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

DOMINANCE (ABUSE), CONCERTED PRACTICES, INTELLECTUAL PROPERTY, UNDERTAKING (NOTION), SPORTS, FOREWORD, STATE AID (NOTIFICATION), STATE AID (EXISTING), STATE AID LEGALITY, STATE AID (NEW), STATE AID COMPATIBILITY

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1. Introduction

In 1974 the Court of Justice of the EU ("CJEU") concluded in its famous Walrave and Koch case [*1*] that sport is subject to EU law as far as it constitutes an economic activity. In the Meca-Medina case of 2006 [*2*] the Court confirmed that sporting regulations that have economic effects could be analysed under competition law. However, even though the European Commission has also on several occasions explicitly stated that competition law does apply to the sports sector, [*3*] the enforcement of competition rules in antitrust cases in the sports industry was not the focus of the European Commission's competition law enforcement at the start of this millennium. This resulted in an absence of formal competition law infringement decisions by the European Commission in the first decade of this century. In the second decade, the European Commission's competition law enforcement started targeting the sports sector again, at first particularly in state aid cases. This article therefore starts with an overview of the recent developments in state aid cases decided by the European Commission concerning the sports sector. Then, the Ice Skating Union case of 8 December 2017 marked the return of the European Commission's antitrust enforcement in the sports arena. Sport has become 'big business' and its enhanced commercialisation and the increasing amounts at stake have boosted the number of complaints. This has resulted in a significant number of antitrust cases, in particular against restrictive measures and abuses through the use of sports associations' regulatory powers, which we discuss in the second part of this article. The third chapter focuses on sports' media rights cases. Broadcasting rights for sporting events have become a crucial source of funding for sports organisations and teams and have also attracted antitrust scrutiny. Competition law enforcement in the sports sector has undoubtedly expanded over the last decade and numerous investigations are

still pending. In our final conclusion and outlook some of these cases are considered. Public authorities granting aid in the sports sector, sport federations, sports event organisers and broadcasters, clubs and athletes are all warned that they should play by the competition law rules.

2. State aid and sports

2.1 Introduction

The EU State aid rules have always applied to sport, but for many years, there were no European Commission decisions that investigated or punished state aid measures in this sector. As a result, most EU countries took the risk of not notifying their public support measures.

Some recent high-profile cases and the European Ombudsman's recommendations in the Spanish football clubs cases have changed this situation. Since 2011, the European Commission has dealt with more than twenty sport-related state aid cases, of which the most recent are mainly related to football.

Several reasons explain this increase. In the famous Leipzig/Halle case of 2011, [*4*] the General Court of the EU ("General Court") made it very clear that the financing of infrastructure that is commercially exploited, falls under the State aid rules. The judgment constituted a turning point in the European Commission's approach towards the public financing of (sports) infrastructure.

Another reason was due to the numerous complaints that the European Commission began to receive from EU citizens that disapproved of the enormous public spending in the sports sector (and mostly in professional football) in times of economic crisis.

In addition, the Commission decided at the end of 2012, in the aftermath of the joint Commission-UEFA statement on the UEFA Financial Fair Play Regulations, to send a request for information to the (then) 27 Member States regarding public financing of infrastructure used by professional football clubs. As a result, it started a first round of investigations regarding six football clubs in the Netherlands and later on regarding seven clubs in Spain.

Finally, it should also be noted that in December 2013, the European Ombudsman, Emily O'Reilly, told the European Commission to stop delaying making a decision on whether to open infringement proceedings against Spain concerning alleged unfair tax advantages for certain Spanish football clubs. The case had been pending for more than four years since the complaint's receipt.

This section will describe some of the most interesting decisions in this domain after outlining the general rules of State aid.

2.2 What is State aid?

Article 107 (1) TFEU sets out the general prohibition for Member States on granting State aid:

> "Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

For a public intervention to qualify as State aid, it must fulfil the following **four cumulative conditions**:

1) the measure is **decided by the State** (or a Region, a city council, a State-owned undertaking etc.) and **financed by State resources**;

In sports cases, the most common example is the (co)financing of sports infrastructure by the State or a more local public authority. Also fiscal advantages for sport clubs or the lease of land/infrastructure below the market price, are clear examples of financial support that is imputable to the State. [*5*]

However, public support for sport can also take many other different forms such as loans with lower interest rates, guarantees with lower commissions, the public acquisition of advertising spaces in sports facilities, etc.

2) the measure confers **an economic advantage** in any form (a capital injection, loan, guarantee, subsidy, discounts, etc.) **to an undertaking**;

Sports clubs and sports associations will be considered as undertakings when they engage in an economic activity (see more details later).

3) it is granted to one or several undertakings: the measure should be **selective**;

Support measures, which are targeted at certain sports branches or even at the sports sector in general, are normally selective.

Although exceptional, it is also possible in the sports sector that a measure is so general that no selective advantage is granted. Hungary, for example, developed a fiscal scheme in favour of Hungarian undertakings willing to donate to sports facilities. As the tax deductions were available to all undertakings in all sectors without any limitation, i.e. any undertaking could be a donor, the Commission considered the scheme as a general measure as regards the selectivity from the donors' perspective (not from the sport clubs' perspective). [*6*]

4) the measure distorts or threatens to **distort competition and affects trade** between Member States.

This condition is normally easily met within the professional sports sector as competitions between professional sports clubs have an international dimension. There are however some exceptions as will be described below.

According to Article 108(3) TFEU, a Member State may not grant aid measures until the European Commission has reached a final decision following a formal notification. This is what we call the **'standstill obligation'**, which enables the Commission to approve or refuse the proposed measure. Exceptions to this principle are the exemption regulations and decisions allowing certain categories of aid to be automatically declared compatible with the internal market without formal authorisation from the Commission (see further under 2.4.1).

When an aid measure does not benefit from an exemption and is not notified, the aid is illegal and may be the subject of a recovery order both by the European Commission and by a national court given the direct effect of Article 108 (3) TFEU.

2.3 Absence of State aid

As noted above, there will be no aid if one of the four cumulative conditions for State aid is not fulfilled.

If we look at State aid decisions in the sports sector, the most common situations where no aid will be involved are the following:

- The beneficiary is not an undertaking (see under 2.3.1);
- There is no economic advantage as the investment is comparable to that of a private investor (see under 2.3.2);
- There is no effect on trade (see under 2.3.3).

2.3.1 The beneficiary of the support measure is not an undertaking

State aid rules apply only if the beneficiary of the aid measure is an undertaking.

Public support in favour of a sports club that has no economic activity or the funding of infrastructure that is not meant to be commercially exploited is thus, in principle, excluded from the application of the State aid rules. The notion of 'undertaking' is in European law interpreted very broadly and is not limited to commercial undertakings. The CJEU has defined undertakings as entities engaged in an economic activity, irrespective of their legal status (public or private company) and the way in which the entity is financed. [*7*] Whether or not an entity is profit-oriented is not crucial in determining if it is an undertaking or not. The decisive element is that **the body in question carries out an economic activity "consisting in offering goods and services on a given market"**. [*8*]

Sports infrastructure that is accessible to everyone free-of-charge and that fulfills a general purpose can in principle be financed without any State aid problems.

If sports infrastructure is used for both economic and non-economic activities, only the aid covering the costs that are linked to the economic activities will fall under the State aid rules. It will be very important in this situation to maintain a clear separation of accounts. If the economic use of the sports infrastructure remains purely ancillary (the annual-allocated capacity is less than 20% of the infrastructure's overall capacity), then its financing can fall outside the State aid rules in its entirety. [*9*]

Sport clubs are considered as undertakings to the extent that they carry out economic activities such as selling tickets and broadcasting rights or conducting sponsoring or advertising agreements. [*10*] The same goes for sports associations if they carry out an economic activity such as for instance commercially exploiting a sports event. [*11*]

The status of a professional or amateur club under national law will not be decisive for determining whether the club is considered as an undertaking. Although professional sports clubs are of course more likely to be caught by State aid law, this is not automatically the case for all their activities.

In 2001, for example, the European Commission decided not to object to a public subsidy scheme for professional sports clubs with state-approved **youth training centres in France** as the measures were designed to assist education and initial training (non-economic activities) and as such constituted an educational or comparable

scheme. [*12*] The French authorities were obliged to monitor the allocation of the subsidies closely, to prevent any overcompensation and hence any cross-subsidisation, by requiring separate accounts for the training measures and for the economic activities of the clubs.

Moreover, although most of the amateur sports clubs will be safe, [*13*] not all of them will be able to escape the State aid rules. In the **Arena Cork decision of 2016**, [*14*] the Commission made it very clear that even if a sports club is not profit-oriented and works exclusively with volunteers, but its facilities are used commercially, then it will still be considered as an undertaking.

2.3.2 No economic advantage (Market Economy Operator principle)

An advantage, within the meaning of Article 107 (1) of the TFEU, is any economic benefit that an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention. [*15*]

Therefore, if it can be demonstrated by the State that its investment is made under the same terms and conditions as a private investor would do in comparable circumstances, no aid will be involved. This is what we call **the 'Market Economy Operator' principle** (hereafter 'MEO principle').

Whether this principle applies can be demonstrated in various ways such as:

- a significant *parri passu* co-investment by commercial operators under the same terms and conditions; or
- the existence of a reasonable *ex ante* business plan that demonstrates that the investment will lead to a normal market return that would also be acceptable for private operators for similar projects.

Regarding infrastructure, it is important to note that the existence of an economic advantage should not only be analysed at the level of the owner or developer, but also at the level of the operator or concessionaire of the infrastructure and even at the level of the users if they are undertakings. [*16*]

The operator of the infrastructure should pay the market price for the right of exploitation (the price that would be paid for comparable infrastructure under normal market conditions). The market price can be determined by selecting the operator on the basis of a competitive, transparent, non-discriminatory tender (in line with public procurement rules), by benchmarking or on the basis of generally-accepted standard assessments (developed by external experts).

If the users are undertakings, then aid can be excluded if they (i) pay the market price, (ii) the infrastructure is not dedicated to one user, and (iii) all users enjoy equal and non-discriminatory access. In the **Ahoy complex decision of 2008**, [*17*] the Commission decided that no aid was involved as the investment of € 42 million by the City of Rotterdam for the renovation and upgrading/expansion of the Ahoy complex (comprising the Ahoy Arena (a name given in English to the Sportpaleis or 'Sports Palace'), six exhibition halls, and a large meeting and congress centre) was made under normal market conditions. According to the Commission, neither the planned investment in the Ahoy complex nor the related sale of the operation and lease of the Ahoy complex by the municipality conferred an economic advantage on the operator of the complex or on any other undertaking. The Commission concluded that the investment was properly taken into account in the sale and lease transactions concluded between the municipality and the operator and that the price of the shares in Ahoy Rotterdam N.V. (the private operator) and the level of the rent for the Ahoy complex reflected market terms.

In the **PSV Eindhoven decision of July 2016**, [*18*] the Commission investigated the sale and lease back transaction made by the municipality of Eindhoven in favour of PSV Eindhoven concerning the land on which the Philips stadium and a training block were built. The Commission took an independent external valuation report (that formed the basis of the transaction) into consideration and found that the transaction had been carried out on terms acceptable to a private investor.

2.3.3 No potential effect on trade between Member States

As seen above, for a measure to constitute State aid, it has to affect intra-EU trade.

This will not be the case when granting very small amounts and that is why the European Commission has created the concept of de minimis aid. Aid from a Member State of no more than € 200,000 to a single undertaking over a period of three fiscal years will not be problematic. [*19*]

Above this threshold, it is normally very quickly assumed that a support measure affects trade between Member States, but there are a number of European Commission decisions in which the Commission has taken the view that the support measures in favour of sports infrastructure have had a purely local impact.

These cases concern the public funding of sports and leisure facilities serving mostly a local audience and that were unlikely to attract customers from abroad or cross border investments such as: the **leisure pool of Dorsten** (Germany), [*20*] certain **non-profit harbours** for recreational crafts in the Netherlands [*21*], **Glenmore Lodge** in the UK [*22*] and a couple of UK member-owned **golf clubs**. [*23*]

Also the financing of certain **ski lifts** in areas with few facilities and tourists was considered not to lead to any State aid problems. [*24*]

That these cases are exceptional is evident from other European Commission decisions on the financing of seemingly local sports activities.

In 2013, for example, the European Commission ruled that the lease of the renovated **football stadium in Chemnitz** (Germany) to the local third division professional football club, Chemnitzer FC, constituted State aid. [*25*] At the time of the decision, the football club was active as a Third League club and stadium visitors were coming only from the region. The Club was not participating in international competitions like the UEFA Champions' League and sponsoring and merchandising only concerned local firms. However, the Commission held that there was still the possibility of an effect on trade and competition concerning an albeit limited, number of player transfers taking place between Member States. It concluded that by improving a club's cash flow, State aid can also affect a club's ability to recruit international players, who are the object of competition between European clubs.

When analysing the financing of the renovation of the **Thialf ice arena in the Netherlands in 2013**, [*26*] the Commission recognised the predominantly local character of the commercial exploitation (the arena would be mostly used for recreational use and the nearest border, with Germany, was around 95 km away) and the fact that it would be unlikely that the operation of the arena would have a strong cross-border effect. However, it concluded that the measure had at least a potential effect on trade between Member States as the arena would have the capacity to host international competitions (one of the objectives of the aid measure was to ensure continued 'A status' at the International Skating Union, which allocates competition between its members).

2.4 Recent State aid decisions in the sports sector

When State aid is involved in the sports sector, the European Commission's assessment of its compatibility is based on Article 107 (3) c) TFEU which states that the following may be considered to be compatible with the internal market: "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*."

The cases can be broadly divided into financial support for two groups: (i) sports infrastructure and (ii) sports clubs.

2.4.1 Financing of sports infrastructure

The first group of cases dealt with by the European Commission, concern public support measures for the construction or refurbishment of sports infrastructure. As this category of aid has been included in Article 55 of the General Block Exemption Regulation ("GBER") [*27*] of 2014, most of the European Commission's decisions date before the entry into force of this Regulation on 1 July 2014. The more recent cases relate to big investments projects where the aid amounts have exceeded the GBER thresholds. [*28*]

Since 2011, the European Commission has adopted several decisions on the public financing of sport infrastructure. Most of these decisions involved football stadiums, [*29*] but others have concerned to multifunctional sports arenas, [*30*] a swimming pool, [*31*] an ice arena, [*32*] sports and wellness facilities, [*33*] climbing halls, [*34*] a Gaelic games stadium, [*35*] a rugby stadium, [*36*] etc.

When analysing these decisions, it is noticeable that they all show a consistent and favourable approach by the European Commission. Certain recurring principles can be identified:

- the Commission emphasizes the specificity of sports by referring to Article 165 TFEU [*37*] and the Amsterdam Declaration of Sport;

- the Commission underlines the importance of the fact that the infrastructure is not exclusively used by a single professional sports user.

a. The General Block Exemption Regulation

These principles are reflected in the GBER's compatibility criteria, which is of particular significance for Member States wishing to grant aid in favour of sports infrastructure. Indeed, Article 55 of the GBER allows investment aid for sports and multifunctional recreational infrastructures up to € 30 million per project (with total costs not exceeding € 100 million), and operating aid of up to € 2 million per infrastructure per year. The aid can be granted without notification to the European Commission if the compatibility conditions are met. The Member State is only compelled to inform the Commission about the grant of the compatible aid via an electronic reporting system.

The compatibility conditions can be summarised as follows:

1) The sports infrastructure should not be used exclusively by a single professional sports user. It has to be offered to other professional or non-professional sports users for at least 20% of the time capacity each year.

2) Access to the infrastructure should be open to all users and granted on a transparent and non-discriminatory basis. Undertakings that have financed at least 30% of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided that those conditions are made publicly available.

3) If sports infrastructure is used by professional sports clubs, Member States should ensure that the pricing conditions for its use are made publicly available.

4) Any concession or other entrustment to a third party to construct, upgrade and/or operate the infrastructure should be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

5) For investment aid, the aid amount should not exceed the funding gap (the difference between the eligible costs and the operating profit of the investment). [***38***] For operating aid, the aid amount should not exceed the operating losses over the relevant period. [***39***]

The first application of Article 55 of the GBER was in the case of Kristall Bäder in Germany. [***40***] The investment of Bavaria and the Municipality of Kochel aimed to create a new swimming pool, wellness and spa facilities complex. The aid was granted without notification before the entry into force of the GBER 2014 and was thus illegal, but found compatible based on the compatibility criteria of Article 55.

It is important to note that even when the GBER does not apply, these conditions remain relevant for the European Commission's individual assessments.

b. French support for football stadiums (EURO 2016)

A very interesting case from 2013, [***41***] was the European Commission's approval of the **French State support for the renovation and construction of nine football stadiums** (in Bordeaux, Marseille, Lille, Nice, Saint-Etienne, Toulouse, Paris, Lens and Lyon) to be able to host the 2016 UEFA EURO Championship. The aid of around € 1,052 million was notified by the French State.

The Commission confirmed the existence of an aid and concluded that the public financing would provide an economic advantage at three levels: (i) to the companies involved in the construction and renovation; (ii) to the operators; and (iii) to the users of the stadiums.

It further assessed the compatibility of the aid under Article 107 (3)(c) TFEU.

In its decision, the Commission started by recognising that the construction of venues for sport or other public events and the support for different types of activities that benefit the general public can be considered as a State responsibility, particularly in light of the Amsterdam Declaration on Sport and Article 165 TFEU.

It further found that the project would not have been viable without public support. According to the Commission, the French authorities had been able to show that France was missing competitive sports venues and that private investors would not be willing to finance the construction and renovation costs of stadiums of this size.

Moreover, it found that the aid granted was limited to the minimum necessary to ensure that the stadiums would conform to the UEFA requirements in time for the EURO 2016 championship.

Finally, another important element limiting the distortion of competition was the fact that the stadiums would continue to be available to the local clubs and citizens for social, sports and cultural events after the championship.

As the conditions for the further commercial exploitation and use of the stadiums were not yet fully defined, the decision was limited to the infrastructure aid, but France committed to set up a system of permanent control of the prices paid by the clubs to ensure the use of the stadiums at market conditions. With this obligation, the Commission wanted to limit the risk of distorting competition by granting undue advantages to particular football clubs.

This decision was in line with previous similar decisions for a series of multifunctional stadiums in Belgium, [***42***] Sweden, [***43***] and Germany. [***44***]

c. Multifunctional arena in Tampere

The most recent case on State aid for sports infrastructure was the approval on 31 July 2017 of the Finnish State's public financing of the **construction of a multifunctional arena in Tampere**. [***45***] The arena consisted of an ice stadium, a practice rink and their auxiliary premises. It would have a capacity of 11,440 seats for ice hockey and 11,000 spectators for concerts.

The aid was given in the form of a direct grant, but also in the form of equity and a subordinated loan and could thus not benefit from the GBER's application, which only applies to transparent aid for which it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment.

However, the Commission however examined the different compatibility conditions as described in the GBER and found that the measure would promote sport and culture while preserving competition in the EU's Single Market.

It emphasized the fact that the arena would not only be available to professional sports teams (two local ice-hockey clubs), but also to non-professional sports users, and would also be used for social and cultural events.

The Commission underlined that Finland would ensure a transparent and non-discriminatory access and that the pricing conditions for its use would be market conforming and publicly available.

As the aid did not exceed the funding gap (the difference between the net operating profit in discounted value and the investment costs of the projects), it was found to be proportional.

A very similar decision was taken approximately 2 months before when the European Commission cleared almost € 36 million in the Slovak construction aid for a new national **football stadium in Bratislava**. [***46***] As the aid exceeded the GBER threshold of € 30 million per project, the project had to be notified.

2.4.2 Financial support for sports clubs

The second category concerns cases where public authorities support sports clubs through tax/debt relief schemes, financial backing, favourable real estate operations, or a combination of them.

Contrary to the financing of infrastructure, the European Commission has not yet adopted sector specific rules for aid measures in favour of (professional) sports clubs. These measures cannot benefit from a block exemption and should thus always be analysed and approved by the European Commission under Article 107 (3)(c) TFEU.

Moreover, it is notable that the European Commission seems to be taking a less favourable stand in these type of cases. While infrastructure aid seems to be approved fairly easily, there are a number of decisions in which the European Commission has found that the aid measures in favour of sports club have been incompatible and so have had to be repaid.

Before 2013, the Commission only started two formal investigations into alleged unlawful State aid. The first one related to the Salvia Calcio Act on accounting rules [***47***] and the second one to the sale of land to the football club, AZ, in the Netherlands. [***48***] In both cases, the Commission concluded there was no aid.

After that, the situation changed when the Commission was confronted with numerous complaints of dissatisfied citizens who saw huge budgets going to professional sports clubs (mostly football clubs) in times of economic crisis. It should be noted in this regard that between 2008 and 2013, the Commission was still obliged to handle any complaint it received. [***49***]

The most recent cases relate to football and concern some of the EU's top professional clubs as in 2013, the European Commission started in-depth investigations into various public support measures (tax privileges, the transfer and sale of land and property, state guarantees, bank loans, and debt waivers) in favour of certain Dutch and Spanish football clubs.

Another recent decision concerns the Danish support scheme for the horseracing sector. [***50***]

a. Dutch football clubs

In 2016 NEC Nijmegen, [***51***] MVV Maastricht, [***52***] Willem II [***53***] and Den Bosch [***54***] were all found to have received compatible aid, while PSV Eindhoven was found to have received no aid as the land transaction took place on market terms (see also under 2.3.2 above).

As the clubs under investigation were in financial difficulties, the Commission assessed the measures in the light of the **2004 Guidelines on State aid for rescuing and restructuring firms in difficulty** . These Guidelines aim to ensure that rescue and restructuring aid only goes to companies that have a realistic prospect of viability and that measures are taken to alleviate the distortions of competition caused by such aid.

The Commission concluded that a realistic restructuring plan had been implemented, that the clubs significantly contributed to the cost of their restructuring and agreed to take measures limiting the distortions of competition created by the public funding, such as reducing the number of employees, the number of registered players and players' wages.

b. Spanish football clubs

Regarding the Spanish clubs, the Commission was less favourable and asked the Spanish State in 2016 to recover incompatible aid from seven professional football clubs: Real Madrid, FC Barcelona, Athletic Club Bilbao, CA Osasuna, Valencia CF, Elche CF and Hercules CF.

1. Tax privileges in favour of Real Madrid, FC Barcelona, Athletic Bilbao and Atlético Osasuna

The Commission's first investigation concerned alleged tax privileges in favour of **Real Madrid, FC Barcelona, Athletic Bilbao** and **Atlético Osasuna**. [*55*]

By a law of 1990, all Spanish professional football clubs were required to convert to sports public limited companies ('SPLCs') in order to encourage more responsible management of their activities.

Professional sports clubs that had achieved a positive result for the 4-5 tax years preceding the adoption of the law, were however permitted to continue to operate as sports clubs. Although no sport clubs were named in the legislation, only the four clubs under investigation benefited from this exemption.

As non-profit organisations and in contrast to SPLCs, their income was taxed at a specific rate that was, until 2016, 5% lower than the rate applying to SPLCs and the Commission found that this led to an unjustified economic advantage. The Commission concluded that the regime was incompatible with the internal market and ordered the Spanish State to discontinue the scheme and to recover the aid from the beneficiaries.

Although it is for Spain to calculate the relevant taxes, the Commission acknowledged that the amount to pay back might be rather limited (between € 0 – 5 million) due to the finances of the clubs concerned over the relevant period.

FC Barcelona and Athletic Bilbao appealed the Commission's decision to the General Court, which decided in February 2019 to uphold FC Barcelona's appeal and to reject Athletic Bilbao's appeal.

In the **FC Barcelona case**, [*56*] the General Court accused the Commission of not having sufficiently proven that the Spanish legislation conferred an economic advantage on the clubs.

The General Court recognised the nominal difference in the tax rate of sports clubs and SPLCs, but agreed with FC Barcelona that the Commission had made a manifest error in its assessment of the existence of an advantage. The General Court established that the data on which the Commission had relied upon only covered four years, whereas the Commission found that the advantage existed for a much longer period (1999-2015) and that this data applied to all sectors of the economy and not only football clubs. According to the General Court, the Commission should have taken more into account the elements highlighting the specificity of the sector concerned relating to the importance of fiscal deductions. [*57*] Real Madrid for example, had provided evidence showing that the tax regime applying to non-profit organisations had been, between 2000 and 2013, significantly more disadvantageous to it than that applying to SPLCs.

Although the General Court went quite far with the requirements it imposed on the European Commission regarding the European Commission's analysis of a tax regime, one could also say that this approach was consistent with the earlier case law that required the EU institutions to have regard to the specific nature of sport when applying EU law.

The European Commission has appealed the decision before the CJEU [*58*] by arguing that the General Court has made an error when interpreting the concept of economic advantage. The CJEU can only decide on points of law and not the facts of the case. The case is pending for the moment, but if the CJEU follows the General Court, then the Commission's decision will stay annulled and if it decides to make a new decision, it will need to reassess more thoroughly the existence of an advantage.

2. Land transfer to Real Madrid

In a second investigation, the Commission examined a land swap between **Real Madrid** and the City of Madrid. [***59***]

In 1998, the City of Madrid and Real Madrid entered into an agreement on exchange of land: Real Madrid would transfer several plots to the City of Madrid, which in exchange would transfer to the former some public land. This public land included plot B-32, known as 'Las Tablas', which was worth € 595,194 in 1998. However, the transfer never happened as a ruling by the Spanish courts declared that land designated for basic sport use (such as plot B-32) could only be owned by public authorities and not private entities such as Real Madrid.

To compensate Real Madrid, the City of Madrid agreed to conclude a settlement agreement in 2011 and to compensate the football club with the value the plot had in 2011 (estimated at € 22.7 million). The compensation would be made through the transfer of land owned by the City of Madrid.

As the European Commission had serious doubts about the enormous increase of value of the 'Las Tablas' land between 1998 and 2011 (the City authorities increased the valuation to € 22.6 million, an increase of over € 20 million in thirteen years), it obtained its own independent expert assessment. Its inquiry determined that the land affected by the transaction had increased in value but was overvalued by € 18.4 million, which gave Real Madrid an unjustified advantage over other clubs and that needed to be paid back.

Real Madrid appealed the decision before the General Court, which resulted in a second defeat for the European Commission. [***60***]

On 22 May 2019, the General Court confirmed the Commission's conclusion that a prudent market economy operator would have sought legal advice before signing the 2011 settlement agreement but followed Real Madrid's reasoning that the Commission had made a manifest error when calculating the aid amount and even establishing the existence of an economic advantage in favour of Real Madrid. According to the General Court, the Commission did not take into account all the aspects and context of the transaction.

As the transfer of the land took place in the framework of a global agreement in which several properties were exchanged, the Commission should have also assessed the value of the plots transferred to replace the Las Tablas land. However, the Commission simply used the estimates on which the 2011 settlement agreement had been based and the General Court therefore decided to annul the decision. In contrast to the Barcelona case above, no appeal has been launched before the CJEU.

3. Bank guarantees to three Valencia football clubs

Finally, in a third case, the Commission investigated guarantees given by the State-owned Valencia Institute of Finance (IVF) for loans granted to three Valencia football clubs (**Valencia, Hercules** and **Elche**) that were all in financial difficulties at the time. [***61***] The public guarantee allowed the clubs to obtain the loans on more favourable terms.

It is interesting to note in this case that the Commission initially accepted Spain's assurance that no aid was involved, but later on decided to re-open the case following complaints from citizens and different press articles.

The Commission concluded that the clubs paid no adequate remuneration for the guarantees (which covered 100% of the loan's principal plus interest plus the costs of the guaranteed transaction) and that this gave them an economic advantage over other clubs, who have to raise money without state backing.

As demonstrated in the Dutch Football cases, it can be permitted to grant aid to firms in difficulty, but in this case, the Commission emphasized that the public financing was not linked to any restructuring plan to make the clubs viable and none of them implemented compensatory measures to offset the distortion of competition created by the aid. The Commission ordered the clubs to pay back the State the advantage they had received (€ 20.4 million for Valencia, € 6.1 million for Hercules and € 3.7 million for Elche).

Hercules made an appeal to the General Court, which, on 20 March 2019, for the third time in three months, decided to annul the European Commission's decision on the (procedural) grounds of a lack of sufficient justification of the existence of an economic advantage. [***62***] The General Court concluded that the European Commission had not sufficiently clarified how it had taken into consideration the counter-guarantee granted by Aligestion (the owner of Hercules' stadium). The General Court also criticised the fact that the Commission only referred to the temporary nature of this counter-guarantee without any real assessment of the impact of this guarantee on the existence of the alleged economic advantage.

Also Valencia [***63***] and Elche [***64***] appealed the Commission's decision and the General Court has very recently, on 12 March 2020, again decided in favour of the clubs by concluding that the European Commission made several manifest errors in its assessment of the existence of an economic advantage.

On 22 May 2020, the European Commission has appealed the Valencia judgment of the General Court before the CJEU (case C-211/20 P).

3. Restrictive measures and abuses through sports association' regulatory powers

3.1 Introduction

The European Commission has taken only one formal antitrust decision in the sports sector in recent years that concerns restrictive measures taken by a sports association through its regulatory powers. This decision, in the International Skating Union ("ISU") [***65***] case has marked the return of the European Commission in the sports sector. Interestingly enough, around the same time a similar case was launched in the US against the *Fédération Internationale de Natation*, "FINA" [***66***] and a decision was taken in India against the Board of Control for Cricket in India, "BCCI". [***67***]

This section here will focus on some recent cases on restrictive measures through sports associations' regulatory powers, first with the recent ISU decision and two national sagas in the equestrian sector regarding Barriers to entry for third party organisers' before considering other recent decisions regarding 'Barriers to entry and unfair conditions of participation for athletes and other stakeholders' (under 3.2), and then followed by 'Ticket Sales Arrangements' (under 3.3), 'Advertising rights' (under 3.4) and 'Disciplinary measures' (under 3.5).

3.2 Barriers to entry for third party organisers

3.2.1 International Skating Union

ISU is an international sports federation recognised by the International Olympic Committee as the international sports federation globally administering figure skating on ice and speed skating on ice. ISU is the sole regulator of both these sports [*68*] and is composed of the individual national associations (its "Members") that administer figure and speed skating on ice at the national level. [*69*]

Following a complaint by two professional speed skaters, Mr. Mark Tuitert and Mr. Niels Kerstholt, the European Commission investigated the existence of potential breaches of competition law arising from ISU's Eligibility rules. [*70*] Under these rules, an athlete would become ineligible to participate in ISU activities and competitions by skating in an event not authorised by an ISU Member and/or the ISU. [*71*] The European Commission heavily relied on the example of Icederby International co., Ltd ("Icederby"), an event and entertainment company that launched a new format of ice racing and ice entertainment events. [*72*] Given the gravity of the penalties (the ineligibility could take the form of a lifetime ban), ISU in effect was forbidding athletes from participating in non-authorised events.

The decision relied on settled case law regarding the application of competition law to the sports sector. [*73*] It then confirmed that international sports associations could be considered as undertakings [*74*] or an association of undertakings. [*75*] In the present case, since the ISU's Members themselves qualified as undertakings, ISU constituted an association of undertakings within the meaning of Article 101 (1) TFEU, and was active in the market for the organisation and commercial exploitation of international speed skating events. [*76*] Hence, ISU's Eligibility rules were a decision of an association of undertakings. This qualification under Article 101 TFEU allowed the European Commission not to assess the existence of a potential dominant position by the ISU on the relevant market. [*77*]

According to the Court of Justice's *Meca-Medina* judgment, [*78*] such rules may fall outside the application of Article 101 TFEU in certain circumstances, taking into account: the overall context in which the rules were taken or produce their effects and their objectives; whether the consequential effects restrictive of competition are inherent in the pursuit of the objectives; and whether they are proportionate to such objectives.

In the present case, the European Commission analysed the various objectives put forward by ISU to justify its Eligibility rules. Among them, the following could be considered as legitimate objectives: the protection of the integrity of the sport, the protection of health and safety, the organisation and proper conduct of competitive sport, some forms of horizontal (for instance, equal distribution of revenues to all the clubs participating in the same competition) or vertical (for instance, redistribution of revenues from the elite/professional level of a sport to the low/grassroots level) solidarity, and the protection of the volunteer model of sport. On the other hand, the protection of economic and/or financial interests and the prevention of free riding could not be considered as legitimate objectives. [*79*] Then, the European Commission examined these restrictions of competition imposed by the ISU and concluded that they were not inherent in the pursuit of these legitimate objectives, nor proportionate to achieving them.

The Commission ordered ISU "*to bring the infringement established in this decision effectively to an end and henceforth refrain from any measure that has the same or an equivalent object or effect*" [*80*] and imposed a daily periodic penalty payment of 5% of the ISU's average daily turnover in the preceding business year in the event of failure to comply with the order. [*81*] The Commission did not impose a fine on the ISU because of the novelty of the case, because the Eligibility rules were publicly known and available since 1998 and because the ISU was a sports federation, which therefore devolved part of its revenues to the development of the sport. [*82*]

The ISU has appealed the decision [***83***] and, in the meantime, has amended its Eligibility rules to comply with the Commission's decision. The amendments to its rules include (i) more precise definitions of the authorisation requirements for third party event organisers, particularly regarding the legitimate objectives that the requirements pursue, such as integrity, health and safety; (ii) lessened potential penalties on athletes for participating in unauthorised third party events; and (iii) a revised code of ethics applying to private companies organising events. [***84***]

3.2.2 Fédération Equestre Internationale's saga in Belgium

The ISU decision is echoed by the multiple decisions taken by the Belgian Competition Authority ("BCA") and the Belgian courts in two proceedings involving another international sports federation, the *Fédération Equestre Internationale* ("FEI").

The first proceedings [***85***] ("FEI 1") began with a simultaneous complaint [***86***] and request for interim measures by an organiser of (a series of) jumping events ("Global") [***87***] against the FEI. Global was the organizer of the Global Champions Tour ("GCT"), a series of jumping events recognised by the FEI. Besides the GCT, Global wanted to organise another series of jumping events the Global Champions League ("GCL"). Jumping is, by essence, an individual sport (with the notable exception of competitions between countries) and, according to Global, the attraction and the novelty of the GCL was that it would be a competition between teams.

At the heart of the legal proceedings were the FEI rules on participation by athletes, horses and officials in unauthorised events, which were the events not recognised by the FEI. Another major point in the proceedings was the alleged lack of clarity of the FEI procedures regarding being recognised as an authorised event.

The interim measures requested by Global sought to: 1) suspend the FEI rules on participation by athletes, horses and officials in unauthorised events; 2) prohibit the FEI from suspending or penalising, athletes, horses, officials and/or organisers participating in a competition not authorised by the FEI; and 3) order the FEI to communicate such suspension of the rules, in writing, on its website and to all stakeholders. These interim measures (slightly modified by the BCA) were ordered by the BCA. Following an appeal by the FEI, the Brussels' Court of Appeal confirmed the BCA's decision. Two days after the Court of Appeal's decision, Global introduced a procedure before the BCA against the FEI for failure to implement the third interim measure. The BCA sided with Global.

Following the decision on interim measures, the FEI amended its rules and allowed Global to organise its GCL and Global withdrew its complaint. [***88***] The fact that the complaint had been withdrawn did not preclude the BCA from continuing its investigation and also taking a decision on the merits on 20 December 2018. Just as with the European Commission in the ISU case, the BCA ultimately decided not to impose a fine on the FEI, given the FEI's amendment of its rules.

The second proceedings flowed from the first. The FEI's decision to allow Global to organise its GCL tournament prompted an athlete and a stable to file a complaint and a request for interim measures before the BCA, arguing that the system for selecting the athletes participating in the GCL events was discriminatory. They argued that only a fraction of all professional riders could be part of a team, while a spot in a team would allow taking part in the most lucrative events: the GCL events. The rules on the selection of the athletes participating in a GCL event were indeed different from the general rules. According to the claimants, those athletes that were a member of a GCL team were given a substantial and unfair advantage by receiving a higher chance to take part in the most lucrative events (in prize money and points for the individual ranking).

In a first decision, [***89***] the BCA awarded interim measures to the claimants and ordered Global and the FEI to align the rules of invitation for athletes to GCL events to the rules of other similar events recognised by the FEI.

The FEI and Global refused to comply with this first decision, which led the BCA to take a second decision [***90***] imposing a periodic penalty payment on the FEI and Global for their failure to implement the first decision. In the meantime, Global had appealed the BCA's first decision before the Brussels Court of Appeal, which annulled the BCA's first decision for procedural reasons. The case was sent back to the BCA, which led to another appeal by Global before the Brussels Court of Appeal on procedural grounds. [***91***] Finally, the BCA ruled [***92***] that there was, *prima facie*, no imminent risk of a serious and difficult to repair damage and (in contrast to its first decision) the BCA decided not to impose interim measures on the FEI and Global. This last decision has not been appealed, but the complaint on the merits is still pending before the BCA.

3.2.3 Federazione Italiana Sport Equestri's saga in Italy

Equestrian sport seems to be prone to sagas, as shown by the Italian Competition Authority ("AGCM") reopening a case against the Federazione Italiana Sport Equestri ("FISE").

In 2008, the AGCM had taken a decision [***93***] against FISE following complaints by *Federitalia-Federazione italiana per l'assistenza, sport e tempo libero*, [***94***] *FIEW* [***95***] and *ENGEA*. [***96***] The complainants argued that FISE had abused its regulatory powers by limiting the possibility of third parties to organise equestrian events (or activities). During the procedure, FISE proposed amending its rules (by allowing, for instance, its members to participate in events organised by third parties that were not member(s) of FISE). The commitments were considered sufficient by the ICA, which closed the investigation without imposing a fine. This decision was appealed, partially annulled and sent back to the AGCMin 2010, which took a new decision in 2011 [***97***] containing an updated version of the commitments and, in particular, one of the commitment was to exclude from the scope of FISE's "exclusive domain" (the organisation of) amateur events. On 8 October 2019, [***98***] the AGCM took the (to date) final decision in this saga and imposed a € 450,000 fine on FISE for the substantial restrictions it had imposed on organisers of amateur events and activities, which had thereby severely limited the scope of operations of other competitors and expanded its own sphere of activity (or its "exclusive domain").

3.3 Barriers to entry and unfair conditions of participation for athletes and other stakeholders

3.3.1 Germany – Bridge

Two German Bridge players became world champions in 2013, but were later found to have been cheating during the tournament through a system of coded coughs. The players were banned both by the World Bridge Federation ("WBF") and by their national federation, the Deutscher Bridge-Verband ("DBV"). They challenged this ban first before a court in Cologne [***99***] and then in an appeal before a specialised antitrust court in Düsseldorf [***100***] based on a specific provision of German competition law on the misuse of "relative or superior market power". They won in both instances, on account that the WBF had no power to punish individuals and that the DBV had not relied on its discretionary power to impose a penalty but had rather merely copied the WBF's decision.

3.3.2 Italia – Football

On 27 June 2018, the AGCM imposed a fine of € 3,330,659.69 on the Italian football federation (Federazione Italiana Giuoco Calcio, "FIGC") [***101***] for the violation of Article 101 TFEU. The FIGC had adopted rules restricting access to the market of professional services offered by some specific professions that support football teams:

the *Direttori Sportivi* and the *Collaboratori della Gestione Sportiva* (that take care of the organisational arrangements of professional and amateur football teams), the *Osservatori Calcistici* (which carry out scouting activities) and the Match Analysts (which carry out the statistical analysis of the performance data of individual players and teams). The AGCM noted the absence of objective justifications for the restrictions introduced by the FIGC, which were not imposed by the international federations (FIFA and UEFA), nor contemplated in other national laws.

3.3.3 Croatia – Taekwondo

In Croatia, the national competition authority (Croatian Competition Authority, "CCA") found on 30 May 2019 [***102***] that the Croatian Taekwondo Federation (CTF) had not distorted competition by abusing its dominant position by sending a letter to its members informing them and obliging them not to enter into a business relationship with a company called LMK. In particular, because the CCA found that the CTF had potentially closed access to LMK only to a small segment of the relevant market; its members (taekwondo clubs) had mostly not complied with the CTF's letter; and the CTF had later informed its members that LMK had paid all its obligations and debts to the CTF, implying that all members could do business with LMK at their own risk.

3.3.4 Belgium – Football

On 12 December 2019, the Brussels Court of Appeal delivered what is, currently (as an appeal before the Belgian Supreme Court was still possible when this article was written) the last decision in the case brought by Doyens Sport Investments limited ("Doyen"), asbl Royal Football Club de Seraing ("Seraing"), the former president of FC Twente (the Dutch football club), and 10 supporters of this club (the "Individuals") against the ban on Third Party Ownership ("TPO"). The ban on TPO is the prohibition of economic ownership of players by third parties (that is, not a football club). Doyen, Seraing and the Individuals had initiated in 2015 proceedings against the Union of European Football Associations ("UEFA"), the International Federation of Football Association ("FIFA"), and the Belgian Football Federation ("URBSFA") regarding FIFA's adoption of Circular no. 1464 banning TPO, which was, among other things, based on the Circular's alleged infringement of competition law. In a first judgement of 27 November 2016, the Brussels' French speaking Commercial Court had (largely) sided with the FIFA, UEFA and URBSFA. This decision was later appealed, which lead to the judgment of 12 December 2019. Between the first and the second judgment, the Court of Arbitration for Sport made an arbitral award in favour of the FIFA on 9 March 2017. Partly because of the existence of this arbitral award, but also for other procedural grounds, the Brussels Court of Appeal rejected the appeal by Doyen, Seraing and the Individuals.

3.3.5 Belgium – Bumper pool

On 24 January 2020, the BCA imposed an interim measure on the Belgian Bumper Pool Association ('Belgische Golfbiljartbond or BGB') concerning the bumper pool balls that can be used in official competitions and matches. [***103***] The interim measure followed a request from HCSB BVBA, a bumper pool ball producer that had challenged the BGB rules stipulating that only two balls produced by Saluc (the world market leader in the production of pool balls) may be played with. The BCA gave the BGB two choices: either suspend the obligation to exclusively use Saluc's bumper pool balls, or organise a non-discriminatory tender to determine the authorised bumper pool balls. In both situations, the BCA authorised the BGB to stipulate that the balls must have certain objectively determinable characteristics that make them functionally suitable for playing bumper pool and do not create a statistically significant advantage for players who have practised with a particular brand of ball. These characteristics include ball weight, diameter, material, and rotation speed.

3.3.6 Belgium – Football

Following the Covid-19 pandemic, Belgium's professional football governing body ("Pro League") decided to end the season for Belgium's two professional leagues (D1A and D1B) before all the matches had been played. This decision has led to the relegation of Waasland-Beveren (from D1A to D1B) and ER Virton (D1B to amateur D2). Both clubs have filed complaints with the BCA against these decisions and requests for interim measures. Various other clubs of both the professional and amateur divisions filed complaints in the spring 2020 with the BCA.

3.3.7 Portugal – Football

On April 8 2020, the Portuguese Professional Football League ("LPFP") issued statements that referred to a resolution adopted by agreement between the First and Second Leagues clubs, as LPFP members, stating that the clubs will not hire players who unilaterally terminate their employment due to issues caused by the Covid-19 pandemic ("no-poach agreement"). [***104***] This has led the Portuguese Competition Authority to impose interim measures on the LPFP aiming at: 1) suspending the no-poach agreement, 2) forcing the LPFP to communicate to all its member clubs the suspension of its decision of April 8 2020, and 3) issuing a press release giving notice of the same fact. For each day of delay in adopting the interim measures, the LPFP has been ordered to pay €6,000 euros.

3.4 Ticket sales arrangements

The sale of tickets is a large source of income in the world of sport and ticketing agreements for major sporting events between international and national federations and associations, event organising committees and/or other undertakings have been scrutinised by the competition law authorities. In particular, agreements that involve an exclusive distribution or impose a territorial restriction or a limitation on payment methods have been assessed under Articles 101 and 102 TFEU.

3.4.1 Exclusive distribution

For the **distribution of 1990 FIFA World Cup tickets**, the Commission decided that FIFA and the Italian Football Federation had committed an infringement by granting to one ad hoc agency the exclusive worldwide rights to provide tickets with package tours, because the Commission found that this action restricted competition with and between travel agencies. [***105***]

Another important decision concerning exclusive distribution was the Turkish Competition Board's **Passolig** Decision. [***106***] On 31 March 2011, Turkey implemented Law No.6222 on the prevention of Violence and Disorder in Sports, which provides that the tickets for the highest and lower football league competitions are available only via an electronic system and that only people with a personal electronic card (stating their last and first name, ID number and displaying a photo) are able to buy them. [***107***] To comply with these legal requirements, the Passolig system was created. Therefore, everyone who would like to attend such a competition in Turkey must purchase a Passolig card. As a result of two tenders, the Turkish Football Federation concluded a Financial Establishment Agreement and an Intermediary Services for Ticket Sales Agreement with Aktif Yatirim Bankasi A.S ("Aktifbank") and a System Integrator Agreement with the E-Kent/Netas Consortium. These agreements were the subject of a preliminary investigation because of an infringement of Article 4 of the Turkish Law on the Protection of Competition No 4504. In its decision of 26 November 2014 the Board decided that the agreements were within the scope of Article 4, but granted an individual exemption to those agreements until the end of the 2016-2017 football season and decided to evaluate those agreements again at the end of this period. On 12 September 2018, the

Turkish Competition Board decided to grant again an individual exemption to the agreement until the end of the 2012-2024 football season. According to the Turkish media, different countries would be evaluating this system with an eye to implementing it themselves. [***108***]

3.4.2 Territorial restrictions

For purchasing tickets for the 1998 FIFA World Cup finals, the ticketing system favoured consumers who were able to provide an address in France. The Commission imposed a symbolic fine of €1000 on the organiser because it found that "*the organiser could not have easily relied on previous decisions of the Commission or case law of the Court in order to ascertain their responsibilities under European Union (EU) competition rules*". [***109***]

3.4.3 Payment methods

The Commission stated in two cases in 2004 [***110***] and 2006 [***111***] that sports fans must benefit from a fair choice of payment methods. Both cases were closed without a formal decision after it was ensured that sales channels requiring credit card-only payments would only be allowed if the consumers also had reasonable access to alternative sales channels not requiring credit card-only payments.

3.5 Advertising rights of athletes

In Germany, the *Bundeskartellamt* ("BKA") has recently taken a decision [***112***] on an abuse of a dominant position against the *Deutscher Olympischer Sportbund* ("DOSB") and the International Olympic Committee ("IOC"). The case concerned the rules of the IOC and DOSB limiting (and even sometimes forbidding) advertising by athletes during and also, for a certain period, before and after the Olympic Games. The administrative proceedings were concluded with a commitment agreement and without imposing a fine on either the IOC or the DOSB. Both the IOC and the DOSB committed "*to considerably enhance advertising opportunities for German athletes and their sponsors*". [***113***]

3.6 Disciplinary measures

Ten years after having taken its decision, the European Commission has finally published its decision in case COMP/39464 Supporters Juventus Turin/ FIGC-CONI-UEFA-FIFA. [***114***] The decision was already the subject of an appeal before the General Court, [***115***] which dismissed that appeal in 2012.

This long-awaited decision concerns the European Commission's rejection of a complaint that the "*Associazione Giùlemanidallajuve*", a group of fans, shareholders, etc. of the *Juventus Football Club SpA di Torino* ("Juventus"), filed with the European Commission.

The complaint was filed against the Federazione Italiana Giuoco Calcio ("FIGC"), the *Comitato Olimpico Nazionale Italiano* ("CONI"), UEFA, and FIFA and concerned alleged violations of Articles 101 and 102 TFEU regarding the disciplinary measures imposed on Juventus. The disciplinary penalties were imposed following the *Calciopoli* scandal, in which a vast fraud in referee designation was supposed to have favoured Juventus during its matches. Juventus was punished with a fine, relegation to *Serie B*, and a point deficit for the upcoming season.

The European Commission has rejected the complaint for various reasons: lack of legitimate interest, lack of sufficient Community interest, lack of significant effect on the functioning of the common market and the fact that the probability of an infringement was too remote in comparison to the depth of the investigation required.

4. Sports and media rights

4.1 Introduction

Sports media rights constitute one of the main factors that have driven economic growth in the sports sector. At present, more than 50 per cent of the funding of sports organisations and teams is financed by the sale of audiovisual rights. [***116***] The acquisition and sale of broadcasting rights for sporting events is subject to the competition rules, particularly the prohibition of anti-competitive agreements and the abuse of dominant positions.

Contracts concluded between league associations and media operators regarding the sale and acquisition of audio-visual content (the upstream market) have a significant effect on the downstream markets in which the media operators, who acquire the broadcasting rights, are active. [***117***] The application of competition law to sports-related broadcasting rights therefore has a dual dimension. First, horizontally with the very controversial issue of collective selling by sports leagues of the right(s) to broadcast exclusive live coverage of their sports in the upstream market. Team sports by definition need to cooperate, which they do through leagues and tournaments. While the individual sale by each club of their rights would allow more broadcasters to obtain rights, it has been widely accepted that the collective sale of those rights have pro-competitive effects. Second, the licensing agreements through which the sports broadcasting rights are distributed on the downstream market have attracted attention to the vertical dimension of sports-related media rights. The European Commission and subsequently the Member States have intervened to draw the outlines of the principles to take into account when selling and acquiring those rights.

4.2 Horizontal issues - Joint selling

4.2.1 General

To date, the application of competition law to sports-related broadcasting rights has focused mainly on the very controversial issue of collective selling by sports leagues of the right(s) to broadcast exclusive live coverage of their sports. [***118***] The application of competition law to the sale of sports rights stems from the argument that teams act as a cartel by pooling their media-related club rights and marketing through a single entity, typically the league association. Sports clubs thus entrust the selling of their media rights to their respective association, which then sells the rights collectively on their behalf. The collective selling of rights restricts competition in three main ways by:

- giving the league the market power to dictate the price of the broadcast rights, which leads to inflated prices both for broadcasters and for consumers;

- limiting the availability of rights for sporting events, given that teams might fear that live broadcast coverage might undermine the stadium attendance and thus revenue; and

- strengthening the market position of the most important broadcasters, as they are the only operators who are able to bid for all the rights in a package.

At national level, the collective selling of rights has been favoured in the majority of countries such as Germany, the UK and France. The European Commission had consistently ruled that joint selling constitutes a horizontal restriction of competition falling within the scope of Article 101 (1) TFEU, but which could be covered by the exception of Article 101 (3) TFEU. The European Commission has indeed sought to amend the practices to dilute their anti-competitive tendencies rather than condemning collective selling outright.

Before Regulation 1/2003, the enforcement system of competition law had worked on an ex ante control basis of clearance and notification under Regulation 17/62. The new Regulation 1/2003 introduced a system of ex post control and self-assessment by undertakings; moreover, the European Commission and national competition authorities enjoyed new powers to deal with infringements of competition law, for example through Article 9, which gives undertakings the chance to offer the Commission commitments to avoid the latter from taking an infringement decision. The Commission can accept those commitments and make them binding upon the undertakings concerned and subsequently end the proceeding under Article 9 (1) of Regulation 1/2003 if, in light of the commitments, there are no longer grounds for action. The possibility of adopting commitment decisions allows competition law concerns to be overcome that are particular to the individual case and sector at hand without having to prohibit a certain behaviour or agreement in itself.

The European Commission and subsequently the National competition authorities have relied on the new enforcement system brought by Regulation 1/2003 and have taken commitment decisions in various sectors, more particularly in the sports sector for media rights.

4.2.2 At European level

In the *European UEFA Champions League* [***119***] decision and afterwards in the national *German Bundesliga* [***120***] and *FA Premier League cases*, [***121***] the European Commission found that the collective selling of media rights by sports federations of their members' matches restricted competition because it had negative effects on prices, innovation and media concentration to the detriment of consumers. It was problematic that the leagues sold the rights in a single bundle or very few packages on an exclusive basis. However, the European Commission admitted that such a system also brought about efficiencies, for example by lowering transaction costs for media-operators (by providing a single point of sale) and enabling the branding of uniform league products. Upon the parties concerned offering changes or commitments, which aimed to address these concerns, the European Commission finally declared the joint selling agreements compatible with Article 101 TFEU. The main remedies can be summarised as follows: a short duration of and a limited scope of the exclusive rights; a transparent bidding procedure; the retention of sales of certain rights by the clubs themselves; and a fall-back clause, under which some unsold rights might revert to the clubs for individual marketing.

These remedies are not exhaustive and have to be assessed on a case-by-case basis depending on the particularities of each situation. In 2007, the European Commission adopted a White Paper on sport, which summarised the existing case law at European level in the sports sector and aimed to facilitate the case-by-case assessment of any practice [***122***].

a. UEFA Champions League decision

In the UEFA Champions League case in 2003, the European Commission exempted UEFA's joint selling policy under Regulation 62/17 following an application by UEFA for an individual exemption under Article 101(3) TFEU. UEFA's first joint selling agreements consisted of UEFA selling all the Champions League TV rights in one package to a single broadcaster on an exclusive basis, for up to four years at a time. The buyers were often free to air TV

broadcasters that could sub-license some rights to pay-TV broadcasters. One of the problems with these selling agreements was that not all matches were seen live on TV, while Internet and phone operators simply did not have access to the rights at all. The Commission therefore found that the joint selling agreements as they were notified by UEFA restricted competition between broadcasters and objected to them. As a result, UEFA proposed a new joint selling arrangement to meet the Commission's concerns. The new policy would allow UEFA to continue selling the rights to its successful Champions League brand while bringing football within the reach of more broadcasters as well as Internet and telephone operators, and permitting clubs to market part of these rights individually. In particular, the Commission negotiated a three-year limit on the length of any exclusive deal; the separation of the television rights into different packages; and the right for the individual clubs to market the matches themselves if they have not been sold by UEFA in one of the packages.

b. German Bundesliga and FA Premier League cases

The UEFA decision at the European level provided a template for the European Commission's approach to other instances of the collective selling of football rights by national leagues, most notably the German league (Bundesliga) in Germany and the Premier League in England.

- In the *German Bundesliga decision*, the German league applied for negative clearance and individual exemption under Article 101(3) TFEU and Regulation 17/62. When Regulation 1/2003 entered into force, the existing procedures lapsed, but the European Commission continued the investigation and adopted the first commitment decision under Article 9 of the new Regulation. Following its assessment in the *UEFA Champions League* decision, the Commission found that the transfer of media rights to the *Bundesliga* and *2. Bundesliga* from the clubs and the subsequent central selling of those rights were within the scope of Article 101 (1) TFEU. The Commission argued that the Bundesliga clubs were prevented from dealing independently with television and radio operators and that competition in the sale of rights was therefore excluded. Another consideration followed from the adverse effect on the downstream television and new media markets, as supplying football content plays an important role in competition between content suppliers for advertising revenues and subscribers or pay-per-view customers. In view of the commitments offered in the *UEFA Champions League* decision, the Bundesliga accepted that all rights would be sold in several packages through a transparent procedure and that the licences and sub-licences would be granted for a maximum of 3 years. In case of failure of the league to sell all rights packages, a similar fall-back clause as in the *UEFA Champions League* decision provided that unsold rights would revert to the clubs for individual marketing. An important novelty, compared to the UEFA Champions League decision, was that the Bundesliga had to sell one package of rights containing a licence to broadcast the league games live via the Internet. This aimed at opening a new way of distribution in the downstream market. As the decision stated, the commitments improved the accessibility of content for TV, radio and new media operators, making sure that more rights were being made available to the market and thereby contributing to innovation and dampening the concentration tendencies in the media markets. [***123***]

- In 2006, the European Commission adopted a second commitment decision regarding a national league association, the FA Premier League ("**Premier League**"). The Premier League is the association of all first division clubs of England and Wales and it sold their audio-visual rights through a limited liability company owned by the clubs. One peculiarity was that the Premier League only sold a limited amount of live rights, which, moreover, were held by one single operator (BSkyB). As was the case with the German Bundesliga, the Premier League applied for negative clearance and an individual exemption under Article 101(3) TFEU and when Regulation 1/2003 entered into force, the Commission continued the procedure under the new enforcement regime. The Commission identified the same competition concerns as the two previous decisions and stressed the strong position of one single media operator, the lack of full free TV secondary exploitation and the barriers to entry in the downstream

market due to the small amount of exclusive packages offered in the upstream market. The Premier League offered commitments ensuring a transparent tendering procedure and it increased the number of exclusive packages of rights from 2007 onwards for a maximum of 3 seasons. The most notable commitment was referred to as the no-single-buyer rule, which aimed at ensuring that no single bidder may be awarded all exclusive audiovisual rights for live broadcasts. The measure was supposed to introduce competition in the upstream market and prevent a monopoly in the broadcasting market. [***124***]

The Commission argued that the commitments introduced greater competition into the marketing of Premier League rights, provided a transparent and non-discriminatory sales procedure, ensured that no single purchaser would be able to buy all TV rights, improved accessibility of content for television, radio and new media operators and made sure that all rights were being made available in the market. [***125***]

4.2.3 Decisions adopted by the national competition authorities

Following the European Commission's practice, disrespect for the abovementioned principles, as set out by the Commission, has led the national authorities to intervene on multiple occasions across Europe. For example, in France, [***126***] Germany, [***127***] the UK, [***128***] Belgium, [***129***] Austria, [***130***] Italy, [***131***] Romania, [***132***] Poland, [***133***] Spain, [***134***] and Denmark, [***135***] the National competition authorities followed the European Commission's reasoning regarding the joint selling of broadcasting rights and took commitment decisions aimed at mitigating the anticompetitive effects of such horizontal agreements. We summarise the most relevant and recent national cases below.

a. Germany

The BKA adopted two subsequent commitment decisions in 2012 [***136***] and 2016 [***137***] under Article 32b GWB, the equivalent to Article 9 of Regulation 1/2003. The BKA based its legal analysis on the *UEFA Champions League* decision to assess the effects of the Bundesliga's practice on the German market over time. In line with the European Commission decision of 2005, the BKA provided that the sale of the rights had to be organised through a fair and transparent tendering procedure; that the rights should be split up into different packages; for a maximum of four years; and that the sale of one package should allow for a free-TV operator to broadcast deferred highlights of the game.

In its decision of 2016, the BKA followed a different approach in assessing Article 101 TFEU. While the three European Commission decisions and the BKA decision of 2012 aimed at preventing the restraint of competition between single clubs, this time the BKA focused on the dominant position of the league association in the upstream market and the quasi-monopoly of Sky in the downstream market. It stressed the effects of foreclosure that this dominance entailed. As a result, the commitments this time included a no-single-buyer rule, which prevented one single media-operator from purchasing all packages.

In March 2020, the FCO approved the German league's marketing model for the broadcasting rights of the Bundesliga and 2. Bundesliga matches for the 2021/2022 season onwards, upon self-commitments offered by the DFL including again a no-single-buyer rule. The broadcasting rights will be sold through an auction for live games in four packages (Saturday afternoon, Saturday evening, Friday/Sunday and Saturday conference) covering all transmission channels (satellite, cable and internet). [***138***]

b. UK

The UK's Ofcom followed a different approach from the BKA and did not ask for subsequent commitment decisions after 2006. Ofcom did not make a new full analysis of Article 101 TFEU to adapt the commitments adopted by the European Commission to the evolving market situation (as the BKA had done), but considered that the Commission's assessment was still accurate and that it only needed to intervene occasionally. Ofcom has not modified the commitments since the Commission's decision: Ofcom argued that the increase of output to a minimum number of 190 matches broadcast live, in combination with the no-single-buyer rule, would overcome competition concerns.

c. Spain

Under the Royal Decree 5/2015 relating to urgent measures regarding the commercialisation of broadcasting rights for professional football tournaments, the **Real Federación Española de Fútbol** ("RFEF") must ask the Spanish Competition Authority ("CNMC") for a preliminary report on its proposals for the commercialisation conditions of broadcasting rights. The CNMC issues reports to provide guidance for the interpretation and application of the rules contained in the Royal Decree of 2015. Throughout 2019, the CNMC has issued reports on the commercialisation conditions of the rights concerning the 2019 Copa del Rey and Supercopa in Spain and in the international markets and for the broadcasting rights of the competition in the seasons from 2019 to 2022 [***139***]. In November 2019, following a proposal sent by the RFEF to the CNMC, the latter expressed multiple concerns regarding the content of the proposal: in particular, the CNMC urged the RFEF to suppress unjustified reserved rights and non-exclusive rights, and to adapt the audiovisual content subject to the commercialisation to the timeframe as set out in the regulation.

d. Italy

In April 2016, the AGCM fined broadcasters Sky Italy, RTI-Mediaset, the Italian Football League ("**Lega Calcio**") and its media advisor Infront Italia a total of € 66 million for altering the outcomes of tenders for the allocation of media rights for Serie A matches for the seasons between 2015 and 2018. [***140***]

The rights in the tender were divided into different lots, which could not be assigned directly to the different bidders because of certain particularities in the contained bids. To reallocate the broadcasting rights, Lega Calcio and Infront facilitated negotiations between Sky and Mediaset, who arranged to assign one lot to Sky, and two lots to Mediaset, who would sublicense one of those lots back to Sky. The AGCM considered that this conduct constituted an infringement by object because it aimed to partition the market for football match broadcasting rights. However, the First Instance Administrative Court annulled the AGCM's decision. [***141***] This decision is currently being appealed to the Council of State.

In April 2019, following a bid-rigging investigation opened into firms that acquire television rights from the Italian football league to sell to broadcasters abroad, the Italian Competition Authority fined the MP Silva, IMG and B4 groups a total of € 67 million for manipulating tenders for the purchase of foreign broadcast rights for matches organised by the Italian football league. [***142***] They were found to have coordinated their participation in the tenders in order to limit the final bid price for the international rights (instead of designing their offers independently) and to have divided geographic markets as they allocated the revenues from the successful resale of the TV rights abroad between them. The violation of Article 101 TFEU was found to have decreased the value of the international broadcasting rights severely, which led the Italian Competition Authority to adopt a strict approach in the calculation of the fines.

4.3 Vertical issues

4.3.1 Foreclosure

Various Member States have relied on Article 102 TFEU to assess the validity of licensing agreements between league associations and broadcasters or pay-TV operators. In Poland [***143***] (tying), Portugal [***144***] (discrimination), Italy [***145***] (bundling), and Spain, [***146***] abuses of dominance have been investigated for the acquisition of exclusive sports broadcasting rights.

In France, [***147***] the National Competition Authority accepted commitments from **PMU**, which holds a legal monopoly over horserace betting placed in physical outlets (such as tobacconists, newsagents etc.). Betclic, one of PMU's competitors, had complained that PMU pooled the stakes placed in the physical places with the ones made on its online website, which entailed PMU being able to offer much higher winnings than its competitors. The French Competition Authority assessed the risk that online competitors would be marginalised and evicted, and considered the barriers to entry into the online horserace betting market. As a result, PMU committed to separating the pool of bets registered online from the pool of bets registered at physical outlets in order to align with its competitors' situation.

In January 2018, the Cairo Economic Court upheld a recommendation made by the **Egyptian Competition Agency** to fine **beIN Media**, which held the exclusive rights to broadcast almost all major international football events and leagues within Egypt, for abusive bundling of international football events. [***148***] BeIN was found to impose excessive subscription terms to its customers, in that the latter were required to subscribe to all of beIN channels for 12 months, and were prohibited from using a satellite receiver different from the one beIN owned.

In February 2018, the **Spanish** Competition Authority accepted commitments offered by **Mediapro** relating to alleged abuses of a dominant position towards Obwan, a firm that managed the over-the-top (OTT) internet pay TV sports platform, Opensport. [***149***] Mediapro allegedly refused to sell football content to new OTT media distributors such as Obwan, by imposing less advantageous conditions on the new distributors than those applying to traditional pay TV broadcasters (e.g. Telefonica, Telecable, Vodafone, Orange, and Deion). Additionally, Mediapro was suspected of applying excessive fees on Obwan for the distribution rights of the beIN Sports channel. The commitments agreed upon with Mediapro ensured that it would grant access to the channels to all TV operators requiring it, including pure-OTT operators, as well as fixing equal and non-discriminatory commercial conditions.

In May 2018, **Mediapro Italia** was found to have abused its dominant position in the sublicensing of Serie A TV rights because one of its tenders contained anticompetitive bundling of broadcasting rights. [***150***] The bundling consisted of offering packages that did not only include the TV rights, but additional services such as interviews before, during and after the matches. The Tribunal of Milan considered that such practice required communication companies to sign a contract for a service different from the pure rights that they would bid for.

In July 2018, the Indian Competition Authority found that **Star India** and **Sony Pictures Network India** were responsible for a *prima facie* outright and constructive refusals to deal in the market for the broadcasting of TV channels [***151***]. Star India and Sony are leading broadcasters who own premium content and offer some of the most popular television channels with high ratings in terms of viewership. In practice, no distributor can operate in the market for the distribution of television channels without offering Star India and Sony channels. The Competition Commission of India ("CCI") considered that they engaged in price discrimination between their distributors, which, given their market power, infringed Indian Competition Law. The CCI particularly assessed Star India and Sony's market power in two genres: entertainment and sports, and took into account that these two firms have the live broadcasting rights of all major sporting events, including the Indian Premier League.

Due to the unpredictable effects of the Covid-19 crisis, the BKA decided on 15 April 2020 to drop the proceedings it had initiated end of the year 2018 due to suspected anti-competitive agreements in connection with the award of UEFA Champions League broadcasting rights. [***152***] Sky, the leading pay-TV provider, had acquired the broadcasting rights for all matches between 2018 and 2021, which it subsequently sublicensed to DAZN. The BKA's concerns was that the Champions League games were no longer broadcast live on free TV, and that new players would be restricted from entering the market as a consequence. Nevertheless, the BKA took into account the results of the recent award procedure regarding the broadcasting rights for 2021/2022 to conclude that there was sufficient dynamism among competitors. Moreover, it argued that given the effects of the Covid-19 crisis on the current football season in Europe, near-terms market developments are hardly predictable. As it would currently be particularly difficult to assess the effects of an intervention under competition law with regard to the concerns at hand, the BKA decided to discontinue its proceedings against SKY and DAZN.

4.3.2 Territorial exclusivity in TV broadcasting

On 4 October 2011, the CJEU issued its preliminary ruling in which it validated exclusive rights for the broadcasting of sports events, provided that they do not grant absolute territorial exclusivity. [***153***] In the case at hand, Mrs. **Murphy**, the owner of a pub in **England**, showed live **Premier League football** through a Greek satellite system – including 3pm games on Saturdays, that were subject to a media 'blackout' in the UK with the aim of protecting the physical attendance at the games. In England, the Premier League granted exclusive licences of broadcasting rights to one TV channel per country. BSkyB was the Premier League's official broadcaster in the UK. To protect the territorial exclusivity granted by the Premier League, the licensing agreement with BSkyB provided that the latter had to encrypt its satellite-delivered signal and transmit it only within the UK: in other words, other broadcasters were prohibited from providing decoder cards to persons outside the Member State for which the licence was granted. However, rather than using BSkyB's coverage, Mrs. Murphy used an imported satellite decoder card to show a Greek TV broadcaster's Premier League football programming. The Premier League sued Mrs. Murphy, holding that she was bypassing the exclusive licence granted to Sky and ESPN, which allowed only them to broadcast games domestically in the UK. Mrs. Murphy appealed, arguing that viewers in one Member State could not be prohibited from importing satellite decoder devices from another Member State (here Greece) in order to watch the services of a foreign broadcaster. The CJEU ruled that the Premier League was allowed to grant exclusive rights on a territorial basis, but that the Premier League's broadcasting licence agreements could not prohibit the use of foreign decoding devices because this would artificially make that territorial exclusivity absolute, by creating artificial price differences between Member States and thereby maximise profits, which infringed Article 101 (1) TFEU and free movement. No justification was put forward under Article 101 (3) TFEU.

However, based on intellectual property regulations, the CJEU found that the Premier League could rely on certain of its intellectual property rights contained in foreign satellite feeds in order to prevent those feeds from being broadcast in pubs in the UK. In fact, the Court said that screening transmissions of a Greek broadcaster in UK pubs (as opposed to private residences) implied a "communication to the public" within the meaning of the EU Copyright Directive, which could amount to copyright infringement. As a copyright holder, the Premier League has the right to authorise and require payment for the screenings by publicans in the UK. If the content had been viewed only privately by Mrs. Murphy, that would have been legal. However, the customers of the pub were considered a "new public", which had not been envisaged by the licensor, the Premier League. In effect, the EU Court found that the *Premier League* could not claim copyright in *Premier League* matches themselves, because they could not be classified as an author's own intellectual creation. However, the opening video sequence, the Premier League anthem, pre-recorded films showing highlights of recent Premier League matches, or various graphics could be considered as "works" and were protected by copyright. In practice, this meant that if the Premier League ensured that these forms of copyright materials were included in the broadcasts of its foreign licensees and that these

materials were not removed or obscured when they are made available in UK pubs, the Premier League could claim that its copyright had been infringed. Following the Murphy case, the Premier League has relied on its logos and graphics contained in TV coverage to bring successful claims against other publicans. [***154***]

Following-up on some of the issues identified in the European Commission's sector inquiry on e-commerce in 2017, the Commission opened formal antitrust proceedings into the bilateral agreements concluded between **Valve** Corporation and five PC video game publishers. [***155***] In the meantime, Regulation 2018/302 on unjustified geo-blocking entered into force on 3 December 2018. In April 2019, the European Commission issued a statement of objections to Valve and five videogame publishers on the geo-blocking of PC video games. [***156***] First, the Commission expressed its concern that Valve and the five video game publishers agreed to use geo-blocked activation keys to prevent cross-border sales, including so-called passive sales, which prevents consumers from buying cheaper games available in other Member States. Second, the Commission identified contractual export restrictions in their agreements with other distributors, which prevented those distributors from selling the relevant PC video games outside the allocated territories. The Commission considered that these practices were aimed at partitioning the market and restricted passive sales to consumers and that this would infringe Article 101 TFEU.

5. Conclusion and outlook

If we look at the increase in the number of decisions since 2011, it is clear that the EU Member States and sports clubs can no longer ignore the application of the EU State aid rules to the sports sector. While infrastructure support can be relatively easily approved and without notification (provided the GBER's conditions are fulfilled), particular care should be taken when granting financial benefits to clubs. However, the General Court's recent judgments also show the favourable approach that the General Court is still applying to this sector in state aid cases. The State aid judgments discussed demonstrate that the European Commission should not forget to take into account the specific character of sport and the high burden of proof laid upon the Commission to demonstrate the existence of an economic advantage.

Also, antitrust enforcement has increased over the last decade and a few pending cases and highly-publicised complaints or disputes might lead to still more decisions in the coming years in various sports. The appeal against the Commission's Ice Skating Union decision remains pending. In cycling, Velon has introduced a complaint against *Union Cycliste Internationale* ("UCI"). Velon is the organiser and promotor of new types of cycling events (the Hammers series) and claims that the UCI is impeding its development by using its regulatory powers and political leverage in an incorrect and unlawful manner. [***157***] Basketball is also stuck in a dispute, with the peculiarity that it involves two international federations: the International Basketball Federation ("FIBA") and the Euroleague Basketball. In 2016, both sides lodged antitrust complaints with the European Commission against the other. [***158***] Euroleague Basketball first complained that FIBA was putting pressure on clubs, players and referees to force them to abandon the Euroleague and the Eurocup, two club competitions, and only participate in FIBA competitions. The FIBA then countered by filing its own complaint claiming that Euroleague Basketball was liable for various types of anticompetitive conduct. [***159***] A change of model in sailing is also leading to antitrust scrutiny. Indeed, World Sailing (the sport's governing body) has moved towards a system of "single-manufacturer one-design" for boats. It means that, following a tender procedure, World Sailing will choose, for each competition, a unique design of boat. Not all boat designs are openly accessible to all manufacturers and therefore some of them might have to ask for a licence to one of their competitor's designs to be able to compete. Following a complaint from Devoti Sailing, a boat manufacturer, the European Commission is currently investigating this issue. [***160***] In football, at least two investigations are pending: one in Poland relating to potential abuses of the Polish Football Association (*Polski Związek Piłki Nożnej*, "PZPN") against betting companies [***161***] and one in Spain regarding potential abuse by the RFEF relating to the training of football coaches. [***162***] In Poland, the alleged abuse of

dominance would consist of making sports betting companies pay to be able to display the results of the matches organised by the PZPN. In Spain, the RFEF would not award licences to coaches trained in organisations competing with its own coach training activities.

The Covid-19 pandemic has affected the sports sector very hard and led to the abrupt termination of various sports competitions and events, affecting also the rankings, promotions and relegations. Numerous legal proceedings have followed in various jurisdictions and many of them are still pending.

Finally, it is also worth mentioning that in April 2018 the European Commission raided the premises of companies active in the distribution of media rights and related rights concerning various sports events and/or their broadcasting in several EU member states. The Commission said that it had concerns that the companies involved may have violated EU antitrust rules that prohibit cartels and restrictive business practices. [***163***]

The increased attention of the competition law regulators in the sports sector does not seem set to decline soon.

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

[*1*] Case C-36/74, *Walrave and Koch v. Association Union Cycliste Internationale*, ECR 1974 01405.

[*2*] Case C-519/04 P, *David Meca-Medina and Igor Majcen v. Commission*, ECR 2006 I-06991.

[*3*] See for instance the "White Paper on Sport" of 11 November 2007, COM (2007) 391 final, *SEC (2007) 932 SEC (2007)934 SEC (2007) 935 SEC (2007) 936* and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Developing the European Dimension in Sport", Brussels, 18 January 2011, COM (2011) 12 final. In its White Paper on Sport of 2007, the European Commission stressed the economic impact of modern sport, stating "sport in a broader sense generated added value of 407 billion euros in 2004, accounting for 3.7% of EU GDP, and employment for 15 million people or 5.4% of the labour force".

[*4*] Case T-443/08, *Leipzig Halle*, ECR 2011 II-01311 which was later confirmed by case C-288/11P, *Leizpig Halle*, ECLI:EU:C:2012:821; see also ***Paul Dodeller***, *Aides d'État et financement public de projets d'infrastructure : Pour l'édification de fondations solides, décembre 2015, Revue Concurrences N° 4-2015, Art. N° 75835 [fr].*

[*5*] For an example of a support measure that was not imputable to the State, see European Commission decision of 22 June 2017 in case SA.37900, Denmark's support to local sport

associations, OJ C 237 of 21.07.2017, where the Commission decided that the interest-free loans granted to the fitness centres via two local sports federations (DIF and DGI) did not constitute aid as neither the Danish State nor any other public body had any influence on the decisions adopted by DIF or DGI, see also ***Phedon Nicolaides***, *The EU commission finds that Danish support for local sports associations is not state aid and that, if it were, it would be compatible according to the general block exemption regulation (Denmark - support to local sports associations), 22 June 2017, e-Competitions Bulletin June 2017, Art. N° 89853*.

[*6*] Case SA.31722 of 9 November 2011, Sport infrastructure development scheme in Hungary, par.67; see also ***Phedon Nicolaides***, *The EU Commission finds that the state aid granted under the form of a fiscal measure implemented in breach of the standstill provision was compatible with the internal market (Hungarian Sport Donations), 9 November 2011, e-Competitions Bulletin November 2011, Art. N° 59653*.

[*7*] Joined Cases C-180/98 to C-184/98 of 12 September 2000, *Pavlov and Others*, ECR 2000 I-06451, par. 74; Case C-222/04 of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, ECR 2006 I-00289, par. 107.

[*8*] Case 118/85 of 16 June 1987, *Commission v Italy*, ECR 1987 02599, par. 7; Case C-35/96 of 18 June 1998, *Commission v Italy*, ECR 1998 I-03851, par. 36; Joined Cases C-180/98 to C-184/98 of 12 September 2000, *Pavlov and Others*, ECR 2000 I-06451, par. 75.

[*9*] See European Commission's infrastructure analytical grid for sport and multifunctional recreational infrastructures, *https://ec.europa.eu/competition/state_aid/modernisation/grid_sports_en.pdf* ↗, par. 7.

[*10*] See case T-313/02, David Meca Medina, ECR 2004 I-09483 and case C-519/04 P, *David Meca-Medina and Igor Majcen v. Commission*, ECR 2006 I-06991; see also ***Alain Ronzano***, *Réglementations sportives : Le TPICE rend un arrêt concernant des pratiques anticoncurrentielles dans le domaine du sport (Meca-Medina), 30 septembre 2004, Revue Concurrences N° 1-2004, Art. N° 57048 [fr]*.

[*11*] See for example case 37398 on the Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291; see also ***Torben Toft***, *The European Commission adopts a formal decision exempting the joint selling of the media rights of an international football tournament (UEFA Champions League), 23 July 2003, e-Competitions Bulletin July 2003, Art. N° 38439*.

[*12*] Decision N° 118/00 of 25 April 2001, French subsidy scheme for professional sport clubs.

[*13*] See for example recital 74 of the General Block Exemption Regulation: "*In the sport sector a number of measures taken by Member States may not constitute State aid because the beneficiary does not carry out an economic activity or because there is no effect on trade between Member States. This could be, under certain circumstances, the case for aid measures which have a purely local character or which are taken in the field of amateur sport*".

[*14*] Decision SA.44439 of 22 July 2016, Arena Cork.

[*15*] Case C-39/94 of 11 July 1996, *SFEI and Others*, ECR 1996 I-03547, par. 60; Case C-342/96 of 29 April 1999, *Spain v Commission*, ECR 1999 I-02459 par. 41.

[16] Decision SA.35501 of 18 December 2013, Renovation of stadiums in France for EURO 2016, described under 2.4.1.

[17] Decision N° 2009/713 of 21 October 2008, Ahoy Complex.

[18] Decision SA.41613 of 4 July 2016, PSV Eindhoven.

[19] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1–8.

[20] Decision N° 258/2000 of 21 December 2000, Leisure Pool of Dorsten.

[21] Decision C° 10/2003 of 29 October 2003, non-profit harbours for recreational crafts in the Netherlands.

[22] Decision SA.37963 of 29 April 2015, Glenmore Lodge in the UK; see also ***Phedon Nicolaides***, *The European Commission finds a measure helping an outdoor training centre not to constitute State aid for lack of affectation of interstate trade, based on the local origin of users (Glenmore Lodge), 29 April 2015, e-Competitions Bulletin April 2015, Art. N° 74135.*

[23] Decision SA.38208 of 29 April 2015, UK member-owned golf clubs; see also ***Phedon Nicolaides***, *The European Commission finds a measure not to constitute State aid because the services provided occurs at a local level and is thus unlikely to attract customers from other member States to any meaningful degree (Community Amateur Sports Clubs), 29 April 2015, e-Competitions Bulletin April 2015, Art. N° 74136.*

[24] Decision N° 376/01 of 27 February 2002, aid scheme for cableways. The Commission clarified in this case that to draw a distinction between installations capable of attracting non-local users that are generally considered as having an effect on trade and local infrastructure that is considered not to have an effect on trade, the following factors can be taken into account: the location (for example within cities or linking villages), operating time, predominantly local users (proportion of daily as opposed to weekly passes), the total number and capacity of installations relative to the number of resident users, other tourism-related facilities in the area.

[25] Decision SA.36105 of 2 October 2013, Fußballstadion Chemnitz.

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

[27] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 187 26.6.2014, p. 1.

[28] Maximum € 30 million investment aid per project (with total costs not exceeding € 100 million) or a maximum of € 2 million operating aid per infrastructure per year.

[29] Decision SA.36105 of 2 October 2013,Fußballstadion Chemnitz Germany; Decision SA.37109 of 12 November 2013, Football stadium in Flanders; Decision SA.35501 of 18 December 2013, Renovation of stadiums in France for EURO 2016; Decision SA.46530 of 24 May 2017, Slovakia National Football Stadium; Decision SA.37342 of 9 April 2014, Regional Stadia Development in Northern Ireland.

[30] Decision SA.33618 of 2 May 2013, Uppsala arena Sweden; Decision SA.35135 of 20 March 2013, Multifunktionsarena der Stadt Erfurt; Decision SA.35440 of 20 March 2013, Multifunktionsarena der Stadt Jena; Decision SA.43575 of 4 August 2016, cultural and sport center "Daugavas stadions"; Decision SA.31722 of 9 November 2011, Supporting Hungarian sport sector via tax benefit scheme (see also ***Phedon Nicolaides***, *The EU Commission finds that the state aid granted under the form of a fiscal measure implemented in breach of the standstill provision was compatible with the internal market (Hungarian Sport Donations), 9 November 2011, e-Competitions Bulletin November 2011, Art. N° 59653*).

[31] Decision SA.33045 of 23 July 2014, Alleged unlawful aid in favour of Kristall Bäder AG; see also ***Phedon Nicolaides***, *The European Commission applies for the first time the General Block Exemption Regulation to sport infrastructures and holds that public funding of local sport infrastructures may constitute State aid (Kristall Bäder), 23 July 2014, e-Competitions Bulletin July 2014, Art. N° 70461.*

[32] Decision SA.37373, ibid.

[33] Decision SA.33045, ibid.

[34] Decision SA.33952 of 5 December 2012, Climbing centres of Deutscher Alpenverein; see also ***Phedon Nicolaides***, *The EU General Court affirms a Commission decision that aid granted to German climbing centres is compatible with the internal market, finding that the Commission's economic analysis was sufficient (Magic Mountain Kletterhallen), 9 June 2016, e-Competitions Bulletin June 2016, Art. N° 89956*. See also case T-162/13 of 9 June 2016, ECLI:EU:T:2016:341.

[35] Decision SA.37342 of 9 April 2014, Regional Stadia Development in Northern Ireland.

[36] Decision SA.37342 of 9 April 2014, Regional Stadia Development in Northern Ireland.

[37] Article 165 (1) TFEU states that: "*The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function*".

[38] The operating profit will be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

[39] This will be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

[40] Decision SA.33045, ibid.

[41] Decision SA.35501 of 18 December 2013, ibid.

[42] SA.37109 of November 2013; see also ***Jérôme Gstalter***, *Financement des stades : La Commission européenne poursuit son contrôle des mesures publiques de financement en faveur des stades et, notamment, des stades de football, 20 novembre 2013, Revue Concurrences N° 2-2014, Art. N° 65990, pp. 156-157.*.

[43] Decision SA.33618, ibid.

[44] Decisions SA.35440, SA.35135 and SA.36105, ibid.

[45] Decision SA.47683.of 31 July 2017, Tampere Arena.

[46] Decision SA.46530 of 24 May 2017, Slovakia National Football Stadium.

[47] See press article of the European Commission of 13 October 2005, *https://europa.eu/rapid/press-release_IP-05-1271_en.htm?locale=en* ↗

[48] Decision C° 49/2003 of 25 January 2006, Football club AZ

[49] Under Article 10(1) of the original Procedural Regulation, the Commission was obliged to act on every complaint regardless of the complainant's legitimate interest.

[50] Decision SA.48604 of 4 December 2017, Horse race betting in Denmark; see also ***Phedon Nicolaides***, *The EU Commission decides that a Danish levy intended to liberalise the horse racing sector was compatible with State aid rules (Denmark - aid scheme for horse racing sector), 4 December 2017, e-Competitions Bulletin December 2017, Art. N° 89850.*

[51] Decision SA.41617 of 4 July 2016, Aid to Dutch Football Club NEC.

[52] Decision SA.41612 of 4 July 2016, Aid to Dutch Football Club MVV.

[53] Decision SA.40168 of 4 July 2016, The Netherlands - State aid for the professional football club Willem II in Tilburg.

[54] Decision SA.41614 of 4 July 2016, Aid to Dutch Football Club Den Bosch.

[55] Decision SA.29769 of 4 July 2016, Aid to certain football clubs in Spain; see also ***Jérôme Gstalter***, *Sport : La Commission européenne s'intéresse au financement des clubs de football professionnel et éprouve des doutes sur plusieurs mesures publiques relatives à certains clubs espagnols, 18 décembre 2013, Revue Concurrences N° 2-2014, Art. N° 65992, pp. 157-158 [fr].*

[56] Case T-865/16 of 26 February 2019, ECLI:EU:T:2019:113; See also ***Raphael Vuitton***, *Avantage fiscal : Le Tribunal de l'Union européenne examine la légalité de décisions de la Commission européenne concernant les mesures en faveur des clubs de football professionnels espagnols (Athletic Club, Fútbol Club Barcelona, Hércules Club de Fútbol), 26 février 2019, Revue Concurrences N° 2-2019, Art. N° 90448, pp. 133-137 [fr]* and ***Clara García Fernández, Miguel Troncoso Ferrer, Sara Moya Izquierdo***, *The EU General Court annuls Commission's state aid decision concerning Spanish tax regime (Athletic Club), 26 February 2019,*

e-Competitions Bulletin February 2019, Art. N° 89742 ; and ***Alain Ronzano***, *Aide illégale : Le Tribunal de l'Union européenne annule une décision de la Commission européenne qualifiant d'aide d'État le régime fiscal de quatre clubs de football professionnel espagnols (Fútbol Club Barcelona), 26 février 2019, Revue Concurrences N° 2-2019, Art. N° 89522 [fr]* ; and ***Alfonso Lamadrid De Pablo***, *The EU Court of Justice and General Court render two judgements on State aid showing how the Courts approach judicial review of complex economic assessments when the burden of proof is on the Commission (Frucona Kosice - Fútbol Club Barcelona), 26 February 2019, e-Competitions Bulletin February 2019, Art. N° 90042.*

[***57***] FC Barcelona held that fiscal deductions, given the transfer of players, were very important in the football sector.

[***58***] Case C-362/19 P, *Commission v. FC Barcelona*, pending.

[***59***] Decision SA.33754 of 4 July 2016, Aid to Real Madrid; see also see also ***Jérôme Gstalter***, *Sport : La Commission européenne s'intéresse au financement des clubs de football professionnel et éprouve des doutes sur plusieurs mesures publiques relatives à certains clubs espagnols, 18 décembre 2013, Revue Concurrences N° 2-2014, Art. N° 65992, pp. 157-158. [fr].*

[***60***] Case T 791/16 of 22 May 2019, *Real Madrid Club de Fútbol v. European Commission*, ECLI:EU:T:2019:346; see also ***Raphael Vuitton***, *Avantage sélectif : Le Tribunal de l'Union européenne annule une décision de la Commission européenne constatant qu'un club de football professionnel espagnol a bénéficié d'une aide d'État, à la faveur de l'indemnisation qui lui a été accordée dans le cadre d'un accord transactionnel lié à un différend avec une municipalité (Real Madrid Club de Fútbol), 22 mai 2019, Revue Concurrences N° 3-2019, Art. N° 91314, pp. 137-139 [fr]* and ***Alain Ronzano***, *Aide illégale : Le Tribunal de l'Union européenne annule une décision de la Commission européenne constatant une aide de 18 millions d'euros illégalement octroyée à un club de football espagnol et incompatible avec le marché intérieur (Real Madrid Club de Fútbol), 22 mai 2019, Revue Concurrences N° 3-2019, Art. N° 90691 [fr]* ; and ***Clara García Fernández, Miguel Troncoso Ferrer, Sara Moya Izquierdo***, *The EU General Court annuls the Commission decision ordering Spain to recover € 18 million of incompatible State aid (Real Madrid), 22 May 2019, e-Competitions Bulletin May 2019, Art. N° 90757.*

[***61***] Decision SA.36387 of 4 July 2016, Aid to Valencia football clubs.

[***62***] Case T-766/16 of 20 March 2020, Hercules v. Commission, ECLI:EU:T:2019:173.

[***63***] Case T-732/16 of 12 March 2020, Valencia Club v. Commission, ECLI:EU:T:2020:98 See also ***Nicole Robins***, *The EU General Court annuls the EU Commission's decision that a football club received over €20m in unlawful State aid (Valencia Club), 12 March 2020, e-Competitions March 2020, Art. N° 94490.*

[***64***] Case T-901/16 of 12 March 2020, Elche Club v. Commission, ECLI:EU:T:2020:97.

[***65***] Case COMP AT.40208, *International Skating Union's Eligibility rules*, Commission decision of 8 December 2017 (the "ISU decision").

[***66***] The complaints are available online at: *https://swimmingworld.azureedge.net/news/wp-content/uploads/2018/12/shields-andrew-hosszu-lawsuit.pdf ↗* and *https://swimmingworld.azureedge.net/news/wp-content/uploads/2018/12/isl-lawsuit.pdf ↗*.

[67] Competition Commission of India, Case No. 61/2010, Board of Control for Cricket in India, Decision, 29 November 2017 and ***Man Mohan Sharma***, *The Indian Competition Authority reinstates fine against national governing body for cricket for abuse of dominance and granting of exclusive licenses (Board of Control for Cricket in India), 29 November 2017, e-Competitions Bulletin November 2017, Art. N° 87486*.

[68] ISU decision p. 32 and 75, for instance.

[69] ISU decision p. 6. See also ***European Commission***, *The EU Commission decides that an international sport association has breached European competition rules (International Skating Union), 8 December 2017, e-Competitions Bulletin December 2017, Art. N° 85430* and ***Romano F. Subiotto QC***, *The EU Commission decides that an international sport association's eligibility rules breached EU competition law (International Skating Union), 8 December 2017, e-Competitions Bulletin December 2017, Art. N° 88192*.

[70] The case concerns the 2014 version of the Eligibility rules, which have been updated during the investigation (in 2016) and after it.

[71] ISU 2014 Constitution and General Regulations.

[72] ISU decision p. 20.

[73] See p. 9 of the ISU decision, and the following cases: Case 36/74 *Walrave and Koch*, ECLI:EU:C:1974:140, paragraph 4, case 13/76 *Donà*, ECLI:EU:C:1976:115, paragraph 12.; Case C-415/93 *Bosman*, ECLI:EU:C:1995:463, paragraph 73; Case C-176/96 Lehtonen, ECLI:EU:C:2000:201, paragraph 32, Joined Cases C-51/96 and C-191/97 Deliège, ECLI:EU:C:2000:199, paragraph 41, Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission*, ECLI:EU:C:2006:492, paragraph 22, Case C-49/07 MOTOE ECLI:EU:C:2008:376, paragraph 22; Case C-325/08 *Bernard* ECLI:EU:C:2010:143, paragraph 27.

[74] To the extent they themselves carry out activities of an economic nature (such as the organisation and commercial exploitation of sports events), see Commission decision of 27 October 1992 in Cases 33384 and 33378 *Distribution of package tours during the 1990 World Cup*, OJ 1992 L326/31, paragraphs 52-53.

[75] If their members carry out activities of an economic nature, regardless of whether the international sports associations themselves carry out such activities, see Case T-193/02 *Laurent Piau*, ECLI:EU:T:2005:22, paragraph 72.

[76] ISE decision p.39.

[77] See ISU decision p. 131 and following, where the European Commission merely qualifies the position of the ISU as "very strong".

[78] Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission*, ECLI:EU:C:2006:492, paragraph 42.

[79] See ISU decision p. 54-57. The European Commission also considers that "*the principle of having one regulator per sport can be considered as legitimate objective capable of justifying restrictions of competition law, the measures established by the ISU (that is, the pre-authorisation*

system embodied by the ISU's Eligibility rules and by Communication No 1974 on Open International Competitions) are neither inherent in the pursuit of those objectives nor proportionate to them" (p. 56 of the Decision).

[***80***] See ISU decision p.82.

[***81***] See ISU decision p.83.

[***82***] See ISU decision p.83.

[***83***] Case T-93/18 - *International Skating Union v Commission*.

[***84***] See ***Romano F. Subiotto QC***, *The EU Commission decides that an international sport association's eligibility rules breached EU competition law (International Skating Union), 8 December 2017, e-Competitions Bulletin December 2017, Art. N° 88192*.

[***85***] The different decisions regarding the request for interim measures are to be found on the website of the BCA: *https://www.abc-bma.be/fr/decisions/15-vm-23-gcl-ttb-vs-fei* ↗. The principal decision being the decision n° ABC-2015-V/M-23 27 July 2015 in case no CONC-V/M-15/0016.

[***86***] Originally, a veterinarian (active in horse jumping), two FEI-judges and several companies part of a group active in horse jumping also complained to the BCA, but they latter all withdrew their complaints, which did not preclude the BCA from taking a decision on these complaints.

[***87***] Or rather the companies behind the organisation of the events concerned. Global later also withdrew its complaint.

[***88***] See p. 5 of the decision n° ABC-2018-I/O-41-AUD of 20 December 2018 in cases CONC-P/K-15/0014 – GCL v FEI ; CONC-P/K-15/0041 Stephex v FEI ; CONC-P/K-16/0009 Docteur De Baker v FEI ; CONC-P/K-16/0022 Rogier Van Iersel v FEI and CONC-P/K-16/0023 Rob Jansen v FEI.

[***89***] Decision n° ABC-2017-V/M-38 of 20 December 2017 in case n° CONC-V/M-17/0037, available at *https://www.abc-bma.be/fr/decisions/17-vm-38-lisa-nooren-et-henk-nooren-handelsstal-sprl-fei-gcl-ttb* ↗. See also ***Belgian Competition Authority***, *The Belgian Competition Authority imposes interim measures in the context of competitions of the Global Champions Tour (GCT), 21 December 2017, e-Competitions Bulletin December 2017, Art. N° 85513*.

[***90***] Decision n° ABC-2018-V/M-11 of 13 April 2018 in case no CONC-V/M-17/0037, available at *https://www.abc-bma.be/fr/decisions/18-vm-11-lisa-nooren-et-henk-nooren-handelsstal-sprl-fei-gcl-ttb* ↗. See also ***Belgian Competition Authority***, *The Belgian Competition Authority fines equestrian competition organizers for lack of implementation of provisional measures (Fédération Equestre Internationale / GCT / GCL), 16 April 2018, e-Competitions Bulletin April 2018, Art. N° 87067*.

[***91***] The case was sent back to the College of the BCA, which was composed of the same members as for the first decision in these proceedings. Whereas, according to Global, and followed by the Court of Appeal, other members should have composed the College. The case was therefore sent back a second time to the College of the BCA, which was this time composed of other members.

[92] Decision n° ABC-2018-V/M-33 of 28 September 2018 in case no CONC-V/M-17/0037, available at *https://www.abc-bma.be/fr/decisions/18-vm-33-lisa-nooren-et-henk-nooren-handelsstal-sprl-fei-gcl-ttb* ↗.

[93] Case A378 - FEDERITALIA/FEDERAZIONE ITALIANA SPORT EQUESTRI (FISE), available at: *https://www.agcm.it/dettaglio?db=41256297003874BD&uid=B4C2182D07E0116BC125745E003712BE&Itemid=54* ↗. See also: ***Denis Fosselard, Vito Auricchio, Benedetto Brancoli Busdraghi***, *The Italian Competition Authority closes the investigations for violations of Art. 81 and 82 EC in the equestrian sports market following commitments proposed by a sport federation (Federazione Italiana Sport Equestri), 15 May 2008, e-Competitions Bulletin May 2008, Art. N° 25162* and ***Valerio Torti***, *The Italian Competition Authority accepts commitments from the federation for the equestrian sport and closes proceedings for alleged infringement of Art. 81 and/or 82 EC without imposing fines (FISE), 15 May 2008, e-Competitions Bulletin May 2008, Art. N° 22372.*

[94] Italian national body in charge with the promotion of social activities.

[95] *"Federazione Italiana Equitazione Western"*, the federation in charge of the organisation of western equestrian activities.

[96] *"Ente Nazionale Guide Equestri Ambientali"*, the non-profit and amateur sports association, active, amongst other things, in the equestrian tourism sector.

[97] Case A378C – FEDERITALIA/FEDERAZIONE ITALIANA SPORT EQUESTRI (FISE), available at: *https://www.agcm.it/dettaglio?db=41256297003874BD&uid=CEF99CDE7AC4D5E4C12578BC004F688D&view=&title=A378C-FEDERITALIA/FEDERAZIONE%20ITALIANA%20SPORT%20EQUESTRI%20(FISE* ↗)&fs=Valutazione%20impegni.

[98] Case A378E – FEDERITALIA/FEDERAZIONE ITALIANA SPORT EQUESTRI (FISE), available at *https://www.agcm.it/dotcmsdoc/allegati-news/A378E_chiusura%20istr-sanz_omi.pdf* ↗.

[99] Decision of the Landgericht Köln, 31 O 448/14, of 28 March 2017, ECLI: ECLI:DE:LGK:2017:0328.31O448.14.00, available at: *http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2017/31_O_448_14_Urteil_20170328.html* ↗.

[100] Decision of the Oberlandesgericht Düsseldorf, VI-U (Kart) 8/17 of 15 November 2017, ECLI: ECLI:DE:OLGD:2017:1115.VI.U.KART8.17.00, available at: *http://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2017/VI_U_Kart_8_17_Urteil_20171115.html* ↗.

[101] I812 - F.I.G.C. REGOLAMENTAZIONE DELL'ATTIVITÀ DI DIRETTORE SPORTIVO, COLLABORATORE DELLA GESTIONE SPORTIVA, OSSERVATORE CALCISTICO E MATCH ANALYST, available at: *https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/4811B462332D2AF1C12582CD0032BCF9/$File/p27249.pdf* ↗.

[102] See the press release of the CCA, *https://www.aztn.hr/hrvatski-taekwondo-savez-nije-narusio-trzisno-natjecanje-zlouporabom-vladajuceg-polozaja/* ↗ and also ***Croatian Competition Authority***, *The Croatian Competition Authority finds that the Croatian Taekwondo Federation did not abuse of its dominant position (Hrvatskog taekwondo saveza), 30 May 2019, e-Competitions Bulletin May 2019, Art. N° 90869.*

[103] ***Belgian Competition Authority***, *The Belgian Competition Authority imposes interim measures against a sport's association because of its anticompetitive rules (Belgian Bumper Pool Association), 24 January 2020, e-Competitions January 2020, Art. N° 93147.*

[104] ***Portuguese Competition Authority***, *The Portuguese Competition Authority imposes on the national football league a precautionary measure to suspend its no-poaching agreement, invoking issues caused by the COVID-19 pandemic (Portuguese Professional Football League), 26 May 2020, e-Competitions June 2020, Art. N° 95117.*

[105] European Commission's Decision dated 27 October 1992 and numbered 92/521/EEC. *https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31992D0521* ↗.

[106] Turkish Competition Board's decision dated 26 November 2014, and numbered 14-46/834-375. *https://www.rekabet.gov.tr/Karar?kararId=8ae3ffdc-56bb-48cb-8193-b3037befbfcf&AspxAutoDetectCookieSupport=1* ↗.

[107] Article 5.4 of the Turkish Law No.6222 on the prevention of Violence and Disorder in Sports, 31 March 2011. *https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6222.pdf* ↗.

[108] "Passolig için dünyadan talepler gelmeye basladi", Hürriyet Gazetesi, 5 June 2019. *http://www.hurriyet.com.tr/sporarena/passolig-icin-dunyadan-talepler-gelmeye-basladi-40858160* ↗.

[109] European Commission's Decision dated 20 July 1999 and numbered 2000/12/EC. *https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000D0012* ↗.

[110] European Commission's press release regarding the Athens Olympic Games (COMP/38.703) dated 23 May 2003 and numbered IP/03/738. *https://europa.eu/rapid/press-release_IP-03-738_en.htm* ↗.

[111] Which?/DFB, Mastercard and Visa (COMP/39.177) dated 2 May 2005 and numbered IP/05/519.

[112] Case B2-26/17, decision (in English) available at: *https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Missbrauchsaufsicht/2019/B2-26-17.html* ↗.

[113] See the press release of the BKA, *https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/27_02_2019_DOSB_IOC.html* ↗

[114] Case COMP/39464, Supporters Juventus Turin/ FIGC-CONI-UEFA-FIFA, Commission decision of 12 May 2009, available at: *https://ec.europa.eu/competition/antitrust/cases/dec_docs/39464/39464_158_5.pdf* ↗.

[115] Case T-273/09, Associazione "Giùlemanidallajuve" v Commission, ECLI:EU:T:2012:129.

[116] See *Competition issues in the sale of audiovisual rights for major sporting events*, United Nations Conference on Trade and Development (UNCTAD), 2 May 2018, TD/B/C.I/CLP/50; T. EVENS, P. IOSIFIDIS, "Competition Law and Sports Broadcasting" in *The Political Economy of Television Sports Rights*, Palgrave Macmillan, London, pp. 85-103.

[117] P. KIENAPFEL, A. STEIN, *The application of articles 81 and 82 EC in the sport sector*, Competition Policy Newsletter, 2007, 6, p. 6-14.

[118] See *Competition issues in the sale of audiovisual rights for major sporting events*, United Nations Conference on Trade and Development (UNCTAD), 2 May 2018, TD/B/C.I/CLP/50; T. EVENS, P. IOSIFIDIS, "Competition Law and Sports Broadcasting" in *The Political Economy of Television Sports Rights*, Palgrave Macmillan, London, pp. 85-103.

[119] Commission decision COMP/37.398 of 23 July 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 (1) of the EEA Agreement, *UEFA Champions League*, see also ***Torben Toft***, *The European Commission adopts a formal decision exempting the joint selling of the media rights of an international football tournament (UEFA Champions League), 23 July 2003, e-Competitions Bulletin July 2003, Art. N° 38439*.

[120] Commission decision COMP/C.2/37.214 of 19 January 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 (1) of the EEA Agreement, *Joint selling of media rights to the German Bundesliga*, see also ***Stefan Wilbert***, *The European Commission adopts its first commitment decision pursuant to Article 9 of Regulation 1/2003 concerning joint selling of German football media rights (Bundesliga), 19 January 2005, e-Competitions Bulletin January 2005, Art. N° 36856*.

[121] Commission decision COMP/38.173 of 22 March 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 (1) of the EEA Agreement, *The football Association Premier League Limited*.

[122] European Commission White paper on Sport, 11 July 2007, IP/07/10696.

[123] Commission decision COMP/C.2/37.214 of 19 January 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 (1) of the EEA Agreement, *Joint selling of media rights to the German Bundesliga*.

[124] Commission decision COMP/38.173 of 22 March 2006 relating to a proceeding pursuant to Article 81 of the EC Treaty, *Joint selling of media rights to the FA Premier League*, §37.

[125] Commission decision COMP/38.173 of 22 March 2006 relating to a proceeding pursuant to Article 81 of the EC Treaty, *Joint selling of media rights to the FA Premier League*.

[126] French Competition Authority, 30 September 2009, Decision. 09-D-31, see also ***Sandrine Behague***, *The French Competition Authority fines € 6.9 M a football association and a rights for sports management agency for anticompetitive agreements on the market for audiovisual rights (FFF-Sportfive), 30 September 2009, e-Competitions Bulletin September 2009, Art. N° 31741*, and ***French Competition Authority***, *The Paris Commercial Court seeks the opinion of the French Competition Authority on the broadcasting rights for championship football matches (Ligue de Football professionnel), 7 June 2012, e-Competitions Bulletin June 2012, Art. N° 58677* ; French Competition Authority, 30 July 2014, Decision n. 14-MC-01, *Groupe Canal+/beIN Sports*, see ***French Competition Authority***, *The French Competition Authority orders interim measures against a TV company on the exclusive rights for the broadcasting of Top 14 matches market (Canal Plus / beIN Sports), 30 July 2014, e-Competitions Bulletin July 2014, Art. N° 68895*; French Competition Authority, 23 March 2016, Decision n. 16-D-04, *Canal+/Ma Chaine Sport*.

[***127***] German Competition Authority, 12 January 2012, *League Association, German football League*, see also ***European Competition Network Brief***, *The German Competition Authority accepts commitments offered by two sports leagues concerning the joint award of media rights (League Association, German Football League), 12 January 2012, e-Competitions Bulletin January 2012, Art. N° 46687.*

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

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[***130***] Vienna High Court in Competition Matters, 18 January 2008, Case Kt 42/06, *Orf – Osterreichischer Schiverband, broadcasting rights of skiing events*, See also ***Hanns Peter Nehl***, *An Austrian Court declares behavioural commitments concerning broadcasting rights of the skiing world cup binding upon the public TV/radio provider and the Austrian skiing association (ÖRF / ÖSV), 18 February 2008, e-Competitions Bulletin February 2008, Art. N° 22338*, and ***Stephan Polster, Philippe Kiehl***, *The Austrian Federal Competition Authority opens the market for broadcasting rights of skiing events (ORF- ÖSV, 'Broadcasting rights of skiing events'), 18 February 2008, e-Competitions Bulletin February 2008, Art. N° 15937.*

[***131***] Regional Administrative Tribunal for Lazio, 10 May 2010, judgment n. 10572/2010, A418, Conto TV, See also ***Alfonso Ricciardelli***, *An Italian regional administrative tribunal annuls a decision from the NCA for ineffectiveness of the undertakings imposed to address the competition concerns raised on the market for broadcasting rights of football matches (Conto TV), 10 May 2010, e-Competitions Bulletin June 2010, Art. N° 31548*, ***Paolo Caprile, Alessandro Marra, Cesare Pozzi***, *The Tribunal of Milan rejects a request for injunctive relief against the Italian soccer association for illegitimate award procedures of TV rights for live broadcast of soccer matches (Conto TV/Lega Calcio), 24 May 2010, e-Competitions Bulletin May 2010, Art. N° 31796*, and ***Valerio Torti***, *The Italian Competition Authority opens proceedings in the market of football audiovisual rights for alleged violation of Art. 81 and/or 82 EC (Lega Calcio / Chievo Verona), 10 April 2008, e-Competitions Bulletin April 2008, Art. N° 19549.*

[***132***] Romanian Competition Council, Guidelines on Commitments Procedure/Market Test on Commitments on the Joint Selling of Commercial Rights for Football Broadcasting, Official Gazette n. 11, 5 January 2011, see ***European Competition Network Brief***, *The Romanian*

Competition Council adopts guidelines on commitments procedure and launches market test on commitments on the joint selling of commercial rights for football broadcasting (Romanian Football Federation and the Professional Football League), 5 January 2011, e-Competitions Bulletin January 2011, Art. N° 35681 ; Romanian Competition Authority, 19 April 2011, case n. 13, *Romanian Football Federation and Romanian Professional Football League* and Romanian Competition Council, 10 August 2012, *Romanian Football Federation*, see ***Iustinian Captariu, Ioana Tirca***, *The Romanian Competition Council addresses new developments on the joint selling of commercial rights for football broadcasting (Romanian Football Federation), 10 August 2012, e-Competitions Bulletin August 2012, Art. N° 49214.*

[***133***] Decision of the President of the Office of Competition and Consumers Protection, 29 May 2006, n. DOK-49/06, concerning a preferential renewal clause contained in the licence agreement for broadcasting of football league matches concluded between Polish Football Association and Canal+, See also ***Robert Gago, Aleksandra Czekaj-Dancewicz***, *The Polish Competition Authority fines the pay-TV operator and a football association for exclusive broadcasting rights (Canal+/Polish Football Association), 29 May 2006, e-Competitions Bulletin May 2006, Art. N° 12438* ; President of the Office for Competition and Consumer Protection, Case n. DOK2-411-1/09/KP, 12 February 2010, *Cyfrowy Polsat.*

[***134***] Spanish Competition Authority, 14 April 2010, case n. 0006/07, *AVS, Mediapro, Sogecable y Club de Futbol de 1 y 2 Division*, see also ***Alfonso Lamadrid De Pablo***, *The Spanish CNC issues a resolution holding that exclusivity agreements for the sale of broadcasting rights for national football championship exceeding three seasons are anticompetitive (Sogecable, AVS), 14 April 2010, e-Competitions Bulletin April 2010, Art. N° 38461* ; ***Patricia Lorenzo***, *The Spanish Competition Authority issues recommendations for guaranteeing effective competition in the acquisition of football broadcasting rights (Sogecable/AVS), 5 July 2008, e-Competitions Bulletin July 2008, Art. N° 21563* ; ***Antía Tresandí Blanco***, *The Spanish Competition Commission limits the duration of contracts concluded between broadcasters and football clubs for the acquisition and resale of football broadcasting rights for Spanish League and Cup matches, as well as a pooling agreement between broadcasters, to three years (AVS, Mediapro, Sogecable y Clubs de Fútbol de 1 y 2 División), 14 April 2010, e-Competitions Bulletin May 2010, Art. N° 31417* ; Spanish Competition Authority's recommendations for guaranteeing effective competition in the acquisition of football broadcasting rights (*Sogecable/AVS*), 5 July 2008; Spanish Competition Authority, 17 March 2011, Res. n. S/0153/09, *Mediapro and Gol TV* ; Spanish Competition Authority, 2 December 2013, *Mediapro, Real Madrid, FC Barcelona, Sevilla and Racing de Santander*, see also ***European Competition Network Brief***, *The Spanish Competition Authority fines media company and football clubs for breaching a resolution on the acquisition of broadcasting rights for football competitions (Mediapro, Real Madrid, FC Barcelona, Sevilla and Racing de Santander), 2 December 2013, e-Competitions Bulletin December 2013, Art. N° 62154.*

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[**142**] Italian Competition Authority, 24 April 2019, *MP Silva, IMG and B4 Capital*, see ***Italian Competition Authority***, *The Italian Competition Authority fines several companies for bid-rigging in the context of tenders for the assignment of broadcasting rights of football matches in tournaments organized by the Italian football league (MP Silva / IMG / B4 Capital), 24 April 2019, e-Competitions Bulletin April 2019, Art. N° 90878.*

[**143**] Decision of the President of the Office of Competition and Consumers Protection, 12 February 2010, n. DOK2-411-1/09/KP, Cyfrowy Polsat, See also ***Piotr Adamczewski, Dorota Karczewska***, *The Polish President of the Office for Competition and Consumer Protection accepts commitments submitted by satellite pay-TV platform regarding the use of exclusive sports media rights (Cyfrowy Polsat), 12 February 2010, e-Competitions Bulletin February 2010, Art. N° 30801.*

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

[148] Cairo Economic Court, 29 January 2018, *beIN Sport*, see also ***David Stallibrass***, *The Cairo Economic Court upholds the recommendation of the Egyptian Competition Agency and fines a TV broadcasting company 400M EGP for abusive bundling of international football events (Nasser Al-Khulaifi / beIN Media), 29 January 2018, e-Competitions Bulletin January 2018, Art. N° 86689.*

[149] Spanish Competition Authority, 7 February 2018, S/DC/0604/17, *Mediapro Futbol*, see ***Rafael Allendesalazar***, *Espagne : L'Autorité de la concurrence espagnole impose des engagements au principal détenteur et gestionnaire de droits de football en Espagne mettant fin à des préoccupations de concurrence sur le marché de la commercialisation en gros de chaînes de télévision de football (Mediapro Fútbol), 7 février 2018, Revue Concurrences N° 2-2018, Art. N° 87008, pp. 201-203 [fr].*

[150] Tribunal of Milan, Case 18406/2018, *Sky Italia/Mediapro Italia.*

[151] Competition Commission of India, 27 July 2018, Case n. 30/2017, *Noida Software Technology Park/Star India/Sony Pictures Network India*, see also ***Man Mohan Sharma***, *The Indian Competition Commission finds no cartelization or abuse of dominance but does find refusals to deal in the market for broadcasting of TV channels (Noida Software Technology Park / Star India / Sony Pictures Network India), 27 July 2018, e-Competitions Bulletin July 2018, Art. N° 91453.*

[152] ***German Competition Authority***, *The German Competition Authority discontinues its administrative proceeding against 2 TV broadcasters who secured exclusive rights to Champions League broadcast because of new market entrants and the unpredictability of football season due to COVID-19 (Sky / DAZN), 15 April 2020, e-Competitions April 2020, Art. N° 94677.*

[153] CJEU, 4 October 2011, joined cases C-403 and C-429/08, *Football Association Premier League and others v. QC Leisure and others, Karen Murphy v. Media Protection Services*, see also ***Max Findlay***, *The European Court of Justice issues its preliminary ruling holding that restricting the sale of European foreign satellite decoder cards is "contrary to the freedom to provide services" (Football Association Premier League), 4 October 2011, e-Competitions Bulletin October 2011, Art. N° 40049*, ***Thomas Graf***, *The ECJ Advocate General Kokott renders her opinion holding that the principle of exhaustion applies to the transmission of live football matches in the same way as to physical products (Football Association Premier League), 3 February 2011, e-Competitions Bulletin February 2011, Art. N° 39264*, ***Thomas Graf***, *The European Court of Justice renders its judgment on licensing of satellite broadcasting holding that national law blocking the importation of foreign decoders is contrary to freedom to provide services (Football Association Premier League), 4 October 2011, e-Competitions Bulletin October 2011, Art. N° 39259*, ***Collette Rawnsley***, *The ECJ Advocate General Kokott considers that territorial exclusivity agreements relating to the transmission of live football matches are contrary to European Union law (Football Association Premier League), 3 February 2011, e-Competitions Bulletin February 2011, Art. N° 36202*, ***Joseph Vogel***, *The European Court of Justice validates exclusive rights for broadcasting of sports events provided they do not grant absolute territorial exclusivity (Football Association Premier League), 4 October 2011, e-Competitions Bulletin October 2011, Art. N° 39726.*

[154] See for example: Football Association Premier League Ltd v Anthony Luxton and Barclays Bank limited, 2014, EWHC 253; Football association Premier League Ltd v. Anthony Berry and Barclays Bank Plc, 2014, EWHC 726.

[155] Focus Home, case AT.40413, 5 April 2019; Koch Media, case AT.40414, 5 April 2019; ZeniMax, case AT.40420, 5 April 2019; Bandai Namco, case AT.40422, 5 April 2019; Capcom, case AT.40424, 5 April 2019.

[156] European Commission Press release, *Antitrust: Commission sends Statement of Objections to Valve and five videogame publishers on "geo-blocking" of PC video games*, 5 April 2019, see also ***European Commission***, *The EU Commission sends statements of objections to an American video game developer and five videogame publishers for "geo-blocking" of PC video games (Valve / Focus Home / Koch Media / ZeniMax / Bandai Namco / Capcom), 5 April 2019, e-Competitions Bulletin April 2019, Art. N° 90387.*

[157] See also *https://www.velon.cc/news/2019/11/7/velon-makes-additional-complaint-against-uci-for-discrimination-against-womens-cycling* ↗.

[158] For information on Euroleague's complaint, see *https://www.euroleaguebasketball.net/euroleague-basketball/news/i/6p8c54yjk66qsitp/euroleague-basketball-presents-a-complaint-before-the-european-commission-against-fiba-and-fiba-europe* ↗ and for FIBA's complaint, see *https://www.fiba.basketball/news/fiba-files-complaint-against-euroleague* ↗.

[159] For instance, threatening to exclude clubs from Euroleague unless they commit to the Eurocup. For an overview of the complaint, see *https://www.fiba.basketball/news/fiba-files-complaint-against-euroleague* ↗.

[160] See L. Croft, *Comment: Olympic sailing's antitrust dispute heads for IP licensing solution*, 21 May 2019, MLex. Available at: *https://www.mlex.com/GlobalAntitrust/DetailView.aspx?cid=1093538&siteid=190&rdir=1* ↗.

[161] For more information on this case, see the following decision of the European Ombudsman: *https://www.ombudsman.europa.eu/en/decision/en/111481* ↗.

[162] See the press release of the Polish Competition Authority: *https://www.uokik.gov.pl/news.php?news_id=15345* ↗.

[163] See the European Commission Press Release, *Antitrust: Commission confirms unannounced inspections concerning distribution of sports media rights and other related rights*, 10 April 2018. See ***European Commission***, *The EU Commission carries out unannounced inspections concerning distribution of sports media rights and other related rights, 10 April 2018, e-Competitions Bulletin April 2018, Art. N° 86685*