

Sports and competition law: An overview of EU and national case law

Anticompetitive practices, Foreword

Note from the Editors: although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

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Introduction

The EU Courts established more than 40 years ago that "*the practice of sport is subject to Community law [...] in so far as it constitutes an economic activity.*" [1] Sport is not just an economic activity, but big business, by some estimates accounting for almost 4% of European GDP and over 5% of the workforce. The European football rights market alone, for example, was worth more than €22 billion in 2014/5, of which €12 billion was derived from the big five national leagues in UK, Germany, Spain, Italy and France [2]. Art. 101 and 102 TFEU, as well as internal market freedoms, have regularly been held applicable to sport, by the courts [3], European Commission and national competition authorities ("NCAs"). By way of example, the Swedish competition authority has recently issued a new research report on sports and competition law, noting that the commercialisation of sport takes place in many different ways and involves vast amounts of money. So sports teams, organisers and those who commercialise sports must keep their eye on the competition law ball [4].

I. Organisation of Sports

A. Federations/National Associations

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International sports federations, together with their members at the national level, are the governing bodies of sports. They control and promote the game, select teams for competitions, make and amend sporting rules and take and review decisions regarding the management of financial resources and organisation of sporting events [5]. Their decisions are often linked to transactions worth thousands or billions of Euros when it comes to the sale of advertising, sponsorship and, above all, television rights. They are therefore both the regulators and the commercial exploiters of the sport. Their decisions are often contentious and subject to challenge *inter alia* on competition law or free movement grounds. The federations tread a fine line. The case law establishes that their rule making/enforcement function is not a matter of antitrust, but part of the "rules of the game." But the distinction between the economic and rule making function is not always a clear one.

The EU Court has consistently held that any entity engaged in an economic activity, irrespective of its legal form and the way in which it is financed, has to be considered as an undertaking operating a business subject to the competition law rules [6]. Accordingly, sports federations are to be considered enterprises, hence falling within the scope of competition law review, every time they exercise commercial activities related to the sport they promote.

This approach has been consistently adopted both at the European level - in *Piau* [7], FIA [8], MOTOE [9] - and at the national level, in Italy [10] and Belgium [11]. In these cases, the courts dealt with conflict of interest situations arising from the peculiar situation of the sports associations - acting at the same time both as regulators and commercial exploiters - that abused their dominant position through the exercise of regulatory powers to exclude competitors. Following a complaint by Force India and Sauber, the European Commission has been recently asked to investigate FIA again. The two teams claim F1's governance and prize money distribution are in breach of EU competition as they favour the five larger teams (Ferrari, Mercedes, McLaren, Red Bull and Williams) and undermine the ability of smaller teams to compete, thus putting them at a disadvantage both in economic and sporting terms [12].

This approach has been adopted also outside the European Union. In 2013, the Indian Competition Commission ("CCI") took two decisions, where it directly referred to EU case-law [13]. The hockey regulator was not found to be abusing its regulatory powers [14]. But, in relation to the Board for Control for Cricket in India ("BCCI"), [15] the authority distinguished BCCI's role as regulator/organiser from its economic role of organising professional league cricket [16]. In the market for organising private professional cricket events in India, by virtue of its regulatory powers, BCCI was found dominant.

B. Restrictive measures through sports associations' regulatory powers

Sporting rules will often have a restrictive effect. Of necessity game rules will limit the qualification and

number of players in a team, the number of teams in a league, the scheduling of matches, the rules by which the game is played and control the ethics of the sport. In theory any of these might affect competition between teams - it might be easier to win a match with 15 rather than the regulation 11 players. But those rules, the Court has held, are not subject to antitrust scrutiny if they are inherent in the game's objectives and proportionate to them. In *Meca-Medina*, the Court stated that "*account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives [...] and are proportionate to them.*" [17] Anti-doping rules promoted fair competition and the protection of athletes' health. The penalties, including suspension/expulsion, were proportionate and necessary. The rules were thus "*inherent in the organisation and proper conduct of competitive sport.*" Notwithstanding the potential anticompetitive effect on excluded athletes, the anti-doping rules were immune to antitrust challenge. [18] The test is a strict one, however, and rules that regulate economic activities, notwithstanding that they also arguably relate to the sport's organisation, have routinely been caught by competition law. Similarly, the English High Court has recently rejected a competition complaint in relation to a disciplinary rule which led to the withdrawal of the licence of a manager of boxers for his participation in matches sanctioned by a foreign boxing body not recognised by the British Boxing Board of Control. *Inter alia*, the Court reiterated that the disciplinary rule was inherent in the organisation and proper conduct of competitive boxing, and as such not subject to antitrust scrutiny [19].

That said, there is one notable exception. In the US there has historically been a "*baseball exemption*" for the '*nation's favourite pastime*'. Dating back to the 1920's there is a stream of case law in which baseball and baseball alone is granted an exception from anti-trust law. While the 1998 Curt Flood Act withdrew part of this exemption with respect to employment law, it retained it for certain other aspects including franchise location, amounting to a system of exclusive territorial rights that has withstood a recent test in the US Courts [20].

1. Barriers to entry and unfair conditions of participation

The ability to authorise or prohibit events, and the economic activity associated with them, has been consistently found to engage antitrust rules. In FIA [21] and MOTOE [22], the conflict of interest inherent in sports federations being empowered to approve (or prohibit) competing events, and thereby favour their own, was considered susceptible to the competition law rules. The EU Court concluded that "*a legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of [sports] events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles [102 and 106 TFEU].*" [23] It may be noted that by applying Art. 106 in conjunction with Art. 102, the Court was able to apply a still stricter standard to sporting federations. It was not necessary that the federation actually exercised its powers to favour its own events. It was enough that this was a likely or

inevitable consequence of this role.

In March 2015 the US Federal Trade Commission announced a final order against the Professional Skaters Association (PSA), settling charges that the association's code of ethics restricted competition. The PSA is a non-profit association for ice skating coaches. The FTC concluded that provisions in the PSA's code of ethics that (i) prevented any member from soliciting pupils from another member and (ii) required coaches to determine the nature and extent of any earlier teaching relationship between a former coach and a prospective pupil before agreeing to act as coach to that pupil, amounted to a restriction of competition [24]. The PSA eventually settled the case and agreed to remove certain rules and implement antitrust compliance programs to address the FTC's concerns.

In October of the same year, following a complaint by two Dutch professional speed skaters, the European Commission opened a formal investigation into the eligibility rules of the International Skating Union (ISU) [25]. ISU rules permanently ban athletes from all ISU events if they participate in alternative non-ISU approved events. Following investigations, the Commission sent ISU a Statement of Objections indicating that by restricting athletes' commercial freedom, its rules could put disproportionate and unjustified [26] restrictions on skaters. The Commission is concerned that such restrictions could foreclose competing alternative sport event organisers, who would not be able to invite skaters to their events [27]. The oral hearing took place in February 2017 [28].

Similarly, the Belgian authority provisionally suspended a clause in the *Fédération Equestre Internationale* (FEI) rules of competition that excluded athletes and horses from participation in FEI approved events, if during the preceding six months they had participated in not approved competitions [29]. After a Swedish investigation, the national Bodybuilding Association changed its loyalty clause and committed not to suspend or fine members participating in non-sanctioned events [30]. In the US a private high school in Virginia filed an antitrust lawsuit against the Virginia High School League (VHSL), a non-profit organisation of public high schools, because it was barred from membership in the VHSL and therefore unable to benefit from their organisation of athletic competitions and statewide play-offs. The parties eventually settled the case [31].

2. Conditions of participation

The Swedish Market Court [32] and the Italian Competition Authority [33] has applied the FIA and MOTOE rule to sports motoring federations finding that as both organiser and regulator of a sport would give rise to anticompetitive conflicts of interest when it came to approving new events. So too conditioning access to the Spanish bowling national championship on acceptance of broadcasting rights arrangements concluded by the federation was considered illegal by the Spanish authorities which imposed a fine on the bowling federation [34]. In Germany, refusing a horse riding licence was potentially an abuse of the federation's monopoly in licensing show jumpers and professional horse races in Germany under Art. 102

TFEU [35]. The Spanish authority ruled that the technical regulations of the association of catamarans' owners prohibiting the use of materials other than wood in the construction of the hulls were considered rules of the game. These were purely technical specifications. But the association's price limits on the sale of catamarans were beyond the association's regulatory powers and considered anticompetitive [36].

3. *Tying and exclusive branding*

In Serbia [37] and Belgium [38], competition authorities have held that rules requiring exclusive use of, or prohibiting certain brands, are anticompetitive. Conversely, the Commission found that FIFA lawfully refused to licence third party football manufacturers with a FIFA trade mark *inter alia* because there was no clear competitive impact on the football supplier [39]. The Commission also concluded that the long-term exclusive agreement between FIFA, UEFA and six football federations and Italian maker of collectible stickers Panini did not foreclose the market for stickers for important football tournaments (World Cup and European Football Championship) [40]. The decision was recently upheld by the General Court, which confirmed that the relevant markets were not confined to World Cup and Euro collectibles and as such there was no violation of Arts. 101 and 102 TFEU [41]. The Court held that the duration of the IP licensing agreements was not unreasonably long. The agreements would typically last four years, but only cover one major tournament. Therefore they did not foreclose other collectible makers. Panini had not, as was alleged, imposed exclusive purchasing obligations on its distributors and retailers in the EU, preventing them from selling unofficial stickers. The Court also concluded that, even if the football associations were in a dominant position, refusal to license collectible makers did not constitute an abuse. One of the requirements to show abuse was indispensability of the rights to competition. But to market World or Euro Cup collection it was held not necessary to hold the rights from the organisers of the international tournaments, and for all the participating teams and all the players. For example, Panini had been able to market a World Cup collection although it did not hold the rights relating to the English national team, which Topps held. Similarly, Topps had marketed the official World Cup collection of the English national team, without holding the rights granted by FIFA, which Panini held. Topps had mistakenly relied upon broadcasting rights related precedents. These, the court held, were different from IP rights granted for collectibles. Broadcasting rights offer a real experience of the tournament, whereas collectibles do not [42].

4. *Player contracts*

Famously the issue of transfer rules of athletes was dealt with in *Bosman* [43]. There the EU Court held the issue of transfers to be one of free movement (Art. 45 TFEU). The Advocate General suggested the rules were also contrary to Art. 101 TFEU, as they replaced the normal system of supply and demand, preventing a player from moving freely from a club to another [44]. Similarly, the Commission issued a statement of objection concerning FIFA's international transfer rules for contracted players in 1998. The Commission eventually decided to close investigations after engaging in discussions with FIFA [45] which led to the modifications of its transfer rules.

The fine line between economic and "rules of the game" issues was illustrated in the subsequent Piau case, [46] relating to FIFA's rules on football players' agents. Mr Piau argued that restrictive agent requirements infringed EU competition law. FIFA amended certain of the rules and the Commission rejected the remaining complaints. The General Court held that the post-amendment rules on football players' agents were not contrary to EU competition law because they resulted in a *"qualitative selection, appropriate for the attainment of the objective of raising professional standards for the occupation of players' agents, rather than a quantitative restriction on access to that occupation."* [47]

Similar issues have been subject to national decisions, both in Europe and elsewhere. The Swedish Market Court found that a prohibition boycotting players from North America's hockey league was justified by sporting objectives, and any resultant anticompetitive effects were proportionate to these objectives [48]. The decision to boycott was deemed to be part of a general prohibition of short-term contracts - to be applied necessarily to North American players as well - which the Court found to be justified by sporting objectives. The Cypriot Competition Authority held that regulations imposed by the Cyprus Football Federation regarding the transfer of players' contracts did not infringe competition law, as these rules were purely procedural in nature [49]. The Authority held competition law inapplicable as the transfer of football players was part of a purely sporting rule aimed to form national teams.

In the US, the National Football League ("NFL") football players lodged an antitrust complaint in the United States following the so-called NFL lockout, because it had been impossible to reach a new collective bargaining agreements with professional players and the NFL shut down league operations. The US Court issued an injunction ending the lockout without dealing with the (antitrust) merits of the players' claims [50], which was later vacated by a Court of Appeals because the dispute was to be considered an issue of labour law, not competition law [51].

5. Ticket sales

Though one might think ticket sales more an issue of consumer protection, rather than competition law, authorities have regularly intervened in the perceived fairness of ticketing rules. The Commission found that FIFA (and the Italian football federation) breached EU competition law as regards the distribution of the 1990 FIFA World Cup tickets [52]. The discriminatory grant of to an ad hoc agency of worldwide exclusive rights to issue tickets for inclusion in package tours restricted competition with and between travel agencies. A similar conclusion was reached by on the 1998 FIFA World Cup, where organisers were found to be implementing discriminatory sales arrangements in relation to finals tickets [53]. The system favoured consumers able to provide an address in France. A nominal fine was imposed on the organisers. The Commission also challenged preferential credit card arrangements in 2004 [54] and 2006 [55], with the aim to enable sports *"fans to benefit from a fairer choice of payment methods."* [56] Both in 2004 and

2006, the Commission closed the case without a decision after ensuring that all consumers in the EEA were eventually granted reasonable access to tickets through alternative sales channels not requiring credit card-only payments. National authorities have also examined ticket sales. In Hungary [57], the Budapest Sports Stadium was fined for anticompetitive exclusive ticket agreements. Exclusivity required every event organizer had to use TicketPro ticketing services, restricting third party ticket services competition and allowing TicketPro to inflate ticket prices. In contrast, on similar facts, the Irish authority [58] rejected complaints that TicketMaster's prices and exclusive contractual relations with promoters were anticompetitive. The largest Irish event promoters exerted significant countervailing buying power, so as to constrain TicketMaster's ability to increase prices or reduce service quality.

The level of scrutiny of ticket arrangements may reflect the high profile nature of the events. It seems unlikely that preferential arrangements for particular payment methods or promoters for just these events - out of the totality of all ticket sales for events or all payments - would have a significant impact on competition.

6. Match fixing

The Turkish Competition Board considered whether match-fixing was a matter for competition law or simply a matter for disciplinary action (or indeed fraud or deception rules outside the ambit of antitrust). It concluded match-fixing was not a competition law violation, representing instead "only" a violation of a sport's ethical rules [59]. In a dissenting opinion, citing European law, it was argued that the decision underestimated the economic effects of football and ran counter to the accepted principle that the concept of 'economic activity' should be interpreted broadly [60]. But it is submitted that the Board reached the right conclusions. Match fixing is a matter of fraud or deception, better suited to the criminal authorities, than the more nuanced economic regulation of antitrust.

7. Financial Fair Play

UEFA, in 2011, and increasingly national football federations have adopted Financial Fair Play ("FFP") regulations. Football clubs that do not spend within a set budgetary framework face league sanctions, even disqualification from competitions. The justification being to reduce "player costs", such as transfer fees, agent fees, wages and so forth that have hugely increased in recent years [61]. The rules have prompted complaints from major clubs and small clubs alike. Big clubs are concerned that they will be penalised if they invest in expensive players. Small clubs are concerned FFP entrenches the current market structure. Big clubs maintain their spending edge through greater inhouse resources. Small clubs will never have a chance to take loans or make a speculative purchase of top talent that gives them a chance to win against the bigger clubs. It has been argued that this will create an "oligopoleague" of large wealthy clubs within the UEFA competitions [62]. The rules have been unsuccessfully challenged before the European Commission and Brussels' Court of First Instance [63]. But the Commission views FFP favourably. Commissioner Almunia welcomes the rules as enabling clubs to "*live within their own means*" [64] and the consistency

between the FFP and EU state aid rules, discussed below. The rules have been renewed for the 2016 to 2019 period and many claim that they are responsible for improving the financial health of Premier League clubs [65].

II. Sports Media Rights

The business of sport has been transformed by the sale of broadcasting rights. And the sale of sports broadcasting rights has an economic impact far beyond the sport itself [66]. Live sport is compelling content for paying subscribers and advertisers. It is commonly the central plank of the offer by pay-TV platforms to their subscribers. And it is even credited with the rise of satellite broadcasting and pay-TV in the 1980s and 1990s, persuading European consumers, used to high quality free-to-air television, to start paying for TV content. Rights acquisition tends to be hotly contested in each national market as a result. Add to that, the fact that few sports have the same appeal as football, and that in each country the federation typically aggregates the selling power of all the major teams, then there is a potent mix of rights price inflation, licensor (and often licensee) market power, media market foreclosure and a host of other potential competition law issues. It is unsurprising, therefore, that the most antitrust attention has been engendered by broadcasting rights arrangements.

A. Horizontal Issues and Joint Selling

In the *UEFA Champions League*, [67] *Bundesliga* [68] and *FA Premier League* [69] decisions the Commission found that collective sale of media rights by sports federations of their members' matches were restrictive of competition. Joint sales of exclusive broadcasting rights threatened to restrict competition by limiting output and foreclosing access to the content by media operators. The Commission found that collective sales also gave rise to efficiencies, such as the creation of a product sold via a single point of sale and the related benefits for consumers. As a condition of exemption, the federations were required to abide by clear and transparent rules. Exclusive broadcasting rights should be sold via tender procedures in multiple packages and for a limited period, such that no one broadcaster would be able to foreclose their rivals for a sustained period of time in relation to this content. French [70], German [71], UK [72] and other member states' [73] competition authorities followed suit, in relation to football and other sports [74]. The Belgian authority, for example, considered an agreement whereby a TV operator had acquired exclusive rights for five years over cyclo-cross to be in breach of competition. Such decision was taken following a complaint claiming lack of transparency in the procedure to assign broadcasting rights [75]. Breach of similar non-foreclosure commitments in Spain [76], where a media company signed contracts for the acquisition of broadcasting rights lasting more than the three seasons maximum mandated by the competition authority, resulted in fines of €6.6 million [77]. At a national level some authorities, including Spain, and in some cases via operation of law, such as Italy, have gone further than the Commission and prohibited collective selling by the federation, requiring instead that teams sell rights individually. The same

has recently happened in Germany and France. The German authority approved commitments received from the German League Association and the German Football League, which offered a "no single buyer" rule. Under this rule, no single bidder will be able to acquire the rights to broadcast all the live matches from these two bodies [78]. Similarly, following a compliant with request for urgent interim measures, the French authority suspended the agreement between French TV company Canal+ and the French Rugby National League awarding Canal+ the exclusive rights to broadcast the top fourteen rugby matches across five seasons [79]. In a contrasting case, the Turkish authority granted an individual exemption to an agreement whereby the Turkish Basketball Federation sold broadcasting rights exclusively to a TV operator. The agreement was found to be different from typical exclusive agreements on media rights because of the obligation to broadcast five live games on open channels each week of the season [80].

In the US, in *American Needle* [81], the Supreme Court held that joint licensing of the National Football League was a concerted action subject to Section 1 of the Sherman Act. It considered that the creation of an association was not sufficient to immunize the joint conduct of its members and constituted instead a concerted action restraining trade [82].

B. Vertical Issues

In addition to attacking sale of sports right as a "horizontal" concern - where teams pool their market power through the federation's sale of rights - "vertical" agreements by which sports broadcasting rights are licensed have also attracted attention.

1. Listed events

In 2011 the EU Court examined whether state interference in how sports rights are sold was compatible with EU law. Under the Audiovisual Media Services Directive member states can choose to reserve certain sports or other events which they consider of major importance to society to their national free-to-air broadcasters [83]. FIFA and UEFA argued that not all matches included in the lists constituted events of major importance meeting this test. The Court held that although "listing" interfered with inter alia competition and freedom to provide services, it was nonetheless justified "*since it is intended to protect the right to information and to ensure wide public access to television broadcasts of events (...) of major importance for society*" [84]. Additionally the Court held that international tournaments, such as those organised by FIFA and UEFA, should be regarded as events divisible into different matches, only some of which capable of being considered events of major importance. However, since as a factual matter the General Court had found that the tournaments' matches all met this standard, this was not a matter for the Court of Justice to review, since it can rule only on issues of law, not of fact.

The same conclusion was also reached by the EFTA court in a similar complaint by FIFA. The Court dismissed FIFA's complaint and agreed that "listing" was justified since it "*correspond[ed] to objectives*

in the public interest and [did] not constitute in relation to the aim pursued a disproportionate and intolerable interference" [85].

The Audiovisual Media Services Directive are being revised as part of the Digital Single Market legislative proposals. But the listed events provisions are not expected to change.

2. Broadcasting rights and foreclosure

In the UK the Office of Communications' attempt to force a pay-TV operator to license its sport channels (on a "must offer" basis) to its competitors was overturned on appeal, when the appellate court found OFCOM had not proven that there was any refusal to supply [86]. That finding was itself reversed by the Court of Appeal, which found the appeals tribunal's analysis had been too narrow [87]. The Court of Appeal remitted the cases to the Competition Appeals Tribunal for further consideration, but the parties withdrew their appeals before a judgement was made. The Polish [88], Italian [89] and Portuguese competition authorities have also investigated alleged abuses of dominance by satellite pay-TV platforms in relation to the acquisition of exclusive sports broadcasting rights. In Poland, the pay-TV operator tied the 2008 UEFA European Championship broadcast to the acquisition of decoders and support services. The pay-TV operator gave commitments to buy back the decoders and reimburse technical support fees. In Italy, the authority found no abuse of a dominant position in relation to both exclusive rights to the UEFA Champions League and 2010 and 2014 FIFA World Cup. In relation to UEFA, the authority held that media rights had been assigned through a competitive process, enabling all TV operators a fair chance to acquire the rights. As regards the 2010 and 2014 FIFA World Cup, the authority concluded that Sky Italia's exclusive rights would not hinder competition. The matches occurred only once every four years over a short period of time, and Italian legislation mandates that key FIFA World Cup matches are shown on free-to-air television. Exclusive rights to the two tournaments was therefore unlikely to have an exclusionary effect on competing TV operators [90]. In Portugal, the authority fined the TV operator almost €4 million for price discrimination, which favoured the main national pay-TV broadcaster to the detriment of all other operators [91].

The French competition authority accepted commitments from PMU, the holder of a legal monopoly over horserace bets placed in physical outlets (e.g., tobacconists, newsagents and others). PMU had been pooling the bets received in physical outlets with those received from its online horse racing website. As a result, PMU could offer more attractive winnings than its competitors on its online site. The Authority concluded that being a statutory monopolist, PMU took unfair advantage over its competitors, as it was able to pool both stakes from physical and online bets. PMU offered commitments which included the division between the pool of bets registered online and that registered at physical outlets [92].

3. Territorial restrictions on TV broadcasting

In *Murphy* the EU Court considered restrictions on cross-border broadcasts of premium sports rights [93]. Ms Murphy, a UK publican, purchased a Greek decoder card from the Greek pay-TV broadcaster, Nova, which held the rights to show Premier League matches. The Court concluded that the cross-border broadcasting restrictions were unlawful. Firstly, the UK law prohibiting use of foreign decoder cards in this way was contrary to the freedom to provide services. Satellite reception of broadcasts was subject to a *lex specialis* copyright regime, which meant that a broadcaster only needs the appropriate copyright for the country of origin of the broadcast (here Greece). It did not matter that there was no licence for the country of destination (here the UK). Though it was legitimate to seek to protect intellectual property in this way, the UK law was not proportionate. It sought to segment the EU by protecting exclusivity premiums paid in each territory. The licensor could be appropriately remunerated for its rights by tracking the number of decoder card users - regardless of where in the EU those users were based. It did not need to segment EU territories to price the rights - it could charge a per subscriber fee based on the number of the subscribers buying decoder cards instead. Accordingly the UK law went beyond the specific subject matter of intellectual property, and so was contrary to EU law.

The Court went on further to consider whether the obligations in the Greek broadcaster's licensing agreement to prevent cross-border sales of decoder cards was legal. The Court concluded that this type of restrictions was illegal by object under Art. 101(1), since it was an absolute territorial restriction on the supply of the relevant broadcasting services. There was no justification put forward under Art. 101(3).

The Court finally considered whether the licensor had any recourse against the publican for showing Premier League matches to customers in the pub. It concluded that, had the content been viewed only privately by Ms Murphy, then that would have been legal. But showing the matches to customers was to show the matches to a "new public" not envisaged by the licensor - who permitted only residential, rather than commercial use. This was a potential copyright infringement. In a similar case, a Scottish court is hearing a damages claim by publicans asserting that the Scottish Premier League unlawfully prevented them from showing customers Scottish Premier League matches via Polish sourced decoder cards [94].

The Commissioner for Competition has since announced that sports licensors have amended their agreements to restrict only "active" sales cross-border, even if passive sales of decoder cards would have to be permitted [95]. In its recent attempts to investigate whether geo-blocking may harm competition in the single market, the Commission has focused on sports also in its e-commerce sector inquiry. The Commission has identified business practices that may limit online competition both in relation to online sales of sports equipment and the making available of digital content relating to sports events and programs. A final report is expected in the first half of 2017.

III. State Aid and Sports

EU law also seeks to ensure that sports clubs do not benefit from state subsidies which unfairly advantage them competitively over their less-supported rivals. In December 2013, the European Ombudsman expressed concerns about the Competition Commissioner's links with one of the football clubs concerned, [96] the Commission opened three in-depth investigations to ascertain whether seven Spanish football clubs received unlawful state advantages. [97] These clubs allegedly benefitted from special exemptions, loans and preferential corporation, capital gains and income tax treatment. One team also allegedly benefitted from a particularly advantageous real estate swap, based on a revaluation (from €595 to €22.7 million) of a plot of land. These measures were allegedly supported through state resources, potentially amounting to state aid incompatible with the internal market. Spain did not make the required notification to the Commission these contested measures. Similarly, the Commission decided that state funded support for the Nürburgring race track operators violated state aid rules [98]. To ward off insolvency, the track benefited from additional loans, preferential interest payments on existing debt and subordination of claims which allegedly would not have been granted on market terms. Even the use of a competitive procedure when choosing the operator of an infrastructure facility, in this case an ice arena in the Netherlands, was not sufficient to exclude the existence of an advantage. [99] On the other hand, the Commission found that a measure helping an outdoor training centre did not constitute state aid because it did not affect interstate trade based on the local origins of the users [100]. Similarly, the Commission concluded that a rent reduction granted to football club Willem II for its stadium was compatible with the internal market because it was conditional on the implementation of a credible restructuring plan, mostly financed by private entities. [101] Some have suggested that this may demonstrate a willingness on the part of the Commission to rein in its definition of state aid.

Conclusion

Almost every element of sport and its commercialisation has been subject to antitrust scrutiny. Though notionally the "rules of the game" should be immune, authorities have rarely restrained themselves in reviewing rules on participation, players, sponsorship and even areas better reserved for consumer protection or other laws, such as ticketing arrangements and match-fixing.

More appropriately, given their apparent centrality to competition in media markets, the collective selling, acquisition and cross-border broadcast of sports broadcasting rights has resulted in some of the most complex and intractable investigations at EU and national level. While the rights continue to be seen as the gateway to a successful pay-TV business, that degree of scrutiny can be expected to continue to be central to competition law investigations in the media sector.

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[1] Case 36/74 *Walrave and Koch v Union Cycliste Internationale*, ECR 1974, 1405, para. 4, and Case 13/76 *Donà v Mantero*, ECR 1976 1333, para. 12.

[2] According to the Commission, sport represented in 2004 3.7% of EU GDP and 5.4% of the labour force (See:

http://ec.europa.eu/competition/sectors/sports/overview_en.html ↗); Deloitte's Annual Review of Football Finance - Highlights, June 2016 (<http://www2.deloitte.com/content/dam/Deloitte/uk/Documents/sports-business-group/deloitte-uk-annual-review-of-football-finance-2016.pdf> ↗).

[3] Case C-415/93 *URBSFA v Bosman*, ECR, 1995 I-4921, para. 73, Joined Cases C-51/96 and C-191/97 *Deliège*, ECR, 2000 I-2549, para. 41; and Case C-176/96 *Lehtonen and Castors Braine*, ECR 2000 I-2681, para. 32, and Case C-519/04P *Meca-Medina v Commission*, ECR 2006, I-6991, para. 22.

[4] See **Swedish Competition Authority**. The Swedish Competition Authority issues a report on sport and competition law, 1 September 2015, e-Competitions Bulletin September 2015, Art. N° 75588.

[5] See, *inter alia*, FIFA, FIA, FINA, FEI (Fédération Equestre Internationale), ICC (International Cricket Council) governance.

[6] Case C-41/90 *Höfner and Elser*, ECR 1991 I-1979, para. 21.

[7] Case T-193/02 *Piau v Commission*, ECR 2005 II-209.

[8] Cases COMP/35.163 - Notification of FIA Regulations, COMP/36.638 - Notification by FIA/FOA of agreements relating to the FIA Formula One World Championship, COMP/36.776 - GTR/FIA & others, Official Journal C169, 13/06/001.

[9] Case C-49/07 *MOTOE*, ECR 2008 I-4863. See also A. L. Sibony, *supra*, footnote 5, and **Tim Kasten, Sean Gerlich**, The European Court of Justice issues a preliminary ruling on the organisation of motorcycle events in Greece (MOTOE), 1 July 2008, e-Competitions Bulletin July 2008, Art. N° 44711.

[10] Italian Competition Authority, 15/05/2008, case n. A378, provvedimento n. 18285. See also **Denis Fosselard, Vito Auricchio, Benedetto Brancoli Busdraghi**, The Italian Competition Authority closes the investigations for violations of Art. 81 and 82 EC in the equestrian sports market following commitments proposed by a sport federation (Federazione Italiana Sport Equestri), 15 May 2008, e-Competitions Bulletin May 2008, Art. N° 25162 and **Valerio Torti**, The Italian Competition Authority accepts commitments from the federation for the equestrian sport and closes proceedings for alleged infringement of Art. 81 and/or 82 EC without imposing fines (FISE), 15 May 2008, e-Competitions Bulletin May 2008, Art. N° 22372.

[11] Commercial Court of Liège, 23/04/2007, *Green Cycle Associates v Amaury Sport Organisation*, case n. B.2007/00111. See also **Philippe-Emmanuel Partsch, Vincent Wellens**, A Belgian commercial court holds as abusive a refusal to let a team participate in

important cycling races (GCA/ASO), 23 April 2007, e-Competitions Bulletin April 2007, Art. N° 13658.

[12] See A. Baldwin, Force India, Sauber file complaint to EU authorities, 29 September 2015, Reuters, available at: <http://uk.reuters.com/article/uk-motor-racing-europe-competition-idUKKCN0RT1LJ20150929>.

[13] See for instance Sections 4.7.1.2, 10.6.4 and 10.8.2 of the Hockey Regulator's decision, *infra*, footnote 13, and Sections 3.9, 8.27-8.28 and 8.45 of the Cricket Regulator's decision, *infra*, footnote 14.

[14] Competition Commission of India, 31/05/2013, case n. 73/2011, Sh. Dhanraj Pillay and Others v Hockey India. See also **Baskaran Balasingham**, The Competition Commission of India finds no abuse of dominance by the hockey regulator (Sh. Dhanraj Pillay), 31 May 2013, e-Competitions Bulletin May 2013, Art. N° 54277.

[15] Competition Commission of India, 08/02/2013, case n. 61/2010, Surinder Singh Barmi v BCCI. See also **Abir Roy, Geetanjali Sharma**, The Indian Competition Appellate Tribunal orders to Competition Commission of India to follow due process by ensuring neutrality and fairness in adjudication and raising the bar for standard of proof (Board of Control for Cricket in India / CCI), 23 February 2015, e-Competitions Bulletin February 2015, Art. N° 80017.

[16] See **Vini Singh**, The Indian Competition Commission fines the board for control of cricket approximately USD 10 M for abuse of dominant position (BCCI), 8 February 2013, e-Competitions Bulletin February 2013, Art. N° 51088, and **Sonam Mathur**, The Indian Competition Commission finds abuse of dominance by the cricket regulator (Sh. Surinder Singh Barmi), 8 February 2013, e-Competitions Bulletin February 2013, Art. N° 51800.

[17] Case C-519/04 P *Meca-Medina v Commission*, para 42, *supra*, footnote 3.

[18] Case C-519/04 P *Meca-Medina v Commission*, para 45, *supra*, footnote 3.

[19] See *Bruce Baker v The British Boxing Board of Control*, [2014] EWHC 2074 (QB); *Bruce Baker v The British Boxing Board of Control*, [2015] EWHC 2469 (Ch); **Ravi S. Mehta**, The English High Court dismisses a competition law challenge to a disciplinary rule imposing sanctions for actions assessed to be inimical to the sport (Baker / The British Boxing Board of Control), 25 June 2014, e-Competitions Bulletin June 2014, Art. N° 67599.

[20] See *City of San Jose v. Office of the Commissioner of Baseball*, case No. 14–15139., January 15, 2015: San Jose fought to move baseball team Oakland Athletics to the city, which according to Major League Baseball's rules is the territory of the San Francisco Giants. The court said it was forced to agree with legislation and former case law; see **Jarod Bona**, The US Court of Appeals for the Ninth Circuit upholds the Baseball antitrust exemption (City of San Jose), 15 January 2015, e-Competitions Bulletin January 2015, Art. N° 71372.

[21] See *supra*, footnote n. 8. FIA rules allowed the Federation to prohibit drivers and teams holding a FIA license to take part in non-FIA authorised events.

[22] See *supra*, footnote n. 9. The Greek Automobile and Touring Club ("ELPA") was both entitled to authorise the organisation of motorcycling events, as well as to organise its own motorcycling events.

[23] Case C-49/07 MOTOE, ECR 2008 I-4863, para. 53.

[24] See *Professional Skaters Association*, FTC File No. 131-0168, 3 March 2015, see **Kristin Sanford**, The US FTC settles restrictive practices charges with trade associations after they agreed to implement changes and compliance programs (PSA, PLASMA), 13 February 2015, *e-Competitions Bulletin* February 2015, Art. N° 72019.

[25] For further details, see case file 40208 International Skating Union's Eligibility Rule on the DG COMP's website, available at: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40208 ↗. See also: **European Commission**, The EU Commission sends a statement of objections to the International Skating Union suspected to have breached EU antitrust rules (ISU), 27 September 2016, *e-Competitions Bulletin* September 2016, Art. N° 81352.

[26] During the EU probe, ISU had claimed that *"these rules are inherent and proportionate to the integrity of Skating"* (ISU press release, European Commission investigation into International Skating Union's (ISU) eligibility rules, 5 October 2015).

[27] When the European Commission sent its Statement of Objections to ISU, Commission Vestager said: *"International sports governing bodies play a unique role in setting the rules of the game and ensuring standards of conduct. They are responsible for both the health and safety of athletes and for the integrity of competitions. We have concerns that the penalties the ISU imposes on skaters through its eligibility rules are not aimed at preserving high standards in sport but rather serve to maintain the ISU's control over speed skating. The ISU now has the opportunity to reply to our concerns"*. See: 27 September 2016, Commission sends Statement of Objections to International Skating Union on its eligibility rules http://europa.eu/rapid/press-release_IP-16-3201_en.htm ↗.

[28] L. Croft, Skating Union to contest EU charges at Feb. 1 hearing, 19 January 2017, MLex, available at: <http://www.mlex.com/GlobalAntitrust/DetailView.aspx?cid=859444&siteid=190&rdir=1> ↗.

[29] This was upheld on appeal, see: Brussels Court of Appeal, Case 2015/MR/1, *Fédération Equestre Internationale/Autorité Belge de la Concurrence*, April 28, 2016.

[30] See **Swedish Competition Authority**, The Swedish Competition Authority welcomes undertaking by a sportive association not to suspend or fine members who participate in competing events (Bodybuilding Association), 28 May 2014, *e-Competitions Bulletin* May 2014, Art. N° 67111.

[31] For further details, see: Virginia High School League and Liberty Christian Academy jointly announce settlement, 20 May 2015, VHSL, available at: <http://www.vhsl.org/news.rel-2015-vhsl-lca-settlement-announcement> ↗.

[32] Swedish Market Court, Dnr A 5/11, 20/12/2012. See also, **Swedish Competition Authority**, The Swedish Market Court prohibits the application of excessively stringent

loyalty rules (Swedish Automobile Sports Federation), 20 December 2012, e-Competitions Bulletin December 2012, Art. N° 62770, **Swedish Competition Authority**, The Swedish Market Court prohibits the application of excessively stringent loyalty rules (Swedish Automobile Sports Federation), 20 December 2012, e-Competitions Bulletin December 2012, Art. N° 62770, and **European Competition Network Brief**, The Swedish Market Court adopts a decision stating that a sport automobile federation cannot apply its loyalty rules in the future (Automobile Sports Federation), 20 December 2012, e-Competitions Bulletin December 2012, Art. N° 51210.

[33] Italian Competition Authority, case n. A396, Gargano Corse/ACI, Decision n. 19946, 11/06/2009. See also **Valerio Torti**, The Italian Antitrust Authority accepts commitments from the official federation operating in the market of sport motoring and closes proceedings without imposing sanctions (Gargano Corse/ACI), 11 June 2009, e-Competitions Bulletin June 2009, Art. N° 28300.

[34] Spanish Competition Authority, 26/09/2009, Emisión de Partidos de Bolos, Case n. 597/05. See also **Pablo Ibáñez Colomo**, The Spanish Competition Authority fines a bowling association € 8 000 for abuse against independent bowling clubs concerning audiovisual rights (Emisión de Partidos de Bolos), 26 September 2006, e-Competitions Bulletin September 2006, Art. N° 12463. For a similar case, with a different outcome, see Belgian Competition Council, 21/12/2005, Decision n. 2005-P/K-59, Liege-Tilleur SA/ Union Royale Belge des Societes de Football-Association (URBSFA). See also **Tarik Hennen, Alexandre Defossez**, The Belgian Competition Council rejects a complaint on alleged discriminatory licensing practices from the national football union (URBSFA), 21 December 2005, e-Competitions Bulletin December 2005, Art. N° 1385.

[35] District Court of Dortmund, 22/01/2009, case n. 13 O 2/09 Kart, the doped horse. See also **Max Klasse**, A German district Court holds that the refusal to grant a horse riding licence can constitute an abuse of a dominant position within the meaning of Art. 82 EC ("The doped horse"), 22 January 2009, e-Competitions Bulletin January 2009, Art. N° 29697.

[36] Spanish Competition Authority, 29/12/2008, Patines a Vela, Case n. 640/08. **Alina Nedeia, María González Navarrete**, The Spanish Competition Authority orders an amateurs' association to withdraw a so-called technical regulation aiming at keeping manufacturers' prices low (ADIPAV, Holland Patines a Vela and Federación Catalana de Vela), 29 December 2008, e-Competitions Bulletin December 2008, Art. N° 26653.

[37] Serbian Competition Authority, 08/05/2009, Decision n. 4/0-02-42/09-07, Ipon d.o.o. V Karate Federation of Serbia and BMA Trading d.o.o.. See also **Alexandr Svetlicinii**, The Serbian Competition Authority prosecutes a sport federation for mandating its athletes to use a single brand of protective wear (Karate Federation of Serbia and BMA Trading), 8 May 2009, e-Competitions Bulletin May 2009, Art. N° 26446.

[38] Belgian Competition Council, 21/12/2005, Decision n. 2005-P/K-57, SPRL Eric Thirty Enterprises (ETE) et SPRLU Kilt Carburateurs v Association Sportive Automobile Francophone (ASAF). See also **Tarik Hennen, Alexandre Defossez**, The Belgian Competition Council fines the Association Sportive Automobile Francophone for an abuse of dominant position relating to sporting rules (ETE-KILT/ASAF), 21 December 2005, e-Competitions Bulletin December 2005, Art. N° 533.

[39] Case IV/F-1/35.266 - FIFA.

[40] Commission Decision in of 15 July 2014 in Case AT.39899 — Licensing of intellectual property rights for football collectibles.

[41] T-699/14, *Topps Europe v Commission*, 11 January 2017, ECLI:EU:T:2017:2.

[42] T-699/14, *Topps Europe v Commission*, 11 January 2017, ECLI:EU:T:2017:2, para. 134 et seq.. For the sake of completeness, with regards to Art. 102 TFEU, the Court also found that Panini had no dominant position. It concluded so based on the fact that several competitors were active on the downstream market and Topps itself had acquired certain IP rights previously held by Panini, and because it found evidence of cannibalisation between football-related collections and other collections (e.g. Dragon Ball in Italy).

[43] Case C-415/93, *URBSFA v Bosman*, ECR 1995 I-4921.

[44] Opinion in Case C-415/93, *URBSFA v Bosman*, para. 262.

[45] Case T-193/02, *Piau v Commission*, ECR 2005 II-209 (upheld by ECJ in Case C-171/05, ECR 2006, I-37).

[46] Case T-193/02, *Piau v Commission*, ECR 2005 II-209 (upheld by ECJ in Case C-171/05, ECR 2006, I-37).

[47] Case T-193/02, *Piau v Commission*, ECR 2005 II-209, para. 103.

[48] Swedish Market Court, 18/12/2012, Svenska Hockeyligan (annulling Swedish Competition Authority, 20/09/2012, Svenska Hockeyligan AB). See also **European Competition Network Brief. The Swedish Market Court annuls interim order prohibiting the ice hockey league association from boycotting players from north america's hockey league (Svenska Hockeyligan), 18 December 2012, e-Competitions Bulletin December 2012, Art. N° 51211, and European Competition Network Brief. The Swedish Competition Authority issues an interim order prohibiting national elite ice hockey league from boycotting players from North America's national hockey league (Svenska Hockeyligan), 20 September 2012, e-Competitions Bulletin September 2012, Art. N° 50245.**

[49] Commission for the Protection of Competition, 04/07/2006, Cypriot Football Players Association, Costas Makelos, Angelos Euthimoiu. See also **Nikoleta Giannouli, The Cypriot Competition Authority finds that regulations imposed by the Cyprus Football Federation regarding the transfer of players' contracts do not violate competition law (Cypriot Football Players Association, Costas Makelos, Angelos Euthimiou), 4 July 2006, e-Competitions Bulletin July 2006, Art. N° 20878.**

[50] US District Court for the District of Minnesota, order in *Tom Brady v NFL*, n. 11-639, 25/04/2011. See also **Alfonso Lamadrid De Pablo, A US District Court issues an injunction ending football players lockout in an antitrust suit (NFL), 25 April 2011, e-Competitions Bulletin April 2011, Art. N° 38463.**

[51] US Court of Appeals for the 8th Circuit, decision in Tom Brady v NFL, n. 11-1898, 08/07/2011. See also Jeffrey May, A US Court of Appeals vacates a lower court's injunction lifting football players' lockout in an antitrust suit (NFL), 8 July 2011, e-Competitions Bulletin July 2011, Art. N° 37348.

[52] Case 92/521/EEC: Commission Decision of 27/10/1992 relating to a proceeding under Article 85 of the EEC Treaty (IV/33.384 and IV/33.378 - Distribution of package tours during the 1990 World Cup).

[53] 2000/12/EC: Commission Decision of 20 July 1999 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (Case IV/36.888 - 1998 Football World Cup).

[54] 2004 Athens Olympic Games (COMP/38.703), see Commission press release IP/03/738 of 23/05/2003.

[55] Which?/DFB, Mastercard and Visa (COMP/39.177).

[56] Comment of Competition Commissioner N. Kroes, see Commission press release IP/05/519 of 02/05/2005.

[57] Hungarian Competition Authority, 08/09/2005, Arena Uzemelteto LLC/ Multimedia Light and Sound LLC/ Ticketpro LLC, n. VJ-60/2004/91. See also Bálint Bassola, A Hungarian Court applies for the first time both EC and national competition law while sanctioning an exclusive ticketing agreement (Budapest Sports Stadium), 13 October 2006, e-Competitions Bulletin October 2006, Art. N° 13081; Kornelia Nagy-Koppány, The Hungarian Competition Authority concludes that the agreements offered by the Budapest Sports Stadium are capable of distorting competition and have the potential of infringing Art. 81 EC (Arena Uzemelteto / Multimedia Light and Sound / Ticketpro), 8 September 2005, e-Competitions Bulletin September 2005, Art. N° 422; and Csaba Tóth, Endre Gombai, The Hungarian Competition Authority finds an exclusivity clause has an effect on trade between member States and may distort competition in the sport events sector (Aréna, Multimédia Light and Sound, Ticketpro), 8 September 2005, e-Competitions Bulletin September 2005, Art. N° 490.

[58] Irish Competition Authority, 26/09/2006, Enforcement Decision E/06/001, TicketMaster Ireland. See also O'Orla Lynskey, The Irish NCA assesses the prices and exclusive provisions of a major entertainment events tickets reseller on the basis of both national and EC competition laws (TicketMaster Ireland), 26 September 2005, e-Competitions Bulletin September 2005, Art. N° 518.

[59] Turkish Competition Board, 27/10/2011, Case n. 11-54/1385-495, The Turkish Football Clubs Case. See also Yaprak Gonlusen, The Turkish Competition Board decides that the match-fixing activities of football clubs are outside the scope of Turkish competition legislation (The Turkish Football Clubs), 27 October 2011, e-Competitions Bulletin October 2011, Art. N° 48240.

[60] See Joined Cases C-51/96 and C-191/97, Christelle Deliège v Ligue Francophone de Judo etc., ECR 2000 I-2549, recalled in the dissenting opinion of the Board Members who opposed the Turkish NCA's decision.

[61] "Financial fair play or oligopoleague of football clubs?: A preliminary review under European Union competition law", Nicolas Petit, June 15, 2014 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2450719 ↗).

[62] Ibid.

[63] See <http://edition.cnn.com/2013/05/06/sport/football/financial-fair-play-complaint/> ↗ and <http://www.bbc.com/sport/0/football/24333604> ↗.

[64] Statement of Commissioner J. Almunia reaffirming the European Commission's support to the financial fair play, see UEFA - Protecting the Game 03/04/2014 (<http://www.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2083789.html> ↗).

[65] See D. Conn, Premier League clubs make record £3.4bn with help from FFP regulations, 25 May 2016, The Guardian, available at: <https://www.theguardian.com/football/2016/may/25/financial-fair-play-premier-league-profit> ↗.

[66] Only in the United Kingdom, according to Deloitte's Annual Review of Football Finance (see *supra*, footnote 4, p. 7), "domestic broadcast deals [...] will generate around £3.4 billion over the three seasons from 2013/14 (Up about 60% on the previous cycle). Overseas broadcast rights covering over 200 countries will generate over £2.2 billion (up over 50% on the previous cycle)."

[67] Case COMP/37.398. See also **Torben Toft**, The European Commission adopts a formal decision exempting the joint selling of the media rights of an international football tournament (UEFA Champions League), 23 July 2003, e-Competitions Bulletin July 2003, Art. N° 38439.

[68] Case COMP/37.214. See also **Stefan Wilbert**, The European Commission adopts its first commitment decision pursuant to Article 9 of Regulation 1/2003 concerning joint selling of German football media rights (Bundesliga), 19 January 2005, e-Competitions Bulletin January 2005, Art. N° 36856.

[69] Case COMP/38.173, The Football Association Premier League Limited.

[70] French Competition Authority, 30/09/2009, case n. 09-D-31. See also **Sandrine Behague**, The French Competition Authority fines € 6.9 M a football association and a rights for sports management agency for anticompetitive agreements on the market for audiovisual rights (FFF-Sportfive), 30 September 2009, e-Competitions Bulletin September 2009, Art. N° 31741, and **French Competition Authority**, The Paris Commercial Court seeks the opinion of the French Competition Authority on the broadcasting rights for championship football matches (Ligue de Football professionnel), 7 June 2012, e-Competitions Bulletin June 2012, Art. N° 58677.

[71] German Competition Authority, 12/01/2012, League Association, German Football League. See also **European Competition Network Brief**, The German Competition Authority accepts commitments offered by two sports leagues concerning the joint award of media rights (League Association, German Football League), 12 January 2012, e-

[72] See **Simon Barnes**, The English High Court dismisses price fixing claim by bookmakers relating to collective exclusive broadcasting Licences (Bookmakers Afternoon Greyhound Services / Amalgamated Racing), 8 August 2008, e-Competitions Bulletin August 2008, Art. N° 21537, **James Kavanagh, Gunnar Niels**, The UK High Court of Justice rules collective and exclusive sports rights permissible in Art. 81/101 EC case (BAGS / AMRAC, "Turf TV"), 28 July 2009, e-Competitions Bulletin July 2009, Art. N° 30199, and **Nathalie Lobel-Lastmann**, The UK High Court clears joint and exclusive selling of racecourse TV rights (Bookmakers Afternoon Greyhound Services / Amalgamated Racing), 8 August 2008, e-Competitions Bulletin August 2008, Art. N° 21790.

[73] For example the Austrian, Belgian, Italian, Romanian, and Spanish NCAS. For **Austria**: Vienna High Court in Competition Matters, 18/01/2008, Case 26 Kt 42/06, ÖRF – Österreichischer Schiverband. See also **Hanns Peter Nehl**, An Austrian Court declares behavioural commitments concerning broadcasting rights of the skiing world cup binding upon the public TV/radio provider and the Austrian skiing association (ÖRF / ÖSV), 18 February 2008, e-Competitions Bulletin February 2008, Art. N° 22338, and **Stephan Polster, Philippe Kiehl**, The Austrian Federal Competition Authority opens the market for broadcasting rights of skiing events (ORF- ÖSV, 'Broadcasting rights of skiing events'), 18 February 2008, e-Competitions Bulletin February 2008, Art. N° 15937. For **Belgium**: Belgian Competition Council, 29/07/2005, Decision n. 2005-I/O-40. See also **Dieter Gillis, Peggy Valcke**, The Belgian Competition Council concludes that the joint selling of media rights is in line with the decision practice of the EC Commission and is not infringing Art. 81(1) EC (Jupiler League - Belgacom Skynet), 29 July 2005, e-Competitions Bulletin July 2005, Art. N° 480. For **Italy**: Regional Administrative Tribunal for Lazio, 10/05/2010, judgment n. 10572/2010, proceeding number A418. See also **Alfonso Ricciardelli**, An Italian regional administrative tribunal annuls a decision from the NCA for ineffectiveness of the undertakings imposed to address the competition concerns raised on the market for broadcasting rights of football matches (Conto TV), 10 May 2010, e-Competitions Bulletin June 2010, Art. N° 31548, **Paolo Caprile, Alessandro Marra, Cesare Pozzi**, The Tribunal of Milan rejects a request for injunctive relief against the Italian soccer association for illegitimate award procedures of TV rights for live broadcast of soccer matches (Conto TV/Lega Calcio), 24 May 2010, e-Competitions Bulletin May 2010, Art. N° 31796, and **Valerio Torti**, The Italian Competition Authority opens proceedings in the market of football audiovisual rights for alleged violation of Art. 81 and/or 82 EC (Lega Calcio / Chievo Verona), 10 April 2008, e-Competitions Bulletin April 2008, Art. N° 19549. For **Romania**: See **European Competition Network Brief**, The Romanian Competition Council adopts guidelines on commitments procedure and launches market test on commitments on the joint selling of commercial rights for football broadcasting (Romanian Football Federation and the Professional Football League), 5 January 2011, e-Competitions Bulletin January 2011, Art. N° 35681, and **Iustinian Captariu, Ioana Tirca**, The Romanian Competition Council addresses new developments on the joint selling of commercial rights for football broadcasting (Romanian Football Federation), 10 August 2012, e-Competitions Bulletin August 2012, Art. N° 49214. For **Spain**: Spanish Competition Commission, 14/04/2010, AVS, Mediapro, Sogecable y Club de Futbol, case n. 0006/07. See also **Alfonso Lamadrid De Pablo**, The Spanish CNC issues a resolution holding that exclusivity agreements for the sale of broadcasting rights for national football championship exceeding three seasons are anticompetitive (Sogecable, AVS), 14 April 2010, e-Competitions Bulletin April 2010, Art. N° 38461, **Patricia Lorenzo**, The Spanish

Competition Authority issues recommendations for guaranteeing effective competition in the acquisition of football broadcasting rights (Sogecable/AVS), 5 July 2008, e-Competitions Bulletin July 2008, Art. N° 21563, **Antía Tresandí Blanco**, The Spanish Competition Commission limits the duration of contracts concluded between broadcasters and football clubs for the acquisition and resale of football broadcasting rights for Spanish League and Cup matches, as well as a pooling agreement between broadcasters, to three years (AVS, Mediapro, Sogecable y Clubs de Fútbol de 1 y 2 División), 14 April 2010, e-Competitions Bulletin May 2010, Art. N° 31417.

[74] Decision of the President of the Office of Competition and Consumers Protection, 29/05/2006, n. D0K-49/06. See also **Robert Gago, Aleksandra Czekaj-Dancewicz**, The Polish Competition Authority fines the pay-TV operator and a football association for exclusive broadcasting rights (Canal+/Polish Football Association), 29 May 2006, e-Competitions Bulletin May 2006, Art. N° 12438.

[75] Belgian Competition Authority, Case No. 17/2015: **Tim Kasten**, The Belgian Competition Authority imposes provisional measures in a case involving TV rights for a series of cyclocross competitions (Telenet), 5 November 2015, e-Competitions Bulletin November 2015, Art. N° 77176.

[76] Spanish Competition Commission, 17/03/2011, Res. n. S/0153/09. See also **Luis Blaquez Palasí**, The Spanish Competition Authority fines the holder of football TV rights for abusing its dominant position in the resale of these rights and in the pay TV market (Mediapro), 17 March 2011, e-Competitions Bulletin March 2011, Art. N° 36126, **Santiago Rossi**, The Spanish Competition Authority fines a broadcasting company and its subsidiary for abusing their dominant position in the market for audiovisual retransmission rights of football matches (Mediapro and Gol TV), 17 March 2011, e-Competitions Bulletin June 2011, Art. N° 36698, **Pedro Callol**, The Spanish Competition Commission fines a company and its subsidiary for abuse of dominant position in the market of resale of audiovisual retransmission of Spanish football clubs (Mediapro, Gol Tv), 17 March 2011, e-Competitions Bulletin March 2011, Art. N° 40161.

[77] Spanish Competition Authority, 02/12/2013, Res. n. SNC/0021/12. See also **European Competition Network Brief**, The Spanish Competition Authority fines media company and football clubs for breaching a resolution on the acquisition of broadcasting rights for football competitions (Mediapro, Real Madrid, FC Barcelona, Sevilla and Racing de Santander), 2 December 2013, e-Competitions Bulletin December 2013, Art. N° 62154.

[78] See **German Competition Authority**, The German Competition Authority approves marketing model for award of football championship rights from 2017/18 season onwards (DFL), 11 April 2016, e-Competitions Bulletin April 2016, Art. N° 79161.

[79] See **French Competition Authority**, The French Competition Authority refuses to lift the ban on exclusive broadcasting of premium sports channels pronounced against a pay TV channel (Canal Plus), 9 June 2016, e-Competitions Bulletin June 2016, Art. N° 80033.

[80] See **Ercüment Erdem**, The Turkish Competition Board grants individual exemption to an agreement signed on broadcasting rights (Turkish Basketball Federation/ Digiturk), 20 November 2015, e-Competitions Bulletin November 2015, Art. N° 79883.

[81] US Supreme Court, *American Needle, Inc. v National Football League*, 130 S.Ct. 2201 (2010), 24/05/2010.

[82] See **Anna A. Chehtova**, The US Supreme Court finds that a football league and its members should not be treated as a single entity (*American Needle / National Football League*), 24 May 2010, e-Competitions Bulletin May 2010, Art. N° 33292, **Lynn Diamond**, The US Supreme Court applies functional test to determine whether joint venture activity triggers antitrust liability (*American Needle / National Football League*), 24 May 2010, e-Competitions Bulletin May 2010, Art. N° 32779, **Meir Feder**, The US Supreme Court rejects special sports league exemption from antitrust scrutiny adopting a narrow view of Copperweld immunity (*American Needle / National Football League*), 24 May 2010, e-Competitions Bulletin May 2010, Art. N° 44420, and **Herbert Hovenkamp**, The US Supreme Court reverses the lower court's decisions addressing the issue of single entity notion under antitrust law (*American Needle / National Football League*), 24 May 2010, e-Competitions Bulletin May 2010, Art. N° 36016.

[83] Council Directive 89/552/EEC of 03/10/1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L. 298 p. 23), as amended by Directive 97/28/EC of the European Parliament and of the Council of 30/06/1997 (OJ 1997 L. 202 p. 60).

[84] Case C-201/11 P, *UEFA and FIFA v Commission*, para. 92. See also ECJ press release n. 92/13, 18/07/2013.

[85] Case E-21/13 - *The Fédération Internationale de Football Association (FIFA) v EFTA Surveillance Authority*. Judgment given 3 October 2014, para. 83. See also press release n. 12/2014, 03/10/2014.

[86] [2012] CAT 20, Cases No: 1156-1159/8/3/10, *British Sky Broadcasting Limited, Virgin Media Inc., the Football Association Premier League, British Communications PLC v Office of Communications and Top UP TV Europe Limited, RFL (Governing Body) Limited, the Football Association Limited, Freesat (UK) Limited, Rugby Football Union, the Football League Limited, PGA European Tour, England and Wales Cricket Board*, reversed in [2014] EWCA Civ 133, Case No: C3/2013/0443, *British Telecommunications PLC v. Office of Communications, British Sky Broadcasting Limited, the Football Association Limited, Virgin Media Inc.*. See also Office of Communications, *Pay TV Market investigation*, 18/12/2007. Available from: http://stakeholders.ofcom.org.uk/consultations/market_invest_paytv/ ↗. See also **Ilan Sherr**, The UK Office of Communications imposes price controls in order to open up the wholesale pay TV market (*BSkyB*), 31 March 2010, e-Competitions Bulletin May 2010, Art. N° 31411.

[87] Following the Court of Appeal's judgment, and on the basis that both the both courts had confirmed OFCOM's jurisdiction over fair and effective competition in the provision of licensed broadcasting services, on 16 April 2014 OFCOM decided to review the wholesale must-offer in order to fully take account of any changes in the market since 2010.

[88] Decision of the President of the Office of Competition and Consumers Protection,

12/02/2010, n. D0K2-411-1/09/KP, Cyfrowy Polsat. See also **Piotr Adamczewski, Dorota Karczewska**, The Polish President of the Office for Competition and Consumer Protection accepts commitments submitted by satellite pay-TV platform regarding the use of exclusive sports media rights (Cyfrowy Polsat), 12 February 2010, e-Competitions Bulletin February 2010, Art. N° 30801.

[89] Italian Competition Authority, 03/11/2010, Case A429, Res. 21767, RTI/Sky-Mondiali di Calcio. See also **Valerio Torti**, The Italian Competition Authority starts investigation in the market of football audiovisual rights for alleged infringement of Art. 102 TFEU (RTI/Sky), 3 November 2010, e-Competitions Bulletin November 2010, Art. N° 33891.

[90] Italian Competition Authority, 23/04/2013, Case A429, Res. 24325, RTI/Sky-Mondiali di Calcio.

[91] See **Portuguese Competition Authority**, The Lisbon Court of Appeal upholds the decision of the Portuguese Competition Authority against a sport channels for abuse of dominance in the market of conditional-access premium sports TV channels (Sport TV), 11 March 2015, e-Competitions Bulletin March 2015, Art. N° 72195.

[92] See *Decision 14-D-04*, 25 February 2014. See also the translation of the press release of the Autorité de la Concurrence, **French Competition Authority**, The French Competition Authority accepts commitments offered by the incumbent holding a legal monopoly for the management of betting on horseracing (Betclic / PMU), 25 February 2014, e-Competitions Bulletin February 2014, Art. N° 65750.

[93] Joined Cases C-403/2008 and C-429/2008, Football Association Premier League and others v QC Leisure and others, Karen Murphy v Media Protection Services, 04/10/2011. See also **Gábor Báthory**, The Hungarian Competition Authority fines IT companies for bid rigging (SAP and others), 15 June 2005, e-Competitions Bulletin June 2005, Art. N° 21250, **Max Findlay**, The European Court of Justice issues its preliminary ruling holding that restricting the sale of European foreign satellite decoder cards is “contrary to the freedom to provide services” (Football Association Premier League), 4 October 2011, e-Competitions Bulletin October 2011, Art. N° 40049, **Thomas Graf**, The ECJ Advocate General Kokott renders her opinion holding that the principle of exhaustion applies to the transmission of live football matches in the same way as to physical products (Football Association Premier League), 3 February 2011, e-Competitions Bulletin February 2011, Art. N° 39264, **Thomas Graf**, The European Court of Justice renders its judgment on licensing of satellite broadcasting holding that national law blocking the importation of foreign decoders is contrary to freedom to provide services (Football Association Premier League), 4 October 2011, e-Competitions Bulletin October 2011, Art. N° 39259, **Collette Rawnsley**, The ECJ Advocate General Kokott considers that territorial exclusivity agreements relating to the transmission of live football matches are contrary to European Union law (Football Association Premier League), 3 February 2011, e-Competitions Bulletin February 2011, Art. N° 36202, **Joseph Vogel**, The European Court of Justice validates exclusive rights for broadcasting of sports events provided they do not grant absolute territorial exclusivity (Football Association Premier League), 4 October 2011, e-Competitions Bulletin October 2011, Art. N° 39726.

[94] March 2013, Scottish Premier League Ltd v Lisini Pub Management Co Ltd [2013] CSOH 48.

[95] Statement of Commissioner J. Almunia on opening of investigation into Pay TV services, see European Commission - SPEECH/14/13 13/01/2014.

[96] See State Aid and European Football Clubs? Summary of Recommendation by the European Ombudsman following a Complaint against the EU Commission. Available at: <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/52874/html.bookmark> ↗.

[97] Cases SA.29769, *State Aid to certain Spanish Football Clubs*; SA.33754, *Real Madrid Club de Futbol*; SA.36387, *Spain - Alleged aid in favour of three Valencia Football Clubs*.

[98] Case SA.34890 Rettungsbeihilfe für Nürburgring (and case SA.31550 Nürburgring for the initial opening decision).

[99] SA. 37373 Contribution to the renovation of ice arena Thialf in Heerenveen; See also **Phedon Nicolaides**, The EU Commission decides to consider the aid for renewing an ice arena in the municipality of Heerenveen to be compatible with the internal market since it served a policy objective of common interest (Thialf), 13 December 2013, e-Competitions Bulletin December 2013, Art. N° 65118.

[100] SA.37963: Glenmore Lodge, UK See also **Phedon Nicolaides**, The European Commission finds a measure not to constitute State aid because the services provided occurs at a local level and is thus unlikely to attract customers from other member States to any meaningful degree (Community Amateur Sports Clubs), 29 April 2015, e-Competitions Bulletin April 2015, Art. N° 74136.

[101] Commission Decision (EU) 2017/97 of 4 July 2016 on the State aid SA.40168 - 2015/C (ex SA.33584 — 2013/C (ex 2011/NN)) implemented by the Netherlands in favour of the professional football club Willem II in Tilburg.