

Update:

# sport



**Adam Leadercramer and Leo Avery** review the steps involved in the bidding process for large sporting events and consider the first match-fixing charge in tennis

## Bidding for large sporting events

The media outcry over FIFA's decision to award the 2022 World Cup to Qatar has thrown into sharp focus the methods and processes used by sports rights holders to determine who is awarded the right to host their large sporting events. This media scrutiny, together with the huge commercial rewards on offer, has meant that bidding processes for events have become more formal and rigorous in recent years. Indeed, in the context of the 2022 World Cup award, there were no complaints that the bidding process was flimsy, rather that the decision-making element was too opaque.

Bidding for large sporting events is a complex process but there are basic principles to structure a bid. Similarly, there are key factors rights holders should consider when comparing bidders.

In most bidding processes, the initial stages will follow a similar format – namely the rights holder obtaining informal expressions of interest from prospective bidders and then providing detailed uniform bidding requirements to each bidder. The bidding requirements will set out the rules of the bidding process, as well as providing a standard format for bid responses and (in most cases) template documentation for bidders to ultimately sign up to.

The key template documents are likely to be a host agreement setting out the rights

and obligations of the rights holder and the host in relation to the event, and associated 'event guarantees' to be provided by third parties on behalf of the bidder. The event guarantees are required to back up both the financial commitments made by the bidder in the host agreement and performance-related obligations (such as visa, tax and customs exemptions, broadcasting exemptions, transport and infrastructure developments and protection against ambush marketing).

The intensity of negotiation of the host agreement and event guarantees will depend upon, among other things, the approach that the rights holder takes to the process. For example, the rights holder may decide to select a preferred bidder and provide it with an exclusive period in which to negotiate. The advantage for the rights holder is that it puts time pressure on the bidder to reach a deal, which should encourage it to negotiate sensibly and put its 'best' bid forward. The disadvantage is that if the rights holder and the preferred bidder are unable to reach agreement, the other non-preferred bidders may no longer be willing to host the event given that they would be publically recognised as a second or third choice.

A more effective approach may be to seek to negotiate 'conditional' host agreements and event guarantees with all of the



bidders, and then for the rights holder to 'activate' one of those host agreements (and its associated event guarantees) having completed the final evaluation process. This approach (although likely to be more costly and time-consuming) should maintain competitiveness between bidders and leave the rights holder in the enviable position of having a number of strong, legally enforceable bids to choose from.

In determining which bidder to choose, the rights holder will need to consider a number of relevant factors. These will vary from event to event, but of particular note are:

1. **Facilities** – the rights holder will need to determine whether the facilities required for hosting the event (such as the stadia, transport and accommodation) are already in existence or if they will need to be developed. In particular, the rights holder will need to be satisfied that spectators, the media and players are able to travel to and from relevant venues with minimal aggravation and also that sufficient affordable hotel rooms have been set aside for spectators.
2. **Commercial** – in many cases, the event will be the 'crown jewel' in the rights holder's stable of events, and the revenue that it generates will be used by the rights holder to fund grass roots involvement in their sport. Bidders will also be judged on their ability to deliver a commercially 'clean' event – i.e. the extent to which they are able to ensure that only official rights holder sponsors are able to legitimately associate themselves with the event.
3. **Popular support** – the event will not be a success unless there has been significant buy-in from both the government and the general public in the host country. The former to ensure that the event and its participants/spectators are not bound by red tape, and the latter to provide momentum and 'heart' to the event.
4. **Power to intervene** – the rights holder will want the power to intervene in the set up of the event if it does not believe that the host is properly performing its obligations (for example, by appointing its own contractors to bring a particular aspect of the event up to standard).
5. **Legacy** – a key aim of the rights holder will be for the event to drive growth in their sport both in the territory in which it is held and in other countries. Of particular relevance is whether young people are likely to be inspired by the hosting of the event, as they will be the key spectators and participants in the sport in years to come.

#### Match fixing

The last sport update referred to the three Pakistan cricketers who had been found guilty by an independent tribunal of 'spot fixing' after two of the players deliberately bowled no-balls (*Solicitors Journal* 155/9, 8 March 2011). While arguably not affecting the eventual outcome of the five-day test match, this practice still fell foul of the International Cricket Council's anti-corruption code. The players' appeal to the Court of Arbitration for Sport (the CAS) has been stayed while a separate criminal investigation by the Crown Prosecution Service continues.

Since that decision, the world of tennis has been rocked by its first guilty match-fixing charge. On 31 May 2011, the Austrian tennis player Daniel Köllerer received a life ban and a fine of US\$100,000 after being found guilty of three charges brought under the Uniform Tennis Anti-corruption Programme. All professional tennis players must sign up to the programme.

Köllerer, who reached a career high 55th in 2009, was found guilty of contriving or attempting to contrive the outcome of an event (article D(1)(d)); soliciting or facilitating a player not to use his or her best efforts in an event (article D(1)(e)); and

soliciting offering or providing money, benefit or consideration to any other covered person with the intention of negatively influencing a player's best efforts in any event (article D(1)(g)). These violations of the programme took place between October 2009 and July 2010.

In accordance with article H(1)(c) of the programme, the life ban applied with immediate effect, and means Köllerer is currently ineligible from participating in any tournament or competition organised or sanctioned by the governing bodies of professional tennis. Under article G(4)(b) (iii) of the programme Köllerer has the right to appeal the decision to the CAS.

The charges were brought by the Tennis Integrity Unit, a body established by the International Tennis Federation, the Grand Slams and the ATP and WTA Tours to protect the sport from corruption and betting scandals.

The proliferation of gambling on sport and in particular the evolution of online and in-play betting has increased the risk to the integrity of sports. Dialogue between betting operators and sports officials is of paramount importance. The tennis authorities have therefore established a memorandum of understanding with betting operators such as Betfair to warn them of any unusual or suspicious betting activity on tennis matches in addition to educating the players about integrity.

While some other sports, such as horse racing and football, have similar 'early warning' mechanisms in place, the malign influence of match fixing continues to tarnish the integrity of all sports. With the unregulated betting markets in India and southeast Asia continuing to cause a headache to sports, this evil does not look like it's going away yet.

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