **CVC Investor**), a 1/7th (c. 14.3%) shareholding in a newly created entity, New Six Nations Limited (**N6NL**). N6NL's remaining shares will be acquired by New Six Nations Investor Limited, a newly incorporated company owned by the Unions. Following the Merger, SNRL will become a subsidiary of N6NL.¹²
9. The Parties informed the CMA that the Merger is also the subject to merger control review by the Competition and Consumer Protection Commission (**CCPC**) of Ireland,¹³ which the CMA liaised with as part of its investigation.

Jurisdiction

10. Each of CVC (including its existing interests in PRL, Pro14 and EPCR) and the Six Nations Business is an enterprise.¹⁴ The CMA considered whether, as a result of the Merger, these enterprises will cease to be distinct.¹⁵

⁷ The Unions are: English Rugby Football Union, the Fédération Française de Rugby, Federazione Italiana Rugby, the Irish Rugby Football Union, the Scottish Rugby Union Limited, and The Welsh Rugby Union Limited.

⁸ The Six Nations Business corporate structure, as described in FMN, pages 64-67; clause 5.1 of the Six Nations Constitution provided as FMN, Annex 117.

⁹ FMN, paragraph 1.2. The exact scope of the commercial rights that comprise the Six Nations Business is detailed in FMN, Annex 116 (Appendix 1 and Appendix 7). As explained in footnote 1, these include rights to a number of rugby properties other than the Six Nations and Autumn Internationals. However, the revenue and viewing figures associated with these other fixtures are minimal (FMN, footnote 4). When referring to the Six Nations Business in this Decision, the CMA has therefore focused on the Six Nations and Autumn Internationals.

¹⁰ Response to CMA's request for information dated 19 May 2021 and accompanying spreadsheet setting out SNRL's UK turnover generated from broadcasting rights in England, Scotland and Wales; and SNRL's worldwide turnover generated from: (i) broadcasting rights internationally, (ii) sponsorships, and (iii) other revenue sources.

¹¹ FMN, Annex 116.

¹² N6NL is expected to hold [X] of the voting rights in SNRL. [X]. FMN, footnote 22.

¹³ The CCPC approved the Merger on 24 June 2021.

¹⁴ 'Enterprise' is defined in section 129 of the Act as the activities, or part of the activities, of a business. The commercial rights comprising the Six Nations Business are associated with recently generated turnover that is directly related to the exploitation of those rights, or in respect of certain limited rights which have not yet been actively commercialised, such turnover would be expected without any material further development. The activities of the Six Nations Business therefore comprise the activities of a business. [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), December 2020, paragraph 4.15(a).

¹⁵ Pursuant to section 26(4) of the Act, as the Merger does not result in any increase in the level of control exercised by any of the Unions over the Six Nations Business, the Unions are not considered further in this section (see also [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), December 2020, paragraph 4.40).

11. Two or more enterprises will cease to be distinct if they are brought under common ownership or control.¹⁶ Control is not limited to the acquisition of outright voting control but may include the ability to exercise material influence over the target's policy without necessarily being able to block votes at shareholders' meetings.¹⁷ The CMA may examine any shareholding to determine whether the shareholder might be able to materially influence the target's policy.¹⁸
12. As a result of the Merger, the CVC Investor will acquire a minority shareholding (c.14.3%) in N6NL. The CVC Investor's written approval will be required for certain reserved matters relating to N6NL's policy,¹⁹ which confers on CVC the ability to exercise material influence over the Six Nations Business.²⁰ Accordingly, the CMA considers that as a result of the Merger, CVC and the Six Nations Business will cease to be distinct.
13. The UK turnover of the Six Nations Business exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
14. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.²¹
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 27 May 2021 and the statutory 40 working day deadline for a decision is therefore 22 July 2021.

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).²² In an anticipated merger the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.²³
17. In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where

¹⁶ Section 26(1) of the Act.

¹⁷ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), December 2020, paragraph 4.20-4.23.

¹⁸ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), December 2020, paragraph 4.27.

¹⁹ [§]. FMN, Annex 116, Appendix 5.

²⁰ [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), December 2020, paragraph 4.29.

²¹ Section 33(1)(a) and Section 23 of the Act.

²² [Merger Assessment Guidelines](#) (CMA129), 18 March 2021 (**Merger Assessment Guidelines**), paragraph 3.1.

²³ [Merger Assessment Guidelines](#), paragraph 3.2.

there are reasons to believe that those changes would make a material difference to its competitive assessment.²⁴

18. The Parties submitted that the CMA should assess the competitive effects of the Merger according to the prevailing conditions of competition.²⁵ The CMA has not received any evidence that indicates that a different counterfactual is more appropriate. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

Competitive assessment

Background

19. The Parties are both active in the sale of sports broadcasting rights to broadcasters in the UK. In particular, SNRL is active in the commercialisation of rights relating to international rugby (the Six Nations and Autumn Internationals), and CVC has existing interests in club rugby properties (PRL, EPCR, and PRO14).
20. The Six Nations consists of high-profile international rugby events that normally takes place over a small number of weekends every year while Autumn Internationals are a series of lower-profile international rugby test matches that takes place over three to four weekends in November.²⁶ International rugby events are 'non-seasonal' events, attracting large number of viewers, that the Parties submit compete with other non-seasonal sports events such as Wimbledon or the World Snooker Championship.²⁷ Club rugby such as PRL, PRO14 and EPCR, are considered 'seasonal' events that take place regularly throughout a season and compete with other seasonal sports such as the Premier League, Darts or the US National Football League.²⁸
21. The owners of the broadcasting rights to these various sports events commercialise them by selling directly to broadcasters, such content relating to football, tennis, cricket, motorsports, etc. Sports broadcasting rights can be sold in different formats, eg live matches, delayed matches, and highlights.
22. There are different types of broadcasters in the UK that compete for sports broadcasting rights such as free-to-Air TV (**FTA**) (eg BBC, ITV), Pay-TV (eg Sky), and over-the-top (**OTT**) media services (eg Amazon Prime). According to the Parties, broadcasters generally bid for sports broadcasting rights, and

²⁴ [Merger Assessment Guidelines](#), paragraph 3.9.

²⁵ FMN, paragraphs 16.1-16.2.

²⁶ FMN, paragraph 3.4 (a).

²⁷ FMN, paragraphs 3.4 (a) and (c).

²⁸ FMN, paragraph 3.4 (a).

when negotiating sports broadcasting rights, rights holders will seek to maximise the value of the rights, although they may also be concerned about matters such as audience size (which tends to be greater if broadcast on FTA) and promoting the overall development of interest in the sport. On the broadcaster side, the value of rights depends on factors such as interest levels amongst existing and potential audiences, broadcaster budget, format of the sport event (length and frequency), audience demographics, etc.²⁹

Theories of Harm

23. The CMA has assessed whether the Merger may give rise to: (i) horizontal unilateral effects in the sale of sports broadcasting rights in the UK; and (ii) conglomerate effects arising from the bundling of international and club rugby broadcasting rights.
24. In assessing an anticipated merger, the CMA considers whether it ‘may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services’.³⁰ In this case, the CMA has assessed competitive dynamics relevant to the Parties’ activities in relation to the sale of sports broadcasting rights to broadcasters in the UK. In line with the approach set out in the CMA’s Merger Assessment Guidelines,³¹ the CMA considers that the analysis of the body of evidence gathered for the purposes of competitive assessment — which assesses the potentially significant constraints on the Parties’ behaviour — captures the competitive dynamics more fully than a separate formal analysis of market definition and the resulting shares of supply.³² The CMA’s assessment of the evidence for the purpose of its consideration of whether the Merger may be expected to result in an SLC does not depend on the precise definition of the relevant market.³³

Horizontal unilateral effects in the sale of sports broadcasting rights

25. As both Parties compete in the sale of sports broadcasting rights, the CMA assessed whether the Merger may give rise to horizontal unilateral effects.
26. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its

²⁹ FMN, paragraphs 14.6-14.23.

³⁰ Section 33(1)(b) of the Act.

³¹ [Merger Assessment Guidelines](#), paragraphs 9.1-9.5.

³² [Merger Assessment Guidelines](#), paragraph 9.2.

³³ [Merger Assessment Guidelines](#), paragraph 9.5.

own and without needing to coordinate with its rivals.³⁴ Horizontal unilateral effects are more likely when the merging parties are close competitors.³⁵

27. In assessing whether the Merger may give rise to horizontal unilateral effects, the CMA considered the following competitive dynamics in the sale of sports broadcasting rights:
- (a) Sports events are highly differentiated by several factors, and not just by the sport itself, such as budget, level of viewers, audience demographics, duration, price points etc. As such, different sports rights compete with each other to win broadcasters spend. In particular, most broadcasters consider rugby broadcasting rights as substitutable with other sports events and some also indicated that rugby broadcasting rights compete with other non-sports programming (eg drama, comedy, etc). Broadcasters also distinguish between non-seasonal and seasonal sports events when comparing the best alternatives available to them;
 - (b) Different types of broadcasters have different business requirements, eg FTA broadcasters tend to focus on a range of sports events that appeal to a broad set of viewers and therefore advertisers, while Pay-TV broadcasters also focus on subscription revenues and the draw of fans of particular sports, which may extend to setting up dedicated sports channels (eg a subscription TV channel that only broadcasts football); and
 - (c) From a geographic perspective, sports broadcasting rights are usually commercialised by broadcasting territory. In the UK, sports broadcasting rights are usually sold for the UK only or the UK and Ireland together.
28. The CMA considered these dynamics when assessing how closely the Parties compete and the competitive strength of alternatives. In carrying out its assessment, the CMA took account of the following evidence:
- (a) shares of supply for the sale of sports broadcasting rights in the UK;
 - (b) the Parties' internal documents; and
 - (c) third party views on the best alternatives available to broadcasters.

However, the CMA attached less weight to shares of supply for the reasons set out below (see paragraph 32).

29. The rest of this section considers each of these sources of evidence.

³⁴ [Merger Assessment Guidelines](#), paragraph 4.1

³⁵ [Merger Assessment Guidelines](#), paragraph 4.8

Shares of supply

30. Table 1 sets out the Parties' estimates of shares of the sale of sports broadcasting rights in the UK. The shares are based on the value of rights sold to broadcasters in the UK per year,³⁶ and provide a high level illustration of the commercial significance of the Parties' rights relative to other major sports broadcasting rights.

Table 1: Share of UK sports broadcasting rights by value of rights sold per year in 2018/2019

Sport	Event	Share of supply (%)
Rugby Union	PRL	[0-5]
Rugby Union	EPCR	[0-5]
Rugby Union	PRO14	[0-5]
Rugby Union	Six Nations	[0-5]
Rugby Union	Autumn Internationals	[0-5]
Rugby Union	Parties' combined	[0-5]
Football	Premier League	[50-60]
Football	UEFA Champions League	[10-20]
Cricket	England Internationals (domestic) and County	[5-10]
Motorsports	Formula 1	[5-10]
Other ³⁷	Other	[10-20]

Source: FMN pages 56-58, based on the Parties' estimates and Sportcal data.

Note: The shares in Table 1 relate to the annual value of contracts in place, and therefore include biennial and quadrennial events such as the Olympic Games even if they did not take place in 2018/19. Shares were calculated by the Parties as follows: (i) the 'value per contract year' is obtained by dividing the total value of the most recent contract for each sport event by the number of years that the contract covers; and (ii) shares of supply were obtained by dividing the 'value per contract year' of each sport event by the sum of all sport events' 'value per contract year'. Since some sports rights cover both the UK and the Irish Republic, the Parties have adjusted the shares of these sports rights according to the proportion of value of these sports rights accruing to the UK. The Parties estimated this proportion by using the viewing hours for these sports events that were made in the UK out of the total viewing hours for these sports events made in the UK and the Irish Republic combined.

31. The Parties' combined shares of sports broadcasting rights are below [0-5]%, and the Merger increment is very low at around [0-5]%. The estimates show a number of other sports rights with a higher share than the Parties, eg the Premier League, UEFA Champions League, the England Cricket Internationals and County games, and Formula 1. There are also several sports rights with a similar share to the Six Nations and Autumn Internationals combined, eg the EFL, the FIFA World Cup, the FA Cup, and Wimbledon.

³⁶ See the Note to the Table 1 for more information on the basis of calculation for the shares of supply.

³⁷ Other sports events includes but is not limited to English Football League (EFL), FIFA World Cup, FA Cup, Wimbledon, Olympic Games, European Tour Golf, Rugby World Cup, Super League, the Open Championship, Moto GP, ATP Tour, Hurling and Gaelic Football, International Cricket, etc.

Finally, a long tail of smaller sports rights all with shares of less than [0-5]% will remain in the UK post-Merger.³⁸

32. While the shares of supply are a good measure of the relative commercial size and significance of different sports rights, the CMA puts limited weight on them, as:
 - (a) Sports events, and the corresponding sports rights are highly differentiated, as described in paragraph 27(a) above; and
 - (b) The broadcasting rights for different sports events are often negotiated at different times of the year and during different years. Therefore, broadcasters' choices on which rights to purchase depends on the time/year.
33. Due to the above, the CMA has put more weight on the Parties' internal documents, and on third-party views as to the extent the Parties' sports rights are alternatives to each other.

Third party evidence

34. The CMA sent third-party questionnaires to [X] broadcasters, of which [X] responded, representing a significant majority of FTA, Pay-TV, and OTT broadcasters active in the UK. Overall, feedback from broadcasters indicates that the Six Nations and Autumn Internationals (international rugby) on the one hand, and PRL, EPCR, and PRO14 on the other (club rugby), do not compete closely. The feedback also indicates that many other sports rights will remain available for broadcasters post-Merger to constrain the Merged Entity. In particular:
 - (a) All responding broadcasters mentioned a large number of alternative sports rights (within and outside of rugby) as close competitors to the Six Nations and the most frequently mentioned were the Rugby World Cup, Sanzaar Rugby Championship, the FIFA World Cup and the European Championship, the Nations League (football), and Wimbledon. Only two broadcasters mentioned EPCR and only one of these mentioned PRL, though one of these broadcasters considered EPCR and PRL to be

³⁸ For completeness, the CMA notes that even if Premier League football and the UEFA Champions League were to be excluded from the shares of supply reflecting the fact that consumer demand for broadcasting of these competitions may be distinct from other sports competitions, the Parties' combined shares of supply would still be below 15%. This is in line with the European Commission's share assessment in [COMP/C.2-37.398 – Joint Selling of the commercial rights of the UEFA Champions League \(23 July 2003\)](#), paragraphs 57-63 and 71-76; [Comp/C-2/38.173 – Joint Selling of the media rights to the FA Premier League \(22 March 2006\)](#), paragraph 22.

inferior alternatives to the Six Nations, on the basis that they are club rugby rather than international rugby;

- (b) Broadcasters also listed a large number of alternatives to Autumn Internationals, the frequently mentioned being the national football, cricket, rugby test and friendly matches. Some of these broadcasters also considered Autumn Internationals to be similar to test matches;
- (c) No broadcaster named the Six Nations or Autumn Internationals as alternatives to PRL, EPCR, and PRO14. The closest alternatives to the Six Nations or Autumn Internationals were the Rugby Super League and Super Rugby 15.^{iv} Other sports rights were named, albeit less frequently, such as the EFL, the ATP Tennis, the Women's Football Super League, and the National Football League (NFL); and
- (d) Only one third-party broadcaster expressed concerns related to horizontal unilateral effects. These concerns were focused on CVC's investment across multiple sports rights in general, rather than on the Merger.

35. Of the [redacted] sports broadcasting rightsholders who provided views to the CMA, only two considered rugby — either in club or international form — to be meaningful competitors. These responses from competitors broadly indicate that the Parties' sports broadcasting rights are differentiated, which is consistent with the broadcasters' view that the Parties are not close competitors.

Internal documents

36. The Parties' internal documents demonstrate that the management of the Six Nations and Autumn Internationals on the one hand, and of PRL, EPCR, or PRO14 on the other, do not consider each other as close competitors. In particular the internal presentations prepared for the board of PRL, EPCR, and PRO14 showed that they did not focus on either the Six Nations or Autumn Internationals in the UK in any significant way. By contrast, PRL's board presentations did contain assessments of other sports rights such as [redacted] which were mentioned in several places in the documents.³⁹
37. Similarly, none of the Six Nations' and Autumn Internationals' board documents reviewed by the CMA showed that they considered any of PRL, EPCR, or PRO14 as competitors.

³⁹ FMN, Annex 20, slide 4; Annex 22; Annex 23; and Annex 27, slide 8.

Conclusion on horizontal unilateral effects in the sale of broadcasting sports rights in the UK

38. On the basis of the evidence above, the CMA considers that the Parties do not compete closely in the sale of broadcasting sports rights in the UK, and that the Merged Entity will be constrained by a wide range of alternative sports rights. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal effects in relation to the sale of sports broadcasting rights in the UK.

Conglomerate effects

39. The concern with a conglomerate theory of harm is that the merged entity may restrict its rivals in one ‘focal’ market from accessing customers using its strong position in an ‘adjacent’ market.⁴⁰ The merged entity could do this through linking the sales of the two products in some way, thereby encouraging customers who want its product in the adjacent market to also purchase its product in the focal market, at the expense of rivals. For example, it may only offer the products as a bundle, integrate them within a digital ecosystem, or offer customers of the adjacent product a discount if they also purchase its focal product, potentially through increasing the stand-alone price of the adjacent product.
40. This loss of sales by competitors is not problematic in and of itself, and linked sales of related products can result in efficiencies. However, competition concerns may arise if such a strategy would result in rivals in the focal market becoming less effective competitors, which may result in higher prices or lower quality in the long term.⁴¹
41. The CMA’s approach to assessing conglomerate theories of harm is to analyse: (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.⁴²
42. In this case, the CMA considered whether the Merger could give the Merged Entity the ability to bundle one or more of its seasonal club rugby rights, namely PRL, EPCR, and PRO14 (focal products), with its non-seasonal international rugby rights ie the Six Nations and Autumn Internationals (adjacent products). The CMA considered whether such bundling could result

⁴⁰ [Merger Assessment Guidelines](#), paragraph 7.30. This can also apply to leveraging between different segments of the same market as well as between different markets. [Merger Assessment Guidelines](#), footnote 126.

⁴¹ [Merger Assessment Guidelines](#), paragraph 7.31.

⁴² [Merger Assessment Guidelines](#), paragraph 7.32

in the foreclosure of rival sports rights, in particular seasonal sports rights with a similar appeal of PRL, EPCR, and PRO14 to broadcasters.⁴³

43. The Parties submitted that bundling of their international and club rugby rights would have a low likelihood of succeeding as a commercial strategy, given that there are a high number of stakeholders involved, as well as different content distribution strategies (eg FTA vs Pay-TV).⁴⁴ The Parties also submitted that they would not have the ability to foreclose because none of their rugby rights offerings are a 'must-have' for broadcasters.⁴⁵ Moreover, the Parties submitted that, even if they were to bundle their products, there would be no foreclosure of other sports rights holders because there are many routes to market (ie many broadcasters) and rugby is only a small proportion of the overall demand for sports content from broadcasters.⁴⁶
44. The majority of third parties did not raise concerns around bundling. However, a small number of competitors did express the view that the value of competing sports rights would be negatively affected if the Parties' products would be offered as a bundle. In particular, one competitor submitted that such a bundling would lead to a reduction in the market value of competing sports rights, because some broadcasters would move part of their spend from competing sports rights to the Parties' bundle.
45. The CMA found that such a bundle offering may be feasible in practice, would be entertained by least a few broadcasters, and contrary to the Parties' submissions,^v the Six Nations is considered an important sports event in the UK by some broadcasters. However, the CMA does not consider that the Merger will provide the Parties with the ability to foreclose rival sports rights through such a bundling strategy, because of the following:
- (a) There is some internal document evidence that suggests that CVC had considered bundling its club rugby sports rights, and in light of the Merger had considered bundling international rugby with club rugby sports rights.⁴⁷ However, the Parties submitted that CVC had never bundled the club rugby rights in the last five years.⁴⁸ Moreover, the CMA has seen no evidence in the Parties' internal documents that suggest CVC plans to foreclose competitors with such a strategy. To the contrary, the only internal document that discusses bundling of rights [✂] is a document

⁴³ The CMA notes that its foreclosure assessment holds irrespective of any precise frame of reference.

⁴⁴ FMN, paragraph 20.9.

⁴⁵ FMN, paragraph 20.5.

⁴⁶ FMN, paragraphs 20.6 and 20.8.

⁴⁷ FMN, Annex 19, Annex 23, and Annex 45.

⁴⁸ FMN, paragraph 20.14.

prepared by an external advisor [REDACTED], which anticipates a potential *negative* impact of a [REDACTED] bundle on broadcaster valuations [REDACTED];⁴⁹

- (b) While some broadcasters did express an interest in acquiring a bundle, several of them noted that it would not be an easy purchase and that many factors would need to be considered, such as budget, value of bundled offering, etc. In addition, several other broadcasters did not express any interest in acquiring a bundle, including because of the cost of a combined package and the amount of air time that multiple tournaments of differing viewer appeal would occupy in their schedules. Overall, a majority of broadcasters indicated that they would have no interest or would not be in favour of accommodating a bundle;
 - (c) Third-party responses⁵⁰ note that there are several alternatives to the Six Nations and Autumn Internationals for broadcasters that would constrain the Parties post-Merger;
 - (d) As set out in Table 1 above, PRL, EPCR, and PRO14 represent a relatively small proportion of broadcaster spend on sports rights. Therefore, any shift in broadcaster spend from rival sports rights to PRL, EPCR, and PRO14 through the bundle would be limited; and
 - (e) Finally, the limited the appeal of any bundle to broadcasters set out above would mean that several viable routes to market for PRL's, EPCR's, and PRO14's rivals would continue to be available post-Merger.
46. In light of the above, the CMA believes that, to the extent that the Parties would bundle their sports broadcasting rights after the Merger,⁵¹ the Merged Entity will not have the ability to foreclose rivals as a result. The CMA has therefore not found it necessary to consider the Parties' incentives or the effects of foreclosing rivals through a bundling strategy.
47. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects arising from the bundling of international and club rugby sports broadcasting rights in the UK.

⁴⁹ FMN, Annex 63, slide 113.

⁵⁰ See paragraph 34 above.

⁵¹ Given the lack of any ability to foreclose, the CMA has not assessed to what extent the other shareholders of CVC's rugby properties on the one hand, and the Unions on the other, would allow such a bundling strategy to be implemented.

Decision

48. For all the reasons set out above, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.
49. The Merger will therefore **not be referred** under section 33(1) of the Act.

Eleni Gouliou
Director, Mergers
Competition and Markets Authority
14 July 2021

ⁱ As further explained in this decision, the CVC Capital Partners SICAV-FIS S.A. and CVC Capital Partners Advisory Group Holding Foundation provide investment advice to and/or manage investments on behalf of certain funds and investment vehicles, which will acquire a minority interest in Six Nations Rugby Limited through Oval BidCo UK Limited. References in this decision to CVC's interests in Six Nations Rugby Limited, or the acquisition of commercial rights by CVC, are therefore references to the interests of these CVC funds.

ⁱⁱ References in this decision to CVC's acquisition of commercial rights mean more precisely that the CVC Funds will acquire, through the Merger, material influence over certain commercial activities relating to the relevant international rugby competitions.

ⁱⁱⁱ In relation to paragraph 7, the Parties clarified that SNRL was formed under the original Six Nations Constitution in 2002 and not in 1999.

^{iv} In relation to paragraph 34(c), reference to 'Six Nations or Autumn Internationals' is incorrect and should be replaced with 'PRL, EPCR, and PRO14'.

^v The Parties submitted in their submissions that their rugby rights offerings are not a "must have" for broadcasters even though the Six Nations Championship may be an attractive property.