SPORTS LAW INSTITUTE

THE SPECIFICITY OF SPORT IN THE CONTEXT OF EU COMPETITION LAW

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ABSTRACT

The thesis at hand examines the interaction between the concept of the 'specificity of sport' and European Union competition law.

Motivated by the growing number of legal challenges within the sports sector and the increasing tension between regulatory autonomy and market fairness, this study is structured around three key areas: the concept of undertaking, the principle of collusion, and the abuse of a dominant position – while also considering broader regulatory developments such as the 'Digital Markets Act'.

In doing so, this thesis contributes to the ongoing legal discourse by arguing that, while the specificity of sport provides governing bodies with a certain degree of autonomy, this autonomy is limited by the overarching principles of EU competition law. Although legitimate objectives like sporting integrity and financial fairness may justify some restrictions, these must meet strict standards of necessity, proportionality, and transparency.

CONTENTS

I. GLOSSARY OF TERMS

EU	European Union
FIA	Fédération Internationale de l'Automobile
FIFA	Fédération Internationale de Football
ITC	International Transfer Certificate
ISU	International Skating Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

II. INTRODUCTION

"A united Europe was not achieved and we had war. Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity" – Robert Schuman, 9 May 1950. [1]

Birth of European Union – In 1950, an intellectual movement emerged, fostering the idea of a united Europe not only for economic but also for political reasons. This vision culminated in Robert Schuman's declaration on May 9, 1950. Drafted by Jean Monnet,[2] De Gasperi,[3] Spaak[4], and Adenauer[5], this declaration proposed the creation of the so-called European Coal and Steel Community (ECSC). Today, the ECSC has become the European Union, a truly supranational power. This power is reflected in the fact that this entity holds several competences, both exclusive and shared ones.

Competition policy is an exclusive competence of the EU. According to Article 3 of the Treaty on the Functioning of the European Union (TFEU)[6], European competition policy is one of the five areas in which the EU has exclusive competence. In these areas, Member States have no autonomous decision-making powers. Their intervention is limited to the adoption of texts, notably via the legislative procedure, but the initiative for proposals lies exclusively with the European Commission.[7]

On the other hand, sports law does not fall within the exclusive competence of the EU.[8] The extent of the EU's power in this field, announced primarily as a supporting and coordinating competence (Art. 165 of the Lisbon Treaty), remains limited and subject to interpretation. For example, several recent rulings show that this competence can be transformed when sport intersects with EU competition policy.[9]

The concept of sports law has its origins in the international Olympic movement. This movement encouraged the creation of sports associations and the emergence of international competitions. For a long time, however, these sporting practices remained outside any legal framework. Ken Foster explains this by pointing out that "*legal norms*

are fixed rules which prescribe rights and duties; relationships within the social world of sport are not seen in this way" [10]. However, with the emergence of globalization and the commercialization of sport, Foster's interpretation was called into question. Numerous debates arose as to whether sports law should be considered a legal branch in its own right.[11] Today, these debates are no longer relevant, as international federations have fully assumed their role as regulators, leading to the emergence of sports law.

Nevertheless, although the Court of Justice of the European Union (CJEU) has affirmed the specificity of sport, this remains open to debate, particularly when it comes into conflict with the principles of competition law. Indeed, while sport enjoys special recognition due to its social, educational and cultural specificities, it is not exempt from the application of the fundamental economic rules of the EU. Several emblematic cases, such as the Bosman ruling (1995)[12] or, more recently, the decisions relating to restrictions imposed by certain sports federations, illustrate this tension between the autonomy of sport and the requirements of the internal market.

A. Research Question

The motivation behind this paper is to examine how the specificity of sport interacts with EU competition law. More specifically, it seeks to analyze the extent to which sport governing bodies can enact rules while being exempted from general competition rules and under what circumstances this specificity cannot justify such rules.

B. Topic Relevance

On 10 February 2025, the French Court of Cassation opened an important debate[13] on the qualification of restriction of competition and the principle of *effet utile*, based on the remarks of Jan Passer[14], judge at the CJEU. The latter introduced his

intervention by referring to the Superleague ruling[15], which he considers to be a synthesis of the major advances in competition law in the European Union.

Today, landmark cases are multiplying in the field of sports law – one thinks of the Diarra[16], Seraing[17], Superleague and Royal Antwerp[18] cases. However, from the point of view of the above-mentioned judge, these are not revolutions, but rather the continuous application of constantly evolving case law.

This highlights the importance of fully understanding the very foundations of Articles 101[19] and 102 TFEU[20], particularly in the run-up to potential reforms of Article 102[21]. This subject is therefore essential for understanding the current and future challenges of competition law, particularly in the field of sport.

C. Methodology

This thesis has been developed using a deductive method, with the aim of following a clear and structured approach. It begins with an exploration of key definitions, followed by their application within the field of sports law.

While certain parts of the text have been enhanced with the assistance of AI to improve clarity and ensure the content is easily comprehensible particularly given the complexity of the subject matter, no ideas, definitions, or original content were generated by AI.

III. THE CONCEPT OF 'UNDERTAKING' AND THE SPECIFICITY OF SPORT

The protection of the internal market from anti-competitive restrictions is one of the fundamental objectives of the European Union, as stipulated in Article 3(3) of the Treaty on European Union (TEU).

This protection aims to guarantee a fair internal market, ensuring equal economic opportunities for all players. However, the application of competition rules raises questions when it comes to identifying the players concerned. Indeed, can sports associations or federations really be considered as undertakings, even though most of them are non-profit-making entities?[22]

This question highlights the need for an in-depth examination of the concept of 'undertaking' to better understand its scope of application and implications in the context of European competition law.

A. Defining 'Undertaking'

Defining the concept of 'undertaking' is a difficult exercise, as understanding it requires an analysis of its conceptual evolution.

The use of this concept does not originate in a case relating to competition law, but rather in a case related to a compulsory equalization scheme, introduced to stabilize the prices of ferrous scrap within the ECSC *(Mannesmann AG v ECSC High Authority)*.[23]

In this case, the claimant argued that a parent company and its subsidiaries should be considered as a single entity, due to the lack of real autonomy of the subsidiaries and the active control exercised by the parent company.

However, this approach was rejected by the Court, which then defined the concept of an undertaking as an autonomous organization, comprising human and material elements, with its own legal personality, and pursuing a lasting economic objective.

Thus, the approach adopted at the time was essentially based on a legal perspective, based on the legal personality of the entity, resulting in an undertaking being equal to a company.

Nevertheless, the arguments put forward by the applicant at the time can be seen as the beginnings of the current definition of the concept of 'undertaking' in European law. Indeed, the latter aimed to lift the corporate veil in order to establish the recognition of a single entity, a concept that can be likened to the Latin notion of *universitas*. Derived from Roman law, this concept has an essentially economic dimension, rather than a purely legal one in the strict sense.

Thus, the contemporary definition of 'undertaking' is based on a functional approach[24], according to which a company is defined as 'any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed' [25]. This interpretation, now firmly established in European law, has also been incorporated into a Council Directive, particularly in the transport sector[26]. The important elements of this definition are based on the economic aspect and ignorance of the status of the entity causing the effect on the market.

Ultimately, this definition is based on a pragmatic approach, centered around two essential criteria:

- Does the entity carry out an activity?
- If so, is this activity of an economic nature?

These two conditions form the basis of the contemporary interpretation of the concept of 'undertaking' in European Union law.

B. 'Undertaking' in relation to Sports Activities

The functional approach to the concept of 'undertaking' in European law has led to various interpretations, ranging from a broad to a strict meaning. [27]

The strict interpretation focuses on the specific characteristics of the activity carried out to determine whether an entity can be classified as an undertaking. On the other hand, the broad interpretation encompasses any entity participating in an economic activity, regardless of its legal status or the terms of its financing.

This distinction between the strict and broad approaches is crucial in determining whether sports governing bodies can be considered as enterprises within the meaning of competition law. Under a broad approach, sports associations would, by virtue of their purpose, be classified as undertakings and therefore subject to competition law. This approach is based on the concept of economic activity; thus, specific characteristics, such as the pursuit of a social purpose or the performance of the activity by a public service, should not alter the classification as an 'undertaking'.

However, this approach has been called into question, and several rulings have adopted a strict interpretation for various reasons. For example, in social security, the Poucet and Pistre[28] ruling concluded that the organisations responsible for managing special social security schemes are not profit-oriented and carry out an activity based on the principle of national solidarity, thus excluding them from the classification of an undertaking. Consequently, these sectors must demonstrate that their activity is not of an economic nature in order to be excluded from the scope of competition law.

Similarly, in the Walrave and Koch v. Association Union Cycliste Internationale ruling, the Court examined whether discrimination based on nationality in the field of sport falls under competition law. [29] [30] It concluded that, although sporting activity as such does not constitute an economic activity, the economic aspects linked to this activity may be subject to the rules of the treaty. Thus, it is necessary to demonstrate that the exclusion based on nationality is not related to an economic activity but purely to a sporting activity in order to escape the application of competition law.

The *Meca-Medina and Majcen v. Commission* [31]judgement adds nuance to the case law arising from the *Walrave and Koch* judgement, which had initially led some actors to consider that purely sporting decisions would be automatically excluded from the scope of competition law.

However, in this case concerning anti-doping rules, the Court affirmed that even sports regulations may fall under competition law. For such regulations to benefit from an exemption, the Court applied the methodology derived from the *Wouters* [32] judgment, considering two fundamental aspects: on the one hand, whether the rules in question pursue a legitimate objective; on the other hand, whether they are necessary and proportionate to that objective. This approach, described as broad, is not limited to the nature of the activity but also takes into account the effects it has on the market.

From this perspective, case law has also illustrated how an association of undertakings can be formed when an entity brings together several economic players and exercises a regulatory power that limits their autonomy. This functional approach comes into play when several undertakings come together within an association or a regulatory entity, for example in the Consiglio Nazionale Degli Spedizionieri Doganali v ruling[33]. The Court recognised that a national council, despite having the status of a public body and therefore of a regulator, functioned as an association of undertakings. This approach can therefore be applied to the world of sport or, as in the case of football, a sports federation or a professional league can be described as an association of undertakings if it establishes rules with anti-competitive effects, such as setting the conditions for the transfer or remuneration of players.

In both cases, the major factor is the exercise of regulatory power that limits the economic autonomy of the members and directly influences the market for the services concerned.

In short, the classification of an entity as an 'undertaking' depends on the adopted interpretation of the concept of economic activity, but also on the effects brought to the market.

C. The Relevant Market in the Sport Industry

The concept of 'undertaking' is linked to an activity, but to analyse the effect of this activity in relation to competition law, it is necessary to have notions on which market it is being focused.

The relevant market is defined according to two cumulative criteria.

First, the geographic market delimits the space in which the undertakings operate, i.e. the area where the conditions of competition are homogeneous and where the economic activity can have a significant impact on competition.

Then, the product or service market brings together all the goods or services considered as interchangeable by the consumer. Interchangeability is assessed according to several factors, including price, quality, advertising, quantity available and degree of innovation. Market analysis is dynamic and evolves according to consumer trends and economic developments.

The *Metro* judgement of 25 October 1977 (C-26/76)[34] is a reference for the definition of the relevant market in competitive analysis. In this case, the Court of Justice of the European Union examined the compatibility of selective distribution systems with competition rules. It recognised that certain vertical restrictions could be justified when they favour competition based on qualitative criteria. This judgement thus highlights the fact that the concept of the relevant market is not based solely on the price factor but can also include elements such as quality or the distribution method.

In sports law, several market configurations can be considered. From the point of view of a federation or league, collective selling[35] refers to the collective sale of rights[36] by a regulatory body, such as a league or federation, as part of a championship or competition. This phenomenon can also manifest itself in another form, namely collective purchasing, which corresponds to the collective purchase of services or products by a federation with a view to optimising the management and development of competitions.

UEFA, as the governing body of European football (sport governing body), makes extensive use of collective selling to market the broadcasting rights for its competitions, notably the Champions League. This practice, although accepted, remains controversial and is the subject of persistent criticism. Indeed, although UEFA has obtained an exemption under Article 101(3) of the TFEU, this is based on a delicate balance between the restrictions on competition imposed by UEFA's monopoly and the resulting efficiency gains. According to the criteria established in the Wouters ruling, the existence of a monopoly on the collective sale of rights can be justified if it contributes to the realisation of objectives of general interest, such as the maximisation of revenue and its redistribution throughout the football ecosystem. UEFA thus defends the idea that this centralisation not only optimises the income generated, but also ensures solidarity redistribution, aimed at guaranteeing a certain competitive balance between clubs.[37]

However, this exemption continues to be controversial, particularly due to the lack of transparency surrounding the distribution of income and the degree of control exercised by UEFA over the broadcasting rights market. Some observers believe that the concentration of power in the hands of a single entity can hinder the development of a more competitive and fair market, thus limiting innovation and diversity of broadcasters. Therefore, although UEFA enjoys a dominant position justified under certain conditions, the question of the balance between regulation and free competition remains a central topic of debate on sports law and the market for audiovisual rights.'

Another aspect to be taken into account is that ticketing can constitute a relevant market in itself, distinct from the market for broadcasting rights or sponsorship.[38] The sale of tickets gives consumers exclusive access to a specific service, namely the live experience of a sporting event, which gives it particular economic and competitive importance. However, the marketing of tickets frequently relies on exclusive distribution agreements, granting a designated operator a monopoly on sales in a given territory.

These practices have given rise to numerous controversies and interventions by competition authorities, particularly the European Commission. Several issues have

been raised, in particular the abuse of a dominant position, when organisers impose excessive restrictions on ticket sales, discrimination based on nationality, by limiting access to tickets to residents of the host country only, and restriction of the freedom to provide services, by preventing travel agencies or foreign distributors from selling tickets to consumers located in other Member States of the European Union.

These issues have been highlighted in investigations conducted by the Commission, particularly during the 1990 and 1998 FIFA World Cups.[39] In the Italia '90 case, the Commission criticised an overly restrictive ticketing system that prevented travel agencies not approved by the organiser from accessing the ticket market, thus limiting competition. Similarly, during France '98, the exclusive ticketing reserved for French residents led to a sanction for abuse of a dominant position, in violation of Article 82 of the EC Treaty (now Article 102 TFEU).

A significant example of a relevant market is that of professional players through transfers. The football player transfer market is a specific sector of the sports industry, governed by regulations issued by bodies such as the Fédération Internationale de Football Association (FIFA).[40] These rules are aimed in particular at structuring contractual relations between players and clubs, by regulating aspects such as the early termination of contracts.

In the event of a unilateral breach of contract without just cause by a player, FIFA regulations provide for compensation mechanisms for the benefit of the aggrieved club, as well as possible sporting sanctions against the player concerned and the club that hires him. Furthermore, the issuance of the International Transfer Certificate (ITC) may be suspended as long as the dispute relating to the contractual termination remains ongoing, thus preventing the player from being registered by a new team. These provisions aim to guarantee contractual stability and the integrity of sports competitions by limiting abusive breaches of contracts and preserving the balance of the transfer market.

However, these regulations have given rise to legal controversy, particularly with regard to their compatibility with the principles of free movement of workers and competition within the European Union. By way of illustration, in the Diarra case, the

matter was referred to the Court of Justice of the European Union to examine the conformity of these rules with Articles 45 and 101 of the Treaty on the Functioning of the European Union (TFEU), relating respectively to the free movement of workers and anti-competitive agreements.

D. Consequences of being an Undertaking

The existence of an undertaking, as defined by competition law, is an essential prerequisite for the qualification of an anti-competitive practice. Thus, when a competition authority analyses behaviour that is likely to distort competition, it must necessarily link this practice to a clearly identifiable economic entity. This requirement is of paramount importance for several reasons: on the one hand, to legally characterise the offence, whether it involves an abuse of a dominant position or a prohibited cartel, and on the other hand, to ensure the effectiveness of the sanctions applied, intended either to put an end to these practices or to neutralise their effects. The general methodology for establishing financial sanctions is based mainly on the profits made by the offending companies, also taking into account the anticipated profits from the offence.[41]

The specific regime of financial sanctions in the sports sector raises particular issues, notably because of the unique structure of clubs, their specific modes of governance, as well as their insertion in an economic environment that is both competitive and highly regulated. Several questions arise when applying financial sanctions to sports entities, in particular concerning the phenomenon of multi-club ownership or adaptation to particular governance models such as that adopted in the German Bundesliga.[42] [43]

The issue of multi-club ownership in European football raises complex issues in the field of European competition law. In the absence of a specific ruling from the Court of Justice of the European Union to date, the concept of a *'single economic entity'*, as defined in the Akzo Nobel case law, could be applied whenever a parent company exercises decisive influence over its clubs, thus creating a risk of anti-competitive

behaviour being attributed to it. However, the generally observed operational autonomy of clubs makes this qualification tricky. Similarly, the European Commission[44] (ENIC/UEFA, Red Bull/Salzburg cases) has validated certain limitations on multiple ownership of clubs, mainly with the aim of preserving the integrity of sports competitions. Currently, the question of the precise liability of investors remains unclear, raising the prospect of potential future litigation before the CJEU.

The mechanism known as the '50+1 rule' in the Bundesliga represents a unique feature in the governance of German football. In concrete terms, this rule requires that the majority of a club's decision-making shares (at least 50% plus one share) be held by its members, commonly referred to as 'socios'. In this way, the latter retain majority control over any private investor. Nevertheless, this rule, far from being absolute, has several notable exceptions as well as possibilities for strategic circumvention. For example, clubs such as Bayer Leverkusen have obtained explicit exemptions allowing them to partially escape this obligation. Other clubs, such as RB Leipzig, have intelligently exploited certain statutory nuances in order to formally respect the rule while minimising its effective impact on the club's internal governance.

This atypical governance has given rise to numerous legal debates, particularly with regard to competition law. In 2021, however, the German competition regulator confirmed the legal validity of the 50+1 rule, explicitly recognising that this governance model met legitimate sporting, cultural and social objectives.

The real legal complexity, however, arises when it comes to identifying the mechanisms of liability in the event of a breach of competition law. Indeed, it seems problematic to conceive that a regulatory authority can easily identify the person responsible when the majority of the powers formally belong to the members of the club, and not to clearly identified external investors. Moreover, in cases where exceptions or circumventions exist, the question of liability becomes even more complex. In European competition law, liability for anti-competitive practices is often attributed jointly and severally to the various entities involved, which makes the application of the law particularly delicate in the specific context of 50+1 in Germany.

IV. CARTELS IN SPORTS LAW

Article 101 of the Treaty on the Functioning of the EU has a fairly simple aim[45] namely, to prohibit all forms of cooperation between companies that could have a negative effect on the internal market. Unlike the offence of abuse of a dominant position, a cartel must be the result of a concerted effort that restricts competition[46]. As a result, a cartel requires at least two parties. The cartel is also complex to define, because its concept is extremely broad. For comparison, the cartel can be vertical (between economic actors located at different levels of the chain) or horizontal (direct competitor), it can be express or tacit. It generally takes the form of agreements, concerted action or decisions of associations of undertakings.[47] The manifestation of these phenomena has been particularly important in sports law.

As with the concept of undertaking, in order to understand the idea of a cartel originating from Article 101 TFEU, it is necessary to look at its history and its various offshoots. In addition, it is also necessary to look at the practical qualification of these offshoots.

A. General definition of 'Cartel' (Article 101 TFEU)

As seen previously, the cartel is difficult to define: its concept is extremely broad. One way of understanding it is to opt for a definition *a contrario*, that is to say by identifying what the cartel is not.

First of all, a cartel is neither a practice resulting from the free play of the market, nor a simple coincidence of behaviour. Nor does it correspond to a long-term merger of interests (this would be a concentration), nor to a renunciation of the independence of a company.[48]

Consequently, a cartel can be defined as anti-competitive coordination between two or more companies, in which the economic operators retain the autonomy of their behaviour.

The cartel has been categorised into several families of anti-competitive behaviour. This typology is also very varied and evolving.

Article 101 TFEU uses the term agreement, i.e. a contract or convention. These agreements can take various forms: a shareholders' agreement a distribution contract[49], or even an agreement between two clubs such as a no-poach agreement.[50] The analysis of the contract is supplemented by a study of the actors involved and their position in the market.

Indeed, although a cartel may be formalised by a contract, the analysis of the stakeholders remains essential to assess the harmfulness of the practice and determine whether or not it is anti-competitive.

A vertical agreement involves a downstream and an upstream player in the production or distribution chain of a product or service, while a horizontal agreement concerns the cooperation between two competitors.

With regard to the concept of a cartel formalised by a contract or agreement, two important points should be noted: the validity of the contract and the reality of the agreement. Even if the contract represents the simple expression of the instrumentum[51] resulting from the will of the parties (negotium), the question has been raised as to whether the mere conclusion of this instrumentum could be sufficient to characterise a cartel. The ECJ answered in the affirmative[52].

A cartel may also manifest itself through an association of undertakings. As already mentioned, the concept of 'undertaking' within the meaning of EU competition law must be understood in its economic sense, regardless of its legal status or method of financing.

In this respect, FIFA and UEFA have been qualified as associations of undertakings within the meaning of Article 101 TFEU, insofar as they bring together

national federations made up of football clubs engaged in economic activity. As these clubs are companies, their federations are therefore considered to be associations of companies. As a result, FIFA and UEFA, as organisers of competitions but also as regulators, fall under the category of associations of associations of companies.[53] Consequently, the statutes they adopt, particularly those relating to the organisation of or participation in international competitions, reflect a desire for coordination between their members and can, as such, be classified as decisions by associations of undertakings that may restrict competition within the meaning of Article 101(1) TFEU.[54]

The forms of cartel are varied and evolving. The use of terms such as coalitions or agreements allows the Court to grasp all the forms of common strategies that companies can adopt. The concept of concerted practices, for its part, makes it possible to target forms of coordination of lesser intensity[55].

A final type of cartel has recently emerged, particularly through the trilogy of ISU[56], Superleague and Royal Antwerp rulings. In fact, for behaviour to be classified as a cartel, it must be analysed as being anti-competitive by object or by effect.

B. Restriction by Object vs Restriction by Effect: Practical Importance and Legal Consequences

The distinction between restriction by object and restriction by effect is a cardinal point in the application of Article 101 TFEU. The stakes are high because it determines both the method of analysis and the rules of evidence and, consequently, legal certainty for the companies involved.

Restriction by object concerns practices considered harmful by nature to the normal functioning of competition. These practices are presumed harmful and concrete demonstration of their effects on the market is not necessary. The Court of Justice of the European Union (CJEU) has clarified this approach by establishing four fundamental criteria: the content of the agreement, the objectives it pursues, the analysis of the economic and legal context in which it operates and, incidentally, the possible

existence of legitimate objectives. Thus, a restriction by object frequently manifests itself through obvious behaviour such as price fixing, the exchange of sensitive information between competitors, barriers to innovation or market sharing.

In contrast, a restriction by effect requires a thorough demonstration of the actual or potential negative consequences on competition. This analysis requires a precise evaluation of the economic context, the market structure and the concrete or probable effects on competition. This level of in-depth examination involves a counterfactual analysis aimed at determining the probable state of the market in the absence of the suspected agreement.[57]

The practical and legal consequences of this distinction are crucial. Qualifying a restriction by object greatly facilitates the work of the competition authorities since it dispenses with the need to provide in-depth proof of negative effects. This qualification is therefore often contested by the companies involved, who are aware of the serious implications it entails. Conversely, a restriction by effect imposes a heavier burden of proof on the competition authority, thus offering companies more scope for challenge.

The recent judgements of the CJEU in sports matters, notably ISU, Superleague and Royal Antwerp[58], particularly illustrate this distinction and what is at stake.

In the ISU judgement, the CJEU examined the internal regulations of an international sports federation that severely punished athletes participating in competitions not authorised by it. The Court characterised these measures as restrictions by object. Indeed, the manifest purpose of these rules was to prevent any potential competition in the organisation of sports competitions, thus confirming the intrinsic harmfulness of such practices.

The Superleague ruling is probably the most striking recent example of the issue of restrictions by object and effect in sport. In this case, some major European clubs had proposed the creation of a private league to compete with the UEFA Champions League. The governing bodies of football (UEFA and FIFA) had threatened to exclude these clubs and players from existing official competitions. The Court ruled that, although UEFA and FIFA legitimately have the power to regulate their sport, the rules imposed to prevent the creation of competing competitions must be transparent,

proportionate and non-discriminatory. Failing to meet these criteria, these rules constituted restrictions by object, as their immediate purpose was to prevent any effective competition in the market for the organisation of professional football competitions.

In the Royal Antwerp case, the legal reasoning confirmed the importance of this distinction. This case concerned contractual restrictions imposed by Belgian clubs aimed at limiting the mobility of young players between competing clubs. The Court held that, by their very objective, these restrictions constituted a restriction by object. By preventing the free movement of players, these practices had the immediate effect of restricting competition in the transfer market.

Recently, there was a jurisprudential addition to the Diarra case, which concerned the market on which professional football players are recruited, also manifesting a restriction by object in accordance with Article 101, paragraph 1, TFEU. As defined by the case law of the Court of Justice examined above, "*a restriction by object is a restriction which by its nature is so obviously harmful to competition that there is no need to examine its objective function*" on the market. In the case of the same judgement explicitly identify that the FIFA rules,[59] imposing severe financial and sporting sanctions on clubs that recruit a player under contract elsewhere, is clearly a 'general, absolute and permanent ban' on the unilateral transnational recruitment of anything. Such an effect necessarily limits national markets by preventing effective competition between European clubs for some of their most valuable assets – the players. Therefore, taking into account the text in question, the economic context and the inherent objectives, the Court may also conclude that these antitrust rules constitute a restriction by object according to Article 101, paragraph 1, TFEU.

These decisions clearly illustrate the practical impact of the distinction between restriction by object and by effect. By classifying these sporting practices as restrictions by object, the Court allows competition authorities to considerably simplify their probative work and sends a clear signal to sports federations about the limits of their regulatory power.

V. ABUSE OF A DOMINANT POSITION IN SPORTS LAW

Article 102 of the Treaty on the Functioning of the European Union (TFEU)[60], relating to the abuse of a dominant position, was one of the last to be modernised. In March 2023, the European Commission announced its intention to open consultations with a view to developing new guidelines for the application of this article, scheduled for 2025.[61]

In sports law, this article raises many concerns. Its title suggests that sports federations, as governing bodies, could be automatically targeted and sanctioned. Indeed, for some, the fact that an entity combines the roles of regulator (enacting rules) and economic actor (organising competitions, managing rights) should be prohibited by Article 102, as this duality would create a conflict of interest situation conducive to abuse.

A. Conceptual Framework of Abuse of a Dominant Position in EU Law

Article 102 TFEU draws up a non-exhaustive list of abusive practices (unfair prices or conditions, limitation of production, discrimination, etc.), but without positively defining the concept of abuse. Case law has defined the abuse of a dominant position as behaviour by a dominant company that uses methods that are unfair or unrelated to 'competition on the merits', and which has the effect of distorting competition by taking advantage of the dominant company's market power. Thus, as early as the Hoffmann-La Roche ruling[62] , the Court of Justice described abuse as behaviour which, by methods other than those governing normal competition on the merits of products or services, has the effect of restricting competition in the market.

Similarly, a player in a dominant position is not to blame for its position per se but has a 'special responsibility' not to undermine effective and undistorted competition.[63]

In other words, it must refrain from any practice that would prevent competitors from competing on the merit of their services. The notion of competition on merit implies that a dominant company can legitimately prosper by offering a better product, a higher quality service or innovations, but that it cannot oust its rivals through coercive, discriminatory or artificial stratagems. Any practice that deviates from this fair competition can be considered abusive if it negatively affects the market structure or the well-being of consumers.

Case law and doctrine distinguish two major categories of abuse: (1) exclusionary abuses, which aim to exclude or marginalise competitors from the market, and (2) exploitative abuses, which consist of the dominant party exploiting its power in relation to commercial partners, customers or consumers (for example by imposing excessive prices or unfair conditions).[64]

In the context of the modernisation of EU competition law, particularly since the publication by the European Commission of effects-based guidelines in 2009, the emphasis is on the economic and factual analysis of the effects of these practices. For example, to establish an abuse of exclusionary conduct, there is an increasing focus on assessing whether the contested behaviour is likely to exclude a 'competitor as efficient' as the dominant company, i.e. a hypothetical rival with equivalent performance, which makes it possible to distinguish truly harmful practices from simple fierce but legitimate competition.

Similarly, the Court of Justice has gradually incorporated an effects-based and proportionality approach, considering that 'by nature' restrictive dominant behaviour can only be tolerated if it is objectively justified or compensated by efficiency gains for the benefit of consumers.[65]

Having established this general framework, it is necessary to examine how sports federations have been able to commit abuses of exclusion and exploitation within the meaning of Article 102.

B. Exclusionary Abuses by Sports Federations

Abuses of exclusion (or abuses of foreclosure) refer to the behaviour of a dominant company that aims to exclude current or potential competitors in order to protect or strengthen its position in the market. In the field of sport, federations often act as 'gatekeepers' to the competition market: they regulate the organisation of events and penalise infringements of their rules. This regulatory power, combined with their own economic activity (organisation of official competitions, marketing of media rights, etc.), creates a situation conducive to conflicts of interest and exclusionary abuses. [66] [67]

A dominant federation could be tempted to use its regulatory authority to prevent the emergence of competing competitions or to dissuade athletes and clubs from entering them – which is not a competition on merit.

A prime example is the International Skating Union (ISU) case, concerning the international skating federation. The ISU, which organises the major figure skating and speed skating championships, had adopted eligibility rules making any international skating competition subject to its prior authorisation, under penalty of extremely heavy sanctions for participating skaters (up to and including lifetime exclusion from all official competitions). These rules gave the ISU absolute control over the organisation of the events and prevented the organisation of independent competing events.

In 2017, the European Commission, after being referred to by two professional skaters, ruled that these rules violated competition law. The Court of Justice, confirming the analysis in 2023, emphasised that the ISU rules were not accompanied by any guarantee of transparency, objectivity, non-discrimination and proportionality, which allowed the ISU to favour its own competitions and to unduly benefit its position to the detriment of any alternative organiser.

As a result, such rules 'give the ISU a clear advantage over its competitors' and harm athletes, consumers and spectators.

In other words, the ISU committed an abuse of exclusion by using its power to lock out competition from the skating competitions market, thus preventing any free

competition. The ISU case perfectly illustrates the notion of absence of competition on the merits: the ISU did not seek to compete with potential new tournaments through the quality of its own events but imposed a monopoly through regulatory coercion.

A similar case, at the heart of recent news, is the football Super League case pitting UEFA and FIFA against a competing private league project. In April 2021, twelve major European clubs attempted to create a dissident 'Super League', escaping the control of UEFA. UEFA (with the support of FIFA) immediately threatened to exclude any club or player participating in the Super League from its competitions (Champions League, World Cups, etc.). Here again, we find a pattern of dissuasive sanctions intended to protect the monopoly of the sports regulator in place.

Seized in summary proceedings by the promoters of the Super League, a court in Madrid referred questions to the CJEU for a preliminary ruling on the compatibility of these rules and threats with Articles 101 and 102 TFEU. In its judgement of 21 December 2023, the Court of Justice ruled that the UEFA/FIFA prior authorisation system and associated sanctions constitute a restriction of competition contrary to EU law.

On the issue of abuse of a dominant position, the Court found that UEFA and FIFA, in a monopoly situation regarding the organisation of European football, had exercised their power without any objective or transparent framework, which places them in a situation of 'abuse of a dominant position'.

Indeed, their statutes did not provide for any limiting criteria governing the refusal to authorise a new competition – no clear procedure for impartially evaluating a project such as the Super League. In the absence of safeguards, this discretionary power was equivalent to the ability to exclude any potential competitor from the competition market, and thus to abusive foreclosure.

The Court added that even exclusive control by UEFA/FIFA of the commercial exploitation of competition-related rights could contribute to restricting competition, given the importance of these audiovisual rights for the media and consumers.

The Superleague case thus confirms that the hindering of competing initiatives by a dominant player (in this case the football federations) constitutes an abuse if it is

not objectively justified. It also enshrines the principle that sports federations, which are vested with a quasi-regulatory role, must exercise this role impartially and proportionately, failing which they violate competition law.

Other precedents illustrate the same logic of abuse of exclusion. In the MOTOE case[68] ,the Court ruled that a national motorcycling federation, which held an exclusive right to authorise the organisation of races, had abused its position by refusing without objective reason to authorise a competitor to organise a race.

Here again, the federation exercised both a power of authorisation and it organised competitions, a situation creating a conflict of interests. The mere fact of combining these functions without safeguards led the Court to find an abuse: an 'unconditional authorisation system' allowing a federation to block competing initiatives is incompatible with Articles 102 and 106 TFEU[69], unless it is governed by objective criteria and appropriate control.

Here we find the notion of the 'special responsibility' of the dominant party: the federation, in a legal monopoly situation, had to use its power in a non-arbitrary manner. Similarly, in the FIA (Fédération internationale de l'automobile) case at the turn of the 2000s, the European Commission investigated the rules by which the FIA – the body governing motor sport and promoter of Formula 1 – required that all motor races obtain its sanction and prohibited participants in its championships from competing elsewhere.

The investigation resulted in commitments from the FIA,[70] which renounced these restrictive clauses, implicitly recognising the risk of abuse of a dominant position. These cases confirm that the use of regulatory power to exclude rivals in a sports market constitutes a classic exclusionary abuse under EU law. It should be noted that sports federations often try to justify such restrictions in the name of the integrity of competitions or the specificity of the sport (for example, maintaining a unified calendar, the need to protect historic competitions, financial solidarity, etc.). We will address the question of justifications later. But already, case law (ISU, Superleague) indicates that without predefined objective criteria, these justifications are inadmissible when the behaviour in question 'has as its very purpose' the restriction of competition.

In short, a dominant federation commits an abuse of exclusion when it prevents free competition not by improving its sporting offer, but by artificially locking the market – through threats, sanctions, refusal of access or exclusivity clauses – and when there is no legitimate necessity to do so.

C. Exploitative Abuses by Sports Federations

In addition to exclusionary abuses, Article 102 also targets exploitative abuses, i.e. behaviour by which a dominant company takes advantage of its position to impose unfair conditions on its partners or consumers. The typical scenario is that of the exploitation of monopoly rents: for example, charging excessive prices or imposing disadvantageous clauses, which the customer accepts for lack of an alternative due to the dominant position.

In practice, competition authorities have historically been more reluctant to sanction purely exploitative abuses, taking the view that the main harm of dominance lies in the undermining of competition rather than in the level of prices (a company that increases its prices too much creates an opportunity for competitors to enter the market, which can self-regulate).

Nevertheless, EU case law has long recognised the category of exploitative abuses. The classic example is excessive pricing, as illustrated by the United Brands case[71]: the Court ruled that an exorbitant price out of all proportion to the economic value of the product, imposed through a dominant position, may constitute an 'unfair' price prohibited by Art. 102.

It outlined a comparative test consisting of comparing the price charged with the costs and the value of the service, to detect a significant disproportion.

Other rulings[72] have confirmed that prices significantly higher than those observed in comparable markets may reveal an exploitative abuse, unless objectively justified.

Transposed to the sports sector, what forms could such exploitative abuse take?

One can imagine several scenarios in which a dominant federation, strong in its sports monopoly, would impose abusive conditions: for example, the imposition of excessive fees for the organisation of events or the sale of commercial rights under unbalanced conditions. If a federation uses its position to make broadcasters pay far above-normal TV rights fees, or to sell licences (e.g. merchandising, sports betting, etc.) at unjustified rates, this could fall under Article 102(a) (unfair prices or conditions).[73]

Similarly, the imposition of unjustified clauses on athletes or clubs could be analysed as exploitative: for example, requiring a club to cede a share of its commercial revenues to the federation in order to participate in a competition, or requiring an athlete to sign a one-sided contract in order to be selected. In the European Superleague ruling, the Court noted that the rules giving UEFA and FIFA exclusive control over the commercial exploitation of inter-club competitions were likely to restrict competition.

Although this part of the analysis also concerns exclusion (preventing dissident clubs from commercialising their own competition), it can be seen as exploitative: federations in a dominant position allocate all commercial resources (TV rights, sponsorship) to themselves and leave the clubs no room for manoeuvre, enabling them to maximise their income. If this exploitation results in unbalanced contractual conditions (e.g. a distribution of income that is unfavourable to the participating clubs, or a restriction of their commercial freedom), this could be qualified as exploitative abuse.

It is true that to date, no significant European case law has sanctioned a sports federation for exploitative abuse such as excessive pricing. However, cases outside the field of sport involving organisations in a monopoly position can serve as a reference. These include collective copyright management companies (such as SACEM in the Lucazeau case), or incumbent operators in a natural monopoly situation. By analogy, a sports federation that charged, for example, prohibitive entry fees for the approval of a competition or for the accreditation of sports agents, could be accused of exploitative abuse.

Moreover, the Piau/FIFA case [74] is partly part of this issue: Mr Piau challenged FIFA's rules imposing a licence (and various conditions) to work as a players' agent. In particular, he criticised the heavy and costly requirements that constitute a barrier to entry for aspiring agents (expensive professional insurance, examination, etc.). The Court ultimately ruled that the FIFA licensing system, in its amended version, did not violate competition law because FIFA had in the meantime relaxed the rules and introduced guarantees of objectivity and transparency.

Nevertheless, the Piau case shows that a federation can easily abuse its position if it imposes disproportionate conditions for access to a sport-related economic activity. If FIFA had maintained excessive and discriminatory criteria for the approval of agents, this could have constituted an abuse (of exclusion by preventing competing agents from entering the market, and of exploitation by abusively monetising a right of access to the profession). In short, exploitative abuses in sport remain a theoretical risk that is more than proven in recent decision-making practice, but they cannot be excluded from the scope of Article 102 TFEU. The concept of 'undue advantage' derived from a dominant position applies both to the exclusion of rivals and to the exploitation of captive partners.

D. Competition on the Merits, Objective Justifications and a Modern Approach

Identifying an abuse of a dominant position is not limited to observing restrictive behaviour on the part of a dominant sports federation. This behaviour must also be assessed in light of its concrete effects and any justifications put forward. European competition law recognises that certain restrictions on the behaviour of a dominant company may be justified by legitimate reasons, provided they are proportionate. This logic has emerged in particular in the Wouters and Meca-Medina case law on cartels, but it is echoed in the area of abuse of dominance through the notion of 'objectively necessary' or compensatory efficiency gains. In other words, behaviour by a sports federation that restricts competition could escape the prohibition of Article 102 if it is indispensable to achieve a legitimate objective of general interest (for example, the

protection of sporting integrity, the health of athletes, the balance of competitions) and if, moreover, it is proportionate (no more restrictive than necessary).

The Court of Justice clarified these issues in its rulings of December 2023. It reiterated that purely technical sports rules or rules with a legitimate aim (for example, anti-doping rules aimed at ensuring equality between athletes) may escape the prohibitions of Articles 101 and 102 if their anti-competitive effects are inherent and proportionate to that aim.

On the other hand, 'sport is no excuse' for violating competition rules: if a measure goes beyond what is necessary and in reality, pursues a protectionist economic purpose, it will be sanctioned.

In the ISU case, no credible objective justification could be put forward: the ISU claimed to be acting for the safety of skaters and the integrity of the sport, but the extreme nature of the sanctions (lifetime ban) and the absence of predefined criteria betrayed an above all commercial objectives. The Court concluded that the 'object' of these rules was to restrict competition within the meaning of Article 101 and that 'by their nature' they constituted an abuse of a dominant position within the meaning of Article 102, hence the impossibility of saving them by any justification of necessity.

Similarly, in the Super League case, UEFA and FIFA invoked the pyramid model of European football and the need to preserve the 'solidarity' of the system. In his conclusions (of an opinion that was ultimately not followed on the outcome), Advocate General Rantos had emphasised the recognition of the European sports model (Article 165 TFEU) and considered that these federations could, to a certain extent, protect this model.

However, the Court decided otherwise, considering that nothing justified the total absence of an open and fair procedure to examine the Super League project: no legitimate interest required an outright ban under threat of sporting reprisals. In short, the federations could have regulated the creation of new leagues by means of objective criteria (financial guarantees, coherent sporting format, etc.), but certainly not prohibited them a priori to defend their own lucrative competitions. This would have been distorted competition and not competition 'on merit'.

The modern approach is also reflected in the importance given to the concrete effects on the market and consumers. Since modernisation, the European Commission has favoured an economic analysis: thus, in cases of rebating or predation (outside the field of sport), it applies the as-efficient-competitor test to verify whether the exclusionary conduct is really likely to eliminate a deserving rival.

Applied to the federations, one might ask: have the UEFA or ISU rules had a measurable exclusionary effect? In both cases, the answer is yes – alternative competitions (a private skating league, the Super League) have not been able to emerge, and therefore consumers (spectators) have been deprived of the innovation that these competing offers could have brought. The effects-based analysis therefore reinforces the finding of abuse: not only was there anti-competitive intent (object), but the concrete effect was to deprive the public of choice and to prevent the competitive emulation that generally stimulates the improvement of the sports offer.

This deprivation of competition has a direct negative impact on athletes and consumers by affecting the number of events which result of less potential income for athletes, possibly higher prices or lower quality for fans in the long term. In this sense, the purpose of competition law (to protect the competitive process in the public interest) is fully engaged. Finally, it should be emphasised that the 'special responsibility' of the dominant player takes on particular significance for sports federations. As governing bodies, often invested with a mission of general interest to develop sport, they have an even greater duty to respect the rules of the economic game.

The Court emphasises that when a company (in this case a federation) has the power to determine the conditions of market access for other players, this power must be exercised in a way that is governed by objective criteria, otherwise the company commits an abuse.

This formula, which comes from the Superleague ruling, is tantamount to imposing on federations an obligation of competitive fair play parallel to sporting fair play. They cannot reserve the market for themselves under the guise of regulation. If they fail to fulfil this responsibility, their behaviour will be judged not as competition on merit, but as a prohibited abusive manoeuvre.

Thus, the notion of abuse of a dominant position, as applied to sports federations under European competition law, covers all behaviour by which these entities unduly exploit their de facto monopoly. Exclusionary abuses are particularly prominent in the sports sector: whether it is a question of denying access to competing competitions, threatening sanctions against dissidents, or blocking the organisation of events, these practices amount to eliminating all competition in the economic sphere in order to preserve a monopoly in flagrant contradiction of Article 102 TFEU.

The ISU (skating) and Superleague (football) cases have recently confirmed that such behaviour, not justified by objective necessities, constitutes punishable abuse. At the same time, although less emphasised in case law, exploitative abuses are conceivable: the imposition of unfair commercial conditions by an all-powerful federation (excessive tariffs, unfair terms) may fall under Article 102, as implicitly illustrated by the Piau case on players' agents. The analysis of these practices now takes place within a modernised framework, where the analysis of anti-competitive effects and the verification of a possible objective justification take precedence. A dominant sports federation may attempt to defend a restrictive rule by invoking the specificity of the sport or a legitimate objective, but it will have to demonstrate that its measure is proportionate and necessary which was clearly not the case for the disputed rules of UEFA, FIFA or ISU.

VI. CONCLUSION

This thesis has demonstrated that the intersection of sports governance and European Union competition law reveals a complex and evolving legal landscape. While the specificities of sport have historically afforded governing bodies a certain degree of regulatory autonomy, this self-governance is not absolute. The jurisprudence of the Court of Justice of the European Union (CJEU) has established a clear doctrinal framework through seminal cases including *Meca-Medina*, International Skating Union (ISU), and *European Superleague*, affirming that sports regulations remain subject to scrutiny under EU competition law principles.

The analysis has established that with respect to both the classification of undertakings and their potential anti-competitive behaviors, sports governing bodies fall within the ambit of Articles 101 and 102 TFEU where they engage in economic activities for remuneration or impose regulatory structures that restrict market access or the freedom to compete. Although these regulatory bodies may pursue legitimate objectives, including sporting integrity, financial solidarity, and competitive balance-their rules must satisfy the cumulative criteria of necessity, proportionality, and transparency to benefit from exemptions under Article 101(3) TFEU.

The CJEU has consistently held that the specificity of sport, as recognized in Article 165 TFEU, cannot serve as a general justification for anti-competitive conduct. Any limitation on competition necessitates rigorous judicial examination employing an effects-based analysis that considers both the ostensible objectives and the actual market consequences of the contested regulation

In this context, EU competition law functions as an essential counterbalance to the regulatory powers of sports federations. Its primary objective is to ensure that sporting rules do not preemptively stifle innovation or constrain choice, nor restrict the fundamental rights of athletes, clubs, and consumers. In an increasingly commercialized sports ecosystem characterized by substantial financial interests, maintaining equilibrium between autonomy and accountability remains crucial to safeguard both

the integrity of sporting competitions and the foundational principles of the internal market.

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