**Competition law and breakaway leagues: aligning effective sports governance and competition law**

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Although it has long been established that professional sport comes within the ambit of EU law – including the rules on competition – insofar as it constitutes an economic activity,[[1]](#footnote-1) over the years, interventions of the EU courts in relation to the organisation and governance of professional sport have been relatively few and far between. Indeed, specifically the relationship between EU competition law and professional sport remains something of a nebulous area. As such, two recent decisions of the Court of Justice published on the same day in December 2023, in relation to ‘breakaway’ professional sports competitions, represent important milestones in this area.

The case of *European Superleague Company v FIFA and UEFA*[[2]](#footnote-2)arose in relation to a high profile and highly controversial attempt by a group of leading European professional football clubs to create a new ‘breakaway’ elite competition – the European Superleague – as a rival to UEFA’s Champions League. Essentially the Court of Justice was asked in a preliminary reference from a Spanish court[[3]](#footnote-3) to consider whether FIFA and UEFA rules which purported to give those two organisations exclusive power to organise – or to permit others to organise – international interclub football competitions, constituted breaches of Articles 101 (preclusion of anticompetitive agreements) and 102 (preclusion of abuse of dominance) of the Treaty on the Functioning of the European Union (TFEU). The court was further asked whether the potential sanctions which UEFA and FIFA threatened to impose for breaches of the aforesaid rules and the retention of rights relating to competitions by UEFA and FIFA also constituted breaches of Articles 101 and/or 102 TFEU.

The decision of the Court of Justice in the case of *International Skating Union v Commission*,[[4]](#footnote-4) came in the context of an appeal against a decision of the General Court[[5]](#footnote-5) to largely uphold a finding of the Commission[[6]](#footnote-6) in relation to rules of the International Skating Union (ISU) that bore certain similarities with the above-mentioned rules of UEFA and FIFA. The rules in question stipulated on the one hand that international skating competitions required to be pre-authorised by the ISU and on the other, set down various eligibility criteria that had to be met by individual athletes to partake in competitions not organised by the ISU. Furthermore, the rules set out penalties that could be imposed on athletes who failed to adhere to these rules.

Whereas in both of these cases the Court of Justice identified problematic aspects of the rules of the governing bodies in question and the potential sanctions for infringing those rules, the purpose of this paper is initially, to summarise the main points of these decisions, before then analysing where the decisions leave the relationship between competition law and professional sport – and more specifically the question of breakaway competitions. An attempt will then be made to suggest how, looking forward, the concerns expressed by the courts in these cases might be overcome. Prior to the discussion of the *Superleague* case, some brief background will be provided to the ill-fated project in order to give context to the court’s decision.

It will be argued that the overriding aim here should be to ensure that professional sports organisations and clubs remain subject to competition law, but that competition law is also applied in a way that takes account of the idiosyncrasies of sport. It will be further argued that as long as competition law is applied in such a way, not only can competition law interact with professional sport in a coherent and effective way, but it can positively complement the ideals and aims of sporting competition. In particular, prevalent doctrines within competition law, such as essential facilities and equality of opportunity, can be invoked in this regard.

Specifically with regard to breakaway leagues, there will be a focus on sports governance. While the possibility of ‘rival’ competitions may seem like an attractive one in theory from a competition law perspective, it will be submitted that from a sporting point of view there is also much to be said for a structured and pyramidic system of organisation of individual sports. Equally, though, such systems rely on the existence of governing bodies with a lot of power including the ability to issue sanctions of one sort or another. As the two above-mentioned decisions show, the exercise of such powers makes such bodies susceptible to conduct or practices that risk infringing competition law. So, the question becomes how to square this circle of ensuring a coherent and effective system of sports governance, but avoiding anticompetitive conduct by the putative governing bodies? A number of possibilities will be discussed in this regard, in particular the idea of subjecting governing bodies to more bespoke regulatory oversight – as has been proposed in relation to professional football in England – or alternatively, requiring a clearer separation between activities of organisation and governance on the one hand and commercial activities on the other. Ultimately, in an environment of transparent and fair sports governance, breakaway competitions might well become obsolete.

1. See inter alia: Case 36/74 *Walrave v Association Union Cycliste Internationale*, EU:C:1974:140; Case 13/76 *Donà v Mantero*, EU:C:1976:115; Case 415/93 *Union royal belge des sociétés de football association ASBL v Jean-Marc Bosman & others*, EU:C:1995:463; Joined Cases C-51/96 and C-191/97 *Deliège v Ligue francophone de judo et disciplines associées ASBL and François Pacquée*,EU:C:2000:199; Case C-519/04 P *Meca-Medina & Majcen v Commission*,EU:C:2006:492. [↑](#footnote-ref-1)
2. C-333/21, *European Superleague Company SL v Fédération internationale de football association (FIFA) and Union of European Football Associations (UEFA)* EC:C:2023: 1011. [↑](#footnote-ref-2)
3. Juzgado de lo Mercantil de Madrid (Commercial Court in Madrid) [↑](#footnote-ref-3)
4. C-124/21 P, *International Skating Union v Commission* EU:C:2023:1012. [↑](#footnote-ref-4)
5. T-93/18, *International Skaing Union v Commission* EU:T:2020:610 [↑](#footnote-ref-5)
6. Commission Decision of 8 December 2017, C(2017) 8230 final, (Case AT.40208 – International Skating Union’s Eligibility Rules). [↑](#footnote-ref-6)