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DEAL OR NO DEAL? WHATSAPP, EMAILS AND THE GOALPOSTS OF CONTRACT FORMATION IN THE CONTEXT OF FIFA CLUB WORLD CUP BROADCASTING RIGHTS

The Court of Appeal has recently delivered an important judgment in *DAZN Limited v Coupang Corp*. [2025] EWCA Civ 1083, reminding us that legally binding contracts can arise through informal channels such as emails and messaging platforms like WhatsApp, even where no formal contract has been signed or even circulated.

This case, which concerned the sub-licensing of the broadcasting rights of the FIFA Club World Cup in South Korea, is a reminder for both commercial and legal teams, particularly for those operating within the entertainment and sports sector, of the risks (including legal, commercial and financial) of high value deals being negotiated at pace, through informal methods of communication.

The judgment confirms that the absence of a written contract does not prevent the finding that a legally binding agreement exists if the parties' words and conduct objectively demonstrate an intention to be bound.

1. The story before kick-off: the background facts

The sports streaming and entertainment platform DAZN secured exclusive worldwide broadcasting rights for the 2025 FIFA Club World Cup and was authorised to sublicense those rights to various broadcasters across different territories.

Coupang Play, a South Korean video on demand streaming service, initially placed a bid for FIFA's original tender but, having lost out (as FIFA was seeking a single party to acquire the rights on a global basis), it turned to DAZN to secure rights to broadcast the tournament's matches in South Korea on a co-exclusive basis.

Negotiations between the parties began in December 2024 and were conducted at speed, ahead of the tournament the following summer, largely through WhatsApp messages and calls, and later moving on to emails. These exchanges culminated in an offer of $1.7 million from Coupang on 27 February 2025 (first communicated over a WhatsApp call, then formalised and sent via email later that day) which DAZN accepted by email on 3 March 2025. The record of communications indicated that DAZN placed importance on their agreement to Coupang's offer being confirmed by email. In the days that followed, the parties' exchanges conveyed their understanding

Match highlights: key lessons

- Agreements reached via informal exchanges (e.g. WhatsApp messages, calls, or emails) including by non-legal teams may create legally enforceable contracts before a written contract is signed or shared.
- Whether an agreement has been reached depends on an objective assessment of the entire course of the parties' conduct and communications.
- In fast-moving negotiations, the substance of the communications matters more than the exact wording, grammar, or phrasing of the exchanges, especially when they are not conducted by legal teams or where English is not the first language of the parties.
- To mitigate the risk of unintentionally being bound to a deal prematurely, clearly state during the course of negotiations that any agreement is "*subject to contract*" or contingent on final approvals being given (as this is more difficult when using informal channels like WhatsApp, use extra caution when discussing terms that could imply intent to be bound on such platforms).

of the deal having been "*finalised*" and "*agreed*". However, when DAZN later received a more favourable offer from Coupang's competitor, DAZN argued that the communications with Coupang did not amount to a legally binding contract.

Coupang disagreed and obtained an expedited High Court ruling that a binding contract had been concluded between DAZN and Coupang by the emails exchanged between the parties in February and March 2025. DAZN was also prohibited by an order from the High Court from sublicensing or streaming the tournament via third-party platforms which would undermine Coupang's broadcasting rights. DAZN appealed the judgment, which the Court of Appeal heard on 6 June 2025, shortly before the competition was due to start, and upheld the first instance decision.

2. VAR review: the Court of Appeal's reasoning

The Court of Appeal found that the parties' informal exchanges resulted in a binding contract, identifying several factors demonstrating that the parties intended to be legally bound:

- **Escalation from WhatsApp to emails:** whilst much of the negotiations were conducted via WhatsApp messages, the Court of Appeal placed weight on two emails: Coupang's message of 27 February 2025 summarising the key terms of the broadcasting arrangement, and DAZN's response on 3 March 2025 confirming acceptance and instructing its legal team to draft the formal agreement. Moving from informal WhatsApp exchanges to email for the final terms signalled a formalisation of the parties' position.
- **Agreement on essential terms:** the emails demonstrated that the parties were in agreement on the key terms of the contract. Coupang's 27 February 2025 email listed the core terms the parties regarded as essential, namely:
  - competition: FIFA Club World Cup 2025;
  - rights granted: live broadcast rights and video on demand rights;
  - territory: South Korea;
  - exclusivity: co-exclusive with DAZN; and
  - financial consideration: $1.7 million.
- **Language of finality:** subsequent communications showed that the parties referred to the deal as having been *"secure[d]", "confirmed", "finalised"* and *"a closed case"*, as well as saying that they were looking forward to working on the project together and congratulating each other. The Court of Appeal held that such language and tone strongly suggested *"the conclusion of a contract and moving on to its implementation"*.
- **Subsequent conduct:** following exchanges of the offer and acceptance emails dated 27 February 2025 and 3 March 2025, the parties acted consistently with having entered into a binding contract. For example, the parties discussed marketing arrangements around making the deal public. DAZN encouraged Coupang to *"start promotion as early as possible"*, which the Court of Appeal said would only be consistent with DAZN deeming their agreement with Coupang to be binding.

- Where the parties agree on all the terms they regard as essential, absent clear wording to the contrary, the courts are likely to view the parties as having intended for their agreement to be legally enforceable, particularly where there is an urgent timescale to conclude the agreement. This applies even if other details are not yet agreed.
- Broadcasts provided through third-party platforms (e.g. on YouTube via a broadcasters' own branded channel) are not necessarily regarded as equivalent to broadcasts provided via the rights-holder's own platforms. Where the broadcasting rights are sub-licensed on a co-exclusive basis, unless an agreement expressly provides otherwise, a licensor should be wary of distributing the content on third-party platforms, especially if these are free to access.

- **Urgency of the deal can signal intent:** the parties were negotiating under significant time pressure to secure a broadcasting deal ahead of the FIFA Club World Cup. The commercial context therefore suggested that there was an intention to be bound, with a more formal contract to follow at a later date. However, there was no sense of urgency on the drafting of the contract though. Taking these points together and viewing them objectively, the parties were considered to have understood their agreement to have been final, rather than conditional on further key clarifications.
- **Acknowledgement of enforceability:** when Coupang's representative warned DAZN it would take legal action if DAZN reneged on their agreement, a DAZN's representative responded: *"I understand"*. This indicated that DAZN acknowledged that Coupang had a clear basis on which it could take legal action.
- **Absence of "*subject to contract*" or equivalent:** the parties did not qualify their discussions with language reserving their position, despite evidence suggesting DAZN's familiarity with such wording in other deals.
- **Industry practice:** the Court of Appeal considered evidence that it was commonplace in the industry for negotiations to take place through informal channels such as the exchange of WhatsApp messages or calls, and for the key terms to be confirmed via email with a contract to follow at a later date. Industry practice, whilst not itself conclusive, suggested the parties considered themselves legally bound by the terms they have agreed via informal exchanges, notwithstanding that a formal contract was not yet prepared and signed.

Injunction preventing DAZN from streaming on its YouTube channel

DAZN also challenged the injunction preventing it from streaming the tournament on YouTube, arguing that its co-exclusive rights allowed such distribution. While the injunction did not prohibit DAZN from broadcasting the tournament on its own app, the principal concern for DAZN was being able to broadcast the matches on its YouTube channel. The Court of Appeal upheld the injunction on the basis that DAZN's YouTube channel constituted a third-party platform (in the absence of a defined term), and free streaming there would undermine Coupang's subscription model.

3. Post-match analysis: do we have a deal?

Under English law, the principles for whether a legally binding contract has been formed are well established and were not in dispute in this case. Communications can crystallise into legally binding agreements long before a contract is signed.

In determining whether a contract has been made, the entire course of negotiations must be considered, rather than isolating a single moment. What happens after the point at which a deal is said to have been struck can also be highly relevant, as subsequent conduct can reveal whether the parties acted as though the agreement was final or remained conditional.

As always, the context is key. For that reason, if as is often the case, the negotiations are conducted between commercial teams, one should not expect them to be as precise in their language as a lawyer would be when carefully drafting the contract's wording. As the Court of Appeal noted, *"[t]heir language may be imprecise, ungrammatical and impressionistic"*, and it would not be appropriate to overly scrutinise the exact grammar, punctuation and syntax used in order to determine

whether a legally binding contract was made. The *"substance and sense of what is said"* should be the greater focus.

Urgency is another important factor. Where negotiations take place against a tight deadline, as they did here with the FIFA Club World Cup approaching, it is more likely that the parties intended to be bound immediately where they have agreed on the essential terms. A binding agreement does not necessarily require a formal document to be in place; this can follow subsequently.

While certain legal formulae such as "*subject to contract*" do indicate that the parties have not yet entered into a contract, the absence of such wording is not conclusive. What is important is whether the parties have agreed on all the terms which they regard as essential. Further minor outstanding points in a deal cannot be used as a shield to protect a party from honouring a binding commitment, where the parties have clearly acted as though a legally binding agreement has been reached.

The court's assessment on whether a legally binding agreement exists is an objective one. It is not about what the parties privately believed, but what a reasonable observer would infer from their words and conduct. The burden of proving that a contract exists rests with the party asserting it.

4. Staying onside with contract law: key takeaways and recommendations

A. Informal communication channels

Ensure that teams negotiating deals with counterparties understand that any exchanges, including by emails or messaging platforms, can give rise to binding obligations, even before legal teams are engaged or a written contract is drafted, shared or signed. Further, an escalation of formality, for example from negotiations over WhatsApp messaging to a summary of key terms over email, may be interpreted as a formalisation of a deal. If that is not the intention, this should be made clear.

B. Clarity in communications and actions

Ensure that the key individuals negotiating on behalf of your business are clear with their counterparties on whether they are intending to bind the company or not. Depending on your internal contract approval processes and the size and importance of any particular transaction, it may be worth clearly stating that senior management's approval will be necessary before finalising any agreements.

Key personnel negotiating deals should ideally use *"subject to contract"* wording in circumstances where they do not yet want to be binding the company to an agreement, especially if negotiations are being conducted via emails (e.g. by including it in the subject line or the headers of documents).

If you do not intend exchanges with a counterparty to create legal obligations, ensure your conduct and language are consistent with that intention. Be wary of actions that suggest a binding agreement (e.g. performing obligations as though a concluded agreement exists) and statements suggesting finality (e.g. thanking the counterparty for *"getting the deal done"*).

If negotiations take place under time pressure (e.g. close to the relevant tournament or event), take extra care with communications, as the courts are more likely to infer that parties intended to be bound even if some terms remain unresolved.

There are no hard and fast rules that specific words will definitively bind or not bind the parties. This will always be highly dependent on the parties' conduct taken as a whole, the common industry practice, and specific context in which negotiations are being conducted.

C. Be clear about the required approvals

It is advisable to have clear policies on who is permitted to negotiate transactions with counterparties, the approvals required before any given agreement is entered into and who is authorised to confirm the company's agreement to the deal. A summary of this can be communicated to counterparties so that they are aware of the relevant limits of authority of your company representatives during negotiations. Internal stakeholders should be clear on whether they can hold themselves out as being able to execute contracts and indeed sign on the company's behalf in any given case.

D. Documenting outcomes

Where key terms are negotiated orally or via messaging apps, promptly follow up with a written summary to ensure both parties are clear on the contents of the agreement. Formal contract negotiation and drafting should also begin promptly. All offers and acceptances should, where possible, be communicated via formal channels. However, where an offer is made and/or an acceptance is sent through informal channels, it is prudent for the key representatives negotiating the deal to file such information to the appropriate section of the company's document management system or equivalent. This ensures that evidence is preserved notwithstanding any automatic deletion policies that may be in place.

E. Internal alignment

Legal teams should be brought into transactions as early as possible to manage and minimise such contracting risks.

Negotiations with multiple bidders on the same asset should be coordinated and aligned. In particular, once a binding agreement is reached with one party, other bidders should be promptly informed and discussions with other bidders should be concluded. This avoids sending mixed signals, which can undermine credibility and reputation, and reduces the risk of costly disputes over competing commitments.

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