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# **COMPETITION LAW IN THE SPORTS INDUSTRY: THE EUROPEAN SUPER LEAGUE CASE**

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## INTRODUCTION

The world of football, in recent decades, has seen an incredible growth that has transformed it from a simple game to an actual business. Especially in the last decade, clubs' revenues have grown exponentially, with the main ones exceeding €500 million and approaching €1 billion.

However, the football system presents serious problems: indeed, costs are mainly fixed, while revenues are variable, and this does not allow clubs to have financial stability, as the costs of players' salaries are really high. At the same time, the current system provides for an exaggerated number of matches with an almost obvious outcome and few games between the great champions: if it is true that this fact enhances the uniqueness of big events, it is evident that the great potential that football possesses is not fully exploited. Also, with the breakout of COVID-19, it was realized that a change was necessary and urgent.

Starting from this premise, some of the most successful clubs in the world have decided to split from UEFA and FIFA, the current institutional bodies, with the aim of creating a semi-closed league, the Super League, with permanent licenses for the founding clubs. While UEFA and FIFA announced severe sanctions, the clubs accused the institutions of having violated the right of free competition, abusing their dominant position, so much that the case was discussed before the Court of Justice of the European Union.

In this thesis, the goal is to clarify a case that caused clamor all over the world, not only in football, to such an extent that there was the intervention of the heads of state of the main European countries.

In the first chapter, we will start by analyzing the concepts of monopoly and perfect competition, then focusing on the laws of the treaties of the European Union that regulate the protection of competition and the abuse of dominant position.

In the second chapter, we will instead focus on what is the status quo of the football industry, clarifying on what has led the clubs to try to revolutionize the current system and on all the problem of the current system itself.

In the third chapter, we will analyze the announcement of the creation of the brand-new competition and everything that followed, from the stakeholders' reaction that led some clubs to abandon the project to the appeal to the Madrid Court, with the preliminary reference to the EU Court of Justice.

In the fourth and final chapter, we will talk about similar cases in other sports, and we will focus on the hearing before the EU Court of Justice, with the parties that have tried to prove their points. Finally, we will try to speculate on the outcome of this case and the potential consequences of the Court's decision.

# CHAPTER I

## EUROPEAN UNION: THE RIGHT TO COMPETITION

### 1.1 Competition and Monopoly: definition and differences between the two types of markets

To begin with, it has to be defined what competition and competition law are.

Conventionally, competition is considered the contest or rivalry between organizations that provide similar products or services or target the same audience of consumers. A competitive market, often referred to as perfectly competitive market, usually possesses three main characteristics, that are:

- the presence of many buyers and many sellers in the market;
- the fact that the goods offered by the various sellers are almost identical, or at least they are perceived as such by consumers;
- the possibility for firms to freely enter or exit the market.

As a result of these characteristics, no single buyer or seller in the market has a notable impact on the market price, as the individual action represents a negligible part of the whole market. Therefore, each buyer and seller takes the market price as given and is consequently considered as price taker.<sup>1</sup> However, a perfectly competitive market does not exist in the real world. It is then considered as a model used in order to understand and predict potential trends of actual companies in response to changes in consumers tastes, changes in technology and changes in the production process.

Obviously, another type of market, which is the exact opposite of perfect competition, is represented by a monopoly, that is a market in which there is a sole seller without any competitor offering a product perceived as a close substitute. The main cause of monopoly is barriers to entry, meaning that no other firm can freely enter the market and compete with the incumbent monopolistic firm, either because a key resource required for production is owned by a single firm or because the government gives a single firm the exclusive right to produce a good or service. Also, there exist another source of barriers to entry, which is the so-called “natural monopoly”, a monopoly that arises because a single firm can supply a good or service to an entire market at a lower cost than could two or more firms. The key difference between a competitive firm and a monopoly is the latter’s ability to influence the price of its output. Since a monopoly is the only producer in its market, its demand

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<sup>1</sup> Mankiw, N. G., “*Principles of Economics*” Seventh Edition, Cengage Learning, pp. 280-283

curve is clearly the market demand curve, so it can easily alter the price of its good by simply adjusting the quantity it supplies to the market. On the other hand, as previously highlighted, a competitive firm is too small relative to the market in which it operates and, as a consequence, has no power to influence the price of its output at all.<sup>2</sup>

From the standpoint of consumers, the fact that a monopoly charges a price ( $P$ ) above marginal cost ( $MC$ ), compared to a competitive firm that charges a price equal to its marginal cost, makes monopoly undesirable. Naturally, a monopolistic position is very desirable from the standpoint of the owners of the firm instead. While the equilibrium of demand and supply in a competitive market is a desirable and efficient outcome, as well as being a natural outcome, this is not the case when there is a monopoly, whose outcome fails to maximize total economic well-being. Therefore, because a monopoly charges a price above marginal cost, not all consumers who value the good at more than its cost buy it and, as a consequence, the quantity produced (and sold) by a monopolistic firm ( $Q_M$ ) is below the socially efficient level ( $Q_C$ ). This inefficiency caused by monopoly, or better this loss in efficiency, generates the so-called deadweight loss, often referred to as the welfare cost of monopoly.<sup>3</sup>

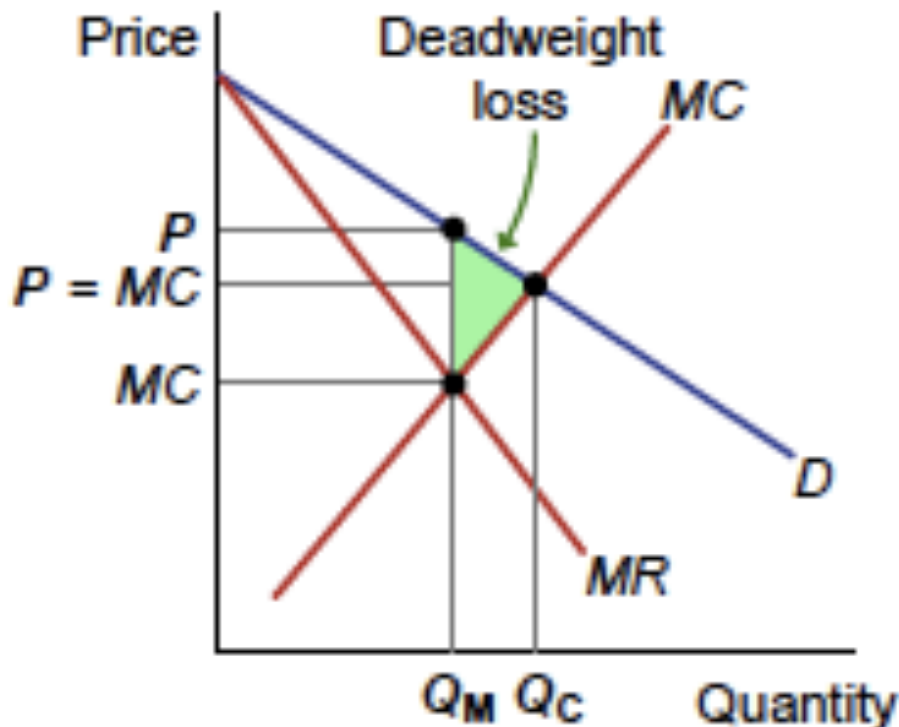


Figure 1: a graphical representation of the loss in efficiency caused by Monopoly compared to Perfect Competition

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<sup>2</sup> Ivi, pp. 301-304

<sup>3</sup> Ivi, pp. 310-313

## 1.2 Competition law: a historical background

After having distinguished a competitive market from monopoly, we can now turn to what competition law is. Competition law is the field whose core objective is making sure that there is fair competition between businesses by prohibiting firms from engaging in strict monopolistic conducts which will distort the competitive process in a way that is detrimental to society<sup>4</sup>. As you may understand, in this sense, efficiency and welfare are crucial objectives and strong competition is considered to promote innovation and economic development as well as contributing, at the same time, at maintaining prices at low levels.

It is generally agreed today that European legislation holds a crucial role in defining the protection of competition and the market. However, the first modern antitrust law, the Sherman Act, was enacted in the United States in 1890. In its Section 2, the Sherman Act provides for a general clause prohibiting monopolization and attempts to monopolize. After a couple of decades, specifically in 1914, two more Acts were added to the first body of rules: the Clayton Act, regulating the phenomena of concentration between companies, and the Federal Trade Commission Act, whose purpose is to sanction conducts generally defined as “unfair” and applies in parallel to the Sherman Act.<sup>5</sup>

With regard to Europe instead, a unitary antitrust control system was only adopted in 1957, well before the actual birth of the European Union, thanks to the signature of the Treaty of Rome, which was officially known as the Treaty establishing the European Economic Community (ECC) and then renamed in 2009 following the Treaty of Lisbon in the “Treaty on the Functioning of the European Union”. The Treaty of Rome, which became effective in 1958 after having been signed by 6 countries (Belgium, Italy, West Germany, France, Luxembourg and the Netherlands), had the aim of creating a common market based on the free movement of goods, people, services and capital, as well as serving as a step forward towards the closer political unification of Europe.<sup>6</sup>

The Treaty of Rome, together with its subsequent modifications, introduced specific rules to protect competition, especially focused on the discipline of restrictive agreements, abuses of dominant position and state aid and a specific discipline for the antitrust control of concentration operations. Here, the passage that refers to the protection of competition, previously contained in art. 3, lett. g),

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<sup>4</sup> <https://dictionary.cambridge.org/dictionary/english/competition-law>

<sup>5</sup> <https://www.treccani.it/enciclopedia/concorrenza-diritto-commerciale/>

<sup>6</sup> [Treaty of Rome, eur-lex.europa.eu](https://eur-lex.europa.eu/ContentServer?uri=CELEXdoc_31957L0001&docId=31957L0001)

EEC Treaty, has been deleted from the part of the principles of the Treaty on the Functioning of the European Union (TFEU), at the express request of the French Republic, and successively included in Protocol no. 27 (protocol on the internal market and competition) annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, although Protocols and Treaties have the same legal value.

In this sense, Art. 3 (ex Art. 2 TEU), par. 3 TEU, which is still in force today, highlights how the EU, by establishing an internal market, works in order to achieve a sustainable development of Europe, based on balanced economic growth, stability of prices and a highly competitive social market economy, aimed at full employment and social progress and promoting scientific and technological advance.<sup>7</sup>

The current Protocol no. 27 on the internal market and competition, instead, states that:

The High Contracting Parties, considering that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted,

Have agreed that:

To this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 352 of the Treaty on the Functioning of the European Union.<sup>8</sup>

With the exception of the amendment relating to art. 3, lett. g), TCEE, the rules contained in articles 101-109 TFEU (the so-called antitrust discipline) are equivalent to the transposition of the provisions of Articles 81-89 EEC Treaty.

For what is relevant here, it is appropriate to focus on the provisions of Articles 101 and 102, respectively governing prohibited agreements (Article 101) and the prohibition of abuse of a dominant position (Article 102). In other words, they govern the conduct of private companies on the market, which are likely to alter free competition. All sectors are subject to the provisions of the economic competition rules, with the only exception being the agricultural sector (Article 33). The Treaty also allows member states to restrict the application of competition rules to some companies, granting them special rights in order to achieve the objectives of general character or common interest.

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<sup>7</sup> Consolidated version of the “*Treaty on the European Union*”, Title I, Article 3 (ex Article 2 TEU)

<sup>8</sup> Ivi, Protocol (No 27) on the Internal Market and Competition



### 1.3 Competition Law: EU Antitrust policy and Abuse of Dominance

As previously stated, the main objective of antitrust law is that of protecting competition from behaviors that are detrimental to society as a whole. Generally speaking, there exist three main practices that harm competition:

- Restrictive agreements (Section 1 of the Sherman Act; Article 101 TFEU; Articles 2 and 4 of Law No. 287/1990);
- Unilateral anticompetitive conduct: monopolization (Section 2 of the Sherman Act) and abuse of dominance (Article 102 TFEU; Article 3 of Law No. 287/1990);
- Concentrations (Section 7 of the Clayton Act; Regulation No. 139/2004; Article 6 of Law 287/1990).

In particular, European antitrust policy is developed from two central rules set out in the Treaty on the Functioning of the European Union.

The first one, as anticipated above, concerns restrictive agreements, which are ruled by Article 101 TFEU. This Article prohibits companies from carrying out agreements, decisions and practices that have the object or effect of preventing, restricting or distorting competition within the internal market. Any agreements or decisions prohibited pursuant to this Article shall be automatically void, with the exemption from the prohibition for those agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and, at the same time, not containing restrictions which are not indispensable to the attainment of these objectives.<sup>9</sup> This provision covers both horizontal agreements (between actual or potential competitors operating at the same level of the supply chain) and vertical agreements (between firms operating at different levels).<sup>10</sup>

The second one, instead, focuses on abuse of dominant position, which is ruled by Article 102 TFEU, which states that “any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States”.<sup>11</sup>

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<sup>9</sup> Consolidated version of the “*Treaty on the Functioning of the European Union*”, Title VII, Chapter 1, Article 101 (ex Article 81 TEC)

<sup>10</sup> [https://competition-policy.ec.europa.eu/antitrust/antitrust-overview\\_en](https://competition-policy.ec.europa.eu/antitrust/antitrust-overview_en)

<sup>11</sup> Consolidated version of the “*Treaty on the Functioning of the European Union*”, Title VII, Chapter 1, Article 102 (ex Article 82 TEC)

Such abuse may, in particular, consist in:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

In other words, rules concerning abuse of dominance have to be applied to both single firms (individual dominance) and to two or more firms capable of behaving on the market as a single economic entity (collective dominance) who exploit their position illegitimately. In this sense, a dominant position held by one or more firms is a prerequisite for finding an infringement, but it has to be made clear that holding a dominant position is not prohibited as such. What is absolutely forbidden is the abuse of this position. However, dominant firms are allowed to demonstrate an objective justification to their behaviors in case of objective necessity or efficiency defense.

In order to assess whether a firm currently is in a dominant position, the EU Commission Guidance identifies three main categories of relevant factors to be kept in mind, that are:

- the market position of the dominant firm and its competitors (actual competitor constraints);
- the possibility of expansion and entry of other operators (potential future competitive constraints);
- the bargaining power of buyers (competitive constraints imposed by demand).

After it has been ascertained that a firm is in a dominant position, in order to be lawful, the dominant firm must not further reduce or eliminate the degree of competition still existing on the market and is obliged to refrain from certain practices that may be *prima facie* lawful but cease to be lawful if carried by a dominant firm. Generally speaking, there are two main types of abuse: exploitative abuses and exclusionary abuses.

Exploitative abuses enable the firm to increase its profits by exploiting its market power, and happen especially by imposing unfairly high prices in relation to the economic value on consumers who

cannot easily move elsewhere. Therefore, exploitative abuses directly harm consumers. However, it is quite hard to determine whether a price is excessive, as there is not a precise criterion to assess so. Exclusionary abuses, instead, are aimed at excluding or removing competitors from the market. Here, these acts indirectly harm consumers and antitrust authorities should focus on the maintenance of the competitive structure. What is difficult here is to distinguish between exclusionary act, whose effect reduces social welfare, and competitive acts, whose effect increases social welfare, as competitive and exclusionary conduct look alike<sup>12</sup>. The Commission Guidance on exclusionary abuses identifies two requirements:

- Foreclosure: hampering or eliminating access of actual or potential competitors;
- Consumer harm: as a result of the conduct, the dominant firm is likely to be in a position allowing to profitably increase prices or affect other parameters of competition to the detriment of consumers.

#### **1.4 EU Law and competition in the sports and football industries**

Despite being an extremely peculiar sector, which we will discuss more in detail later in this paper, due to the importance of the sports industry in Europe, both from an economic and a social and cultural point of view, many of the rules and policies implemented by the European rules end up having a strong impact on the sports world. Obviously, the right to competition also falls within the aforementioned applicable rules to the sports industry. However, what has always been, at least partially, controversial, is to what extent these rules apply.

In this sense, a first turning point happened in 1974. Indeed, the Court of Justice of the European Union (CJEU) established that sport is subject to EU law in so far as it constitutes an economic activity within the meaning of Article 2 of the EEC Treaty<sup>13</sup>, with the sole exception being those regulations relating uniquely to sporting practices (purely sporting rules) totally irrelevant from an economic point of view. These regulations constitute the limit of the specificity of sport.

Over the years, there have been several cases that have had a crucial importance in defining the specificity of sport even more precisely. The first case, which completely redefined the limits on

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<sup>12</sup> Easterbrook, 1986

<sup>13</sup> Parrish, R., *Sports law and policy in the European Union*, Manchester University Press, 2003, p. 8.

transfers of footballers, is the well-known Bosman<sup>14</sup> case, which was ended in 1995 thanks to a ECJ decision applying Article 45 TFUE (ex Article 39 TEC), which states that freedom of movement for workers shall be secured within the community and that such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.<sup>15</sup>

The decision, in particular, banned restrictions on foreign EU players within national leagues and allowed players in the EU to move to another club at the end of a contract without a transfer fee being paid. In fact, before *Bosman ruling* was adopted, professional clubs in some parts of Europe were able to prevent players from joining a club in another country even if their contracts had expired by still asking for a transfer fee. Therefore, after 1995, Bosman and all other EU footballers were given the right to a free transfer at the expiration of their contracts<sup>16</sup>, provided that they transfer from a club within one EU association to a club within another EU association. In addition, because many leagues used to set quotas limiting the amount on non-nationals permitted on member teams, the *Bosman ruling* forbade domestic football leagues in EU member states, and also UEFA, from restricting foreign players to the point that they discriminated against citizens of EU states.<sup>17</sup>

After a few years, another case shows when the European Court of Justice decides to intervene. This second case is known as *Meca-Medina*<sup>18</sup> ruling, which is considered important as it established that sports disciplinary ruling need to be analyzed under European competition law to assess if the limits contained in the rules are acceptable and do not contradict EU law. In short, after having been disqualified, the two swimmers (who were represented by Jean-Louis Dupont, who also represented Bosman in the previous case and will represent the Super League clubs in this year's dispute against

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<sup>14</sup> Jean-Marc Bosman is a former football player who was coming to the end of his contract for RFC Liège (in the Belgian First Division) in 1990. He wanted to change team and move to Dunkerque, a French club. However, Liège demanded a fee, far out of reach for Dunkerque, to release Bosman. In the meantime, Bosman's wages were reduced, as he was no longer a first-team player, and he was also banned by the Belgian federation. He began his fight and brought his case to the European Court of Justice in Luxembourg and sued club, Belgian FA and UEFA for restraint of trade, citing FIFA's rules regarding football, specifically Article 17, and the Treaty of Rome, which guaranteed freedom of movement for workers

<sup>15</sup> Consolidated version of the "*Treaty on the Functioning of the European Union*", Title IV, Chapter 1, Article 45 (ex Article 39 TEC)

<sup>16</sup> Since then, however, new disputes arose due to the huge commissions to be paid to players' agents in the event of a free transfer, on which there are no specific limitations at the moment, as the free market principles are in force instead

<sup>17</sup> G. Brand, "How the Bosman rule changed football – 20 years on", skysports.com

<sup>18</sup> David Meca-Medina and Igor Maicen were long distance swimmers from Spain and Slovenia who finished first and second in a World Cup race in Brazil but had both positive anti-doping test for Nandrolone, a prohibited anabolic steroid, and were banned for a period of 4 years by FINA's (International Swimming Federation) Doping Panel of 8 August 1999. Meca-Medina and Majcen then appealed the decision before the Court of Arbitration for Sport, which confirmed the suspension on 29 February 2000 before reconsidering it and subsequently reducing it to 2 years

UEFA) appealed to the European Commission by claiming that the rules implemented by the *Comité International Olympique* (CIO)<sup>19</sup> regarding doping control standards (arguing that fixing a limit for Nandrolone was “unlawful”) were incompatible with the EC regulations on competition and freedom to provide services, and thus violated Articles 49, 81 and 82 of the EC Treaty (now Articles 101 and 102 TFEU). However, contrary to what happened with the *Bosman case*, here the European Court of First Instance found that doping was a purely sporting issue and not an economic one and, consequently, fell outside the scope of EU law. On a further appeal, though, the appellate court (the Court of Justice itself) ruled instead that any sporting regulation restricting competition must be proven to have effects that are solely limited at achieving its immediate objectives. In other words, to make it lawful, sporting bodies should be able to demonstrate that the objectives pursued by its rules are legitimate and proportionate in their effects. By doing so, the ruling has no effect at all on them. Basically, what the ECJ wanted to underline is that the purely sporting nature of a rule does not exclude that the entire sporting activity cannot fall within the scope of the Articles 101 and 102 TFEU. Despite the ruling being welcomed positively by many, UEFA was not of the same opinion, and in particular Gianni Infantino<sup>20</sup> considered *Meca-Medina* “a step backwards for the European Sports Model and the Specificity of Sport”<sup>21</sup>

Finally, another important achievement for the sports industry was the so-called “*White paper on sport*”<sup>22</sup>, released in 2007, which was one of the European’s Commission main contributions to the team of sport and its role in the daily lives of EU citizens. Its main achievements were the recognition of the impact that sport can have on EU policies, the need and specific characteristics of the sports world and, also, it opened up future prospects for sport at EU level while respecting EU law and the independence of sports organizations. Over the years, the Council also adopted new work plans including new measures relating to the social and economic aspects of sport, such as health, social inclusion, voluntary work, education or external relations.

Although there have been some steps forward in the attempt to define more precisely which sporting rules can be considered compliant or in conflict with competition law, there are still no specific rules in this regard to date. However, thanks to a series of recent judgments, it is easier to make a first

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<sup>19</sup> The International Olympic Committee

<sup>20</sup> Currently President of FIFA (International Federation of Association Football), at that time he was the Director of Legal Affairs of UEFA (Union of European Football Associations)

<sup>21</sup> Infantino, G., “Meca-Medina: a step backwards for the European Sports Model and the Specificity of Sport”, [https://www.uefa.com/MultimediaFiles/Download/uefa/KeyTopics/480401\\_DOWNLOAD.pdf](https://www.uefa.com/MultimediaFiles/Download/uefa/KeyTopics/480401_DOWNLOAD.pdf)

<sup>22</sup> “*White Paper on Sport*”, Commission of the European Communities, 2007, <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:52007DC0391>

distinction between the two. In particular, Articles 101 and 102 TFEU are generally not violated by rules useful for achieving a purely sporting goal (even if it must be assessed on a case-by-case basis, as all norms have to be proportionate to achieve “legitimate objectives”), such as:

- Rules of the game (duration of matches, number of players on the pitch, scores, possible substitutions and so on);
- Anti-doping rules;
- Rules concerning the composition of national teams;
- Rules regarding the selection criteria for participating in a competition;
- Rules that exclude the possibility for the same person or group of persons (relatives) to control two or more teams participating in the same competition;<sup>23</sup>
- Rules relating to the official periods in which transfers of players from one team to another can take place.

On the other hand, the rules that present total or partial incompatibility with Articles 101 and 102 TFEU are:

- Rules preventing recourse to ordinary justice for the appeal of decisions hired by sports associations;<sup>24</sup>
- Rules protecting associations and/or federations from any form of competition;<sup>25</sup>
- Some of the rules on sports agents.

As you can see, it is not easy to clearly apply EU regulations within the world of sport which, as we will discuss more in detail in the next chapters, is so peculiar in its essence that it makes the matter even more complicated than it may seem.

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<sup>23</sup> Starting from 2028 (despite the initial deadline was 2024) FIGC (Federazione Italiana Giuoco Calcio, the Italian Football Association) decided to prohibit permanently the possibility to own two or more professional football teams even if they do not participate in the same competition, while until now it was only prohibited to own two teams participating in the same competition. For instance, Claudio Lotito, currently owner and President of SS Lazio, was obliged to sell US Salernitana following the latter's promotion in Serie A, the Italian first league. Instead, Aurelio De Laurentiis, currently owner of both SSC Napoli, participating in the 2022/23 Serie A, and SSC Bari, participating in the 2022/23 Serie B, will be obliged to sell one of the two teams by 2028 due to this new decision by FIGC.

<sup>24</sup> It has to do with the case mentioned before about Aurelio De Laurentiis

<sup>25</sup> The European Super League case is a clear example of this, with UEFA and FIFA Statutes being accused of protecting them from competition

## CHAPTER II

### THE STATUS QUO IN THE FOOTBALL INDUSTRY

#### 2.1 The pyramidal structure of the football industry

First of all, by analyzing professional football from a competitive point of view, it is immediately clear a huge difference compared to other markets. In fact, what is peculiar in the football industry is the fact that any professional club, in order to achieve its goals, actually needs competition, that is represented by other football clubs targeting the same identical goals.

At club level, if there were no other teams, there would be no league, therefore the “monopoly” club would have no way of expressing its potential by not having any opponent. Obviously, every professional club has the goal of winning trophies and thus prevailing over other teams; but to do so, they necessarily need these other teams to exist. No club, therefore, will ever want (nor can<sup>26</sup>) take actions aimed at totally eliminating competition, because it would go against its interests. Even looking at the issue just from a profit maximization point of view, a competition in which equilibrium and uncertainty are high is more attractive for an enthusiast, and consequently it will be more profitable and easier to sell tickets for the games, TV rights, merchandising and so on.

On the other hand, for what concerns sporting organizations, the pyramidal structure of the football industry (which we will discuss later more in detail) provides that sporting federations possess some characteristics of natural monopolies. As the EU Commission highlights in “*The Helsinki Report on Sport*”, the existence of several federations in one discipline would risk causing major conflicts.<sup>27</sup> Indeed, by its very nature, each sporting competition aims at identifying one single winner. Therefore, one single company is needed to organize and offer the service, since if there were two competing companies organizing two different football leagues for the same level, there would be two different winners at the end of year.

Despite having very unique peculiarities compared to other markets, as anticipated above, the world of football has a well-defined hierarchical structure of governance, which has represented (and still represents) the status quo for decades.

Focusing more in detail on the so-called pyramidal system mentioned above, at the top of the pyramid there is FIFA (Fédération Internationale de Football Association), the supreme authority when it

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<sup>26</sup> Since the format and the number of teams participating in the competitions is preset by the individual federations and, at most, there can be a voting involving all clubs to change it.

<sup>27</sup> Commission of the European Communities, “*The Helsinki Report on Sport*”, 1999, p. 9

comes to football. FIFA's primary objective, from their Statute, is said to be "to improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes"<sup>28</sup>

It is a private law body whose scope extends to determining the set of rules involving the organizations of competitions as well as players' registrations. Moreover, FIFA directly organizes the World Cup and the Club World Cup. However, they are not in charge of determining nor modifying the Laws of the Game.<sup>29</sup>

Underneath FIFA, there are the regional confederations, mainly representing the various continents: UEFA (Europe), CAF (Africa), CONCACAF (North and Central America), CONMEBOL (South America), AFC (Asia and Australia) and OFC (Oceania).<sup>30</sup> All of them are affiliated with FIFA. The main function of these bodies consists in organizing tournaments at a continental level, both for clubs and national teams, and achieving as much as possible commercial and financial success thanks to them without distorting the sporting qualities of the competitions. For instance, UEFA currently organizes both European tournaments between clubs (UEFA Champions League, UEFA Europa League, UEFA Conference League and UEFA Super Cup; all of them are held on annual basis) and between national teams (obviously, the European Football Championship, that is held every four years). In addition to having an organizational role, they also play a strong regulatory role, as well as having a series of other goals such as using revenues to support redistribution and reinvestment in the game, promoting positive sporting and human values by increasing access and participation, without discrimination on grounds of gender, religion or race and ensuring a coherent approach to decision-makers and opinion-formers on issues of relevance to European football.<sup>31</sup>

Below continental federations, there are national associations, such as FIGC (Italy), FA (England), FFF (France) and so on. Generally speaking, they have the function of managing and promoting football at a national level by regulating domestic matters. Also, depending on the nation in which they are, they might be in charge of organizing competitions at national level. However, especially in the biggest countries, clubs have decided to create private leagues in accordance with the respective associations in order to manage autonomously their main tournaments.<sup>32</sup>

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<sup>28</sup> FIFA Statute, Article 2 General Provisions: Objectives

<sup>29</sup> This task is up to IFAB (International Football Association Board), that is a separate body from FIFA, despite FIFA being represented on the board and holding 50% of the voting power.

<sup>30</sup> "The Pyramid System", Lex Sportiva

<sup>31</sup> UEFA.com, About UEFA, 2019

<sup>32</sup> For instance, in Italy the leagues (Lega Serie A, Lega Serie B and so on) are obviously part of the Football Federation, but they have been given the right for the (independent) organization of professional and amateur leagues



Following national associations, obviously, we have domestic leagues. Differently to what happens in the USA, national football leagues in Europe are subordinate to superior organizations, that obviously are their respective national associations, despite having a greater degree of autonomy and independence in the last decades. The main goals for national leagues in order to be successful is organizing professional competitions and safeguard their correct functioning while, at the same time, maintaining or targeting a high standard of quality in order to attract spectators at stadiums and large television audiences both domestically and worldwide. The next level is represented by regional associations, despite this form of association is not present in all countries. Clubs are usually affiliated to these organizations. Being branches of the national associations, however, they do not possess much power when it comes to deciding on regulatory issues, therefore their scope is limited to a region within a country in which they are responsible for organizing regional championships (which of course are less relevant compared to the national ones and usually only involve amateurs) or coordinating the sport. At the bottom of the pyramid there are the clubs, whose main goal is to pursue the best possible sporting performance while, at the same time, being financially sustainable. By improving their sporting performance, clubs will be more likely to raise fans' happiness as well as attracting new fans, which in turn will increase the firms' profitability.



*Figure 2: The Pyramidal structure of European football*

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and cups. Both Serie A and Coppa Italia, in fact, are organized by Lega Serie A and not by FIGC. In England, instead, the situation is quite different, since in 1992 the teams who were participating to the First Division (at that time the main football league in England) decided to create the Premier League for economic reasons. However, FA still organizes the FA Cup, England's main national football cup as well as the oldest official football competition (as it was founded in 1871).

## **2.2 Main sources of revenue and the failure of the Financial Fair Play**

In the recent decades, football has definitely become a business rather than a simple game and, consequently, clubs must be more and more careful to efficiently combine sporting results with the economic activity. The football industry business model in Europe, today, relies on a series of revenues streams, that are:

- Domestic and international competition prizes;
- Matchday revenues;
- TV Rights – paid by media companies to broadcast the sporting event;
- Other commercial revenues – especially merchandising;
- Income derived from the transfer of players' performance rights.

Over the years, one of the clubs and federations main goals became that of maximizing as much as possible their earnings. To do so, obviously, it is fundamental to build a competition system that is appealing to consumers by delivering an improving quality of the game combining it with the so-called “uncertainty of the outcome” of both single games and the whole competitions. Later on, we will see that the way in which the competitions are organized is one of the main reasons why some of the most successful clubs of the European continent decided to create the object of this thesis, that is of course the European Super League.

Out of the entries mentioned before, following revenues from sporting results, which of course have a significance that goes beyond the mere profit, the most important one is represented by TV Rights. In fact, especially for what concerns low-tier clubs, which cannot count on high revenues from sporting results, commercial activities and in many cases also from matchday activities, revenues coming from televisions (apart from the ones derived from the transfer of players to other clubs) are crucial in order to survive. Naturally, revenues for TV rights are in large part caused by the big clubs, that are the ones attracting large audiences either because they are historically more successful or because they sign the most famous and followed footballers. However, as competitiveness is one of the main driving factors that make a league appealing, big clubs agree on recognizing low-tier clubs a relevant slice of the cake, despite always asking for more at the same time. In this sense, distribution of revenues derived from TVs is a crucial issue and we will discuss more in detail about the differences among the major leagues in order to get a deeper understanding of why some leagues are more successful than others and why some clubs are more and more convinced that a change in the European model is needed.

Below, an illustration by *Deloitte*<sup>33</sup> shows how total revenues of elite football clubs has evolved in recent years as well as where these revenues come from. As you can see, the biggest part comes from TV rights, which increased up to 56% in 2020/21, also due to the huge impact that COVID-19 has had on the industry<sup>34</sup> that made matchday revenues decrease from around 16% of total revenues in 2018/19 to only 1% in 2020/21, the lowest amount ever<sup>35</sup>.

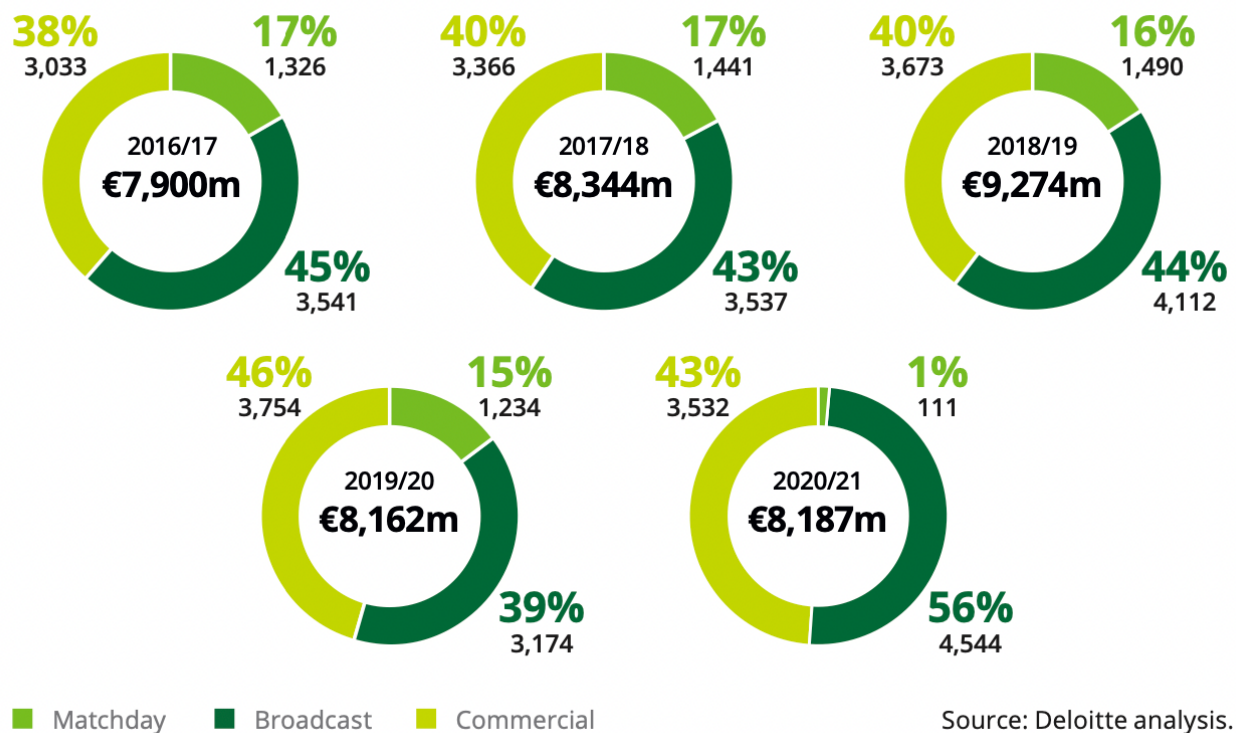


Figure 3: Sources of revenues of elite football clubs. Source: Deloitte analysis

Focusing on TV Rights, let's analyze more in detail the revenues in the top 5 European leagues<sup>36</sup> and in the Champions League. Looking at data reported by *Tifosy*, an advisory boutique specialized on sport and business, for the 2020/21 season, it is immediately evident how the Premier League, the English championship, is by far the one with the greatest value, having reached an agreement at €3.6 billion per season, that corresponds to an amount that is 77% greater compared to La Liga, which occupies the second position in this special ranking. Out of these €3.6 billion, differently to what happens with most of the other leagues in Europe, there is a substantial equilibrium between earnings coming from national rights (52.8%) compared to the ones coming from abroad (47.2%).

<sup>33</sup> "Deloitte Football Money League", Deloitte, March 2022

<sup>34</sup> Which Deloitte estimates to have been more than 2bn in total in 2019/20 and 2020/21

<sup>35</sup> Football stadiums remained closed as no spectators were allowed (apart from a few games at the end of the season in some leagues, with reduced capacity) due to COVID-19 restrictions

<sup>36</sup> Premier League (England), La Liga (Spain), Serie A (Italy), Bundesliga (Germany) and Ligue 1 (France)

Below, this is the ranking of the revenues of the top five European leagues based on TV rights in the 2020/21 season:

- Premier League (England) – €3.6 billion;
- La Liga (Spain) – €2.1 billion ;
- Bundesliga (Germany) – €1.3 billion;
- Serie A (Italy) – €1.2 billion;
- Ligue 1 (France) – €0.8 billion.

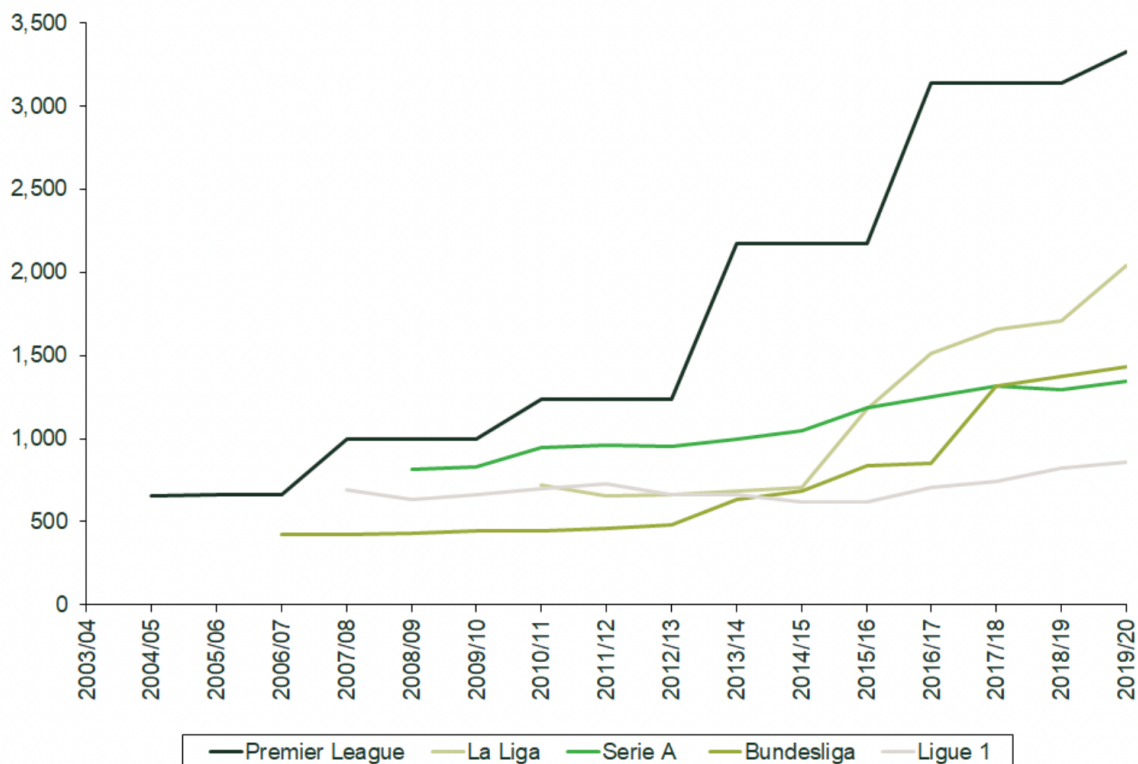


Figure 4: The evolution in the sum from international and domestic TV rights revenues for the top 5 European football leagues (€m) over the years. Source: Oxera analysis based on multiple sources

For what concerns the partition between national and international rights, Premier League and La Liga (56.2% from national and 47.2% from international rights) are the only leagues that managed to be truly appealing to the international fans' eyes. Premier League, indeed, is commonly perceived as the best national football league in the world: for the quality of the product offered to consumers, the quality of the players involved and the competitiveness of the competition, as in recent times each year there are at least six teams<sup>37</sup> out of twenty that can realistically win the title in the end, with the marvelous exception of the underdog Leicester City FC in 2015/16 as well. La Liga, instead, despite

<sup>37</sup> Manchester City FC, Liverpool FC, Chelsea FC, Manchester United FC, Arsenal FC, Tottenham Hotspur FC

being structurally more similar to the other leagues, as realistically just two teams (or, at most, three) can win the title<sup>38</sup>, had the fortune of having had for almost a decade the two most famous and successful footballers of the new millennium, Cristiano Ronaldo and Lionel Messi, both playing in Spain, respectively for Real Madrid CF and FC Barcelona, two of the most successful teams in European football. Thus, the Spanish league hugely increased its appeal to foreign consumers. For what concerns the other three leagues, instead, there is a strong prevalence of revenues from national rights (78.7% for Serie A, 83.1% for Bundesliga and 89.1% for Ligue 1).

Another important factor to be analyzed concerns the distribution of these revenues among all the teams participating in the various competitions. All the top five leagues, apart from Bundesliga<sup>39</sup>, grant a fixed base (equivalent to 50% of the total) that is equally divided among all clubs. In general, Premier League has by far the “fairest” distribution model, since the ratio between the revenues of the first classified and those of the last is about 1.6. The second “fairest” model is, instead, the Italian one. However, here the ratio increases to 2.9.

More specifically, as regards the Italian league, with the *Legge Melandri*<sup>40</sup>, in addition to the 50% to be equally divided among all the teams, the other parameters that are considered are:

- the results obtained in the league last year (15%);
- the results of the previous five years (10%);
- the “historical ranking” starting from the season 1946/47 (5%);
- the TV audience according to data from Auditel (8%);
- total attendance at the stadium in the last three seasons (12%).

During the 2021/22 campaign, the three most successful teams in Italy picked up €84.2m (Inter), followed by Juventus on €77.9m and AC Milan on €77.8m. However, what is immediately evident is the financial disparity with the Premier League, as in the English championship the team that finished bottom of the league in the same season pocketed €105m from tv rights, more than €20m more than the first team in the Italian league.

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<sup>38</sup> Real Madrid CF, FC Barcelona, Atlético de Madrid

<sup>39</sup> The German league divides its revenues based on sporting performances in the previous five seasons up to an amount equal to 93% of the total. Moreover, revenues are distributed among both first and second division (that 93% is divided in 70% for Bundesliga and 23% in 2. Fußball-Bundesliga)

<sup>40</sup> Spaziante, M., “*Diritti tv, i ricavi in Serie A: quanto incasseranno i club*”, Calcio e Finanza, 12th April 2022

As regards the UEFA Champions League, instead, considering both the starting fee and performance bonuses, whoever wins the competition<sup>41</sup> between 2022 and 2024 will receive a maximum of €85.14m, which become around €120m if we include tv rights<sup>42</sup>. A rather low amount, especially when compared to other sports in the United States. If the European competition system remains unchanged, therefore, the gap the teams participating in the English league and the other will only increase, making the Premier League almost hegemonic in Europe, something that has already been happening in recent years more and more often.

Over the years, governing bodies have tried to tackle, as much as possible, this phenomenon, as well as the issue of unsustainability of the clubs running in the industry. In this sense, the introduction of the *Financial Fair Play* (FFP) by UEFA, which was announced by former President Michelle Platini in 2008 and came into force in 2011, should have theoretically helped in reaching this objective by mitigating the discrepancy between top clubs, with more spending possibilities, and small clubs, not allowing anyone to have overdue debts in the long run. Generally speaking, the main goal was to make the clubs not spend more than what they earn. Moreover, Article 2 of the document called “*UEFA Club Licensing and Financial Fair Play Regulations*”<sup>43</sup> lists all the objectives of the FFP, including the improvement of the economic and financial capability of the clubs, increasing their transparency and credibility, but also encouraging responsible spending for the long-term benefit of football (by making clubs operate on the basis of their own revenues) and introducing more discipline and rationality in club football finances in order to reach economic stability. Clubs that fail to achieve their objectives within a maximum period of three years will risk being unable to participate in UEFA competitions for at least one season. However, despite the intentions being good, FFP has done nothing but consolidate the already substantial gap between international teams and less wealthy ones, thus “crystallizing” the balance of power in European football. Many of its stakeholders, indeed, believe these are an “anti-competitive set of rules that entrenches the existing inequalities between clubs”<sup>44</sup>. Moreover, over the years UEFA has struggled to enforce efficiently these regulations<sup>45</sup> and, with the arrival of COVID-19, the implementation of these rules has become even more complicated, considering the huge losses that the clubs have had to face. Therefore, the FFP as we knew it practically no longer exists to date, but institutional bodies are said to be working to restore in the next future different types of regulations having the same objectives.

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<sup>41</sup> Which we recall is the most important football competition for clubs in the world

<sup>42</sup> Spaziante, M., “*La Champions 21/22 vale 2 miliardi: tutti i premi per i club*”, “*Calcio e Finanza*”, 24th June 2021

<sup>43</sup> “*UEFA Club Licensing and Financial Fair Play Regulations*”, Edition 2018, Article 2: Objectives

<sup>44</sup> Okoronkwo, S., “*Samuel Okoronkwo charts the problem with UEFA FFP regulations*”, [mercantilebarristers.com](http://mercantilebarristers.com)

<sup>45</sup> In ten years, in fact, despite dozens of clubs not being financially stable, just six have been denied access to UEFA competitions because they were not meeting these requirements

### 2.3 Sporting merit and financial stability: does football need to change?

The European Super League, whose birth and main evolution will be analyzed in detail in the next chapter, comes from afar. The perception that an evolution is needed in order to keep football appealing to new generations, as well as providing financial stability in the industry, is now practically common opinion in recent years. However, the first discussions on the possibility of creating a championship between major European teams date back to almost fifty years ago, less than twenty years after the creation of the first official European club competition ever<sup>46</sup>. In fact, back to 1973, when Ajax and Bayern Munich were the two best teams in Europe<sup>47</sup>, former Ajax President Jaap van Praag and former Bayern Munich President Wilhelm Neudecker had already thought about a reform of the European competition that should have led to a sort of Super League, a brand-new championship, more similar to the domestic leagues, that should have replaced the traditional knockout stage formula. This revolution would have allowed to have more games to play and, consequently, more income from the ticket sales<sup>48</sup>. In this sense, the dutch director stated:

“The European Super League will take place, that is for sure. We will discuss intensively with Mr. Neudecker about our respective proposals. In my opinion, we should accept two or three clubs per country and the last ranked will then give away its spot to the new champion in the following season”<sup>49</sup>

Neudecker had already suggested in an open letter on the pages of “*Sport Illustrierte*” the transformation of the Champions Clubs’ Cup into the new European club championship:

“From a sporting and financial point of view, I think this solution would be much more interesting than the current format of the Champions Clubs’ Cup. Also, since the European league should play on Wednesdays, all clubs would be free to participate regularly in their respective national leagues”.<sup>50</sup>

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<sup>46</sup> The UEFA Champions League was born in 1955 as the *Coupe des Clubs Champions Européens* (French for European Champions Clubs’ Cup) and was originally a straight knockout tournament open only to the champions of Europe’s domestic leagues

<sup>47</sup> Ajax won three consecutive UEFA Champions League from 1971 to 1973, Bayern Munich did the same from 1974 to 1976

<sup>48</sup> TV rights revenues became a significant source of income starting from a couple of decades later

<sup>49</sup> Reported on the Italian newspaper “La Stampa” on 24th February 1973 by summarizing an interview to the weekly publication “Sport Illustrierte”

<sup>50</sup> See note n.49

No longer than fifteen years later, former AC Milan President and Italian politician, Silvio Berlusconi, focused on the same topic in an interview to the famous Italian newspaper “*Corriere della Sera*” on 17th May 1988, stating that:

“Unfortunately, the imponderable prevails in the European competitions. We must transform them into a continental championship, a formula that would allow clubs both managerial and economic certainties. (...) We would go to play in Madrid, in Barcelona, in Lisbon, not in some provincial towns. It is nonsensical to be demagogic: teams at certain levels, who are counting on large audience and consequent revenues, must have the right to compete against each other. (...) How would a low-tier team come to San Siro to play AC Milan, for instance? At most, they would play for a draw. Is this the show we want? We need to change.”<sup>51</sup>

The imponderability of European competitions as well as the lack of stability due to the current competitions format are recurring topics in club owners or sporting managers’ thoughts. The common dissatisfaction among European clubs’ managements has led to many reforms of the competition formats during the years. However, apart from the ones between 1997 and 1999, which gave the chance to compete in the Champions League to more than one club per nation<sup>52</sup>, no reform was ever considered satisfactory for the clubs’ interests. As KPMG stated in its annual report called “*Football Clubs’ Valuation: The European Elite 2021*”, club owners aspire to a system which produces financial stability and predictability of cash flows. A great majority of football clubs, in fact, due to the current system, do not know what their budget for the following season will be like until the very last game of the season. However, this need for sporting managers usually conflicts with the uncertainty of sporting results and qualification to competitions based on sporting merit, which is a fundamental principle in the European sporting model which should be preserved in any future reform. The main issue here is that clubs’ revenues are unpredictable and hugely depend on sporting results from season to season, while costs are mostly fixed as players are usually guaranteed multi-year contracts. Therefore, a system that mitigates financial uncertainty, but still preserving the principle of sporting merit, is needed. Recently, many have thought about a model granting an assurance to clubs with outstanding historical performance (at least in the previous decade) that however faced a single disappointingly underperforming season. Andrea Agnelli, Juventus FC President and former Chairman of ECA (*European Clubs Association*), spoke about this issue one year before the birth of

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<sup>51</sup> Reported on the Italian newspaper “*Corriere della Sera*” on 17th May 1988

<sup>52</sup> The limit increased from the traditional “one per nation” (the domestic champions) to two per nation in 1997 and up to four per nation in 1999



the European Super League<sup>53</sup> by making the example of two Italian teams: AS Roma, who qualified to the UEFA Champions League consecutively from 2014/15 to 2018/19 and gave high contribution to improve Italy's performance in the UEFA Nations ranking but failed to qualify to the 2019/20 UEFA Champions League due to poor performance in the previous season in the domestic league, and Atalanta BC, a historical low-tier team that had an incredibly successful season in 2018/19 and directly qualified to the following year's UEFA Champions League group stage. More specifically, Andrea Agnelli stated:

"I have great respect for everything that Atalanta are doing, but without international history and thanks to just one great season, they had direct access into the primary European competition. Is that right or not? (...) Then I think of AS Roma, who contributed in recent years to maintaining Italy's ranking. They had one bad season and are out, with all the consequent damage to them financially. (...) We must also protect investment and costs. So, would Atalanta therefore have less chance of playing at high level? I don't have the answer to that, it's just about setting up a transparent process to make this decision. (...) There are teams who won the league or cup and achieve qualification just on the basis of their country's ranking. The point is how we balance the contribution to European football and the performance of a single year"<sup>54</sup>

In other words, what Andrea Agnelli proclaims is that the current European model does not allow clubs to protect and safeguard their investments, as one single underperforming season, which could depend on many factors, could have incredibly negative drawbacks on clubs' finances. His objective, therefore, is creating a sustainable environment in which to operate.

The issue of sustainability goes hand in hand with the collective idea that the current European model does not exploit its full potential, considering that football is the most popular sport in the world. Karl-Heinz Rummenigge, CEO of Bayern and former ECA President, argued in 2016 that:

"Currently there is an unexpressed potential of football formats, given that the Champions League final is worth over a billion euros against the five billion of the American football Super Bowl"<sup>55</sup>

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<sup>53</sup> More specifically at the 2020 edition of the Financial Times "Business of Football Summit" in London

<sup>54</sup> "Agnelli: *"Rispetto l'Atalanta, ma è giusto che sia in UCL?"*", Eurosport.it, 5th March 2020

<sup>55</sup> *"Super Bowl vs Champions, chi vale di più?"*, Calcioefinanza.it, 23th August 2020

Looking at data regarding both the UEFA Champions League and the American football Super Bowl, it is immediately clear that there exists a sort of missed maximization in terms of revenues of the UCL. As you can see from the picture below, based on an analysis on *World Population Review* (2021), in fact, football is by far the most popular sport in the world.

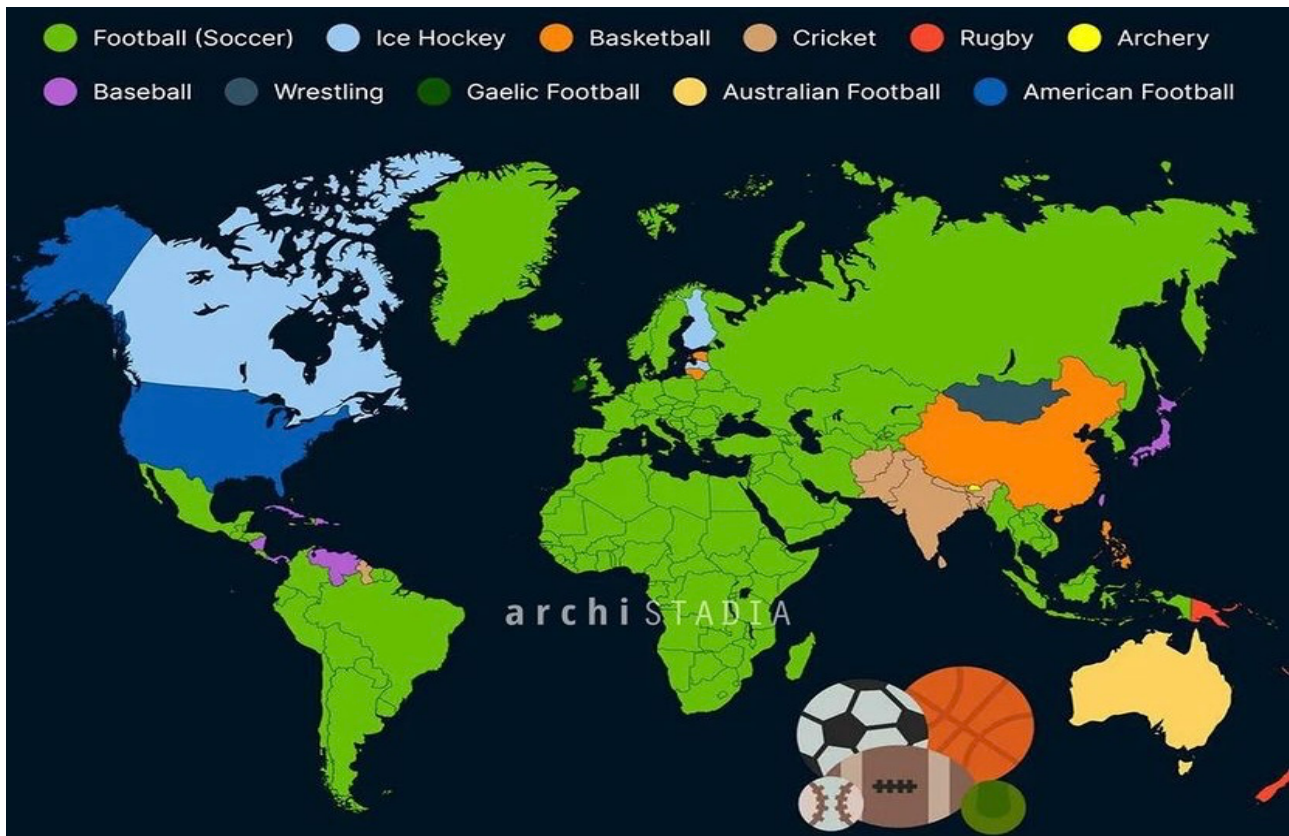


Figure 5: The most popular sport in every country in the world. Source: *World Population Review* (2021), graphic by Archistadia

However, despite the Champions League having had in recent years a slightly larger audience compared to the one of the Super Bowl<sup>56</sup>, the NFL (National Football League, that is the main championship for what concerns American Football) still collects much more money. For instance, in 2021 the NFL earned around \$18 billion and is on track to hit \$25 billion by 2027.<sup>57</sup> UEFA, instead, including revenues generated by both clubs and national teams' competition, earned just €5.7 billion in 2021, out of which just €3.1 billion were generated by men's clubs' competitions, almost back to pre-pandemic levels.<sup>58</sup> Therefore, this evident discrepancy for what concerns revenues of the two

<sup>56</sup> According to multiple sources, the 2018 UCL Final had around 160 million spectators worldwide, while the Super Bowl had a bit less than 150 million viewers, out of which more than 100 million from the USA

<sup>57</sup> Badenhausen, K., "Goodell's \$25 billion revenue goal remains in NFL's 2027 sights", Sportico.com

<sup>58</sup> UEFA Financial Report 2020/21

most important clubs' competitions of two of the most popular sports in the world highlights how European football has an enormous margin to better exploit its currently unexpressed potentiality. The perceived missed maximization is just one of the numerous conflicts that have arisen between UEFA and the top clubs. Clubs, in fact, despite bearing the entrepreneurial risk of the industry related to operational and capital investment, have little influence over both the distribution of revenues and the governance of the industry and competitions.

For what regards revenues distribution, for instance, even if the distribution to associations and clubs participating in UEFA's competitions represents the biggest cost item in its income statement (from total revenue of €5.7 billion, 60 % was made available for distribution in 2021), UEFA still decides to reinvest money in solidarity payments to clubs and associations that did not qualify to the European competitions' group stage in order to help them invest in infrastructure, youth development and so on. Below, this picture taken from the *UEFA Financial Report 2020/21* summarizes the evolution of revenues in relation to total distribution and solidarity in the last six seasons (excluded the very last season 2021/22, as data have not been made available yet).<sup>59</sup>

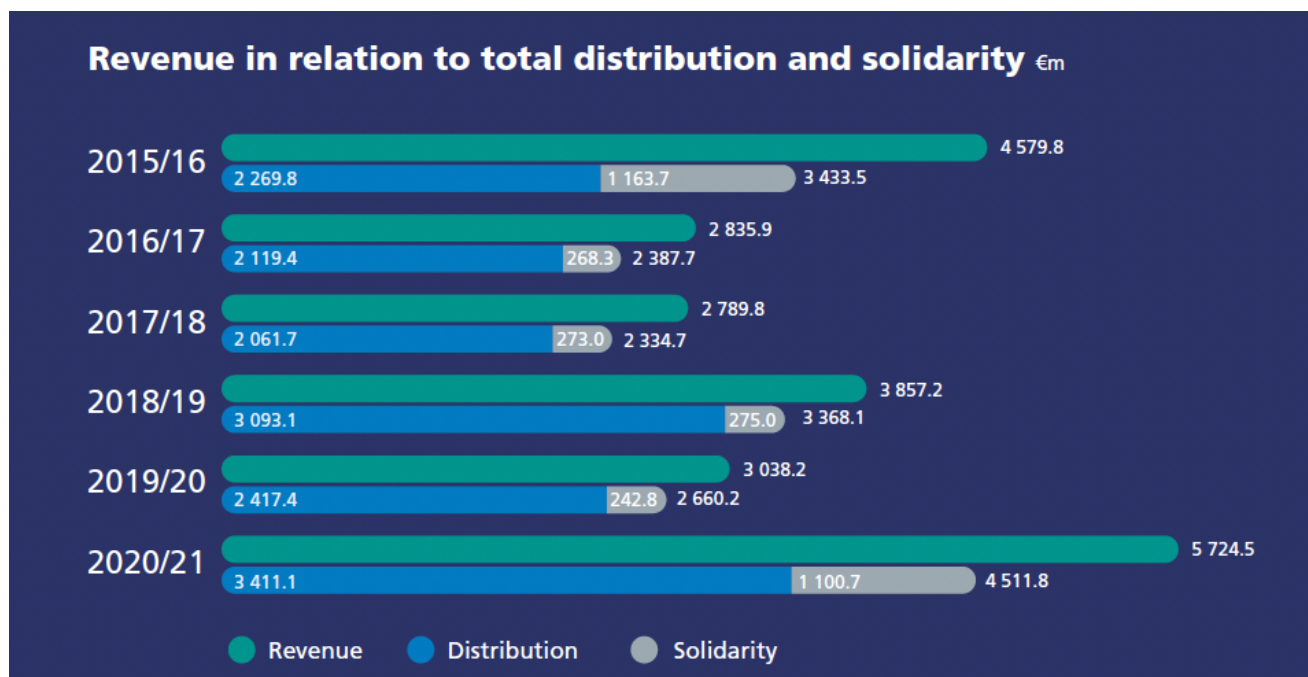


Figure 6: UEFA Total revenues' distribution. Source: UEFA Financial Report 2020/21

<sup>59</sup> Both seasons 2015/16 and 2020/21 had the National teams' European Championship in the end, therefore total revenues are clearly higher compared to the other seasons. During season 2019/20, instead, all games were played behind closed doors

Both the European championship and the UCL rely heavily on the resources of top clubs. The presence of the most supported top clubs and all their famous players in the UCL is what makes most of the commercial value of the competition. A competition without any top clubs would have a small fraction of its current appeal to sponsors and TV companies. Also, the national teams participating in the European championship are mostly composed of players employed by top clubs. This explains why there has been constant pressure from the top clubs to make changes in the way revenues from UEFA's competitions have been distributed, with clubs asking for both a higher share of the total income as well as advocating for being more influential in the management of the media rights' sale.

Anyway, as KPMG did in its aforementioned report, a number of key reasons that made some of the European most powerful clubs opt for a revolution can be listed:

- increasing crystallization of sporting results and polarization of clubs' economic power;
- media landscape evolution and digitalization: football has become more accessible at relatively low cost anywhere in the world at any time;
- change in the way fans access and consume football, which transformed large football clubs in true global brands and in entertainment enterprises rather than just sporting organizations, with the average fan being interested mainly in international games between the continent's biggest teams;
- huge economic losses and high amount of debt that rapidly increased due to the pandemic, which has accelerated the needs of structural changes to the football ecosystem;
- the willingness to have more stable cash-flows and reduce the financial implications associated with performance risk;
- limited control on the governance of international clubs' competitions and revenues distributions in conflict with the entrepreneurial risk, which is entirely borne by the clubs;
- perceived missed maximization of UCL income, mainly due to its format, compared, for instance, to the American leagues such as the NBA and the NFL.<sup>60</sup>

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<sup>60</sup> KPMG, *"Football Clubs' Valuation: The European Elite 2021"*, p. 20

## CHAPTER III

### THE EUROPEAN SUPER LEAGUE

#### 3.1 The birth of the European Super League

As anticipated in the previous chapter, the football industry is constantly trying to “reinvent” itself in order to keep the appeal that football possesses all over the world and, if possible, attract newer generations. Together with all the reasons listed above, this is why on 18th April 2021 twelve of the most successful European football clubs reached an agreement and announced the birth of a brand-new mid-week competition, the Super League, fully governed by its Founding clubs, together with the establishment of a specific company, the *European Super League Company S.L.*

The clubs who joined the agreement as Founding Clubs were the Italian sides AC Milan, FC Internazionale Milano and Juventus FC, the Spanish sides Atlético de Madrid, FC Barcelona and Real Madrid CF, and the English sides Arsenal FC, Chelsea FC, Liverpool FC, Manchester City, Manchester United and Tottenham Hotspur. Moreover, three more clubs<sup>61</sup> should have soon joined the agreement in order to be eligible for the inaugural season, and five more clubs would have qualified every season.

To make it clearer, the format of the competition was expected to have 20 participating clubs with 15 Founding Clubs and a qualifying mechanism for a further five teams to qualify annually based on achievements in the prior season. The tournament would have started in August with clubs participating in two groups of ten, with the first three of each group automatically qualified to the quarter finals, while teams finished fourth and fifth would have compete in a two-legged playoff for the remaining spots<sup>62</sup>. Also, all the games would have been midweek fixtures, exactly like in the current UEFA Champions League, therefore all participating clubs would have continued to compete in their respective domestic leagues, preserving the traditional domestic match calendar.

In the press release in which the founding clubs announce the creation of the brand-new competition, it is highlighted that “the new annual tournament will provide significantly greater economic growth and support for European football via a long-term commitment to uncapped solidarity payments which will grow in line with league revenues. These solidarity payments will be substantially higher than those generated by the current European competition and are expected to be in excess of €10 billion during the course of the initial commitment period of the clubs. In addition, the competition

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<sup>61</sup> German sides Bayern Munich and Borussia Dortmund as well as French side Paris Saint-Germain were sought out by the ESL to join

<sup>62</sup> [thesuperleague.it](https://thesuperleague.it)

will be built on a sustainable financial foundation with all Founding clubs signing up to a spending framework. In exchange for their commitment, Founding clubs will receive an amount of €3.5 billion solely to support their infrastructure investment plans and to offset the impact of the COVID pandemic”.

The mantra of the founders of the Super League, when presenting the new competition, was clear: football needs to change. Indeed, football is said to be losing attractiveness due to the huge number of games considered “useless” by fans (those with a predictable result) and, as we saw in the previous chapter, the current competition system doesn’t safeguard sustainability for clubs.

Florentino Pérez, President of Real Madrid and the first Chairman of the Super League, stated in an interview to the Spanish TV program “*El Chiringuito*”:

“Why now for the European Super League? The big clubs of England, Spain and Italy have to find a solution to tackle the bad situation that football is experiencing. We’ve come to the conclusion that by replacing UCL with the Super League, we’ll be able to alleviate the lost income due to the pandemic. You have to make profitable income by producing more competitive games. When you have no income other than the broadcasting rights, you come up with a solution of producing more attractive games that enable fans from all over the world to watch the big clubs play against each other. (...) Football is beginning to lose interest, audiences are going down and television rights too, something had to be done, and the pandemic accelerated this process. Without change, we are ruined. 16–24-year-old fans aren’t interested in football. 40% of young people aren’t interested in football, because there are too many games of low quality. It’s in all the statistics and the studies. Teenagers are more interested in playing video games than in football these days, and we have to do something to bring them back. We had to adapt. (...) No one has interest in the Champions League until the quarter finals. What generates the most interest? Let the greats play. We’re doing our best for the sport. The Champions League has lost its attraction, we have created the Super League to save football. We have to change something to make this sport more attractive at a global level. (...) The television rights are what make us money. That money is for everyone. If those at the top have money, it goes to everyone because we buy players from those other clubs, and we can be in solidarity”<sup>63</sup>

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<sup>63</sup> “Florentino Perez’ FULL interview regarding the European Super League with *El Chiringuito*”, [managingmadrid.com](https://managingmadrid.com), 20<sup>th</sup> April 2021

Andrea Agnelli, Chairman of Juventus and Vice-Chairman of the Super League was also Chairman of the European Club Association (ECA), which represents interests of clubs in UEFA.

Unsurprisingly, he resigned on the day the ESL was announced. About the Super League, he said:

“Our 12 Founder clubs represent billions of fans across the globe and 99 European trophies. We have come together at this critical moment, enabling European competition to be transformed, putting the game we love on a sustainable footing for the long-term future, substantially increasing solidarity, and giving fans and amateur players a regular flow of headline fixtures that will feed their passion for the game while providing them with engaging role models”<sup>64</sup>

Finally, Joel Glazer, Co-Chairman of Manchester United and Vice-Chairman of the Super League, said:

“By bringing together the world’s greatest clubs and players to play each other throughout the season, the Super League will open a new chapter for European football, by ensuring world-class competition and facilities, and increased financial support for the wider football pyramid”<sup>65</sup>

In any case, the creation of the Super League does not represent a real break with the institutions. In fact, the Founding clubs immediately state that they are absolutely willing to sit down with UEFA and FIFA to discuss about the future of football and collaborate in partnership in order to deliver the best possible outcome for the new League and for football as a whole, respecting the interests of fans and the clubs themselves.

The effects of the agreement between the founding clubs were subject to one of the following events (so-called “conditions precedent”) taking place:

- the recognition of the Super League by FIFA and/or UEFA as a new competition compatible with their statutes
- or
- obtaining a ruling from judges or administrative bodies that allows the founding clubs to participate in the Super League, while maintaining at the same time their participation in the national competitions.

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<sup>64</sup> Press release “Leading European football clubs announce new Super League competition”, [thesuperleague.it](https://thesuperleague.it)

<sup>65</sup> See note n.64

### 3.2 The football stakeholders' reactions: the project runs aground

Unsurprisingly, following the announcement of the creation of the European Super League, FIFA and UEFA reacted very harshly to the new competition, announcing very severe penalties supported by the national football federations and leagues of Spain, England and Italy and even by various institutional bodies.

In particular, UEFA and FIFA expressly refused to recognize the Super League<sup>66</sup> and threatened to forbid any player or club involved in the new Super League project from participating in any competition organized by FIFA and UEFA, including those between national teams and therefore also the FIFA World Cup and the UEFA European Championship.

In fact, the European Super League potentially violates the UEFA Statute, in particular Article 49 (3) which states that:

“International matches, competitions or tournaments which are not organized by UEFA but are played on UEFA’s territory shall require the prior approval of FIFA and/or UEFA and/or the relevant Member Associations in accordance with the FIFA Regulations Governing International Matches and any additional implementing rules adopted by the UEFA Executive Committee”<sup>67</sup>

Therefore, according to what the UEFA Statute states, the clubs who wanted to create the Super League were required to get permission from UEFA before holding the competition.

UEFA and FIFA, in any case, were not the only ones who started to fight against the new competition. Indeed, the entire football community played out as one big power clash and immediately declared its opposition to the project, including football main actors such as players and coaches, but also politicians, media companies, sponsors and, above all, the fans, who took to social media and in some cases to stadiums to revolt against the project. For instance, many managers declared they had not been told of any plans for the new Super League before the announcement, and Pep Guardiola, Manchester City’s coach, stated about the Super League that “it is not sport if it doesn’t matter if you

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<sup>66</sup> Defining the project as a “founded on the self-interest of a few clubs at a time when society needs more solidarity than ever” in a joint statement by UEFA, the English FA, the Premier League, the Spanish Football Federation, LaLiga, FIGC and Lega Serie A published on UEFA.com

<sup>67</sup> *UEFA Statutes, Edition 2021*, <https://play.uefa.com/fame/Repository/KissDocument/16005001/2/9/7/3/16005001.pdf>



lose”, while Professor Stephen A. Greyser from Harvard Business School defined it as a “greed-driven initiative that would emasculate the competitive character of European football”<sup>68</sup>.

On 19<sup>th</sup> April 2021, the Italian Prime Minister Mario Draghi defended the meritocratic value and social function of sport, which “cannot be endangered by those who seek to pursue personal interests in sport”, while the English Prime Minister Boris Johnson defined the project “a kind of cartel that stops clubs competing against each other”<sup>69</sup>.

In the following hours, many will speak about the Super League issue, with only objective being getting the owners of the twelve clubs back on their steps for the sake of sport. The day after, at a press conference following approval of the new post-2024 format for UEFA club competitions, UEFA President Aleksander Čeferin spoke out strongly against the notion of a European Super League, saying that:

“I cannot stress more strongly at this moment that UEFA and the footballing world stand united against the disgraceful, self-serving proposals we have seen from a select few clubs in Europe that are fuelled by greed above all else. Not only the football world is united. Society is united. Governments are united. We are all united against this nonsense of a project. We have the English FA, the English Football Association and the Premier League, the Royal Spanish Football Federation (RFEF) and La Liga, and the Italian Football Federation (FIGC) and Lega Serie A, but also FIFA, all our 55 national associations, unanimous in our opposition to these cynical plans that are completely against what football should be... I would like to thank especially UK prime minister (Boris) Johnson, the President of France (Emmanuel) Macron, the European Commission Vice-President Margaritis Schinas, David Sassoli, President of the European Parliament, and all the leaders around Europe who respect our fans, our culture and values that are not only football values but European values too. This idea is a spit in the face of all football lovers and of society as a whole. We will not allow them to take it away from us. Our game has become the greatest sport in the world based on open competition, integrity and sporting merit. We cannot and will not allow that to change. Never, ever. We urge everyone from the millions of football lovers around the world, the world’s media, politicians and football’s governing bodies to stand tall with us, as we do everything in our power to ensure this never ends up in fruition. As previously announced by FIFA and the

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<sup>68</sup> Cortsen K., *Football economy, the European Super League and a history that repeat itself*, kennethcortsen.com, 16<sup>th</sup> May 2021

<sup>69</sup> Walker, P., and Elgot, J., “*European Super League amounts to a ‘cartel’, says Boris Johnson*”, theguardian.com

six Confederations, the players who will play in the teams that might play in the closed league will be banned from playing in the World Cup and the EUROs. They will not be able to represent their national teams at any matches”<sup>70</sup>

Moreover, UEFA President Aleksander Čeferin added:

"I have deep respect for those players, coaches and football administrators who clearly say no to this greedy idea, that would kill football forever. Football is about players and fans. It's not about football administrators, it's not about owners from God know where. It's part of our culture and it would be a huge step for football, sports and society, if a club said, 'We made a mistake, we are ready to change, we respect our fans.' I can't understand how you can see your fans protesting and you don't care. You are full of money anyway, you're not poor, but you want more and more and more. I've had enough of (hearing) football clubs are assets. They are part of our history, and we have to respect it. The European game is the greatest success story of modern sport. There is a reason why. We are constantly adapting the European competition to ensure it's more and more interesting, more and more modern. But the principles cannot change, and solidarity is something that stays forever. For some people, solidarity, unity do not exist. The only thing that exists is their pockets... The way that the (12 clubs) acted was terribly wrong. We all know that. Everyone knew what (the post-2024 club competition format) looks like. We negotiated with 247 clubs, with the leagues, with the national associations. Then, when you come to the solutions, somebody comes along with something completely 'phantomatic'. It's a strange way of negotiating."<sup>71</sup>

Following the reactions of fans and media and the threats from UEFA, the teams gradually begin to abandon the project. In fact, on 20<sup>th</sup> April, English side Manchester City become the first club to officially drop out from the new competition after Chelsea had their intent to do so by preparing documentation to withdraw and will soon be followed by all the other English teams.

Liverpool owner John W. Henry issued a video statement to the club, apologizing to manager Jurgen Klopp, the players, the staff and fans saying "I'm sorry, and I alone am responsible for the unnecessary negativity brought forward over the past couple of days. It's something I won't forget. And shows the power the fans have today and will rightly continue to have". Manchester United co-owner Joel Glazer also offered his apology, 18 hours after the original statement of their withdrawal was issued.

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<sup>70</sup> "President Čeferin: Footballing world and society stand united against the closed Super League", uefa.com

<sup>71</sup> See note n.70

"Over the past few days, we have all witnessed the great passion which football generates, and the deep loyalty our fans have for this great club," said Glazer, who was going to be the Super League's Vice-chairman. "You made very clear your opposition to the European Super League, and we have listened. We got it wrong, and we want to show that we can put things right. Although the wounds are raw and I understand that it will take time for the scars to heal, I am personally committed to rebuilding trust with our fans and learning from the message you delivered with such conviction."

Manchester City CEO Ferran Soriano also apologized, saying the club "failed to remind ourselves of the unbreakable link between the passion of our fans and the right to have the opportunity to earn success."<sup>72</sup> The following day, Spanish side Atlético de Madrid and Italian sides AC Milan and FC Internazionale Milano also withdrew, stating they were no longer interested in the project. In the end, only three teams were left to defend the Super League project, namely FC Barcelona, Real Madrid CF and Juventus. Even JP Morgan, the financial institution that was supposed to finance the project with an initial amount of almost € 4 billion, publicly express their doubts by stating that they had "clearly misjudged how this deal would be viewed by the wider football community and how it might impact them in the future".<sup>73</sup>

The Super League project, therefore, at least as we have known it in its first version, has officially collapsed.



Figure 7: the 12 Founding Clubs of the European Super League. Picture by logos-world.net

<sup>72</sup> Hamilton, T., "Super League collapses: How fan reaction, revolt helped end English clubs' breakaway", [espn.com](https://www.espn.com)

<sup>73</sup> Panja, T., Das, A., "JPMorgan apologizes for its role in Super League", [nytimes.com](https://www.nytimes.com)

### **3.3 The dispute with UEFA: the appeal to the Madrid Court and the preliminary reference to the EU Court of Justice**

Despite the fact that the project had almost failed, to prevent the application on sanctions that were already preannounced by UEFA and FIFA, the European Super League Company filed an appeal to the Madrid Court with a request for precautionary measures, asking the judges to:

- declare that UEFA and FIFA were abusing their dominant position in the European football market;
- declare that UEFA and FIFA were imposing unjustified and disproportionate restrictions, limiting free competition in the European football market;
- order UEFA and FIFA to cease any anticompetitive behavior;
- order UEFA and FIFA to refrain, and make sure that the national football authorities would be doing the same, from taking any action that could negatively affect the creation of the Super League project, or from the application of penalties to the clubs and the individuals involved in the project.

On 20th April 2021, the Madrid Court accepted the request for precautionary measures. However, UEFA decides to proceed with the sanctions, announcing on its website the approval of the reintegration measures for the nine clubs that had abandoned the Super League project and much more severe penalties for the three clubs that still defended the project.

In particular, nine of the 12 clubs involved in the Super League project submitted to UEFA a “Club Commitment Declaration” setting out the position of the Clubs, including their commitment to UEFA Club Competitions as well as national club competitions. Therefore, each club:

- unreservedly acknowledges and accepts the binding nature of the UEFA Statutes;
- remains committed to and will participate in any UEFA Club Competitions each season for which that club qualifies on sporting merit;
- will rejoin the European Club Association, which is the only representative body for clubs that UEFA recognizes;
- will take all steps within their power with a view to terminate their involvement in the company established to form and operate the Super League and cease any existing related legal actions;

- as a gesture of goodwill, and together with the other clubs, will make a donation totaling an aggregate of €15 million, to be used for the benefit of children, youth and grassroots football in local communities across Europe, including the UK;
- will be subject to the withholding of 5% of the revenues they would have received from UEFA club competitions for one season, which will be redistributed;
- agree to have substantial fines imposed if they seek to play in such an unauthorized competition (€100 million) or if they breach any other commitment they have entered into in the Club Commitment Declaration (€50 million);
- will provide individual commitments to UEFA in which all the principles and values set out in the 2019 Memorandum of Understanding between UEFA and the European Club Association are accepted.<sup>74</sup>

Thanks to the preliminary injunction by the Madrid Commercial Court dated 1<sup>st</sup> July 2021, UEFA was ordered to suspend any disciplinary proceedings commenced against the founding members. Also, the Madrid Commercial Court formally made a request for a preliminary ruling to the EU Court of Justice, in which the Madrid Court asking the EU Court to clarify some doubts (represented by a series of preliminary questions) concerning the interpretation of Articles 45, 49, 56, 63, 101 and 102 TFEU in this specific case. Indeed, the applicant (the European Super League Company, S.L.) requested the Madrid Court to express themselves on the fact that the defendants (UEFA and FIFA), by opposing to the organization of the European Super League, are conducting concerted practices and abusing their dominant position in the market relating to the organization of international football club competitions in Europe in the market for the promotion of rights related to such competitions. Specifically, the preliminary questions referred to the EU Court of Justice<sup>75</sup> are:

1. Must Article 102 TFEU be interpreted as meaning that that article prohibits the abuse of a dominant position consisting of the stipulation by FIFA and UEFA in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) that the prior approval of those entities, which have conferred on themselves the exclusive power to organize or give permission for international club competitions in Europe, is required in order for a third-party entity to set up a new pan-European club competition like the Super League, in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?

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<sup>74</sup> “UEFA approves reintegration measures for nine clubs involved in the so-called ‘Super League’”, uefa.com

<sup>75</sup> “Request for a preliminary ruling from the Juzgado de lo Mercantil n°17 de Madrid (Spain) lodged on 27 May 2021, Official Journal of the European Union, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62021CN0333:EN:PDF>

2. Must Article 101 TFEU be interpreted as meaning that that article prohibits FIFA and UEFA from requiring in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any similar article contained in the statutes of the member associations and national leagues) the prior approval of those entities, which have conferred on themselves the exclusive power to organize or give permission for international competitions in Europe, in order for a third-party entity to create a new pan-European club competition like the Super League, in particular where no regulated procedure, based on objective, transparent and non-discriminatory criteria, exists, and taking into account the possible conflict of interests affecting FIFA and UEFA?
3. Must Articles 101 and/or 102 be interpreted as meaning that those articles prohibit conduct by FIFA, UEFA, their member associations and/or national leagues which consists of the threat to adopt sanctions against clubs participating in the Super League and/or their players, owing to the deterrent effect that those sanctions may create? If sanctions are adopted involving exclusion from competitions or a ban on [OR 30] participating in national team matches, would those sanctions, if they were not based on objective, transparent and objective criteria, constitute an infringement of Articles 101 and/ or 102 of the TFEU?
4. Must Articles 101 and/or 102 TFEU be interpreted as meaning that the provisions of Articles 67 and 68 of the FIFA Statutes are incompatible with those articles in so far as they identify UEFA and its national member associations as ‘original owners of all of the rights emanating from competitions ... coming under their respective jurisdiction’, thereby depriving participating clubs and any organizer of an alternative competition of the original ownership of those rights and arrogating to themselves sole responsibility for the marketing of those rights?
5. If FIFA and UEFA, as entities which have conferred on themselves the exclusive power to organize and give permission for international club football competitions in Europe, were to prohibit or prevent the development of the Super League on the basis of the abovementioned provisions of their statutes, would Article 101 TFEU have to be interpreted as meaning that those restrictions on competition qualify for the exception laid down therein, regard being had to the fact that production is substantially limited, the appearance on the market of products other than those offered by FIFA/UEFA is impeded, and innovation is restricted, since other formats and types are precluded, thereby eliminating potential competition on the market and limiting consumer choice? Would that restriction be covered by an objective justification which would permit the view that there is no abuse of a dominant position for the purposes of Article 102 TFEU?
6. Must Articles 45, 49, 56 and/or 63 TFEU be interpreted as meaning that, by requiring the prior approval of FIFA and UEFA for the establishment, by an economic operator of a Member State, of a pan-European club competition like the Super League, a provision of the kind contained in the statutes of FIFA and UEFA (in particular, Articles 22 and 71 to 73 of the FIFA Statutes, Articles 49 and 51 of the UEFA Statutes, and any other similar article contained in the statutes of national member associations [and] national leagues) constitutes a restriction contrary to one or more of the fundamental freedoms recognized in those articles?

The legal principles on which the matter is based concern rules on competition<sup>76</sup>, which we analyzed in the first chapter of this thesis, as well as rules on workers and services. Indeed, in the sixth

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<sup>76</sup> More specifically Articles 101 and 102 TFEU

preliminary question referred to the EU Court of Justice by the Madrid Commercial Court, Articles 45, 49, 56 and 63 TFEU are mentioned. In particular, these Articles are:

- Article 45 TFEU, which provides for freedom of movement for workers which shall be secured within the Union, with the abolition of any discrimination between workers of the Members States as regards employment, remuneration and other conditions of work and employment
- Article 49 TFEU, which prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State
- Article 56 TFEU, which prohibits restrictions on freedom to provide services within the Union
- Article 63 TFEU, which prohibits all restrictions on the movement of capital and payments between Member States and between Member States and third countries

In the next chapter, we will take a look at similar cases in the world of sport, including those that have actually been discussed in front of the EU Court of Justice, and we will focus on the potential outcome of the dispute and the possible consequences that would arise.

## CHAPTER IV

### THE ESL HEARING BEFORE THE EU COURT OF JUSTICE AND SIMILAR CASES

#### 4.1 Similar cases in other sports: the basketball EuroLeague and the ISU case

The announcement of the creation of the Super League, which brought a lot of criticism from football stakeholders, however, was not the first breakaway between sporting institutional bodies and teams in the history of sport. The idea of a breakaway league stems from the belief, developed by the professional elite of continental sport, that the regulatory structures do not allow them to take full advantage of new sources of revenues and new mechanisms for distribution of wealth between clubs and players. This idea, therefore, does not come from a generic desire for freedom or rebellion against the status quo, but from a precise belief that innovative possibilities can be better pursued in strategic terms.<sup>77</sup> In this sense, a little over 20 years ago, European basketball experienced the exact same situation we have lived in football last year. At that time, FIBA (the International Basketball Federation) was the sole organizer of the main European clubs' competition, which was first called Champions Cup and became the EuroLeague in 1996. Here, the system of European club basketball competitions changed in 2000. In fact, on 11<sup>th</sup> January 2000 FIBA sent a letter to the National Federations and the main clubs in which they recalled that, in order to strengthen and develop the European basketball movement, it had been decided to centralize the exploitation of marketing and TV rights for the men's EuroLeague starting from the 2000/01 season, informing the clubs that a four-year agreement with ISL (International Sports and Leisure) had been signed in this sense. In addition, it was communicated that it would be mandatory to adhere to the agreement in order to participate in the new competition. A few days later, the representatives of the Spanish, Italian and Greek leagues (together with those of some of the most important teams in Europe) signed a document in which they reported that "The clubs disagree with the project of the new EuroLeague presented by FIBA", announcing that they distanced themselves from the letter sent by FIBA to the National Federations and that they would not adhere to the new project.

The two irreconcilable positions led to a break, which took place on 9<sup>th</sup> June 2000 in Sitges, where ULEB (the Union of European Basketball Leagues) decides to split with FIBA. A week later, FIBA decided to suspend the recognition of ULEB, who were asking FIBA for "a structure that would take

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<sup>77</sup> Tranquillo F., *Pijetlovic and Gardiner, 2009, passage taken from "Cenni storici e concettuali sulla Breakaway League"*, [flaviotranquillo.com](http://flaviotranquillo.com)



on every sporting and managerial aspect, leaving FIBA with a nominal role, relating to doping, eligibility of players and game rules”. In a press release of that June 2000, FIBA claimed that:

“The movement to which ULEB gave life is an evident attempt to destabilize the current sports model in Europe. As such, it is not limited just to basketball. Therefore, we feel even stronger responsibility for governing basketball in Europe, and we confirm we will use everything in our power to keep this model in place. At the same time, we will immediately take the necessary steps to give life to a common movement between all disciplines and political authorities in every European country, to inform the threat that the ULEB philosophy represents and to strengthen the role of all national and international federations”<sup>78</sup>

In response, ULEB hopes that FIBA could “understand the changes that professional sport requires in terms of league management by recognizing the predominant role of clubs”.

The group of big European teams who were advocating for more power over decision-making processes and urged ULEB to build their own EuroLeague included FC Barcelona, Real Madrid, Olympiacos, Virtus Bologna and Fortitudo Bologna and AEK Athens. FIBA, instead, counter-attacked by setting up their SuproLeague. Therefore, the 2000/01 season saw two major European competitions take place, with two European champions at the end: Virtus Bologna for the EuroLeague and Maccabi Tel Aviv for the SuproLeague.<sup>79</sup>

Despite the first conflict between the two bodies did not last for long, a second shock intervened at the end of 2015, when FIBA wanted to regain control of the European basketball elite from the following season by launching a brand-new competition, the Basketball Champions League. ULEB, however, took the lead and joined forces with the American company IMG, turning the competition into a semi-closed league with sixteen teams, including eleven clubs that would have permanent license, which grants these clubs the right to compete in the EuroLeague for the following ten years. These clubs are Anadolu Efes Istanbul, CSKA Moscow, Milan, FC Barcelona, Fenerbahçe Istanbul, Vitoria, Maccabi Tel Aviv, Olympiakos, Panathinaikos, Real Madrid and Zalgiris Kaunas. The other five spots are awarded to the winner of the Eurocup (the equivalent of the UEFA Europa League in football), to the champions of the German, Russian and Adriatic leagues and to the winner of a

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<sup>78</sup> Tranquillo, F., “*FIBA-Eurolega: la prima diatriba*”, [flaviotranquillo.com](http://flaviotranquillo.com)

<sup>79</sup> “*The Super League, a project modeled on the basketball Euroleague?*”, [archyde.com](http://archyde.com)

qualifying tournament in eight teams. Despite the threats of exclusion from FIBA, the project has seen the light of day, while the conflict between the two bodies still continues today.<sup>80</sup>

Another similar case is the one regarding the ISU, the International Skating Union. While the basketball EuroLeague case was similar to the football European Super League for what concerns the competition format and the concept of “breakaway league”, the ISU case regards instead one of the main themes of this thesis, that is the issuing of anticompetitive rules and conducts by a sporting institutional body. Just like the football ESL case, the ISU case was discussed at the EU Court of Justice. To make it clearer, the ISU is the sports federation that regulates figure and speed skating at worldwide level and organizes the main skating international competitions. All professional skaters that are members of the ISU are subject to their rules which include, in particular, pre-authorization rules for third-party events as well as eligibility rules defining the conditions under which athletes may participate in the ISU competitions. The ISU regulations, therefore, provide that a skater who participates in an unauthorized event must face serious penalties, such as the suspension for several years (or even a life ban) from any competition organized by ISU.

Following an appeal by two Dutch speed skaters, since ISU had refused to allow them to participate in an event organized by a Korean company called IceDerby in Dubai, the European Commission issued a decision in December 2017, stating that the ISU rules infringed Article 101 TFEU and Article 53 of the EEA Agreement, ordering ISU to amend these rules. In their Judgement T – 93/18<sup>81</sup>, the Commission found that the competition eligibility rules prevented competing organizers from organizing alternative sporting events and that they were intended to limit the free participation of professional speed skaters in third parties’ international events.

The General Court noted firstly that the situation of the ISU is capable of giving rise to a conflict of interests. The ISU is responsible for administering and regulating the discipline and can authorize competitions organized by third parties, but it also organizes the most important speed skating competitions which is a commercial purpose. The General Court insisted that the ISU is required to ensure, when examining applications for authorization, that third-party organizers of speed skating competitions are not deprived of access to the relevant market, to the extent that competition on that market is distorted.

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<sup>80</sup> See note n.79

<sup>81</sup> Judgment of the General Court (Fourth Chamber, Extended Composition), 16<sup>th</sup> December 2020, Case T-93/18, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=235666&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=462967>

Regarding the content of the eligibility rules, the General Court found that not all requirements applied by the ISU can be said to be clearly defined, transparent, non-discriminatory and reviewable authorization criteria. On the contrary, the ISU holds broad discretion to refuse to authorize competitions proposed by third parties. The General Court also noted that the severity of the potential sanction is particularly relevant when identifying potential obstacles to the proper functioning of competition on the relevant market. A lifelong ban is a very severe sanction that could dissuade athletes from taking part in non-authorized events even when there is no legitimate reason for this. Lastly, the General Court examined the European Commission's assessment regarding the objectives pursued by the eligibility rules. Indeed, the qualification of these rules as abusive or unlawful restrictions strongly depends on the objectives pursued.<sup>82</sup> The Court acknowledged that the protection of the integrity of the sport constitutes a legitimate objective recognized by Article 165 TFEU, however concluding that the eligibility rules set up by the ISU go beyond what is necessary to achieve its objectives and are not proportionate to those objectives.<sup>83</sup> To make it clearer, the *ISU case* confirms the freedom for sports governing bodies to adopt and implement authorization rules which pursue legitimate objectives, underlining at the same time that they have an obligation to ensure that these rules are framed in an objective, transparent and non-discriminatory way and stay clear from any attempts to foreclose the market and advance the commercial interests to the detriment of potential competitors.<sup>84</sup>

In this sense, therefore, the European Super League case and the ISU case have numerous points in common, so much that, among the others, the ISU case was mentioned on several occasions by the lawyers of the European Super League Company during the hearing that was held last July before the EU Court of Justice, which we will discuss in detail in the next paragraph. Among these, of course, there are the refusal by the regulatory institution to recognize an alternative competition and the threats of very severe sanctions against those who violated the eligibility rules provided by the ISU and UEFA's statutes which, in the first case, were considered by the Court as "non clearly defined, transparent, non-discriminatory and reviewable authorization criteria", as well as them going "beyond what is necessary to achieve its objectives and not proportionate to those objectives".

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<sup>82</sup> Cattaneo A., *International Skating Union v Commission: Pre-authorisation Rules and Competition Law*, Journal of European Competition Law & Practice, 2021

<sup>83</sup> De Bandt, P., Gherghinaru, R., "The General Court of the European Union confirms that the strict penalties imposed by the International Skating Union are contrary to competition law", [debandt.eu](http://debandt.eu)

<sup>84</sup> See note n.83

## 4.2 The ESL Court hearing: the parties involved prove their points

With a joint statement dating back to 30<sup>th</sup> July 2021, FC Barcelona, Juventus FC and Real Madrid CF announced that the European Super League case would have been discussed before the European Court of Justice.

In particular, their statement affirmed:

“FC Barcelona, Juventus, and Real Madrid CF welcome today's Court's decision enforcing, with immediate effect, UEFA's obligation to unwind the actions taken against all European Super League founding clubs, including terminating the disciplinary proceedings against the undersigning three clubs and removing the penalties and restrictions imposed on the remaining nine founding clubs for them to avoid UEFA's disciplinary action.

The Court backs the request made by the promoters of the European Super League, dismisses UEFA's appeal, and confirms its warning to UEFA that failure to comply with its ruling shall result in fines and potential criminal liability. The case will be assessed by the European Court of Justice in Luxembourg, which shall review UEFA's monopolistic position over European football.

We have the duty to address the very serious issues facing football: UEFA has established itself as the sole regulator, exclusive operator, and unique owner of rights of European football competitions. This monopolistic position, in conflict of interest, is damaging football and its competitive balance. As shown by ample evidence, financial controls are inadequate, and they have been improperly enforced. Clubs participating in European competitions have the right to govern their own competitions.

We are pleased that going forward we will no longer be subject to ongoing UEFA's threats. Our aim is to keep developing the Super League project in a constructive and cooperative manner, always counting on all football stakeholders: fans, players, coaches, clubs, leagues, and national and international associations. We are aware that there are elements of our proposal that should be reviewed and, of course, can be improved through dialogue and consensus. We remain confident in the success of a project that will be always compliant with European Union laws.”<sup>85</sup>

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<sup>85</sup> “Statement from Barcelona, Juventus and Real Madrid”, 30<sup>th</sup> July 2021, [juventus.com](https://www.juventus.com/en/press-releases/2021/07/30-statement-from-barcelona-juventus-and-real-madrid/)

The Court hearing of the ESL case, or rather the case C333/21, was held on 11<sup>th</sup> and 12<sup>th</sup> July 2022, with the participation of the representatives of the Super League, UEFA, FIFA, and the 21 countries belonging to the European Union, in addition of course to the European Commission.

Here, however, unlike what many may have thought, the goal is not to determine how desirable or well done the European Super League project is. Indeed, the Super League as a competition in itself has very little to do with the matter. On the contrary, what was actually discussed and what the Advocate General (whose opinion is not binding) and, subsequently, the Court, will speak, is rather the dominant position of UEFA and the legitimacy, or not, of the rules present in their Statute, their position in the market and their behavior.

The hearing began with a very convincing argument by lawyer Odriozola, belonging to one of the three offices that served the interests of the ESL Company<sup>86</sup>, who began his speech by saying:

“I would like to begin these observations with a question addressed to each of you here. Do you think UEFA will ever authorize a competitor of the Champions League? The answer you are all thinking about is No. Never. Why? Because UEFA has a conflict of interest! They will not authorize a competitor. I urge you to take this into account during the hearing. An authorization system led by a company that is both judge and party will always lead to a violation of competition rules. It is regrettable that UEFA and FIFA threatened sanctions before knowing the details of the project. Is it conceivable that a federation like UEFA could ban European initiatives that intend to compete with the Champions League? How is it possible that they try to ban innovative projects that seek to improve the current model? The European clubs, who are the only ones who invest and risk in this initiative, today do not have the ability to control their own destiny”

Subsequently, Odriozola continued his speech by mentioning more topics, including the sanctions against clubs and players by UEFA and FIFA, UEFA’s position as well as the possibility of modifying the project, although stressing that it is not the main theme of the matter. Specifically, he said:

“As for the clubs, the exclusion sanction was imposed immediately after the mere intention to participate in an alternative project was announced. However, a project requires several years of work and development to be carried out, as it is necessary

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<sup>86</sup> In particular, Odriozola belongs to the *Clifford Chance* office, while the other two are *Latham & Watkins* (USA) and *Roca Junyent*. The latter has a partnership with J.L.Dupont, the famous lawyer who dealt, among others, with the Bosman case, of which we spoke at the end of the first chapter of this thesis

to finalize funding, commercialize audiovisual rights, obtain sponsorships and so on. Any alternative competition is effectively blocked. Sanctions for players are also clearly disproportionate. First, they are sanctioned as third parties, as they are not even involved in the decision to attempt to organize an alternative competition. Secondly, the players could choose to leave the clubs involved in order to continue competing with their national teams.

Also, it is not up to UEFA to apply competition law, it is up to the competition authorities. We remind you that UEFA has already declared its intention to ban the Super League before even knowing any aspect of the project. Furthermore, the Super League does not violate competition law either. And if the competition authorities were to take the opposite point of view, this would be analyzed at the right time and we would adapt the project as needed, so that the competition authorities have no doubts about its compatibility with competition law. (...) UEFA systematically avoid the application of Community law through the CAS and, as such, deprives European of access to our courts. I ask you, is it acceptable that a federation like UEFA can ban all European initiatives that aim to compete with the Champions League? How is it possible that UEFA can ban innovative projects that seek to improve the current model? (...) Why do clubs that invest and take operational risk don't have the ability to control their own destiny? (...) Last year a group of clubs had the courage to found a company with the aim of innovation and developing European football, launching an alternative proposal to the UEFA monopoly and offering an open and constructive discussion. UEFA's response was dismissive of any potential dialogue, as they responded with threats and insults, completely intolerable responses in a democracy. (...) We are here in defense of the freedoms that make the EU such a unique territory in the world, and we are committed to opposing to the abusive practices of UEFA that we are here to denounce. In conclusion, we are here to discuss before the Court whether these practices are compatible with a democracy and the framework of freedoms that all citizens of the EU are free to enjoy".<sup>87</sup>

Furthermore, in support of his arguments, Odriozola mentioned three more cases that have been discussed before the EU Court of Justice over the years, in addition to the ISU case, that we presented in the first paragraph of this chapter. In particular, the three cases in question are:

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<sup>87</sup> Re-elaborated version of notes taken by watching the pre-recorded streaming of 11-12 July hearings of the European Super League case (C-333/21) that was publicly made available by EU Court of Justice press just on 13-14 July 2022 on [curia.europa.eu](https://curia.europa.eu) and cannot be consulted any longer

- The *OTOC case* (C-1/12), judgement of 28<sup>th</sup> February 2013<sup>88</sup>

Here, the EU Court of Justice handed down a judgement on a reference for a preliminary ruling from the Portuguese Court of Appeal on the application of Article 101 TFEU to professional associations. This case regards a regulation adopted by the *Order of Chartered Accountants* (OTOC) requiring their members to do compulsory training provided or approved by OTOC. Eventually, the ECJ concluded that EU competition rules preclude a regulation adopted by a professional association putting into place a system of compulsory training to the extent that it eliminates competition within a substantial portion of the relevant market and imposes discriminatory conditions to the detriment of competitors of the association. Also, the restrictions contained in the OTOC regulations appear to go beyond what is necessary to guarantee the quality of the service offered, thus these restrictions are not covered by the exemptions laid down in Article 101 (3) TFEU.<sup>89</sup>

- The joined cases C-46/90 and C-93/91 concerning National type-approval for radiocommunications terminal equipment in Belgium, judgment of 27<sup>th</sup> October 1993<sup>90</sup>

The Court handed down a judgment on a reference for a preliminary ruling from the 57<sup>th</sup> and the 55<sup>th</sup> Chambers of the Tribunal de Première Instance of Brussels on the interpretation of Articles 30 to 37 of the EEC Treaty and Commission Directive 88/301/EEC of May 1988 on competition in the markets in telecommunications terminal equipment. To make it simple, anyone who owned or sold equipment that hadn't been approved by a state telecommunications company (in particular the *Régie des Télégraphes et Téléphones*, or RTT, the Belgian telecommunications authority), who was selling too, would have been sanctioned. The Court stated that a system of undistorted competition can only be guaranteed by equal opportunities between the various operators and policyholders. Therefore, it is necessary to entrust an entity, independent from the companies offering goods and services, with the task of deciding on access to the terminal equipment market. From that moment onwards, the control of the approvals and mandatory specifications, the allocation of frequencies and the control of the conditions of use, are carried out by an independent entity.

In fact, telecommunication companies which, at the same time, sell radiocommunication equipment, manage the spectrum of frequencies and control their implementation, enjoy a secure competitive advantage.<sup>91</sup>

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<sup>88</sup> Judgment of the Court (Second Chamber), 28<sup>th</sup> February 2013, Case C-1/12, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62012CJ0001&from=IT>

<sup>89</sup> Roschier, Attorneys Ltd, “Court of Justice of the European Union hands down a judgment on compulsory training obligations by professional associations”, lexology.com

<sup>90</sup> Judgment of the Court, Joined Cases C-46/90 and C-93/91, 27<sup>th</sup> October 1993, [https://eur-lex.europa.eu/resource.html?uri=cellar:6d94a397-5c12-479c-a60a-895edcd921f2.0002.03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:6d94a397-5c12-479c-a60a-895edcd921f2.0002.03/DOC_1&format=PDF)

<sup>91</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61990CJ0046&from=LT>

- The *MOTOE* case (C-49/07), judgment 1<sup>st</sup> July 2008<sup>92</sup>

MOTOE was a Greek motorcycling non-profit association that was required state authorization in order to organize motorcycling competitions in Greece. However, this authorization was refused. Under Greek law, authorization would have been granted only after consent had been secured from the official representative in Greece of the International Motorcycling Federation, called ELPA. ELPA, though, in addition to being the body responsible for the authorization of other motorcycling competitions, at the same time, organized sporting competitions in Greece too. Therefore, ELPA did not give its consent, and the Greek State didn't authorize MOTOE to proceed to organize these competitions. Consequently, MOTOE claimed to have been the victim of unlawful treatment and that Articles 102 and 106 (2) TFEU (former Articles 82 and 86 (1) of the Treaty Establishing the European Community) had been violated and reached the EU Court of Justice. Here, the Court found that ELPA held a dominant position and abused that position of power, as its double role represented a clear conflict of interest. The Court insisted that "a system of undistorted competition can be guaranteed only if equality of opportunity is secured between the various economic operators". Also, the Court added that entrusting a legal person which itself organizes and commercially exploits sports competitions that at the same time has the task to authorize competitions organized by third parties is "equivalent de facto to conferring on it the power to designate the subjects authorized to organize the aforementioned competitions as well as to establish the conditions under which they are held, thus granting the entity in question a clear advantage over competitors. Such a prerogative can therefore induce the company that has it to prevent the access of other operators on that market or to distort competition by favoring the competitions that it organized or those in which the organization participates".<sup>93</sup> Therefore, the Court's concern in *MOTOE* is to require equality of opportunities between the various economic operators<sup>94</sup>.

On the other hand, while the Super League lawyers tried to denounce the abuse of dominant position by UEFA and insisted on presenting their project to the European judiciary as an alternative to this monopoly, lawyers for UEFA and FIFA accused the Super League of trying to "have its cake and eat it", by creating a breakaway league but still expecting to keep their clubs in their respective national leagues<sup>95</sup>. Both lawyers Donald Slater (UEFA) and Álvaro Pascual Morcillo (FIFA) agreed that the

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<sup>92</sup> Judgment of the Court (Grand Chamber), 1st July 2008, Case C-49/07, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62007CJ0049&from=EN>

<sup>93</sup> "The Court of Justice: *MOTOE*", ebrary.net

<sup>94</sup> Weatherill, S., Article 82 EC and Sporting 'Conflict of Interest': the Judgment in *MOTOE*, *The International Sports Law Journal*, 2009/1-2, pp. 3-6

<sup>95</sup> Walker, A., "UEFA battles Super League at EU's top court", politico.eu



sanctions that the participating teams would have had to face if they had gone ahead with the ESL project are legitimate and necessary in order to defend the principles enshrined in the European treaties.

More specifically, UEFA's lawyer Donald Slater stated:

"The Super League is a textbook example of what is a cartel, 12 clubs that wanted to have all the cake and eat it. These clubs wanted to have it all. They wanted to continue to participate in national leagues, but at the same time be exempted from the principles of sporting merit and solidarity that support them. The Super League would have struck a fatal blow to the European sports model, that made Europe the best place in the world to play and enjoy football. UEFA is here to defend it. Also, UEFA's authority to organize and regulate European football is not self-attributed, as the Super League claims. It is recognized by our 55 member associations, FIFA and European institutions. UEFA don't use this power to its advantage, as it is a non-profit organization and a public-interest entity that receives only a small portion of the gains produced by competition, which income is partly redistributed to clubs and invested to develop social and educational initiatives. This is in clear contrast to what the Super League would do. The suggestion that a potential conflict of interest can only be resolved through the structural separation of UEFA's regulatory and commercial activities is completely unfounded, as this dual function ensures that sport fulfills broader social functions.

(...) Allowing this competition would have given rise to other closed leagues, causing a systemic collapse of the European sports model, which would have been a disastrous outcome for European football and society. Quoting former Manchester United footballer Eric Cantona, you don't get to be champions without struggle. Competition should be open to all, and merit, not money, must determine the outcome."<sup>96</sup>

FIFA legal representative Álvaro Pascual Morcillo, on the same page as Slater, argued that the Super League would dilute the European leagues and undermine solidarity with grassroots football, damaging the international match calendar. According to Pascual Morcillo, the Super League aimed at completely overturn the European sports model.

In response to these considerations, Fernando Irurzun Montoro, a lawyer representing A22 sports management (a Super League partner), firmly reaffirmed that "the EU treaty mentions the European

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<sup>96</sup> See note n.87

dimension of sport, not the European sporting model. A22 is committed to organizing competitions that are fully consistent with the European dimension of sport”. Also, the Super League envisaged a much greater redistribution of funds in terms of solidarity than the ones that are currently provided by UEFA.

Regarding the matter of the specificity of sport, lawyer Irurzun Montoro added:

“The concept of European dimension of sport is not easily definable. Take the Tour de France, which is organized by a private company, does it violate Article 165<sup>97</sup> TFEU? If a private entrepreneur wants to organize the EU football league, does he violate the treaties? (...) The Super League has never been a closed competition and it will never be. Does Article 165 TFEU mention federations as the sole organizers and regulators of sport? No, they are just asked to respect the Community rules. UEFA and FIFA proclaim themselves the regulatory bodies of football, but are they? No, that’s not what Article 165 states. (...) If we talk about an European model, in other sports there are situations that are opposite to what UEFA claims: cycling, padel, tennis, golf. In these sports, federations have nothing to do with a monopoly on organization and regulation. For us, UEFA and FIFA violate Articles 101 and 102 TFEU. Here we are not looking for the authorization to organize the Super League, we are here to determine whether they violate the Treaty. Do UEFA and FIFA protect general interest such as to constitute an exception and exemption, as in Article 101 (3) TFEU? No, they don’t.”<sup>98</sup>

In response to the accusation from the Super League’s lawyers concerning the fact that UEFA’s problem is that it is both an organizer and a regulator of European football and that the authorization system that stopped the Super League is “inherently discriminatory and will never allow a direct competitor of the Champions League”, Slater (UEFA) warned that, according to him, the Super League project “did not collapse because of the supposed anti-competitive behavior of anyone, but because the European fans greatly appreciate the current system and the European values of merit and solidarity it represents”.

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<sup>97</sup> Article 165 (2) TFEU, when mentioning sport, states that “Union action shall be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen”

<sup>98</sup> See note n.87

Furthermore, the lawyers of FIFA and UEFA stressed that their opposition to the project does not imply a restriction of competition, since the rebel clubs have the possibility of abandoning the Champions League and all the other competitions to organize their own tournament. And this is exactly what the Advocate General Athanasios Rantos asked to the ESL representatives, inquiring whether it was possible for them to just leave UEFA and FIFA and set up their “separate structure” ignoring whatever sanctions imposed by their former governing bodies. On the other hand, the Super League lawyers argued that such a project requires that clubs that will take the risk remain on the market as peaceful operators, since the abandonment of the current system would result in a loss of income which would entail significant capital losses and risks and, in many cases, also bankruptcy. The truth is that those clubs, according to ESL lawyers, needed time to build their new house, but it would be bankrupted if they were kept out of the Champions League (which would then be abandoned after the new project has been finally put in practice) and their domestic leagues in the meantime.

Lined up to support UEFA and FIFA, during the two days of hearing, a record number of 21 member states have spoken, including Spain, Czech Republic (that initially seemed to be siding with the Super League and instead changed its mind), Denmark, Germany, Estonia, Ireland, Greece, France, Croatia, Italy, Cyprus, Latvia, Hungary, Malta, Austria, Poland, Portugal, Romania, Slovenia, Sweden and Norway. For instance, lawyer Ester Gyarmati, the representative of Hungary, said that UEFA represent the values of the European sports model in protecting the physical and moral integrity of players and in organizing competitions based on merit. Similarly, lawyer Emilia Gane, representing Malta, said that the Super League has taken into account only the narrow interests of its clubs, ignoring the open nature of competition based on merit and defining the Super League as a “cartel”, exactly like UEFA and FIFA’s lawyers did, and the Spanish lawyer L. Aguilera Ruiz said “we believe in open, plural and diversified competition, we do not believe in the Super League”. The Austrian lawyer Franz Koppensteiner, instead, surprisingly, said that UEFA’s restrictions clearly violated EU competition law. However, he added that these restrictions are actually justified in order to safeguard the European sports model. Likewise, Denmark’s lawyer J. F. Kronborg affirmed that the current system regulated by UEFA and FIFA is certainly not perfect, but it must be tolerated in order to prevent the risk of fragmentation in European football.

Finally, Greece and Slovenia challenged the ESL’s argument that sports like basketball are doing just fine with their closed leagues independent of governing body control. Indeed, they pointed out that

club-v-country rows prevented their national sides from taking up places at world championships and said the EuroLeague casts a dark shadow over their domestic leagues.<sup>99</sup>

Representatives of the *Ligue de Football Professionnel* (LFP, the authority that organizes the French national league) and of the *Real Federación Española de Fútbol* (RFEF, the Spanish football federation) also denounced that the Super League was looking for a “permanent picture of European football. More specifically, LFP lawyer Yolanda Martínez Mata argued that the European sports model is based on merit, intended as “a guarantee of entry or exit from competitions based exclusively on results obtained on the pitch”. “The reality shows that the historically most successful and richest clubs want to obtain a greater of the economic benefits deriving from their commercial exploitation”, she added. RFEF lawyer Pedro Callol García, just like the majority of the parties who spoke during this hearing, stressed that “the treaties of the European Union establish that sport is based on an open system of relegations and promotions, therefore these principles collide with the essence of the Super League, which was a competition that was intended to bring the richest clubs in Europe and provided for a permanent position for its 12 founding teams”.<sup>100</sup>

Differently to what the member states and the football federations did, the European Commission has shown itself to be much more cautious on the issue, as lawyer Carlos Urraca Caviades warned FIFA and UEFA about the possible excesses of sanctions announced by the two federations, explaining that all sanctions must be justified by “legitimate objectives” and that it does not seem that excluding players from participating to FIFA and UEFA competitions are necessary or proportionate to achieve this purpose and these rules do not seem to be based on “objective, transparent and non-discriminatory criteria”, adding that the exercise of regulatory functions must be subject to limits, obligations and controls to prevent such bodies from distorting competition.

Finally, two interesting questions came from the Court Judge Serena Rossi from Italy. In the first one, she wanted to know more about the competition format and how it would not be a closed league. Concerning this issue, ESL lawyer Luis Alonso Diez said that the project they presented “is not a format, it’s a platform for clubs to organize at international level in the same way they do

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<sup>99</sup> Slater, M., “*The European Super League is still fighting for survival – the battle continues*”, theathletic.com, 10<sup>th</sup> August 2022

<sup>100</sup> See note n.87

domestically”. “What was proposed was a tentative format, subject to dialogue, we are not tied to any format, and we want to work with the European Commission to find the right format”, he added.<sup>101</sup>

Furthermore, judge Serena Rossi asked the Super League representatives to explain whether the doubt that part of the wealth of UEFA and FIFA football ecosystem pyramid, defined as a sort of “cherry picking”, would be exploited.

Also, she asked if the Super League could consider fair the concept that once the new competition has been defined, UEFA can sanction the clubs that would abandon their ecosystem, as UEFA is an association with specific values. Here, lawyer Jean-Louis Dupont intervened, replying:

“You are saying that UEFA shares some values, nice words. But it seems UEFA is not applying them here, given that they clearly represent a monopoly. We have been in a discriminatory situation since the beginning. Does this constraint by UEFA have some basis or is it blackmail? In my opinion, it is blackmail. I do not remember I have ever heard from domestic leagues that prestigious clubs have to leave, as far as I know. Ask La Liga if they want their most successful clubs to go out. Or ask the Italian league as well. To me, it is only UEFA who are threatening this”<sup>102</sup>

Anyhow, despite the fact that the hearing before the European Court of Justice is over, the Super League case is certainly not over yet. Indeed, Advocate General Athanasios Rantos is expected to deliver his non-binding legal opinion on 15<sup>th</sup> December 2022, with the final decision of the Court that is expected to arrive within the following quarter.

In the final considerations of this thesis, we will try to predict, on the basis of what was said by the two parties during the Court hearing and of what is established on the EU Treaties, the outcome of the ESL case, trying at the same time to speculate on the potential sporting-based developments and consequences of the decision of the Court.

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<sup>101</sup> See note n.87

<sup>102</sup> See note n.87

## FINAL CONSIDERATIONS

### **The potential outcome and consequences of the dispute between UEFA and the clubs**

The European Super League case (C-333/21), as you can easily guess, turns out to be an extremely controversial case, with the possibility of admitting multiple interpretations, both from a sporting and a purely legal point of view. Generally speaking, as previously stated throughout this thesis, the European Court of Justice clarified that EU Law applies in any case to sporting constellations regarding economic activities<sup>103</sup>.

Starting from a purely legal analysis of the issue, it could be argued both that UEFA represents a monopoly and that, according to what is provided for by Articles 101 and 102 TFEU, it is actually abusing this monopoly through clearly anti-competitive behavior. As stressed on several occasions by both lawyers Odriozola and Dupont, the point of the question is that UEFA is both a regulatory body and an organizer within the football scene, thus representing a clear conflict of interest as in the MOTOE case<sup>104</sup>. From this point of view, therefore, it seems that UEFA has little chance.

However, it must also be taken into account that sport, and football in particular, is not an economic activity like many other, but has instead a social and cultural role of enormous importance, and therefore the support of the member states and most of the football stakeholders might me a point in favor of the current football institutional bodies. Nevertheless, it should also be said that most of the member states seem not to have understood neither the heart of the matter, nor the project in its entirety. In fact, many of the representatives of the member states have focused on the project itself, from a purely structural point of view, without understanding that in reality the Court will not have to decide on the legitimacy or on how good or not the Super League project was, but instead on the role of UEFA in the football scene and on the potential abuse of its dominant position. Also, as mentioned, many of the countries have showed that they do not completely know the actual project, since, for example, they have clearly emphasized the importance of the funds allocated by UEFA to local federations, which make it possible to finance various projects. These funds, according to them, would have been lacking if the Super League model had been applied, while instead it is the exact opposite, given that the Super League project provides for a higher solidarity contribution. In this sense, the Super League would therefore allow, from an economic perspective, to enlarge the “cake”, thus allowing the entire football pyramid to benefit from it.

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<sup>103</sup> Bach, D., Gerginov, B., Westerhoven, P., Mateina, E., “*The Super League and its related issues under EU Competition Law*”, Kuwler Competition Law Blog, 22nd April 2021

<sup>104</sup> See page n.48

To put it simply, it will be necessary to determine whether UEFA is a monopoly and whether it is abusing it, as well as determining whether UEFA and FIFA's behaviors and rules are proportionate and justifiable to protect the integrity of the sport, therefore whether this constitutes the so-called "legitimate objective", which would ensure that the conduct adopted by UEFA and FIFA is not in conflict with the EU Treaties and, as a consequence, that there is no violation of Article 102 TFEU at all.

From this point of view, although it is very difficult to try to make speculations, it seems quite clear that what UEFA has been doing is clearly in contrast with the laws that protect competition in the European Union, and the fact that the European Court of Justice is historically much more sided with citizens than institutions might consist in a favorable outcome for the Super League. However, as anticipated, the sporting side, including the social and cultural aspects, must also be taken into account, whose protection could therefore represent a legitimate objective that justifies the anti-competitive behavior of UEFA. In this regard, Darren Bailey, a consultant at law firm Charles Russel Speechlys and the former director of football governance and regulation at English Football Association (FA), believes that the outcome is currently 50-50 under the current approach, which goes up to 60-40 in favor of a "football family victory" if the Court go to a more sport-specific approach, as he thinks they should.<sup>105</sup>

More specifically, turning to the purely sporting side of the issue, it must be said that the Super League project initially presented is not viable any longer, both. Because it is not accepted by the stakeholders, and because the constitution of a semi-closed league without promotions or relegations would excessively distort the essence of this sport and, possibly, would also be incompatible with EU competition law, as indicated by lawyers Parrish and Miettinen<sup>106</sup> and Pijetlovic<sup>107</sup> in their respective books or papers. Indeed, considering the widely accepted assumption that the so-called "relevant market" for football is the national market, the main threat of the establishment of a Super League such as the one that was initially presented would significantly decrease the competitiveness within the national markets. Therefore, coming back for a moment to the legal side, it might be seen as an agreement that restricts competition and that potentially violates Article 101 TFEU. For instance, in the Netherlands, it is not unlikely that in the long run the only participant would be Ajax, which would give the Amsterdam club a sort of monopoly on top-level football in the Dutch market. From an economic perspective, according to general economic theory, this would lead to higher prices for

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<sup>105</sup> Carp, S., *European Super League: What legal hurdles stand in the way of a breakaway competition?*, sportspromedia.com, 20<sup>th</sup> April 2021

<sup>106</sup> Parrish R. & Miettinen S., *The sporting exception in European Union law*, T.M.C Asser Press, 2008

<sup>107</sup> Pijetlovic K., *EU sports law and breakaway leagues in football*, Springer, 2015

fans.<sup>108</sup> In the same way, the first version of the European Super League would exclude too many regions and countries, while it won't be guaranteed that the issues concerning the uncertainty of the outcome, especially at a national level, would be solved.<sup>109</sup>

However, the current system itself is not totally meritocratic as well. For example, although it is determined by a specific ranking, the teams that win "secondary" domestic leagues are obliged to start their journey from the preliminary rounds, while the fourth classified of the top five domestic leagues is automatically qualified for the Champions League group stage. Furthermore, in this way, many leagues are "structurally excluded". For instance, as pointed out by lawyer Dupont, no team from Dublin, a major European capital, has ever participated in the group stage of the Champions League, and the same can be said for many other important cities and countries.

The feeling is that, whatever the Court's decision, there will be room for negotiation, as already hoped for from the beginning by the representatives of the Super League. If the judgment were to be positive for the latter, the world of football would be completely revolutionized: the most powerful clubs would have the whip hand and, in addition to the organization of a brand-new tournament, could be able to obtain from the current institutions some new rules that are more favorable to them, since FIFA and UEFA would be obliged to change their respective statutes. In instead the judgment were to be in favor of UEFA and FIFA, the current system would remain in force, with likely sanctions against the clubs. In this case, the already approved format of the new Champions League would start from 2024 and no alternative project would be accepted anymore. However, in this case, there could be sensational consequences also in other sports, such as, for instance, for the basketball Euroleague, which despite being active for over 20 years, could be limited by the new potential restrictive rules that would be established by FIBA.

To conclude, a solution to this issue could be the establishment of a unique European system of promotion and relegations with multiple levels, with domestic league that would only allow qualification at the lowest level, so that everyone could be able to earn its European status through performance in international competitions themselves and not through national leagues any longer. Such a system would ensure that managers of the biggest clubs can be satisfied with achieving greater financial stability and more predictable cash flows. In addition, it would allow the most successful and richest clubs to play each other more often, in order to make the competition more appealing and

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<sup>108</sup> Van der Burg, T., *EU competition law, football and national markets*, Managing Sport and Leisure, 2020, pp. 1-14

<sup>109</sup> Drewes, M., and Rebeggiani, *Die European Super League im Fußball Mögliche Szenarien aus sport- und wettbewerbsökonomischer Sicht*, 2019



consequently increase the total income for everyone. At the same time, such a system, despite revolutionizing the current qualification system through national leagues, would keep intact the concept of meritocracy established by the treaties of the European Union and strongly desired both by fans and other stakeholders. Despite that, since teams would qualify for European competitions solely through international achievements, with the only exception being the lowest European level, with the current national league system, these leagues could lose a lot in terms of appeal, utility and competitiveness. In fact, some of the top teams, presumably already qualified for the European competitions, could decide not to compete with the maximum effort when they are out of the title race. However, a solution to this problem could be the reduction of teams participating in the main national leagues, which would go from 20 to 16 teams. This would lead to more teams fighting for the title till the end, which already happens in many domestic leagues such as, for example, the Scandinavian ones.

In any case, regardless of what will be the decision of the European Court of Justice, the Super League case should make all the fans and professionals of the football world and, even more broadly, of the sporting world, reflect on the fact that for sport to become once again economically sustainable and not to lose its appeal acquired over decades by attracting enthusiasts from all over the world, innovation is a key factor. My personal proposal is only a theory, but the sports institutional bodies will in any case have to think about changing something as soon as possible. The Super League, despite the obvious mistakes made concerning the format proposed as well as communication, had the great merit of showing the enormous defects of the current system, a system that is no longer sustainable which, in addition to the huge losses from an economic point of view for most of the clubs, has led to the decline of competitive balance of football competitions over the years and the exponential increase in predictable results and meaningless games. The majority of fans, managers and players are getting tired of this, as the increase in meaningless games represents, at the same time, greater exposure to the risk of injuries for players and, consequently, average lower quality of performances.<sup>110</sup>

Although it is true that the increase in the number of matches between big clubs and the reduction of the ones with a predictable result is no guarantee of success, as a higher frequency of games in which the historically most successful teams and the best players of the planet compete could result in the partial disappearance of the uniqueness of the “great event” by making it more ordinary and, after some time, even boring, what is certain is that the proposal of the new Champions League by UEFA

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<sup>110</sup> Kumbelen, N., *Europe's Super League is dead, but UEFA needs reform*, foreignpolicy.com, 18<sup>th</sup> July 2021

would only consolidate this problem. In fact, the new Champions League goes in the exact opposite direction to the one presumably desirable, since it would increase the number of group stage games by adding more lower tier teams, thus also increasing the number of meaningless matches.

Following the ruling of the European Court of Justice, therefore, it is necessary that the two parties, that are the one represented by the current football institutions and the one represented by some of the top clubs, hold a meeting in order to find a solution for the good of the clubs, investors and enthusiasts, in compliance with the rules established by the treaties of the European Union and with sport as a whole.

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