

## LEGAL ALERT

### COMPETITION AND SPORT

#### RELEVANT RULINGS CLARIFYING THE APPLICATION OF EU COMPETITION LAW TO THE RULES OF SPORTS ORGANISATIONS

At the end of last month, the Court of Justice of the European Union (CJEU or Court of Justice) handed down two relevant judgements in which it once again analysed the application of European Union (EU) competition law to the regulation of sporting activities.

In fact, both in [case C-333/21, \*European Superleague Company\*](#), and in [case C-124/21 P, \*International Skating Union v. Commission\*](#), the CJEU begins by reaffirming that **sport is an economic activity and**, to that extent, **is subject to the application of the competition rules of the Treaty on the Functioning of the EU (TFEU)**. It also adds that the rules of sports associations and federations relating to these activities should be considered decisions of associations of undertakings for the purposes of applying competition law. The Court of Justice was therefore called upon to interpret the competition law rules in force in the EU (Articles 101 and 102 TFEU) in the cases in question.

#### **Case C-333/21, *European Superleague Company***

This first judgement is the result of a request for a preliminary ruling from a Spanish court in a case opposing FIFA and UEFA against the European Superleague Company SL, which was set up on the

initiative of several professional football clubs<sup>1</sup> and whose aim was to create the “Super League”, a new international football competition. FIFA and UEFA opposed the creation of this new competition because they claimed that their statutes gave them exclusivity to organise or authorise international competitions for professional football clubs in Europe.

Essentially, the CJEU considered that **FIFA and UEFA’s rules, which require their prior approval for competitions such as the *Super League*, are contrary to competition law, as they constitute an abuse of a dominant position (Article 102 TFEU) and a decision by an association of undertakings which has as its object the restriction of competition (Article 101(1) TFEU).**

Firstly, the Court of Justice considers that **when an undertaking in a dominant position has the power to determine the conditions of access to the market of potentially competing undertakings, that power must, given the risk of conflict of interest, be subject to appropriate criteria to ensure its transparency, objectivity, non-discrimination and proportionality.** However, the powers of FIFA and UEFA are not subject to any such criteria, and these organisations are thus abusing a dominant position.

Furthermore, given their arbitrary nature, **FIFA and UEFA’s rules on approval, control and sanctions are considered unjustified restrictions on the freedom to provide services.**

At the same time, the CJEU concluded that **FIFA’s and UEFA’s rules on the exploitation of broadcasting rights are likely to harm European football clubs, all companies operating in the media markets and, ultimately, consumers and viewers,** preventing them from benefiting from new and potentially innovative or interesting competitions.

With this ruling, the CJEU establishes as a requirement the **need for sports organisations to operate in the market through a regulatory framework with transparent, objective, non-discriminatory and proportionate criteria.**

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<sup>1</sup> Including the following: Club Atlético de Madrid, Fútbol Club Barcelona and Real Madrid Club de Fútbol (Spain), Associazione Calcio Milan, Football Club Internazionale Milano and Juventus Football Club (Italy), Arsenal Football Club, Chelsea Football Club, Liverpool Football Club, Manchester City Football Club, Manchester United Football Club and Tottenham Hotspur Football Club (United Kingdom).

## **Case C-124/21 P, *International Skating Union v. Commission***

This second ruling concerned a decision by the European Commission which, in 2017, found that the **International Skating Union's (ISU) rules on the authorisation of skating competitions and the participation of athletes were contrary to EU competition law rules.**

According to these rules, the organisation of international figure skating and speed skating competitions would require the prior approval of the ISU and, if an athlete took part in a competition that had not been authorised by it, he or she could be excluded by ISU from all competitions. Refusals of authorisation and sanctions against athletes could, under ISU rules, only be challenged before the Court of Arbitration for Sport in Lausanne, Switzerland.

With this ruling, the Court of Justice overturns the judgment of the General Court (which, in 2020, ruled partly for and against the ISU) **confirming the unlawfulness of the ISU's rules on authorisation and participation** in international figure skating and speed skating competitions. In fact, these **rules were considered restrictive of competition**, since they give the ISU a clear advantage over its competitors, including giving it the power to authorise or prevent potential competitors from accessing the market.

To that extent, the CJEU stresses that a sports association such as the ISU can adopt and enforce, through sanctions, rules relating to the organisation and staging of competitions. However, those **rules must be subject to a framework that guarantees their transparency, objectivity, non-discrimination and proportionality.** If they are not, these rules are likely to allow the exclusion of any competing company from the market and limit the production of new competitions.

On the other hand, the Court of Justice held, contrary to the General Court, that the Commission correctly called into question the arbitration rules, since they would deprive athletes of effective access to the courts.

In short, following the European Commission, **the CJEU confirms that the ISU rules in question are contrary to EU law, as they are not subject to any guarantee ensuring their transparency, objectivity, non-discrimination and proportionality.**

## Conclusion

With these judgements, the Court of Justice has reaffirmed that the regulation of sporting activities must fully respect European competition law rules (which are materially equivalent to Portuguese competition rules).

To this end, it is particularly important for **sports organisations to ensure that they operate in the market through a regulatory framework with transparent, objective, non-discriminatory and proportional criteria, otherwise they might be acting in breach of competition law.**

We remain at your entire disposal for any further clarification.

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