COMPETITION AND PROFESSIONAL SPORTS

OECD Competition Policy Roundtable Background Note

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Foreword

Sports are embedded in national cultures and are seen as contributing to social development. At the same time, the economic relevance of sports – and of professional sports in particular – has increased substantially in the last decades and is projected to increase further. Ensuring both economic competition and sports competition is essential to the well-functioning of the industry. This background note provides an overview of the professional sports industry and some of its main characteristics, such as its specific economics (including the notion of sports competition and the need for some co-operation between participants) and a distinctive governance model. It also discusses two main competition issues related to professional sports: (i) the organisation of sports leagues, namely the existence of monopolies and potential anti-competitive behaviour by their organisers; and (ii) sports labour markets, including no-poaching and wage fixing agreements, as well as transfer rules. The paper concludes that competition law has an important role to play, in order to ensure the further growth of the sports sector, which will ultimately provide consumers with more attractive and affordable products.

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1 Introduction

Sports are embedded in national cultures and are regarded as contributing to social development. Indeed, the United Nations recognises the role of sport for achieving development and peace, by promoting tolerance and respect, as well as contributing to health, education and social inclusion objectives, including the empowerment of women, young people, individuals and communities (United Nations, 2015[1]). In addition, sports represent a significant dimension of national and local identity, as they provide citizens with a sense of belonging, creating a healthy outlet for an "us" and "them" mentality (Seippel, 2017, p. 45[2]; Levinson and Pfister, 2016[3]). For example, the Olympic Movement sees sports as an instrument to promote peace and understanding among nations and cultures, highlighting that the Olympic spirit requires mutual understanding and a sense of friendship, solidarity and fair play (International Olympic Committee, 2023[4]).

Besides the pursuit of these non-economic objectives, sports activities are economic in nature, particularly as regards professional sports. Indeed, the economic relevance of sports has increased substantially in the last decades and is projected to increase further. For instance, sports industry revenue worldwide exceeded USD 486 billion in 2022 and it is expected to reach around USD 512 billion in 2023 and USD 623 billion in 2027 (The Business Research Company, 2023[5]).

In light of their progressive commercialisation, professional sports are especially relevant for the economy. For example, the International Association Football Federation (FIFA) increased its World Cup revenue in the last four-year cycle (2018 to 2022), from USD 6.4 billion to USD 7.5 billion (The Guardian, 2022[6]). Likewise, the International Olympic Committee (IOC) has experienced a rise in its revenue, from USD 5.7 billion in the 2013-2016 cycle to USD 7.6 billion in the 2017-2021 cycle (SportsPro Media, 2022[7]). Popular sports leagues have also reached substantial revenue, such as the National Football League – NFL (USD 12 billion in the 2022 season) in the United States (Forbes, 2023[8]), the Major League Baseball – MLB (USD 10.8 billion in the 2022 season) (Forbes, 2023[9]) and the National Basketball Association – NBA (USD 10 billion in 2021-2022 season) (Front Office Sports, 2022[10]), in the United States and Canada; and the English Premier League – EPL (USD 6.63 billion in the 2021-2022 season) (SportsPro Media, 2022[11]), in the United Kingdom.

Women's sports are also increasingly growing, including in their commercial dimension. The levels of interest, attendance, viewership, media coverage, and investment in women's sports have never been higher (Deloitte, 2023[12]). For example, the audience of women's sports has increased by almost 20 times in the last 10 years (The Telegraph, 2022[13]). The 2023 FIFA Women's World Cup has broken several records, e.g. as regards ticket sales, broadcast numbers, and digital media data (FIFA, 2023[14]).

Given the unique nature of economic activity of sports and their increasing commercialisation, several competition issues arise in relation to professional sports. In fact, professional sports have certain characteristics vis-à-vis most ordinary economic activities that should be taken into account. These include the special link with social and cultural life, a distinctive governance model and specific economics (e.g., the notion of sports competition and the need for some co-operation between participants). Despite an overall consensus that competition law applies to the professional sports market, the specific features of the industry may raise particular challenges that competition authorities should consider.

The sports industry involves various economic activities, such as sports labour markets, organisation of tournaments, broadcasting of events, advertising and sponsorship, sale of events tickets, merchandising,

among many others. The main actors within the sector include athletes, clubs (teams), leagues, sports governing bodies (i.e., national and international sports federations/associations), sponsors, broadcasters, advertisers, and supporters.

Athletes (sports players) have a central role in sports competitions, as they are the ones who take part in contests, either individually (individual sports) or collectively through a team (team sports). In professional sports, teams are organised as clubs and usually compete in a league championship, which can be open (i.e., promotion and relegation systems, where clubs are transferred between divisions according to their performance) or closed (i.e., in which the number and identity of clubs do not change from season to season according to their performance).

Furthermore, every sport has a governing body that sets the rules of the game, promotes the sport and collects revenues. This includes international and national sports federations/associations, although the governance framework, including its forms and functions, varies substantially across sports and jurisdictions. Sports governing bodies are often responsible for organising competitions such as leagues, but there are a few examples of leagues that operate independently. Broadcasters, sponsors, and supporters are also important stakeholders in the professional sports industry and provide substantial funds to develop and organise sporting activities.

In this context, this background note discusses the current main competition issues related to professional sports. More specifically, it deals with competition in the organisation of sports leagues or other tournaments (such as the existence of rules or practices that create artificial market power and potential anti-competitive behaviour) and the application of competition law in sports labour markets, particularly as regards restrictions imposed on athletes by legal rules, sports associations or agreed among clubs. It also discusses the financing of sports leagues and whether regulation and/or competition law may contribute to the well-functioning of the market.

While the paper mainly focuses on the topics above, which have raised most recent competition concerns and also reflect more directly the specific features of the sports industry, one should note that there are also other issues that have been examined by competition authorities, such as the sale of sports broadcasting rights, sporting equipment issues, sale of tickets to sports events, sports betting, state aids, eSports and fantasy sports. Despite the importance of these topics, they will not be directly covered by this background note, either because they have already been sufficiently addressed in the past OECD roundtables and there have not been many new cases or because they do not raise significant competition concerns intrinsically linked to the specificities of sports.

In addition, although the application of competition law to the sports industry has been increasing worldwide, the United States and the European Union are at the forefront of this process. Both jurisdictions already have an established case-law from which a clear methodology and common principles can be extracted, but also grounding in solid academic literature. Yet, this paper will also cover, to the extent possible, jurisdictions from other regions, which have generally followed the US and the EU practice.

It should be noted that most competition cases have dealt with team sports, but there are also some cases involving individual sports. Moreover, while each sport has its own specificities – which should be considered in concrete cases – there are many commonalities across sports, and the experiences in one sport can provide useful insights to others.

This background note builds on and complements past OECD work on the topic and related issues. The OECD had the opportunity to explore the competition issues in the sports industry in two roundtables held in 2010 (OECD, 2010[15]) and 1996 (OECD, 1996[16]). A specific session on the topic was also recently held during the OECD-IDB Latin American and Caribbean Competition Forum in September 2023 (OECD, 2023[17]). The discussions have highlighted that the specific features of the sports industry may raise particular challenges, requiring competition authorities to carefully assess how competition law is enforced in the sector.

This note is organised as follows:

Section 2 describes the main characteristics of the sports industry, including the economics of sports and its governance set-ups.

Section 3 provides an overview of how competition law is applied to the sports sector.

Section 4 examines competition issues in the organisation of sports leagues, particularly the trend towards monopoly and potential anti-competitive behaviour.

Section 5 discusses the main competition issues in sports labour markets, namely no-poach and wage-fixing agreements, as well as transfer rules.

Section 6 concludes.

2 Characteristics of the sports industry

This section will describe the main characteristics of the sports industry and cover: the economics of sports, including the notion of sports competition, the differences between team and individual sports and sports finance (section 2.1); as well as the governance of sports, namely its institutional set-up and the responsibilities of its members (section 2.2).

2.1. Economics of sports

In the last seventy years, economists have developed a literature on the economics of sports, focusing mainly on the functioning of team sports and leagues. One of the main drivers of this discipline has been the discussion whether competition law should apply to the sports industry. The area has expanded significantly in recent decades in light of the increasing economic size of professional sports (Andreff and Szymanski, 2006[18]; Noll, 2006[19]).

This section of the paper will outline main features developed by the economics of sports will be discussed, namely the notion of sports competition, the main characteristics of team and individual sports, as well as sports finance.

2.1.1 Sports competition v. economic competition

A specific feature of the sports industry is the notion of sports competition, which may not always be consistent with the principles of economic competition.

First, sports activities depend on a sufficient number of competitors to take place, as participants alone are unable to organise a sport competition. In most sectors, increasing a player's market power to the detriment of rivals is a positive and desired outcome. However, in sports, participants (teams or individual athletes) in a competition (a match, a race, or a tournament) do not benefit from the exclusion of competitors from the market. On the contrary, they need each other to provide an economically viable product (Budzinski and Pawlowski, 2017[20]). This indicates that there must be a certain degree of co-operation between the participants of a sport competition, for example to establish the rules of the game and their enforcement, the number of participants and the calendar. Given the need for co-operation to produce a sport competition, a governance structure becomes fundamental (Colomo, 2022, pp. 326-328[21]), as discussed in section 2.2 below.

Second, the uncertainty of the outcome of sports competitions must be preserved. Indeed, sports economics rests on the so-called uncertainty of outcome hypothesis, according to which consumers value close, competitive contests. Increasing outcome uncertainty in sports competitions raises the marginal utility of consumers and the demand for sports, which means that guaranteeing uncertainty of outcomes is an essential dimension of the quality of the product. As a consequence, the success and viability of sports competitions rely on sustained rivalry among competitors. This involves ensuring the integrity of competition and achievement based on merit, as well as a competitive balance. While the integrity of

competition refers to guaranteeing the absence of match-fixing or sports collusion (which is different from the notion of economic competition collusion) and doping, competitive balance relates to a competitive closeness of all participants in the sporting contest (i.e., competitors who are sufficiently close-matched) (Budzinski, 2012, pp. 5-6[22]; Budzinski and Pawlowski, 2014, p. 2[23]; Budzinski and Pawlowski, 2017[20]).

Thus, the relationship between participants can be considered as *co-opetitive*,[1] as they co-operate as much as they compete with one another (Colomo, 2022, p. 328[21]).[2] While this could be considered a cartel in other industries, in sports it can be justified to allow sports competition.

Furthermore, the competitive environment in the sports sector also presents specific features, such as a unique relationship between consumers (i.e., supporters) and suppliers (individual athletes or clubs). In fact, most consumers of the sports industry are personally connected to a particular club/athlete, and are not likely to move to other club/athlete if they do not win or if other clubs/athletes deliver better results (i.e., low demand elasticity). This loyalty connection to clubs/athletes is non-economic, as one becomes supporter of a club/athlete not because of the outcome (better or cheaper product), but for other reasons, such as attachment to a community or mere familiarity. Moreover, athletes are not seen as mere inputs, and often cannot be easily separated from their clubs. Indeed, athletes are usually regarded as heroes by their supporters, which can further build up a feeling of identification with a club.

2.1.2 Team sports v. individual sports

Every professional sport competition needs an organiser (who focuses on creating an attractive competition as a whole) and participants (who aim at winning and maximising their gains from taking part in the contest) (OECD, 2010, p. 18[15]). As mentioned above, while athletes are the participants in individual sports, in team sports the participants are the teams that gather and organise players.[3]

The way tournaments are set varies between team and individual sports. Team sport competitions usually operate on a “home and away” basis, with clubs alternately playing games at their home stadium and the stadium of a competitor. Post-seasons or playoffs with the top competitors sometimes also occur after the regular season to determine the champion. Individual sports are more commonly organised as tours, run in different sites throughout the year and often with different organisers, although competitions are usually interconnected through a common ranking system (OECD, 2010, pp. 19-20[15]; Li and Scott, 2021, p. 248[24]).

Unlike team sports, where there are generally measures to promote competitive balance through some degree of revenue-sharing (see section 2.1.3), the approach in individual sports is different, since it is believed that a significant inequality in prize money distribution is necessary to attract competitors of similar strength. If only the winner of a tournament wins a substantial prize, only contestants that feel they have the chance to win that prize will join the tournament. Accordingly, the economic literature indicates that the performance of athletes is associated with differences in the amount of money distributed to players according to their ranking (which should be big and increase up to the final), although other non-financial elements may also play a role, such as the prestige of the competition and the allocation of points (Barget, 2006, p. 421[25]). Financial prizes are not very relevant in team sports, and reward for success is more often associated with the rise in the number of spectators at matches, the ability to increase ticket prices, increased advertising and merchandising opportunities and enhanced value of broadcasting rights (OECD, 2010, p. 20[15]).

Leagues are often established to enhance the attractiveness of the game by incorporating new forms of competition (e.g., the race for the title in addition to the result of the match itself), making competitions more systematic, increasing the ability of supporters to recognise success, and establishing a consistent basis for historical comparisons of team performance (Hoehn, 2006, p. 234[26]). Moreover, leagues reduce transactions costs, since they allow teams to co-ordinate scheduling, instead of depending on a series of bilateral arrangements (Noll, 2003, p. 532[27]). Leagues also increase the economic value of competitions,

since they lead to a product that is more than the sum of the parts, i.e., they are more valuable than a mere collection of disparate matches (Colomo, 2022, p. 327[21]).

It should be noted that the dynamics of sport leagues, including the relationship between clubs, organisers, supporters, viewers, broadcasters, and sponsors, can be considered a multi-sided market, with direct and indirect network effects. There are strong and positive indirect network effects, as more top clubs attract more supporters, viewers, broadcasters and sponsors; more viewers and supporters attract more top participants (athletes and/or clubs) that want to make their reputation and generate more sponsorship income. In addition, there may be positive direct network effects, since the participation of more top participants can increase incentives for other top participants to take part in the league (Klein, 2023, pp. 7-8[28]).

2.1.3 Sports finance

In the 1960s and 1970s the major source of revenue of clubs was match-day gate receipts. Many clubs also received subsidies from local authorities (more often municipalities). Revenues from advertising and sponsorship were still emerging, and sale of broadcasting rights was not a relevant source of revenue. Currently, clubs have a different financial structure. Since the 1980s, subsidies have declined substantially, while revenues from advertising and sponsorship have increased. More importantly, the commercialisation of broadcasting rights has become the most important source of professional sports finance, accounting for around 40% to 60% of revenues.[4] This can be explained by the deregulation of the broadcasting sector and many technological changes from the last decades that transformed media into a more competitive and dynamic sector, allowing the expansion of the sports business into a global industry (Andreff, 2006, pp. 689-691[29]; Weatherill, 2014, p. 334[30]; Evens, Iosifidis and Smith, 2013, p. 32[31]).

As will be mentioned in section 3.2, there has been a trend, at least in the United States and in Europe, to sell sports broadcasting rights collectively, i.e., all matches of a league are sold together by the league, the sports governing body or an association composed of the participating clubs. However, the way the revenues arising from such sales are shared among the participating clubs varies and has a different impact on competitive balance. For example, the US major leagues usually distribute the revenue from national broadcasting rights to all clubs equally, regardless of their performance or popularity, although the differences in local broadcast revenues can be significant, contributing to financial imbalance among clubs. In Europe, most football leagues share part of the broadcasting revenue based on the clubs' performance, prestige, and market size, which tends to remunerate large clubs and does not help improve competitive balance among clubs (Andreff, 2006[29]; Evens, Iosifidis and Smith, 2013[31]).

There are also other ways of revenue sharing, particularly in the United States. For instance, in the NFL the visiting club receives 40% of the gate receipt revenue. In the MLB, all clubs place 34% of their locally-generated revenue (including gate revenues, concession revenues and locally television revenues) into a central pool, which is then split equally among all clubs. The NBA and the NHL have also a similar pool-sharing arrangement (Dietl, Grossmann and Lang, 2010, p. 3[32]).

Revenue-sharing schemes are intended to increase competitive balance, as they would equalise resources among teams, and therefore weak and poor clubs would be able to compete on the merits with strong and rich clubs. This argument has been generally accepted by competition authorities, who tend to understand that these agreements are pro-competitive (Szymanski and Késenne, 2010[33]). Nevertheless, this outcome is not straightforward, and some authors argue that revenue-sharing mechanisms would rather distort competitive balance, reduce total investment in talent by teams and leads to lower overall quality of sports within a league (Hansen and Tvede, 2016[34]; Szymanski and Késenne, 2010[33]).

Another relevant and more recent change in sports finance concerns the emergence of entrepreneurs. Indeed, over the last decades, investors (often foreign) have spent billions gaining ownership and control of clubs. Football in Europe has been a clear example, where many clubs have been changing ownership

and/or control in the last decades, from local business (or even fans) to foreign state funds and private-investment firms (Bloomberg, 2023[35]).

This has transformed clubs' administration, which is now taken over by professional managers, enhancing financial stability. Such investors are able to mobilise additional funds to clubs allowing growth and competitive edge. They have also further promoted other ancillary activities, such as the control of stadium facilities and the promotion of merchandising (Andreff, 2006, pp. 692-693[29]). This trend has involved not only clubs but also leagues and is going beyond football, also concerning other sports (e.g., volleyball, golf, skating and padel). In 2022, more than 220 mergers and acquisitions were conducted in the sports sector. 52% of these transactions occurred in Europe, 32% in the Americas and 10% in Asia Pacific. These new investments have been acting as a catalyst for increased professionalisation and commercialisation across sports (Deloitte, 2023[36]).

This approach, nevertheless, has been raising concerns about the effects of excessive commercialisation on competitive balance and the true essence of sports. For example, there is evidence showing that the gap in performance of football clubs has increased substantially (Financial Times, 2023[37]). In this context, the concept of "financial doping" has emerged to refer to clubs buying capacity to dominate the others by external investments (i.e., detached from sports activities), providing the former an illegitimate performance advance that undermines the spirit of sports (Iorwerth, Tomkins and Riley, 2018[38]).

Some jurisdictions and sports have tried to tackle financial doping. This has been the case of football in Germany, where DFL (the organiser of the national football league – Bundesliga) has adopted in 1998 the so-called 50+1 ownership rule, according to which teams must be controlled by not-for-profit organisations (i.e., these should hold the majority of voting rights: 50% plus one). This limitation intends to prevent private or commercial investors from taking over clubs and prioritising profit over the wishes of supporters (Bundesliga, 2023[39]).[5] The new EU Regulation on Foreign Subsidies Distorting the Internal Market has also been invoked to prevent that non-EU states grant subsidies to European clubs on non-market terms, distorting competition in the EU and several national markets.[6] Moreover, the establishment of an independent regulator for men's football is currently under discussion in the United Kingdom, aiming to implement a new licensing system applicable to all clubs in the top five tiers of the English football league system, "to protect clubs and their fans from unscrupulous owners" (see Box 2.1).[7]

There have also been concerns about the financial stability of sports, since insolvency and bankruptcy are quite common (Andrews and Harrington, 2016[40]). For instance, clubs often include their players as an intangible asset on their balance sheets based on their market value, which allows such clubs to obtain more loans, but this increases bankruptcy risks if the athletes are overvalued. These concerns have led to some attempts to ensure the long-term viability of clubs.

The most outstanding example concerns the Financial Fair Play (FFP) regulations, adopted by the Union of European Football Association (UEFA) in 2010, aiming at increasing the integrity and longevity of football. To participate in UEFA competitions, clubs must meet certain governance, economic and financial parameters, including the "no overdue payables" rule and the "break-even" rule. The first rule requires that clubs do not have overdue payables towards other clubs, players and social/tax authorities, in order to ensure solvency. The second rule seeks to guarantee stability of clubs and establishes that each club must not spend more than the football related income it generates, which essentially prevents potential investors to fund the financial losses of a club (Andrews and Harrington, 2016[40]; Sims, 2018[41]; Football Benchmark, 2022[42]).

Since the adoption of FFP regulations, financial performance of European football clubs has improved, from net losses of EUR 1.7 billion in 2010 to a profit of EUR 600 million in 2017 and EUR 140 million in 2018. Due to the severe negative effects of Covid-19 pandemic on clubs, UEFA adopted new FFP regulations in 2022, including an additional requirement to ensure cost control: the "squad-cost" rule, according to which expenditure on player and coach wages, transfers and agent fees are subject to a limit

consisting of a percentage of the total club revenue (90% in 2023, 80% in 2024 and 70% from 2025) (UEFA, 2023, p. 58[43]).[8]

New changes to the FFP regulations are already being considered, including the establishment of a hard cost limit, rather than a limit associated with clubs' revenue. Moreover, the effectiveness of the existing rules seems to be limited, since some clubs continue to spend high sums of money with athletes and just pay the resultant fines, transforming the sanctions into a tax (Financial Times, 2023[44]). This suggests that the penalties for failure to comply with FFP regulations and their enforcement might also need to be reviewed.

The United States has a different approach in this regard, and major leagues have salary caps for players aiming to guarantee greater parity among teams, as discussed in section 5. This is also envisaged by some stakeholders in Europe (Financial Times, 2023[44]), but it could be challenging to be implemented in practice.

While the elements above apply to team sports in general, in individual sports the funding is somewhat different. Organisers of tournaments (including leagues) carry out economic activities and control the main sources of revenue (such as broadcasting rights, merchandising, sponsorship, advertising and gate receipts). Athletes are usually self-employed, taking their revenues from a fee for participation in tournaments (so-called "appearance fee") and a prize depending on their success in the contest – in addition to potential endorsement deals and sponsorships paid by advertisers (OECD, 2010, p. 19[15]; Li and Scott, 2021, pp. 248-249[24]).

2.2. Governance structure

As mentioned above, competitors in the sports industry must co-operate to set up a championship or a league as a marketable good. Indeed, being the only club in the market would not be useful in the sports sector, as sports competition inherently requires the existence of different competitors. This *co-opetitive* relationship requires a market-internal governance structure to establish, update and enforce the rules of the game, settle disputes, co-ordinate and organise sports events, including championships and leagues, as well as generally promote the development of the sport (Budzinski and Feddersen, 2022, p. 3[45]; Hoehn, 2006, p. 227[26]).

These functions are performed by the so-called sports governing bodies (SGBs), usually national and international sports federations/associations (e.g., FIFA, UEFA and the French Football Federation – FFF). The sports governing bodies carry out legislative, executive, and judicial roles (Hoehn, 2006, pp. 228-229[26]; Budzinski and Szymanski, 2015, p. 413[46]; Houben, 2023[47]):

- Legislative (regulatory) roles: set the rules of the game (e.g., the size of the field and how the game is played) and the rules of the league (e.g., requirements that clubs must fulfil to enter the league and how athletes are contracted), as well as review and update these rules when necessary;
- Executive (organisational) roles: organise and promote competitions in their own rights, including leagues; and
- Judicial roles: monitor and enforce the rules, manage disciplinary procedures, and arbitrate disputes.

According to some authors, the performance of these functions constitutes the so-called *lex sportiva*, a transnational autonomous private order that governs sports, including its own judicial bodies. This order also includes mandatory arbitration rules, conferring exclusive jurisdiction on arbitration courts (notably the Court of Arbitration for Sport – CAS) to decide sports-related disputes (Duval, 2020[48]). Indeed, sports governing bodies have historically claimed freedom from the state to organise their sport, develop their

own regulations and have their own adjudicating bodies, considering the special character of sports and their international dimension (Weatherill, 2014, p. 179[30]).

Although the discussions on the existence and nature of *lex sportiva* are legal in nature and go beyond the scope of this paper, it is worth mentioning that the self-regulatory approach has not been fully accepted by state courts, which have indicated that the sports industry is not exempted from state law and judicial oversight. Therefore, state intervention is possible regardless of the existence of arbitration clauses, at least in specific circumstances – for instance as regards competition law, as suggested by several competition cases mentioned in the following sections.[9] Some jurisdictions are going even beyond and are currently proposing independent regulators to overview sports activities (see Box 2.1).

Box 2.1. The proposal for creating an independent regulator of football governance in the United Kingdom

Despite the global success of English football, with increasing revenues and viewers, a White Paper published by the Parliamentary Under Secretary of State for Culture, Media and Sport found that clubs across the top five tiers are at risk of financial failure, threatening the stability of English football as a whole. According to the report, this is motivated by several reasons, including "poor governance, and defective industry self-regulation".

In this context, the British government has concluded that reform was necessary, requiring state intervention. This is because the free market would not properly consider the relevance of clubs to their fans and communities, and industry self-regulation would be inadequate, allowing clubs to collapse and harming fans.

The UK government put forward a proposal to create a new independent regulator for English men's football clubs, to ensure sustainability and resilience of the game. The regulator would have three main duties: (i) ensure clubs' financial sustainability; (ii) guarantee systemic stability of English football; and (iii) protect the heritage of football clubs that matter most to fans.

The regulator would operate a licensing system, where clubs need a licence to operate as professional football clubs, covering appropriate financial resources, suitable owners, fan interests and approved competitions. The regulator would operate an "advocacy-first" approach to regulation as the default, but it would also have a range of powers, including strong sanctions on clubs and individuals when more significant action is required.

The UK government intends to bring forward legislation to support the creation of the football regulator when Parliamentary time allows.

Source: Secretary of State for Culture, Media and Sport (2023[49]), A sustainable future - reforming club football governance, https://www.gov.uk/government/publications/a-sustainable-future-reforming-club-football-governance/a-sustainable-future-reforming-club-football-governance; Department for Culture, Media and Sport (2023[50]), Government outlines preferred structure of new independent football regulator, https://www.gov.uk/government/news/government-outlines-preferred-structure-of-new-independent-football-regulator.

Especially in team sports (but also in some individual sports), leagues and other tournaments tend to be organised by sports governing bodies. Given the close relationship and common overlap between leagues and sports governing bodies, they are collectively referred to as sports organisations (Rompuy, 2022[51]). Many authors indicate that the fact that sports governing bodies often concentrate the legislative, executive and judicial roles in sports competitions lead to a conflict of interest that could raise competition concerns, as will be discussed in section 4 below.

Unlike most team sports, which have a unified governance structure, individual sports are often subject to multiple governing bodies that are connected into a larger framework (such as tennis and golf) (Li and Scott, 2021[24])[10] or not connected at all (such as boxing) (Tenorio, 2006, p. 365[52]).[11]

The organisation and governance of sports can vary substantially across jurisdictions and sports, with two main systems (i.e., European and American), that in turn are followed by other countries.

The so-called European sports model is characterised by a single national governance structure for each sport (one sports governing body per sport), integrating all levels of sport, from grassroots to top-level professional sport, in a pyramid structure. In turn, national federations represent their jurisdiction at the European and international level. Each sports governing body has jurisdiction over both amateur and professional competitions within their geographic branch, with a comprehensive approach to rules, regulations, standards, calendars and qualification for competitions. This set-up allows, at least in theory, that a participant can progress from the bottom (grassroots) to the top (professional) levels of the pyramid. This occurs via a system of promotion and relegation based on sporting merit that rewards success in the lower tiers and penalises defeat in the upper ones (the so-called open system/leagues). In addition, the European pyramid structure aims to ensure financial solidarity between elite and grassroot participants, as more commercially lucrative top-tier participants contribute to promote lower-tier participants and commercially less attractive competitions (Klein, 2023, pp. 17-18[28]; Colomo, 2022, pp. 329-331[21]; Budzinski and Szymanski, 2015, p. 410[46]; Council, 2021[53]). This model, nevertheless, applies mainly to team sports, and other sports have completely different structures. For example, motorsports and cycling are organised under partially or totally closed leagues and the organisation of golf and tennis largely diverges from the pyramid structure (EC, 2007[54]).

The United States has a different model, in which amateur and professional sports are independent and run under separate structures. Amateur sports are governed by different layers of authority (e.g., community leagues, school athletic associations, the National Collegiate Athletic Association – NCAA and the US Olympic Committee). Professional sports are generally organised by leagues (such as NBA, NFL, MBL and NHL), that are owned by the clubs (more often referred as franchises) that play in the league. The league has absolute power to set the rules of the game. New clubs are only admitted in the league through the approval of a supermajority of the existing ones, subject to the payment of a substantial entry fee, usually shared among the existing teams. Thus, in the US closed system, the participants are pre-determined and there is no promotion or relegation (Healey, 2012, p. 42[55]; Colomo, 2022, p. 330[21]; Szymanski, 2006, p. 685[56]; Budzinski and Szymanski, 2015, pp. 409-412[46]).

3 Application of competition law to the sports industry

This section will assess whether and how competition law is applied to the sports industry (section 3.1). It will also provide an overview of the main areas where competition concerns have arisen in the sports sector (section 3.2).

3.1. How does competition law apply to the sports industry?

Despite the specificities of the sports industry, notably the *co-opetitive* relationship between rivals and the notion of sports competition, there is an overall consensus on the applicability of competition law to the sector, particularly due to the increasing commercialisation of sports activities. However, competition authorities should take into account the special features of the sector when applying competition law (OECD, 2010[15]).

There is little doubt that professional sporting activities are economic in nature, and the fact that some stakeholders of the sports industry are non-profit making bodies does not change that conclusion (Colomo, 2022, p. 324[21]; Rompuy, 2022[51]).[12] Indeed, apart from very amateur sports, all sports events (premier-level sports but also other professional and semi-professional sports) involve business elements and economic activity (Budzinski, 2012, pp. 7-8[22]).

Therefore, in principle competition law is applicable to sports market participants (including sports governing bodies, leagues and clubs), both as regards merger review and anti-competitive behaviour. Most of the discussions on competition law and sports concern anti-competitive practices, as merger cases are not as common (Orth, 2021[57]).[13]

Some competition authorities have differentiated between “purely sporting rules” and business activities. On the one hand, “purely sporting rules” would refer to the laws of the game, i.e., the rules that are essential to produce sports competition (e.g., the size of the field, the weight and dimensions of the ball, the number of players, the calendar and structure of the tournament and anti-doping rules). These rules would be non-business in nature and would fall outside the scope of the application of competition law. On the other hand, other decisions that are not essential for sports competition (e.g., the sale of broadcasting rights, solidarity transfers, ticket arrangements and marketing tournament products) would constitute business activities and would be subject to competition law (Budzinski, 2012, pp. 6-7[22]; Colomo, 2022, pp. 331-332[21]). While the first category would reflect the regulatory roles of sports organisations, the second would be within their executive mandates.

However, this distinction has been criticised for a long time. Indeed, some scholars argue the difference between “purely sporting rules” and business activities is fluid, since defining the nature of sports competition (i.e., sports-related aims) has also economic repercussions (Weatherill, 2014, pp. 384-385[30]).[14] For instance, sports organisations can shape the so-called “purely sporting rules” to increase the attractiveness of the sport in order to maximise fan numbers and revenues, e.g. simplifying the rules of the game to make matches more accessible and easier to follow (Budzinski, 2012, p. 7[22]). In addition, even

rules governing anti-doping have economic impact on athletes (e.g., a sanction for doping may represent the end of the career of an athlete). This suggests that competition law should apply even to the so-called "purely sporting rules", as already decided by the European Court of Justice – ECJ (see Box 3.1).

The following subsections will describe how competition law has been applied to the sports sector in the European Union and the United States. Although other jurisdictions (for instance, in Latin America and Asia Pacific) have also applied competition law to the sports sector, they have mainly followed the EU and/or the US approach and do not seem to have yet built up a solid case-law on the sports industry.

3.1.1 European Union

Apart from some specific harmful behaviours in the sports labour markets (as discussed in section 5), the European Commission has considered that practices pursuing sports-related goals are not per se/by object infringements. Indeed, the European Commission follows a case-by-case approach, based on the ECJ caselaw, according to the rule of reason, which provides enough flexibility to address the specific features of the sector (EC, 2007[54]). National competition authorities follow the same methodology.

First, the sport organisation must be considered an "undertaking" (i.e., it carries out an economic activity) or an "association of undertakings" (i.e., its members carry out an economic activity). In the case of abuse of dominance, the undertaking or undertakings must hold a dominant position within the internal market or in a substantial part of it.

Second, the practice must infringe articles 101 (anti-competitive agreement) or 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union (TFEU). For that purpose, it should be examined whether the behaviour is liable to distort competition and, if this is the case, whether the restrictive effects of the conduct are inherent in the pursuit of a legitimate objective and proportionate to it. Legitimate objectives purposed by sports organisations are usually related to the "organisation and proper conduct of competitive sport" and may include, for example, "the ensuring of fair sport competitions with equal chances for all athletes, the ensuring of uncertainty of results, the protection of the athletes' health, the protection of the safety of spectators, the encouragement of training of young athletes, the ensuring of financial stability of sport clubs/teams or the ensuring of a uniform and consistent exercise of a given sport" (EC, 2007, p. 35[54]). The restrictions adopted to pursue legitimate objectives may violate the competition rules when they are not proportionate. Furthermore, they should be transparent and non-discriminatory. In any case, the analysis of the likelihood of these restrictive effects should consider the economic and legal context in which the undertakings operate, including the structure of the relevant market, the nature of the goods, and the prevailing conditions of competition (Colomo, 2022, p. 28[21]).

Third, if the restrictive effects of the conduct are not inherent in the pursuit of a legitimate objective, it must be assessed whether the practice fulfils the exemption conditions of article 101(3) TFEU or if it can be objectively justified under article 102 TFEU, as its beneficial effects may outweigh its negative effects. According to article 101(3) TFEU, behaviours can escape the prohibition of article 101 if they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose unnecessary restrictions on competition and do not eliminate competition in a substantial part of the concerned products.

Box 3.1. The Meca Medina case

In the European Union, *Meca Medina* (2006) is the landmark case on the application of competition law to the sports industry. The complainants, who had been sanctioned for violating anti-doping regulations, argued that the rules in question constituted anti-competitive practices, as per current Articles 101 and 102 TFEU.

The complaint was rejected by the European Commission, as well as by the Court of First Instance (now the General Court), based on the argument that competition law would not apply to "purely sporting rules", which are not related to economic activity.

In its judgment, the European Court of Justice (ECJ) has ruled that "the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down". In other words, the ECJ established that even "purely sporting interest rules" could be scrutinised under the EU competition law.

In addition, the ECJ established a methodological framework for assessing the compatibility of sporting rules with Articles 101 and 102 TFEU. According to the Court, when analysing an agreement between undertakings or a decision of an association of undertakings that limits the freedom of action of the parties or of one of them, it is necessary to consider the overall context in which the behaviour was taken or produced its effects, in particular its objectives. Then, it should be examined whether the restrictive effects are inherent in the pursuit of those objectives and are proportionate to them.

Following this methodology, the court has eventually dismissed the case, as the restrictions arising from the anti-doping rules in question were considered justified by a legitimate objective (i.e., to ensure healthy rivalry between athletes), which was inherent in the organisation and proper conduct of competitive sport. Moreover, the ECJ concluded that the restrictions imposed on the professional athletes did not go beyond what was necessary to guarantee that sporting events take place and function properly.

This methodology was later spelled out by the European Commission in the White Paper on Sports, presented in 2007.

Source: Case C-519/04 P (Meca-Medina and Majcen v. Commission), judgment of the European Court of Justice (Third Chamber) of 18 July 2006; EC (2007[54]), The EU and Sport: Background and Context, Commission Staff Working Document, Accompanying document to the White Paper on Sport, (SEC(2007) 935 final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52007SC0935&from=EN.

3.1.2 United States

Likewise, the United States has generally applied competition law in the sports sector. US case-law has considered that sports organisations engage in commercial activity, which has a broad understanding and includes almost every activity that leads to economic gain (Rompuy, 2022[51]). For example, the US's sport governing body for amateur collegiate athletics (National Collegiate Athletics Association – NCAA) is subject to the Sherman Act, regardless of its allegedly non-profit or social character.[15]

Under US competition law, behaviours carried out by sports organisations have been assessed under a rule-of-reason approach, seeking to determine whether restrictions are undue (i.e., whether their harm to competition outweighs their pro-competitive effects). "Per se" rule has not been accepted even for horizontal agreements between clubs due to the specificities of the industry, in particular the need for co-operation between clubs to produce their product (Farzin, 2015, pp. 80-92[58]). Therefore, restraints from behaviours of sports organisations are subject to a fact-specific assessment of their actual effect on competition. The objective of the analysis is to determine whether the restraints have anti-competitive

effects that are harmful to the consumer or whether the restraints stimulate competition in the consumer's best interest.[16]

One specificity of US competition law is that professional baseball has been historically exempted from federal antitrust law (see Box 3.1). There are also antitrust exemptions related to the sale of broadcasting rights (see Box 3.2) and union activities and collective bargaining (see section 5).

Box 3.2. The baseball's antitrust exemption in the United States

Professional baseball is exempted from federal antitrust law in the United States, following *Federal Baseball Club v. National League* (1922), where the Supreme Court ruled that the baseball business did not constitute interstate trade or commerce and therefore was outside the scope of the Sherman Act. Later, in *Flood v. Kuhn* (1972), although recognising that the baseball exemption was "an established aberration", since professional baseball is undeniably engaged in interstate commerce, the Supreme Court upheld the baseball exemption in the interest of *stare decisis* (respect for precedent) and Congressional inaction on the topic. Other professional sports are not exempted from antitrust law, despite the similarities with baseball.

The Curt Flood Act of 1998 partially abolished the baseball exemption, only as regards practices directly relating to or affecting employment of Major League Baseball (MLB) players. However, the 1998 Act did not change much in practice, as MLB players are unionised, and therefore prevented from filing antitrust suits against their league to resolve labour disputes, in light of the general antitrust exemption on collective bargaining agreements.

Currently, there are several ongoing cases where the baseball exemption is being challenged, including a case brought by minor league clubs and supported by the United States Department of Justice.

Source: *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs,* 259 U.S. 200 (1922); *Flood v. Kuhn,* 407 U.S. 258 (1972); Gaglio and Stross, (2022[59]), United States: antitrust in organised sports, https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2023; Rompuy (2022[51]), Antitrust challenges to sports governance: EU and US perspectives.

Another issue that has generated a lot of debate in the United States refers to the characterisation of sports organisations (in particular, sports leagues) as joint ventures of separately owned clubs, and not as a single economic entity, for competition law purposes. In 2010, the US Supreme Court has ruled that sports leagues are considered a joint venture between independent clubs and are subject to scrutiny under Section 1 of the Sherman Act (OECD, 2010, pp. 28-31[15]).[17]

3.2. Areas where competition concerns have emerged

As mentioned above, sports are a complex industry, involving many economic activities and different actors, which often interact in horizontal or vertical relationships. Competition issues have emerged in a series of areas, involving practices of sports organisations and clubs, but also other stakeholders of the industry (such as broadcasters and sellers of tickets).

In particular, the organisation of sports leagues/tournaments has been often scrutinised, concerning behaviours that prevent breakaway leagues from being established and anti-competitive practices against clubs (both incumbents and potential new entrants). Likewise, the sports labour market has been subject to competition enforcement, notably as regards restrictions imposed on athletes by legal rules, sports associations or agreed among clubs (e.g., wage-fixing and no-poach agreements, as well as transfer

rules). These two topics will be the focus of the remainder of this paper, building on recent cases that competition authorities have been facing worldwide.

Besides these two issues, competition discussions have involved many other areas and economic agents. For example, as indicated in section 2.1.3, the commercialisation of sports broadcasting rights usually represents the main revenue source of sports organisations and have received significant attention from competition authorities. Most cases in this area have been on collective selling of broadcasting rights, since this practice could be considered a cartel (see

Box 3.3. Sale of sports broadcasting rights

The sale of sports broadcasting rights can be done individually (by each team) or by joint selling. When done individually, each club usually sells the broadcasting rights of its home matches. When done jointly, all clubs of a league or championship bundle the broadcasting rights of all the respective matches and sell them together, either through an assigned association formed by the participating clubs or through the sports organisation governing the sport at stake. In the latter case, the revenues from the sale of broadcasting rights are shared among all participating clubs, either equally or (more commonly) based on criteria such as performance, prestige and market size.

Collective selling of exclusive packages has been the dominant model for commercialising sports broadcasting rights worldwide. For example, FIFA reported that 88% of broadcasting rights of top-tier football competitions are sold collectively. However, collective selling could constitute – at least in theory – a cartel, where the competitors (clubs) collude to artificially create a monopolistic package and extract supra-competitive rents from their customers (broadcasters), increasing prices and limiting output.

On the one hand, collective selling can allow clubs and/or leagues to exploit their market power and increase prices and restrict the availability (i.e., the number and extent) of rights for sports events (so-called blackout), in order to further increase prices and reduce the impact on attendance revenue. This is likely to reinforce the market position of dominant incumbent broadcasters, as they may be the only ones that are able to bid for all the rights within the package. On the other hand, collective selling of broadcasting rights can increase competitive balance by ensuring more financial equity among the clubs participating in the league, through the redistribution mechanism to allocate the revenues arising from the sale of the broadcasting rights, although this depends on how the redistribution system is designed. Creating a single point of sale also increases efficiency by reducing transaction costs for broadcasters and clubs, especially in single-elimination tournaments. This model also allows the sale of the entire league, which is more valuable than the sum of the individual matches, creating more incentives for the broadcaster to invest in promoting the league as a whole, as well as more money to the clubs, which could increase the quality of the matches. Moreover, supporters value the whole championship rather than individual games, since the most relevant aspect for consumer interest is the year-long rivalry. But, most importantly, collective selling is beneficial for consumers, who need to pay for just one subscription to watch all matches of a certain league.

In the United States, the major professional sports leagues are allowed to sell collectively sports broadcasting rights, as this practice is exempted from competition law by the Sports Broadcasting Act of 1961. Nevertheless, the exemption applies only to free-to-air TV, and not to pay-TV or OTT services. This could help to explain why free-to-air TV remains dominant in sports broadcasting in the United States.

In the European Union, the collective selling of sports broadcasting rights (particularly regarding football) has also been permitted if a set of conditions are fulfilled: (i) limited duration of exclusive contracts (typically three seasons); (ii) partial unbundling and no-single-buyer rule (division of broadcasting rights into a number of separate packages to be sold to different broadcasters, including as regards traditional broadcasting and online streaming); (iii) transparent and non-discriminatory

competitive bidding process to sell the rights, with trustee supervision; (iv) fall-back clause (unused rights must fall back to the individual clubs for parallel, competitive exploitation; if the club's home match is not covered by a live package, the club must have the right to individually sell the corresponding broadcasting right). These remedies were first designed in three leading cases in the 2000s and since then have been followed by national competition authorities in local cases, albeit not always in a systematic way.

Source: Budzinski, Gaenssle and Kunz-Kaltenhäuser , How Does Online Streaming Affect Antitrust Remedies to Centralized Marketing? The Case of European Football Broadcasting Rights; Evens, Iosifidis and Smith , The Political Economy of Television Sports Rights; FIFA , FIFA Professional Football Landscape, https://landscape.fifa.com/en/landscape; Case COMP/C.2-37.398 (*Joint selling of the commercial rights of the UEFA Champions League*), Commission Decision of 23 July 2003; Case COMP/C-2/37.214 (*Joint selling of the media rights to German Bundesliga*), Commission Decision of 19 January 2005; Case COMP/38.173 (*Joint selling of the media rights to the FA Premier League*), Commission Decision of 22 March 2006.

). Other stages of the broadcasting value chain have also been raising competition concerns, for example discriminatory practices against pay-TV platforms not vertically related to the content distributor or against some specific types of pay-TV platforms (e.g., online platforms).[18]

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Source: Budzinski, Gaenssle and Kunz-Kaltenhäuser (2019, p. 4[60]), How Does Online Streaming Affect Antitrust Remedies to Centralized Marketing? The Case of European Football Broadcasting Rights; Evens, Iosifidis and Smith (2013, p. 41[31]), The Political Economy of Television Sports Rights; FIFA (2023[61]), FIFA Professional Football Landscape, https://landscape.fifa.com/en/landscape; Case COMP/C.2-37.398 (*Joint selling of the commercial rights of the UEFA Champions League*), Commission Decision of 23 July 2003; Case COMP/C-2/37.214 (*Joint selling of the media rights to German Bundesliga*), Commission Decision of 19 January 2005; Case COMP/38.173 (*Joint selling of the media rights to the FA Premier League*), Commission Decision of 22 March 2006.

Another area where competition concerns have emerged is the sale of tickets to sports events. Different competition issues have arisen here, such as discriminatory sales (e.g., geographic restrictions that favoured consumers from specific locations) and exclusive agreements (e.g., with credit card companies, restricting payment methods), suggesting that sports organisations should ensure non-discrimination and reasonable access to tickets.[19] Moreover, there have been cases of collusion, in which sports organisers and ticket retailers entered into illegal agreements to increase ticket prices.[20]

Collusive behaviour has also arisen in sports betting,[21] and in the market for exclusive product licensing and branded products.[22] In addition, the setting of sporting equipment standards (usually through exclusive agreements that allow the use of only one type of equipment, such as balls, rackets, shoes, car tyres etc.) has attracted attention of competition authorities, as this could prevent market entry and innovation.[23]

The European Union has also been assessing the sports industry under the state aid regime. In sum, such cases refer to subsidies granted either to finance sports infrastructure (e.g., arenas or stadiums) or individual clubs (usually for preventing their insolvency or bankruptcy). While the European Commission has adopted a more favourable approach towards state support for sports infrastructure, it has been more cautious when it comes to financing individual clubs.[24]

These practices may impact different stakeholders (e.g., competing leagues, clubs, athletes, broadcasters, sellers of tickets, sponsors and advertisers, betting companies etc.) in different ways, but they ultimately have negative effects on consumers (supporters), who might face: less choice (e.g., less tournaments or clubs), lower quality (e.g., less attractive competitions and innovations), and higher prices (e.g. higher fees for attending or watching matches).

4 Organisation of sports leagues

This section will analyse how competition works in the market for organising sports competitions (leagues and other tournaments), more specifically whether this market should constitute a monopoly or whether there is room for competing leagues (section 4.1). It will also address issues related to potential anti-competitive behaviour in that market (section 4.2).

4.1. Monopoly of sports leagues

As discussed above, unlike other sectors, in the sports industry competitors are essential to produce sports competition. There is no economic rationale for clubs to monopolise a championship, driving competitors out of the market and becoming the only player. Nonetheless, sports governing bodies have significant incentives to monopolise the market for the organisation of competitions and reap the benefits of a monopoly (e.g., higher profits). In practice, in most sports there is only one national premier/top league/tournament, organised by the respective sports governing body (Budzinski and Feddersen, 2022, p. 4[45]).[25]

On the one hand, it is argued that a monopoly in the organisation of premier leagues/tournaments would make economic sense. A monopoly would increase consumer (supporter) welfare, as it offers a competition of the highest quality competitors, with the best competitive balance among competitors and the best quality regarding the uncertainty of outcome (Budzinski and Feddersen, 2022, p. 4[45]). Only one international/regional/national/local champion could be crowned annually, and therefore a monopoly would deliver the best possible competition organising services (Budzinski and Szymanski, 2015, p. 424[46]; Noll, 2003, p. 547[27]). Conversely, competing leagues or tournaments, where the best talents are split, would be less attractive (Budzinski and Feddersen, 2022, p. 4[45]). Moreover, as already discussed, sports leagues can be viewed as multi-sided markets, and network effects push such markets towards a monopoly of the sports organiser (Klein, 2023, p. 5[28]).

Indeed, there are very few successful examples of competition between competing leagues within the same territory in history.[26] For instance, in the United States (but also in other jurisdictions) there were many attempts of new competing leagues (breakaway or rival leagues), but they only existed for few years and ultimately went bankrupt or merged with the incumbent league (Budzinski and Feddersen, 2022, p. 4[45]; Noll, 2003, p. 547[27]) – including the recent PGA/LIV golf case (see Box 4.2 below). Additionally, the European sports model, according to which each sport has a single governance structure at each geographical level (i.e., national/regional/international), seems to reflect the rationale for a monopoly in the organisation of competitions. Indeed, the organisation of sports in Europe has been traditionally characterised by a "monopolistic pyramid structure" (EC, 2007[54]),[27] and sports associations are understood to have, "within their geographical jurisdiction, a monopoly over the governance and the organisation of the sport".[28]

On the other hand, it has been suggested that introducing competition within the market for the organisation of sports competitions would be both possible and positive. From this perspective, the current scenario would be a result of the search of market power by major leagues, in both input (athletes/clubs) and output (supporters, broadcasters, sponsors etc.) markets. Monopoly power allows firms – in this case, major leagues – to eliminate competitive pressure and to increase prices, lower levels of output, as well as reduce

quality and innovation to the detriment of the other market participants. (Klein, 2023, p. 5[28]; Ross, 2003, pp. 569-571[62]).

Although leagues from different geographic levels (e.g., FIFA Club World Cup, UEFA Champions League and the respective national leagues) could be considered competitors, in practice they seldom are, since such events are commonly organised by related entities within the pyramid structure and regarded as complementary, normally planned to avoid scheduling clashes. Some could also suggest that there would be competition between leagues in different regions (e.g., Major League Cricket in the US, Indian Premier League – IPL and the events of the England and Wales Cricket Board – ECB) or leagues of different sports (inter-sport competition, e.g., between NBA and NFL), which could exercise competitive pressure and constrain the exercise of market power by the incumbent sports organisation. However, if substitutability between teams in the same league is low (which seems to be supported by empirical evidence), it can be expected to be much lower across leagues of different sports or regions,[29] as well as other types of entertainment (Winfree, 2009[63]; Ross, 2003, p. 570[62]). Furthermore, even if inter-sport competition were substantial,[30] sports organisations would still be able to exercise their market power against athletes/clubs without being subject to significant constraints in light of the absence of intra-sports competition (i.e., competition between different organisers within the same sport) (Klein, 2023, p. 5[28]).

Promoting competition between premier/top leagues would also be financially attractive (Noll, 2003, pp. 547-548[27]) and increase consumer welfare, as it would expand the number and frequency of premier-level events, reduce prices for tickets and broadcasting, as well as produce more innovative and interesting products (Budzinski and Feddersen, 2022, pp. 4-5[45]; Houben, Blockx and Nuyts, 2022, p. 207[64]). Competing leagues could also benefit clubs, since they could attract more supporters and, consequently, more revenue (Houben, Blockx and Nuyts, 2022, p. 207[64]). At the same time, this could also be positive to other stakeholders operating in the multi-sided market (such as broadcasters and sponsors), since the market power of current dominant leagues would be reduced.

In recent years, there have been several attempts to establish breakaway leagues worldwide. For example, this was the case of Icederby International speed skating competitions (vis-à-vis International Skating Union events), the football European Super League (vis-à-vis FIFA and UEFA league), LIV Golf events (vis-à-vis PGA Tour events) and Confederation of Professional Baseball Softball Clubs competitions in India (vis-à-vis Amateur Baseball Federation of India). In these cases, the incumbent leagues reacted energetically to the creation of alternative tournaments (see section 4.2), and in some of them supporters also reacted strongly against the new proposals.

For Houben (2023, pp. 20-21[47]), determining whether a monopoly should exist depends on each sport, since this will be the case only if the minimum efficient scale relative to the aggregate market of the particular sport is equal or greater than the market size for that sport. Some sports, particularly those which are not highly mediatised and monetised, with few high-quality athletes, tend to lead to a monopoly, where there is only room for one organiser of leagues/tournaments. Conversely, where the minimum efficient scale is lower than the aggregate market size of the sport concerned, there will be space for multiple parallel competing leagues/tournaments. Whether a given sport fits in one or other category requires a case-by-case analysis.

Regardless of the existence of a monopoly in the market for organising sports tournaments/leagues, there are policy alternatives for sports governance that could provide significant benefits to stakeholders, such as clubs, supporters, broadcasters, and sponsors.

According to some authors, giving a sports governing body both regulatory and organisational powers is problematic as it can lead to a conflict of interest, since the same organisation responsible for making and applying the rules of the game (including authorising new sports events and imposing sanctions on participants not complying with the rules) also operates as a commercial player in the market of organising sports competitions (Houben, 2023, p. 21[47]). Although this conflict of interest is not itself anti-competitive, the current set-up would facilitate restrictions on competition by the dominant sports organisations, such

as preventing rivals from entering the market (Colomo, 2022, pp. 339-340[21]). To address this issue, some suggest to separate the role of market-internal regulator from the role of commercial organiser of major leagues/tournaments (Houben, 2023, pp. 21-22[47]; Budzinski and Feddersen, 2022, p. 11[45]).[31]

From this perspective, where the existence of a monopoly makes economic sense the organisation of leagues/tournaments could be theoretically outsourced to a third party, and the absence of competition in the market could be compensated by regular competition for the market. Accordingly, a licence to organise the league/tournament could be awarded through a competitive tender process with clear and transparent criteria, which would ultimately result in more options for innovation (e.g., as regards the selection of participants, tournament modes, scheduling etc.), as well as significantly reduce the incentives to abuse market power (Budzinski and Feddersen, 2022, pp. 11-12[45]).

Other more intrusive interventions could include specific gatekeeper regulation for sports organisations (such as the proposal currently under discussion in the UK for men's football) or public utility regulation to be enforced by public authorities (Budzinski and Feddersen, 2022, p. 15[45]).[32]

4.2. Anti-competitive behaviour in the organisation of sports leagues

As discussed above, sports organisations (i.e., sports governing bodies and leagues, as indicated in paragraph 0) usually do not face significant competitive pressure due to the *de facto* monopoly they have in the organisation of leagues/tournaments. Therefore, they often have significant market power and incentives to engage in anti-competitive practices in the organisation of sports competitions (and also in related markets), with anti-competitive effects that may impact athletes, clubs, supporters, broadcasters, sponsors and advertisers.

In the market of the organisation of sports leagues/tournaments, there are two types of conducts by incumbent sports leagues where competition concerns may emerge: (i) behaviours against competing leagues and (ii) behaviours against clubs or athletes that participate or might participate in a league, including exploitative practices.

The conducts of sports organisations can be assessed under a horizontal or vertical approach. On the one hand, sports organisations are associations of clubs created to implement the necessary co-ordination among competitors within a sports league/championship. In that sense, sports organisations could be seen as a horizontal agreement among the participants of the league/tournament, and decisions of the organisation would reflect the decisions of its own members. Anti-competitive behaviours of sports organisations should therefore be assessed under the rules on horizontal agreements, focusing on anti-competitive effects on potential organisations of competing events. On the other hand, sports organisations can be seen as an undertaking that acts independently from their members and has a dominant position in the market of organising sports events, controlling access to the market. Under this approach, anti-competitive restrictions would be vertically imposed on different levels of the market, affecting for instance the members of the sports organisation (clubs or athletes) (Budzinski and Szymanski, 2015[46]).

Although each of these different approaches depend on special features of the case at stake and may impact the theories of harm that will be used to build an antitrust case, the methodology that will guide the competition assessment will not vary substantially. As described above, these behaviours are reviewed by competition authorities under the rule of reason, which means that the actual or potential effect on competition of the sports leagues' behaviours should be examined case by case. Moreover, even if their behaviours restrict competition, they still can be justified if the anti-competitive effects are inherent in the pursuit of a legitimate objective and proportionate to it. However, these justifications should be specific and detailed, and therefore abstract or vague references to the integrity of sports, ethics, fair play and similar principles should not be enough to justify restrictions on competition (Houben, Blockx and Nuyts, 2022, p. 210[64]; Houben, 2023, p. 11[47]).

The most common behaviour in the organisation of sports leagues/tournaments that has been raising competition concerns in many jurisdictions refers to non-compete obligations or eligibility rules often imposed by sports organisations on their members (clubs or individual athletes). In fact, most sports organisations establish an ex-ante control system over third-party events (such as breakaway leagues), which means that new competitions require a prior approval by the sports organisation. In addition, their members are prohibited from participating in unauthorised events and those who take part in such competing events are sanctioned (including with fines and/or the withdraw of licence to participate in "official" events).

As already mentioned, sports organisations usually perform both organisational and regulatory functions simultaneously. This creates a potential conflict of interest, as carrying out the commercial organisation of competitions could prevent them from performing the regulatory role (including the authorisation of new events) independently. Indeed, when sports organisations assess requests for new competing events, they often do not follow objective, transparent, and non-discriminatory pre-established criteria. Furthermore, their decisions are rarely subject to review by an independent authority. Then, sports organisations not only have the power to prevent competitors from entering the market, but also have an economic interest in denying market access and favouring their own events. It is also common that sports organisations tie up the inputs required to stage a rival tournament through exclusive contracts with prohibitive sanctions in case of non-compliance.[33] Therefore, these practices can be characterised as anti-competitive infringements, affecting not only organisers of competing leagues, but also clubs and individual athletes (as they cannot join breakaway events), as well as consumers (who may not benefit from alternative and potentially more innovative events). The existence of very few examples of successful competing sports leagues, as described above, can result from such anti-competitive practices.

Nevertheless, sports organisations claim that non-compete or eligibility rules are necessary to achieve legitimate sports objectives, such as the integrity of sports, the protection of health and safety, the organisation and proper conduct of competitive sport, and solidarity between participants. For instance, the *ex-ante* control system would ensure the proper functioning of the match calendar, guaranteeing that all clubs are able to complete all matches and that players have a healthy balance between rest and matches. Moreover, this system would ensure uniform sporting rules and would be necessary to implement solidarity payments among clubs. Eligibility rules could also protect the economic interests of sports organisations preventing free riding by a rival (Colomo, 2022, p. 335[21]; Houben, 2023, pp. 11-12[47]).

Thus, to determine whether sports organisations engage in anti-competitive behaviour, competition authorities should assess on a case-by-case approach (i) whether the objectives pursued by the allegedly anti-competitive practices are legitimate, but also (ii) whether these practices are inherent and proportionate to those objectives (i.e., whether the legitimate objectives cannot be achieved without a less restrictive behaviour).

The European Union has some experience in analysing practices of sports organisations that prevented the establishment of breakaway leagues or tournaments. For example, in the early 2000s, the European Commission has raised competition concerns regarding the bundling of the regulatory and commercial functions of sports governing bodies, as this could lead to conflict of interests (EC, 2001[65]). The ECJ later provided further clarification on the competition analysis of the dual roles of sports organisations. According to the ECJ, although concentrating within the same entity the roles of running sports events and authorising events by third parties is not itself anti-competitive, there could be an abuse of dominance if the power to authorise events was not subject to restrictions, obligations and review (Houben, 2023, p. 6[47]; Rompuy, 2022[51]).[34]

More recently, exclusionary restrictions in sports have been under intense discussion in the European Union, with both supranational and national cases (e.g., in Belgium, Finland, Germany, Ireland, Italy, Spain and Sweden), involving different sports such as basketball, bodybuilding, equestrian sports, football, ice hockey, motor racing, padel, sailing, wrestling and swimming (Orth, 2021, pp. 2-3[57]; Szyszczak, 2018, pp. 192-194[66]; Klein, 2023, p. 3[28]). See Box 4.1 on the leading cases on this topic in the European Union.

Box 4.1. International Skating Union (ISU) and European Super League (ESL) cases in the European Union

International Skating Union (ISU)

The International Skating Union (ISU) is the international skating governing body, being responsible for regulating and managing ice skating and speed skating on ice. Under ISU eligibility rules, speed skaters participating in competitions that are not authorised by ISU are subject to severe sanctions, including a lifetime ban from all major international speed skating events. In 2014, two professional speed skaters lodged a complaint before the European Commission, alleging that ISU rules infringed EU competition law and prevented them from taking part in a new event organised by Icederby International Co. Ltd, a Korean company.

In December 2017, the European Commission decided that ISU rules were in breach of Article 101 TFUE, enabling ISU to pursue its own commercial interests to the detriment of athletes and organisers of competing events. Indeed, the European Commission considered that the eligibility rules constituted a restriction of competition by object, since they prevented independent organisers from establishing their own speed skating competitions because they were unable to attract top athletes. Although the European Commission understood that it was not necessary to analyse the effects of the conduct, it explained why ISU's eligibility rules had the effect of restricting competition. In addition, the European Commission stated that the anti-competitive behaviour was aggravated by arbitration rules, which made effective judicial protection against a potentially anti-competitive decision of ISU more challenging. While it was not subject to a fine, the decision required ISU to stop its illegal practice, particularly imposing or threatening to impose unjustified penalties on athletes who participate in competition that pose no risk to legitimate sports objectives. If the eligibility rules are maintained, they should be based on objective, transparent and non-discriminatory criteria.

The European Commission's decision was upheld by the General Court of the European Union in December 2020, which confirmed that ISU eligibility rules restricted competition by object, within the meaning of Article 101 TFEU. Nevertheless, the General Court concluded that the European Commission was not entitled to consider that ISU's arbitration rules were an aggravating circumstance. ISU appealed against the General Court's ruling, and a decision by the ECJ is pending. In December 2022, the Advocate General's non-binding opinion was issued, proposing to set aside the judgment of the General Court. According to the opinion, the decision of the General Court that there was a restriction by object is not well founded, being contrary to the settled case-law of the Court.

European Super League (ESL)

In 2021, twelve European football clubs signed an agreement to create a new tournament, the European Super League (ESL), in parallel with the UEFA Champions League. UEFA and FIFA refused to recognise the new league and warned that any club or player who join the new competition would be expelled from competitions organised by FIFA and its confederations (including UEFA). Fans all over Europe also reacted against the ESL, especially in light of its closed format, gathering wealthy clubs and motivated by economic interests, which would undermine sporting merit and make national championships less interesting.

The ESL lodged a complaint against FIFA and UEFA before the Commercial Court of Madrid, alleging that the behaviour of the football governing bodies was anti-competitive. In April 2021, an interim measure was imposed by the Spanish Court to prevent FIFA and UEFA from adopting any measure or announcement to impede or hinder the organisation of the ESL. The Spanish Court also requested the ECJ to rule on whether certain FIFA and UEFA rules, as well as the warnings or threats of sanctions comply with EU competition law. The preliminary ruling of the ECJ is still pending, but in December

2022, an Advocate General delivered his non-binding opinion, concluding that the rules providing for prior approval by FIFA or UEFA of new competitions are inherent in and proportionate to the pursuit of the legitimate objectives related to the specific nature of sport, and therefore compatible with EU competition law. The interim measure imposed by the Commercial Court of Madrid in 2021 was lifted in 2022 but reimposed in February 2023 after a decision of the Provincial Court of Madrid.

Source: Case AT.40208; Case T-93/18; Case C-124/21 P; Pieza de Medidas Cautelares 150/2021 – 0001; Recurso de Apelación 1578/2022; Case C-333/21 (ESL)

The issue of breakaway leagues has also been attracting attention outside the European Union, for example in India on baseball, table tennis and cricket (CCI, 2022[67]; 2021[68]; 2018[69]); as well as mixed martial arts (MMA) in the United States.[35] A similar discussion regarding golf has recently occurred in the United States, which ultimately led to the merger of the two competing leagues (see Box 4.2).

Box 4.2. Golf in the United States

PGA Tour held a monopoly in the organisation of major professional golf tours in the United States until 2021, when the Saudi-Arabia-based LIV Golf was created to establish a breakaway league. It proposed an innovative format, as well as significantly enhanced players prize pools. The first LIV Golf tournament occurred in 2022, with some players from PGA Tour taking part given the extremely lucrative contracts. Since the PGA Tour imposes non-compete rules on its athletes, requiring them to obtain prior, written approval before participating in non-PGA events, the players who joined LIV events were sanctioned with fines and suspension from taking part in PGA Tour events, even though some players had expressed an interest in competing in both tournaments.

In 2022, some of the breakaway athletes filed an antitrust lawsuit in the US District Court for the Northern District of California against the PGA Tour, alleging that the later caused harm to players and foreclosed the entry of the first competing golf league in decades. LIV Golf has later joined this lawsuit. The US Department of Justice also started investigating the PGA Tour for potential anti-competitive practices, in particular whether LIV Golf was compelled to allocate more resourced to do business compared to what it would have done if athletes were permitted to play on both tournaments.

In June 2023, the PGA Tour and LIV Golf announced that they would end their litigation and merge. While the transaction has not yet been assessed by the US antitrust authorities, it has been argued that it restricts competition to the detriment of sports consumers and athletes, by eliminating the benefits that the coexistence of two national golf tours could bring, including more innovative competitions and more bargaining power to professional golfers. On the other hand, it is also stated that merging both leagues will ensure that all the best players will compete on the same league, which increases the quality of the game and the attractiveness to consumers, although it is asserted that this outcome could be achieved absent the merger. In addition, it is still not clear whether and how the above-mentioned investigation underway by the DOJ will be affected by the announced merger.

Note: The merger between PGA Tour and LIV Golf also comprises PGA European Tour, which is responsible for organising golf competitions in Europe. In July 2022, golfers who had taken part in the LIV breakaway competitions and had been suspended from PGA European Tour events have filed an arbitration claim against PGA European Tour, arguing that it had violated competition law. In April 2023, the arbitration rejected the athletes' claim, indicating that the assessed behaviour did not restrict competition either by object or effect (Sport Resolutions Case SR/165/2022, Golfers v PGA European Tour, decision of 3 April 2023, https://www.sportresolutions.com/decisions/view/golfers-v-pga-european-tour).

Sources: Gaglio and Stross (2022[59]), United States: antitrust in organised sports, https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2023; Forbes (2023[70]), PGA Tour Merger With LIV Golf Should Cause Concern For Antitrust Regulators, https://www.forbes.com/sites/marcedelman/2023/06/06/pga-tour-merger-with-liv-golf-should-cause-concern-for-antitrust-regulators/?sh=14afff772363; Needham, (2023[71]), 5Qs: Friedman and Crane Shed Light on Issues Surrounding Professional Golf Merger, https://michigan.law.umich.edu/news/5qs-friedman-and-crane-shed-light-issues-surrounding-professional-golf-merger.

Besides behaviours aiming at preventing new sports tournaments/leagues, other conducts of sports organisations within the established competition and directly related to the clubs (either incumbents or potential new entrants) can also raise competition concerns. These practices are also examined under the rule of reason, and potential justifications to achieve sports objectives are taken into account, following the same methodology described above on behaviours against competing leagues.

One example of such practices concerns the imposition of licensing requirements on clubs as a condition to participate in a league. Such requirements vary across sports and jurisdiction, covering different aspects (e.g., the obligation to meet minimum financial and governance standards or to own or have access to a stadium of a given capacity) and may raise competition concerns, as they restrict the behaviour of clubs within the league (either incumbents or potential new entrants). Nevertheless, such requirements may be justified to achieve legitimate sporting objectives in a proportionate fashion.

One example of licensing requirements concerns minimum financial conditions. While these obligations may seek to ensure the financial stability of clubs and the long-term viability of sports tournaments, they might also distort competition by limiting the ability of clubs to invest and recruit new talents, with a stronger effect on smaller or new clubs, which could face more difficulties to be promoted or enter the market. Another example relates to rules limiting the ownership of clubs, with the objective of guaranteeing that commercial interests do not outweigh the essential nature of sports (see Box 4.3).

Box 4.3. Requirements imposed on clubs by sports organisations

UEFA Financial Fair Play Regulations

Since its introduction in 2010, the Financial Fair Play (FFP) Regulations imposed by UEFA on clubs in order to participate in the Champions League has generated debate in Europe. As mentioned in section 2.1.3, these rules concern the solvency of clubs, as well as how they are funded and how their funds are used. Despite the objectives these rules aim to achieve, including to ensure more discipline and rationality in club finances to protect the long-term viability of clubs, it has been argued that these regulations would have many anti-competitive effects, such as restriction of investments, fossilisation of the current market structure, reduction of the number of transfers of players, and foreclosure of competing organisers from entering the market. In addition, FFP rules would have a stronger restrictive effect on mid-sized or small clubs than on big clubs, which already have increased revenue sources, reducing the competitiveness of leagues. In that sense, the FFP regulations would not succeed in improving competitive balance and uncertainty in sports competition.

Nevertheless, the FFP regulations have been considered pro-competitive by the European Commission, and particularly consistent with the EU state aid policy. The FFP regulations could help ensure that football clubs compete on a level playing field, where no special advantages are granted to the largest teams. The European Commission has even indicated that the FFP regulations could be adapted and used by other sports.

DFL 50+1 ownership rule in Germany

In 2021 the Bundeskartellamt analysed the DFL 50+1 ownership rule that prevents investors from taking control of German football clubs (see section 2.1.3). The German competition authority concluded that while limiting the participation of entities controlled by not-for-profit clubs “undoubtedly constitutes a restriction to competition”, the rule escaped the prohibition of anti-competitive agreements since it intended to ensure the club character of the sport and to guarantee a degree of competitive balance. In sum, the 50+1 ownership rule was considered appropriate and proportionate for achieving its goals.

However, the Bundeskartellamt was concerned about the so-called benefactor exemption, according to which DFL could grant an exemption to the 50+1 rule if an investor had substantially supported the parent club's football activities for more than 20 years. In the view of the competition authority, the coexistence of these two rules could distort competitive balance to the detriment of the clubs which do not benefit from the exemption. To address the concerns of the competition authority, in 2023 DFL has committed to abolish the benefactor exemption. The three clubs that already enjoyed the exemption at the time were protected but were required to allow more members to participate in a similar way to the other clubs and to share the benefits by paying a compensation amount.

Source: Kalashyan (2022[72]), The game behind the game: UEFA's Financial FairPlay Regulations and the need to field a substitute; Andrews and Harrington (2016[40]), Off Pitch: Football's Financial Integrity Weaknesses, and How to Strengthen Them, CID Working Paper No. 311, https://scholarlycommons.law.northwestern.edu/njilb/vol39/iss1/3/; Sims (2018[41]), The Circumvention of UEFA's Financial Fair Play Rules Through the Influx of Foreign Investments, https://scholarlycommons.law.northwestern.edu/njilb/vol39/iss1/3/; EC and UEFA (2012[73]), Joint statement on Financial Fair Play (FFP) rules and state aid control in professional football, https://competition-policy.ec.europa.eu/system/files/2022-03/2012_financial_fairplay_and_state_aid_in_professional_football_joint_statement_en.pdf; Bundeskartellamt (2021[74]), Bundeskartellamt provides preliminary assessment of DFL's 50+1 ownership rule, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/31_05_2021_50plus1.html; Bundeskartellamt (2023[75]), 50+1 proceeding – commitments offered by DFL to be declared binding, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/13_07_2023_50+1.html.

The imposition of entry fees to clubs promoted from lower divisions is another example of a requirement that has raised competition concerns, as this would prevent new clubs from entering the market or distort the playing field vis-à-vis the clubs that are already in the league but in lower divisions (see Box 4.4).

Box 4.4. Entry fees imposed on clubs promoted from lower divisions

Chile

In 2016, the Chilean National Economic Prosecutor (FNE) opened an investigation regarding an entry fee (of approximately USD 2 million, later reduced to around USD 1 million) imposed by the Chilean National Professional Football Association on clubs promoted from the third to the second division of the professional football league in Chile. After the investigation, FNE concluded that the fee was anti-competitive as it reduced competition in the league by excluding from the market the teams that could not pay the fee and negatively affecting the teams that were able to pay the fee. Therefore, FNE requested the Competition Tribunal (TDLC) to order the termination of the practice and the imposition of fines.

In 2020, TDLC concluded that the fee was anti-competitive since it constituted a barrier to entry to the market of sports events, and sanctioned the practice of the Chilean National Professional Football Association with fines of around USD 2.7 million. This decision was confirmed by the Chilean Supreme Court in 2021.

Spain

In 2015, the Spanish National Markets and Competition Commission (CNMC) initiated an investigation against the Basketball Clubs Association (ACB), which organises the main national basketball tournament. In particular, CNMC investigated the imposition of administrative and financial requirements on clubs to be promoted to the top flight, particularly the payment of an entry fee (higher than the average income of a second-division club). In 2017, the CNMC concluded that the entry fee constituted an anti-competitive infringement, substantially distorting competition within the basketball first league as it prevented or made it more difficult for clubs promoted on sporting merit to compete with incumbent clubs. By applying the Meca-Medina test, the CNMC considered that the behaviour did not intend to improve competition or achieve any legitimate objective, being disproportionate and discriminatory. The CNMC imposed a fine of EUR 400 000 on ACB.

CNMC's decision was annulled in first-instance judicial review in 2021. However, the Spanish Supreme Court confirmed CNMC's ruling in 2023, reducing the fines to EUR 200 000.

Source: Chile (2022[76]), Annual Report on Competition Policy Developments in Chile, https://one.oecd.org/document/DAF/COMP/AR(2022)5/en/pdf; Spain (2023[77]), Contribution from Spain, Latin American and Caribbean Competition Forum - Session III: Competition and Sports, https://one.oecd.org/document/DAF/COMP/LACCF(2023)14/en/pdf.

Likewise, rules that prevent clubs from operating beyond their home territory or from being incorporated as a commercial company can also affect competition, by limiting investments and innovation within the current format of competitions.[36]

5 Sports labour markets

There has been much debate in recent times about the application of competition law to labour markets. The OECD explored the topic in a recent roundtable to discuss anti-competitive issues in labour markets (OECD, 2019[78]; 2019[79]).

Competition law enforcement (both anti-competitive practices and merger review) is relevant to address the anti-competitive creation or maintenance of monopsony power in labour markets. As in product markets, collusion is the most detrimental anti-competitive practice in labour markets. Typical practices in this regard include collusive agreements among employers to fix wages or working conditions, as well as no-poach agreements. In addition, non-compete clauses on workers that are not justified by pro-competitive efficiencies, as well as abuses of employer's monopsony power, such as predatory hiring to prevent market entry, could also be tackled by competition law enforcement. Likewise, further anti-competitive concentration of labour input markets could be prevented via merger control (OECD, 2019[78]).

It is widely accepted that competition laws apply equally to anti-competitive restrictions on the demand and the supply side of markets, including labour markets. However, collective bargaining agreements between employees and employers are typically not subject to the application of competition law, considering the social objective they pursue and explicit exemptions adopted in many jurisdictions (OECD, 2019, p. 9[78]).[37] This is especially relevant in the US sports labour markets, where collective bargaining agreements between clubs and players' unions are very common (Rompuy, 2022[51]).[38]

Even if competition law is generally applicable to labour markets, enforcement in this area has been limited.[39] Nevertheless, a trend towards more action from competition authorities in labour markets has been emerging worldwide. So far, the focus has been on restrictive agreements whose effects do not need to be proved, such as wage-fixing and no-poach agreements (including in cases related to sports labour markets, as further discussed below). For instance, some jurisdictions (such as Hong Kong, Japan, Peru, Portugal, the United Kingdom and the United States) have developed guidelines to highlight the risks of these practices and to clarify that they are unlikely to generate efficiencies (OECD, 2019[78]).

When it comes to sports labour markets, it should be noted that professional athletes have characteristics that differentiate them from most ordinary professionals. First, most professional sporting careers are short by nature. For example, the average career length in the United States' major leagues (NFL, NBA, NHL, MLB and MLS) is less than six years (Forbes, 2015[80]) and elite football players have an average career duration of eight to eleven years (Rey et al., 2022[81]). Second, the gender pay gap is substantially higher in the sports industry (Forbes, 2019[82]). For example, in a 2016 study that covered 460 occupations, athletes experienced the widest gender pay gap (around 150% difference) (Time, 2016[83]). Third, the sports industry is labour intensive, and the final product is not easily separated from the workers themselves (Rosen and Sanderson, 2001, pp. F48-F49[84]). Fourth, professional athletes are often exposed to substantial labour market power, as players are highly specialised workers and have few employment alternatives compared to employees in many other industries in light of limited-cross sectoral employability (Humphreys and Pyun, 2015, p. 2[85]; Araki et al., 2022, p. 19[86]).

In this context, restrictions on athletes are often imposed by sports associations or agreed among clubs, which could restrain competition for players. While some of these restrictions can be justified considering the specificities of the sports labour market, in some circumstances they can be considered competition law infringements.

It should be noted the status of professional athletes as employees is not always straightforward, particularly (but not exclusively) in individual sports, where athletes are often considered independent contractors or self-employed workers, meaning that they receive remuneration for participating in leagues and matches but are not subject to labour benefits, such as paid leave and social protection (ILO, 2020[87]). These labour law considerations will not be addressed by this paper.

The following sections will discuss key competition issues in sports labour markets that have received the most attention from competition authorities. These are no-poach and wage-fixing agreements (section 5.1), as well as transfer rules (section 5.2). Other related topics that have also been assessed by competition authorities include athletes' advertisement and sponsorship opportunities,[40] student athletes,[41] minimum-age requirements,[42] as well as agents,[43] and coaches.[44]

5.1. Wage-fixing and no-poach agreements

No-poach agreements are a particular type of employers' cartel through which they agree to refrain from soliciting, hiring or recruiting one another's employees, removing competition for the employees' labour. Wage-fixing agreements are also collusive practices between employers through which they agree on salaries and wages or on any other aspect of the compensation policy to employees. (OECD, 2019, p. 28[78]).

In the sports labour markets, wage-fixing agreements refer mainly to salary caps, implemented by clubs – often with the involvement of the sport organisation – aiming at harmonising or co-ordinating wages. Salary caps can involve different levels of restrictions, such as individual salary caps (maximum wages paid to individual players), club salary caps or payroll limitations (maximum total wage expenses, without directly restricting the wage of individual players) or luxury taxes (surcharges levied on clubs whose payrolls exceed the salary caps, distributing the proceeds to clubs with lower payrolls) (Rosen and Sanderson, 2001, pp. F64-F65[84]).

No-poach and wage-fixing agreements have been the focus of competition enforcement in labour markets, and many of these cases have been in the sports labour market (see Box 5.1). This suggests that the sports sector is particularly vulnerable to such anti-competitive behaviours, probably because of the limited cross-employability mentioned above, which creates substantial labour market power in favour of employers (Araki et al., 2022, p. 19[86]).

Box 5.1. Competition enforcement against no-poach and wage-fixing agreements in sports labour markets

Mexico

In 2021, Mexican COFECE sanctioned 17 football clubs, the Mexican Football Federation and 8 individuals for having colluded to impose maximum wage caps for female football players. The anti-competitive practice prevented clubs from competing for hiring female players through better wages. The conduct had a negative impact on female players' income and increased the gender pay gap. The practice also affected the markets of male football players, particularly by a no-poach agreement in which clubs agreed to apply a right of retention (i.e., each club had the right to keep their players at the expiration of their contracts). In practice, the clubs segmented the market of players, limiting competition of clubs in the hiring of players, which restricted the mobility of players and reduced their bargaining capacity to get better wages. It was estimated that the illegal practices generated a harm of almost USD 4 million to the market. COFECE imposed fines totalling around USD 8 million.

Poland

In 2022, the Polish Competition Authority (UOKiK) sanctioned the Polish Basketball League and its 16 clubs for illegally colluding to terminate contracts with players and not to pay the salaries for the remainder of the 2019/2020 season, which was terminated early because of the Covid-19 pandemic. According to UOKiK, the parties exchanged sensitive information and eliminated the rivalry for the best players, a relevant factor affecting competition between clubs. Total fines amounted to EUR 197 616.

In 2023, UOKiK issued another decision in the sports labour market, concerning motorcycle speedway. Poland's top speedway league and the national motorsports governing body were sanctioned to pay a fine of EUR 1.2 million for agreeing on maximum remuneration rates for professional motorcyclists competing in Polish leagues between 2013 and 2014, which had limited competition among sports clubs. The practice is also likely to have impacted clubs and individual racers in other jurisdictions, as local salaries serve as a benchmark for athletes playing abroad.

Portugal

In 2022, the Portuguese Competition Authority (AdC) sanctioned 31 football clubs and the national football league for implementing a no-poach agreement, through which the clubs agreed not to hire players who unilaterally terminated their employment contracts between 2019 and 2020 due to the Covid-19 pandemic. Thus, a player who took the initiative to terminate his contract would not be hired by other clubs either in the first or second football leagues in Portugal. This was the first sanctioning decision of AdC in a labour market. The authority imposed a total fine of approximately EUR 11.3 million.

Source: COFECE (2021[88]), COFECE sanctions 17 clubs of the Liga MX, the Mexican Football Federation and 8 natural persons for colluding in the market of women and male soccer players' draft, https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-028-2021_ENG.pdf; UOKiK (2022[89]), Basketball clubs violated competition – decision of President of UOKiK, https://uokik.gov.pl/news.php?news_id=19005; UOKiK (2023[90]), Competition-limiting agreement in speedway – decision of President of UOKiK, https://uokik.gov.pl/news.php?news_id=19643; Autoridade da Concorrência (2022[91]), AdC issues sanctioning decision for anticompetitive agreement in the labor market for the first time, https://www.concorrencia.pt/en/articles/adc-issues-sanctioning-decision-anticompetitive-agreement-labor-market-first-time.

As highlighted in the 2019 OECD roundtable on competition in labour markets, no-poach and wage-fixing agreements have been considered as "by object" or "per se" infringements by competition authorities, since they would be unlikely to generate efficiencies and therefore no evidence of the effects of the conduct are required (OECD, 2019, p. 28[79]).

Indeed, as in labour markets in general, these practices are likely to produce anti-competitive effects on the sports sector. While no-poach agreements reduce the number of clubs competing for players, wage-fixing agreements lead to similar cost structures among competitors, reducing the strategic uncertainty that characterises economic competition. Both practices may limit athletes' mobility, lower salaries and ultimately restrict the ability of clubs to expand their labour force,[45] as well as reinforce the clubs' bargaining power. Such behaviours may also affect investment in training, result in inefficient allocation of athletes among clubs and ultimately reduce the quality of the game and its attractiveness to consumers (Araki et al., 2022, pp. 19-20[86]; Ross, 2003, p. 51[62]; Autoridade da Concorrência, 2021, pp. 11, 37-38[92]; Autoridade da Concorrência, 2022[91]).

Additionally, these negative effects might be even more harmful in the sports labour markets than in other sectors. In the sports industry the output (the game) inherently cannot be distinguished from the inputs (the players). This means that a potential impact on the labour force might more directly affect output and consumers' welfare. For example, as no-poach and wage-fixing agreements may incentivise athletes to move to foreign markets, not only the quality of the games may be compromised, but also the connection of supporters to their club.

Nevertheless, some argue that these practices, especially salary caps, are necessary to ensure competitive balance, and therefore should be treated differently in the sports sector. Accordingly, in the absence of limits to spend in wages, the clubs with more resources would hire the best players from the clubs with less resources, leading to a source of imbalances, which in turn would reduce the uncertainty and excitement of competitions. Thus, salary caps would be a mechanism to limit inequality among clubs and to better distribute talents across teams, making sports competition more intense. In fact, these limitations would be an element of the collaborative relationship of clubs, reflecting the shared nature of the wealth produced by the tournament (Colomo, 2022, pp. 347-348[21]). Other arguments in favour of salary caps are the need to maintain financial stability (Dietl, Lang and Rathke, 2008, pp. 2-3[93]) and the impact on ticket prices and the public financing of new facilities that may be required to generate enough revenues to pay very high salaries (Rosen and Sanderson, 2001, p. F48[84]).

According to these arguments supporting salary caps, at the very least salary caps should be assessed under the rule of reason. Following this rationale, even if more restrictive types of wage-fixing agreements (such as individual salary cap) should be avoided, less restrictive practices (e.g., club salary caps or luxury taxes) could be justified, in contrast with the current practice of considering these conducts "per se" violations.

It should be noted that several sports leagues implement salary caps, such as NFL, NBA and NHL in the United States (the last two also in Canada), as well as the National Rugby League (NRL) in Australia and New Zealand.[46] In those cases, however, wage-fixing agreements are part of collective bargaining agreements between leagues and players unions, and therefore exempted from the application of competition law (Hoey, Peeters and Principe, 2021, p. 16[94]). This argument would not apply outside a collective bargaining agreement, and therefore salary restrictions would still be considered anti-competitive infringements.

5.2. Transfer rules

The transfers of players are regulated by a complex set of rules established by sports organisations, varying substantially across jurisdictions and sports. For instance, these rules may refer to: (i) specific formalities to be followed (e.g., a prior authorisation from the association or the league; authorisation from the former club); (ii) transfer windows outside which players cannot, without exception, move to another club; (iii) limitation of the number of players that a club can employ; (iv) restriction of the nationality of players (e.g., nationality quotas); and (v) financial conditions (e.g., registration fees, training fees or compensation due to early termination of the contract) (KEA; CDES, 2013, p. 95[95]).

In Europe clubs are subject to less restrictions to buy and sell players (although conditions usually exist, such as transfer fees, unless the contract with the player has expired). While in the United States, the transfer of players is much more regulated through collective bargaining agreements[47]. For instance, in the United States transfer fees are strictly limited and players are usually traded for other players or draft picks. Under the draft picks system, new players coming into professional leagues are allocated through a draft system, where clubs take turns in selecting from a pool of eligible players – the lowest-ranked club from the previous season choosing first, followed by the next-to-last and so forth. When a club selects a player, the team receives exclusive rights to hire that player, and other clubs in the league are prevented from signing a contract with the player. Unlike in Europe, clubs do not have incentives to invest in the development of young players, which is outsourced to high school and college sports programmes (e.g., the NCAA) (Hoey, Peeters and Principe, 2021, p. 16[94]; KEA; CDES, 2013, p. 81[95]).

On the one hand, transfer rules aim to ensure contractual stability, and promote competitive and financial balance among clubs. For example, contractual stability rules seek to guarantee that players fully commit to a club for the duration of their engagement. Transfer periods (or windows) prevent movement of players during a tournament or before decisive matches, which could affect the fairness of competitions. Setting limits on transfer of players could also prevent the richest clubs monopolising all of the best players at any time. In addition, transfer rules seek to protect minors and guarantee the search for and development of new talents, for instance by redistribution and solidarity mechanisms (i.e., compensation given to previous clubs that invested in the training of young athletes and contributed to the development of high value players). Moreover, supporters are usually attached to some players (especially the most skilled ones), meaning regular changes in the team rosters could lead to disappointment and might undermine fans' connections with clubs. Therefore, transfer rules can help to ensure team loyalty and cohesion. In addition, nationality requirements could ensure the development of national players (including for the relevant national team). This could also boost investment in homegrown talent and pride among supporters of their club. On the other hand, transfer rules also limit free movement of players from one employer to another, generate substantial monopsony power and might therefore restrict competition for players (Ross, 2004, pp. 49-50[96]; KEA; CDES, 2013[95]).

Unlike no-poach and wage-fixing agreements, practices that limit the transfer of players are assessed under the rule of reason, allowing clubs and leagues to justify restrictive effects as an inherent mean to achieve legitimate sports goals in a proportionate fashion.

Antitrust enforcement on transfer rules has been very common in the European Union, particularly in light of the EU free movement of workers, which has been often invoked alongside competition law arguments. *Bosman* in 1995 is the landmark case on this topic,[48] banning the nationality requirements that limited the permissible number of players from other EU Member States within clubs in national leagues and allowing players to move freely to another club after the end of a contract, regardless of the payment of transfer fees.[49] Other subsequent cases have also contributed to increase competition in the transfer of players.[50] Currently, there are a set of ongoing cases in the EU concerning transfer rules (see Box 5.2).

Box 5.2. Current competition investigations on player transfer rules in the European Union

Royal Antwerp F.C.

The case discusses whether rules establishing a mandatory inclusion by clubs of a minimum number of "home-grown" players (i.e., players trained by a club or others in the same national association) unduly restrict the free movement of workers within the EU and limit competition between clubs in different Member States and between players themselves. A Belgian court submitted a request for preliminary ruling before the ECJ. The Advocate General's non-binding opinion, issued on March 2023, proposes that the ECJ determines that rules requiring a minimum number of "home-grown" players are contrary to the TFEU.

Diarra

This case assesses several FIFA transfer rules, which establish that (i) a player that terminates a contract without just cause shall pay compensation and his/her new club is jointly liable for its payment and (ii) a player can only be registered at a new association once it has received a certificate from the former association, which is only done if there is no contractual dispute between the player and the former club. These rules allegedly infringed competition law and freedom of movement, preventing the claimant from carrying out his profession as a football player. A Belgian court sent the ECJ a request for guidance on these issues.

Swift Hesperange

In addition to look at the rules requiring a minimum number of locally trained players, this case also investigates whether the rules of the Luxembourg football association imposing a scale of prices for all national football players transfers infringe competition law. It also assesses the rules requiring a player who has been permanently transferred between two national clubs to remain in the new club for at least three seasons. A Luxembourgish court was requested to ask preliminary questions on the alleged anti-competitive behaviour to the ECJ.

Source: Case C-680/21 (UL, SA Royal Antwerp Football Club v. Union royale belge des sociétés de football association ASBL); Case C-650/22 (Federation Internationale de Football Associations v. BZ); PaRR (2022[97]), Luxembourg football club lodges UEFA damages suit seeking ECJ guidance, https://app.parr-global.com/intelligence/view/intelcms-q33cxr.

Recent academic literature also indicates that there is room for increasing competition in the European transfer system. For example, (Hoey, Peeters and Principe, 2021[94]) carried out an empirical investigation that showed that the restrictions on the mobility of professional football players in Europe did not achieve its alleged objectives (i.e., the development of new talents and redistribution of revenues from large market to small market clubs, therefore reducing revenue inequality among clubs).

Transfer rules have also been addressed in other jurisdictions, not necessarily by competition enforcement means. In Japan, for example, the Rugby Football Union has abolished the so-called "letter of permission", according to which an athlete could only move to another team to play official matches if his/her previous club had issued such a letter. Likewise, the Japan Boxing Commission has also reviewed the regulations that prevented their athletes from changing the gym to whom they belong (Japan, 2019[98]).

In the United States, rules limiting the mobility of players are usually included in collective bargaining agreements, and therefore are exempted from the application of competition law. This explains why there have been so few antitrust challenges to sports labour restraints in the United States (Rompuy, 2022[51]).

In sum, transfer rules vary substantially across jurisdictions and may allow more or less flexibility to athletes' mobility. On the one hand, ensuring a competitive environment for transfer of players is relevant to increase competition for players, reduce clubs' bargaining power and foster the ability of clubs to expand their labour force. On the other hand, some restrictions may be required to ensure legitimate sports objectives, such as the promotion of competitive and financial balance among clubs. Thus, it is necessary to ensure that restrictions on athletes' mobility are not beyond what is necessary to achieve such goals.

6 Conclusions

Sports are interconnected with national culture and are a powerful instrument to improve social development and cohesion. However, the increasing commercialisation of professional sports and their extensive economic dimension leaves little doubt that sports market participants, including sports governing bodies, leagues and clubs, engage in economic activities and therefore are subject to competition law. Indeed, ensuring economic competition – in addition to sports competition – is essential to the well-functioning of the industry.

When assessing practices in the sports sector, competition authorities should carefully consider the specificities of the industry, such as the interdependence between participants and the need to ensure the competitive balance. It is also necessary to take into account the particular characteristics of each sport, its governance framework and geography, as there is no model universally applicable to all sports. On the one hand, nearly all sports and in all jurisdictions have a self-regulated governance, in which all functions (i.e., regulatory, organisational and judicial) are carried out by governing bodies. On the other hand, while most team sports have a unified governance structure, with one governing body (which often organises leagues and other tournaments), individual sports are commonly subject to multiple governing bodies, which may be connected into a larger framework or not connected at all. In addition, leagues can adopt an open model (with promotion and relegation systems) or a closed model (with a closed list of teams).

The current legal framework already ensures a case-by-case approach, in which the particularities of the sector and the conduct (including its effects and potential justifications) are taken into account by competition authorities. In fact, behaviours in the sports sector are commonly analysed under the rule of reason, except for specific harmful practices (i.e., no-poach and wage-fixing agreements). This means that restrictions on competition can be justified when necessary to achieve sports legitimate objectives (such as sports competition) where there is no less restrictive alternative to do so.

Although the interaction between competition and sports is not a new topic, competition authorities have been increasingly more interested in the issue recently. Not only are more jurisdictions examining behaviours in the sports industry, but also the scope of the assessed practices is also growing. For example, there has been more cases on the organisation of sports events, in particular as regards behaviours of incumbents to prevent the creation of breakaway leagues. Sports labour markets have also been increasingly scrutinised, as illustrated by recent cases involving wage-fixing and no-poach agreements, as well as transfer rules. Moreover, in light of the dynamics of the sector, new sports or events can also be expected to be subject to competition scrutiny in the future, such as eSports and fantasy sports.

Competition law certainly has an important role to play in order to ensure the further growth of the sector, which will ultimately provide consumers with more attractive and affordable products. Nevertheless, other regulatory instruments may also be necessary to guarantee that the commercialisation of the sector does not distort the competitive balance (i.e., the essence of sport). For instance, financial doping has become a major concern, but competition law does not seem to be the most suitable tool for addressing this issue, which may suggest that other types of state intervention are required. Thus, if well designed, other regulatory measures might be able to complement competition law enforcement, ensuring that the market works well.

Endnotes

[1] Brandenburger and Nalebuff (1996[103]) define *co-opetition* as the outcome of the dynamic relationship between competition and co-operation.

[2] It should be noted that this particular feature is similar, to some extent, to heavily regulated sectors (such as some energy markets), where competition is designed to take place in a strictly pre-defined conditions and may also require competitors to interact with each other.

[3] Nevertheless, in some cases individual sports can also be organised through team competitions, such as the Davis Cup and the Billie Jean King Cup for men and women tennis, respectively.

[4] For instance, the global value of sports broadcasting rights reached USD 55.2 billion in 2022 (Sports Business, 2022[112]).

[5] As will be discussed in section 4.2 below, this rule has already been challenged as being anti-competitive, although the Bundeskartellamt has decided that it was pro-competitive.

[6] For instance, there has been recent complaints with the European Commission in this regard vis-à-vis the funding mechanism of certain clubs, in particular SK Lommel in Belgium and Paris Saint-Germain in France (Bloomberg, 2023[117]; LALIGA, 2023[118]).

[7] The British Premier League has recently accused Manchester City of more than 100 violations of its financial regulations. Since it was acquired by Gulf investors in 2008, the club has become one of the most successful teams in European history (The New York Times, 2023[115]).

[8] Nevertheless, FFP has been criticised as anti-competitive, as referred in section 4.2.

[9] For instance, in an ongoing case the Belgian Supreme Court has asked the ECJ to rule whether *res judicata* granted to the Court of Arbitration for Sport (CAS) awards violates the general principle of effective protection ensured by the TFEU (Case C-600/23, Royal Football Club Seraing). This case should decide on the validity, under EU law, of arbitration clauses imposed by sports federations on their members (Mergermarket, 2023[132]). It should be mentioned that in the ISU case the General Court has highlighted that the use of the CAS arbitration system does not constitute an anti-competitive infringement nor compromise the full effectiveness of EU competition law, since any person can still lodge a complaint with a competition authority, as well as bring proceedings before a national court to claim compensation for the harm suffered (Case T-93/18, International Skating Union v. European Commission, judgment of the General Court (Fourth Chamber, Extended Composition) of 16 December 2020).

[10] For instance, in tennis, there are at least seven governing bodies that work together. The International Tennis Federation (ITF) is the international governing body and is entitled to establish the rules of the game and represent tennis at major international sports governing bodies, such as the International Olympic Committee (IOC). ITF also sanctions the Grand Slam and lower-level events, as well as organises tours. The four Grand Slams, the major tennis tournaments, are governed by the respective national federations: Tennis Australia (Australia Open), *Fédération Française de Tennis* (French Open), Lawn Tennis Association (Wimbledon) and United States Tennis Association (US Open). The Association of Tennis Professionals (ATP) and the Women's Tennis Association (WTA) also organise high-level tours and set a ranking to provide fair assessment of players' (men and women, respectively) performance. The

results from ITF tournaments and Grand Slams are incorporated into the ATP and WTA Rankings, allowing athletes to progress from lowest level to highest level competitions, including Grand Slams. Therefore, although each of these tournaments are independently managed, they build a greater "constellational" governance (Li and Scott, 2021, pp. 248-252[24]; King, 2020, p. 345[116]).

[11] Professional boxing, for example, is characterised by a fragmented structure, where the four major governing bodies (i.e. the World Boxing Council – WBC, the World Boxing Association – WBA, the International Boxing Federation – IBF, and the World Boxing Organisation – WBO) do not work together and four different rankings coexist (Tenorio, 2006, p. 365[52]).

[12] For example, the United States sports governing body for amateur collegiate athletics (National Collegiate Athletics Association – NCAA) is subject to the Sherman Act, regardless of its allegedly non-profit or social character (National Collegiate Athletic Association v. Alston et al., 594 U.S. ___ [2021]).

[13] For example, the acquisition of OGC Nice football club by Ineos was assessed by the French competition authority in 2019, which cleared the transaction unconditionally (Autorité de la Concurrence, 2019[104]). Some recent changes in Brazilian law have also raised some questions on mergers in the football industry (OECD, 2023[17]). The recent merger between PGA Tour and LIV Golf is another as example, as described in Box 4.2.

[14] Colomo (2022, pp. 331-334[21]), for example, proposes a more nuanced taxonomy of sporting rules, comprising four different categories: (i) laws of the game (the rules of "purely sporting interest"); (ii) rules governing the behaviour of participants in a competition (e.g., salary caps and anti-doping rules); (iii) rules dealing with the relationship between participants (or governing bodies) and third parties that are peripheral to the system (e.g., regulation of activities of players' agents); (iv) strategies to monetise the value generated by the organisation (e.g., sponsors, advertisers and broadcasters).

[15] See, for example, *National Collegiate Athletic Association v. Alston et al.*, 594 U.S. ___ (2021).

[16] *National Collegiate Athletic Association v. Alston et al.*, 594 U.S. ___ (2021).

[17] Indeed, sports leagues have always argued that since member clubs need to co-operate to produce sports competitions, they should be viewed as single economic entities for antitrust purposes and would therefore escape from the application of Section 1 of the Sherman Act (anti-competitive agreements). Nevertheless, in 2010 the US Supreme Court has rejected this argument and concluded that member clubs of a league are "a substantial, independently owned, independently managed business, whose 'general corporate actions are guided or determined' by 'separate corporate consciousness,' and whose 'objectives are' not common' (…) they compete with one another, not only on the playing field, but to attract fans, to gate receipts, and for contracts with managerial and playing personnel" (American Needle, Inc. v. National Football League et al., 560 U. S. 183 (2010)).

[18] For instance, in 2016 the Swiss Competition Authority has sanctioned a content distributor and its sports broadcasting subsidiaries for abuse of dominant position in the market for the provision of Swiss football and ice hockey broadcasts and the provision of foreign football broadcasts through pay-TV platforms. In particular, the distributor has discriminated against provider platforms not vertically related to it (COMCO, 2016[122]; Switzerland, 2023[123]). The Spanish National Commission of Markets and Competition (CNMC) has also investigated the practice of a pay-TV distributor that allegedly had abused its dominant position in the market for wholesale commercialisation of premium sports pay-TV channels by discriminating against online streaming providers. The investigation was closed in 2018 after the investigated firm agreed to ensure the same conditions for access to its football channels (CNMC, 2018[124]). In 2020, Chile, the National Economic Prosecutor (FNE) had submitted a complaint to the Competition Tribunal (TDLC), requesting the sanctioning of the TV channel holding the exclusive rights to broadcast the matches of the

national football tournament for abusing its dominant position, restricting competition between cable operators. The case is still pending before the TDLC (FNE, 2020[125]).

[19] See, for example, (Budzinski, 2012, pp. 9-10[22]) and (Weatherill, 2014, pp. 135-148[30]).

[20] In 2020, the Colombian Competition Authority (SIC) has fined the Colombian Football Federation, two ticket retailers and 17 individuals over EUR 4 million for a cartel in the sale of tickets to 2018 FIFA World Cup qualifying events, which increased prices of tickets by up to 350% (SIC, 2020[99]).

[21] For example, the Belgian Competition Authority is investigating an alleged anti-competitive agreement related to the distribution of betting products on French horse races in Belgium (Belgian Competition Authority, 2023[127]). Moreover, in 2020 a complaint has been submitted against three sports data and betting companies before the UK Competition Appeal Tribunal (CAT), alleging that they had infringed competition law by concluding an unlawful agreement that prevented competition for the supply of sports data and sport betting services for five years. The case was closed after a settlement agreement among the parties in 2022 (GCR, 2022[126]).

[22] In 2022, the CMA has imposed fine totalling over GBP 2 million on Rangers Football Club and two sportswear retailers for fixing the retail prices of certain Rangers-branded clothing products (CMA, 2022[113]). Another alleged collusion involving branded products is currently under investigation by the CMA (CMA, 2023[114]). In the United States, there is an ongoing investigation on exclusive deals related to the market of sports trading cards (GCR, 2023[120]).

[23] See, for instance, (OECD, 1996[16]) and (Lopatka, 2009[100]).

[24] See, for example, (Alexiadis and Asenov, 2020[101]), (García, 2017[102]) and (Rompuy and Maren, 2016[130]). In 2016, the European Commission has concluded that bank loan guarantees granted by a Spanish local state-owned entity to three football clubs (Hercules, Elche and Valencia) characterised unlawful state aid and were incompatible with EU law (Case SA.36387). However, this decision was annulled by the General Court of the European Union in 2019 and 2020 on procedural grounds since it lacked a sufficient justification of the existence of an economic advantage (Cases T-766/16, T-901/16 and T-732/16), which was confirmed by the ECJ in 2022 (Case C-211/20 P). As for public financing of sports infrastructures in the EU, the general principle is that state support granted for the construction of a sport infrastructure aiming at its future commercial exploitation by the State or third parties involves an economic activity and thus is likely to involve state aid, although it can be compatible with EU law under certain conditions. In the early 2010s, the European Commission has assessed in several cases state aid measures for stadiums and other sports infrastructures, establishing a consistent and favourable approach towards state support for sports infrastructures. This approach was later adopted in the General Block Exemption Regulation No. 651/2014. According to Article 55, aid for sport infrastructure is compatible with the internal market, and therefore exempted from notification, if it fulfils a number of conditions, including the non-exclusive use of the sport infrastructure by a single professional sport user and open access to the sport infrastructure based on a transparent and non-discriminatory basis. More recently, several measures granted by Member States during the Covid-19 pandemic to support sports events and sport-related industries were approved by the European Commission under the State Aid Temporary Framework and Article 107 TFEU (EC, 2023[129]).

[25] Exceptions can be found, for instance, in padel, commercial boxing and other martial arts, as well as, to a certain extent, motor sports (Budzinski and Feddersen, 2022[45]; Klein, 2023, p. 18[28]).

[26] An interesting example regards darts, where two competing organisations have been managing rival tournaments for the last three decades (Nauright and Parrish, 2012, p. 70[105]). In addition, in boxing and other martial arts there are usually different competing leagues, managed by different entities. As

mentioned in footnote 11, professional boxing is characterised by a fragmented structure of four major governing bodies that do not work together and use different rankings.

[27] According to the European Commission, "traditionally, there is a single national sport association per sport and Member State, which operates under the umbrella of a single European association and a single worldwide association. The pyramid structure results from the fact that the organisation of national championships and the selection of national athletes and national teams for international competitions often require the existence of one umbrella federation" (EC, 2007[54]).

[28] Opinion of Advocate General Rantos, delivered on 15 December 2022, European Super League Company SL v. UEFA and FIFA (Case C333/21).

[29] One exception may be labour markets, where in some circumstances leagues in different regions can compete for players (see section 5).

[30] In this regard, see (Wallrafen, Nalbantis and Pawlowski, 2022[106]).

[31] For instance, this was implemented by Formula One, following an investigation carried out by the European Commission in the early 2000s (EC, 2001[65]).

[32] As mentioned above, the United Kingdom has recently announced its plan to establish in law a new independent regulator for men's football to oversee the financial sustainability of the game. The independent regulator will also analyse requests from clubs to join new competitions, in consultation with the football governing body and fans and based on predetermined criteria. Yet, it was stated that such criteria may "include measures to stop clubs participating in closed-shop breakaway competition which harm the domestic game" (United Kingdom, 2023[107])

[33] For instance, this was the case in the FIA (*Fédération Internationale de l' Automobile*) case before the European Commission in the early 2000s (Parrish, 2003, pp. 135-138[108]).

[34] Case C-49/07 (Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio), judgment of the Court (Grand Chamber) of 1 July 2008. Subsequently, the ECJ confirmed that MOTOE case-law also applies in cases concerning horizontal agreement rules (Rompuy, 2022[51]).

[35] There is a current class-action lawsuit in the United States involving over 1 000 MMA fighters against the Ultimate Fighting Championship (UFC), alleging that the company has illegally monopolised the sport, which prevented the development of competing fighting organisations and led to the reduction of athletes' wages. A class certification has recently been granted to a group of athletes, and the court has concluded the UFC controlled between 94 and 99% of the labour market, which allowed it to impose low wages and eliminated fighters' ability to negotiate with other organisations. The court indicated the existence of high barriers to entry for new event organisers, since UFC's contract with fighters prohibit them to sign with other promoters (GCR, 2023[128]).

[36] For instance, Swift Hesperange, a Luxembourg football club, has recently filed a complaint against UEFA and the national football governing body (FLF) for infringement of competition law. In particular, it is argued that UEFA requires football clubs to operate within the borders of their home territory (regardless of its size) and this territorial lock-in has allegedly prevented clubs from growing and consumers from benefiting from better quality of entertainment. It is also invoked that FLF prohibits football clubs from being incorporated as commercial companies, which could restrict investments (PaRR, 2022[97]). Moreover, FIFA and the US Soccer Federation, Inc. (USSF) are currently under investigation in the United States for alleged anti-competitive practices related to their geographic market division policy that prevents soccer leagues and clubs from playing official season matches outside their home territory (PaRR, 2023[109]; GCR, 2023[119]).

[37] Yet, it is argued that the exemption for collective bargaining agreements would not prevent the application of competition law to self-employed individuals that qualify as enterprises, nor to collective agreements that do not seek to improve working or employment conditions (OECD, 2019, p. 9[78]).

[38] Nevertheless, there is still debate in the United States on the availability and scope of the exemption beyond expiration of a collective bargaining agreement, as well as on the effects of decertification of a union (Rompuy, 2022[51]).

[39] Indeed, competition authorities face several challenges when applying competition law to labour markets. For instance, this regards how to assess negative effects of labour monopsony under the consumer welfare standard and how to adapt to labour markets competition tools that were built for the exam of product markets, such as the hypothetical monopolist test for market definition (OECD, 2019[79]).

[40] For instance, the Bundeskartellamt has investigated whether the German Olympic Sports Confederation (DOSB) and the International Olympic Committee (IOC) were abusing their dominant position by limiting their athletes from engaging in commercial advertising and promotion activities. In fact, DOSB and IOC prohibited athletes participating in the Olympic Games to allow their name, image and sports performance to be used for commercial purposes (including on social media) during a period of nine days before the opening of the games until three days after the closing ceremony without prior authorisation by the IOC and DOSB. In 2019, the German Competition Authority and the investigated parties have settled the case, committing to enhance advertising opportunities for German athletes and their sponsors during the Olympic Games (Budeskartellamt, 2019[111]; Rompuy, 2022[51]). The outcome of this case was ultimately followed in other jurisdictions, for example in Austria in 2021 (Bundeswettbewerbsbehörde, 2021[110]).

[41] For example, in 2021 the US Supreme Court has confirmed that the National Collegiate Athletic Association (NCAA) had violated Section 1 of the Sherman Act by preventing the educational-related compensation that students could receive from exceeding their universities' cost of attendance. In fact, student athletes were classified as amateur, despite the fact that the concerning colleges and universities were engaging in very profitable sports activities. The Supreme Court ruled that this policy infringed antitrust laws by limiting individual schools to compete by offering recruits compensation according to their athletic contributions (Gaglio and Stross (2022[59]); National Collegiate Athletic Association v. Alston et al., 594 U.S. ___ (2021)).

[42] For instance, in 2021 a 15-year-old player was prevented from signing a professional contract within the US National Women's Soccer League, which required players to be at least 18 years old. The player challenged this rule in courts, alleging that it violated the Sherman Act, characterising an illegal horizontal agreement that limited competition for professional players. A preliminary injunction was issued by the District Court for the District of Oregon, according to which the anti-competitive effect of the rule was not outweighed by any pro-competitive benefits arising from administrative costs regarding compliance with laws related to employment of minors. The league has ultimately settled with the player ensuring her eligibility to be professionally signed (Gaglio and Stross (2022[59]); O.M. v. National Women's Soccer League, LLC, 554 F. Supp. 3d, 1171, 1176 (2021)).

[43] For example, the new FIFA Football Agent Regulations (FFAR), announced in January 2023, which include a limitation on multiple representation and a cap on the level of commission agents can earn, has been challenged, especially in Europe. Competition complaints were filed to the European Commission and other national competition authorities, alleging that the new rules distort competition by fixing purchasing prices and indirectly imposing unfair trading conditions. A German court asked the ECJ to issue a preliminary ruling on whether the FFAR are compatible with the EU competition law and granted an injunction to limit the implementation of the rules within the German football leagues until the ECJ issues its decision. Another complaint brought before the Court of Arbitration for Sport (CAS) was dismissed in

July 2023, concluding that the FFAR were legal since they do not fix prices in itself, leaving room for agents to compete beneath the cap (Ward and Swall (2023[121]); CAS 2023/O/9370 Professional Football Agents Association (PROFAA) v. FIFA, decision of 24 July 2023).

[44] For instance, in the United States, the National Collegiate Athletic Association (NCAA) has been investigated for illegally fixing the wages of assistant coaches in baseball and other sports between 2019 and 2023 (Colon et al v. NCAA, U.S. District Court, Eastern District of California, No. 1:23-cv-00425-WBS-KJN, and Smart et al v. NCAA, same court, No. 2:22-cv-02125-WBS-KJN).

[45] For example, as wage-fixing agreements are likely to reduce salaries, they might discourage the development of new players, who may prefer to follow other professions. In addition, if all clubs pay the same salary, players will not have incentives to move to another club.

[46] In addition, these leagues provide for minimum salaries, which are also included in the collective bargaining agreements between leagues and players unions.

[47] However, it should be noted that the US sports labour market was much more restrictive in the past. For instance, until the 1970s the reserve clause applied to all professional sports. This clause gave clubs the exclusive property rights to players' work, since only his/her club had the legal right to transfer performance rights of players to other clubs. The reserve clause was abolished because of players' unions and antitrust lawsuit threats. Since then, free agency was emerged, allowing players to sell their services to the highest bidder at the completion of their contracts (Rosen and Sanderson, 2001[84]).

[48] Case C-415/93 (*Union Royale Belge des Sociétés de Football Association and others v. Bosman and others*), judgment of the Court of 15 December 1995.

[49] Pre-Bosman, players were not free to go to the marketplace and conclude a new contract with another employer on the expiry of a contract, unless the new club had paid the former club a transfer fee. The decision considered that such transfer fees were not proportionate to the alleged objective of the restrictions, namely (i) maintaining a financial and competitive balance between clubs and (ii) supporting the search for talent and the training of young players. According to the ECJ, the transfer rules did not prevent the richest clubs from securing the services of the best players, and thus was not able to change the balance between clubs. Moreover, transfer fees were considered contingent, uncertain and unrelated to the actual cost of training athletes. Thus, they would not be a decisive factor in incentivising recruitment and training of young players and could be achieved by other means that dis not distort freedom of movement for workers.

[50] In particular, during an investigation carried out by the European Commission, FIFA agreed in 2001 to change their rules on international football transfers, seeking to establish a balance between the right of free movement and the stability of contracts between clubs and players. Some of the relevant changes included: (i) for players aged under 23 years, training compensation fees were allowed to encourage and reward the training efforts of clubs (in particular small ones); (ii) setting of minimum (one year) and maximum (five years) duration of contracts; (iii) creation of one transfer period per season and a further mid-season window, with a limit of one transfer per player per season; (iv) unilateral breaches of contract are only possible at the end of a season; (v) financial compensation can be paid if a contract is breached unilaterally, whether by the player or the club; and (vi) the creation of solidarity mechanisms to redistribute a significant proportion of income to clubs involved in the training and education of a player, including amateur clubs (EC, 2002[131]; KEA; CDES, 2013, p. 89[95]). Although the case focused on Europe, its outcome benefited the football industry worldwide.

References

Alexiadis, P. and T. Asenov (2020), "State Aid in Football: Fall-Out From the General Court's Judgments in the Valencia and Elche Appeals", *CPI Antitrust Chronicle*, pp. 40-45. [101]

Andreff, W. (2006), *Team sports and finance*, Edward Elgar. [29]

Andreff, W. and S. Szymanski (eds.) (2006), *Governance and governing bodies in sport*, Edward Elgar Publishing. [26]

Andreff, W. and S. Szymanski (2006), *Introduction: sport and economics*, Edward Elgar. [18]

Andreff, W. and S. Szymanski (eds.) (2006), *The economics of tennis*, Edward Elgar. [25]

Andreff, W. and S. Szymanski (eds.) (2006), *The promotion and relegation system*, Edward Elgar Publishing. [56]

Andrews, M. and P. Harrington (2016), *Off Pitch: Football's Financial Integrity Weaknesses, and How to Strengthen Them, CID Working Paper No. 311*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2746644. [40]

Araki, S. et al. (2022), *Labor Market Concentration and Competition Policy across the Atlantic, IZA DP No. 15641*, https://docs.iza.org/dp15641.pdf. [86]

Autoridade da Concorrência (2022), *AdC issues sanctioning decision for anticompetitive agreement in the labor market for the first time*, https://www.concorrencia.pt/en/articles/adc-issues-sanctioning-decision-anticompetitive-agreement-labor-market-first-time. [91]

Autoridade da Concorrência (2021), *Labor market agreements and competition policy, Issues Paper - Final Version*, https://www.concorrencia.pt/sites/default/files/Issues%20Paper_Labour%20Market%20Agreements%20and%20Competition%20Policy.pdf. [92]

Autorité de la Concurrence (2019), *The Autorité de la concurrence clears the acquisition of OGC Nice by Ineos*, https://www.autoritedelaconcurrence.fr/en/press-release/autorite-de-la-concurrence-clears-acquisition-ogc-nice-ineos. [104]

Belgian Competition Authority (2023), *The Belgian Competition Authority sends a statement of objections to Ladbrokes and the French PMU concerning agreements for the distribution of betting products on French horse races in Belgium*, https://www.belgiancompetition.be/sites/default/files/content/download/files/20230703_Press_release_28_BCA.pdf. [127]

Bloomberg (2023), *Man City Sister Club Sparks Complaint to EU Over Belgian Investment*, https://www.bloomberg.com/news/articles/2023-05-10/manchester-city-risks-eu-scrutiny-over-abu-dhabi-money#xj4y7vzkg. [117]

Bloomberg (2023), *Who Really Owns Your Football Club?*, https://www.bloomberg.com/graphics/2023-european-football-owners-premier-league-la-liga-serie-a/. [35]

Brandenburger, A. and B. Nalebuff (1996), *Co-opetition*, Doubleday. [103]

Budeskartellamt (2019), *German Athletes and their sponsors obtain further advertising opportunities during the Olympic Games following Bundeskartellamt action - IOC and DOSB undertake to change the advertising guidelines*, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/27_02_2019_DOSB_IOC.html. [111]

Budzinski, O. (2012), *The institutional framework for doing sports business: Principles of EU competition policy in sports markets, Ilmenau Economics Discussion Papers, No. 70*, Technische Universität Ilmenau, Institut für Volkswirtschaftslehre. [22]

Budzinski, O. and A. Feddersen (2022), *Should organizing premier-level European football be a monopoly? And who should run it? - An economists' perspective, Ilmenau Economics Discussion Papers, No. 166*, Ilmenau University of Technology, Institute of Economics, https://www.econstor.eu/bitstream/10419/264905/1/1817210270.pdf. [45]

Budzinski, O., S. Gaenssle and P. Kunz-Kaltenhäuser (2019), *How Does Online Streaming Affect Antitrust Remedies to Centralized Marketing? The Case of European Football Broadcasting Rights, Ilmenau Economics Discussion Papers, Vol. 25, No. 128*, Technische Universität Ilmenau, Institut für Volkswirtschaftslehre. [60]

Budzinski, O. and T. Pawlowski (2017), "The behavioral economics of competitive balance: Theories, findings, and implications", *International Journal of Sport Finance*, Vol. 12/2, pp. 109-123. [20]

Budzinski, O. and T. Pawlowski (2014), *The behavioural economics of competitive balance: Implications for league policy and championship management, Ilmenau Economics Discussion Papers, No. 89*, Technische Universität Ilmenau, Institut für Volkswirtschaftslehre. [23]

Budzinski, O. and S. Szymanski (2015), "Are Restrictions of Competition by Sports Associations Horizontal or Vertical in Nature?", *Journal of Competition Law & Economics*, Vol. 11/2, pp. 409-429. [46]

Bundeskartellamt (2023), *50+1 proceeding – commitments offered by DFL to be declared binding*, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/13_07_2023_50+1.html. [75]

Bundeskartellamt (2021), *Bundeskartellamt provides preliminary assessment of DFL's 50+1 ownership rule*, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/31_05_2021_50plus1.html. [74]

Bundesliga (2023), *Explaining the Bundesliga's 50+1 rule*, https://www.bundesliga.com/en/faq/what-are-the-rules-and-regulations-of-soccer/50-1-fifty-plus-one-german-football-soccer-rule-explained-ownership-22832. [39]

Bundeswettbewerbsbehörde (2021), *More advertising opportunities for athletes with non-Olympic partners – AFCA supports Austrian Olympic Committee's adaptation of guidelines*, https://www.bwb.gv.at/en/news/detail/more-advertising-opportunities-for-athletes-with-non-olympic-partners-afca-supports-austrian-olymp. [110]

CCI (2022), *CCI issues cease and desist order against Amateur Baseball Federation of India for abusing its dominant position, Press Release No. 09/2022-23*, https://www.cci.gov.in/antitrust/press-release/details/214/0. [67]

CCI (2021), *Order under Section 33 of the Competition Act, 2002, Case No. 19 of 2021*, https://primelegal.in/wp-content/uploads/2021/12/click-here-to-read-the-judgment-3.pdf. [68]

CCI (2018), *Annual Report 2017-18*, https://www.cci.gov.in/public/images/annualreport/en/annual-report-2017-181652253434.pdf. [69]

Chile (2022), *Annual Report on Competition Policy Developments in Chile*, https://one.oecd.org/document/DAF/COMP/AR(2022)5/en/pdf. [76]

CMA (2023), *Suspected anti-competitive behaviour in relation to the sale of Leicester City FC-branded products and merchandise*, https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-in-relation-to-the-sale-of-leicester-city-fc-branded-products-and-merchandise. [114]

CMA (2022), *Anti-competitive behaviour in relation to the pricing of Rangers FC-branded replica football kit*, https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-in-relation-to-the-pricing-of-rangers-fc-branded-replica-football-kit. [113]

CNMC (2018), *La CNMC aprueba la terminación convencional del expediente sancionador a Mediapro por la comercialización mayorista de sus canales futbolísticos (BeIN Sports y BeIN La Liga) en España*, https://www.cnmc.es/node/366950. [124]

COFECE (2021), *COFECE sanctions 17 clubs of the Liga MX, the Mexican Football Federation and 8 natural persons for colluding in the market of women and male soccer players' draft*, https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-028-2021_ENG.pdf. [88]

Colomo, P. (2022), "Competition Law and Sports Governance: Disentangling a Complex Relationship", *World Competition Law and Economics Review*, Vol. 45/3, pp. 323-350. [21]

COMCO (2016), *La COMCO sanctionne Swisscom dans le domaine de la diffusion sportive en direct par Pay-TV*, https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-61823.html. [122]

Council (2021), *Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the key features of a European Sport Model (2021/C 501/01)*, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42021Y1213(01)&from=EN. [53]

Deloitte (2023), *2023 sports industry outlook*, https://www2.deloitte.com/us/en/pages/technology-media-and-telecommunications/articles/sports-business-trends-disruption.html. [12]

Deloitte (2023), *The Future of Sport: Forces of change that will shape the sports industry by 2030*, https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/deloitte-uk-future-of-sport-2023.pdf. [36]

Department for Culture, Media and Sport (2023), *Government outlines preferred structure of new independent football regulator*, https://www.gov.uk/government/news/government-outlines-preferred-structure-of-new-independent-football-regulator. [50]

Dietl, H., M. Grossmann and M. Lang (2010), *Competitive Balance and Revenue Sharing in Sports Leagues with Utility-Maximizing Teams, Working Paper Series, Paper No. 10-06*, https://core.ac.uk/download/pdf/6351783.pdf. [32]

Dietl, H., M. Lang and A. Rathke (2008), *The Effect of Salary Caps in Professional Team Sports on Social Welfare, Working Paper No. 72, Institute for Strategy and Business Economics University of Zurich* ,, https://www.isu.uzh.ch/static/ISU_WPS/72_ISU_full.pdf. [93]

EC (2023), *Coronavirus Outbreak - List of Member State Measures approved under Articles 107(2)b, 107(3)b and 107(3)c TFEU and under the State Aid Temporary Framework*, https://competition-policy.ec.europa.eu/system/files/2023-05/State_aid_decisions_TF_and_107_2b_107_3b_107_3c.pdf. [129]

EC (2007), *The EU and Sport: Background and Context, Commission Staff Working Document, Accompanying document to the White Paper on Sport, (SEC(2007) 935 final*, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52007SC0935&from=EN. [54]

EC (2002), *Commission closes investigations into FIFA regulations on international football transfers*, https://ec.europa.eu/commission/presscorner/detail/en/IP_02_824. [131]

EC (2001), *Commission closes its investigation into Formula One and other four-wheel motor sports*, https://ec.europa.eu/commission/presscorner/detail/en/IP_01_1523. [65]

EC and UEFA (2012), *Joint statement on Financial Fair Play (FFP) rules and state aid control in professional football*, https://competition-policy.ec.europa.eu/system/files/2022-03/2012_financial_fairplay_and_state_aid_in_professional_football_joint_statement_en.pdf. [73]

Evens, T., P. Iosifidis and P. Smith (2013), *The Political Economy of Television Sports Rights*, Palgrave Macmillan. [31]

Farzin, L. (2015), "On the Antitrust Exemption for Professional Sports in the United States and Europe", *Jeffrey S. Moorad Sport Law Journal*, Vol. 22/1, pp. 75-108. [58]

FIFA (2023), *FIFA Professional Football Landscape*, https://landscape.fifa.com/en/landscape. [61]

FIFA (2023), *Staggering statistics demonstrate FIFA Women's World Cup™ growth*, https://www.fifa.com/tournaments/womens/womensworldcup/australia-new-zealand2023/media-releases/staggering-statistics-demonstrate-fifa-womens-world-cup-tm-growth. [14]

Financial Times (2023), *Can European football clubs ever be profitable?*, https://www.ft.com/content/b9bfbc9e-d81b-4566-b933-56e74e310142. [44]

Financial Times (2023), *Manchester City's outsized domination is hurting English football*, https://www.ft.com/content/db28ad76-7175-412e-a3f7-674c514e3de7. [37]

FNE (2020), *Fiscalía Nacional Económica, the Chilean antitrust agency, filed a lawsuit against the football channel for monopoly abuse*, https://www.fne.gob.cl/en/fne-pide-al-tdlc-multa-de-us-24-millones-contra-el-canal-del-futbol-por-abuso-de-posicion-monopolica/. [125]

Football Benchmark (2022), *Overview of the new UEFA Financial Fair Play Regulations*, https://www.footballbenchmark.com/library/overview_of_the_new_uefa_financial_fair_play_regulations. [42]

Forbes (2023), *MLB Sets New Revenue Record, Exceeding $10.8 Billion For 2022*, https://www.forbes.com/sites/maurybrown/2023/01/10/mlb-sets-new-revenue-record-exceeding-108-billion-for-2022/?sh=705dc8cb77ee. [9]

Forbes (2023), *NFL National Revenue Was Almost $12 Billion In 2022*, https://www.forbes.com/sites/mikeozanian/2023/07/11/nfl-national-revenue-was-almost-12-billion-in-2022/. [8]

Forbes (2023), *PGA Tour Merger With LIV Golf Should Cause Concern For Antitrust Regulators*, https://www.forbes.com/sites/marcedelman/2023/06/06/pga-tour-merger-with-liv-golf-should-cause-concern-for-antitrust-regulators/?sh=14afff772363. [70]

Forbes (2019), *Why Female Athletes Earn Less Than Men Across Most Sports*, https://www.forbes.com/sites/oliviaabrams/2019/06/23/why-female-athletes-earn-less-than-men-across-most-sports/?sh=4f8febd440fb. [82]

Forbes (2015), *Pro Athletes: How To Navigate Short Careers, Long Retirements*, https://www.forbes.com/sites/rbcwealthmanagement/2015/07/17/pro-athletes-how-to-navigate-short-careers-long-retirements/?sh=12039b096980. [80]

Front Office Sports (2022), *NBA Tops $10B in Revenue for First Time Ever*, https://frontofficesports.com/nba-tops-10b-in-revenue-for-first-time-ever/. [10]

García, B. (2017), "A new horizon in European sports law: the application of the EU state aid rules meets the specific nature of sport", *European Competition Journal*, Vol. 13/1, pp. 28-61. [102]

GCR (2023), *Fanatics accused of monopolising sports trading cards*, https://globalcompetitionreview.com/gcr-usa/article/fanatics-accused-of-monopolising-sports-trading-cards. [120]

GCR (2023), *MMA fighters win class certification*, https://globalcompetitionreview.com/gcr-usa/article/mma-fighters-win-class-certification. [128]

GCR (2023), *US Soccer looks to pause monopolisation suit after Second Circuit reversal*, https://globalcompetitionreview.com/gcr-usa/article/us-soccer-looks-pause-monopolisation-suit-after-second-circuit-reversal. [119]

GCR (2022), *Sports data and betting companies settle litigation during CAT trial*, https://globalcompetitionreview.com/article/sports-data-and-betting-companies-settle-litigation-during-cat-trial. [126]

Global Competition Review (ed.) (2022), *United States: antitrust in organised sports*, https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2023. [59]

Healey, D. (2012), "Governance in Sport: Outside the Box?", *The Economic and Labour Relations Review*, Vol. 23/3, pp. 39-60. [55]

Hoey, S., T. Peeters and F. Principe (2021), "The transfer system in European football: A pro-competitive no-poaching agreement?", *International Journal of Industrial Organization*, Vol. 75. [94]

Houben, R. (2023), *Let's play: 'Master and Servant'*, https://medialibrary.uantwerpen.be/files/560194/d7d30c2e-7546-4420-996b-b1531b6eb3d2.pdf. [47]

Houben, R., J. Blockx and S. Nuyts (2022), "UEFA and the Super League: who is calling who a cartel?", *The International Sports Law Journal*, Vol. 22/3, pp. 205-216. [64]

Humphreys, B. and H. Pyun (2015), *Monopsony Exploitation in Professional Sport: Evidence from Major League Baseball Position Players, 2000-2011, West Virginia University, Department of Economics Working Paper Series, Working Paper No. 15-48*, http://busecon.wvu.edu/phd_economics/pdf/15-48.pdf. [85]

ILO (2020), *Decent work in the world of sport, Issues paper for discussion at the Global Dialogue Forum on Decent Work in the World of Sport (Geneva, 20–22 January 2020)*, https://uniglobalunion.org/news_media/uploads/2020/01/ilo_gd_report_.pdf. [87]

International Olympic Committee (2023), *Olympic Values*, https://olympics.com/ioc/olympic-values. [4]

Iorwerth, H., P. Tomkins and G. Riley (2018), "Financial Doping in the English Premier League", *Sport Ethics and Philosophy*, Vol. 12/1, pp. 272-291, https://www.tandfonline.com/doi/full/10.1080/17511321.2017.1351484. [38]

Japan (2019), *Competition Issues in Labour Markets – Note by Japan*, https://one.oecd.org/document/DAF/COMP/WD(2019)40/en/pdf. [98]

Kalashyan, J. (2022), "The game behind the game: UEFA's Financial FairPlay Regulations and the need to field a substitute", *European Competition Journal*, Vol. 18/1, pp. 21-81. [72]

KEA; CDES (2013), *The Economic and Legal Aspects of Transfers of Players*, https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf. [95]

King, K. (2020), "Professional Tennis's Constellational Response to COVID-19", *International Journal of Sport Communication*, Vol. 13/3, pp. 344–351, https://journals.humankinetics.com/view/journals/ijsc/13/3/article-p344.xml. [116]

Klein, T. (2023), *The Competitive Effects of Sports Exclusivity*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4351680. [28]

LALIGA (2023), *LALIGA files complaint against PSG with European Commission*, https://www.laliga.com/en-GB/news/laliga-files-complaint-against-psg-with-european-commission. [118]

Levinson, D. and G. Pfister (2016), *Berkshire Encyclopedia of World Sport*, Berkshire Publishing, https://www.oxfordreference.com/display/10.1093/acref/9780190622695.001.0001/acref-9780190622695. [3]

Lopatka, J. (2009), "Antitrust and sports equipment standards: Winners and whiners", *The Antitrust Bulletin*, Vol. 54/4, pp. 751-800. [100]

Mergermarket (2023), *Belgian court seeks ECJ guidance on legality of arbitration to CAS involving FIFA*, https://mergermarket.ionanalytics.com/content/1003648376. [132]

Nauright, J. and C. Parrish (2012), *Sports Around the World: History, Culture, and Practice*, ABC-CLIO. [105]

Needham, B. (2023), *5Qs: Friedman and Crane Shed Light on Issues Surrounding Professional Golf Merger*, https://michigan.law.umich.edu/news/5qs-friedman-and-crane-shed-light-issues-surrounding-professional-golf-merger. [71]

Noll, R. (2006), *Sports Economics at Fifty*, https://ideas.repec.org/p/sip/dpaper/06-011.html. [19]

Noll, R. (2003), "The Organization of Sports Leagues", *Oxford Review of Economic Policy*, Vol. 19/4, pp. 530-551. [27]

OECD (2023), *Competition and Sports, Latin American and Carribbean Competition Forum, Background Note by the Secretariat*, https://one.oecd.org/document/DAF/COMP/LACCF(2023)5/en/pdf. [17]

OECD (2019), *Competition in Labour Markets, OECD Competition Policy Roundtable Background Note*, https://www.oecd.org/daf/competition/competition-concerns-in-labour-markets.htm. [78]

OECD (2019), *Executive Summary of the Roundtable on Competition issues in labour markets*, https://one.oecd.org/document/DAF/COMP/M(2019)1/ANN2/FINAL/en/pdf. [79]

OECD (2010), *Competition and Sports, OECD Competition Policy Roundtable Background Note*, https://www.oecd.org/daf/competition/competition-and-sports-2010.pdf. [15]

OECD (1996), *Competition Issues Related to Sports, OECD Competition Policy Roundtable*, https://www.oecd.org/daf/competition/1920279.pdf. [16]

Orth, M. (2021), "Sports & competition law: An overview of EU and national case law", *e-Competitions Sports & Competition Law, Art. N° 103749*, https://www.concurrences.com/en/bulletin/special-issues/sport/new-article-no103749. [57]

PaRR (2023), *US Soccer, FIFA can't dodge promoter antitrust suit*, https://app.parr-global.com/intelligence/view/intelcms-sw6jdc. [109]

PaRR (2022), *Luxembourg football club lodges UEFA damages suit seeking ECJ guidance*, https://app.parr-global.com/intelligence/view/intelcms-q33cxr. [97]

Parrish, R. (2003), *Sports Law and Policy in the European Union*, Manchester University Press. [108]

Pinto, A. et al. (eds.) (2016), *Revenue Sharing in European Football Leagues: A Theoretical Analysis*, Springer Science. [34]

Rey, E. et al. (2022), "No sport for old players. A longitudinal study of aging effects on match performance in elite soccer", *Journal of Science and Medicine in Sport*, Vol. 25/6, pp. 535-539. [81]

Rompuy, B. and O. Maren (2016), *EU control of State aid to professional sport: why now?, ASSER research paper 2016-01*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2737788. [130]

Rompuy, B. (2022), *Antitrust challenges to sports governance: EU and US perspectives*, Edward Elgar Publishing. [51]

Rosen, S. and A. Sanderson (2001), "Labour Markets in Professional Sports", *The Economic Journal*, Vol. 111/469, pp. F47-F68. [84]

Ross, S. (2004), "Player Restraints and Competition Law throughout the World", *Marquette Sports Law Review*, Vol. 15/1, pp. 49-61. [96]

Ross, S. (2003), "Competition Law as a Constraint on Monopolistic Exploitation by Sports Leagues and Clubs", *Oxford Review of Economic Policy*, Vol. 19/4, pp. 569-584. [62]

Ruihley, B. and B. Li (eds.) (2021), *Governance in Professional Individual Sports*, Waterstones. [24]

Secretary of State for Culture, Media and Sport (2023), *A sustainable future - reforming club football governance*, https://www.gov.uk/government/publications/a-sustainable-future-reforming-club-football-governance/a-sustainable-future-reforming-club-football-governance. [49]

Seippel, Ø. (2017), "Sports and Nationalism in a Globalized World", *International Journal of Sociology*, Vol. 47, pp. 43-61. [2]

SIC (2020), *Sanción de $18 mil millones a cartel de boletería en las eliminatorias al Mundial Rusia 2018*, https://www.sic.gov.co/slider/sanci%C3%B3n-de-18-mil-millones-cartel-de-boleter%C3%ADa-en-las-eliminatorias-al-mundial-rusia-2018. [99]

Sims, P. (2018), "The Circumvention of UEFA's Financial Fair Play Rules Through the Influx of Foreign Investments", *Northwestern Journal of International Law & Business*, Vol. 39/1, pp. 59-84, https://scholarlycommons.law.northwestern.edu/njilb/vol39/iss1/3/. [41]

Spain (2023), *Contribution from Spain, Latin American and Caribbean Competition Forum - Session III: Competition and Sports*, https://one.oecd.org/document/DAF/COMP/LACCF(2023)14/en/pdf. [77]

Sports Business (2022), *Global Media Report 2022*, https://www.sportbusiness.com/global-media-report-2022/. [112]

SportsPro Media (2022), *Study: Premier League revenues projected to pass US$7bn for 2022/23*, https://www.sportspromedia.com/news/premier-league-revenues-2022-23-deloitte-football-finance/. [11]

SportsPro Media (2022), *Tokyo 2020 pushes IOC to US$7.6bn revenue for 2017/2021 cycle*, https://www.sportspromedia.com/news/ioc-financial-results-2021-revenue-tokyo-2020-olympics/?zephr_sso_ott=NtaXSd. [7]

Switzerland (2023), *Annual Report on Competition Policy Developments in Switzerland*, https://one.oecd.org/document/DAF/COMP/AR(2023)35/en/pdf. [123]

Szymanski, S. (ed.) (2010), *Competitive balance and gate revenue sharing in team sports*, Palgrave Macmillan. [33]

Szyszczak, E. (2018), "Competition and Sport: No Longer So Special?", *Journal of European Competition Law & Practice*, Vol. 9/3, pp. 88-96. [66]

Tenorio, R. (2006), *On the competitive structure in professional boxing, or why the best boxers very seldom fight each other*, Edward Elgar. [52]

The Business Research Company (2023), *Sports Global Market Report*, https://www.thebusinessresearchcompany.com/report/sports-global-market-report. [5]

The Guardian (2022), *Fifa World Cup revenue up by more than $1bn after taking tournament to Qatar*, https://www.theguardian.com/football/2022/nov/20/fifa-world-cup-revenue-up-by-more-than-1bn-after-taking-tournament-to-qatar. [6]

The New York Times (2023), *The Premier League's Charges Against Manchester City, Explained*, https://www.nytimes.com/article/manchester-city-premier-league-charges.html. [115]

The Telegraph (2022), *Women's sport is booming – and that is borne out by the statistics*, https://www.telegraph.co.uk/womens-sport/2022/12/26/womens-sport-booming-borne-statistics. [13]

Time (2016), *These 25 Jobs Have the Worst Gender Pay Gap*, https://time.com/4224473/gender-pay-gap-worst-jobs/. [83]

UEFA (2023), *UEFA Annual Report 2021/22*, https://editorial.uefa.com/resources/027e-175fe9b18b8d-59b8b4264404-1000/uefa_annual_report_2021-22.pdf. [43]

United Kingdom (2023), *Bold plan to protect long-term future of English football*, https://www.gov.uk/government/news/bold-plan-to-protect-long-term-future-of-english-football. [107]

United Nations (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, https://sdgs.un.org/2030agenda. [1]

UOKiI (2022), *Basketball clubs violated competition - decision of President of UOKiK*, https://uokik.gov.pl/news.php?news_id=19005. [89]

UOKiK (2023), *Competition-limiting agreement in speedway - decision of President of UOKiK*, https://uokik.gov.pl/news.php?news_id=19643. [90]

Wallrafen, T., G. Nalbantis and T. Pawlowski (2022), "Competition and Fan Substitution Between Professional Sports Leagues", *Review of Industrial Organization*, Vol. 61/1, pp. 21-43. [106]

Ward, I. and S. Swall (2023), *FIFA's new regulations for football agents: The current state of play*, https://www.lexology.com/library/detail.aspx?g=9e7569da-ee02-489b-ab9d-286d9115e07c. [121]

Weatherill, S. (2014), *European Sports Law - Collected Papers, 2nd Edition*, Asser Press, Springer. [30]

Winfree, J. (2009), "Fan substitution and market definition in professional sports leagues", *The Antitrust Bulletin*, Vol. 54/4, pp. 801-822. [63]

Zumbansen, P. (ed.) (2020), *Transnational Sports Law: the living Lex Sportiva*, Oxford University Press. [48]

www.oecd.org/competition