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THE RISE OF BREAKAWAY LEAGUES: COMPETITION LAW ANALYSIS FROM THE AMERICAN MODEL TO EUROPEAN DISPUTES

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ABSTRACT

With utmost dedication, I hereby submit this master's thesis to analyze the revolutionary changes that define the modern sports world with the emergence of Breakaway Leagues. This paper aims at presenting an explorative analysis of the intricate relationship between sport and regulation and is intended to provide a comprehensive overview of the issues and trends in this fairly dynamic field. The research question can be developed from the aforementioned objectives and aims at identifying how, through a detailed study of football, basketball, and motorsport practices, the creation of new leagues can germinate in European competition law.

I consciously chose this topic due to my genuine interest in the world of sports and the realization of its significance in today's society. Watching the changes taking place in the sports sector has stimulated me to address essential questions regarding the nature of Breakaway Leagues in the process of globalization, and thus, I have focused on the dynamics of the leagues structure, functions, socio-cultural, and economic importance.

With this study, the main goal is to help elucidate the dynamics that shape contemporary sports, and provide a thoughtful and comprehensive examination of the legal, economic, and social consequences that staking to alter the current sports structure.

I wish this thesis to give a useful contribution to academic discourse and the cultivation of policies meant to enhance the development of sports that are sustainable and also inclusive for every nation in the era of globalization.

In acknowledging the help and backing received during the process of research, this study is dedicated to all those who have passion in sports and everything it encompasses.

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INTRODUCTION

Over the past decades, the world of sports has charted its course in line with the global context, undergoing profound metamorphoses, both in organizational and economic terms, inevitably influencing the related regulatory landscape. The relentless acceleration of globalization has consistently imposed the concept of interdependence among global economies, societies, and cultures as a common core, delineating a distinctive feature in any scenario.

Undoubtedly, the sports sector has reflected this transformation, assuming a prominent role in the process of global integration and planetary connection. This phenomenon has manifested in various facets within the sports landscape:

- Internationalization of competitions: Sporting events have increasingly taken on an international dimension, with athletes from every corner of the globe competing against each other. Events such as the Olympic Games, World Championships, and continental competitions have provided a platform for interaction and collaboration among athletes and nations from diverse backgrounds.
- Global talent market: Access to a vast pool of sports talent from around the world has led to increased diversity and competitiveness in teams and sporting competitions. Athletes can be recruited by teams scattered across the planet, while leagues and federations have expanded their influence internationally.
- Global transmission and consumption: thanks to advancements in media and telecommunications, sporting events can be broadcasted in real-time to every corner of the world. This has amplified the audience for sports and opened doors to new opportunities for global marketing and sponsorship.
- Internationalization of sports organizations: International sports institutions such as the International Olympic Committee, FIFA (Fédération Internationale de Football Association), and FIBA (International Basketball Federation) have played a fundamental role in promoting the globalization of sports. These entities work to coordinate international competitions, establish global regulations and standards, and promote sports development worldwide.
- Sporting events as cultural catalysts: Global sporting events such as the FIFA World Cup and the Olympics have served as platforms to promote cultural diversity, intercultural exchange, and mutual understanding among nations. Often, these events act as catalysts for urban development, infrastructure, and tourism in host cities.

The analysis undertaken sheds light on three sports disciplines, primarily involved in both organizational and economic terms, in the concepts of development, growth, and interconnection: football, basketball, and motorsport; in detail:

- Football, through international player transfers, has contributed: to the formation of multi-ethnic teams, to the spread of media coverage, facilitated by advances in television broadcasting and increased presence on social media and, finally, to brand commercialization and globalization, resulting in the expansion of commercial and marketing operations internationally.
- Basketball, through the internationalization of leagues and players, particularly professional basketball leagues like the NBA (National Basketball Association) in the United States, has attracted talents from every corner of the globe, generating a mix of players of different nationalities. Moreover, the globalization has led to increased investments in basketball worldwide, with the development of infrastructure, the construction of new sports facilities, the organization of youth championships and the creation of basketball development programs in many nations.
- Motorsport, through the internationalization of teams and drivers, with Formula 1 teams and other racing series becoming increasingly international over the years, with teams and drivers coming from around the world. This has helped create a multicultural environment within the paddock, with engineers, mechanics, and executives from a variety of cultural and linguistic backgrounds. In addition, through motorsport it has been possible to develop and test new technologies and innovations in the automotive industry. Solutions developed for racing competitions often find applications in the production automotive sector, contributing to the global dissemination of advanced technologies such as hybrid engines, active safety systems, and connectivity solutions.

As a result, the theme of globalization has given rise to attempts to subvert and modify the existing system in order to maximize efficiency and increase revenues, through the creation of the so-called Breakaway Leagues.

Breakaway Leagues or “alternative leagues” can generally be defined as closed or partially open private leagues, established by a group of clubs united by common commercial interests. Thorp and Shah have outlined a Breakaway League as "*a league created without the consent of the official national or supranational governing body for the specific sport*"[1]. Historically, such leagues, often formed without the approval of a governing authority, lack official recognition from that entity. Consequently, this lack of recognition results in the automatic exclusion of such leagues from central regulatory and organizational control. In parallel, clubs participating in such leagues suffer the loss of benefits offered by a governing body to its members.

[1] Thorp, J., & Shah, R. (2008).

A Breakaway League can be configured as a closed model rather than being integrated into a promotion and relegation system with other leagues in the same sport. Member clubs of alternative leagues typically present similar levels of competitiveness and financial situations, often being bound by geographic proximities and/or their elite status. The decision of clubs to establish their own competition and to break away from previous structural affiliations is motivated by perceived financial prospects outside of such constraints.

In cases where clubs from an alternative group are the most economically powerful and participate in the most prestigious national and pan-European leagues, they are able to produce a high-quality product with a correspondingly high market value for television rights, merchandising, tickets, and so on. They represent the valuable element for their discipline in a system where solidarity plays a significant role in funding the rest of the sport, and therefore governing bodies do not wish to lose them.

This attribute is particularly evident in the context of European football and basketball, where elite clubs enjoy predominant contractual power that influences decisions of governing bodies.

The discussion is different for the premier motorsport competition, Formula 1, whose configuration has long taken the form of a closed alternative league on a global scale, where few wealthy companies can enter.

In recent decades, there have been several attempts to create alternative leagues, independent of governing bodies, such as UEFA in football, which rose the following issues:

- an urgent need to modify the structure of sports competitions;
- doubts about the relationship between companies and governing bodies, in terms of competition law;

Indeed, attempts to create alternative leagues, as will be analyzed below, have consistently met strong opposition from existing organizing authorities, which often, by virtue of the powers granted, have limited the actions of the so-called founding companies, through threats of exclusion from national and European leagues.

This scenario has inevitably attracted the attention of legal operators - often, among other things, called into question by the parties involved - on the issue of free competition in the sports market and on the possible monopoly position that the aforementioned governing authorities could exploit, averting the creation of alternative leagues.

Infact, while the pyramidal structure of existing leagues has remained substantially unchanged in its external form, internal changes have contributed to a significant decentralization of governance in European football, which, however, does not always align with standards of good governance and fair representation of all stakeholders. Elite clubs constitute a distinct interest group that has

demonstrated its ability to exert pressure on all sports governing authorities whenever their commercial interests have been threatened.

The analysis undertaken sheds light, in this regard, on three main phenomena:

1. Euro League in basketball;
2. Super League in football;
3. Similar attempts in Formula 1.

The choice of such phenomena is based on their resonance in the global context and the multiple similarities that characterize them. While they have been greeted with enthusiasm by some actors in the sports world, they have also sparked heated discussions at both legal and socio-economic levels.

In this regard, it is limiting to focus exclusively on the European context. This stems from the evidence that the structure of proposed alternative leagues in various sports disciplines has its roots in the so-called American model of private league, which has existed for decades. For this reason, I will start with an examination of the American model will be analysed first, using the NBA basketball as a benchmark, with the aim of understanding how such structures have gained approval from legal operators, without raising issues regarding a presumed league monopoly or restrictive competition agreements.

Subsequently, I will proceed with the an analysis of the competition law will be presented - European breakaway leagues pair. Therefore, this work aims to thoroughly analyze the legal aspect of these initiatives, focusing on antitrust aspects, competition, and European legislation regulating their operations, with few insights into economic dimensions. Starting from a legislative framework in constant evolution, the objective is to examine how these initiatives fit into the European legal context and evaluate their influences. Concurrently, the study conducts an analysis aimed at identifying the underlying reasons and economic implications of such subversive attempts. The choice of four different phenomena will allow understanding their relationship with different social and economic contexts, considering that each of these examples has seen its evolution in different periods and, consequently, in profoundly dissimilar landscapes.

This study will be structured as follows:

1. The first section of the document will be dedicated to the analysis of legal and sports jurisdiction. In particular, the concept of the nature of the legal order developed by doctrine will be examined, with a specific focus on the aspects of autonomy and specificity of the sports legal system; finally, brief mentions will be made of the organizational profile and sports justice. Whitin this chapter, regulatory changes at the EU and national levels since the early developments will also be examined, as will the case law of the Court of Justice of the European Union of particular relevance, with particular reference to the legal-sports system.

Furthermore, the theme of competition law will be addressed by comparing EU and Italian models with the US model; in this regard, an attempt will be made to understand the legal and regulatory implications of the concept of competition, analyzing the principles developed by literature, from the notion of "cooperative competition" to the so-called "sports monopoly".

2. Once the analysis of the legal and competitive sports context is concluded, the study will proceed to delve into the heart of the analysis: following a logical order, and recognizing that the roots of European alternative leagues derive from the American model of private league, the first model worth analyzing is the American one, particularly the NBA, illustrative for many sports leagues, including the basketball Euroleague. The complex relationship between the objectives of the European Union to protect traditional European sports structures and the emerging new commercial and governance realities in the European sports context will be explored. The first attempt to create a Breakaway League in European basketball will then be analyzed, focusing on governance and legal and commercial dimensions. The general intent is to understand the legal compliance bases of the American model, comparing the regulatory challenges faced by alternative leagues in Europe. The reflection will then explore the influence that the American model has had on the European continent, questioning its actual applicability in the regulatory context of the Old Continent and exploring its implications, with particular reference to competition regulations.

3. The third chapter will focus on the football landscape after the analysis of European and American basketball, seeking to understand how the Super League project is applicable to the world's most followed sport. The analysis, after an overview of the functioning and reasons of the model, will focus on legal disputes and judicial pronouncements, culminating with the last decision, on December 21, 2023, which will be the subject of a detailed analysis in order to evaluate the feasibility of applying the American private league model, already successfully adopted in European basketball, in a sport where monetary interests dominate the scene. The analysis of the December 2023 ruling will attempt to answer the question that concerns all European Breakaway Leagues: *can private leagues be considered, from a legal point of view, restrictions on competition? What would be their effects on the same?*

4. The analysis of Formula 1, in addition to examining the effect of alternative leagues in a different discipline (and, therefore, context), will allow evaluating the option from a different perspective. In fact, the premier motorsport competition has long taken on the form of a global,

closed elite league, destined for few, wealthy companies. Therefore, it will be interesting to understand the functioning of F1, the underlying reasons for the creation of different private leagues, and the responses of legal operators regarding them. In this regard, it is necessary to specify a peculiarity of the case: disputes in the automotive sector, unlike the disciplines analyzed previously, have been largely resolved through commercial agreements between the parties involved (the so-called "Concorde Agreement"). Such agreements, renewable periodically, exempt legal operators from the burden of pronouncing, except in cases where they are directly involved (as has rarely happened). This section will also attempt to answer an interesting question: *to what extent are the judgments and judicial decisions relating to the football Super League in line with decisions made regarding disputes in Formula 1?*

5. Finally, this section aims to comprehensively summarize the legal dimension of Breakaway Leagues, contributing to the critical understanding of such phenomena and providing reflections for the future of sports and its regulation, synthesizing the conclusions drawn from the previous analyses. The author's personal reflections on the topic will be presented, comparing the analyses conducted and formulating hypotheses about the future of Breakaway Leagues. It will seek to identify the challenges and opportunities that such initiatives present for the world of sports and society as a whole, offering insights for academic debate and the progress of the international sports system.

CHAPTER I
Shaping Competition Law: The European And American Models In The Sports

This section of the paper will be devoted to the analysis of the legal and sports jurisdiction. Specifically, it will look at the concept of the nature of the legal order elaborated by the doctrine, placing a specific focus on the aspects of autonomy and the specificity of the sports legal system; finally, brief hints will be given on the organizational profile and sports justice.

During this chapter, moreover, the regulatory changes that have occurred at the EU and national levels from the early developments will be examined, as well as the jurisprudence of the Court of Justice of the European Union of particular relevance, with particular reference to the legal system-sporting system pair.

In addition, the topic of competition law will be addressed by comparing the EU and Italian models to the U.S. model; in this regard, an attempt will be made to understand the legal and regulatory implications of the concept of competition, analyzing the principles developed by the literature, from the notion of "*cooperative competition*" to the so-called "*sports monopoly*".

This analysis will be motivated by the need to understand the legal context and the regulatory and jurisprudential implications in which initiatives, such as the Super Leagues, the Euroleague and similar attempts in Formula 1, which are the subject of the present study, are set.

1.1. Legal And Sports Regulations

The expression "legal system" encompasses a complex array of meanings, which is why there is no single, definitive definition. According to the Kelsenian transposition[2], it is a complex system of norms and rules of conduct justified by the Grundnorm (Basic Norm). However, it can also be seen as a social body or entity, as theorized by Santi Romano[3], who, considering law as more than just a rule of conduct, bases it on society and social order. According to this *institutional* or *institutionalistic* theory, the legal system represents an entity that operates according to norms, but more importantly, it justifies the actions of a social group because they represent the object and means of its activities rather than just an element of its structure.

"Ubi ius ibi societas", but also "ubi societas ibi ius." [4]

[2] The legal system is configured as a unified entity, not simply the sum of individual legal norms, but rather as a system that transcends their empirical plurality. The validity of each individual precept is based on its ability to be traced back to a fundamental norm that governs the entire legal system. This establishes a hierarchy in which each norm, starting from the specific and concrete, such as a judgment, is connected to a higher norm that justifies it, until reaching the so-called Grundnorm. This latter, in particular, constitutes the supreme foundation upon which the entire legal system rests, because its validity can no longer be deduced from a higher norm; the foundation of its validity cannot be debated (Kelsen, 1960).

[3] Romano, S. (1977). L'ordinamento giuridico (3rd ed.). Florence.

[4] Romano, S. (1977). L'ordinamento giuridico (3rd ed.). Florence

Based on these premises, it is assumed that every legal system is an institution, and vice versa, every institution is a legal system, thus forming a necessary and absolute equation.

Romano laid the foundation for the theory of the plurality of legal systems, according to which there are as many institutions as there are legal systems, which, however, do not necessarily have to coexist peacefully. Indeed, there are many situations where it becomes necessary to balance conflicting interests or rights touched upon by two different legal systems, but I will return to this point later.

Starting from the premise that the sports system exists independently of the state system, it becomes necessary to investigate the relationship between the two systems: can the state system embed the sports system, causing it to disappear, or can it ignore its existence, thereby creating an autonomous system? From this perspective arises the problem of the autonomy of the sports system from the state system. If its existence depended solely on the state, there would be no real parity and autonomy of the former from the latter. The power exercised by the sports system derives from the union of individuals who, having a shared purpose and a super-individual goal, legitimize it as an expression of the common that prevails over the individual.[5]

From Romano's theory of the plurality of systems, it follows that the autonomy of the various systems does not derive from state sovereignty but from an intrinsic statutory power, which in turn is an expression of the common will that asserts itself over the individual member.[6]

Therefore, since the state system is the only one able to hold universal interests, the other systems would be located within it, establishing legal relations with it.[7]

One wonders, therefore, if state law, aimed at regulating as many relations between citizens as possible, can leave room for relationships that, although already regulated by the legislator, may still find a place in a different system, sometimes contrary to what is already provided by the law itself, or if instead entirely new legal relationships are established, thus admitting that there are legal forms external to state law.

From my perspective, the answer leans towards the first of the two hypotheses, as it seems evident that the state system cannot offer a complete picture of factual reality, which also includes areas or subjects regulated by private law.[8] The "pluralistic-systemic" assumption, according to which the presence of a community of people and a shared purpose is sufficient to constitute a social body that legitimizes the birth of a legal norm because it is desired by all members but at the same time is

Where there is law, there is society; where there is society, there is law.

[5] Thus, there is a departure from the contractual conception of the sports system that justified the emergence of this phenomenon in the institute of the adhesion contract from which the contractual obligation to observe the provisions of the belonging federation emanates.

[6] Cesarini Sforza, W. (1969). La teoria degli ordinamenti giuridici e il diritto sportivo. Rivista di Diritto dello Sport.

[7] Cesarini Sforza, W. (1963). Il diritto dei privati, il corporativismo come esperienza giuridica. Milano.

[8] Cesarini Sforza, W. (1963). Ibid.

imposed on each member, leads to the emergence of the sports system. It is the intensification of relations and associations among individuals that forms new institutions, which, on one hand, find their reason for existence in the relationship between private individuals, and on the other hand, have super-individual or collective goals and functions.[9] In support of this thesis, a comparison could be made with the principle of irrelevance underlying the relations between state law and canon law.[10]

However, such considerations do not provide a definitive answer to the question of the relationship between the state system and the sports system. Cesarini Sforza identifies in the common passion, or rather in the common purpose mentioned above, of athletes in a particular sport, the matrix of rights and duties, due to the fact that they want/need to respect certain customs and technical rules in the exercise of their activity, which would otherwise be impractical due to the chaos that would ensue. As evidence of this, it is argued that the independence/autonomy of sports law is confirmed by the "indifference" of the State, which, for example, tolerates injuries resulting from sports activities that are highly protected and certainly not allowed under state law. Consider how injuries sustained in combat sports, such as boxing or martial arts, or in contact sports, such as rugby, are exempted from the protection of state law and, specifically, from the penalties provided by criminal law, which undoubtedly conflict with Article 32 of the Constitution[11]; or, again, the frequent use of strict liability, provided for in state law only in explicitly defined cases.[12]

Even based on this last example, if it is true that certain injuries are subject to an atypical defense if the violation is unintentional, if, however, the presence of the subjective element of intent or gross negligence is found, there is criminal liability for the athlete, relevant under state law. In light of this, is it correct to speak of the "ignorance/disinterest" of the State or would it rather be a non-relevance of specific subjective legal situations?

Indeed, there are numerous aspects of the sports world that are irrelevant to the general legal system; consider, for example, the so-called technical regulations. On the other hand, however, it is undeniable that, if sport interferes with fundamental or generic (national and European) values, it will necessarily be subject to the relevant discipline. Moreover, even from an organizational point of view, complete independence is not plausible. Consider that the head bodies of the sports system, as I will see in more detail, assume legal forms in accordance with the law of the State in which they are based (CONI is a public, quasi-state body and, consequently, closely linked to the State). It should not be

[9] Cesarini Sforza, W. (1963). Ibid.

[10] Cesarini Sforza, W. (1963). Ibid.

[11] Refer to Cass. Pen., sez. V, 2 June 2000, n. 8910, according to which social conscience attributes a positive value to the practice of sport, even if violent, to the extent that the lack of social harm renders the act non-antijuridical.

[12] For further information on this point, see T. Piccirilli, Attività sportiva e responsabilità civile, in Giur. It., 1999; M. Buoncristiano, La responsabilità oggettiva delle società sportive: problemi, limiti, prospettive, in Giur. Civ., 1989, IV.

forgotten that all the various components of the sports system are equally subject to national law; in fact, despite the greater or lesser degree of organizational power enjoyed by sports institutions, they can never completely escape state sovereignty.

From this perspective, the national sports system would have a derivative character from the state sphere, which leaves unaffected an area of competence of sports regulations, but which recognizes such a system; in this way, the sports system would be hierarchically subordinate, as recognized, and not independent, having to comply with what States dictate in exercising their sovereignty.

And it is precisely from this statement that the criticism is directed towards the theory of plurality of systems. In fact, according to some, the limits and degree of self-regulation power of the sports system are provided for by the state system.[13] What has been asserted would find confirmation in the fact that the regulation left by the State to the sports system concerns almost exclusively technical-sports norms; the rest of the norms derive from the State as either contractual or legislative sources.[14]

In any case, the pluralistic principle finds recognition in Article 2 of the Constitution[15], which posits, guarantees, and protects social formations as functional to the safeguarding of the inviolable rights of the individual.

Based on the considerations made so far, one could speak of various sports systems, if only because there is a national level and a world level. Consider the relationships between CONI (Italian National Olympic Committee) and COI (Italian Olympic Committee). Indeed, with Law No. 426 of 1942 - "Constitution and organization of the Italian National Olympic Committee (CONI)", CONI was established as the apex body of the sports world. As previously mentioned, CONI is a public legal entity, explicitly established by decree-law No. 242 only in 1999[16], with which its public nature was confirmed and it was placed under the supervision of the Ministry of Culture; subsequently, under Article 1, paragraph 19, of Legislative Decree No. 181/2006, it was placed under the supervision of the President of the Council of Ministers.

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[13] See F.P. Luiso, La giustizia sportiva. Milano, 1975, according to which it is not clear why an act, such as professional orders (evaluated as pseudo-legal phenomena), should be framed "within the state legal system, but without the possibility of being limited to the group's regulations, to whose organization they are attributable", while a similar possibility is vice versa given to the statute of a sports federation.

[14] Criticism of approaches that base their theories on the plurality of legal systems moves from the idea that the concept of institution is conceived as a phenomenon to which a plurality of meanings can be attributed, thereby compromising its ability to provide an accurate reconstruction of the legal reality.

[15] "*La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale"* - The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality develops, and requires the fulfillment of the inescapable duties of political, economic, and social solidarity.

[16] With Legislative Decree no. 242 of 23 July 1999 - "Reorganization of the Italian National Olympic Committee - CONI - as indicated by Law no. 59 of 15 March 1997, so-called "Bassanini law"

Article 2, paragraph 1, of Law 242/99, then replaced by Article 1 of Legislative Decree 15/2004, states that "*CONI is the Confederation of national sports federations and associated sports disciplines (...) The entity promotes the organization and enhancement of national sports, and in particular the preparation of athletes and the provision of suitable means for the Olympics and for all other national or international sports events (...)*".

Furthermore, Article 1 of the currently valid Statute (amended by the National Council on November 21, 2023, with resolution No. 1745 and approved by DPCM on December 20, 2023) defines CONI as *" (...) the authority responsible for disciplining, regulating, and managing sports activities, intended as an essential element of the physical and moral training of the individual and an integral part of national education and culture. (...)".*

Its functions, important in their own right, are set out in Article 2 of the Statute, but can also be found in Article 5 of the aforementioned law.[17]

[17] Art. 2 - Funzioni di disciplina e regolazione:

"*1. Il CONI presiede, cura e coordina l'organizzazione delle attività sportive sul territorio nazionale. 2. Il CONI detta i principi fondamentali per la disciplina delle attività sportive e per la tutela della salute degli atleti, anche al fine di garantire il regolare e corretto svolgimento delle gare, delle competizioni e dei campionati. 3. Il CONI promuove i principi e i valori dell'olimpismo, in armonia con l'ordinamento sportivo internazionale, nonché la massima diffusione della pratica sportiva in ogni fascia di età e di popolazione, con particolare riferimento allo sport giovanile. 4. Il CONI, nell'ambito dell'ordinamento sportivo, garantisce la parità di genere attraverso le procedure elettorali e detta principi contro l'esclusione, le diseguaglianze, il razzismo e contro le discriminazioni basate sulla nazionalità, il sesso e l'orientamento sessuale e assume e promuove le opportune iniziative contro ogni forma di violenza e discriminazione nello sport. Il CONI esercita poteri di vigilanza sui soggetti che riconosce, facenti parte dell'ordinamento sportivo, al fine di assicurare che le relative attività siano svolte in armonia con gli orientamenti e le regole stabiliti dal CONI e dal CIO, in conformità del principio di autonomia sportiva previsto dalla legge nazionale. 4-bis. Il CONI, nell'ambito dell'ordinamento sportivo, detta principi ed emana regolamenti in tema di tesseramento, anche degli atleti minorenni, e utilizzazione degli atleti di provenienza estera al fine di promuovere la competitività delle squadre nazionali, di salvaguardare il patrimonio sportivo nazionale e di tutelare i vivai giovanili. 5. Il CONI, nell'ambito dell'ordinamento sportivo, detta principi per conciliare la dimensione economica dello sport con la sua inalienabile dimensione popolare, sociale, educativa e culturale. 6. Il CONI, nell'ambito dell'ordinamento sportivo, detta principi per assicurare che ogni giovane atleta formato da Federazioni Sportive Nazionali, Discipline Sportive Associate, società o associazioni sportive ai fini di alta competizione riceva una formazione educativa o professionale complementare alla sua formazione sportiva. 7. Il CONI detta principi per prevenire e reprimere l'uso di sostanze o di metodi che alterano le naturali prestazioni fisiche degli atleti nelle attività agonistico-sportive. 8. Il CONI garantisce giusti procedimenti per la soluzione delle controversie nell'ordinamento sportivo e ne fissa la disciplina attraverso il proprio codice di giustizia sportiva da applicare a tutte le Federazioni Sportive Nazionali e alle Discipline Sportive Associate, nonché attraverso il presente Statuto e propri Regolamenti dedicati.*"

1. CONI presides over, manages, and coordinates the organization of sports activities throughout the national territory. 2. CONI establishes the fundamental principles for the discipline of sports activities and for the protection of athletes' health, also in order to guarantee the regular and correct conduct of races, competitions, and championships. 3. CONI promotes the principles and values of Olympism, in harmony with the international sports system, as well as the maximum diffusion of sports practice in every age group and population, with particular reference to youth sports. 4. CONI, within the sports system, guarantees gender equality through electoral procedures and establishes principles against exclusion, inequalities, racism, and discrimination based on nationality, gender, and sexual orientation, and undertakes and promotes appropriate initiatives against all forms of violence and discrimination in sports. CONI exercises supervisory powers over the subjects it recognizes, which are part of the sports system, in order to ensure that their activities are carried out in accordance with

Being, therefore, a non-profit public entity, CONI may have tasks normally attributed to the State, which is why the measures adopted by its bodies are subject to prior control by the Presidency. Among other things, the powers of the latter also include the dissolution of the national board or the revocation of the President of CONI, with the consequent extraordinary commissioning.

In CONI's own statute, in Article 4, entitled "Principle of sporting autonomy", it is established that it exercises *"(...) its functions and tasks with autonomy and independence (...) safeguarding its autonomy from political, religious, and economic interference (...)*" making an explicit reference to the characteristics and attributes typical of independent authorities.

CONI clearly falls within the broader context of National Olympic Committees affiliated with the IOC or the broader international context, which is affiliated with the IOC and the Olympic Charter.

In particular, the Olympic Charter deals with National Olympic Committees in Chapter 4, Articles 31-35, and expressly in Article 31, paragraph 5, it states that " *(...) since sport contributes to education, health, the economy, and social order, it is desirable that N.O.C.s may benefit from the support of public authorities in achieving their objectives. However, N.O.C.s must preserve their autonomy and resist all pressures, including those of a political, religious, or economic nature, which could prevent them from complying with the Olympic Charter (...)*". The autonomy of the NOCs, recognized internationally, is made even more binding by the sanctioning powers provided for in case of non-compliance with the Olympic Charter. In fact, under Article 31, paragraph 9, "*(...) The IOC may, after hearing it, suspend an N.O.C. or withdraw its recognition: if the activity of the N.O.C. is hindered by legal provisions or regulations in force in its own country or by the actions of other sports or similar organizations of the country (...)*". CONI's compliance with the principles of the Olympic Charter is reiterated in CONI's own statute.

1.1.1. Autonomy And Specificity Of The Sports System

Therefore, the issue arises of delimiting the degree of autonomy of the sports system compared to the state system, especially with regard to the interference of judicial bodies.

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the guidelines and rules established by CONI and the IOC, in accordance with the principle of sports autonomy provided for by national law. 4-bis. CONI, within the sports system, establishes principles and issues regulations concerning membership, including of underage athletes, and the use of athletes from abroad in order to promote the competitiveness of national teams, safeguard the national sports heritage, and protect youth academies. 5. CONI, within the sports system, establishes principles to reconcile the economic dimension of sport with its inalienable popular, social, educational, and cultural dimension. 6. CONI, within the sports system, establishes principles to ensure that every young athlete trained by National Sports Federations, Associated Sports Disciplines, clubs, or sports associations for high-level competition purposes receives complementary educational or professional training in addition to their sports training. 7. CONI establishes principles to prevent and repress the use of substances or methods that alter athletes' natural physical performances in competitive sports activities. 8. CONI guarantees fair procedures for resolving disputes within the sports system and sets out the rules through its own sports justice code to be applied to all National Sports Federations and Associated Sports Disciplines, as well as through this Statute and its own dedicated Regulations.

Our Constitution did not have any explicit and direct reference to the sports phenomenon until 2001, the year of the so-called Reform of Title V[18], which identified the "sports system" as a matter of concurrent jurisdiction between the State and the Regions.

However, as already anticipated in the previous paragraph, the sports system finds initial recognition in Article 2, as an order, and in Article 18, which guarantees the freedom of association. In addition to this, in sports, the rights provided by the Constitution as fundamental must always be guaranteed, as well as the principles of equality provided for in Article 3 (formal and substantive), health protection under Article 32, and labour rights under Article 35; furthermore, the principles of good governance and impartiality of the administration under Article 97 cannot be ignored. However, none of these references contains the substantive definition of the sports phenomenon, or even a mention of it.

Indeed, until 2009, no community treaty contained any notion of sport; only with the reform of the Lisbon Treaty was there a positive recognition of the sports phenomenon, albeit only for its social value and not economic.[19] As for the economic profile, sports do not have its own legislation, but falls within Article 3 of the Treaty on European Union (TEU).

As mentioned earlier, the Italian state has only recently referred to the sports system in its Constitution for the first time and did so by inserting it into Article 117 of the Constitution, which, on one hand, recognizes the sports system, while on the other hand, leaves to the State and the Regions a regulatory power entirely irrelevant[20] in terms of organizational and judicial aspects, which I will discuss later.

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[18]Constitutional Law of 18 October 2001, n. 3, Art. 117, 3rd paragraph, expressly defined sport as an organization, placing it among the matters of concurrent legislation between the State and the Regions.

[19] Morzenti Pellegrini revisits the concepts presented by Giannini (1949) in his article "Prime osservazioni sugli ordinamenti giuridici sportivi" published in Rivista di Diritto dello Sport, pages 12-13. (Morzenti Pellegrini, R. (2007). The Evolution of Relationships Between the Sports Phenomenon and the State Legal System, p. 21)

[20] "*La potestà legislativa è esercitata dallo Stato e dalle Regioni nel rispetto della Costituzione, nonchè dei vincoli derivanti dall'ordinamento comunitario e dagli obblighi internazionali.*
Lo Stato ha legislazione esclusiva nelle seguenti materie: […]
Sono materie di legislazione concorrente quelle relative a: […] ***ordinamento sportivo****; […]*
Spetta alle Regioni la potestà legislativa in riferimento ad ogni materia non espressamente riservata alla legislazione dello Stato.
[…]
La potestà regolamentare spetta allo Stato nelle materie di legislazione esclusiva, salva delega alle Regioni. La potestà regolamentare spetta alle Regioni in ogni altra materia. I Comuni, le Province e le Città metropolitane hanno potestà regolamentare in ordine alla disciplina dell'organizzazione e dello svolgimento delle funzioni loro attribuite.
Le leggi regionali rimuovono ogni ostacolo che impedisce la piena parità degli uomini e delle donne nella vita sociale, culturale ed economica e promuovono la parità di accesso tra donne e uomini alle cariche elettive [3].
La legge regionale ratifica le intese della Regione con altre Regioni per il migliore esercizio delle proprie funzioni, anche con individuazione di organi comuni.
Nelle materie di sua competenza la Regione può concludere accordi con Stati e intese con enti territoriali interni ad altro Stato, nei casi e con le forme disciplinati da leggi dello Stato. "

The sports system has always found a fortification in regulatory indifference to claim its autonomy, but it is difficult to imagine that the State could allow complete independence, so much so that scholars have pointed out how the State can never even attenuate its control over fundamental principles and rules, which cannot suffer limitations.[21]

In fact, *"(...) the rules laid down by sports communities to regulate their activities - whether organizational, behavioural, or technical - potentially have the same relevance in the state system as the rules of any other community recognized and guaranteed by the State (...)".*[22]

Indeed, some doctrinal currents, in arguing that federal regulations could encompass all subjective and objective sports situations within their normative scope, were conditioned by the fact that federations, to address the normative vacuum, had autonomously provided for their normative needs, including conflict resolution.[23]

Such doctrines were inevitably surpassed when the first economic interests emerged, especially in the world of football, and labour-related matters already protected by the general legal system. It is thus definitively recognized that the power of self-regulation is such only within the limits provided by the state system itself, and that the latter fundamentally recognizes the sports system's power over technical-sporting regulation, which is, in principle, irrelevant to the State, while all other regulation falls under the general legal system.[24] Therefore, the sports phenomenon is difficult to classify in a defined doctrinal classification within the state system because while it acts within the limits of the state system, it undoubtedly recognizes autonomies not common to other areas.[25]

Consider the so-called sports justice constraint, also widely debated in doctrine, which will be discussed later, which assigns exclusive jurisdiction over sports disputes to internal judicial bodies,

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The legislative power is exercised by the State and the Regions in compliance with the Constitution, as well as with the constraints deriving from the community legal system and international obligations. The State has exclusive legislation in the following matters: […] Matters of concurrent legislation include those relating to: […] sports organization; […]. Legislative power in reference to any matter not expressly reserved to the State's legislation belongs to the Regions. […] Regulatory power belongs to the State in matters of exclusive legislation, subject to delegation to the Regions. Regulatory power belongs to the Regions in every other matter. Municipalities, Provinces, and Metropolitan Cities have regulatory power over the organization and conduct of functions assigned to them. Regional laws remove any obstacles preventing full equality between men and women in all spheres of social, economic, and cultural life and promote equal opportunities for men and women to enjoy civil and social rights and perform public functions.

[21] G. Vidiri (2007). Autonomia dell'ordinamento sportivo, vincolo di giustizia e azionabilità dei diritti in via giudiziaria. Corriere Giuridico, 7, 1115+.

[22] Caprioli, R. (2007). Il significato dell'autonomia nel sistema delle fonti nel diritto sportivo nazionale. Nuova giurisprudenza civile e commerciale, 2007(II), 285

[23] Mirto, P. (1959). L'organizzazione sportiva italiana. Autonomia e specialità del diritto sportivo. Rivista di Diritto dello Sport, 352.

[24] FERRARA, L. (2007). L'ordinamento sportivo: meno e più della libertà privata, Journals. Diritto pubblico. Issue 1/2007

[25] Perez, R. (1988). Disciplina statale e disciplina sportiva nell'ordinamento dello sport. Studi in onore di Massimo Severo Giannini, vol. I, Milano, 507 ss.

also prohibiting recourse to ordinary courts; the well-founded doubt arises that this may conflict with the right to judicial protection under Articles 24 and 111 of the Constitution.[26]

On the other hand, there have always been interferences from the State within the sports system: think of the laws promoting sport, such as the various so-called Stadium Laws that have been enacted over the years.[27] The State has intervened directly within the sports system also to protect and safeguard constitutionally guaranteed fundamental rights: for example, with Law No. 12/2016, the possibility for minors of foreign citizenship, but residing in Italy from the age of ten, to be registered as if they were Italian citizens was established. The Legislature had to intervene, given CONI's silence, to address a situation of imbalance among foreign minors according to the principles of equality and equal treatment under Articles 2 and 3 of the Constitution, which are independent of citizenship.

Based on the considerations made so far, through the contributions of doctrine and jurisprudence, the so-called principle of specificity has been elaborated, which until 2006 (Meca-Medina Judgment), allowed sport to enjoy a particular legal regime under EU law. As will be seen later, from the 1970s, the jurisprudence began to take an interest in the relationship between the state system and sport, in particular, bringing sports activities within the sphere of community law, where they constitute an economic activity within the meaning of Article 2 of the EC Treaty.

Instead, the principle of specificity was recognized by the Commission for the first time in the Helsinki Report on sport in 1999[28], which, starting from the general interest social function of sport and the threats posed by sport, such as increased popularity, its internationalization, and the unprecedented development of its economic dimension, summed up in the last section "Clarifying the legal environment of sport": *"(...) While the Treaty contains no specific provisions on sport, the Community must nevertheless ensure that the initiatives taken by the national State authorities or sporting organisations comply with Community law, including competition law, and respect in particular the principles of the internal market (freedom of movement for workers, freedom of establishment and freedom to provide services, etc.) (...)"*

Always with a view to protecting the social function of sport, the Commission called for a dual intervention by the Community and the Member States, in compliance with the Treaty, especially with the principle of subsidiarity, and the autonomy of sporting organizations: thus, the principle of

[26] De Marzo, G. (2003). Ordinamento statale e ordinamento sportivo tra spinte autonomistiche e valori costituzionali. Corr. Giur., 1254.

[27]New Stadium Law is D.lgs. 28 February 2021, n. 38, Implementation of article 7 of Law 8 August 2019, n. 86, containing measures concerning the reorganization and reform of safety rules for the construction and operation of sports facilities and regulations concerning the modernization or construction of sports facilities.

[28]Final Report From The Commission To The European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework - The Helsinki Report on Sport - 10.12.1999 COM(1999) 644 final

specificity, so much claimed by the sports system, was expressly recognized, which would later be reiterated in the Nice Charter of 2000.[29] The specificity finds a formal expression in the White Paper on Sport, although it seems significantly downsized, which is why the Commission, following the jurisprudence, concluded in the following years that the specificity of sport must continue to be recognized, but "*(...) cannot be understood in a way that justifies a general exemption from the application of EU law (...)*". One of the major issues, vigorously debated in doctrine, concerns the jurisdiction attributed to the State by Article 117 of the Constitution. The relationship between sports justice and the state, as anticipated earlier, is controversial because the former operates according to its own rules, claiming as much autonomy as possible from the latter.[30]

Without delving into doctrinal debate, it is necessary to mention the clarifying intervention of the legislature, often dictated, as often happens in Italy, by an urgent situation. Law No. 280 of 2003 intervened to codify what until then had been established by doctrine and jurisprudence trying to fill the normative vacuum, and expressly recognized its "*autonomy*." Article 1, paragraph 1, establishes that "*The Republic recognizes and promotes the autonomy of the national sports system, as an articulation of the international sports system headed by the International Olympic Committee*". Paragraph 2, in turn, provides that: "*The relations between the sports system and the Republic's legal system are regulated based on the principle of autonomy, except in cases relevant to the legal system of the Republic of subjective legal situations connected with the sports system.*" The law, therefore, recognizes the status of autonomy of the sports system.

In the meantime, it is necessary to remember that, at the European level, as anticipated above and as will be seen in detail, there was no direct reference to sport and even after the reform of the Lisbon Treaty, all issues relating to the relationship between the two systems remained unresolved. In this context, the case law of the Court of Justice had tried to find a solution to balance the interests involved in the field of sport, considering that state jurisdictional interference could be justified when not only sporting interests are at stake, but also economic and legal interests of relevance. This could legitimize the intervention of national courts and, possibly, also of European courts, to correct violations of the legal rights of the subjects affected by decisions taken by sports institutions. However, the application of this principle could entail the recognition of an "irrelevance principle" for technical issues related to the sporting result on the field, considered therefore irrelevant to the general legal system and outside the jurisdiction of the ordinary judge.

[29] Leone, L. (2006). La promozione dello sport in ambito internazionale ed europeo. Giustiziaamministrativa.it, (III).

[30] For further insights, see G. Vidiri (2003). Organization of competitive activity, autonomy of the sports system, and Legislative Decree No. 220 of 2003. In Giustizia Civile, II, 509+; F. Ghignone (2006).

Regarding judicial instruments, it must be recognized that while sports justice bodies enjoy broad autonomy, the general and essential regulation of these bodies has been prepared by the national legislature.[31] On this point, the Constitutional Court, following the referral of the matter by the Lazio Regional Administrative Court, through an interpretative rejection judgment (no. 49 of 2011), deemed the rule to be in accordance with constitutional dictates. The constitutional judges confirmed the legitimacy of the rule regarding the reservation on technical rules disputes, while, as for the so-called disciplinary issues, the subject of the question of constitutional legitimacy, they clarified that the reservation in favour of sports justice bodies in disciplinary matters implies the exclusion of full jurisdiction, or demolishing, by the administrative judge; whereas, the jurisdiction of a compensatory nature remained the competence of the ordinary judge.

In conclusion, considering the previous observations, it must be agreed that the sports system is deeply integrated into the state system, both from a regulatory and organizational-judicial point of view. From a regulatory point of view, as already highlighted, the national and regional legislative power confers a clear power of normative action on sports law, which is not compatible with any form of separation from the latter. On the organizational side, it is important to note that the national sports system is based around a semi-state public body like the Italian National Olympic Committee (CONI), which is subject to supervision by the Presidency of the Council of Ministers. CONI has regulatory and control powers over the Federations, which implies that the entire sports organizational system depends largely on the regulatory acts and decisions of a public body.

Also, regarding judicial instruments, despite the considerable autonomy granted to sports justice bodies, it is always the national legislature that dictates the essential guidelines of the system. However, it should be noted that sports organizations enjoy extensive regulatory power, which gives them a certain normative autonomy. Furthermore, it should be emphasized that the autonomy of sports justice does not exclude state intervention but can represent a limit to state interference, provided that suitable criteria are identified to preserve a core of autonomy.

The main problem does not concern separation or integration, but concerns the definition of the methods, contents, and limits of integration between the general legal system and the sports system. This implies a reflection on the relationships between the two systems and how to reconcile state interference with the specific needs of the sports world. The issue does not concern purely sporting activities, always permitted within legal limits, but concerns issues relevant to both legal systems, where there is possible overlap. A response could come from the principle of proportionality, which contains rigorous criteria (suitability, necessity, and strict proportionality), useful for identifying

[31] G. Manfredi. Plurality of systems and judicial protection. The relationships between state justice and sports justice. Ibid.

constant parameters in the relationships between the two systems. Proportionality could justify the safeguarding of the sports system while ensuring respect for general regulations. It is necessary to evaluate whether the criteria of proportionality are effective in solving the main problems related to the relationships between the general legal system and the sports system, and whether they are able to provide a stable and satisfactory framework, compatible with the general needs of the system. This must be considered from at least two perspectives: as a limit to excessive state (or regional) interference, especially regarding public interventions aimed at regulating sports law; or as a limit to exceptions granted to sports law, which could compromise rights and subjective situations recognized by the general legal system.

Moreover, it is important to consider European law, according to which the principle of proportionality is one of the indispensable parameters in the exercise of its competences, as provided for in Article 5, paragraph 1, last paragraph, TEU[32], and, therefore, also in relation to the sports world. An analysis of the community landscape can offer useful insights to address problems similar to those at the national level.

1.1.2. Sports Regulation: The Relationship With Case Law And European Legislation

In the European landscape, the phenomenon of sports was initially narrowed down and confined solely to its economic dimension, reducing it to a mere market sector[33], almost to justify the fact that the autonomy of sports regulation disregarded certain fundamental points of European legislation. Even before the 1970s, the Court of Justice had applied community law, particularly the provisions on freedom of movement and competition, to sports activities with economic relevance.

This approach justified the autonomy of sports regulation, at least regarding technical-sporting rules, which were essentially exempt from the application and scrutiny of community law.

For example, in the 1974 case of Walrave and Koch v. International Cycling Union[34], the ECJ included sports activity within the scope of community law as an economic activity under Article 2 of the Treaty CE, or at most, in cases of employment relationships, within the scope of Articles 48-51 or 59-66 of the Treaty.

This economic perspective was also confirmed in the Donà[35] case. The Court, as it had already established in the 'Walrave' judgment, clarified that "*(...) the practice of sport is subject to Community law only insofar as it constitutes an economic activity within the meaning of Article 2 of the Treaty*

[32] "The exercise of Union competences is based on the principles of subsidiarity and proportionality."

[33] J. Zylberstein (2008). The specificity of sport in the European Union. Journal of Sports Law and Economics, IV(1).

[34] Judgment of the Court of 12 December 1974. B.N.O. Walrave and L.J.N. Koch v Association Union cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo.

[35] Judgment of the Court of 14 July 1976. Gaetano Donà v Mario Mantero.

(...)".[36] The economic aspect is evident in the work of professional or semi-professional athletes, who engage in subordinated work activities or provide remunerated services. This fully confirms that sports become relevant to community rules when they can be considered an economic activity.

In the 1990s, there was an advancement in community case law. There was no clear change in direction, but the Bosman case[37] had fundamental consequences, which, unlike all previous decisions, did not only concern technical-sporting regulations but also had clear and preeminent economic aspects.

During the period when UEFA, the European football's governing body, operated entirely autonomously and independently from EU organs and laws, and when football began to assume a prominent role in Europe not only culturally and as a mass phenomenon but also economically with the entry of television rights, Advocate General Lenz had sensed the importance and the echo that such a judgment would have, especially considering that the previous case law was not applicable to the case.[38] In particular, the issue concerned the conflict between Articles 48, 85, and 86 of the Treaty of Rome (TCE) prohibiting any restriction on free movement, and UEFA's transfer rule, which imposed the so-called transfer fees, preventing professional footballers from playing for a club in another Member State at the end of their contract unless the latter club paid a transfer, training, or development fee to the former club. Furthermore, the issue concerned the conflict of these articles with the rules dictated by national or international sports associations or federations limiting the registration and use on the field of foreign players from adhering countries.

The Court, following the Advocate General's considerations, initially clarified that Article 48 of the Treaty therefore applies to rules laid down by sporting associations such as URBSFA, FIFA, or UEFA, which determine the terms on which professional athletes can engage in gainful employment. Regarding the substance, the judges ruled that Article 48 of the Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training, or development fee.

Regarding the second issue, namely the rules of national and international federations and associations concerning the registration and use of foreign citizens, the Court ruled that Article 48 of

[36] N. 12 of the Judgment.

[37] Judgment of the Court of 15 December 1995. Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman.

[38] "The importance of this proceeding is evident. The solution to the question of the compatibility of the transfer system and the rules concerning foreigners with community law will have repercussions on the future of professional football in the Community."

the Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States. But there is another fundamental aspect that was cautiously advanced by the Advocate General but on which the Court did not rule, namely the compatibility of sports rules with Articles 85 and 86 TCE (now 101 and 102 TFEU) which regulate competition. In fact, despite the Court of Justice not pronouncing on the matter, in its conclusions, the Advocate General emphasized how the rules in question could hinder competition among companies through the engagement of footballers. Furthermore, he introduced, without delving into it, the problem of collective dominant position that could be established in the companies. The Court, as anticipated, did not pronounce on the issue, but it was the first time that the relationship between sport and competition law was highlighted.

The periods following the Bosman decision are crucial in the evolution of the relationship between the world of sports and EU law. In that period, attention grew on the problem of compatibility with community law of federal regulations even for amateur sports and individual sports[39], as in the Case Christelle Deliège v Ligue francophone de judo et disciplines associées ASBL.[40]

Mrs. Deliège, after being excluded from an international judo competition by her Federation due to previous placements, believed that the fact that the Federation had to authorize participation in an international competition violated her rights to the free provision of services under Article 59 TCE, now Article 49 CE.

In a preliminary ruling on the dispute, the court recalled that rules limiting the number of participants in a tournament are inherent in the conduct of an international sports competition, which necessarily involves the adoption of selection criteria. Therefore, the selective criteria for participation in such events fall within the competence of the organizations, federations, and associations of professional athletes concerned.[41]

According to the Court, the principle of selection does not hinder the free provision of services, unless the selective criteria lead to discrimination based on European law principles. A few days after this judgment, a new case came before the Court, the Lehtonen case, allowing it to make further jurisprudential progress.[42] Specifically, the actor, a professional basketball player, asked the Court to rule on the compatibility between the principle of free movement of workers and federal regulations

[39] Morzenti Pellegrini, R. (2007). Ibidem

[40] Judgment of the Court of 11 April 2000. Christelle Deliège v Ligue francophone de judo et disciplines associées ASBL, Ligue belge de judo ASBL, Union européenne de judo (C-51/96) and François Pacquée (C-191/97).

[41] Point 67 and 68 of the Judgment of the Court 11 April 2000.

[42] Judgment of the Court (Sixth Chamber) of 13 April 2000. Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB). Reference for a preliminary ruling: Tribunal de première instance de Bruxelles - Belgium.

prohibiting teams from fielding players signed after a certain date. The Court, again in the ruling, considered that such rules constitute an obstacle to the free movement of workers but that this rule did not pertain to the economic sphere but solely to the sporting one. These terms were understood by the judges as necessary to ensure the regularity of competitions, justifying, therefore, a derogation from the principle of free movement of workers.

Indeed, in both the Deliège and Lehtonen cases, among the preliminary issues, there was a reference to Articles 81 and 82 of the EC Treaty, now Articles 101 and 102 of the TFEU, namely to the possible anti-competitive effects of the norm subject to the case, which, however, the Court deemed inadmissible due to lack of information provided by the referring judges.

Furthermore, in this regard, no signals of any kind were received from the Community institutions, which had left to jurisprudence the task of interpreting sports regulations from the perspective of community law. The first signal came in 2003: following a surveillance procedure, the Commission imposed on the FIA (Fédération Internationale de l'Automobile) compliance with competition law, also considering its significant economic importance.

In 2006, with the Meca-Medina judgment, a clear shift in the jurisprudence of the European Court was observed, which, contrary to previous directions, declared a regulation within the competence of the sports system, in particular a technical regulation on doping, conflicting with community law, specifically with the regulations on competition, if the sanctions it provided were not justified by a legitimate objective or were not proportionate to its achievement.

The scope of the judgment is broader than mere doping regulations: essentially, it is stated that sports law is also subject to scrutiny from the perspective of European Union law, and its compatibility must be assessed using the same criteria provided for regulations governing any other economic activity.[43]

The case concerned two professional swimmers, Mr. Meca-Medina and Mr. Majcen, who tested positive for Nandrolone during an anti-doping test conducted during the World Championships and were suspended for 4 years by FINA (Federation Internationale de Natation), reduced to 2 by the Court of Arbitration for Sport in Lausanne. The athletes turned to the European Commission, complaining about the conflict of certain regulations adopted by the IOC and thus applied by FINA with Articles 81 and 82 of the EC Treaty; the Commission rejected the appeal, arguing that the doping regulation, being of a technical-sporting nature, did not fall within the scope of the prohibition provided for in Articles 81 and 82 of the EC Treaty[44].

[43] S. Bastianon (2017). From Cassis de Dijon to Meca Medina: the specificity of sport between prohibitions and derogations in EU law. In European Union Law Journal, 3/2017, 418.

[44] "*Les règles définissant le dopage (...) empêchent d'exercer leur sport et d'exercer ou d'attirer les activités économiques y afférentes comme le sponsoring. Ces règles pourraient donc avoir pour effet de limiter la liberté d'action de l'athlète qui pourrait être qualifié d'entreprise au sens de l'article 81 du Traité. Cependant, une limitation de la liberté d'action*

Following the rejection, the two athletes turned to the Court of First Instance to request the annulment of the sanction, which, as expected, confirmed what was said by the Commission in accordance with the constant jurisprudence principles of the Court.

The Court, in fact, not seeing any economic objective in the anti-doping regulation, could only comply with what was decided by the Commission.[45] An appeal was thus filed before the Court of Justice, accusing the Commission of considering, on the one hand, that the IOC was not an undertaking within the meaning of Community case law, on the other hand, that the controversial anti-doping regulation did not constitute a restriction of competition within the meaning of Article 81 EC, and finally, that their complaint did not contain facts that could lead to the conclusion that a violation of Article 49 EC[46] could have occurred.

In the judgment, the Court preliminarily referred to previous case law, in particular confirming that sporting activities fall within Article 2 of the EC Treaty (now incorporated into Article 3 of the current TEU) and acknowledged that the Court of First Instance had made a legal error in holding that

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n'est pas nécessairement une restriction de concurrence au sens de l'article 81, car une telle limitation peut être inhérente à l'organisation et au bonne déroulement de la compétition sportive. (...) En effet, aux fins de l'application de cette disposition à une cas d'espèce, il y a lieu tout d'abord de tenir compte du contexte globale dans le quel la décision de l'association d'entreprises en cause a été prise ou déploie ces effets (...) de ses objectifs, liés en l'occurence à la nécessité de concevoir des règles d'organisation, de qualification, de déontologie, de contrôle et de responsabilité qui procurent la nécessaire garantie d'intégrité et d'expérience aux consommateurs finaux des services juridiques et à la bonne administration de justice. (...) Le contexte globale dans le quel une décision a été prise et déploie ses effets doit être pris en compte. Pour autant qu'il y ait un effet limitant la liberté d'action des athlétes, il convient d'examiner si les règles antidopage aussi bien celles établies par le C.I.O. que celles de la FINA font partie de cet ensemble (...). Comme l'ont récemment confirmé (...) la nècessiteé de reègles antidopage dans le sport est incontéstée (...) afin d'éviter des états ou disciplines "paradis" pour les athlètes ayant recours à des substances dopantes. L'objectif général des règles antidopage est de lutter contre le dopage en vue d'un déroulement loyal de la compétition sportive".

The rules defining doping (...) prevent athletes from exercising their sport and from engaging in or attracting related economic activities such as sponsorship. These rules could therefore have the effect of limiting the athlete's freedom of action, who could be considered an enterprise within the meaning of Article 81 of the Treaty. However, a limitation of freedom of action is not necessarily a restriction of competition within the meaning of Article 81, as such a limitation may be inherent in the organization and proper conduct of sports competition. (...) In fact, for the application of this provision to a specific case, it is first necessary to take into account the overall context in which the decision of the association of undertakings in question was made or has its effects (...) of its objectives, linked in this case to the need to design rules of organization, qualification, ethics, control, and responsibility that provide the necessary guarantee of integrity and experience to the final consumers of legal services and to the proper administration of justice. (...) The overall context in which a decision is made and has its effects must be taken into account. Provided that there is a limitation on the freedom of action of athletes, it is necessary to examine whether the anti-doping rules, both those established by the IOC and those of the FINA, are part of this set (...). As recently confirmed (...) the need for anti-doping rules in sport is undisputed (...) to avoid situations or disciplines that are "paradises" for athletes using doping substances. The general objective of anti-doping rules is to combat doping for the fair conduct of sports competition.

[45] At point 42 of the Judgment, the Court refers to the conclusions of the Advocate Generals in the main cases including Bosman and Deliège.

[46] The appellants advanced three pleas in support of their action. They criticised the Commission for having found, first, that the IOC was not an undertaking within the meaning of the Community case-law, second, that the anti-doping rules at issue were not a restriction of competition within the meaning of Article 81 EC and, finally, that their complaint did not contain facts capable of leading to the conclusion that there could have been an infringement of Article 49 EC.

Community law did not apply to the anti-doping regulation. For the first time, it was admitted that even a rule considered to be of a technical-sporting nature, despite having no economic aspect, should be subject to Community law, specifically regarding competition. In holding that rules could thus be excluded straightaway from the scope of those articles solely on the ground that they were regarded as purely sporting with regard to the application of Articles 39 EC and 49 EC, without any need to determine first whether the rules fulfilled the specific requirements of Articles 81 EC and 82 EC, as set out in paragraph 30 of the present judgment, the Court of First Instance made an error of law.[47]

In fact, the Advocate General had also expressed, in his conclusions, opinions consistent with previous case law and with what had been asserted by the Court and the Commission.

In particular, the Court, referring to the Wouter judgment[48] established that the compatibility of rules with the Community rules on competition cannot be assessed in the abstract but must be analyzed on a case-by-case basis, taking into account the global context.

The assessment of the compatibility of a sports rule with European Union antitrust law follows a methodological approach outlined by the Court of Justice in the judgment, also invoking the Wouters judgment. According to this approach:

a) Firstly, it is necessary to determine whether the sports association that has issued the rule in question can be considered an undertaking or an association of undertakings within the meaning of Articles 101 and/or 102 of the Treaty on the Functioning of the European Union (TFEU). This implies that the sports association must engage in economic activity on its own account or its members must be undertakings engaged in economic activity.

b) If the answer is affirmative, the next step is to verify whether the contested rule restricts competition within the meaning of Article 101(1) of the TFEU or constitutes an abuse of a dominant position within the meaning of Article 102 of the TFEU. To this end, it is necessary to: i) consider the general context in which the rule was adopted or has its effects, as well as its objectives; ii) assess whether the restrictive effects on competition are proportionate to the pursuit of those objectives.

c) If the answer is negative, it must be examined whether the rule in question could nevertheless prejudice trade between Member States.

d) In case of a positive answer, finally, it is necessary to verify whether the four conditions established by Article 101(3) of the TFEU are met.

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[47] Already from the Court's preamble at point 27, the legal error committed by the Court was apparent: "*It is apparent that the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down.*"

[48] Judgment of the Court of 19 February 2002. J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten, intervener: Raad van de Balies van de Europese Gemeenschap viene richiamata dal punto 40 in poi.

Therefore, even if the anti-doping rules at issue are to be regarded as a decision of an association of undertakings limiting the appellants' freedom of action, they do not, for all that, necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, since they are justified by a legitimate objective. Such a limitation is inherent in the organization and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.

Indeed, the judges argue that it must be acknowledged that the penal nature of the anti-doping rules at issue and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in. It follows that, in order not to be covered by the prohibition laid down in Article 81(1) EC, the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport.[49]

In the present case, according to the Court, the athletes did not concretely demonstrate that the doping rules were disproportionate to ensure the objectives pursued by such regulations, namely fair competition, equal opportunities, athletes' health and integrity, as well as the objectivity of the competition and the ethical values of sport.[50]

Since the appellants have, moreover, not pleaded that the penalties which were applicable and were imposed in the present case are excessive, it has not been established that the anti-doping rules at issue are disproportionate and, therefore, the Court concludes by dismissing the appeal.

This judgment completely reformulated the concept of the "*sports exception*" as previously interpreted, leaving confusion regarding the economic value of sports activity, which served as a criterion in applying the so-called sports exception. Consequently, even the principle of specificity underwent a clear downsizing compared to how it was previously recognized.

Indeed, the Court did not explain why a technical rule falls within the competence of Community law, but it nevertheless analyzed such a rule from the perspective of community antitrust regulations.

The importance of the judgment is also due to the debates it sparked. Indeed, the Court left numerous questions unresolved: it did not bother to provide a criterion in the application of the principle of proportionality to sports sanctions, nor did it provide a new criterion for assessing the applicability of community discipline to sports rules.

Beyond the criticisms that can be levelled at this judgment, all the principles contained therein were then included in the White Paper of 2007, which cites a passage from the judgment stating that *"(...)*

[49] Point 47.

[50] Point 43.

whether a certain sports rule is compatible with EU competition rules can only be assessed case by case, as recently confirmed by the European Court of Justice in its judgment on the Meca Medina case. The Court has provided clarification on the effects of EU law on sports rules, rejecting the notion of [purely sports rules] as irrelevant to the question of the applicability of EU competition rules to the sports sector (...)".

The White Paper also includes a list of organizational rules of sport which, given the objectives pursued, do not violate the antitrust provisions of the EC Treaty:

- the so-called "rules of the game" (e.g., rules setting the length of matches or the number of players on the field);
- rules relating to selection criteria for sports competitions, on national races or "home" or "away" matches;
- rules prohibiting the accumulation of company ownership;
- regulations relating to doping;
- rules regarding transfer periods.

While European case law has been analyzing the legal aspects of sports since the 1970s, it wasn't until 2007 that formal recognition of sport was found in the primary sources of European law, as European institutions lacked specific competence in the sports sector. Indeed, before the Lisbon Treaty, sport was encompassed within the scope of Article 2 of the EC Treaty so that all aspects not regulated by that article were considered specific features of sport, giving rise to the previously analyzed sports exception.

In fact, in the Treaty of Amsterdam, signed on 2 October 1997 and entered into force on 1 May 1999, the social value of sport was recognized[51], but in the form of a declaration and, therefore, non-binding for the Member States.

Furthermore, the failure of the European Constitution to enter into force further postponed the sports issue: the Constitution text contained an explicit reference to the sports phenomenon and attributed full competence to the EU institutions in that matter. Thus, the European panorama, at the beginning of the new millennium, regarding sports was rather confusing. Sport did not have recognition in any Treaty, and the bodies of the European Union did not have specific competence in the matter, but indirectly, the sports phenomenon was already being addressed, and especially the Court of Justice, as seen before, had made a fundamental contribution in this regard. In this context, sport had acquired a fundamental character in almost every sector of the Union: think of the importance that sports such as football, MotoGP, or Formula 1 had begun to assume at the social level, but above all economic, due to television rights and sponsors.

[51] Declaration on Sport - Annex No. 29 to the Treaty of Amsterdam.

Thus, on July 11, 2007, after more than three years of work, the White Paper on Sport was published, one of the European Commission's main contributions to the theme of sport, aiming to recognize the impact which sport can have on other EU policies. It has also identified the needs and specific characteristics of the world of sport. It has opened up future prospects for sport at EU level, while respecting EU law, the principle of subsidiarity, and the independence of sports organisations.

This was the first "global" initiative on sport undertaken by the Commission.

The White Paper addresses three themes:

- the "*social role of sport*" i.e., the importance of sport as a social phenomenon;
- the "*economic dimension of sport*" that is, the contribution of sport to growth and job creation in Europe;
- the "*organization of sport*" namely the role of the public, private, economic operators, and sports organizations in the governance of various sports sectors.

The first chapter, focused on the social role of sport, provided a broad view of sport and was not limited to its mere economic relevance.[52] The second chapter, instead, returned to the well-known economic dimension of sport, emphasizing its significant impact on the European market.[53]

The Commission highlighted how an increasing part of the economic value of sport was linked to intellectual property rights, such as copyrights, commercial advertising, registered trademarks, image and broadcasting rights, and radio and television broadcasting rights. Sports associations had various sources of income, from membership fees to ticket sales proceeds, from advertising to sponsorships, from broadcasting rights to merchandising, and from profit redistribution within federations to public aid. Despite the economic importance of sport, most sports activities took place in non-profit structures. Therefore, for amateur sports, equal opportunities and open access could only be guaranteed through public participation, provided it complied with EU law. However, the Commission did not limit itself to discussing compatibility with sports regulations but also specified the need for compliance with European law.

In the third chapter, the Commission attempted to discuss the organizational profile in sport[54], but especially analyzed the so-called principle of sports specificity, trying to provide a criterion to delineate the boundaries between what falls within European regulations and what remains outside.

Thus, formal legal recognition was given to the principle of specificity, as the Commission recognized the autonomy and self-management of sports representative bodies but emphasized that these could

[52]Parrish, R. & Miettinen, S. (2008). The sporting exemption in European Union Law, The Hague.

[53]Point 51.

[54] Point 51.

not ignore compliance with European Union law. Sport has certain specific characteristics, which are often referred to as the "*specificity of sport*".

The specificity of European sport can be approached through two prisms:

- the specificity of sporting activities and of sporting rules, such as separate competitions for men and women, limitations on the number of participants in competitions, or the need to ensure uncertainty concerning outcomes and to preserve a competitive balance between clubs taking part in the same competitions;
- the specificity of the sport structure, including notably the autonomy and diversity of sport organizations, a pyramid structure of competitions from grassroots to elite level and organized solidarity mechanisms between the different levels and operators, the organization of sport on a national basis, and the principle of a single federation per sport;

In essence, the specificity of sport does not correspond to a general exemption from EU law but is relative. The principle expressed in the Meca-Medina judgment is taken up again, namely that the sports exception cannot be applied using the criterion of purely sporting rules, but an analysis of the fundamental principles of the EU must be carried out on a case-by-case basis, with an explicit reference to the competition principle: *"(...) however, in respect of the regulatory aspects of sport, the assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis, as recently confirmed by the European Court of Justice in its Meca-Medina ruling (...)".*

The White Paper was not received with the expected enthusiasm because many argued that it denied the principle of specificity[55], so the autonomy of sport was recognized in a primary law provision in 2007 with the Lisbon Treaty.[56]

Article 149 of the Treaty (now replaced by Article 165 TFEU) reads as follows: *"(...) (a) in paragraph 1, the following subparagraph shall be inserted: The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function (...)".*

Furthermore, in Article 6 of the TFEU (Treaty on the Functioning of the European Union), among the areas in which the European Union has competence to take actions intended to support, coordinate, or supplement the action of the Member States, sport has been included. In fact, the Lisbon Treaty did not grant sport the much-hoped-for autonomy. Indeed, the fact that there is no specific reference to the economic value of sport seems to confirm that the economic value is already within

[55] J. Tognon (2003). Law and policies of Sport in the European Union, 81-85. For further insights, see J. Tognon, Sport and the Treaty of Lisbon: The unresolved problem of specificity.

[56] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007

the European principles contained in the Treaty provisions, in particular in Article 2 of the EC Treaty. The main novelty consists in the inclusion of the sports sector within the scope of supranational legal protections, with particular attention to the various aspects of sport.

On the one hand, the specificity of sport is reiterated, while on the other hand, the European Union is entrusted with the task of safeguarding its social and educational function, promoting equity and openness in sports competitions, and protecting the physical and moral integrity of athletes. This detailed listing of tasks reflects the complexity of the non-economic function of sport.

Sport is therefore considered globally by the European legal system, considering that the economic aspect is already subject to general European discipline. However, the regulatory complexity concerning sports activities requires identifying the predominant function in each specific case to correctly frame the sporting activity itself. The new provision introduced by the Lisbon Treaty seems to recall the principle expressed by the Court in the Meca-Medina case, namely the need for a case-by-case analysis.

1.2. Antitrust Regulation

Considering what has been said so far, it becomes necessary to analyze the current competition regulations in force in Italy, harmonized by Community Law, and in the United States, in order to identify their roots and developments, and, additionally, the similarities and differences that characterise both disciplines. The "*right to competition protection*" originates from the "*Treaty establishing the European Economic Community*" (EEC Treaty), signed in Rome in 1957, and was considered a fundamental objective of the EU. With the aforementioned Lisbon Treaty of 2007, the reference to competition protection, previously contained in Article 3, letter g), of the EC Treaty, was eliminated from the principles part of the Treaty on the Functioning of the European Union (TFEU). Article 3, paragraph 3 TEU, currently in force, emphasizes how the EU, with its internal market, strives for the sustainable development of Europe, based on balanced economic growth, price stability, and a highly competitive social market economy, aimed at full employment and social progress. All economic sectors are subject to the provisions of competition law, with the only exception being the agricultural sector, while other economic sectors subject to different rules are insurance and transport. The purpose pursued by the regulation is the so-called model of perfect competition aimed at achieving the highest possible level of economic and social welfare. However, reality is radically different as it is affected by objective and subjective problems such as the uneven distribution of natural resources or the significant investments required, which push the market further away from the ideal model.

It can be affirmed that all European legislation is based on the fundamental principle that the freedom of economic initiative and competition among enterprises cannot justify acts and behaviours that significantly prejudice the competitive structure of the market. This principle is contained in Articles 101 and 102 TFEU and Regulations CE. 16-12-2003 no. 1 and 20-1-2004 no. 139. The regulation is directly applicable to Italian companies and aims to protect only the European market under the supervision of the European Community Commission, which adopts the necessary measures and imposes pecuniary sanctions. The application of this regulation is delegated to national authorities, unless the Commission decides to deal with it personally, and concerns private enterprises, public enterprises, and those with predominant state participation; it is interesting to note that in the notion of enterprise, developed by European jurisprudence, intellectual professionals also fall, which are not entrepreneurs according to Italian law.[57]

The aforementioned principle was only incorporated into Italian legislation in 1990. In fact, as far as Italy is concerned, the recognition of the freedom of private economic initiative and the consequent freedom of competition finds its protection in the Constitution, in Article 41. But such recognition is a necessary but not sufficient condition: it is necessary to introduce legislation to protect competition that prevents the formation of monopoly or near-monopoly situations. It is therefore essential to reach a balance between the utopian model and reality, and to achieve this goal, the legislator:

- allows legal limitations on the freedom of competition for purposes of social utility, as also provided by Article 41, paragraph 3 of the Constitution, or the creation of legal monopolies in specific sectors under Article 43 of the Constitution;
- allows negotiated limitations on competition, i.e., limitations established by the parties, always respecting the aforementioned constitutional principles;
- protects competition by repressing acts of unfair competition.

Italian legislation was distinguished by being lacunary in antitrust matters aimed at controlling abuses, especially when compared to other legal systems such as the United States, which had detailed regulations for more than a century (Sherman Act of 1890), which will be analyzed later. The law of October 10, 1990, no. 287[58] intervenes to satisfy this need also in Italy where only Community legislation that protected only the European market was applied, with no provisions regarding the Italian internal market. Italy, in fact, was the last of the Community countries to adopt antitrust legislation, and it did so only when the adoption of protection in this area was no longer postponable.

[57] Note that Italian and EU antitrust law also applies to intellectual professionals and artists; this is true only for antitrust law.

[58] Law 10/1990, No. 287.

Historically, the origin of this phenomenon is identified from the fascist phase to the 1980s. During this period, Italy pursued a growth model characterized by strong state intervention in a context of structural weakness of the national production system. The State exercised control over the economy through two main modalities: the ownership and direct management of public enterprises and extensive regulation of private economic activity in various sectors. This development model was supported by a widespread cultural mentality among political forces, which tended to distrust the free market and instead relied on public intervention through state-owned enterprises and administrative regulations. This mentality preferred an interventionist approach rather than creating rules that would allow the market to operate freely. However, in the late 1980s, driven also by the influence of the European Commission and European integration, the limitations and inconsistencies of this model emerged in several member states, including Italy. In the latter, the State had an excessively broad role in managing and regulating economic activity. This context triggered a revaluation of the role of the State in the economy, gradually promoting the market as the main tool for regulating the behaviour of economic operators. In this context, the processes of privatization of public enterprises and liberalization of sectors previously subject to competition restrictions also fit.

Therefore, the entry into force of Law 287/1990 represented a real revolution in our legal system, effectively forcing Italy to move towards the adoption of principles of a free market economy. Despite its late introduction into the Italian legal system, Law No. 287/90 was nonetheless included among modern antitrust disciplines, aimed at protecting not only the competitive structure of the market but also economic efficiency and social welfare. In essence, according to national antitrust law, in a market economy, competition protection drives companies into constant competition, thus triggering a virtuous circle where innovation, progress, and efficiency are placed at the centre, generating countless beneficial effects for society as a whole.

In the context just described, the main purpose of antitrust law is to ensure the correct functioning of competitive dynamics in the local market and to prevent the competitive process from degenerating and preventing companies from using their power to eliminate competition from the market, through unilateral behaviours, so as to apply detrimental commercial conditions to consumers.

The relevant phenomena for national and community antitrust discipline are essentially three:

- restrictive agreements of competition, i.e., agreements, resolutions (by consortia, associations of companies or other similar entities), and concerted practices among companies, in cases

where they prevent, restrict, or distort competition significantly (Article 101 TFEU[59] or Article 2 of Law 287/90[60]);

[59] Art. 101 TFEU: "*The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:*
(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make 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."
"Any agreements or decisions prohibited pursuant to this Article shall be automatically void."
"The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
any agreement or category of agreements between undertakings,
any decision or category of decisions by associations of undertakings,
any concerted practice or category of concerted practices,
which contributes 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 which does not:
(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

[60] Art. 2 of Law 287/1990: "*1. Sono considerati intese gli accordi e/o le pratiche concordate tra imprese nonché le deliberazioni, anche se adottate ai sensi di disposizioni statutarie o regolamentari, di consorzi, associazioni di imprese ed altri organismi similari.*
2. Sono vietate le intese tra imprese che abbiano per oggetto o per effetto di impedire, restringere o falsare in maniera consistente il gioco della concorrenza all'interno del mercato nazionale o in una sua parte rilevante, anche attraverso attività consistenti nel:
a) fissare direttamente o indirettamente i prezzi d'acquisto o di vendita ovvero altre condizioni contrattuali;
b) impedire o limitare la produzione, gli sbocchi o gli accessi al mercato, gli investimenti, lo sviluppo tecnico o il progresso tecnologico;
c) ripartire i mercati o le fonti di approvvigionamento;
d) applicare, nei rapporti commerciali con altri contraenti, condizioni oggettivamente diverse per prestazioni equivalenti, così da determinare per essi ingiustificati svantaggi nella concorrenza;
e) subordinare la conclusione di contratti all'accettazione da parte degli altri contraenti di prestazioni supplementari che, per loro natura o secondo gli usi commerciali, non abbiano alcun rapporto con l'oggetto dei contratti stessi.
3. Le intese vietate sono nulle ad ogni effetto."
1. Agreements and/or concerted practices between undertakings as well as resolutions, even if adopted pursuant to statutory or regulatory provisions, of consortia, associations of undertakings and other similar bodies are considered agreements.
2. Agreements between undertakings which have as their object or effect the prevention, restriction or substantial distortion of competition within the national market or a substantial part thereof, including through activities consisting of:
(a) directly or indirectly fixing purchase or selling prices or other contractual terms;
(b) preventing or restricting production, market outlets or access, investment, technical development or technological progress;
(c) share markets or sources of supply;
(d) applying objectively different conditions to equivalent transactions with other trading parties so as to place them at an unjustified competitive disadvantage;

- abuse of dominant position that imposes prices or other unduly burdensome conditions, which limit or prevent production, outlets, or market access, which apply objectively different conditions for equivalent performances in commercial relations, which subordinate the conclusion of contracts to the acceptance of supplementary performances not related to the object of the contract;
- mergers between companies that occur when two or more companies merge to form a single company, when two or more companies, while remaining legally separate, become a single economic entity, when two or more independent companies form a joint corporate entity, in cases where they give rise to serious distortions of the competitive regime.

In any case, the freedom of private economic initiative and the consequent freedom of competition are freedoms disposed of in the general interest and cannot be exercised in contrast to social utility or in a way that harms the security, freedom, and human dignity, as provided in Article 41 of the Constitution.[61] This translates into the possibility for the legislature to restrict such freedoms for the purpose of social utility; examples in this regard include controlling access to the market by new entrepreneurs, implemented by subordinating the exercise of certain activities to concession or administrative authorization, as well as the detailed system of public control over the selling prices of strategic or widely consumed goods or services.

There is also the most extreme case of suppression of the freedom of initiative where the legislature, by ordinary law and for general utility purposes, creates public monopolies within the limits provided for by Article 43 of the Constitution[62], such as, for example, the fiscal monopolies of tobacco, national lotteries, and forecast contests. Clearly, in these cases, antitrust regulations do not apply but some

(e) making the conclusion of contracts subject to the acceptance by the other parties of additional services which, by their nature or according to commercial usage, bear no relation to the subject matter of such contracts.

3. Prohibited agreements are void for all purposes.

[61] Art. 41 of the Constitution : "*L'iniziativa economica privata è libera [2082 ss. c.c.].*

Non può svolgersi in contrasto con l'utilità sociale o in modo da recare danno alla salute, all'ambiente, alla sicurezza, alla libertà, alla dignità umana [2087 c.c.]

La legge determina i programmi e i controlli opportuni perché l'attività economica pubblica e privata possa essere indirizzata e coordinata a fini sociali e ambientali."

Private economic initiative is free [2082 ff. civil code]. It may not be carried out in conflict with social utility or in such a way as to be detrimental to health, the environment, safety, liberty or human dignity [2087 Civil Code]. The law determines the appropriate programmes and controls so that public and private economic activity may be directed and coordinated for social and environmental purposes.

[62] Art. 43 of the Constitution: "*A fini di utilità generale la legge può riservare originariamente o trasferire, mediante espropriazione e salvo indennizzo, allo Stato, ad enti pubblici o a comunità di lavoratori o di utenti determinate imprese o categorie di imprese, che si riferiscano a servizi pubblici essenziali o a fonti di energia o a situazioni di monopolio ed abbiano carattere di preminente interesse generale*."

For purposes of general interest, the law may originally reserve or transfer, by expropriation and subject to compensation, to the State, to public bodies or to communities of workers or users certain undertakings or categories of undertakings, which relate to essential public services or energy sources or monopoly situations and are of overriding general interest.

limits are placed on the protection of users, such as the principle of equal treatment among different applicants. However, the freedom of economic initiative is a partially available freedom since the Civil Code allows the conclusion of agreements restrictive of competition, provided that these respect certain rules, for example, the maximum duration of a restrictive agreement is 5 years.

Law 287/90 brought further innovation through the establishment of a specific independent public body: the Italian Competition Authority (AGCM), tasked with applying the discipline set by the aforementioned law 287/90, which has extended competence to all economic sectors and operates for various cases, depending on whether they involve agreements, abuses, concentrations, or administrative norms and provisions. The AGCM represented the first case of an independent administrative authority in the Italian legal system, which was seen as something completely innovative for the time. This body, in fact, still today is characterized by three aspects:

- it is completely detached from the political circuit: it is not subject, therefore, to controls by the Government, having to comply only with the law and with the administrative judge who pronounces on the legality of its measures;
- the exercise of the competences carried out is totally alien to the discretion that characterizes public administrations, as the basis of its decisions there is always an extremely strict control work, similar to that carried out by a judge;
- the exercise of its market control powers takes place in a peculiar way, assuming every decision after a hearing with the interested parties, who then have the right to become aware of the acts and documents of the proceeding that led to that decision.

The competition authority has extensive powers of investigation and inspection, adopts measures and imposes pecuniary administrative sanctions: against such administrative measures, an appeal can be brought exclusively to the Administrative Court of Lazio, while for the rest, the business court has jurisdiction. Under Law 287/90, it is known that in the national legal system, restrictions on free competition derive both from the actions that companies carry out on the market and from the intervention of public authorities in the functioning of the market. Under the first aspect, the AGCM supervises business activity by sanctioning restrictive agreements, abuse of dominant position, and concentrations, as mentioned above. These are interventions by the Authority aimed at combating any degeneration by economic operators to protect the competitive mechanism as such. In case these violations occur, the law attributes to the AGCM powers of ascertainment, inhibitory powers, and sanctioning powers. As mentioned earlier, Law 287/90 does not only deal with the behaviour of companies but also with the public regulation of the economy. The legislator, therefore, acknowledges the existence of regulatory or administrative measures that distort competition, providing a fundamental advisory role to the AGCM.

The tools with which the AGCM can intervene to ensure the regular conduct of competitive play and limit "public" restrictions are provided for in articles 21 and 22 of Law no. 287/90:

- under article 21, the AGCM is tasked with identifying cases of distortion of competition or the proper functioning of the market if these are not justified by requirements of general interest. In this case, the Authority reports these cases to Parliament and the President of the Council or, in certain cases, to the President of the Region and, in administrative cases, to the President of the Council, the competent Ministers, and the local authorities. Finally, the Authority can express itself on the initiatives necessary to remove or prevent such distortions;
- under article 22, instead, the AGCM can express opinions on legislative initiatives and issues concerning competition, both autonomously and at the request of interested public bodies or administrations.

The tools available to the AGCM to promote pro-competitive evolution have been significantly strengthened over the years. Specifically:

- Article 47 of Law 99/2009 introduced into the legal system the annual law for competition and the market. This is a law that must be proposed annually by the Government by March 31, with the aim of removing all regulatory obstacles, both normative and administrative, to market opening, promoting the development of competition, and ensuring consumer protection. It represents a fundamental innovation because it periodically binds the Government and Parliament to examine the interventions carried out by the Authority;
- Article 21-bis of Law 287/90 (introduced by Article 35 of Legislative Decree 2010/2011, known as the save-Italy decree, converted into Law No. 214/2011), granted the Authority the power to challenge administrative acts contrary to competition rules. This is a tool that offers great potential to strengthen actions against acts of the PA aimed at restricting or hindering competition: with this power, in fact, the acts subject to possible intervention are varied (tender notices, ministerial decrees, denials of authorizations or concessions, etc.);
- Article 4 of Legislative Decree No. 1/2012 (known as the grow-Italy decree, converted into Law No. 27/2012), which provides that the Presidency of the Council of Ministers collects reports from independent administrative authorities (therefore, primarily the AGCM) regarding restrictions on competition, in order to ensure the exercise of coordination initiatives by the Ministries and regulations in implementation of Articles 41, 117, 120, 127 of the Constitution. With this provision, since January 2012, a close collaboration has begun between the AGCM and the Presidency of the Council, where the former reports to the Government regional rules that are not justifiably restrictive of competition and therefore susceptible to challenge before the Constitutional Court.

According to the AGCM, all forms of coordination and cooperation between companies must be evaluated in light of the principle that, in a competitive system, each entrepreneur must enjoy the freedom to determine their conduct autonomously. If this principle is violated, total uncertainty about the future behaviour of competitors is obtained, with the risk of determining a series of uniform commercial practices that could compromise the normal course of economic competition.

Legislative prohibitions intervene both against horizontal agreements - i.e., between entities operating in the same phase of the production process - and towards vertical agreements - between companies operating at different levels of the same process.

From the beginning, horizontal agreements have represented the ground on which all antitrust legislation has had to intervene; this is because any type of agreement between entrepreneurs in direct competition presents particularly worrying aspects, as they are capable of causing the market the same effects that a monopoly situation could cause. However, it is not excluded that, in some cases of horizontal agreement, an agreement between companies can represent, especially for small and medium-sized enterprises (SMEs), a means to produce beneficial economic effects.

Regarding vertical agreements, according to Article 2 of Law 287/90, these are subject to the prohibition only episodically, such as when they produce effects attributable to a market and customer allocation. Starting from the postulate that vertical agreements represent a less serious threat to the free market compared to horizontal agreements, questions have been raised about their possible positive effects, leading to the conclusion that forms of cooperation between producers and distributors, realized through the use of restrictive contractual clauses, can bring useful recoveries to the contracting parties, partly transferable to the benefit of consumers and the system. One of the main advantages, as well as the fundamental objective of the utopian model, of the competitive system is to contribute to maintaining prices as low as possible. It is easily understood, therefore, the aversion of antitrust legislation towards all those horizontal concentrations aimed at influencing the price-setting process. Therefore, not only actions aimed at collectively determining prices are prohibited, but also those aimed at fixing minimum or maximum prices, hourly rates, discounts, or rebates. This prohibition also concerns horizontal agreements relating to "contractual conditions"; this expression refers to hypotheses intended to influence, through costs, the overall final price of the transaction.

As for vertical agreements on prices, instead, we rely on the emblematic case of the imposition of the resale price by the producers to the distributors of the product. Remaining on the subject of fixing the resale price, it must be said that the Guidelines on Vertical Restraints of 2010 by the Commission specify that companies have the possibility to demonstrate the existence of pro-competitive effects resulting from this type of agreement, identifying three possible cases where the fixing of the resale price may be economically justifiable:

- a company that launches a new product (with a justifiable price due to the high costs of product promotion);
- within a commercial operation characterized by low prices;
- in the presence of retailers providing certain pre-sale services. The offer of these services in favour of the consumer could decrease in the event that retailers that do not bear the cost of the service can offer a lower price for the same product.

1.2.1. Antitrust Regulation In The United States

The US antitrust law represents a crucial pillar of US economic policy, shaped by a series of historical events and socioeconomic concerns that have delineated the context in which it developed. The set of legal principles and regulations aims to promote economic competition and prevent the formation of monopolies or other forms of excessive concentration of economic power that could harm consumers and limit economic efficiency. The profound economic transformations of the late 19th century, driven by rapid industrialization and the growth of large industrial conglomerates, led to the introduction of antitrust law in the United States. During this period, due to a series of consolidations in various American industries, a limited number of companies dominated key sectors of the economy. The concentration of economic power raised concerns about free competition and its benefits for consumers and society as a whole.

These concerns found an initial response with the Sherman Antitrust Act of 1890, one of the first laws to address this issue. The Sherman Act was conceived as an attempt to protect economic competition by limiting the monopolistic power of "trusts", huge conglomerates of companies that controlled vast sectors of the American economy.

Senator John Sherman of Ohio, the main supporter of the act, described it as a weapon to "*(...) preserve public order and ensure healthy competition (...)*". This historical context reflected the concerns of the United States at the time regarding excessive concentration of economic power and the potential negative impact on economic democracy and market freedom. Consumer and small business interests were thus placed at the centre of antitrust law, as expressed in the Sherman Act, in order to balance the power of large companies.

The heart of the Sherman Act lies in its first two sections. Section I focuses on agreements aimed at restricting or distorting competition deemed unlawful at both contractual and criminal levels. Specifically,

- Section 1 of the Sherman Act reads:

  " (...) Section 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court(...)";[63]

- Section II, on the other hand, aims to prevent any attempt to monopolize the market. Indeed, it states:

  "(...) Section 2. Monopolizing trade a felony; penalty

  Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court (...)."[64]

The two sections of the Sherman Act are complementary, both aimed at preventing the consolidation of economic control by one or more entities in key sectors of the national economy.

After its enactment, legal scholars and economists immediately became interested in the subject, but the early years of antitrust law application in the United States were characterized by intense debates over the interpretation to be given to the text of the law concerning the declaration of any restriction of competition as unlawful and its practical implications. Specifically, the dialectical clash developed between those advocating for a strict application of the law and those, following the principle of "rule of reason", proposing to exclude restrictions that could have positive effects on the economy. Meanwhile, the US Supreme Court began applying antitrust law to key sectors, such as transportation and grain, but the real turning point came with the rise to power of President Theodore Roosevelt. Roosevelt, elected in 1901, made fighting monopolies one of his main objectives, arguing that the state should intervene to ensure the common welfare of the American citizen. Once in office, his administration took legal action against trusts, achieving significant results, as in the case of Standard Oil, Rockefeller's oil trust, whose breakup in 1911 represented a major precedent in US antitrust law, becoming known as "*the great trustbuster*". Standard Oil was indeed compelled to break up into about

[63] 15 U.S.C. § 1 (1890).
[64] 15 U.S.C. § 2 (1890).

thirty different companies, including Mobil and Exxon, which in 2000, for other reasons, would merge back into a single entity.

After the introduction of the Sherman Act, the landscape of antitrust law in the United States experienced various developments, both through legislative changes and through the interpretation and application of laws by courts and regulatory agencies.

Among these, the Clayton Antitrust Act of 1914[65] represented a significant step forward. In addition to confirming the prohibition of monopolistic practices such as price discrimination and tying contracts, which require the purchase of an unwanted product in order to buy another product from the same seller, the Clayton Act introduced a stricter scrutiny of corporate mergers to better control the phenomenon of illicit concentrations. This included a ban on mergers that could reduce competition or create a monopoly.[66] Furthermore, with a focus on controlling concentrations, the Clayton Act imposed restrictions on cross-ownership that could influence competition and prohibited executives from performing similar functions in competing companies.

To ensure a more rational application of antitrust laws, the Federal Trade Commission Act of 1914 established the Federal Trade Commission as an independent entity responsible for overseeing the application of laws and court decisions. Throughout the 20th century, antitrust law in the United States underwent a series of transformations to adapt to changing economic dynamics and emerging challenges. The advent of new technologies and industrial sectors, related to computing and high technology, raised questions about the application of traditional antitrust laws. Additionally, the globalization of the economy led to the need for closer international cooperation in the field of antitrust regulation. In addition to economic aspects, US antitrust law reflects fundamental social and political values in North American culture, such as the promotion of fair competition, consumer protection, support for small businesses, and the preservation of economic innovation. These values have deep roots in the history and culture of the United States, which place great importance on free enterprise, competitiveness, and economic justice.

In conclusion, antitrust law in the United States is based on historical concerns regarding excessive concentration of economic power and the importance of fair and open competition for the economic and social well-being of the country. Over the decades, this set of legal principles and regulations has continued to evolve to address new challenges and adapt to changes in the economic and

[65] Among the various novelties, the Clayton Act clarified the nature of labour unions, reaffirming the right to strike and the freedom of association of workers, and explicitly excluded unions from the application of antitrust laws. In this way, it put an end to disputes regarding the role of unions accused of hindering competition. In fact, some decisions of the Supreme Court, arousing numerous perplexities, had considered labour unions on par with agreements aimed at limiting competition. Consequently, in 1935, a specific law was adopted to rationalize this sector, thus ending the issue.

[66] In essence, it introduced a ban on mergers by acquiring shares or assets, where the operation may lead to a decrease or weakening of competition or the creation of a monopoly.

technological environment, while maintaining its fundamental commitment to promoting competition and protecting the interests of consumers and small businesses.

1.2.2. Comparative Legislation On Competition In Sports

If purely technical-sporting activities were considered exempt from antitrust control at least until 2006, following the Meca-Medina ruling, previously analyzed, activities related to sports and with increasing economic implications are undoubtedly subject to the scope of market economy rules, including those related to competition. The sector has been subject to the supervision of European institutions, first with respect to general European law, then with reference to competition law.

In the Helsinki Report, the Commission, in addition to reaffirming that " *(...) in terms of the economic activity that it generates, the sporting sector is subject to the rules of the EC Treaty, like the other sectors of the economy (...)*", began to understand the importance of the Treaty's competition rules to the sporting sector in relation to the specific characteristics of sport. Indeed, after addressing practices which do not fall under the competition rules, it tackles the practices that are, in principle, prohibited by the competition rules, even though there is not an in-depth discussion but only some examples like *"(...) restrictions on parallel imports of sports products and the sale of entrance tickets to stadiums that discriminate between users who are resident in a particular Member State and those who live outside that Member State (...)".*

Indeed, as mentioned above, respect for competition rules in light of the principle of specificity is also addressed in the White Paper on sport. In fact, in this document, the Commission, recognizing that television rights were the primary source of income, accepted the system of collective selling, despite giving rise to certain competition problems, offset by an (unspecified) income redistribution mechanism from larger to smaller companies. The principle of specificity, according to doctrine, *"(...) has allowed sport and football to obtain an autonomy that, from a regulatory, organizational, and jurisdictional point of view, has inevitably been compressed by the pervasiveness of antitrust investigations (...)"*[67].

To analyze the *modus operandi* with which antitrust investigations are carried out in the sports sector, keeping in mind the principles established by the case law of the ECJ, the sector will be examined, observing its atypical characteristics and subsequently proposing a comparison between the two reference sports systems, the European and the American. It can be anticipated that there is a marked cultural difference between the two approaches since in the USA sports have always been organized according to market criteria, while in Europe this process is partly rejected due to its strong social

[67] Granieri, M. An alternative reading on the specificity of sports activities in light of competition rules in Europe.

and cultural connotation, which still attempts to prevail over the economic dimension. Think of the strong protests following the announcement of the first Super League in 2021 from the entire football world.

Researchers who have addressed the issue clarify that an antitrust analysis becomes possible and necessary only by recognizing that understanding competition in an agonistic sense compared to the economic sense, although leading to evidently different results, can nevertheless find a meeting point if one transcends the conception of football or sport solely as a game and instead understands it in the context of an organization that makes it practicable. The first to study the phenomenon of professional sports business through the application of economic models were, not by chance, some American economists who immediately highlighted its organizational and productive peculiarities compared to usual capitalist enterprises. Some concepts expressed by this doctrine will be exposed, recalling that the AGCM, in its investigation into professional football in Italy, described the environment and context in remarkably similar terms, although with some divergences attributable to the different conception of sport and football in Italy compared to the United States. The birth of the sports economy is generally identified by doctrine in the publication of Simon Rottenberg, which analyses the labour market of baseball players. The author intended to demonstrate how the restriction on player transfers produced distorting effects on the distribution of players among teams, not allowing the achievement of the equilibrium wage. The abolition of this constraint would have allowed the market to distribute talents evenly and efficiently among teams. In this way, the uncertainty of the result, the necessary condition for maximizing the profit of the individual company and the league as a whole, would have been ensured. Once the constraint was eliminated, the presence of an organization that managed the correct allocation of the player resource would have become necessary. In America, this task is carried out by the Leagues, which ensure the correct conduct of competition among different teams by redistributing players, controlling salaries, and offering cross-subsidies, with the ultimate aim of ensuring the right level of competitiveness. Indeed, in the major North American sports leagues, such as the NBA or the NFL, players are introduced through the draft mechanism. This mechanism consists of selecting a number of young players who will be chosen by teams during the draft, which is also a major media event. Draft picks are determined based on the league's overall ranking: thus, teams that ranked lowest in the previous season will have the first picks and consequently will be able to choose the best players. This system essentially guarantees that the access to the "player resource" favours competitiveness and competition as much as possible; through this system, ideally, any team that implements a good strategy could become a top team in a few years. A concrete example can be brought: the Oklahoma City Thunder, a basketball franchise in the NBA from the state of Oklahoma, embarked on its journey in 2020, strategically accumulating draft

picks over the years. The team concluded the 2023/24 season atop the Western Conference, securing a spot in the playoffs, which represent the final phase of the season reserved for only 16 teams.

According to two different schools of thought, on one hand, the organization overseeing and regulating competitions, such as a league or federation, would constitute a monopoly in the market for offering that particular sport, only competing with leagues of different sports. On the other hand, the analysis should be directed towards individual clubs, whose "*mission*," especially in Europe, is not solely profit maximization but includes sporting success, popularity, fan following, and safeguarding the league they belong to. However, the purpose of sports enterprises often tends to prioritize profit maximization, leading them to deviate from the objectives outlined by Neale and Rottenberg, as their investment choices might align with different goals.

The findings of the AGCM investigation in 2007 revealed that sports competitions, including football leagues, would have the nature of "natural monopolies" concerning the production of the good, meaning an activity produced more efficiently by a single company, thereby minimizing production costs. Consequently, according to the AGCM, organizing sports competitions to determine the sole winner necessitates a single "enterprise" and thus qualifies as a natural monopolist. Competition primarily unfolds among individual companies competing and cooperating within the leagues and federations' organized tournaments. Analyzing these relationships introduces another element of atypicality: the interdependence and solidarity among competitors. Therefore, the football sector has been labelled as an “imperfect competition model.”

Judicial precedents have also arrived at similar conclusions, such as the Piau[68] ruling. In this instance, the Court of First Instance has scrutinized the compliance of the FIFA Regulations on football player agents with the European Community competition rules, Articles 81 and 82 of the EC Treaty, as the regulation conditions the issuance of the agent license upon passing a suitability examination and depositing a bank guarantee. Initially, the Court reiterated that both football clubs and the national federations representing them are considered undertakings under community competition law. Therefore, given that FIFA is an association of national federations, its regulations must comply with community competition rules as they have effects within the European Union. Regarding the agent license required by the FIFA regulations, the Court noted that it constitutes a barrier to access to the economic activity of agents and thus influences competition. However, it considered that the mandatory nature of the license could be justified and benefit from an exemption under Article 81(3)

[68] Judgment of the Court of First Instance (Fourth Chamber) of 26 January 2005. Laurent Piau v Commission of the European Communities. Fédération Internationale de Football Association (FIFA) Players' Agents Regulations - Decision by an association of undertakings - Articles 49 EC, 81 EC and 82 EC - Complaint -No Community interest - Rejection.

of the EC Treaty[69]. The licensing system, while imposing qualitative restrictions, is intended to protect players and clubs, considering the risks associated with poorly negotiated transfers and the lack of uniform national regulation for football agents.[70]

Finally, concerning the abuse of dominant position by FIFA, the Court concluded that the collective dominant position of football clubs does not constitute abuse under Article 82 of the EC Treaty, now Article 102 of the Treaty on the Functioning of the European Union (TFEU). Such a position is deemed justifiable only qualitatively, as it aims to ensure player protection and moralize agent activities. The companies compete in the factors of production market, attempting to secure the best players. However, for the realization and maximization of the product, their cooperation is necessary. Gerrard defined the relationship between teams as *"cooperative competition*"[71]. They have both individual private interests, such as winning against competitors, and a collective interest, aimed at respecting the rules set by the league or federation and effectively promoting the jointly created product to the public.

Regarding the first characteristic, competition and thus individual interest, it is observed that in the football market, companies are positioned on both the demand and supply sides of the production factor, the players. Over the years, players have gained decisive bargaining power, allowing their clubs to exercise a considerable competitive advantage in negotiations for potential transfers, often unrelated to the actual economic size of the selling enterprise.

Regarding the second characteristic, the need for cooperation and thus collective interest, excluding behaviours aimed at reducing companies in the market is impossible, as the realization of the product and the profits of a company depend on the presence and competitive strength of competitors. While the dominant position of a company in a typical market sector would undoubtedly enable it to achieve a certain degree of independence and, thus, exert dominance over competitors, in the sports sector, assuming such a position, through winning most matches and championships, would deprive the company of the opportunity to increase its earnings. This is because the imbalance compared to competitors would make the offered product less appealing to the public. Starting from these considerations and the concept of cooperative competition, a third element of atypicality can be introduced: the uncertainty of the outcome[72]. It is evident that the aim of all federations or companies

[69] Point 102 of the Judgment of the Court of First Instance (Fourth Chamber) of 26 January 2005. Laurent Piau v Commission of the European Communities.

[70] Point 103 e 104 of the Judgment of the Court of First Instance (Fourth Chamber) of 26 January 2005. Laurent Piau v Commission of the European Communities

[71] Gerrard B. (2003, June). Competitive balance and the sports media rights market: What are the real issues? SourceRePEc.

[72] The Commission begins to discuss the uncertainty of the result already in the Helsinki Report, and this will become a clear objective in the Communication of 18 January 2011, entitled "Developing the European Dimension of Sport," which

must be to ensure a certain degree of balance in order to make the match and the competition exciting and unpredictable in their outcome. The product offered by federations or leagues, through companies, is intangible, and its fundamental peculiarity lies in the uncertainty of the result, which characterizes the attractiveness of the sport and has obvious economic implications for the sports enterprise.

However, it could be argued that this objective conflicts with the further and primary "sporting" goal pursued by companies, namely winning their respective competitions. The acquisition of the best players certainly increases the chances of victory. Therefore, economically stronger companies will naturally seek to maximize their position and consequently the likelihood of victory, potentially disrupting competition. Nevertheless, if a company or a few companies were to create a sort of sporting monopoly, the unpredictability of the outcome would be lost, and proportionally there would be negative economic consequences due to the loss of interest in that particular sport. Consideration should be given to the economic loss that sports clubs would incur in the event of a loss of interest and a consequent decrease in income from sponsorships and television rights.

Often, it is the same bodies that control or manage sports activities that establish rules and regulations to ensure competition and the unpredictability of the outcome. For example, in Formula 1, substantial changes are made to the technical regulations that essentially force teams to redesign their cars. The current regulations, already significantly modified in 2021, will be overhauled again in 2026. Over the years, this strategy has proven useful in preventing a single team from winning on all circuits, thus maintaining competition and interest in the sport.

It should be noted that cars are almost redesigned whenever the rules are substantially changed; then, a considerable amount of time and money is required to make changes, which often only slightly increase the top speed. Essentially, due to factors such as costs, time, and technological progress, it is difficult to increase the competitiveness of cars once they are designed. For this reason, it is understandable that a team that can design a highly competitive car from the outset risks eliminating the unpredictability of the outcome for many years, as demonstrated, for example, by the fact that Verstappen's Red Bull won 21 of the 22 races during the 2023 championship and also appears to be by far the most competitive car during the current 2024 championship.

For these reasons, the fundamental variable, namely the unpredictability of the outcome of a match or a championship, is the factor that makes sport unique and incomparable to any other economic activity.

provided a series of objectives that must be pursued by sports rules and employed to assess their compatibility with antitrust law.

The economic-sporting literature, rooted in Anglo-Saxon tradition, has developed, with reference to the concepts expressed thus far, the notion of "Competitive Balance" (CB). Initially, it can be stated that studies acknowledge the relationship between competitive balance and the uncertainty of results: in particular, it is believed that as competition increases, so does the uncertainty of the outcome, directly correlated to CB. An analysis of the discipline of CB necessarily stems from an assessment regarding the appropriateness of applying the theory to the context, followed by resolving issues related to the unique measurement tool and usable unit of measurement. Some scholars have questioned the relative need to protect result uncertainty in order to ensure consumer or fan interest in the sporting event: while it is clear that a championship with a predetermined outcome will not generate interest from spectators, it is also true that such a scenario is unverifiable in the sporting context. Conversely, a situation where the championship is perfectly balanced may only seem optimal. In this regard, it is worth noting that the concept of "Competitive Balance" in sports originated in America, whose sports system presents numerous differences, primarily cultural, compared to the European Model endorsed by the European Commission and Parliament. The major systemic discrepancy between the American sports system and the European one lies in the nature of the entities that organize and manage competitions.

For example, in North America, at the apex of the system are the so-called "big four," the four leagues representing the most popular sports, which, while sharing structures and principles, are capable of self-management and self-regulation. Consequently, the league is tasked with ensuring that teams do not abuse any potential dominant position and that competitive balance is assured through result uncertainty. Similarly, Formula 1, which already had a self-management model, saw a significant increase in revenue when it transitioned from Ecclestone's management to American Liberty Media. As few argue, interventions by such apex organizations as Leagues, which act as central controllers, have allowed, in the name of the CB argument, to include, in the balancing of the 'Rule of Reason,' practices otherwise restrictive of competition and therefore to justify distorting interventions in the market such as "*salary caps*" and "*drafts*" or "*revenue sharing*".[73]

These mechanisms have been designed to generate, on the one hand, sporting balance among the forces in play so that all teams could vie for championship victory, the sole available objective, and, on the other hand, economic balance, ensuring long-term sustainability. As part of the doctrine points out, originally in American sports leagues, the system of the so-called "reserve" was in force: clubs could exercise the right to sign the so-called "option" with the athlete whose contract was expiring to extend their contract, potentially binding them for life to the club. Subsequently, such a mechanism was considered illegitimate, so that at the end of the contract, the athlete had the freedom to choose

[73] Bastianon, S. (2007). Antitrust sport and competitive balance in EU law.

whether to sign with another team. The "reserve" system was significantly downsized as a result, and it has survived to this day in the form of a sort of right of first refusal. This change resulted in fierce bidding wars among teams to sign the best players, and consequently, the average salary level skyrocketed. In response to this increase in salaries, the salary cap was introduced, which imposes a maximum ceiling on the expenditure that clubs can allocate to player salaries.

The legal basis of the relationships between athletes and clubs is established through a collective agreement, as happens in Italy for the salary system of each federation. However, there is a substantial difference: while in Italy the collective agreement establishes only a minimum salary, in the United States, through the salary cap, a maximum ceiling is also set. This limit is calculated annually and stems from negotiations between the League and the players' union, taking into account the revenues obtained by the club in the previous year from television rights and sponsorships. It can thus be asserted that the regulation has a dual objective: firstly, there is an economic goal, aiming to contain costs for sports clubs, allowing them not to spend more than they earn to compensate players. Secondly, there is a purely sporting objective, which seeks to ensure balance in competition. Therefore, a single team cannot monopolize all the best players. According to some scholars, the salary cap, along with other typical institutions of American sports such as the "draft" and "revenue sharing," would not lend themselves well to being applied outright to the European sports model[74], since the primary goal in professional sports in Europe would not be to maximize profits, but rather win-maximizer, often focused on achieving sporting rather than economic results.

The European sports system is composed of national federations affiliated with European and international confederations according to a pyramidal structure. This aspect is also found in the organization of competitions and categories, which are interdependent. The element that distinguishes the European sports model, and in particular football, is the openness of the mechanism, which guarantees clubs access to the higher national category or relegation to the lower category, based on the meritocratic principle. Based on this principle, sports clubs qualify for European competitions and the significant revenues that derive from them, causing a change in the competitive environment, in order to stimulate clubs to adapt to the context and continue to develop. Winning one's category or competition is not the only objective.

On these bases, scholars have questioned the opportunity, rather than the obvious usefulness, of applying Anglo-Saxon economic-sporting theory to European football. While it significantly boosts the development of sports-business, it seems to overlook the strong social and moral connotation inherent in European sports. Cultural differences in the vision of sport will always lead to a difference between the North American and European models, especially when comparing the main sports of

[74] Bastianon, S. (2007). Antitrust sport and competitive balance in EU law.

the two continents, namely football on one side and the so-called "big four" on the other. This cultural difference has deeper roots than just the sporting phenomenon, but it is undeniable that there is an incompatible vision and management. These are the main reasons why the 2021 Super League project sank before it even began: leaving aside the legal aspects, the 2021 project had forgotten the fundamental principle that drives European football, namely meritocracy. The total abandonment of the open system in favour of an Americanized mechanism and the renunciation of the possibility of participation in European competitions by ever-changing and even more "humble" teams could never have been tolerated. Investment in European football is not solely driven by the expectation of financial return; financial gain can be considered of secondary importance compared to the satisfaction derived from winning a championship or a European cup. The significance of the club's identity, the close bond with the territory and its supporters allows for a different perspective: in addition to the conception whereby clubs use competition as a means to increase profits, there is an idea that places sporting success as the primary goal to pursue. It must be acknowledged that, especially in the last decade, the entry into the European scene of investors/owners who are "non-fans," i.e. not rooted in the context to which the team belongs, has led some clubs to adopt management models more similar to American sports clubs. Furthermore, there is also an "accountability" due to the fact that the maintenance costs of clubs are reaching exorbitant levels, and it is currently impossible for all clubs to survive in this context without a sustainable model. It must also be admitted that the current European football model is not, in the writer's opinion, a healthy context for the survival of competition, which is a fundamental characteristic, as has been seen. UEFA's rules do not always allow for the optimal management of situations and, at times, have the opposite effect by disadvantaging competition. Already in the comparative report of 2011, UEFA highlighted problems in European football, which, combined with the global financial crisis, have led to an increase in costs, especially regarding player salaries, resulting in a decrease in investments in the youth sector and profitability. In the last decade, there has been a partial failure of UEFA regulations, especially the so-called "financial fair play," a form of regulation consisting of measures aimed at combating financial problems and ensuring the economic stability of European clubs, trying to limit inflation regarding wages and salaries. In fact, while there has been a decrease in debt and an increase in revenue, UEFA has not managed to counteract the trend of increasingly extravagant purchases and guaranteeing pharaonic salaries. The "*financial fair play"* as applied has saved many teams through an austerity policy, but the lack of clarity in the application of the rule has allowed many other teams to conduct extremely expensive purchasing campaigns, to the detriment of competition between teams. Consider the transfer sessions of teams like Manchester City or Paris Saint-Germain, teams that, despite not having a long footballing tradition, find themselves at the top

of Europe in a few years. The main problem is that FFP, together with the considerable increase in UEFA prizes and the uneven distribution thereof, has contributed to crystallizing existing hierarchies both among clubs and between major and minor leagues.

Since the introduction of FFP, the "*break-even requirement*" budget balancing rule has forced clubs to spend within their financial limits, leading to stagnation among teams and making it increasingly difficult for smaller, less affluent clubs to compete with their own resources within the constraints imposed by Financial Fair Play to achieve a higher status. On the contrary, the big clubs, which already enjoyed significant revenues, have benefited from this situation.

Therefore, the CB theory, from which these mechanisms derive, seems not to fit well into the European football context, where teams compete for a range of diversified objectives, including maintaining their category or gaining access to European competitions. This suggests that fan interest is not necessarily conditioned by the possibility of winning the championship, but rather stimulated by the possibility of achieving victory against a more prestigious team.

1.3. Considerations On The First Chapter

The aim of this chapter, as anticipated in the introduction, was to analyze the European and American legal landscape in terms of sports and competition. The analysis, through a historical-chronological path, was divided into two main sections:

- the first section focused on the duality between the legal system and the sports system, capturing the evolution of concepts and the issue of the autonomy of the latter in relation to the former. In this regard, starting from the definition of the legal system and the nature of the sports system, it has been shown that the relationship between the two systems is difficult to define, as it can be seen as one of relative or partial autonomy. Furthermore, from the analysis of the nature of the sports system, it is possible to appreciate the evolution, initiated by the case law of the CJEU, of the principle of specificity, a concept closely related to autonomy. The evolution of the concept of specificity is symptomatic of the change in the application of EU law to sports from the 1970s to the present day: from a substantial lack of interest in community legislation, justified by the lack of competence of EU institutions in sports matters, to a formal recognition in the treaties and full EU competence, also due to the growing economic, geopolitical, and social weight;
- the second section focuses on anti-competitive regulation, a crucial element for the growth and development of societies and markets, especially in the sports sector, where the business-competition binomial prevails. Starting from EU legislation, which provided the impetus for Italian legislation, it has been shown that even in the application of antitrust regulation, the

distinctive characteristics of the legal system indicated in the first section cannot be ignored. In fact, case law first highlighted the close correlation between the application of competition law and the specificity of the sports system, which cannot be overlooked. Furthermore, the results obtained through a transversal analysis of European and American competition law have highlighted profound differences in the vision and management of sports between the European model and the North American model: these differences are rooted in the different conception of sports as a cultural and social phenomenon before being economic and are the main reason why some American sports models and mechanisms (draft, "closed system," salary cap) are difficult to apply in European sports.

In conclusion, this (first) chapter of the study has been useful for reconstructing the entire legal panorama that has emerged over the years and has led to the current state, in terms of competition, relationships between legal systems, and legal structure of sports companies and the entities that govern them. The theoretical background designated earlier and, with it, the results obtained will allow to understand the legal reasons that have led sports companies, with particular reference to the football, basketball, and automotive sectors, to undertake attempts to create "elite" leagues, such as the Super League in football, and the consequent legal judgments that have marked an irreversible watershed in the aforementioned disciplines.

CHAPTER II

The Advent of Breakaway Leagues: Applying the American Model to European Basketball

The fundamental theme of this chapter is rooted in the recognition of an apparent conflict between, on the one hand, the objectives of the European Union aimed at preserving traditional European sports structures, and, on the other hand, the new realities concerning commercial aspects and governance of European sport. Perspectives regarding the creation of a Breakaway League in European disciplines will be examined from the standpoint of governance, the commercial environment, and the legal environment. In this regard, it is limiting to focus exclusively on the European context. This stems from the evidence that the structure of proposed alternative leagues in various sports disciplines has its roots in the so-called American model of private league, which has existed for decades.

Looking at the American sports leagues today it could clearly be seen that it has undergone several important changes throughout the decades. It is beyond the scope of this narrative to attempt to provide an exhaustive listing of professional baseball leagues but it should be noted that Major League Baseball or MLB is one of the oldest leagues which was established back in 1869. Its formation is quite a milestone in erasing the timeline of professional sports leagues in the United States since MLB is widely known as the oldest professional sports league in the country. However, as the century evolved, other major leagues began to emerge as significant parts of sporting culture in America. In 1920, the formation of National Football League occurred and the National Hockey League in 1917 whereas the formation of National Basketball Association happened in 1946. These leagues have played pivotal roles in development and expansion and diversification of the sports entertainment industry in United States. All these American leagues are quite alike when it comes to the structure of the system presented by monopolistic and highly centralized tendencies as well as peculiarities of team control, championships organization, and profit sharing. Still, since the context of our consideration is the field of sports, we shift the spotlight to NBA.

As a successful basketball league that enjoys international popularity and impact, the NBA, in turn, acts as an inspiring example for many other sporting leagues, including the Euroleague. One can thus identify how the Euroleague, as the first effort at developing a European Super League has undoubtedly been influenced by the organizational model and achievements of the NBA. This is due to the fact that NBA has promoted its popularity among the fans and other stakeholders, achieved high media coverage, and attracted substantial amounts of dollars' investment that made this sports association as a reference point to innovations and advancements in the professional world of sports. Therefore, the example of the NBA has played a significant role in shaping the approach and aspirations of the Euroleague in the European context, as, despite basketball not being the most followed sport globally, it has managed to catalyze billions of viewers and investors, becoming the

premier league, and therefore worthy of consideration in this examination as "the inspirational model".

The applicability of the American model to the Old Continent, as will be detailed later, requires further examination as concerns the legal landscape: this is because the aforementioned American competition does not seem to have encountered any insurmountable obstacles within the framework of US antitrust law during its development; different, on the other hand, would seem to be the case for European sports entities, which, in attempting to develop new Breakaway Leagues, must consider competition rules of a different nature. Therefore, a preliminary analysis of the American model will be conducted, with the aim of understanding how such structures, unlike European Breakaway Leagues, have obtained approval from legal operators without raising issues related to a presumed league monopoly or restrictive competition agreements. Subsequently, attention will be focused on the impact that the American model has had on the Old Continent and the consequent legal implications, taking into account also the underlying economic motivations, while maintaining a single, consistent guiding principle: the competition balance.

2.1. Shaping The NBA: Strategies And Competitive Evolution Of The American Model

The National Basketball Association, commonly known as the NBA, is the premier professional basketball league in the United States and Canada and is now the most modern sports league in the world, reaching enormous popularity that has made the sport the second most followed in the world after soccer. The two previously existing leagues, the BAA and the NBL[75], merged in 1949 in New York, giving rise to the "National Basketball Association" (NBA). I cannot speak of the NBA's rise without mentioning the innovations this league introduced to attract greater interest in basketball, among which the most significant were the introduction of the 24-second rule (in the 1950s)[76] and the three-point shot (introduced even in the early 1980s)[77]:

- The 24-second rule in basketball is a regulation that sets the maximum time a team has to attempt a shot after gaining possession of the ball. This rule was introduced to promote a faster and more spectacular game, avoiding game slowdowns due to potential attempts to waste time. In practice, once a team has possession of the ball, they have only 24 seconds to attempt a shot. If they fail to do so within this time, a "shot clock violation" occurs, and possession of the ball is awarded to the opponent. The introduction of this rule was one of the first steps to increase the excitement of matches: one of the main limitations of the game was that it did not

[75] Efosi, S. (2016, October 27). BAA and ABL: Basketball in America before the NBA.
[76] Flanagan, K. (2015, April 22). Basketball's Shot Clock: A Brief History.
[77] History of the 3-Pointer. (2014, January 1).

provide the expected level of entertainment, and its gameplay was completely different from today's. Fan interest in the games was dampened by a specific rule that allowed players on the court to hold onto the ball without any time limitation, thus easily preserving their advantage: the only way the defensive team could try to recover from the disadvantage was to foul the opponents, giving them free throws. As a consequence of this regulation, games tended to end slowly and dully. The 24-second rule allowed to recapture the audience's attention: teams that managed to score 100 or more points were more than half (while in the previous year's playoffs, this had only happened on three occasions): arenas began to fill up again, recording a 50% increase compared to the previous year.

- In the 1970s, the league went through a strong crisis that risked compromising its existence, from which it managed to emerge thanks to the merger in 1976 with the ABA[78], a young league born parallel to the NBA, and thanks to winning marketing and communication policies. In particular, following the merger with the league considered a competitor, it inherited the three-point shot: an attempt to score a basket from a greater distance than the normal two-point shot. This type of shot is valued at three points instead of two. The three-point line is drawn around the basketball court at a standard distance from the basket. In most professional leagues, including the NBA, the distance of the three-point line is about 7.24 meters (23 feet 9 inches) from the basket at the farthest point. The three-point shot, one of the inventions that most changed the game of basketball, was introduced in the NBA only in the 1979-1980 season: during that season, two particularly important players, Larry Bird (with the Boston Celtics) and Magic Johnson (with the Los Angeles Lakers), joined the league. Thanks to their decisive contribution, the NBA experienced a phase of considerable development due to the new interest aroused among American and global fans towards the league. Johnson and Bird, together, won eight NBA titles with their respective franchises.

In the development of new marketing strategies and the growing success of the NBA, David Stern played a key role as the league's commissioner from 1984 to 2014. Some numbers can demonstrate the impact Stern had on the league:

- from 23 teams valued at a total of $400 million in 1984, it grew to 30 teams valued at over $19 billion in 2014;
- the 24 employees based in New York became 1100 with offices scattered in Europe and Asia;
- the average salary of an athlete, $250,000, increased to $5.5 million.[79]

[78] History.com Editors. (2009, November 16). NBA merges with ABA. HISTORY. Retrieved May 15, 2024.

[79] Santomier, J., Dolles, H., & Kunz, R. (April 2023). The National Basketball Association's (NBA) Digital Transformation: An Explanatory Case Study.

In the 1980s, the league was already rich in talent, but it did not enjoy a good reputation, neither among the public nor among the media: athletes were seen as delinquents because fights were frequent both on and off the field, there was a drug problem, and because of all this, games had poor television coverage and even the finals were broadcasted with a delay. Stern, therefore, understood that it was necessary to make changes within the organization to revive the market and make it attractive to the public. Attractiveness in the sports world is closely related to the concept of competitiveness: the more the league is composed of a large number of teams and the more these teams are on a similar competitive level, the greater the uncertainty of the result and consequently the interest and involvement of the public. So, to ensure a competitive championship and quell rumors about drug use among players, clinical drug tests, the Salary Cap, and the Draft[80] were introduced:

- Regarding the first measure, Stern introduced the obligation of clinical drug tests for all registered athletes. Once in charge, he definitively marked his territory with lifetime bans imposed on John Drew and especially on a top-notch star like Michael Ray Richardson.
- The second measure, as extensively described in the first chapter, establishes the maximum amount that a team can spend on salaries; this amount varies each year based on the league's revenues and is necessary to prevent the creation of super teams by companies with higher financial resources.
- The third measure, instead, aims to strengthen less competitive teams by giving them priority in choosing new players from American college or Europe. In America, athletes must sign up for the Draft to join professional leagues; in this event, which takes place annually, the first companies that can choose players are those that ranked low in the standings the previous year.

Through these regulations, the championship becomes more attractive not only for the public and fans but also for players worldwide; athletes are indeed driven by competition and fame and find in the NBA a perfect stage for their goals. The league, therefore, becomes richer and richer in talent and consequently becomes even more competitive.

2.1.1. How NBA Works

In the tradition of American basketball, a unique ranking system has developed, different from that adopted in many other sports such as soccer. While in football championships points are awarded based on results obtained (3 for a win and 1 for a draw), thus creating a final ranking, the NBA follows

[80] Quinn, S. (2022, June 30). NBA salary cap explained: Glossary for the terms you need to know ahead of basketball free agency.

a different approach. In the United States, the ranking system is based on key concepts such as winning percentage and the gap in wins.

Figure 1 - Source: Dunkest

In this regard, the following main aspects of the aforementioned competition are highlighted:

- **Divisions and Conferences:** NBA is organized into two territorial Conferences, the Western Conference, comprising teams located in the western part of the United States, and the Eastern Conference, which groups franchises located in the eastern part of the country. The only exception is represented by the Toronto Raptors, whose headquarters are outside the United States, being a Canadian team. The Raptors have been placed in the Eastern Conference since their foundation in 1995, when they became part of the league. Additionally, each Conference is subdivided into three Divisions, each composed of 5 teams.
- **The Schedule:** it is divided into three main phases, Regular Season, Playoffs, and Finals. During the Regular Season, each of the 30 participating teams plays a total of 82 games, following a specific schedule:
    - They play four games against each of the other four teams within the same division (for a total of 16 games);
    - They face off three or four times against the other ten teams in the same conference (for a total of 36 games);
    - They play twice against the teams from the other conference (for a total of 30 games).

  At the end of the Regular Season, the top 8 teams from each conference, including those qualified through the Play-in Tournament, are ranked based on their position in the standings and advance to the NBA Playoffs and Finals. In this phase, teams face each other following a

bracket determined by their position in the standings during the Regular Season, competing for the NBA title;

- **The Standings:** During the Regular Season, it differs from that of other sports leagues, such as football or the LBA, as it is not based on the total score obtained by each team, but on winning percentages, which determine the position of each franchise within the standings. To calculate a team's winning percentage, known as the winning percentage (PCT), a simple mathematical operation is performed: the number of wins obtained by the team is multiplied by one hundred, and the result is divided by the total number of games played up to that point (sum of wins and losses). In the NBA standings, there are several columns that provide specific information:
    - Games Back (GB): Indicates the number of wins behind a team and the top-ranked team in the same conference.
    - Wins and Losses: Indicated respectively by the letters W (wins) and L (losses), represent the number of games won and lost by each franchise during the Regular Season.
    - Home and Road: Refer to games played at home (home) and away (road).
    - Conf and Div: Represent the results obtained by each team against the other teams in the same conference and division.
    - Streak and L10: "Streak" indicates a team's series of consecutive wins or losses, marked by a letter (W for wins, L for losses) followed by a number indicating the number of consecutive results. "L10" indicates the results of the last 10 games played by the team.[81]

2.1.2. The NBA's Global Reach

A crucial aspect for the growth of the NBA has been the achievement of a solid market position, identifying a specific segment to target. Initially followed and practiced mainly by white individuals, the shift towards a more spectacular and physical game, along with the recognition of the rights of African Americans, has fostered the emergence of African American athletes such as Michael Jordan and Kobe Bryant, increasing interest in the league among this segment of the population. Many of these personalities come from disadvantaged backgrounds, and basketball has represented an outlet for them, serving as a role model for many young African Americans who see these players as a path to success. This demographic, often economically challenged, thus becomes the ideal target for the NBA.

[81] Merrell, C. (2024). 2024 NBA Play-In Tournament Explained: Teams, schedule, how it works.

After identifying the market segment, attention has focused on how to reach it and with what communication strategy. Efforts have been made to create an emotional connection between the audience and the NBA, going beyond mere product advertising. Advertising campaigns have focused on the personalities of the athletes, leveraging their differences to evoke empathy. In addition to traditional forms of communication, storytelling has played a significant role in reinforcing the image of players as almost mythological figures.

Furthermore, it was the NBA star Michael Jordan who, through his agreement with Nike, contributed to increasing attention towards the competition from a commercial and media perspective, creating his own line of shoes and revitalizing the league, becoming its symbol. In terms of media relations, within a few years, the NBA transitioned from having to pay American cable networks to broadcast games live to having its own television channel: Stern was the first to realize the importance of having a dedicated broadcaster and took the lead in 1999 with the launch of NBA TV[82] (with other leagues following suit over the next ten years).

The production of branded content paved the way for the transition to digital and the era of social networks where, once again, the NBA arrived well ahead of its competitors, thus gaining an additional market share and facilitating the generational turnover of its fanbase. Additionally, the NBA has succeeded in expanding beyond American borders, especially in Europe and China, thanks to various factors, including the increase in foreign players in the league and the initiative to present a team composed exclusively of NBA players at the 1992 Olympics, the so-called "Dream Team."[83]

The opening of NBA offices in Europe and Asia, along with events and games organized in foreign cities, has contributed to making the NBA an international league. For international marketing purposes, the "McDonald's Open" was created in 1987[84], the first attempt to pit teams from both sides of the ocean against each other, laying the groundwork for what would later become the "Global Games," actual regular-season games played in the old continent, as well as in Mexico and Japan; the growing popularity of the NBA is also reflected in merchandising, with players' jerseys becoming a fashion trend even outside the basketball world.

Sponsorship has become a widely used marketing tool for companies, including within the context of the NBA, to promote their products and gain visibility through association with the league's brand or specific athletes. This method entails a company providing a sum of money to the sports organization in exchange for visibility and promotion of its products.

[82] Brockinton, L. (1999, February 1). NBA launches new programming deal aimed at Britain's swinging set. *SBJ Sports Business Journal.

[83] Olympics.com. This is the dream team.

[84] Fiba.com (2022, August 15). Basketball takes big leap with First McDonald's Open.

The NBA, with its enormous global visibility, attracts numerous brands eager to be associated with the most popular teams or players. NBA athletes are particularly attractive to companies targeting a young and dynamic audience. The practice of sponsorship in the league began in the 1980s with the arrival of Michael Jordan when Nike recognized his enormous potential and launched the Air Jordan shoe line[85], which today represents a successful brand. In addition to Nike, other brands such as Adidas and Under Armour have followed suit, sponsoring NBA athletes to leverage their visibility and influence on fans. Furthermore, agreements have been made between companies and the league itself, such as the partnership between Tissot and the NBA to become the official timekeeper of the games[86]. Technical sponsorship has also been important, with Nike securing a billion-dollar deal to produce NBA team technical apparel. The NBA introduced the option to place sponsors on players' jerseys, generating additional revenue for teams and increasing brand visibility. Despite the initial negative reaction from fans, the league sought to balance commercial interests with fan preferences, allowing teams to offer jerseys without sponsorships.

The NBA's goal is to leverage commercial partnerships to generate additional revenue and increase the league's popularity, using the visibility of established brands like Nike. Sponsorship has become a key element in the NBA's marketing strategy, with the overall value of sponsorship deals increasing significantly in recent years, also thanks to jersey sponsorship.

The NBA has demonstrated a consistent commitment to maintaining a clean and cutting-edge image over time. Initially, to overcome image-related issues such as fights and drug abuse among athletes in the early 1980s, David Stern focused on cleaning up the league's image, introducing the "Antidrug Agreement"[87] and applying heavy fines and suspensions for behaviour not conforming to the rules of the game or acts of violence. Subsequently, the NBA promoted the NBA Cares initiative[88], which actively involves players in social responsibility initiatives in the United States and around the world. This program has led to over 5 million hours of service and the construction of over 1,300 places dedicated to the well-being of children and families. Additionally, fines imposed are donated to charity through NBA Cares. The league has also taken a stand on important issues such as homophobia and racism, fining and suspending Los Angeles Clippers owner Donald Sterling in 2014 for racist remarks[89]. In 2017, the Golden State Warriors declined an invitation to the White House in

[85] Kunkel, T. (2023, April 3). How Michael Jordan revolutionized the sneaker industry—and our relationship to shoes. Faculty Experts, Thought Leadership, The School of Sport, Tourism and Hospitality Management.

[86]Tissotwatches.com. Sport Partnerships.

[87] Ganglani, N. (2022, May 3). How David Stern eradicated the use of drugs in the NBA.

[88] Cares.Nba.com

[89] Yglesias, M. (2015, May 13). Donald Sterling's racist outburst. Vox.

opposition to Donald Trump's political choices[90], demonstrating the league's commitment to supporting social and political values. Communication plays a fundamental role in maintaining a positive image of the NBA. In addition to promotional spots for sports events, advertising campaigns are created to highlight NBA Cares activities and the fight against racism, showcasing the social commitment of athletes. This type of communication aims to build a strong and quality image of the NBA brand, expressing positive social values. Furthermore, the league seeks to export the NBA brand and its values worldwide through communication. The NBA works constantly to spread a healthy and socially engaged image, politically exposing itself to strengthen the idea of an authoritative and morally correct league, in order to maintain its prominent position and attract investors.

Supporter care is one of the distinctive features of the NBA, which considers them not only as consumers but as individuals to offer an exceptional purchasing experience. Every detail is carefully planned to bring customers closer, engage them, and build loyalty over time. The league is committed to providing an engaging and entertaining spectacle even for those who are not basketball enthusiasts, ensuring an unforgettable experience. This concept of "Game experience" includes all stages of the relationship between the league and its supporters, from ticket purchase to post-game. The initial phase of the relationship between the NBA and the customer begins with ticket purchase through the "Hellotickets" website, which offers a preview of the view of the field based on the selected seat. Queue organization and ticket office efficiency facilitate entry into the arena, with appropriate security procedures. Once inside the arena, spectators are greeted by a wide range of services, including refreshment points and shops selling official franchise merchandise. Ushers guide fans to their seats, ensuring order and comfort. The highlight of the customer experience is represented by the game, where athletes perform extraordinary plays and are enriched by music, cheerleader choreographies, and other engaging activities for the audience. Even after the game, the relationship between the league and supporters continues, with the NBA sending a questionnaire to spectators to collect feedback and improve its services. Additionally, fans have the opportunity to vote for players for the All-Star Game, demonstrating how important the opinion of its supporters is to the league. In conclusion, the NBA is committed to meeting the expectations of its supporters, actively engaging them, and seeking continuous improvement through customer feedback.

Furthermore, especially in a comparative perspective with European competitions, a study, dating back to October 2017, by the newspaper "il Sole 24 Ore"[91] highlighted some aspects related to the success of the NBA worthy of attention. In particular, according to journalist Fabio Fantoni, the

[90] Blake, A. (2017, September 23). Golden State Warriors reject White House invitation after Trump rescinds offer to Stephen Curry. The Washington Times.

[91] Fantoni, F. (2017, October 6). Success in the NBA? It's not a matter of money.

disparity between American and European sports models, especially in football, is evident in the management of financial resources and results obtained. While in European leagues, a team's economic power is often correlated with its prestige, conversely, in the United States, a more equitable approach is adopted to investments in the world of sports. This translates into greater competitive equity and a wider rotation of successes among participating teams.

In the United States, the system is based on three fundamental principles:

- player transfers occur through equivalent value trades rather than through "transfer fees";
- there is a salary cap that limits team spending during a season (the aforementioned salary cap);
- young talents are distributed among teams through an annual draft.

The National Basketball Association (NBA) provides a tangible example of how this model promotes greater equity in competition. Over the past 33 years, the NBA championship has seen a wider rotation of participating teams in the finals compared to many European competitions. This indicates a more evenly distributed success among franchises. Another significant aspect is the percentage of wins by teams over the seasons. While there are teams with a successful track record, such as the San Antonio Spurs, other teams, despite their financial resources, may struggle to maintain a competitive position in the long run. This contrast highlights the effectiveness of the American system in mitigating financial disparities and promoting fairer competition. Additionally, teams like the New York Knicks, despite their prestige and considerable financial resources, may find it difficult to attract high-level talents and translate their economic potential into on-field success. On the other hand, teams like the Golden State Warriors show that, despite recent dominance, long-term success is far from guaranteed, further illustrating the competitive dynamics of the NBA.

Schematically, the table prepared by the journalist allows to perceive how the competition victories since 1984/85 are (almost) equally divided among the teams.

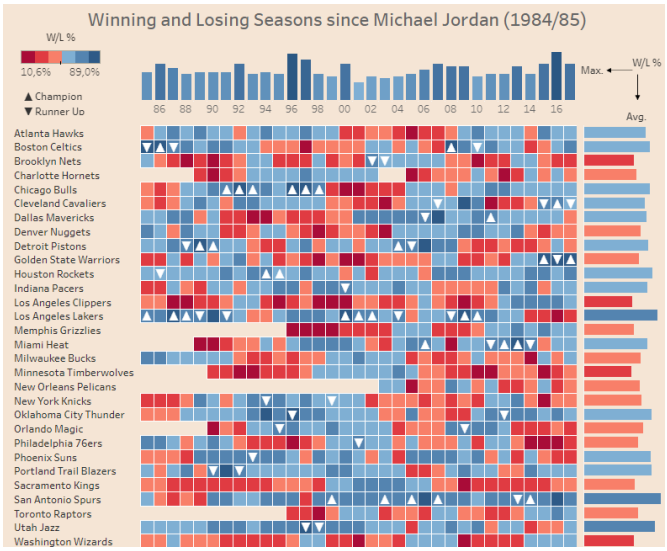

Figure 2 - Source: IlSole24ore

In summary, the American sports model, with its principles of financial equity and talent distribution, offers an alternative to the long-standing dominance of European top clubs.

2.1.3. A Look At Revenue Growth And Market Value

As reported by the renowned sports magazine Sky Sport[92], the NBA has experienced exponential growth in its value in recent years, with prospects for further increase by 2025, the year in which the new media agreement is expected to be signed. A significant indicator of this growth is represented by the minimum value required for the purchase of one of the thirty franchises, currently set at $2.7 billion, more than double compared to three years ago. This trend is evidenced both by recent acquisitions, such as the case of the Suns valued at over $4 billion[93], and by the valuations provided by Forbes for the most valued franchises, with Golden State valued at $7.7 billion, while the Knicks and Lakers surpass $6 billion each[94].

The robust financial situation of the NBA is confirmed by an annual turnover approaching $11 billion. However, what arouses greater interest is the origin of such revenues. In this regard, a detailed examination of the main sources of income is presented:

- $4.5 billion from Media Deals: revenues resulting from contracts signed by the NBA as a league, starting with the television contract, which alone brings in $2.66 billion annually, in the multi-year agreement that will expire with the 2024-25 season (and talks of renewals at figures 100%/150% higher than current ones, thus with expected revenues between $6 and $7 billion annually);
- $4.5 billion from all sponsorships: agreements that the league has signed with commercial partners in various product categories, from the supply of technical equipment (Nike for uniforms, Wilson for balls) to video games (2K), from beverages (PepsiCo) to computers (Microsoft) up to the recent signing of a global airline partner (Emirates);
- $2.9 billion from the audience: derived from the revenues generated by ticket sales (audience growing by 2% even this year, with over 22 million people who have already attended an NBA game by the All-Star Game break, with an average of over 18,000 spectators per game). A significant portion of the total figure comes from the revenues derived from the suites present within each arena, which are sold to commercial partners or individual private entities at a premium;
- $1.4 billion from local media: the NBA - in addition to the national agreement with Disney (ABC and ESPN) and Warner Bros. Discovery (TNT) - also earns from the agreements that

[92] Skysport.com. (2024, February 21). NBA, un business da quasi 11 miliardi di dollari all'anno: ecco come.
[93] Wojnarowski, A. (2022, December 20). Mat Ishbia agrees to Suns purchase for record $4 billion. ESPN.
[94] Ozanian, M., & Teitelbaum, J. (2023, October 26). NBA Valuations.

each of the 30 NBA franchises signs with local networks, to ensure the TV broadcast of the team's games in the home market;

- the remaining revenues come from local sponsors, stands, parking, etc.

Evidence of the fact that American basketball is, in economic terms, light years ahead of European competitions, simply requires a comparison with the turnover of UEFA, the body that manages all European competitions, forecasted for the 2023-24 season. According to the analysis made by the blog Calcio e Finanza[95], the gross turnover of the UEFA Champions League, UEFA Europa League, and UEFA Europa Conference League, and the UEFA Super Cup 2023 is estimated at €3.5 billion for the 2023/24 season.

From this amount, UEFA will make several deductions:

- €323 million will be deducted to cover the estimated organizational/administrative costs related to the competitions;
- 3% (€105 million) will be allocated for qualifying round payments;
- 4% (€140 million) reserved for non-participating clubs;
- €10 million will be allocated to the UEFA Women's Champions League distribution program.

Of the resulting net income of €2.92 billion, 6.5% will be allocated to European football and remain with UEFA (€190 million), and the remaining 93.5% will be distributed to participating clubs. Based on the forecasts, therefore, the total amount available for distribution to participating clubs in 2023/24 is €2.732 billion, of which €2.032 billion will be distributed to clubs participating in the UEFA Champions League and UEFA Super Cup, €465 million will be distributed to clubs participating in the UEFA Europa League, and €235 million will be distributed to clubs participating in the UEFA Europa Conference League. UEFA will therefore distribute approximately 78% of its revenues (€2.732 billion) to clubs participating in the group stage of the three competitions: an additional 7% will be distributed to companies (including those eliminated in the qualifying rounds, those not participating in the cups, and the women's Champions League quota), while UEFA will collect approximately 15% (approximately €513 million).

It is immediately apparent that there is a huge gap between the major American competition and the European one, without considering the additional minor European competitions, such as basketball's Euroleague, which have significantly smaller revenues compared to the examples cited.

Furthermore, it is worth noting that, despite the increase in income, the European football system, represented by UEFA, continues to close its accounts in deficit. In fact, according to forecasts by One

[95] Calcio&Finanza. (2023, July 10). UEFA anticipates €3.5 billion in revenues in 23/24: 78% to clubs.

Football[96], UEFA expects, for the 2022-23 season, a deficit budget, increasing to €89 million, despite revenue increasing beyond the €3.5 billion mark. This is due to the much higher and important investments in other competitions and in the development of football, primarily women's football.

2.1.3.1. Insights on New York Knicks

Once the framework of how the NBA operates is outlined, it could be interesting to provide a brief analysis of the economic situation of sports companies competing in the top American competition: it is self-evident to assert that the general prosperity of the competition due to a constant increase in investors and, consequently, revenues, are elements that positively reflect on the financial situation of the participating companies. Paradoxically, participating sports companies do not universally benefit from an advantageous condition. Often, in the analysis of their financial statements, a net loss may emerge, a significant level of indebtedness, or almost non-existent cash flows. Let's take, as a case study, the financial statement for the fiscal year ending in 2022 (the latest available financial statement currently) of Madison Square Garden Sports Corporation[97] (formerly The Madison Square Garden Company, and subsequently, for narrative purposes, also referred to as "New York Knicks"), a team competing in the top basketball competition, in order to understand if the economic well-being of the NBA also reflects on the companies that are part of it. Before proceeding with the analysis, it is useful to clarify that Madison Square Garden Sports Corporation holds a diverse portfolio of businesses, including: the NBA team under analysis, the New York Knicks, the New York Rangers, a team competing in the national hockey league, and other minor businesses. The largest portion, in terms of weight within the portfolio, is held by the NBA team, and for this reason, the financial statement for this team's operations will be used as a case study for basketball companies. Therefore, to make the analysis among sports companies more consistent and seamless, the name of the team competing in the NBA will be used to indicate the entire corporation; furthermore, Madison Square Garden Sports Corporation takes the legal form of a Corporation: although these companies do not perfectly coincide with the so called *"Società per azioni"*, they enjoy a series of similarities that lead them to be considered similar.

Examining the financial situation of the financial statement for the 2021/22 season, the following emerges, among other things:

- out of a total of liabilities amounting to $1,447,343 thousand, the company holds indebtedness (current and non-current) totalling $1,039,891 thousand, with a specific weight of 72% on the total liabilities;

[96] Calcio e Finanza. (2023, March 6). UEFA reports €4.5 billion in revenues in 22/23 but expected deficit.
[97] Madison Square Garden Annual Report 2022.

- a profit of $48,880 thousand, with a margin on revenues of 6%;
- a total cash flow, given by the sum of cash flow from operating activities (CFFO); cash flow from investing activities (CFI); cash flow from financing activities (CFF), totalling $91,018 thousand. The sum of these three elements mentioned above leads to the determination of the total financial flow of a company and, therefore, to understand if it enjoys a positive or negative cash flow, a central element for the performance and evaluation of a company.

Based on the data just described, it is possible to use the so-called Key Performance Indicators to analyze the company's performance. Financial Statement Analysis - the process through which investors, corporate executives, financial analysts, and other stakeholders assess the financial health of a company - relies on KPIs (key performance indicators) to evaluate the health, profitability, and performance of a company. In fact, the relationship between financial statement analysis and key performance indicators is manifested through various mechanisms: first of all, the financial data provided by financial statements form the basis for many financial KPIs, which allow aspects such as liquidity, profitability, return on investment, and more to be assessed. Furthermore, financial statement analysis provides a long-term perspective on the company's financial performance, allowing the monitoring over time of the trend and sustainability of performances through the use of financial and operational KPIs. Performance indicators emerge as fundamental evaluation tools that allow organizations to measure, monitor, and improve their results in relation to established objectives. These indicators provide a clear and measurable view of an organization's performance, offering concrete data to evaluate the success and effectiveness of its initiatives and strategies. They can be quantitative or qualitative and can vary greatly depending on the sector, scope, and specific objectives of the organization itself. However, the essence of KPIs remains the same: to provide a clear and measurable indication of the organization's performance and progress.

In the analysis of the financial status of the New York Knicks, I will proceed to use the following KPIs:

- Debt Gearing Ratio (static): Total Liabilities/Equity, which shows the relationship between a company's debt and equity financing. In general, the higher the gearing ratio, the more dependent a company is on external creditors. However, the gearing ratio should never be considered alone, but always in connection with the company's earnings position (leverage-effect). In the case of the New York Knicks, the indicator is 9, which means that the company is in a strong debt position and relies heavily on third-party creditors;
- Golden Financing Rule: Current Liabilities / Current Assets ≤ 1. This ratio states that the terms between obtaining and repaying capital on the one hand and the use of capital on the other should be in line with each other. According to this rule, capital may not be tied up in assets

for a longer period than the capital is available to the company. If a company finances a long-term investment (e.g., a machine) with short-term financing, the loan becomes due before the income required to repay the loan has been generated. In the case of the New York Knicks, the index in question is 2, pretty high. This can be interpreted in several ways:

  - High short-term debt: A high GFR suggests that the company has a high amount of current liabilities relative to its current assets. This may indicate that the company relies heavily on short-term external financing to support its daily operations.
  - Liquidity risk: a high GFR may indicate potential difficulty in covering short-term obligations with its liquid assets. This can lead to liquidity risks if the company is unable to repay its debts when due.
  - Possible financial issues: a high GFR could be a sign of financial problems, such as inefficient working capital management or excessive reliance on short-term financing without the ability to convert assets into sufficient liquidity to repay debts.
  - Future financial pressures: a high GFR may indicate the need for the company to reduce its current liabilities or increase its current assets to improve its financial position and reduce the risk of future financial difficulties.

- Return on Equity (ROE): Net Profit / Equity, measures how much income is earned for the shareholders on their invested capital. A company's target must be to generate a return that corresponds to the interest rate on the capital markets plus an industry-dependent risk premium (generally 5–10%). Given constant profits, the return on equity increases the lower the level of equity employed is (leverage effect). In the case of the New York Knicks, the indicator is -0.3, negative due to the company's equity. Having a negative ROE, albeit slight, is an important warning signal of the company's financial health, particularly of operational issues and risk to shareholders.

The financial analysis conducted on the company, therefore, reveals a complex and articulate picture of the financial situation, not exactly parallel to the performance of the NBA. Through the deepening of the main financial indicators and business performance, strengths and weaknesses emerge that provide valuable insights for investors, managers, and industry observers and provide, albeit limited, insight into the economic and financial situation of basketball. Despite facing some challenges, the New York Knicks show an acceptable balance between current assets and current liabilities, indicative of adequate working capital management. Despite a negative ROE and a relatively high financial leverage, the company still demonstrates some financial resilience that can be attributed to its status as a franchise in the NBA and its market value. However, the company still needs to address some critical issues. A negative ROE and a relatively high financial leverage indicate profitability

overly dependent on debt, raising questions about long-term financial sustainability. Although working capital management seems to be handled acceptably, the company should focus on debt reduction and increasing profitability to ensure greater financial stability in the future.

2.2. The Birth Of The Euroleague: A Breakaway Moment In European Basketball History

Once the analysis of the American landscape is concluded, from which our continent, in the sports field, seems to draw greatly in order to create a private and elitist league and multiply revenues, it is important to fully reconstruct what can be considered the first (and successful) attempt to develop a Breakaway League within the European sports context.

In the course of 2001, the European basketball scene underwent an epochal transformation, determining a significant shift in power between the international federation and the clubs. That year was characterized by the triumph of two teams as European champions, marking a crucial moment in the continent's basketball history[98]. Fifteen years after this event, the International Basketball Federation (FIBA) and the Union of European Leagues (ULEB) found themselves embroiled in an official dispute, officially for the better interest of the game and its participants, but with an evident subplot of power ambitions and financial gain. After a period of ULEB dominance, FIBA decided to emerge from the shadows and reaffirm its presence on the European scene, second only to the NBA in terms of importance.

However, before examining recent events, it is essential to delve into the past until 1991. Already in the 1980s, major European clubs showed interest in creating a league independent of FIBA Europe, in order to gain greater economic control. Borislav Stankovic, Secretary General of FIBA, sought to address this need by expanding participation in the European Cup in 1991, allowing non-winning teams in their respective national leagues to participate[99]. In 1996, further changes led to the creation of the Euroleague, limiting participation only to the top teams from the major leagues.[100]

However, such initiatives did not fully satisfy ULEB, founded in 1991. The organization believed that revenue distribution was too limited for the clubs. This dissent led to the split in 2000 and the founding of Euroleague Basketball by ULEB, which on its institutional website states the following mission: "*Global leader in sports management, Euroleague Basketball develops and organizes competitions, sporting events, social responsibility, and educational programs*". And so, with what I could now define as a pioneering as well as opportunistic spirit, 24 clubs belonging to the top

[98] Eurodevotion.com. (2021). Euroleague Story 2000/2001: The Beginning of a New Era. Balbo.

[99] fibabasketball.com. (2022, June 9). FIBA's second Secretary General Borislav Stankovic altered course of international basketball.

[100] Štrumbelj, E., Vračar, P., Robnik-Šikonja, M., Dežman, B., & Erčulj, F. (2013, October 8). A Decade of Euroleague Basketball: an Analysis of Trends and Recent Rule Change Effects.

European leagues decided to join the new private and "self-managed" competition in order, needless to say, to maximize their profits. All in respect of their interests, as well as legality.

Meanwhile, FIBA introduced the Suproleague as an alternative to the Euroleague, and thus, it was the first season in which there were two European Cups, managed by two different entities. To understand the state of world basketball federation at that time, consider this seemingly marginal aspect: the "Euroleague" brand—a simple and catchy name for a European competition—had not even been trademarked, which is why the clubs appropriated it ahead of the competition.

The arrival of the new millennium saw major European clubs divided between the two competitions, but the following year FIBA recognized ULEB's project as more promising, intriguing, and, above all, profitable. This change led to a sort of peace, with FIBA establishing its own continental competition, the Euro Challenge, for teams not enrolled in the Euroleague or Euro cup. However, despite initial difficulties, the FIBA competition continued to offer good basketball and talented players.

Patrick Baumann, who became Secretary General of FIBA in 2003, emerged as a key figure in redefining the European basketball landscape[101]. Through a series of initiatives, he worked to bring clubs back under the FIBA umbrella, although there were significant obstacles to overcome:

- The first step was to change the international calendar by inserting three qualification windows for National competitions during the season, however, he encountered a marketing obstacle: he realized that it was not convenient to have National teams play without NBA players, who were not released by their respective teams during the season;
- The second step was to align with the UEFA-FIFA model regarding the dispute of European and World Championships, to be held every 4 years. This change seems to be moving towards the push that then NBA commissioner David Stern had given towards a joint management between FIBA and NBA of the World Cup as a flagship event, with the transformation of the Olympics into an Under-22 tournament without professionals, just as it happens in soccer, to create a global event like the FIFA World Cup (which has an increasing following in the States).
- The third step concerned the number of participants in the competition, which increased to 16 teams in 2015, with a fairer distribution of available slots among European nations.

FIBA's proposals for reforming the top European competition generated considerable tensions with the Euroleague, which over the years modified its format and composition to counter Baumann and FIBA's attempts. The tournament, born at the beginning of the new millennium, is structured in a single group of 18 teams (probably 20 or 22 in the near future), including 13 holders of multi-year

[101] fibabasketball.com. (2022, November 15). Third Secretary General Patrick Baumann led modernization of FIBA.

licenses, one (Alba Berlin) with a two-year license, the two finalists of the previous Euro cup season, and two wild cards. It is essentially a closed system, which over the years has raised barriers to entry to protect and strengthen the existing clubs. Infrastructure, for example, has increasingly become an important parameter for access, in the sense that to have a chance to enter the elite, one must play in a spacious and modern arena, as close as possible to NBA standards.

Since 2009, the ownership of the tournament has been in the hands of Euroleague Commercial Assets (ECA)[102], a company owned by 11 clubs (Anadolu Efes, Baskonia, CSKA Moscow, Barcelona, Fenerbahce, Maccabi, Milan, Olympiacos, Panathinaikos, Real Madrid, and Zalgiris) with ULEB remaining a minority shareholder. The Euroleague is now truly the club competition for the clubs. And if it changed its format in 2016 it is because FIBA, as told above, re-emerged after 15 years of accepting the status quo, creating its own competition and threatening sanctions against teams and players who would join the Euroleague.

Overall, the Euroleague is traveling at two speeds. On the field, the tournament is exciting, at times thrilling. The 34-game regular season is not currently at risk of less competitive matches towards the end between teams that no longer have playoff aspirations. And the postseason itself, including of course the Final Four, showcases top-level basketball. There are the strongest players outside the NBA and the best European coaches in a system that feeds itself and tends upwards.

On the organizational side, however, there are gaps that need to be addressed promptly. The mixed system is showing cracks that could be resolved by turning the Euro cup into a sort of Euroleague 2, thus providing a system of promotions and relegations between the two competitions. From the 2022-23 season, the second cup envisages three-year licenses and this seems to be heading towards a closed system but with a greater number of clubs involved. And then there is the aspect of economic stability and revenue distribution, which is still a subject of ongoing debate.

In conclusion, the Euroleague has ensured that:

- the clubs participating in it are certainly stronger on the market, not just among fans;
- the entire structure is second in the basketball world only to the NBA;
- the brands that make it up are increasingly consolidated and recognizable.

However, real economic growth in terms of revenues and their distribution is not being accompanied by all this, and this is what needs to be reasoned about. In light of these recent events as well, FIBA has seized the opportunity, spreading news of a potential partnership with the NBA. The goal would be to create a high-level competition anti-Euroleague in Europe, managed directly by the star-studded American managers, strategists of Sports Entertainment. Certainly, the ongoing clash between FIBA and ULEB does not benefit the club's coffers, which push for a peaceful compromise: both parties

[102] European Commission (2022, April). Study on the European Sport Model.

must find a compromise to ensure the success of European basketball as a whole. Otherwise, there is a risk of harming the game and disappointing its supporters.

2.2.1. Understanding The Gap Between NBA And Euroleague Basketball

Despite the Euroleague's ambition to narrow the gap with the NBA, the path toward this goal remains challenging and intricate. The American league stands out for its focus on entertainment and spectacular shots, such as those made at the buzzer or from considerable distances. Conversely, European basketball values the essence of the game, competitiveness, and technique, sometimes at the expense of the purely spectacular aspect of the action.

Dunkest's article[103], by closely examining the (main) differences between the two competitions, highlights how there are still some gaps that distance American basketball culture from European basketball culture. In particular:

- in the United States, the philosophy of "Bigger is Better" is also reflected in the dimensions of the court. Euroleague matches are played on courts that measure at least 14 meters wide by 26 meters long, while the NBA uses courts with a minimum size of 15x28 meters, and sometimes even 17x30 meters;
- The NBA season is characterized by its length, with a regular season consisting of 82 games, providing teams and players with a balance between activity and rest. However, the highlight of American basketball is represented by the playoffs, when the best teams compete in a tight competition. In contrast, the Euroleague features a formula that includes a 34-round regular season, with the participation of 18 teams;
- NBA games have a longer duration compared to European ones, with quarters lasting 12 minutes each, while in Europe quarters last 10 minutes. This difference also results in a longer overall duration of NBA games, giving spectators more time to engage and place bets. Consequently, European basketball appears more frenetic, with less room for the long individual displays of NBA players;
- In the NBA, a player is ejected after 6 fouls, while in the Euroleague, 5 fouls are sufficient.

These elements contribute to delineating the distinctions between the two leagues and their respective gaming experiences.

[103] Dunkest.com (2022). Euroleague vs NBA: History of a Challenge. How the NBA was born and the differences with the Euroleague. Why the NBA is the most beloved league by basketball fans.

2.2.2. Has the Euroleague Truly Changed The Fortunes Of European Basketball?

Taking stock of this new format, now in effect for 8 seasons, it is necessary to consider the significant impact that the pandemic has had for at least three years. It is clear, therefore, that eight seasons, with a pandemic in between and all the related issues ranging from non-existent box office revenues, are not sufficient time to give an overall judgment on the Euroleague project.

Before the advent of the Covid-19 pandemic, the Euroleague was experiencing a period of financial success. Between the 2015/16 season (the first fully detached from FIBA) and the 2018/19 season, the transition from a tournament format to a league with playoffs was well received, leading to considerable commercial expansion, especially in the media and sponsorship sectors. According to Sport Business[104], the competition's revenue more than doubled, growing 2.3 times in just three years. TV and live audiences also increased, with an overall per-game attendance growth of about 10 percent. Countries like Spain, Greece, and Türkiye experienced significant revenue growth, with particularly lucrative television rights deals. The sponsorship program also saw considerable development, nearly doubling revenue from the new championship format. This success was attributed to a more data-driven approach and a strategy targeting specific audience segments, supported by the engagement of industry experts. Additionally, according to Sport Business, the prosperous new sponsorship paradigm appears to have been built on three fundamental principles:

- Adoption of agreements based on detailed data analysis.
- Transition to a model focused on targeting specific demographic information.
- Investment in the identification and recruitment of talent with the right managerial and technical skills.

The stability guaranteed by long-term contracts attracted broadcasters and brands, facilitating further investments and expansions. Negotiations for a franchise in the UK are ongoing, with London as the main target, given its potential in the vast British media market. Euroleague Basketball is also focusing efforts on assisting clubs in increasing revenues through initiatives such as the Business Operations and Club Services department and the Euroleague Basketball Business Summit, with the aim of creating a sustainable competition that benefits both clubs and communities across Europe.

On the broadcast front, the organization has seen a significant increase in the value of television rights, as demonstrated by the 50% increase Dazn paid for rights in Spain in 2018. Commercial partnership frameworks have also seen successes, with a 94% increase in value provided to commercial partners through digital channels during the 2019-2020 season compared to the previous

[104] SportBusiness. (2019, September 2). Euroleague Basketball's great leaps forward. In association with Euroleague Basketball.

year. Additionally, fan enthusiasm for the Euroleague is a fundamental element of the competition. As highlighted by Sport Business, during the 2018/2019 season, the Euroleague reached higher engagement levels on digital channels compared to other prestigious competitions such as the UEFA Champions League, the Premier League, La Liga, and even the NBA. Furthermore, in July 2020, the Euroleague released surprising statistics regarding the growth of fan support during the 2019-2020 season, despite its shortened duration. Some of the most significant data points include:

- An average 15% increase in fan interest in Euroleague markets, surpassing the overall 9% growth in basketball interest as a category. This increase was primarily driven by France, Israel, Türkiye, Spain, and Germany, to which, along with France, a permanent license was granted during the aforementioned season.
- A 15% increase in TV viewership, mainly in the markets of France, Italy, Israel, and Germany.
- Growth across all social media platforms, with an average 11% increase in followers, 21% in reach, 25% in video views, and 46% in interactions.
- A participation increase in "live" events of over 12%, with a 75% increase in the average arena fill rate.[105]

In light of this data, it emerges that fans seem to prefer a high-level regional competition like the Euroleague.

It is worth noting that one of the critical elements for the success of the Euroleague has proven to be one of the most controversial points for those who opposed the creation of the European Super League. This element is "stability", which manifested itself in the fact that 11 out of the 18 teams participating in the 2020-2021 edition obtained a decade-long license in a league without relegations to a lower division. Indeed, this stability was crucial in attracting broadcasters and sponsors willing to commit to the long-term project. Additionally, it captured the interest of other stakeholders and potential new team owners.

Another essential component in ensuring this stability was the implementation of the financial fair play regulation. In the 2018-2019 season, team shareholders limited their contributions to 65% of the team's total revenue, with the aim of gradually reducing them to 40%. Although initially this reduction was planned for the 2022-2023 season, due to the pandemic, it was postponed for a few seasons. This measure was adopted to ensure that each team adopts sustainable business models without overly relying on external sources of funding. Furthermore, teams that do not comply with these limits will be subject to sanctions proportional to the amount of waste. Another crucial element for the championship has been the "revenue distribution model" among participating teams. Even during the

[105] Ballketing. (2022, February 7). Euroleague Basketball: The mirror the European Super League looked itself into.

season affected by the Covid-19 pandemic, the Euroleague respected this model. Eurohoops.net[106] provided a detailed explanation of this model, highlighting a significant revenue distribution variation in favour of participating teams.

However, despite what seems to be a promising economic outlook for the Euroleague, there is one data point that stands out and is prompting the ECA to assess the short-term future, especially regarding the mixed access system. Participating in a single edition of the Euroleague does not bring proportional revenues to the clubs involved to cover the excessive costs they incur. Teams that entered the tournament through on-court qualification in 2016, by winning the Euro cup or placing in their respective championships, had to significantly increase their budget: assembling a roster of at least 15 players to compete in both the cup and the league, and traveling on charter flights across Europe are just two of the items that force executives to find new resources. However, the returns have not been sufficient, even in the presence of state-of-the-art sports arenas. Examining the case of Gran Canaria, as analyzed by the sports newspaper Ultimo Uomo[107], which has an 11,740-seat facility built for the 2014 World Cup. The average attendance for the 15 home games of the Euroleague 2018-19 season was 4,823 units, about a thousand more than the previous season in the Euro cup: decidedly too little to help concretely support the costs. TV rights, despite being sold in 201 countries, do not constitute economically significant revenue. As for the prize chapter, we only have rumors, such as the one from nova.rs[108] reporting news of an increase in the prize fund:

- Minimum 1.5 million euros for long-term licensed clubs;
- Minimum 500,000 for the others;
- 650,000 for clubs reaching the Final Four;
- Another one and a half million for the winners
- Various prizes for the top 14 finishers.

The total is around 38 million euros, decidedly insufficient to cover the required expenses. To provide a benchmark, the winner of the FIBA Basketball Champions League receives one million, which is slightly less than a third of the total prize money of the competition: however, it has considerably reduced expenses for access and maintaining the position. Those coming from the Euro cup – which is a "subordinate" competition but still under the ECA's auspices – are entitled to stay another year upstairs provided they qualify for the playoffs. This means not only equipping themselves with a substantial but also competitive bench, without, of course, having the certainty of achieving the result.

[106] EuroLeague to distribute 79% of the 2020-21 season revenues to clubs via the market pool. (2020, July 9). EUROHOOPS.NET.

[107] Ronzulli, D. (2021, April 23). Has the EuroLeague truly saved European basketball?

[108] Matić, Đ. (2020, August 16). Crvena Zvezda to receive at least 500,000 euros from EuroLeague.

Thus, an additional economic and technical disparity is created between those who can afford to make biennial and triennial contracts and those who must carefully consider the opportunity to go beyond the annual one.

Continuing with the same case described earlier, in the Board of Directors meeting held in June 2023, Gran Canaria unanimously decided not to participate in the following edition of the Euroleague. The Spanish club, having obtained the right to participate in the prestigious ECA competition in 2023/24 thanks to their victory in the Euro Cup, stated the reasons for this decision through a statement by President Sitapha Savané during a press conference, illustrating that the switch to the Euroleague would entail a substantial increase in the number of matches, from 18 to 34. He emphasized that, unlike the Euro Cup, which usually allows three days of rest between matches, the Euroleague would only have two. Additionally, he highlighted the presence of seven weeks with closely scheduled matches and periods where three games are played in five days, circumstances that would almost inevitably force the club to use charter flights for travel. Based on these considerations, it emerged that the budget required to support potential participation would significantly increase, from 500,000 euros to 1,500,000 euros, with the further caveat that for Gran Canaria, this increase would be even more significant, estimated at around 2,025,000 euros. Savané expressed concern about the relatively modest prizes offered by the Euroleague, arguing that these amounts would not allow the club to cover participation costs. He explained that the proceeds are distributed in three parts: a fixed amount of half a million euros, from which arbitration costs are deducted; another share of 1,800,000 euros for qualification, reduced to about 200,000 euros for 14th place, with no compensation for the last four finishers. He also mentioned the distribution of television revenues and sponsorships, stating that while these sums are considerable, they are allocated exclusively to A licenses, with no revenue forecast for Gran Canaria.[109]

2.3. Exploring US Sports Monopolies In A Competitive Landscape

In relation to American antitrust law, it is necessary to adopt a differentiated approach compared to the European one and to consider some specific aspects. American sports leagues, in every discipline, have always taken the form of a closed elite, accessible only to companies with sufficient financial resources. This contrasts with the European landscape, where there is greater emphasis on sport as a meritocratic principle, a concept that, indeed, finds its roots in the Old Continent. Inevitably, this context leads to a significant reduction in competition, or at least to a reinterpretation of the concept itself: competition between companies does not occur based on merit, but on economic grounds. In other words, the decision has been made that the best teams are to be provided with the opportunity

[109] Pianetabasket.com. (2023, June 13). Gran Canaria, no EuroLeague. President: "Costs too high for travel".

to gain experience and compete, whilst other teams are to remain uncompetitive and unfavoured. This might pose some contradiction to the anti-trust laws of the Sherman Act of 1890, the Clayton Antitrust Act of 1914, and the Federal Trade Commission Act 1914 that tries to control formation of monopolies in the country and any distortions of the free competition in the market. It is still possible to question the presence of the potential competition limitations behind such highly exclusive as private leagues that need significant funding to join.

2.3.1. Application Of The Sherman Act In American Sports Leagues

In the United States, the issue of antitrust exemption for sports, due to its peculiar and autonomous nature, has had a complex historical and legal trajectory. Even before Europe, the American Supreme Court had expressed a favourable opinion on this exemption, focusing specifically on baseball, considered the quintessential national sport. Several reasons contributed to this position. Firstly, the predominantly local nature of sporting events at the time, with limited impact beyond state borders, reduced the relevance of federal antitrust legislation, particularly the Sherman Act. Additionally, baseball was seen as an activity with a strong entertainment and traditional component, distinct from regular commercial activities. However, it is important to note that this exemption was never absolute. Over time, the Supreme Court has addressed various controversies regarding the application of antitrust laws to baseball, defining the limits of this special condition. For example, the 1953 ruling in the case of Toolson v. New York Yankees[110] clarified that the organization of baseball games does not constitute "interstate commerce"[111] subject to the Sherman Act. Despite these limitations, the antitrust exemption for baseball remains a significant element of the American legal landscape. It reflects the recognition of the unique nature of baseball as a sport and its cultural and social importance.

Considering all American sports disciplines, which are of public interest, it should be avoided to grant excessive market power to a few clubs and, consequently, to limit or control such power as much as possible. This constitutes the fundamental premise of antitrust law. Significantly, it emerges that the

[110] U.S. Supreme Court. (1953). Toolson v. New York Yankees, Inc., 346 U.S. 356. Argued October 13, 1953. Decided November 9, 1953.

[111] *"(...) In the Federal Baseball Club case, the Court did not state that, even if the activities of organized baseball amounted to interstate trade or commerce, those activities were exempt from the Sherman Act. The Court acted on its determination that the activities before it did not amount to interstate commerce. The Court of Appeals for the District of Columbia, in that case, in 1921, described a major league baseball game as "local in its beginning and in its end." [Footnote 4] This Court stated that "The business is giving exhibitions of baseball, which are purely state affairs," and the transportation of players and equipment between states "is a mere incident. . .." [Footnote 5] The main thrust of the argument of counsel for organized baseball, both in the Court of Appeals and in this Court, was in support of that proposition. [Footnote 6] Although counsel did argue that the activities of organized baseball, even if amounting to interstate commerce, did not violate the Sherman Act, [Footnote 7] the Court significantly refrained from expressing its opinion on that issue. (...)".*

major American sports leagues, including the National Football League (NFL), Major League Baseball (MLB), and the National Basketball Association (NBA) - considering the enormous demand and cultural impact of major professional sports, high ticket prices, substantial fees paid by television networks for broadcasting rights, and the fact that players are the highest-paid unionized employees in the world - possess considerable market power in various relevant markets. However, despite their acknowledged power, given the complexity of the concept of market power and the limitations of the legal process, convincing arguments regarding the presence of competition restrictions, if not outright monopolies, represent a challenge. However, few objective observers would seriously doubt that the NFL, MLB, the National Basketball Association (NBA), and the National Hockey League (NHL), to varying degrees, hold considerable market power in different sectors, and, consequently, the obvious question becomes what role the law should play in this regard. Several avenues could be envisioned:

- Establishing a regulatory agency with the authority to oversee and control potentially monopolistic activities.
- Intervening ad hoc to address specific undesirable effects.
- Mandating the division of the current major leagues into two or more independent leagues, prohibiting collaboration except for organizing events such as All-Star games and postseason championships.
- Prohibiting private ownership and requiring that the major professional sports leagues and their respective teams be government-owned and operated. Each of these options for addressing the market power of the leagues, in theory, presents plausible merits, although most entail disadvantages.

The possible solution to adopt passes through a central question: whether the major American sports leagues are single entities for antitrust law purposes. If they are, the Sherman Act's prohibition regarding "*contracts, combinations (...) or conspiracies in restraint of trade*"[112] would not apply to internal rules or league behaviour because there would be no agreement between different entities. The resolution of the issue should be based on whether antitrust policy is promoted by allowing all or most of the leagues' behaviour to be judicially understood within the Section 1 reasoning rule. The aforementioned section is designed to counteract the market power gained from the cooperation of entities operating in a market. Given that sports leagues seemingly involve the cooperation of teams that collectively appear to possess considerable market power, the natural instinct of the courts is not to exclude sports league behaviour from the aforementioned rule. Rejecting the single entity defense, courts seem to consider Section 1 as the only available vehicle to address the alleged market power of the leagues. The problem with this approach is that antitrust doctrine provides no significant

[112] Sherman Antitrust Act of 1890, Section 1.

guidance for applying Section 1 to a decentralized entity where constituent parts cannot independently create any product. In fact, the underlying theory of Section 1 is that independent centres of economic power should act independently except when their cooperation, overall, enhances consumer welfare. According to this principle, the anticompetitive effects of the combined market power of the defendants should be balanced with the efficiencies generated by their cooperation.

However, this theory is based on the assumption that each constituent entity can produce and control something separate and distinct from what is produced and controlled by its competitors. An entity that lacks such independent production capability has no intrinsic economic power and cannot act or make decisions except within the constraints imposed by the narrower productive entity that possesses independent economic power.

In this regard, it is necessary to mention the historical case Copperweld Corporation v. Independence Tube Corporation[113], in which the United States Supreme Court issued a crucial decision in the field of antitrust law. The case concerned the application of antitrust law, particularly Section 1 of the Sherman Act of 1890, to a parent company and its wholly owned subsidiaries. The Court ruled that when a parent company and its wholly owned subsidiaries act as a single economic entity, they are considered a single enterprise for antitrust law purposes. This means that, despite being legally separate entities, if they act together as a single economic entity, they cannot be considered in violation of antitrust laws for conspiring or acting in restraint of trade. The decision had a significant impact on how companies structure their relationships with subsidiaries and clarified the concept of economic unity for antitrust purposes. Essentially, it established that companies cannot circumvent antitrust laws by using controlled subsidiaries to engage in anticompetitive actions.

Connecting the ruling to the context of American sports leagues, it is evident that the constituent teams of a closed league do not have independent production capability and, therefore, no economic power except as members of the league itself. For example, if the New York Yankees were not members of the MLB, the team would be virtually worthless, able only to play casual friendly matches that few consumers would find interesting or entertaining at any price. The name and logo of the Yankees would have little value. Therefore, there is no production or marketing decision regarding any MLB game that is not inherently the joint decision of all the league's teams. Deciding which teams play when and at which venues, at what ticket price, for which television and radio rights, or under what rules necessarily involves the express or implied agreement of every MLB team and every club in other leagues. Of course, many decisions, for efficiency reasons, are delegated to each team rather than being made jointly by all teams or centrally by the league office. But because all teams

[113] Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984). Argued December 5, 1983. Decided June 19, 1984.

defer to the judgment of one team for some decisions does not mean they are not de facto league decisions because the entire league must accept them for there to be a league product. If some teams were to refuse to accept the decision of one team and, consequently, not recognize the results of that team's games in the league standings, those games (if played) would have virtually no economic value.

When analyzing the role of anticompetitive effect in the given sports leagues, a certain perspective comes to mind. Commonly, the anticompetitive effect comes where several firms collude to engage in conduct that tends to restrict competition by either charging higher prices or offering substandard goods and services to gain more profits. However, such a concept does not seem quite fitting in the context of sports leagues. The teams are like different businesses that are part of the same league. Severally, none of them has the capacity of independent production of the vehicles. Thus, only the assembly of each of the teams will create the closest business unit capable of creating sports entertainment. Thus, when it comes to decisions like organizing league games or defining rules of the game, it is done in unison since it forms a part of the league-making process.

Hence, if the interactions between teams in a league are viewed as anti-competitive, this means that doubt is being cast on the operation of leagues itself. The goals set by such shared decisions and rules do not curb the competition between individual teams; instead, it tries to provide a standard and quality performance to fans and spectators. Thus, to regard sports leagues as potential violators of antitrust laws is excessive, and therefore, it would not seem appropriate to apply Section 1 of the Sherman Act in full to the American sports leagues.

2.3.2. Antitrust Exemption In American Sports: A Case Study Of Major League Baseball

The decision of the United States Supreme Court in the case "Federal Baseball Club v. National League"[114] of 1922 is an important legal precedent that established the interpretation of the applicability of antitrust laws in the context of activities of American professional sports leagues, particularly baseball.

According to the Court, the organization of professional baseball games between geographically distinct clubs, while requiring frequent interstate movement of players under the control of their leagues, does not constitute interstate commerce subject to federal antitrust regulation. This is because the primary activity, namely the public exhibition of baseball games, represents a localized event within each state, albeit facilitated by the interstate movement of players. The ruling indeed established that the activity of organizing professional baseball games does not constitute interstate

[114] United States Supreme Court (1922). Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs.

commerce under the Sherman Act. The court deemed the central element of the activity, namely the public exhibition of games, to be a localized event within each state, even though facilitated by the interstate movement of players. Interstate movement of players is considered a mere accessory, not the essence of the activity itself, and the organization of baseball games was equated with other activities that are not considered interstate commerce. The reasons identified by the court for the non-constituency of interstate commerce were as follows:

- The public exhibition of baseball games takes place within a specific state and does not cross state borders.
- The primary objective of the activity is the entertainment of the local public, not the transportation of people or goods across state borders.
- Interstate movement of players is an ancillary consequence of organizing games, not the ultimate purpose of the activity.

The decision in the case Federal Club v. National League limited the application of federal antitrust laws to the professional baseball industry, and since then, baseball leagues have enjoyed greater autonomy in managing their activities without the risk of incurring federal antitrust sanctions.

The decision was subsequently reaffirmed in 1953 (Toolson v. New York Yankees): it was a crucial decision of the United States Supreme Court that further strengthened the exemption of professional baseball from federal antitrust laws. Earl Toolson was a professional baseball player who had signed a contract with the Washington Senators, a Major League Baseball (MLB) team. In 1952, the Senators traded him to the Binghamton Triplets, a Minor League Baseball (MiLB) team affiliated with the New York Yankees. Toolson refused to play for the Triplets and filed a lawsuit against the Yankees and the MLB and MiLB leagues, claiming that the trade constituted a violation of antitrust laws. The central issue of the case was whether the activity of organizing professional baseball games should be considered "interstate commerce" subject to the Sherman Act, the main federal antitrust law.

The United States Supreme Court reaffirmed the decision of the previous case Federal Club v. National League wherein it determined that the organization of professional baseball games does not qualify as interstate commerce. The court said that it was also true that baseball games are publicly exhibited in each state and this is made possible by trading players across states. As a result, the activity sits beyond the reach of the Sherman Act. The Toolson v. New York Yankees case also fixed the previous ruling done in the case to support the professional baseball exemption decision of federal anti-trust laws.

It is also important to state here that there are other commentators who have expressed criticism in regard to the Toolson v. New York Yankees case; these commentators argue that the activity in organizing professional baseball is instrumental in affecting the flow of Commerce across states.

Another significant event in the legal history of the MLB was the Curt Flood v. Bowie Kuhn[115] case of 1972 also famously referred as the Flood's case. The case was over Curt Flood, an outfielder with the St. Louise Cardinals and baseball player who sought to change the reserve clause of baseball. It tended to lock a player to his team for as long as possible, making it impossible for him to negotiate with other teams after the contract expired and easily become a free agent. Flood stated that the free agency system, which included the reserve clause as one of its components, was a violation of antitrust laws, specifically the Sherman Act. He said that the clause raised issues with the flow of labour and his freedom to discuss remuneration. In the case against Flood, the Supreme Court made their decision against him. The majority opinion admitted the restraint clause hamming competition but argued that baseball was not subject to federal anti-restraint laws. This exemption earlier arose from precedents as in the United States Constitution Cases Federal Baseball Club v. National League (1922) and Toolson v. New York Yankees (1953). These cases regarded baseball as mere exhibition for which it could not be considered as an interstate commerce hence could not be subjected to the provisions of the antitrust laws.

It could be argued, however, that the Flood case served the purpose of altering baseball in a profound manner, even if it did not result in victory for the player. It raised awareness of the need and lack of fairness of the reserve clause across the nation and forced MLB to begin to engage in bargaining with the Major League Baseball Players Association (MLBPA). This eventually paved way to the introduction of free agency system in 1976 since it gave players the opportunity to have some say on their destinies and compensation packages. As much as MLB has some kind of immunity to some antitrust restraints and limitations, free agency offers more competition in acquiring individual players.

Based on the aforementioned court rulings, it is possible to conclude that, in the context of professional sports and as far as the legal understanding is concerned, baseball also has its somewhat special status. Robinson noted that Major League Baseball or MLB is arguably the most antitrust exempted professional sports league, the one which is most sheltered from these laws, those that regulate competition in the market. To begin with, the particular nature of the professional sports leagues that, contrary to other industries, rather than individual, has to be defined as fully integrated joint ventures[116]. This means that all affiliated teams are essential for the production of the final product: it has also played an important role with regard to the games. This interdependence results in a type of "natural monopoly" [117], where for example, a league would hold a monopoly over many

[115] Flood v. Kuhn, 407 U.S. 258 (1972). Argued March 20, 1972. Decided June 19, 1972.

[116] Roberts, G. R. (2003, November 4). The Case For Baseball's Special Antitrust Immunity. Tulane University.

[117] Roberts, G. R. (2003, November 4). The Case For Baseball's Special Antitrust Immunity. Tulane University.

markets in a certain sport. On the strength of the foregoing peculiarities, one would expect that court judgments would corroborate the notion that what can be considered normal antitrust rules which argue competition standards are not appropriate in the sphere of baseball. Competitive forces such as the one within the structure of those organizations, would not make any sense and actually may be detrimental.

More specifically, it is enlightening that leagues, which are subject to the Anti-trust laws (NFL, NBA, NHL), will, despite the difference in the legal treatment, not react fundamentally different. This implies to the assumption that antitrust laws do not dictate clear organizational strategies of leagues. Indeed, removing MLB's antitrust exemption could even harm baseball: such enforcement may ultimately decrease the number of minor league franchises – this, in turn, would come at a cost to many communities and fans who will be denied this form of entertainment.

The analysis provided in this article provides an enabling qualitative look at the interaction between baseball and sports leagues and the American antitrust laws. The following explores the fact that this sport has some peculiarities that make its management and operating model different from that of other industrial sectors. Although the decision to provide an exemption for MLB under the antitrust law might be highly debatable, it might be argued that it was made necessary by the need to protect the purity of baseball and the sporting public that actively patronise the game. Of course, the debate on this topic is likely to continue.

Also, there is going to be some further link of the discussion. It is possible that new challenges and transformations in the sports environment have led to the need to reconsider the special status attributed to the phenomenon.

2.3.3. The Advent Of Sport Broadcasting Rights

Television broadcasts signified perhaps the most significant development brought about in professional sports announcing the onset of what could be termed a ‘commodification’ of the field. The extent of this change was perhaps most apparent in the United States of America where rights to broadcast sports for instance triggered extensive legal controversies.

As with most evolutions, there are numerous and long-term implications of such a change. Firstly, the travels and broadcasts of sports events on the national and international stages allowed them to be beyond simply local events. This led to federalization of certain rules and regulations in the sector and more interferences of federal authorities in the sector. Second, new media visibility of the sport events and naming athletes as trendy performers led to the improvement of the bargaining power of athletes. This factor upset the system which had been operated by athletes and the sport organizations, meaning that it forced lawyers into re-examining the foundations of the law on the basis of which

athletes were treated differently from the organizations were treated. In addition, the growing interest in the monetization of sporting events with regard to sales of sporting events broadcasts, sponsorships, and betting also contributed to changing the character of this sector and making it more commercial than purely non-profit. One of the most conspicuous examples that demonstrated the necessity of the reform of legal regulation concerning working athletes was the United States v. National Football League litigation issuing from the United States of America which local trial judges deviated from the Supreme Court of the USA judgments over-emphasizing television influences on the sports industry and therefore, the variation of the pertinent antitrust legislation.

The decision was discussed before the United States District Court for the Eastern District of Pennsylvania in 1953[118]. The U.S. government brought legal action seeking an injunction against the enforcement of certain provisions of the National Football League (NFL) regulations, arguing that these provisions violated the Sherman Antitrust Act, a federal antitrust law. Article X of the NFL regulations[119] prohibited the television or radio broadcast of games in which a team was involved within 75 miles of a League city on the day when another city's home team was playing a game in its own city or playing away and broadcasting or televising its game. The government said that these measures had formed a contract and conspiracy to limit trade, thus violating the Sherman Act. In the judgment, the Parties have discussed the analysis of each of the four primary sections of Article X vis-a-vis antitrust legislation adhesion. It also examines the specifics of the professional football business and later tries to determine if such restrictions make some sense or are unfair, all-in light of potential implications on team revenues and competition within the sector. While the court noted that some restrictions were reasonable and legal, the other restrictions were unreasonable and hence considered to be unlawful. For example, it was considered unreasonable and unlawful for away games at the home territory of other teams to be televised while they themselves were away but it was legal to bar televising of home games in one’s own area as a protective measure of team revenues. Finally, the text addresses whether professional football itself is involved in interstate commerce and whether

[118] District Court (1953) Eastern District of Pennsylvania US Federal District Court Case Law.

[119] Article X of the by-laws of the National Football League provides that no club shall cause or permit a game in which it is engaged to be telecast or broadcast by a station within 75 miles of another League City on the day that the home club of the other city is either playing a game in its home city or is playing away from home and broadcasting or televising its game by use of a station within 75 miles of its home city, unless permission for such broadcast or telecast is obtained from the home club.[1] The evidence is uncontradicted that it is the general policy of the clubs to refuse to permit the broadcasting or televising of "outside games"[2] in their home territories and that such permission has seldom been granted. Most League games, particularly regular season games, are played on Sundays, and since the teams, when they are not playing at home, almost always either broadcast or televise their "away games"[3] in their home territories, the restrictions of Article X effectively prevent "live" broadcasts or telecasts[4] of practically all outside games in all the home territories.

this is relevant to the issue of NFL antitrust restrictions, distinguishing this case from previous legal cases concerning professional baseball.

Regarding the regulation of television broadcasting rights for professional sports games, the Sports Broadcasting Act of 1961 played a crucial role in the legal dispute between the Chicago Bulls, the WGN television station, and the National Basketball Association (NBA). The legal dispute revolved around the television broadcasting of NBA basketball games through so-called superstations, with particular attention to the role played by the Sports Broadcasting Act (SBA) of 1961[120]. This law provides limited immunity from antitrust laws for some sports broadcasting activities, introducing the concept of "sponsored telecasting." This term refers to the television broadcast of sports events that are sponsored or funded by third parties. The legal dispute in question concerned the NBA's decision to limit the number of Chicago Bulls games broadcast through superstations, including WGN. The NBA, concerned that the national broadcasting of Bulls games could compromise the league's competitive balance and harm the local television rights of other teams, proposed reducing the number of games broadcast on these platforms.

Judge Hubert L. Will, who was faced with the mission of hearing the dispute, was primarily concerned with the concern and interpretation of the SBA within the framework of the hearing. It was left to the judge to make a ruling on whether the NBA acted in violation of the SBA by effectively deciding to minimize television coverage of Bulls games. Specifically, the judge had to determine whether such a restriction was within the reading of the expression ‘sponsored telecasting’ as defined in the law. During the hearing, Judge Will strictly followed the rules of the SBA and thoroughly scrutinized the claims and counterclaims of both the disputing parties and participants. The judge also appreciated the need to consider rivalry in the market for sports television broadcasting interests of NBA teams with a local television rights holder. Judge Will stated that while there is a restricted immunity for sports television broadcasting activities, the NBA acted within the legal rights to limit and restrict broadcasts of Bulls games and that it did not compromise with the provisions of the SBA in regard to the provision for ‘sponsored telecasting’. Therefore, with the belts the judge issued an injunction in favor of the NBA, Bulls and WGN, for which a greater number of games through superstations, than the league had proposed was allowed. Thus, understanding the place and role of the SBA in relation to regulating sports television broadcasts, and how antitrust legislation came the fore to protect the efficient and competitive functioning of the market structure, by providing the necessary rights and freedoms to the various parties.

The opportunity provided for the recognition of the role of the SBA was valuable in this case because it helped determine the applicable legal principles in the very contentious issue of NBA basketball

[120] Sports Broadcasting Act of 1961, Pub. L. No. 87-331, 75 Stat. 732 (1961).

games television broadcasting via superstations like WGN. The SBA or the Sports Broadcasting Act which started in 1961 further offer the idea of limited antitrust immunity to some sports broadcasting activities which include the idea of sponsored telecasting.

The knowledge of SBA was vital in the particular legal battle of Chicago Bulls, WGN and NBA for it explain the important idea of the sponsored telecasting that give the circumstances under which particular sport television broadcasts can enjoy under a given limited immunity from ant. This legal concept formed the basis of the decision made by Judge Hubert L. Will, hinging upon whether the NBA decision to truncate the televise coverage of Bulls games counted to fall within the definition of "sponsored telecasting", in accordance with the SBA. Consequently, the SBA being the overarching body in the assessment of the legal admissibility of the parties' claims relevant to the dispute offered the necessary regulatory framework in the assessment of the validity of the arguments presented by the parties and assist Judge Will in arriving at a proper decision. In the absence of the SBA the issue would have been resolved probably without recourse to a regulatory benchmark critical in giving a different judgment.

2.3.4. Critiques Of Antitrust Immunity For Sports Leagues

Interpreting the more ancient Sherman Act and the younger Sports Broadcasting Act it becomes obvious that there is more than a tendency perceived in American antitrust legal framework to exempt, at the least partially, the native sports leagues from it. This exemption makes substantial sense in light of the fact that sports leagues are extraordinarily distinctive from every other corporate structure and the technique for disciplining them is geographically confined. However, this position has raised criticism from legal scholars who do not necessarily agree with the notion that seasons organizing sports in the US, or baseball qualify for exemptions from the antitrust laws due to their national institutional nature. Related to this line of thinking is that of Stephen F. Ross, whom in 1989 with his article "Monopoly Sports Leagues" [121] aimed at a different consideration. In reference to this, the text highlights the plight of two major professional sports leagues in the United States, namely baseball and American football concerning their economic place. The role of these leagues in the organization's economic situation and impact on the nation's budget is also stressed and that, in spite of this, these leagues are not deemed subject to antitrust legislation. The passage puts a case that the league decisions including location of franchise teams has a bearing in local economies. Moreover, it states that the decision-making process regarding game broadcasting carries a significant impression on the consumers and fans. The issue of leagues' control and its detrimental effect to taxpayers and fans is also explored as it is demonstrated that leagues possess exclusive control measures that allow

[121] Stephen F. Ross (1989). "Monopoly sports leagues," University of Minnesota Law School Scholarship Repository.

them to achieve lucrative contract terms for exploiting privately-owned taxpayer financed stadia and restrictive access to franchises in the market. It also offers some insight into the problem of suboptimal resource allocation and mismanagement of franchises by leagues. Using the concepts of economic 'bedroom communities', the author suggests that government should intercede to disrupt the sports leagues' monopolization of an opening to economic competition in every sport. It points out that the formation of Hunters leagues would reverse the social losses that get occasioned by the formation of sports monopolies to the residents and fans. It further argues that antitrust laws provide a workable framework for regulating competition between rival leagues.

Ross's thought can be summarized in the following points:

- Balanced Competitiveness: the idea is introduced as a theoretically optimal state for sports leagues. It has been postulated that balanced competitiveness necessitates a situation where teams are closely matched so that any team will have the chance to be the winner within a reasonable number of years. And it is marked that such balance allows to attract the fans and develop an interest to the events in the field of sports.
- Effects of Player Mobility Restrictions: Apex restrictions, which are Historic restrictions like the reserve clause in baseball and the Rozelle rule in American football are critically discussed. It is suggested that such restrictions hamper efficiency of players exchange; making it possible for some teams to negotiate for the desired talents, while making it difficult for other teams to access better players. It is also noted that such restrain can affect both teams with a lot of and with no talent to win which can have negative impact on league progression.
- Arguments For and Against Restrictions: There have been counterarguments suggesting that having restrictions in player mobility is for the mere purpose of maintaining competitive balance amongst the competing teams as well as the interest of the owners of different franchises. Critics have suggested that when there are no such restrictions in place, better teams look forward to snapping up all the best talents which does not augur well with balance in the league. Still, there are concerns toward such restrictions, some of which are as follows; This means that restrictions with regards to players' mobilization is very inefficient In as much as it is clear that it has some measurable effects to the competency level of the leagues and indeed the national teams.
- Role of Restrictions in Preserving Minor Leagues: The question about the ways the rules of the players' mobility affect the matter of preserving minor leagues is discussed. Some critics asserted that an open system would just pose a risk to the survival of the minor leagues as consumers' attention would shift and the ability to groom talents would be at risk. Nonetheless, it is proposed that there are other means of supporting minor leagues thus calling

for moderate limitations on the player mobility. The text, therefore, addressing various issues regarding the application of antitrust laws to major sports leagues, highlights the concern expressed by representatives of these leagues regarding the effect of antitrust laws on their practices. The concept of analysis based on the principle of reasonableness is discussed, and it is argued that such an approach may not adequately protect baseball practices in case of loss of existing antitrust immunity. It is argued that courts have not done particularly thorough work in analyzing accusations regarding monopolistic sports league activities unreasonably restraining trade. The role of player mobility restrictions is discussed, emphasizing the need to strike a balance between regulating monopoly practices and promoting competition among rival leagues.

The text also addresses issues related to the television broadcasting of games by monopolistic sports leagues and the pitfalls of restrictions in accessing such broadcasts. The importance of careful scrutiny by courts to protect consumers from anticompetitive agreements is emphasized.

Finally, the role of antitrust laws in preventing the acquisition of monopolistic power by existing leagues and addressing issues related to the sale of television broadcasting rights is discussed. It is suggested that in a context of competing leagues, agreements between leagues could be evaluated based on the principle of reasonableness, allowing league cooperation to produce events like the World Series and the Super Bowl, but preventing agreements that reduce competition.

2.3.5. Current Landscape

Overall, the connection between the competitional legislation and the American sports alliances can be stating that it is a multifaceted and actively developing topic where some delicate and disputable aspects can be distinguished. Therefore, it is crucial to analyze essential terms of the present stage, check previous similar events, and discuss main laws and exceptional cases that influenced the formation of this area of law. For the past, the United States Supreme Court saw that the American sports leagues had been operating under a “de facto” immunity to federal antitrust laws. This was due to the previous ruling of 1922 in which the Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs was considered as an inherent local business that did not affect the interstate commerce when it went through their internal rules. Such allowances made what is essentially an informal exemption and has become a hot topic of discussion among scholars and commentators. They got it wrong as they pointed out noting that the present-day professional sports, national and internationally established, have truly little that is, in itself, local as these bear major economic effects, nationally and internationally and courses through media channels. Besides, they stress that conduct of sport leagues can regulate and directly affect interstate commerce for instance

through limitations in players' mobility, TV rights sales and monopoly sponsorship contracts. Even though the teams are deemed de facto exempt, the Sherman Antitrust Act continues to apply to American sports leagues in given laws. In this respect, the challenge is to show that a league's activities affect interstate commerce and cause substantial effects. For instance, in the 1981 case United v. National Football League, the Supreme court declared that the NFL avoiding the Sherman Act by restraining competition amongst television networks for the rights to broadcast matches. The Sherman Act also applies in other player related issues such as the imposition of high players' salaries, prohibitions against league competition, and restrictive television and sponsors rights.

It must be noted, however, that the application of the Sherman Act in relation to the sports leagues causes quite ambiguous and calls for subjective analysis of numerous factors. However, there are certain legal regimes governing the American sports leagues' behavior, notably the Sherman Act. One key instance is with regard to the Act of the Sports Broadcasting 1986 which governs the rights of television broadcasting of professional games. This law targets to address reasonable access to games by television networks in a bid to promote competition among the available networks. The legal framework surrounding American sports leagues is complex and constantly shifting because competition law remains contested and is still subject to clarification by the courts and legislators. The growth of commercial value for sports, the impact which is exercised by various sports leagues for the society and the implementation of current trends in technology such as the online streaming also present some challenges and opens new perspectives that may have legal implications that have to be measured. It has also been argued that some examples that can be regarded as rather obvious in fact played a crucial role in forming the modern approaches to the application of competition law to sports leagues. Among these, we recall:

- American Needle v. NFL (2010)[122]: In this case, the Supreme Court ruled that the NFL had violated the Sherman Act by prohibiting retailers from selling unofficial player jerseys during the Super Bowl.
- NBA v. Donaghy (2007)[123]: The NBA was involved in a betting scandal that raised issues regarding the integrity of sports competitions and the potential impact on interstate commerce.
- NBA Lockout of 2011[124]: The prolonged NBA lockout led to disputes regarding labor relations, player rights, and the potential negative impact on the local economy.

[122] American Needle, Inc. v. National Football League, 560 U.S. 183 (2010).

[123] Eurosport.com (July 21, 2007). Accusations Against Donaghy.

[124] Bevacqua, M. (2011, July 1). Perché si è fermata l'NBA. Cos'è il "lockout" che ha sospeso il campionato di basket americano, e cosa c'è in ballo.

Another attempt to regulate the Maine of expenses, including players' wages and to restore the order and stability within sports competitions the function of salary cap has been introduced and is broadly practices in some American professional sports leagues. Most importantly, the matters of cost control especially regarding players' wages act as a protective measure against the risk of converging oligopoly by the super-rich teams which, given their higher financial capacities, could potentially capture all key talents, thus disrupting the competitive balance irreversibly. As such, fairness is stretched among the participating teams, hence making games more interesting, unpredictable, and more thrilling for the fans.

Moreover, the management of costs is a strategic factor in ensuring the general well-being of teams and avoiding situations in which teams get too much indebted to buy really titled players at extremely high prices. Thus, financial viability benefits the league in multiple ways that are quite instrumental in enhancing its sustainability and competence in the years to come. Perhaps the most famous example of using cost control as one of the key instruments is the salary cap, the maximum amount of money the teams can spend on players, which is widely adopted in various American leagues such as NBA and NFL. By analyzing findings from the literature review, the use of this system has been found to be an essential tool in sustaining competitiveness and solvency of the leagues. Cost control strategies do not resist criticism, but their implementation is inevitable in any organisation. There are some critics who tend to point that such measures massively restrain players' free choice of contract, and therefore negatively affect their career opportunities, as well as the economy in general. Thus, it is conceived that the number of players that can be signed needs to be balanced to ensure that costs are kept down while at the same time ensuring players' welfare is safeguarded. However, the salary cap system is not the only tool that has been used for controlling the costs of streaks. It is also possible to make some additional changes to the current plan for club financing, for example, the introduction of luxury taxes, or restrictions on the amount of money to be spent on the transfer of players. However, it means that the choice of the most suitable method depends on a variety of specific factors, which may be typical for every particular case in the leagues and sports environment.

In conclusion, cost control, particularly through the use of the salary cap, emerges as an indispensable tool for preserving balance and stability within sports competitions. Despite the criticism received, this approach has demonstrated a positive impact on the overall health of sports leagues and the enjoyment of fans, ensuring an exciting and engaging sports experience.

2.4. EU Competition Lawand Sports Federations: The Fiba – Euroleague Case

The FIBA was the first European federation to feel threatened by the advent of the Breakaway leagues model, which jeopardized its undisputed power. Even before 2000, the main European leagues,

through their representative association, the ULEB (in French Union des Ligues Européennes de Basketball), strongly advocated for the creation of the Euroleague, arguing that the competition organized by FIBA, the Suproleague (since the name Euroleague was a trademark registered by the ECA), failed to deliver on the television rights promised to its teams.

In 2016, however, the conflict reignited when FIBA's Basketball Champions League did not achieve the expected success as none of the eight Euroleague clubs joined. The response from the ECA to apply the same organization to its tournament was poorly received by FIBA. To an already heated atmosphere, the conclusion of the dispute arising from the resolution by the ECA, in 2012, of an agreement that had previously guaranteed FIBA four hundred thousand euros annually, was added. Since the inception of the Euroleague, first the ULEB and then the ECA had ensured this amount to FIBA, which had relinquished management of the competition. The contract resolution occurred after FIBA unilaterally modified the national teams' schedule starting in 2017, breaching the agreement that had stipulated coordination with the ECA (and with players and clubs) in managing the schedule; the consequence of this unilateral change was a substantial overlap of national team matches with Euroleague calendar matches. Indeed, one of the main reasons for dispute within basketball is precisely the organization of schedules; schedules, from league to private league, are often very packed with games, sometimes one every three days.

In this context, the Commercial Court of Luxembourg, approached by FIBA to seek damages following the resolution, ruled in 2017 fully in favour of the plaintiff. The Luxembourg judges argued that such reasons were excessively trivial and, in any case, not sufficient for a unilateral resolution of such a contract. In fact, from the methods and timing, that of the ECA seemed an attempt to evade this contractual obligation, which, besides being economically burdensome, constituted a sort of power that FIBA continued to exert over the Euroleague, despite not being the organizer. Moreover, even the Italian Civil Code, in article 1455, states that a contract cannot be terminated if the non-fulfilment by one of the parties is of little importance, considering the interest of the other. There is a debate, never dormant in doctrine, regarding the qualification and delimitation of the seriousness of non-fulfillment, between those who have an objective view of this requirement (arguing that only the imbalance of the reciprocal obligations should be considered) and those who have a purely subjective view (believing that only the intention of the creditor should be considered). Of the two views, jurisprudence has adopted a third intermediate path where it is up to the judge, with a discretionary assessment adhering to the specific case, to determine when the non-fulfillment is not of little importance.

This ruling fits into a context where relations between ECA and FIBA had again become complicated. Indeed, the ECA, following FIBA's reaction threatening to exclude athletes and clubs, had sued the

federation to obtain cessation of such behaviour. These sanctions were quite burdensome for clubs and players: the latter risked not being able to participate in national team matches, which are still organized by FIBA, while clubs risked exclusion from national championships as national federations support and depend on FIBA. The lawsuit was filed before the Munich forum, considered competent as the city where FIBA Europe was headquartered.

In June 2016, the Munich District Court, endorsing the plaintiff's argument, issued a ruling prohibiting FIBA Europe and FIBA from sanctioning or threatening, directly or indirectly, Euroleague and Euro cup clubs, as well as other basketball clubs within the geographical area of FIBA Europe, national basketball federations within its geographical area, and national or supranational European basketball leagues, following any deliberation by these entities to cooperate with Euroleague Commercial Assets C.A. and its subsidiaries. It also hinted at pecuniary sanctions and/or even restrictive measures of personal freedom for any violation of the prohibition to impede or hinder the establishment and/or development of these European competitions.

Initially, the Court clarified that both FIBA and FIBA Europe fall within the definition of undertakings under antitrust legislation, particularly Article 102 of the Treaty on the Functioning of the European Union (TFEU). This is due to the fact that both exploit the competitions they organize for economic purposes, such as through the sale of television rights or obtaining sponsorships, thus demonstrating typical business activities.

By virtue of their monopoly position in their territorial scope, the defendants enjoy a dominant position in the market in accordance with Article 102 of the TFEU. Furthermore, both FIBA and FIBA Europe have been recognized by the International Olympic Committee (IOC) as the only organizations authorized to enact regulations in the basketball sector with global reach, as well as to determine which teams will be admitted participating in the Olympic Games and European competitions for national teams.

The judgment's main motivations lie in safeguarding the right to competition: clubs, leagues, or federations must be able to choose whether or not to join a competition without the risk of incurring sanctions of any kind. The sanctions mentioned in the communication sent by FIBA EUROPE to various National Federations constituted an abuse of dominant position by FIBA Europe and, indirectly, also by FIBA itself, the international organization of reference for basketball worldwide.

Moreover, the threatened and sometimes imposed sanctions are not consistent with the principle of proportionality, a cornerstone principle of European law. Even in this case, the applicability of union law arises again but is easily overcome since the sanctions are purely sporting in nature but predominantly affect the economic sphere.

Finally, as complained by the ECA, the sanctions allegedly lacked motivation from FIBA. On this point, it must be clarified that FIBA argued that Euroleague did not adhere to fairness criteria, also undermining competition protection principles, since some clubs had guaranteed access. To address the grievance regarding the absence of motivations, FIBA EUROPE invoked, among other provisions, Article 9.1 of FIBA's General Statute adopted in 2014, as well as Article 12 of the same statute. According to the provisions of these rules, National Federations are required to ensure that their leagues, clubs, and players participate exclusively in internationally recognized tournaments both by the National Federation and FIBA. Failure to comply with this rule could lead to FIBA's intervention, with the possibility of imposing sanctions. Similarly, this applies to competitions such as the Olympic Games, which involve participants from different geographical areas, as established by Articles 3, 4, and 126 of FIBA's Internal Regulations.

The motivations put forward by FIBA, according to the ECA, would demonstrate the inconsistency of the federation's position, as the Basketball Champions League, a competition organized in an attempt to compete with the Euroleague, would have used the same selection criteria for club participation, guaranteeing 8 teams fixed participation in the tournament.

The German judge concluded that the exclusion or threat of excluding national teams based on the exclusivity clause provided for in Article 9.1 of the FIBA Statute would constitute an abuse of dominant position, characterized by an "asymmetric" war. Such action would have prevented National Federations from participating in the Olympic Games or European Championships, with the intent to persuade them to influence clubs and players affiliated with such federations to renounce participation in competitions, regardless of the legal issue regarding the alleged abuse of market power by ECA through the organization of Euro cup and Euroleague club championships.

Even if the exclusivity clauses established in Articles 9.1 and 12 of the Statute, along with the related sanction mechanism, did not in themselves constitute an anti-competitive practice within the meaning of Article 101 of the TFEU, in the specific case, there would be no justification to exclude a National Federation from European championships in order to effectively eliminate a competitor (the only one) for club championships (Euro cup against FIBA Europe Cup), especially when the latter is unable to organize an economically sustainable competition due to clubs being forced to decline.

The Court noted that the right to participate in the Olympic Games must be determined for sporting reasons and that the decision of some clubs to participate in a club competition is not connected, from a sporting point of view, to a national team's participation in international competitions. Imposing sanctions on third parties to pursue interests in a different field would constitute a classic example of abuse of dominant position within the meaning of Article 102 of the TFEU. However, the judgment did not have effective utility, as, upon FIBA Europe's appeal, the Regional Court of Bavaria

overturned the favorable decision to ECA taken by the Court: the first-instance judges did not consider, in the decision, the presence of arbitration clauses, which bind federations, leagues, and clubs to dispute resolution through arbitration at CAS, present in FIBA Europe's statute to which they have adhered. For this reason, the recourse to the German national civil court would have been inadmissible from the outset.

In addition to national judicial bodies, both parties have filed complaints with the European Commission, while Euroleague has also brought the issue to the attention of the European Parliament. FIBA has lamented the violation of competition law. The motivations of ECA are the same as those in the proceedings initiated before the Munich Court, namely, to protect the free choice of clubs, players, and referees to participate or not in competitions without being subjected to threats or pressure from the federation.

The European Union is once again called upon to intervene not as a judge of sports regulations, but rather with the task of preventing excessive powers of federations from transgressing the fundamental principles of the internal market and fair economic competition. Federations, in exercising their regulatory power, also have the duty to balance the needs of competitions and the interests of affiliates, including the rights of athletes as members of society, and to ensure fair competition among all economic entities operating in the sector, thus promoting fair competition both on the sports field and in the economic sphere.

According to FIBA, however, the complaint filed by ECA against it served only as a *smokescreen* to mask its own anticompetitive behaviour. The federation accused ECA of abusing its dominant position by unduly pressuring leagues and clubs, as well as threatening exclusion from the Euroleague. Such practices were applied in the case of the Adriatic League and other European leagues. FIBA argued, following a *syndication agreement* of the majority of clubs, that the decisions of greatest relevance, including all decisions of Euroleague and Euro cup on sports and commercial matters, were essentially made by six clubs. Additionally, it lamented the selection method for club participation in Euroleague and Euro cup, going against any commercial and sporting value of national championships and undermining competitive balance in European basketball. Finally, it accused ECA of unlawfully discriminating against financially weaker clubs, thus putting them in a position of further competitive disadvantage.

"(...) In essence, ECA wishes to benefit from the basketball ecosystem developed by national federations (players, coaches, referees, thousands of other clubs) without contributing to the foundations of the sport's pyramid and holding the national teams hostage to serve the interests of six commercially powerful clubs (...)"

FIBA, based on the aforementioned reasons, filed a complaint after sending a letter to ECA inviting it to cease such actions. The complaint was filed only after implementing measures in response to ECA's aggressive and illegal behaviour, whereby *"(...) with the exception of the 16 Euroleague teams, any National Federation that supports ECA's illegal tying practices by allowing their leagues or clubs to conclude and/or implement agreements with ECA, or any other entity directly or indirectly linked to it, will automatically lose the right to participate in Senior men national team competitions organised by FIBA Europe (...)".*

The question that has been raised for all commentators analyzing from a legal standpoint concerned the legitimacy of the actions taken by FIBA. Can a federation tasked with safeguarding sport, from both a social and economic perspective, simultaneously act as the primary organizer of the sport, with the clear economic implications that such a position entails? It is evident how in this situation there arises a blatant conflict of interest, as the federation, in safeguarding its own economic interests, may undermine the interests of the sport and the sports community.

Such behaviour, which we have so far identified as a simple conflict of interest, can it transform into anticompetitive behaviour? If the answer is affirmative, what are the boundaries that delimit the harmfulness of competition?

2.4.1. The Isu Case: European Commission's Verdict On Sports Federation Regulations

The European Commission was initially involved in the issue by the European Parliament, which, through the Resolution of March 10, 2015, on the annual report on EU competition policy, urged the Commission to examine the restrictive and abusive practices of international sports federations. These practices included, for example, denying members the right to participate in alternative sports events not approved by their respective federations, as well as imposing lifetime bans on athletes, officials, and coaches for failure to comply with the rules.

Subsequently, the Commission responded to specific parliamentary questions on this topic.

On November 9, 2017[125], the European Commissioner for Competition emphasized the importance of ensuring players' freedom to participate in national team competitions and expressed regret for calendar conflicts and issues related to World Cup and Euroleague qualifying matches, hoping for solutions in the best interest of athletes and sports.

Later[126], the Commission clarified that sports rules defined by sports federations are subject to EU antitrust rules if the federations or individuals involved engage in economic activity. Restrictive rules

[125] Provided in response to question E-005288/2017.

[126] On September 27, 2018, in response to European Parliament question P-003773/2018.

are compatible with EU law if they pursue a legitimate objective and if the restrictions are relevant and proportionate to achieving that objective.

The Commission confirmed the role and autonomy of sports federations in pursuing the legitimate objective of safeguarding the integrity, health, safety, and proper conduct of sports activities. However, it emphasized that measures taken must be proportionate, based on clear, objective, and non-discriminatory criteria, and must not be used to exclude athletes from the market.

In such a context, the institutions of the European Union were repeatedly drawn into a matter that presented the same underlying motivations but involved different actors and which will be discussed shortly. Indeed, the Commission, seizing the opportunity, did not rush to provide a response to the complaints of FIBA and ECA but awaited the resolution of the following dispute. In this way, the European Union was able to clarify its position on the matter without necessarily favoring one party over the other.

Specifically, two Dutch skaters, Mark Tuitert and Niels Kerstholt, contested the prohibition on participating in unauthorized competitions imposed by the International Skating Union (ISU) - the international federation for figure skating and speed skating - in its capacity as the sole global entity responsible for the management, promotion, organization, and regulation of these sports. The two athletes wanted to participate in a competition, the Dubai Icederby, given its strong remunerative aspect, but faced the prohibition imposed by the ISU based on its statutes. Indeed, Article 102 imposes on all skaters affiliated with national federations adhering to the ISU to participate only in competitions authorized by it, essentially imposing an exclusivity clause with severe disciplinary repercussions in case of violation. Thus, an infringement procedure was initiated before the Commission, raising the question of the relevance of this regulation to European competition law under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), considering the ISU's dominant position in the market and the possible abuse of that position.

The Commission concluded that the rules were not in conformity with competition rules, imposing sanctions on the international federation, and not considering valid the defense of the ISU, which argued that the company organizing the Dubai Icederby also engaged in betting activities on the competitions. However, the Commission argued that "under the ISU eligibility rules, in force since 1998, speed skaters participating in competitions not approved by the ISU are subject to severe penalties up to a lifetime ban from all major international speed skating events. The ISU may impose such penalties at its discretion, even if independent competitions do not pose a risk to legitimate sports objectives, such as protecting the integrity and proper conduct of the sport, or the health and safety of athletes. By imposing such restrictions, the ISU eligibility rules limit competition and allow the ISU to pursue its commercial interests at the expense of athletes and competing event organizers. In

particular, the Commission considers that the ISU eligibility rules restrict the commercial freedom of athletes who are prevented from participating in independent skating events. As a result of the ISU eligibility rules, athletes are not allowed to offer their services to organizers of competing skating events and may be deprived of further sources of income during their (relatively short) careers in speed skating. The ISU eligibility rules prevent independent organizers from putting together their own speed skating competitions because they are unable to attract the best athletes. This has limited the development of alternative and innovative speed skating competitions and deprived ice-skating enthusiasts of following other events.

In this way, the Commission emphasized that the ISU's complete discretion to impose sanctions, even in situations where the principles and values of sports competition are not at risk, constituted a violation of antitrust rules as it limited competition among athletes. Moreover, the Commission noted that the sanctions imposed by the ISU were in clear violation of the principle of proportionality, as well as hindering other entities from organizing alternative competitions to those promoted by the federation itself.

Ultimately, the Commission had ruled the sanctions as anticompetitive and in violation of Article 101 of the Treaty on the Functioning of the European Union (TFEU), and ordered that the ISU must "*cease its illegal conduct within 90 days and refrain from any measure having the same object or effect".*

To comply, the ISU may abolish or amend its eligibility rules so that they are based solely on legitimate objectives (explicitly excluding the ISU's own economic interests) and are inherent and capable of achieving those objectives. In particular, the ISU should not impose or threaten to impose unjustified sanctions on athletes participating in competitions that pose no risk to legitimate sports objectives. If the ISU maintains its rules for authorizing third-party events, they must be based on objective, transparent, and non-discriminatory criteria and not simply intended to exclude competing independent event organizers. Although the Commission did not deem it necessary or appropriate to impose a fine in this case, if the ISU fails to comply with the Commission's decision, it may be liable to pay a sum of up to 5% of its average daily worldwide turnover.

2.4.2. Judicial Response To Isu's Appeal: Eu Court And CJEU Verdicts

The Federation, dissenting from the conclusions reached by the Commission, lodged an appeal with the European Union Court[127], called upon for the first time to rule on a decision of the Commission regarding regulations adopted by a Federation entirely from the perspective of competition law, and

[127] General Court (Fourth Chamber, Extended Composition). (2020, December 16). Judgment in the case of International Skating Union v European Commission (Case T-93/18).

subsequently appealed to the Court of Justice of the European Union. The latter essentially upheld and reinforced what had already been expressed by the Commission and the tribunal.

The Tribunal preliminarily noted the issue of potential conflicts of interest, generated by the fact that the ISU performs a regulatory function but also engages in commercial activity: indeed, while it adopts regulations inherent to sports activities, also applied in events organized by third parties, it also organizes competitions and events itself. The judges ruled that the Federation was obliged to ensure third parties' free access to the market by virtue of its role, which did not align well with the extensive power to arbitrarily exclude third-party subjects from the market that it had assumed.

Furthermore, as previously stated by the Commission, the rules and related sanctions were blatantly disproportionate and did not specify the legitimate objectives that the ISU intended to pursue: specifically, the admission criteria contained in the rules in question were not considered transparent, non-discriminatory, and enforceable, and therefore not capable of ensuring effective free access to the market. The tribunal continued by reminding that the integrity of sports and its protection constitutes a legitimate objective under Article 165 TFEU; this article gives the ISU the right to introduce rules aimed at preventing competition manipulation and ensuring compliance with common standards, but not intending to favour the Federation's economic interests. Indeed, the Commission believed that even the arbitration regulation, as far as it grants exclusive jurisdiction to the Court of Arbitration for Sport in Lausanne, was detrimental to competition law, although the tribunal did not confirm this point.

The ISU appealed the judgment before the CJEU for infringement of Article 263 TFEU and, in general, the Court's case law on Article 101 TFEU; moreover, the ISU complained that the tribunal did not take into account that the Icederby event was in conflict with a legitimate objective, namely the prohibition of any form of support for betting.

On the other hand, the two athletes, Tuitert and Kerstholt, also lodged an appeal contesting the part in which the tribunal did not recognize as an aggravating circumstance and as a violation of competition the forum selection clause, which attributed exclusive and mandatory arbitration to the federation. In order to analyze the judgment, it is necessary to consider the conclusions of Advocate General Rantos, who concluded that the judgment should be annulled and referred back to the European Union Tribunal.

Starting from an analysis of the rules subject to the proceedings from the perspective of competition law, Rantos reiterated the application of EU competition law, in line with previous case law. Relying on the case law of the CJEU, the Advocate justified the exemption of Article 101 TFEU only when the sports regulation is considered indispensable for achieving a legitimate objective; however, in the

present case, the rules, which should have pursued this aim, were blatantly excessive and did not respect the principle of proportionality.

The Advocate General observed that sports federations, due to their position, potentially face the risk of conflicts of interest because, as observed before, they both perform a regulatory role and engage in economic activities. It was clarified the fact that the same entity exercises both of these roles does not constitute a per se violation of EU competition law. However, it is essential that such federations ensure that third parties are fairly excluded from the market to the extent that it distorts competition. Therefore, according to his conclusions, sports federations may, under certain conditions, deny market access to third parties without violating Article 101(1) TFEU, provided that this is justified by legitimate objectives and that the measures taken are proportionate to those objectives.

Regarding the appeal, the Advocate General examined the interpretation of Article 101 TFEU provided by the Tribunal. In particular, he emphasized that when a restriction is not clearly demonstrated, a comprehensive analysis of its effects on competition in the relevant market is necessary. Only through an examination of how the rules are interpreted and applied in practice by the ISU will it be possible to determine whether these rules may prejudice competition. Consequently, only the first ground of appeal was considered admissible.

Therefore, according to Rantos, the Tribunal made a legal error in considering the ISU's rules as a restriction of competition. As for the incidental appeal filed by the athletes concerning the mandatory arbitration mechanism before the CAS, he did not believe that this mechanism reinforced the restriction of competition.

On December 21, 2023, the Court of Justice of the European Union definitively pronounced in Case C-124/21 P, International Skating Union v. European Commission, regarding the appeal of the International Skating Union ("ISU"), as well as the incidental appeal brought by the two skaters who initiated the entire case.

Preliminarily, the Court recalled the constant and well-known jurisprudence, which recognizes that sport is subject to European regulations as an economic activity, while regulations and rules relating to pure sports activities remain outside the jurisdiction of EU judges, thus preserving the specificity of sports law.[128]

[128] Apart from those specific rules, the rules issued by sporting associations and, more broadly, the conduct of the associations which adopted them come within the scope of the FEU Treaty provisions on competition law where the conditions of application of those provisions are met (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 30 to 33), which means that those associations may be categorised as ‘undertakings’ within the meaning of Articles 101 and 102 TFEU or that the rules at issue may be categorised as ‘decisions by associations of undertakings’ within the meaning of Article 101 TFEU. Point 111 - According to the settled case-law of the Court, not every agreement between undertakings or decision of an association of undertakings which restricts the freedom of action of the undertakings party to that agreement or subject to compliance

Furthermore, the Court emphasized the importance of a restrictive interpretation of the concept of anticompetitive 'object' as well as the concept of anticompetitive 'effect', referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects.

After these premises, delving into the merits of the issue, the CJEU fully endorsed what was argued by the Commission, the Tribunal, and Rantos regarding the conflict-of-interest position in which the ISU, as well as other sports federations, finds itself.[129]

In agreeing with the Tribunal, the Court argued that such power, unless subject to restrictions, obligations, and review such as to prevent the risk of abuse of a dominant position, could lead to having as its 'object' the prevention, restriction, or distortion of competition, within the meaning of Article 101 TFEU.

When it comes to an activity aimed at preventing, limiting, or distorting competition, it is essential that the associated powers be defined by transparent, clear, and precise criteria; criteria that must be stated in an accessible manner and defined before any application. Procedural methods must also be transparent and non-discriminatory, such as those related to the terms applicable to the submission of a prior authorization request and the adoption of a decision on it.

In the concrete examination of the content of such rules, the Tribunal did not commit any legal error in considering that they were not justified by any specific objective and did not delimit the discretionary power of the ISU to authorize or refuse to authorize the organization and implementation of speed skating competition projects that could be submitted by third-party entities or companies based on transparent, objective, non-discriminatory, and therefore verifiable authorization criteria, thus it had to be considered that such association had discretionary power.

In particular, the Court, regarding the sanctions, supported that the tribunal did not commit any error of law even in considering that the sanctions that could be imposed by the ISU on athletes participating in speed skating events not subject to prior authorization by it were not governed by criteria such as to ensure that they are objective and proportionate and were a relevant factor in

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with that decision necessarily falls within the prohibition laid down in Article 101(1) TFEU. […] That case-law applies in particular in cases involving agreements or decisions taking the form of rules adopted by an association such as a professional association or a sporting association, with a view to pursuing certain ethical or principled objectives and, more broadly, to regulate the exercise of a professional activity if the association concerned demonstrates that the aforementioned conditions are satisfied (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 97; of 18 July 2006, *Meca-Medina and Majcen* v *Commission*, C-519/04 P, EU:C:2006:492, paragraphs 42 to 48; and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, C-1/12, EU:C:2013:127, paragraphs 93, 96 and 97).

[129] To entrust an undertaking which exercises a given economic activity the power to determine, *de jure* or even de facto, which other undertakings are also authorised to engage in that activity and to determine the conditions under which that activity may be exercised gives rise to a conflict of interests and puts that undertaking at an obvious advantage over its competitors, by enabling it to deny them entry to the relevant market or to favour its own activity.

determining whether the prior authorization and eligibility rules had the ‘object’ of restricting competition on the relevant market.

In essence, what the Court argues on this point is that the ISU fully has the authority to adopt, apply, and enforce, through sanctions, rules regarding the organization and conduct of competitions, but these rules are illegitimate as they are not subject to suitable restrictions, obligations, and review as legitimate.

The main appellant's arguments were, therefore, rejected because the ISU regulations allow not only to exclude any competing enterprise from the market but also to limit the creation and marketing of new alternative competitions in terms of format and content; this implies that other associations, athletes, spectators, and television viewers could be deprived of the opportunity to participate in such alternative competitions or enjoy their broadcast.

The Court, after such analysis, moved on to the rulings regarding the skaters' incidental appeal, considering that the Commission correctly raised questions about the arbitration rules, contrary to what was argued by the Tribunal and Advocate General Rantos.

The European judges, on the specific case, observed how the arbitration rules imposed by the ISU mainly concern disputes arising from economic activities, such as the organization and marketing of international speed skating competitions and participation as professional athletes. Therefore, since these rules apply to disputes related to sports practice as an economic activity, they must comply with competition laws and Union rules, regardless of where the organizations that introduced them are established.

The Court clarified that, in particular, the Commission found that judicial review was entrusted to a court established in a third country, thus outside the European Union and its legal order, and that, according to the case-law of that court, such awards could not be reviewed in the light of the EU competition rules. Ultimately, the Commission complained not of the existence, organization, or operation of the CAS as an arbitration body, but rather of the legal immunity enjoyed by the ISU, in its view, in the light of EU competition law, in the exercise of its decision-making and sanctioning powers, to the detriment of persons who may be affected by the lack of a framework for those powers and the discretionary nature which derives therefrom.

Therefore, since Articles 101 and 102 of the TFEU are provisions with direct effect and are part of the European law of public order, any mechanism that limits subsequent judicial review of arbitration decisions must still ensure compliance with these rules.

The Court found that the General Court erred in law by limiting itself to observing, in a generic and abstract manner, that the arbitration regulations could be justified by legitimate interests related to the peculiarities of sport.

On the contrary, the General Court erred in law where it should have ensured that such regulations complied with all the requirements provided by European rules of public order.

This aspect, perhaps too overlooked, will have a significant impact on legal protection within the ecosystems of all organizations and federations operating in Europe, such as UEFA and FIFA. The Court of Justice of the European Union has clearly condemned the practice of exclusive jurisdiction assigned by the Court of Arbitration for Sport (CAS) in Lausanne, imposing on athletes and clubs to be judged by a court outside the European Union. This court is not bound by the principles outlined in Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

The Court was particularly unequivocal in declaring that the Federal Tribunal, to which it is possible to appeal against decisions of the CAS, is not considered a judicial body of a Member State. It is rather a judge outside the legal system of the Union, lacking the competence to raise preliminary questions to the Court regarding these types of issues. Furthermore, the Court emphasized that, according to the case-law of the Federal Tribunal, athletes are practically obliged to accept the jurisdiction of the CAS in disputes with the ISU, unless they wish to withdraw from competitions organized by the ISU or by the affiliated national skating associations, effectively giving up their professional careers.

As in the case of the Super League, the Court decided to limit the authority of international federations in allowing or prohibiting the creation of new sports competitions, putting an end to the competitive free market that sport has enjoyed for decades, blending institutional functions and economic activities at will. This means that a system of prior authorization established by an international federation can be considered compatible with European law only if it is subject to substantive and procedural criteria that ensure that the exercise of such power is impartial, transparent, and non-discriminatory.

The Judgment on the December 21, 2023, presents a significant decision in the application of the EU competition law to international Sports Organisations, crucial also for the long-standing conflict between the Fédération Internationale de Basketball (FIBA) and Euroleague Commercial Assets (ECA) regarding the creation and management of the Euroleague basketball championship.

In detail, the points of contact between the ISU judgment and the FIBA-ECA case:

- Anticompetitive Rules and Sanctions: the ISU case was in relation to the rules set by the federation that prohibited athletes from engaging in other events that were not recognized by the ISU and the consequences that came with it. The European Court of Justice (ECJ) ruled these rules as anticompetitive since it limited the freedom of athletes and event organizers in an unwarranted manner, thus preventing competition. For instance, FIBA's decisions to fine clubs and players that are part of the Euroleague, which is not recognized by FIBA, can also

be viewed as an effort to protect its territory in the international competition sphere. This makes it clear that the ISU is using the same principles of regulation to control competing events, which is not accurate at all.

- Freedom of Participation: the ISU case shows that the ECJ is firm on the position that international sports organisations cannot unilaterally control the ability of athletes to compete in other events that are not affiliated to those organisations. This principle can be immediately related to the FIBA-ECA conflict because the main reason for the conflict boils down to the freedom of clubs to select the events, they want to participate in. The Euroleague is an option that offers competition to FIBA tournaments and therefore enhances the competition in the European basketball market. Therefore, the ISU judgment simply strengthens the argument that this kind of freedom is vital in ensuring competitiveness in the market.
- Abuse of Dominant Position: in the ISU judgment, the ECJ pointed out that no sports federation should use its dominant position to hinder competition. The ISU was said to be using its regulatory power to keep on dominating figure skating competitions and this was deemed as anti-competitive. The principle of preventing the abuse of dominant position is also relevant in the context of FIBA-ECA. The measures that FIBA has taken in order to reduce the development of the Euroleague and its recognition can be seen as an effort to maintain the organization's leadership in the basketball, which results in the restriction of new competition.

The implications of the ISU judgment for the FIBA-ECA dispute are far-reaching and complex. Firstly, the principles set by the ECJ can be used to establish a coherent check for the validity of FIBA's regulations. Rules that have been put in place to prevent clubs from engaging in the Euroleague could be considered as anti-competitive and, therefore, unlawful under the EU competition law as outlined in the ISU case. This precedent implies that if FIBA tries to impose penalties on clubs for engaging in the Euroleague, such actions will most probably attract litigation and would not be viewed in the eye of the European courts as appropriate. Secondly, the ISU rule may force FIBA to reconsider its policy in regulating the sport. As the ECJ focuses on the competitive market FIBA and its rules could be in violation of the EU antitrust laws, and thus FIBA may have to make some changes to their rules. This could lead to an environment that is much more open and competitive in international basketball and this would be good for all parties involved, including the clubs, players, and fans. Last but not the least, the ISU judgment can be viewed as a legal and moral inspiration for other sports organisations. This is a clear message to international federations that the EU's competition rules will be enforced to the extent that fair competition and non-regulatory market abuse will be prevented. It can therefore be expected that this precedent will set a precedent for how

future disputes of this kind will be resolved and thus contribute to the enhancement of fairness and competition in the world of sports.

In conclusion, the ISU judgment is highly relevant to the FIBA-ECA dispute, since it establishes legal principles that challenge the restrictive practices of sports federations and underscores the importance of maintaining a competitive market in sports. The ECJ's ruling not only provides a framework for resolving the FIBA-ECA conflict but also sets a precedent for ensuring that sports governance aligns with EU competition law.

The clear position of the Court has paved the way for completely new scenarios that could revolutionize the organizational model on which sport has been based so far, as no federation or organizing body, starting from FIFA and UEFA, can evade the control of the CJEU by taking refuge in the judgments of a third-country court which is not bound to respect EU regulations.

CHAPTER III

From Courts to Competition: Study of the Legal Implications of the Super League in Football

In the wake of recent events concerning the past decades of European and American basketball and after analyzing the similarities and differences between the two worlds, we delve into the football landscape, through a comprehensive analysis of the Super League project and its evolutions, in order to understand the structure of the competition that, in April 2021, sparked considerable debate and controversy within the football community, and notably elicited different reactions from clubs, fans, and football institutions. Being the sport with the highest number of spectators worldwide, it inevitably attracted considerable attention from jurists, investors, and television viewers. This has led, over the past three years, to a series of legal disputes and judicial rulings, culminating in the latest decision on December 21, 2023, which will be subject to detailed analysis to assess the feasibility of applying the American private league model, already successfully adopted in European basketball, to a sport where monetary interests dominate the scene. I will proceed with an analysis of the functioning of the model, its differences from the American one, and discuss the economic motivations that have led to this situation.

Finally, I will examine legal opinions and rulings in order to answer a crucial question that concerns all disciplines: can private leagues be considered, from a legal point of view, restrictions on competition? What would be their effects on it?

3.1. The Genesis Of The Super League: Ambition, Controversy And Backlash

The European football landscape, in recent years, had reached a crucial moment: almost all top clubs were following the same trend, with rising costs not matched by an increase in revenue, leading to negative operating results and an exponential increase in indebtedness.

The Super League project was introduced by twelve of the leading European football clubs between the evening of April 18 and April 19, 2021[130]. This initiative proposes a new annual continental competition among Europe's most prestigious teams, independent of the most important football governing body, UEFA. In particular, the twelve teams that initially embraced this idea include:

- Manchester United, Manchester City, Tottenham, Arsenal, Chelsea, and Liverpool from the English Premier League;
- Juventus, Milan, and Inter from the Italian Serie A;
- Barcelona, Real Madrid, and Atletico Madrid from La Liga, in Spain.

[130] Ginesta, X., & Viñas, C. (2023, March 7). The geopolitics of the European super league: A historiographical approach and a media analysis of the failed project in 2021.

Initially, it was expected that the founding clubs would be fifteen, but Bayern Munich, Borussia Dortmund, and Paris Saint-Germain declined the invitation.

The new tournament would involve twenty teams - divided into two groups of ten with a mini-league where each team would play nine home and nine away games - including the fifteen automatic participants and five others determined season by season through an unspecified qualification mechanism. The top three teams from each group would automatically advance to the knockout stage, while the fourth and fifth teams would have to play a playoff to progress. The next phase of the tournament would include quarter-finals and semi-finals with two-legged ties, followed by the final to be played in a single match. Match pairings would be determined based on final standings, with group winners facing playoff winners and third-placed teams playing against second-placed teams. Each qualified team would be guaranteed to play at least eighteen matches, up to a maximum of twenty-five if they reached the final through playoffs.

By comparison, in the current format of the Champions League, the thirty-two participating teams have the opportunity to play only six matches, up to a maximum of thirteen for the finalists. The Super League would be organized during the normal football season, with matches played during the week, replacing the Champions League.[131]

The Super League project relied on the support of one of the world's leading banks, J.P. Morgan, through an investment of 3.5 billion euros to be distributed among the fifteen founding teams, which would finance infrastructural investments, such as stadium development, and contribute to consolidating the clubs' finances. It was envisaged that the six main founding clubs would each receive approximately 350 million shares of the total three and a half billion, while other clubs would receive smaller shares, but still over 100 million euros. The loan would have a duration of twenty-three years and would be granted at favorable rates, ranging from 2% to 3%. Regarding revenue distribution, 65% would be evenly divided among the twenty participating teams, while 15% would be determined based on the commercial value of the teams. The remaining 20% would be allocated based on on-field sporting results.[132]

The operational headquarters of the Super League would have been in London, and control of the competition would have been in the hands of the twelve founding clubs, which would constitute the majority shareholders of the project. A new media company would be created to manage the competition's television rights, and UEFA would be replaced by this new private organization.

[131] Panja, T., & Smith, R. (2021, April 19). Europe's New Super League, Explained. The New York Times.

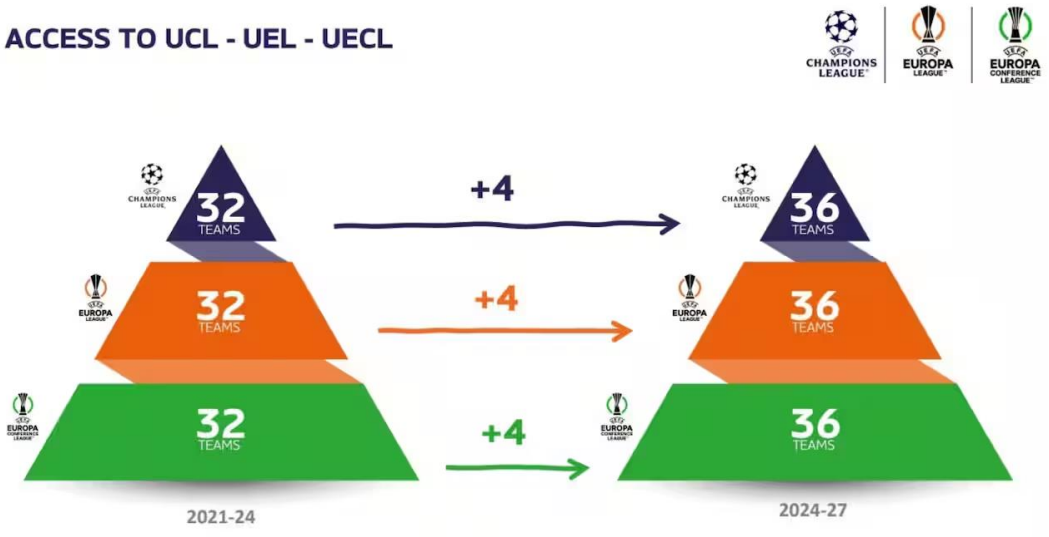
[132] Hohmann, F. (2021). The Financial Motivation Behind the Super League Attempt.

3.1.1. *The UEFA's Response: The New Champions League Format*

After the unveiling of this project and in response to its threat, on April 19, 2021, UEFA announced a new system of club competitions and decided to redefine the project for the new Champions League[133]. On May 10, 2022, the final format, access list, and schedule of European club competitions were approved. "*UEFA has demonstrated its total commitment to respecting the fundamental values of sport and preserving the principle of open competitions based on sporting merit, in line with European sporting values and the solidarity-based sports model*", said UEFA President Aleksander Čeferin[134].

The main change in the announced reforms concerns the abandonment of the current group stage system. Currently, the group stage of the Champions League features 32 participants divided into eight groups of four teams each. Starting from the 2024/25 season, however, 36 clubs will participate in the championship phase of the Champions League, offering four more teams the opportunity to challenge the top European clubs. These 36 clubs will compete in a single league, and the standings will include all 36 teams.

According to the new format, teams will play eight matches in this single-group stage. They will no longer play twice against three opponents, but will face eight different teams, playing half of the matches at home and half away. The eight different opponents will be determined through a division into four pots, and each team will be drawn to play against two opponents per pot, playing one home and one away match against each.



[133] UEFA. (2024, May 7). New format for Champions League post-2024: Everything you need to know. Retrieved from uefa.com

[134] ilBIancoNero.com. (2024, March 4). Calendario Juve in Champions League: quando ci sarà la prossima partita.

Figure 3 - Source: UEFA.com

The qualification for the Champions League will continue to be open and will depend on a club's final position in the national league of the previous season, combined with the position of each federation in the UEFA ranking. The basis of the access list will remain unchanged from the current season, and the four additional spots available in 2024/25 will be allocated as follows:

- Slot 1: This spot will go to the team ranked third in the league of the federation in fifth place on the access list determined by the UEFA club coefficients ranking by country;
- Slot 2: This spot will be awarded to the winner of a national league, increasing from four to five the number of clubs qualifying through the Champions path of the competition's qualification (composed of four qualification rounds);
- Slots 3 and 4: These spots will be assigned to the federations whose clubs achieved the best results in the previous season (i.e., the club coefficient per country of the previous season, based on the total number of club coefficient points obtained by each team of a federation, divided by the number of participating clubs from that federation). These two federations will be entitled to one place each in the championship phase ("European Performance Spot") for the club ranked immediately after the teams entitled to automatic qualification to the championship phase.

Figure 4 - Source: UEFA.com

The results of each match will determine the overall ranking of the new championship, with three points for a win and one for a draw. The top eight teams in the championship phase will automatically qualify for the round of 16, while the teams ranked 9th to 24th will compete in direct elimination playoffs, with home and away matches, to fill the round of 16 grid. Teams ranked 25th and below will be eliminated without the possibility of accessing the UEFA Europa League.

The new format, which sees all teams classified together in a single league, means that all will have something to fight for until the last matchday. In the direct elimination phase, teams ranked between 9th and 16th will be seeded in the playoff draw, meaning they will play the return leg at home against a team ranked between 17th and 24th. The eight teams that prevail in the direct elimination playoffs will qualify for the round of 16, where they will face the top eight ranked teams, which will be seeded in the round of 16 draw. To strengthen the synergy between the championship and direct elimination phases, and to provide greater sporting incentives during the championship phase, the pairings for the direct elimination phase will also be partly determined by the championship phase standings.
Starting from the round of 16, the competition will follow its current format with direct elimination rounds leading to the final, which will be played as usual on a neutral field selected by UEFA.

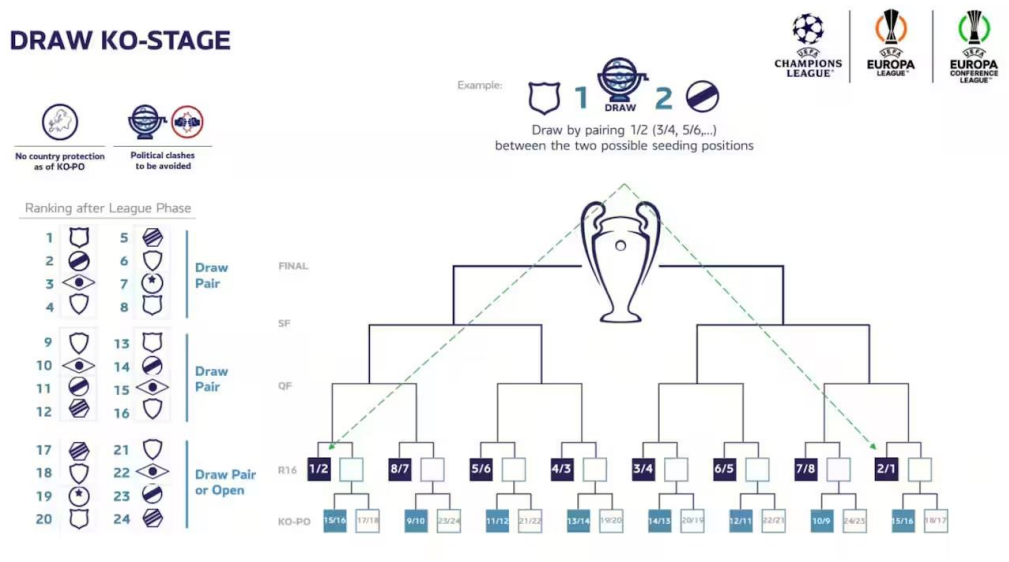


Figure 5 - Source: UEFA.com

3.1.2. The Second Model Of Super League

After the judgment of the European Court of Justice on December 21, 2023, which will be subsequently analyzed from a legal standpoint, A22 Sports, the company sponsoring and promoting the creation of the Super League, has relaunched the Super League project: *"An open system with promotions and relegations and two phases: the league and the final phase. There will be no permanent members*"[135], as seen in the video published on the official account. "*Our proposal is based on sporting merit and ensures turnover among the various leagues. Matches will be played midweek, and the Super League will integrate seamlessly with national leagues. Matches will be available for free streaming*"[136].

[135] A22 Sports. Official Twitter Account.
[136] A22 Sports. Official Twitter Account.

The Super League will consist of 64 teams, divided into three leagues: Star, Gold, and Blue. In the first two leagues, Star and Gold, there will be 16 clubs divided into two groups of eight; in the last one, Blue, there will be four groups of eight teams for a total of 32 clubs. There will be no increase in calendar days compared to those provided for by current competitions. In the first year of the competition, clubs will be selected based on an index with transparent and performance-based criteria.

Figure 6 - Source: A22 Sports

The first part of the competition will take place from September to April, with home and away matches between teams of the same league: thus, 14 matches for each team. Then there will be the final phases of the three leagues, which will be held separately starting from the quarter-finals: the top four of both groups of the Star (for the Star final phase) and the top four of both groups of the Gold (for the Gold final phase) will qualify; finally, the top two of each Blue group will qualify for the Blue final phase. Quarter-finals and semi-finals will be played with the home and away formula, while the final - single - will be played on neutral ground. This will crown three champions: the Star, Gold, and Blue champions. The bottom two of the Star will be relegated to the Gold, and naturally, the top two of the Gold will be promoted to the Star. The same applies between Gold and Blue: the bottom two will be relegated, and their places will be taken by the top two of the last leagues. Every

year, 20 of the 32 Blue teams will leave the Super League and be replaced by twenty teams chosen based on results obtained in national leagues.[137]

Regarding revenue and free streaming, the A22 statement reads: "*(...) To ensure stability in the initial phase of the competitions, revenues during the first three years of the new competition will be guaranteed at an amount higher than currently planned in the next cycle. Solidarity payments will amount to 8% of the League's revenues, with a minimum sum of 400 million euros, more than double the amount distributed by the current pan-European competition (...)*"[138].

3.1.3. The Reasons Behind The Super League

The football sector, reaching a crucial moment in its history, especially following the onset of the 2020 pandemic, inevitably needed updates and modifications to economically revitalize itself. Indeed, the need to increase revenues and penetrate new markets through new formats that enhance the spectacle of the sport became the priority for major clubs. It was evident that various sources of income, especially television rights, stadium reopening, and merchandising, were not sufficient to offset the significant increase in operational costs of the clubs. It is important to note that revenues were not decreasing; on the contrary, revenues, especially those from television rights, have seen a considerable increase in recent years, almost doubling[139]. However, the issue lay in the increase in costs, which did not follow the same exponential trend as revenues.

To this circumstance was added the deterioration of the relationship between the clubs and the main regulatory body, UEFA: discontent regarding the distribution of revenues, especially those from television rights, spread among the clubs, which did not understand the need for an intermediary body to coordinate and administer competitions, retaining a significant portion of revenues that, in the absence of such an intermediary, would have flowed directly into the clubs' coffers.

To fully understand this discontent, it is necessary to outline the distribution criteria of the highest category of revenues: the sale of television rights among the main European football competitions. Indeed, sport, with the transition to the sports-business binomial, has undergone enormous evolution in terms of sports event consumption. The media industry and professional sports, joining forces, have led to increased visibility and, therefore, profits for clubs, thanks to sports broadcasts and so-called television rights. Undoubtedly, sports broadcasts today represent peak moments for television channels, generating significant revenues for the entertainment industry, a phenomenon that until a

[137] Eurosport. (2023, december 21). How will the new super league be? 64 teams in 3 leagues: star, gold, and blue. Promotions and relegations: how does it work?

[138] A22 Sports. Official Twitter Account.

[139] Calcio&Finanza. (2024, February 3). TV Rights, the Premier League-Serie A Comparison: The Latest English League Earns 40% More Than the First Italian One.

few decades ago was unthinkable. The stadium has now become a huge television stage, where athletes compete to provide entertainment to fans watching the games comfortably from home. In Europe, football excels as the sport with the highest number of enthusiasts and, consequently, spectators, and with the advent of pay-tv and its services such as pay-per-view and video-on-demand, European regulations, as extensively explained in the first chapter, had to adapt, especially to ensure respect for the right to competition, particularly with the issuance of the "Television without Frontiers" directives no. 89/552 and 97/36[140].

3.1.3.1. The Role Of Sport Broadcasting Rights In Football

With the advent of new technologies and new transmission channels, things have changed: with the advent of new operators, true commercial battles have arisen to secure the exclusive broadcast rights of major sports events. These increasingly fierce commercial disputes have led to a consequent transfer of profits from broadcasters to rights holders downstream with a significant increase in prices. To better analyze television rights transmission agreements in light of competition regulations, it is first necessary to define the relevant market. According to the Commission, for the geographical market of television rights, the national one should be understood, for reasons of language, culture, and obvious interests of users for the performances of local and national athletes and teams, as well as the regulatory barriers deriving from different national legislations[141].

To maintain the interest of viewers in the long term, major television broadcasters often monopolize the market, having the financial resources necessary to participate in TV rights auctions. This phenomenon can have a negative impact on the television market, with the risk of concentrations and restrictions that limit consumer choice and entail anti-competitive effects. It is evident that the market for sports television rights is a particular case since sports possess unique characteristics that distinguish them from other sectors even in the field of television rights. To ensure compliance with competition rules, cases of horizontal, vertical, and in some cases both horizontal and vertical restrictions have been defined. Horizontal restrictions include agreements by sports associations that monopolize the rights of participating teams in a competition, reducing competition. Even if they may seem illegitimate, sometimes they are necessary[142]. Vertical restrictions concern the sale of advertising space or exclusive television broadcasts that strengthen the dominant position of some television broadcasters, especially regarding the duration or scope of exclusivity. Finally, when both

[140] Directive no. 298 of October 17, 1989, §§ 23 et seq., Official Journal of the European Communities (OJEC) and Directive no. 202 of June 30, 1997, §§ 60 et seq., Official Journal of the European Communities (OJEC) [or Official Journal of the European Union (OJEU)].

[141] European Commission. (2021, October 26). Definition of Relevant Market.

[142] European Commission. (2020, December 3). Guidelines on Horizontal Cooperation Agreements.

horizontal and vertical restrictions occur, there is a combination of dominant positions in upstream and downstream markets, which can exclude competitors from the market. Noteworthy was the UEFA's collective sales agreement of 2002 which, contrary to the agreements of 1999, those of 2002 ensure that all rights are sold through a public auction.[143]

In conclusion, the Commission's objective of keeping the television rights market open and competitive has been achieved. A definitive turning point in the management and commercialization of TV rights was achieved through legislative interventions. In 1990, the Stream pay platform, with the involvement of Rupert Murdoch's "News Corporation," proposed the purchase of the entire Serie A package[144]. This proposal would have led to the creation of a monopoly in the Italian pay-tv market centered on football. The Italian government, under the guidance of Massimo D'Alema, had to intervene promptly to avoid possible violations of Article 3 of Law No. 287/90[145] and Article 82 of the EC Treaty[146]. The result of this immediate intervention was Legislative Decree No. 15 of January 30, 1999, known as the "anti-Murdoch law"[147]. This decree introduced provisions aimed at promoting balanced development of television broadcasting and preventing the formation or maintenance of dominant positions in the radio and television sector. Among the provisions, a limit of 60% was imposed on the rights acquirable for matches broadcast in coded form. However, over time, the anti-

[143] Schön, M. (2018). Joint Selling of Television Rights: An EU Competition Law Perspective and a Comparative Analysis of the Impact of Regulation 1/2003.

[144] International Communication Gazette. (2011). Global media, business and politics: A comparative analysis of News Corporation's strategy in Italy and the UK, 73(8), 670-684.

[145] Italian Parliament. (1990). Law no. 287 of October 10, 1990. Competition and market protection regulations.

[146] "*Articolo 82: (ex articolo 86 TCE)*

Ogni abuso da parte di una o più imprese delle loro posizioni dominanti nel mercato interno o in una parte sostanziale di esso è incompatibile con il mercato comune, in quanto può pregiudicare il commercio tra Stati membri.

Tali abusi possono consistere, in particolare, nell'imporre direttamente o indirettamente, prezzi d'acquisto o di vendita o altre condizioni di transazione non equi o nell'applicare condizioni dissimili a prestazioni equivalenti nei confronti di partner commerciali, comportandosi in modo discriminatorio nei confronti di alcune imprese contraenti creando barriere all'ingresso sul mercato che favoriscano, direttamente o indirettamente, l'impresa dominante o impediscano ai suoi concorrenti di affrontarla sul mercato, quando tali pratiche sono suscettibili di pregiudicare il commercio tra Stati membri.

L'eventuale constatazione dell'esistenza di un'impresa in posizione dominante non pregiudica l'applicazione delle disposizioni del paragrafo 1. Se, in seguito all'applicazione del paragrafo 3, è accertato che l'impresa interessata ha commesso un abuso, può essere data l'ingiunzione di porre fine a tale abuso.

Misure che neghino alle imprese il beneficio di un regime giuridico obiettivamente giustificato, il quale applicabile agli scambi tra Stati membri, in particolare misure che neghino il beneficio del regime di approvazione o di registrazione previsto dalla legislazione nazionale per l'esercizio di un'attività economica, sono incompatibili con il mercato comune, nella misura in cui possano pregiudicare il commercio tra Stati membri, salvo che siano giustificate da ragioni di interesse generale."

[147] The "anti-Murdoch law" is not an official term or specific legislation, but it commonly refers to legislative or policy measures designed to limit the influence or control of the media by large media groups, such as Rupert Murdoch's conglomerate, News Corporation.

Murdoch law proved to be paradoxical, ultimately producing the same results it initially sought to avoid.

It is known to all, in fact, that in the recent past, it was precisely Mr. Murdoch, with his media creation Sky, who dominated and exercised a de facto monopoly in the field of Italian pay-tv satellites[148]. At least until the beginning of 2005, when new technologies, such as digital terrestrial television, launched a tangible attack on the Australian Group, the actual competitive impact of which was seen in the penultimate auction for the rights of the 2021-2024 triennium, where the streaming service DAZN exceeded Sky's offer for the first time.

Another regulation worth mentioning, central in conceiving the overall Italian landscape in terms of television rights, dates back to 2006: with an AGCM investigation, it was concluded that individual sale of television rights was a failure, and how collective sales led to decidedly better results[149]. This investigation led to Law 106/2007, called the "*Delegation to the Government for the revision of the discipline relating to the ownership and market of transmission, communication, availability to the public, in radio and television and on other electronic communication networks, of sports events of football championships and other professional football competitions organized at the national level"*[150], aimed at establishing a balance of resources produced by the sale of football TV rights. Naturally, the government aimed to reintroduce centralized sales of television rights, while the proposed bill contained two significant restrictions for the communications sector:

- First of all, there was an absolute ban on the purchase of rights intended for platforms without an enabling title.
- Secondly, sublicensing of acquired rights was prohibited. In addition, the duration of contracts had to be carefully calibrated to avoid any form of consolidation of dominant positions.

[148] Sylvers, E. (2004, March 24). The Murdoch Empire Looks to Italian TV.

[149] GCM. (2006, December 21). "Indagine conoscitiva sul settore del calcio professionistico", Provvedimento n. 16280. Boll. Uf., n. 51-52/2006.

[150] Law 106/2007: art. 1 *"Allo scopo di garantire l'equilibrio competitivo dei soggetti partecipanti alle competizioni sportive e di realizzare un sistema efficace e coerente di misure idonee a stabilire e a garantire la trasparenza e l'efficienza del mercato dei diritti di trasmissione, comunicazione e messa a disposizione al pubblico, in sede radiotelevisiva e su altre reti di comunicazione elettronica, degli eventi sportivi dei campionati e dei tornei professionistici a squadre e delle correlate manifestazioni sportive organizzate a livello nazionale, il Governo è delegato ad adottare, su proposta del Ministro per le politiche giovanili e le attività sportive e del Ministro delle comunicazioni, di concerto con il Ministro dell'economia e delle finanze, con il Ministro per le politiche europee e con il Ministro dello sviluppo economico, sentite le competenti Commissioni parlamentari, entro il termine di sei mesi dalla data di entrata in vigore della presente legge e in conformità ai princìpi e criteri direttivi di cui ai commi 2 e 3, uno o più decreti legislativi diretti a disciplinare la titolarità e l'esercizio di tali diritti e il mercato degli stessi, nonché, entro dodici mesi dalla data di entrata in vigore di ciascuno dei decreti legislativi, eventuali decreti legislativi integrativi e correttivi dei medesimi, adottati con le medesime procedure e gli stessi princìpi e criteri direttivi previsti dai commi 2 e 3."*

At this point, having described the Italian framework, it is worth delving more knowledgeably into the world of buying and selling TV rights in the top 5 European leagues, Italy, England, Spain, Germany, and France.

Here are the earnings from television rights in the aforementioned competitions, with particular reference to the last three seasons:

Revenues from sport broadcasting rights	***Country***	***30th June 2021***	***30th June 2022***	***30th June 2023***
Amount in €		***Actual***	***Actual***	***Actual***
Bundesliga	Germany	1.450.000.000,00	1.100.000.000,00	1.524.000.000,00
Liga	Spain	1.450.000.000,00	1.430.000.000,00	1.500.000.000,00
Ligue 1	France	645.000.000,00	633.000.000,00	704.000.000,00
Premier League	United Kingdom	3.000.000.000,00	3.000.000.000,00	3.000.000.000,00
Serie A	Italy	854.000.000,00	939.000.000,00	1.018.000.000,00
TOTAL		7.399.000.000,00	7.102.000.000,00	7.746.000.000,00

Figure 7 - Source: Calcio & Finanza

1. *Bundesliga*

Ranked fourth in the UEFA ranking is the top German league, the Bundesliga. The Bundesliga will earn 1.1 billion euros per season from national TV rights for the four-year period starting from 2021/22. The auction for the German league's TV rights concluded at over a billion euros, inclusive of the 2. Bundesliga, as announced by the DFL during a press conference. Specifically, the main TV rights for the league in Germany were awarded to Sky and Dazn: Comcast's pay-tv will show all Saturday matches, while the streaming platform will broadcast Friday and Sunday matches live, almost tripling the number of matches compared to the current situation (from 40 to 106 live matches per season). Sky will also broadcast the 2. Bundesliga (the Saturday evening match will be broadcast on Sport1), while for free-to-air TV, ProSiebenSat.1 will air the opening matches of both the Bundesliga and the 2. Bundesliga, the relegation playoff, and the Supercup.

The total of 4.4 billion over the four years represents a slight decrease compared to the 4.64 billion from the 17/21 quadrennium: partly due to the Coronavirus emergency, the decrease was around 5%, with total revenues per season decreasing from 1.16 to 1.1 billion euros. "*(...) The auction's result provides Bundesliga and 2. Bundesliga clubs and fans with the maximum possible stability in uncertain times. This applies both to preserving revenue situations widely and to viewing habits. A big thank you goes to the media partners for the upcoming rights period, who, with their investments, have expressed their confidence in the positive future development of the Bundesliga and 2. Bundesliga (...)*", said Christian Seifert, CEO of the DFL[151].

There are four criteria according to which revenues from national TV rights are distributed from the German football league to clubs in the First and Second divisions, with an 80%-20% ratio:

[151] Calcio&Finanza. (2021, March 31). Bundesliga, -5% per i diritti tv 21/25: 1,1 mld a stagione.

- 70% of the total revenue is divided among all 36 Bundesliga and Bundesliga.2 clubs based on the five-year ranking of each of the two competitions;
- A share of 23% is distributed based on the weighted ranking over the last 5 years for each club;
- A third share, equal to 5%, is awarded based on the overall ranking of the 36 clubs over the last 20 years;
- The remaining 2% rewards clubs that utilize their youth sectors, distributing the amount based on the minutes played by Under-23 players trained by the clubs.[152]

Regarding TV rights revenues from the international market, apart from a solidarity contribution of 8 million, all revenues go to Bundesliga clubs.

2. La Liga

The second league to consider is the Spanish top division, "La Liga", currently third in the UEFA ranking. Over the past 15 years, La Liga has asserted itself at the European level, primarily due to the rivalry between Real Madrid and Barcelona, led by Cristiano Ronaldo and Lionel Messi, respectively, which allowed the league to establish itself in Europe as one of the most captivating.

La Liga has officially announced the sale of audiovisual rights locally (Spain and Andorra) for the five-year period from the 2022/23 season to the 2026/27 season. The winners are Movistar, for a total of 5 matches per day plus three full matchdays, and Dazn, for another five matches per day. The expected amount for the entire period is 4.95 billion euros, a slight increase compared to the revenues obtained from the sale of equivalent packages in the previous television rights cycle. "*With this result* - the note reads - *La Liga has managed to maintain audiovisual revenues, in a context where most of the major European leagues have reached their peak and are reducing their revenues in recent cycles, and where many industry experts predicted significant decreases*"[153].

As for the criteria for revenue distribution from TV rights, in Spain, collective selling was only introduced in 2015, with the Real Decreto-Ley n. 5/201540[154], published by the Spanish Government, thereby converting Spain to the collective distribution criterion. With this law, it was decided that revenues obtained from the commercialization of La Liga's audiovisual rights must be distributed among all participating clubs in both the First and Second divisions according to the criteria

[152] Figus Diaz, J., Marini Balestra, F., & Scassellati Sforzolini, G. (2016, June 10). La ripartizione dei ricavi derivanti dalla vendita collettiva dei diritti audiovisivi degli eventi calcistici. Controversie tra le squadre e prospettive antitrust.

[153] FIRSTonline. (2021, December 14). Calcio, Dazn sbarca in Spagna: dalla Serie A alla Liga.

[154]Spanish head of state. (2015, May 1). Royal Decree-Law 5/2015, April 30, on urgent measures in relation to the commercialization of rights to exploit audiovisual content of professional football competitions. BOE, no. 104.

established by art. 5 of the Real Decreto-Ley n. 5/2015[155]. The 90% of the total revenue is allocated to clubs participating in the First division, while the remaining 10% goes to those in the Second division. It is then up to the Liga Nacional de Futbol Profesional (LNFP) to distribute the sums within the following limits:

- 50% of the total must be distributed among participants in the top league equally;

[155] Article 5. Criteria for the distribution of profits among participants in the National League Championship. 1. The proceeds obtained from the exploitation and joint commercialization of the audiovisual rights of the National League Championship will be distributed among the companies and entities participating in the First and Second Division according to the criteria established in this article. 2. 90% of the revenues will be allocated to the clubs and entities participating in the First Division of the National League Championship and the remaining 10% to the clubs and entities of the Second Division. 3. The National Professional Football League will distribute the amounts corresponding to each category according to the agreed criteria, always respecting the following rules and limits: a) A percentage will be distributed among the participants of each category equally. The amount to be distributed will be 50% in the First Division and at least 70% in the Second Division. b) The remaining amount, after deducting the item indicated in letter a), will be distributed among the clubs and entities of each category in a variable manner. Each half of this amount will be distributed according to each of the following criteria: 1. The achieved sporting results. In the First Division, the sporting results of the last five seasons will be taken into account, with a weight of 35% for those obtained in the last season, 20% in the penultimate, and 15% in each of the three previous ones. In the Second Division, only the last season will be considered. For the application of these criteria, the amount to be distributed will be allocated to each of the seasons considered, according to the weighting criteria established in the previous paragraph. The amount assigned to each season will be distributed among the participants as follows: – 1st place: 17%. – 2nd place: 15%. – 3rd place: 13%. – 4th place: 11%. – 5th place: 9%. – 6th place: 7%. – 7th place: 5%. – 8th place: 3.5%. – 9th place: 3%. – 10th place: 2.75 out of 100. – 11th place: 2.5 out of 100. – 12th place: 2.25 out of 100. – 13th place: 2%. – 14th place: 1.75 out of 100. – 15th place: 1.5 out of 100. – 16th place: 1.25 out of 100. – 17th place: 1 out of 100. – 18th place: 0.75 out of 100. – 19th place: 0.5 out of 100. – 20th place: 0.25 out of 100. If the competition has more or fewer than 20 participants, these percentages must be adjusted according to what is provided in the following paragraph, respecting the progressiveness based on the results. 2. Social implementation. One-third of the evaluation of this criterion will be determined by the revenue from subscriptions and the average ticket sales of the last five seasons, and the other two-thirds by its participation in generating resources from the commercialization of television broadcasts. To apply the social implementation criteria, a proportional distribution system will be established, with no entity receiving an amount exceeding 20% of this item. If a participant exceeds this limit, the excess will be distributed proportionally among the remaining participants. None of the participants may receive an amount less than 2% of this item for this concept. 4. The criteria to be applied for the distribution provided in the previous paragraph must be approved by the governing bodies of each category, with a qualified majority of two-thirds of the votes, after the signing of each contract for the commercialization of rights by the National Professional Football League. If no proposal obtains such a majority after three votes in the assembly convened for this purpose, the criteria of the previous period will be maintained. If they do not exist, the distribution criteria will be decided by the Higher Council for Sports. 5. In both categories, once the amounts corresponding to the criteria indicated in this article have been distributed, the difference between the clubs and entities receiving the most and those receiving the least cannot exceed 4.5 times. If this circumstance occurs, the share of all entities will be proportionally reduced as necessary to increase those that need to reach that maximum difference. To the extent that the overall distribution exceeds one billion euros, this difference between those who earn the most and those who earn the least will progressively decrease to a maximum of 3.5 times, which would be reached with an income equal to or greater than one billion five hundred million euros. In both cases, both the amounts that could be received from the compensation fund provided for in letter a) of article 6.1, and the proceeds that the participating entities receive from the assignees of the exclusive exploitation of audiovisual rights as consideration for any other commercial relationship. 6. The settlement of the amounts corresponding to each club or participating entity as consideration for the commercialization of their audiovisual rights will be made on a seasonal basis, before the conclusion of the calendar year in which each season begins. Promotions and relegations at the end of a season will not affect the corresponding settlement for the same and will only take effect from the following season.

- the remaining portion is divided among the teams in each division based on the following sub-criteria:
    - Based on the sporting results obtained. In the First division, the last five seasons are taken into account, with the last one weighted at 35%, the penultimate one at 20%, and the previous three at 15% each, while in the Second division, only the last season is considered. The value assigned to each season is then distributed among all participants so that the first-place team receives 17%, the second-place team 15%, and so on until the last-place team, which receives 0.25%;
    - Based on social implantation. One third of the value of this criterion is determined based on the number of subscriptions and tickets sold in the last five seasons. The remaining two-thirds are awarded for the teams' participation in creating revenues from TV broadcasts. Like in Italy, a maximum limit of 20% is set in Spain, which, if exceeded, is distributed proportionally to the others. A lower limit of 2% is also set to avoid disadvantaging smaller clubs.

With equity in mind, the rule aims to limit earnings disparities among teams, with a maximum gap of 4.5 times to avoid unfair resource distribution. In case of total revenues exceeding one billion euros annually, the objective ratio is reduced to 3.5 times if the total exceeds 1.5 billion. All these measures, though intricate, have been implemented to improve competitive balance, ensuring that the most important teams do not overly dominate, thus promoting fairness in sports. Another method of distributing TV rights based on each team's fan base favours the most renowned clubs and heavily depends on fan presence in stadiums. The pandemic particularly affected high-profile clubs, forced to deal with increased expenses and decreased revenues. Real Madrid, Barcelona, and Juventus were among the first to propose the Super League last April, facing economic and financial difficulties, a topic that will be examined in the next chapter.

3. Ligue One

The third league in the "Top 5" is the French Ligue One, ranked fifth. During the 2020/2021 sports season, the issue of TV rights in France became extraordinarily complex following the bankruptcy of the Spanish broadcaster MediaPro, promptly replaced by Amazon, which then acquired the rights for 8 Ligue One matches and eight Ligue 2 matches for the 2021-2024 triennium, leaving the remaining matches to the Canal+ and beIN Sports partnership. The American giant secured the package for 300 million euros, which, combined with the 330 million euros from the beIN Sports package, yielded around 630 million euros for the clubs, half compared to the previous 1.2-billion-euro agreement

signed with MediaPro. Since MediaPro's bankruptcy, Ligue One has experienced a sharp decrease in revenues, remaining steadily below the billion marks.[156]

Regarding revenue distribution, the LFP also uses a mutualistic criterion, which applies to both the first and second divisions as follows:

- 50% equally distributed
- 21% based on audience data
- the remaining 29% based on sporting results, divided between 25% from the last season and the rest based on aggregate results from previous seasons.[157]

4. Premier League

The fourth league under analysis is the English Premier League, currently ranked first in the UEFA ranking. In England, revenues from sports rights are divided very differently from Serie A. Firstly, it should be noted that TV channels do not broadcast all Premier League matches, unlike what happens, for example, in Italy, due to cultural and social differences, which see the stadium as the center of support, thanks to state-of-the-art facilities and significantly higher attention to fans and enthusiasts not only compared to Italy but also to the rest of the world. The importance of English football within the continental panorama is evident from the revenues that clubs receive annually from television rights: The Premier League has sold television rights for four years from 2025 to 2029 to Sky and TNT for a record amount: 6.7 billion pounds, equivalent to 7.8 billion euros. The BBC has retained the rights to broadcast daily highlights. This is the largest contract ever signed in the UK sports sector: about 1.95 billion euros per year, more than twice the 1 billion per season that Serie A receives[158]. The heated rivalry between Sky Sports and the BT Group in recent years has led to a 70% increase in the price of television rights, which for the 2013/2016 triennium were worth just 1.78 billion pounds - already a third more than the current Serie A - and, already for the following triennium, saw its price increase to 5.13 billion.

The reward for finishing as Premier League champions is estimated at around £44 million / $54.4 million from the Premier League alone, with the total, including sponsorship bonuses, TV money, and other payments, bringing the figure close to £150 million / $186 million. The difference extends along the table, but while the gaps per position are relatively minor (£2.5 million/$3.1 million on average), the final figures are much higher. For example, the drop from fifth place to fourth is separated only by £2.2 million/$2.7 million in Premier League prize money, but the drop between qualifying for the Champions League and not is over 10 times that amount based on other revenue

[156] Calcio&Finanza. (2021, June 11). Caos diritti tv in Francia: Canal + si ritira dopo l'arrivo di Amazon.

[157] Napolista.com. (2017, May 25). Dossier Napolista – I criteri di ripartizione dei diritti televisivi in Europa.

[158] La Repubblica. (2023, December 5). Premier League TV rights at record levels: double Serie A.

streams. In addition to the spaces between European qualification places, relegated teams (from 18th to 20th) also receive parachute payments from the Premier League, to assist with the financial hit of dropping out of the top flight. Each relegated club collects 55% of the equal share of TV revenues paid to Premier League clubs in the first year after relegation, 45% the following year, and 20% in the third year.[159]

The element that differentiates the Premier League's distribution method from Serie A is the mutualistic model, which is strongly favored by the criteria for distributing revenues from TV rights sales. In England, there is a division between national and international revenues:

- National revenues, as seen, accounting for 52.8% of the total, are distributed as follows:
    - A share of 50% is divided among all clubs that participated in the last season, including an equal share, a portion of commercial revenues, and overseas TV rights;
    - A 25% share is allocated based on matches broadcast for each club (Facility Fees). As explained earlier, only 45% of matches are broadcast live, so the Premier League awards 12 million to each club for a number of matches less than or equal to 10, and then adds one million for each additional match;
- The remaining 25% is assigned based on the final league position (Merit Fees);
- Revenues from the sale of overseas rights (47.2%) are divided equally among all clubs.

In addition to the 20 clubs participating in the Premier League, all clubs affiliated with the Football League, the second professional league in England, benefit from TV rights. The football system in England has a peculiar structure, with the distribution of TV rights also involving the 72 clubs that participated in the Championship, League One, and League Two. Furthermore, the decisive factor that allows even the last-place team to receive a three-figure sum, close to the top-earning club's income, from TV rights is undoubtedly the fair distribution of 50% of the total, plus the sale of overseas TV rights. Also, thanks to this attention to the fair distribution of TV rights, the Premier League has been able to establish itself over the years as one of the world's most important leagues, improving year after year and gradually increasing the gap from other continental national competitions.

5. Serie A

In the leading Italian league, Serie A, the sale of television rights, as shown previously, has undergone significant changes over the years, up to the signing of the Melandri law. Regarding the 2020/2021 sports season, Serie A earned approximately 854 million euros from TV rights, a figure referring to the sale of rights to both domestic and foreign channels. Serie A revenues are divided into 78.7% for national rights, with the remaining 21.3% coming from foreign channels. Thus, although Italy

[159] Jugo Mobile. (2023, August 11). Premier League prize money by position: what each team can win in 2023/24?

currently ranks third in the UEFA nation rankings, the sale of national rights is significantly higher, as is the case for France (89.1%) and Germany (83.1%), while for Spain (56.2% and 43.8%) and England (52.8% and 47.2%), the situation is more balanced. In the last season, Serie A distributed around 1.018 billion euros net, starting from around 1.3 billion in revenues, following the provisions of the Melandri Law.

In the 2018 Budget Law, officially announced in January 2019, the Melandri Law was modified, the second in a few years[160]. In 2017, the then Minister of Sport, Luca Lotti, introduced the novelty of social rooting, to be calculated based on TV audience and stadium attendance, also raising the share to be distributed equally to all clubs from 40% to 50%.[161] Essentially, therefore, the distribution of TV rights revenues for Serie A clubs occurred as follows:

- 50% equally among all clubs;
- 30% based on sporting results (15% based on the results of the last championship, 10% based on the results of the last 5 championships before the last one, 5% based on historical results);
- 20% based on social rooting (8% TV audience and 12% stadium spectators).

In 2019, the modification introduced the novelty of youth playing time. This innovation introduced a share equal to at least 1.1% of total revenues to be distributed based on "*(...) minutes played in the Serie A championship by players aged between fifteen and twenty-three years, trained in Italian youth sectors, and who have been registered for at least thirty-six uninterrupted months with the club for which they carry out their sporting activity, including any periods of loan to other clubs participating in Serie A or Serie B championships or the second teams participating in the Serie (...)*"[162] . The best way, in fact, to incentivize even big clubs to use young players on the field, also because it reduces sporting results as a distribution criterion. The law, therefore, currently provides that TV rights revenues must be distributed among Serie A clubs as follows:

- 50% equally among all clubs;
- 28% based on sporting results;
- 22% based on social rooting (of which at least 5% of the 22% linked to youth playing time).

From these data on the best European leagues, various approaches to distributing TV rights revenues emerge, with none necessarily superior to the others. However, it is clear that the "English method" ensures a more equitable distribution and also guarantees significant revenues even for clubs relegated to the second division at the end of the season. These differences from other leagues are the result of studies conducted in the early years of the last decade.

[160] Bertolino, F. (2022, December 15). Serie A, the Melandri Law reform arrives: TV rights can be sold for five years.
[161] Calcio&Finanza. (2023, December 31). Serie A, political mess: the law for youth sectors never applied.
[162] Calcio&Finanza. (2024, March 1). Serie A, more money for those who play young players: how much do clubs earn.

Starting in the 2010s, the Football Association and the Premier League adopted an innovative strategy, focusing on the Asian audience, which was still relatively uninvolved in commercial deals but showed growing interest in football. Teams began organizing summer tours in Asia, making training sessions and matches points of interest for an increasingly large audience. Match times were adjusted to favour the Asian audience.

In conclusion, there is no definitive solution for distributing TV rights, but it is evident that a method that favours equity allows more teams to compete for the title and leads to higher overall revenues. Despite the dominance of money in today's football world, fans appreciate balanced matches and leagues that are decided until the last moment, with different teams competing for victory.

At this point, after examining the main source of revenue for clubs, a question arises: what are the reasons why, despite the exponential increase in TV rights revenues, clubs are sinking deeper into debt?

In 2021, Il Sole 24 Ore[163] estimated the turnover of the football system, later confirmed by actual trends, predicting a loss ranging from 6.5 to 8.5 billion euros, especially concerning the twelve founding clubs, the most affected by the crisis with an impact of 2.5 billion euros over two seasons and an increase in aggregate net financial debt up to 3 billion euros. The problem preceding the poor debt situation of the clubs is mainly attributable to the frantic pursuit by teams of securing the top players, convincing them to sign through impressive salary offers, unsustainable with the onset of the pandemic, due to significantly reduced sponsorships and zero matchday revenues. The big clubs went from a situation where revenues continued to grow significantly and the system somehow remained in a sort of precarious balance to one where costs remained unchanged, debts increased, and revenues plummeted, due to an excessive use of financial leverage which leads, if a certain threshold of financial tolerance is exceeded, to the inability of the clubs to repair the accumulated debt. The pandemic, within this extremely fragile context, limited (if not completely eliminated) the only possible solution: maintaining revenues proportional to the growth of costs.

In Italy, the situation is even more complicated since the stadiums were already half-empty before the pandemic, and the club coffers are empty. The increase in these operating costs for clubs is closely linked to the rampant inflation of raw materials: according to KPMG, the ratio between personnel costs and revenues has increased on average from 61% to 67%. This increase is even more steep for clubs that have joined the Super League. In the case of Juventus, for example, the ratio between operating costs and revenues has been above 70% for five years, and in the first quarter of the 2020-21 season, it exceeded 100% due to the reduction in revenues following anti-pandemic measures.

[163] Bellinazzo, M. (2021, April 22). Calcio, Superlega naufragata, resta il nodo dei deficit dei club. Il Sole 24 Ore, p. 29.

Analyzing the data from the accountant Luca Marotta[164] and the annual reports of the companies in question, I proceeded to analyze the net debt situation (financial and commercial) and the net operating result of the twelve founding clubs of the first version of the Super League, reaching the following conclusions:

- Net debt situation of the twelve founding companies, given by the difference between debts and liquid assets, from the 2019/20 sports season to the 2022/23 sports season. The figures are expressed in European currency (euros) and the €/£ exchange rate used is calculated based on the average values of the rates during each sports season:

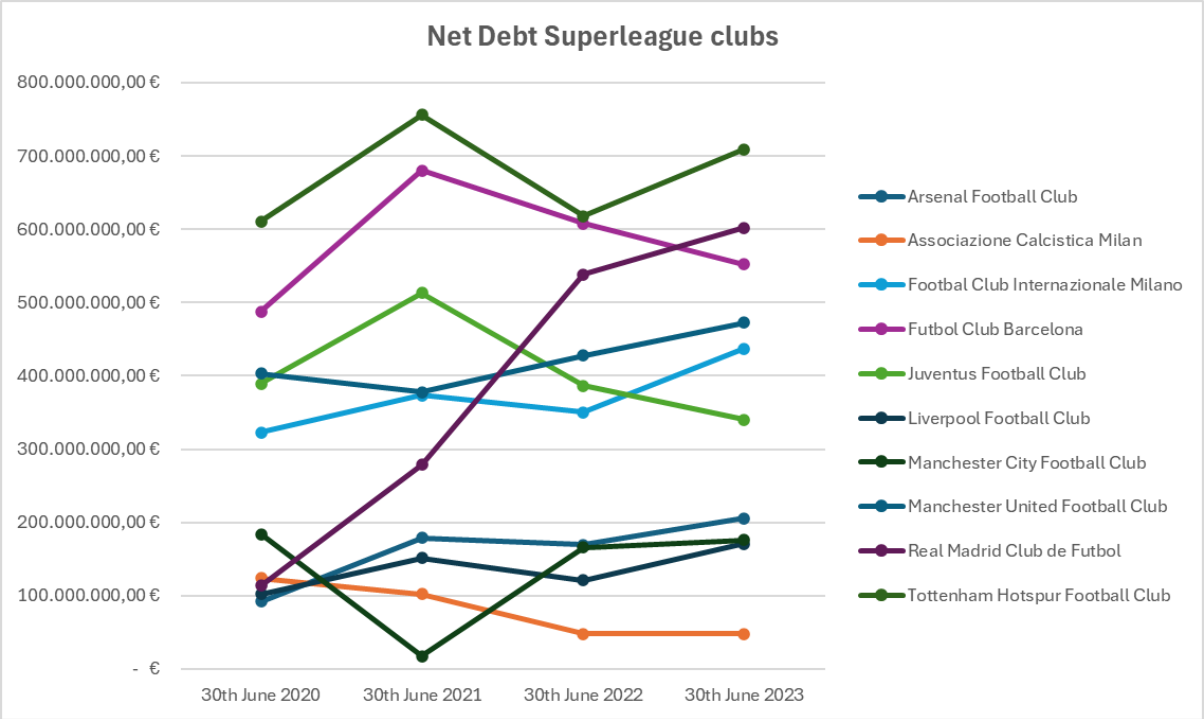


Figure 8 - Source: Luca Marotta

- Net result of the twelve founding companies from the 2019/20 sports season to the 2022/23 sports season. The figures are expressed in European currency (euros) and the €/£ exchange rate used is calculated based on the average values of the rates during each sports season:

[164] Luca Marotta Blog Spot.

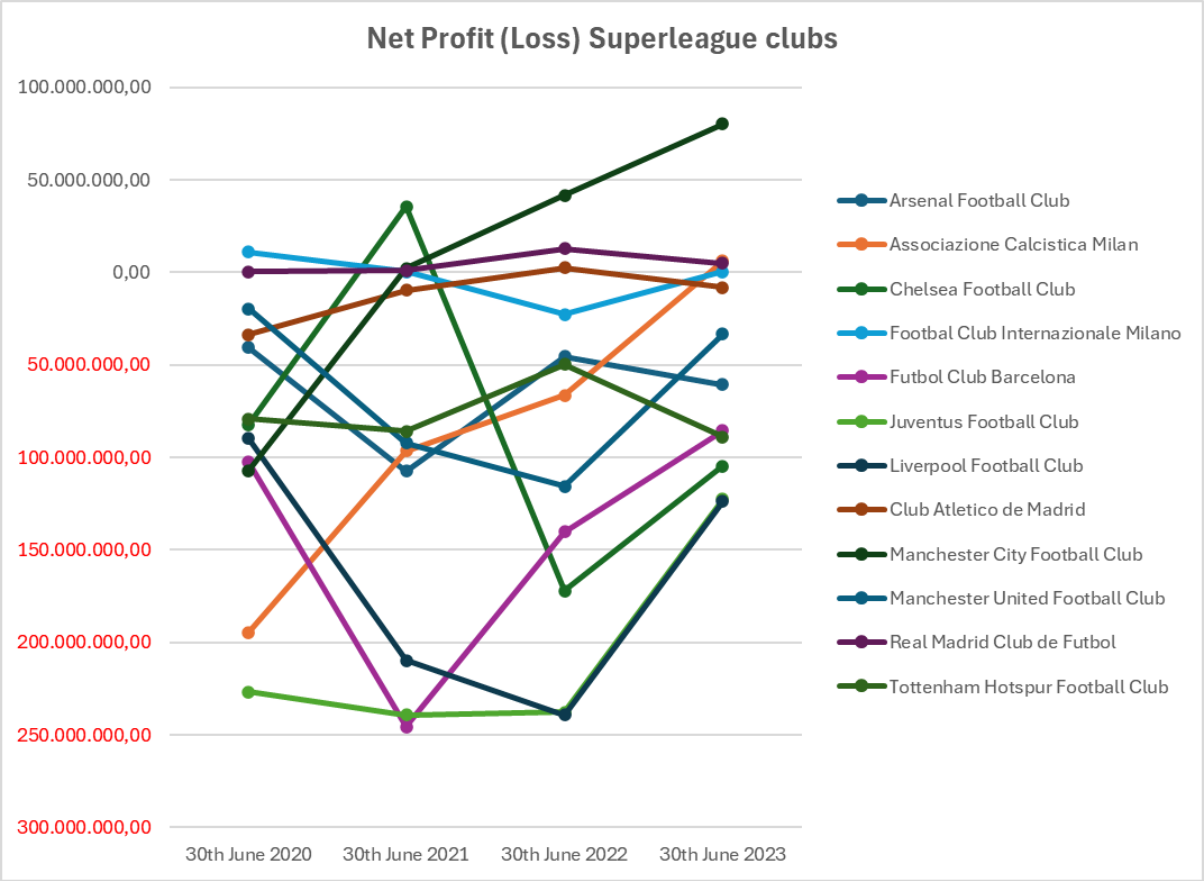


Figure 9 - Source: Luca Marotta

It is worth noting, in this regard, that in the calculation of the net result or the net debt situation, some companies were not mentioned, as the writer did not consider the information available online regarding the corporate balance sheet data to be reliable and/or truthful. As can be seen, the financial situation represented by the twelve founding clubs is extremely negative, and it is clear that there is an urgent need for a turnaround.

Another telling statistic that demonstrates the need for reform for clubs is the inability of revenues to keep pace with rising costs. Indeed, despite the reopening of stadiums and the removal of pandemic-related limitations, resulting in increased revenues for major clubs – see, for example, Manchester City, which went from 619 to 731 million euros, and Real Madrid, which surpassed 700 million[165] – clubs are unable to proportionally increase revenues compared to costs. Perhaps these are precisely the data that best illustrate the situation of European football and the need for a structural reform of the system.

Football has grown continuously over the past fifty years with significant growth rates. The abrupt halt in recent years has brought to light the clubs' indebtedness and the difficulties of companies in coping with a reduction in their revenues; this is because football is probably the sports market that

[165] Deloitte Football Money League 2024.

least exploits its market potential, according to top clubs, due to the main body, UEFA, accused of inefficient management: despite being by far the sport with the most fans in the world, it generates less revenue than other sports. According to top clubs, changes that only a lean, vertical, and elitist structure can bring are essential to bridge the gap. More high-profile matches between top European teams, innovative formats for fans, and a higher level of internationalization of the product are necessary.

In the last season, UEFA's turnover stood at around three billion euros[166], less than half of the main basketball league, the NBA, and a third of the NFL (American football). UEFA, following the reasons of the founding clubs, is primarily responsible for this situation: the introduction of the so-called Financial Fair Play has been easily circumvented by football's rich, revealing itself as an inadequate measure to stem the growing economic problem.

The Financial Fair Play, introduced by UEFA to ensure greater fairness within competitions, through spending and solvency thresholds, was approved in September 2009 by the UEFA Executive Committee and officially introduced on May 27, 2010, with the signing, by representatives of the main European clubs, of the document "UEFA Club Licensing and Financial Fair Play".[167] The need arose from the analysis of European clubs that were reaching the final stages of the main competitions organized by UEFA (first and foremost the UEFA Champions League) or winning the national title: an unstoppable connection was being established between winning clubs and companies with a disastrous debt situation, just think of the two teams that played in the 2008 Champions League final, Chelsea and Manchester United, which that year had a debt quota exceeding one and a half billion pounds.[168]

The announcement that marked a crucial turning point came on July 31, 2012, with a statement from UEFA expressing the intention to introduce further measures to control clubs: *"(...) In recent seasons, many clubs have reported repeated and increasing financial losses. The unstable economic situation has created difficult market conditions for European clubs, with negative consequences on profit generation and further financial availability issues for day-to-day operations. Many clubs have experienced a decrease in liquidity, leading, for example, to delays in payments to other clubs, employees, and social/fiscal authorities. Therefore, as requested by the entire football family, UEFA is introducing appropriate measures to achieve these objectives. Among these, the obligation for*

[166] Milano Finanza. (2022, July 27). Sport analytics: turnover will go from 3 billion in 2022 to 8 billion in 2026.

[167] UEFA (2012). Club Licensing and Financial Fair Play Regulations. Budzinski, O. (2014, March). The competition economics of Financial Fair Play. Ilmenau Economics Discussion Papers, 19(85). D'Andrea, A., & Masciandro, D. (2016). Financial Fair Play in European Football: Economics and Political Economy. BAFFI CAREFIN Centre Research Paper, (2016-15).

[168] Chelsea FC and Manchester United FC Annual Reports 2008-09.

clubs to balance their budgets or operate at a surplus within a specified period. In this regard, clubs cannot repeatedly spend more than they earn and are required to pay employees and transfers promptly. Clubs at higher risk that do not meet certain indicators must also provide financial statements and a detailed strategic plan (...)".[169]

The introduction of the FFP represented a milestone in UEFA's history, a necessary response to repair the tragic management situation many clubs were facing, with the stated objectives of:

"(...)

- *Introducing more discipline and rationality in football club finances;*
- *Reducing pressure on salaries and transfers and limiting inflationary effects;*
- *Encouraging clubs to rely solely on their own profits;*
- *Encouraging long-term investments in youth sectors and infrastructure;*
- *Ensuring long-term sustainability in European football;*
- *Ensuring the timely payment of debts by clubs;*

The aim is to ensure that clubs do not spend more than they earn (...). We are at the beginning of a new era (...)".

The FFP is registered in the document "UEFA Club Licensing and Financial Fair Play Regulations," which has undergone some changes over the years. This document consists of three chapters outlining the criteria to be followed to access European competitions. It presents the terminology of the Licensing System, the Monitoring System, the nature of the body responsible for control (UEFA Club Financial Control Body), and the fundamental requirement of the break-even point. The document also defines the role of the independent Club Financial Control Body (CFCB), which ensures compliance with the necessary standards. The CFCB analyses three annual budgets for the periods concerned for each club under review:

- deciding whether to allow access to UEFA competitions in compliance with the regulations;
- imposing disciplinary measures if the required criteria are not met;
- verifying whether, once the License is obtained, a team continues to meet the established criteria, hence the monitoring system;
- verifying whether the Leagues have fulfilled their obligations and whether clubs have complied with UEFA License and FFP criteria;

Before the FFP came into force, clubs had to meet a series of criteria to access the main European club competitions, the Champions League and the Europa League. Thus, until 2011, clubs had to align with international standards of the "Licensing System"[170] from a sporting, structural,

[169] UEFA. (2012, July 31). Club licensing.

[170] Desideri, L. (2023). Football clubs and Financial Fair Play.

organizational, legal, and economic-financial perspective to obtain a "UEFA License" and thus access the aforementioned competitions.

From the 2013/2014 season onwards, compliance with the FFP regulations also became mandatory, respecting the criteria outlined in the document "UEFA Club Licensing and Financial Fair Play Regulations" in "Part III," from art. 53 to art. 68, where the two criteria for management aimed at achieving the objectives set by the FFP are simply listed:

- the absence of overdue payments to other clubs, employees, and Tax and Social Security Authorities;
- the "break-even rule," which has had the most significant impact on the football sector. In art. 60[171] of the document, the break-even is defined as *"(…) The difference between relevant income and relevant expenses is the breakeven result, which must be calculated in accordance with Annex X for each reporting period (…)*". Monitoring takes into account the sum of the results of an overall period of three years (art. 59), thus determining the so-called "aggregate break-even result." In case of a positive result, there will be a surplus for the "monitoring period," while in case of a negative result, there will be a deficit, which can, however, be covered with a surplus obtained in the two years preceding the monitoring. UEFA, with art. 61[172], has established that a deviation from the break-even point of 5 million euros is

[171] Article 60 – Notion of break-even result

"The difference between relevant income and relevant expenses is the breakeven result, which must be calculated in accordance with Annex X for each reporting period. 2 If a licensee's relevant expenses are less than relevant income for a reporting period, then the club has a break-even surplus. If a club's relevant expenses are greater than relevant income for a reporting period, then the club has a breakeven deficit. 3 If a licensee's financial statements are denominated in a currency other than euros, then the break-even result must be converted into euros at the average exchange rate of the reporting period, as published by the European Central Bank. 4 The aggregate break-even result is the sum of the break-even results of each reporting period covered by the monitoring period (i.e. reporting periods T, T-1 and T-2). 36 5 If the aggregate break-even result is positive (equal to zero or above) then the licensee has an aggregate break-even surplus for the monitoring period. If the aggregate break-even result is negative (below zero) then the licensee has an aggregate break-even deficit for the monitoring period. 6 In case of an aggregate break-even deficit for the monitoring period, the licensee may demonstrate that the aggregate deficit is reduced by a surplus (if any) resulting from the sum of the break-even results from the two reporting periods prior to T-2 (i.e. reporting periods T-3 and T-4)."

[172] Article 61 – Notion of acceptable deviation

"The acceptable deviation is the maximum aggregate break-even deficit possible for a club to be deemed in compliance with the break-even requirement as defined in Article 63. 2 The acceptable deviation is EUR 5 million. However it can exceed this level up to the following amounts only if such excess is entirely covered by contributions from equity participants and/or related parties: a) EUR 45 million for the monitoring period assessed in the licence seasons 2013/14 and 2014/15; b) EUR 30 million for the monitoring period assessed in the licence seasons 2015/16, 2016/17 and 2017/18; c) a lower amount as decided in due course by the UEFA Executive Committee for the monitoring periods assessed in the following years. 3 Contributions from equity participants and/or related parties (as specified in Annex X D) are taken into consideration when determining the acceptable deviation if they have occurred and been recognised: a) in the financial statements for one of the reporting periods T, T-1 or T-2; or b) in the accounting records up to 31 December of the year of the reporting period T. The onus is on the licensee to demonstrate the substance of the transaction, which must have been completed in all respects and without any condition attached. An intention or commitment from owners to make a contribution is not sufficient for such a contribution to be taken into consideration. 4 If contributions from equity

acceptable, as it is considered physiological; the "acceptable deviation" defines the maximum deficit allowed for a club to comply with the break-even requirement. The analysis is based on data collected from year T, going back two years, thus T-1 and T-2.

Article 62[173] establishes that, within the times and ways provided by UEFA, the club applying for a license must provide:

- information on break-even related to the second year of the monitoring period;
- information on break-even related to the first year of the monitoring period if not already provided;
- information on break-even related to the last year of the monitoring period if at least one of the four indicators of paragraph 3 of the same article is not respected.

The indicators referred to in paragraph 3 of article 62 are:

- going concern;
- negative net assets;
- break-even result;
- absence of overdue debts.

participants and/or related parties occurring up to 31 December of the year in which the UEFA club competitions commence are recognised in a club's reporting period T+1 and have been taken into consideration to determine the acceptable deviation in respect of the monitoring period (T-2, T-1 and T) assessed in the licence season commencing in that same calendar year, then for later monitoring periods the contributions will be considered as having been recognised in reporting period T."

[173] Article 62 – Break-even information

"By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit: a) the break-even information for the reporting period T-1; b) the break-even information for the reporting period T-2, if not already previously submitted; c) the break-even information for the reporting period T, if it has breached any of the indicators defined in paragraph 3 below. 2 The break-even information must: a) concern the same reporting entity as that for club licensing as defined in Article 46; b) be approved by management, as evidenced by way of a brief statement confirming the completeness and accuracy of the information, and signature on behalf of the executive body of the licensee. 3 If a licensee exhibits any of the conditions described by indicators 1 to 4, it is considered in breach of the indicator: i) Indicator 1: Going concern The auditor's report in respect of the annual financial statements (i.e. reporting period T-1) and/or interim financial statements (if applicable) submitted in accordance with Articles 47 and 48 includes an emphasis of matter or a qualified opinion/conclusion in respect of going concern. ii) Indicator 2: Negative equity The annual financial statements (i.e. reporting period T-1) submitted in accordance with Article 47 disclose a net liabilities position that has deteriorated relative to the comparative figure contained in the previous year's annual financial statements (i.e. reporting period T-2), or the interim financial statements submitted in accordance with Article 48 disclose a net liabilities position that has deteriorated relative to the comparative figure at the preceding statutory closing date (i.e. reporting period T-1). iii) Indicator 3: Break-even result The licensee reports a break-even deficit as defined in Article 60 for either or both of the reporting periods T-1 and T-2. iv) Indicator 4: Overdue payables The licensee has overdue payables as of 30 June of the year that the UEFA club competitions commence as further defined in Articles 65 and 66. 38 4 In addition, the UEFA Club Financial Control Body reserves the right to ask the licensee to prepare and submit additional information at any time, in particular if the annual financial statements reflect that: a) employee benefits expenses exceed 70% of total revenue; or b) net debt exceeds 100% of total revenue."

According to article 62, paragraph 4 of the Regulation, clubs that have personnel costs exceeding 70% of revenues and a net financial debt exceeding turnover may be requested for further analysis and investigations.

As referred to in article 63[174], paragraph 1, the obligation to break-even is satisfied if no indicator listed in article 62, paragraph 3, is violated, and the club applying for the license holds a "break-even surplus" for the first two periods of the "monitoring period" interval. However, the obligation to break-even is also satisfied if one of the four indicators is violated, provided that:

- the club applying for the license records an aggregate profit in the "monitoring period";
- the club applying for the license has an aggregate loss, for the financial years comprising the monitoring period, within the tolerance threshold, possibly considering the two financial years preceding the monitoring period.

The break-even obligation is not satisfied if the club applying for the license has an aggregate loss, for the financial years of the monitoring period, exceeding the limits established by the tolerance threshold, even considering the two financial years preceding the period itself.[175]

The last articles (arts. 64-68) list the requirements requested by the Monitoring System, providing all the indications regarding the documents to be provided to the control bodies: balance sheet status budget, income statement budget, cash flow budget, supplementary note including assumptions, potential risks, and comparison between budgets, and finally a development plan with forecasts regarding the achievement of the break-even point in the T+1 period.

The FFP system does not take into account all costs and revenues but only certain relevant items indicated in art. 58[176] and explained in more detail in section "Annex X" of the document.

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[174] Article 63 – Fulfilment of the break-even requirement

"The break-even requirement is fulfilled if no indicator (as defined in Article 62(3)) is breached and the licensee has a break-even surplus for reporting periods T-2 and T-1. 2 The break-even requirement is fulfilled, even if an indicator (as defined in Article 62(3)) is breached, if: a) the licensee has an aggregate break-even surplus for reporting periods T-2, T-1 and T; or b) the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T which is within the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60(6)). 3 The break-even requirement is not fulfilled if the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T exceeding the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60 (6))."

[175] Ju29ro.com. (2010, December 27). Insights: Financial Fair Play. Initial reflections.

[176] Article 58 – Notion of relevant income and expenses

"Relevant income is defined as revenue from gate receipts, broadcasting rights, sponsorship and advertising, commercial activities and other operating income, plus either profit on disposal of player registrations or income from disposal of player registrations, excess proceeds on disposal of tangible fixed assets and finance income. It does not include any non-monetary items or certain income from non-football operations. 2 Relevant expenses is defined as cost of sales, employee benefits expenses and other operating expenses, plus either amortisation or costs of acquiring player registrations,

As for revenues, only the following items are considered relevant:

- matchday revenues;
- sponsorships and advertising;
- media rights;
- capital gains from player sales;
- revenues from player rights management and their transfer;
- commercial activities related to the stadium area, such as hotels, restaurants, shops, or museums;
- financial activities attributable to the company and not to an individual shareholder.

As for expenses, the following costs are considered relevant:

- material costs;
- personnel costs;
- other operating costs (e.g., any stadium rent);
- depreciation and impairment of player exploitation rights;
- capital losses;
- costs related to transactions with "related parties" below fair value;
- financial charges and dividends.

From these lists of relevant costs and revenues, it is immediately evident that UEFA's intention was to encourage clubs to invest in a targeted and sustainable manner. Consistent with UEFA's objectives, the FFP aims for clubs to achieve self-financing through highly diversified long-term investments. Another important topic is the potential sanctions, addressed in art. 29 of the "Procedural rules governing the UEFA Club Financial Control Body."[177] This document establishes different

finance costs and dividends. It does not include depreciation/impairment of tangible fixed assets, amortisation/impairment of intangible fixed assets (other than player registrations), expenditure on youth development activities, expenditure on community development activities, any other non-monetary items, finance costs directly attributable to the construction of tangible fixed assets, tax expenses or certain expenses from non-football operations. (...)".

[177] ART 29*: "The following disciplinary measures may be taken against any defendant/appellant other than an individual: warning; reprimand; fine; deduction of points; withholding of revenues from a UEFA competition; prohibition on registering new players in UEFA competitions; restriction on the number of players that a club may register for participation in UEFA competitions, including a financial limit on the overall aggregate cost of players registered on the List A for the purpose of UEFA club competitions; disqualification from competitions in progress and/or exclusion from future competitions; withdrawal of a title or award.*
The following disciplinary measures may be imposed against any defendant/appellant who is an individual: warning; reprimand; fine; suspension for a specified number of matches or for a specified or unspecified period; suspension from carrying out a function for a specified number of matches or for a specified or unspecified period; ban on exercising any football-related activity. Disciplinary measures may be combined."

disciplinary measures, including warning, reprimand, fine, deduction of points in the respective league, withholding of revenues from UEFA competitions, inability to register new players for UEFA competitions, restriction on the number of players a club can register in UEFA competitions, and a financial limit on the aggregate cost of salaries, disqualification from the ongoing competition, exclusion from future competitions, revocation of a title or award. In addition to these sanctions for clubs, art. 29 also lists potential sanctions for individual executives and administrators under investigation, similar to those indicated earlier.

This sanction system is aimed at a rehabilitative approach rather than a punitive one. Indeed, clubs can reach agreements with control bodies, such as the settlement agreement - see AS Roma, which, in September 2022, reached an agreement with UEFA committing to keep the squad cost and budget under control, through a containment of the aggregate deficit - or the voluntary agreement - UEFA rejected the voluntary agreement request submitted by AC Milan as a plan to return within the deadlines set by financial fair play.

With these agreements, clubs acknowledge non-compliance with UEFA's FFP directives and commit to achieving break-even results or resolving outstanding debt situations within an agreed-upon period in exchange for a reduction in sanctions. However, following the Covid-19 pandemic that has affected the entire world, UEFA announced, through the document "Temporary Emergency Measures for Financial Fair Play"[178] in June 2020, a series of temporary emergency measures as an integration to the club licensing and FFP regulations to account for all adverse effects on club finances. In particular: "(...) *These measures have been developed and unanimously supported by all interested parties within the UEFA Emergency Working Group on Legal, Regulatory and Financial Issues, which includes representatives from UEFA, the ECA, the European Leagues and FIFPRO Europe.*

These new emergency measures aim to:

- *ensure flexibility while ensuring that clubs continue to promptly fulfill their obligations regarding transfers and salaries;*
- *give clubs more time to quantify and account for unforeseen revenue losses;*
- *neutralize the negative impact of the pandemic by allowing clubs to adjust the balance calculation for lost revenues recorded in 2020 and 2021, while protecting the system from potential abuses;*
- *ensure equal treatment of clubs where the impact of COVID-19 may have affected multiple reporting periods due to different tax deadlines and national league calendars;*

[178] UEFA. (2020, June 18). Temporary emergency measures for Financial Fair Play.

- *address the current issue of revenue shortfall due to the COVID-19 emergency and not due to poor financial management;*
- *maintain the spirit and intent of financial fair play for the long-term sustainability of football.*

The key points covered by the integration include:

1. *Overdue debts – valid for the 2020/21 season*
    - *all clubs participating in UEFA competitions must demonstrate by July 31 (instead of June 30) and September 30 that they have no overdue debts for transfers, employees, and tax and social entities linked to payments to be settled respectively by June 30 and September 30;*
    - *all clubs participating in UEFA competitions must provide information on transfer movements as of June 30 and September 30 to allow cross-checking between information and debts of other clubs.*
2. *Break-even rule – valid for the 2020/21 and 2021/22 seasons*
    - *the assessment of the 2020 financial year is deferred by one season and will be assessed together with the 2021 financial year;*
    - *the 2020/2021 monitoring period is reduced and covers only two reporting periods (financial years ending in 2018 and 2019);*
    - *the 2021/2022 monitoring period is extended and covers four reporting periods (financial years ending in 2018-2019-2020 and 2021).*
    - *the 2020 and 2021 financial years are evaluated as a single period;*
    - *the negative impact of the pandemic is neutralized by averaging the combined deficit of 2020 and 2021, as well as allowing additional specific adjustments related to COVID-19 (...)."*

However, these aforementioned changes lasted for just under a year, while the damages caused by the pandemic led to losses too great for the clubs, especially in the long term, and UEFA found itself forced to act accordingly. The changes mainly affected financial fair play, which, according to the head of research and financial stability Andrea Traverso, *"(...) looks back: it assesses a situation in the past. The pandemic represents such a abrupt change that looking back is becoming useless. So perhaps the rules should focus more on the present and the future and should focus more on the challenges of high salaries and the transfer market (...)"*[179].

It is clear, therefore, that the Break-Even Point have been abolished, and various options are being evaluated to restore the financial situation of European clubs. According to lawyer Felice

[179] Raimondo, F. (2021, March 29). Financial Fair Play, agents, and Covid-19: How can the football system be relaunched?

Raimondo[180], the most pressing need is to allow those who have the opportunity to inject money into the system and, at the same time, prevent that money from leaving the system. Furthermore, continuing to "monitor" the balance sheets and, in particular, the Income Statement of the companies would not be effective because it would only be a matter of looking for defects and errors in an already struggling economic management. Given that it is universally agreed that the solution to mismanagement in football clubs must be aimed at a proportional increase in revenues and/or a reduction in costs, what means to achieve such a trend is less agreed upon: according to the lawyer, the majority shareholders, or the owners of the companies, should be allowed to guarantee the necessary investments to relaunch the company; another way, following the NBA model, is the introduction of a salary cap, aimed at limiting the costs of company personnel.

However, it remains clear that there is a need to ensure a "sustainable" debt for the companies, namely a debt that is likely to be repaid, which allows companies to expand their investments and greater equity among the different companies included in the ranking. In fact, it would be appropriate to establish a specific recovery plan for each club, weighted by size and economic availability. In this way, the wealth oligarchically appropriated by the clubs would be redistributed equally, and the richest clubs could be forced to sell their players to other clubs or pay a costly "tax" to UEFA that would allow them to spend beyond the limits, the proceeds of which would be distributed to clubs with lower economic availability. What UEFA will have to work on will surely be to guarantee greater transparency and fairness in the eyes of fans. The FFP rule has never fully convinced either fans or insiders, so after "celebrating" its 10 years, with the pandemic that favored its cancellation, those who govern the world of football are now forced to decide on the future of European clubs.

The real reason behind these clubs' drastic decision lies in the fact that between 2009 and 2018, the top ten European clubs tripled their revenues, surpassing, collectively, half of the total revenue of all other teams in the Bundesliga, La Liga, Serie A, Ligue 1, and the Premier League and reached the total revenue of all six hundred teams participating in the other championships and in the fifty-five European championships, 85% of the resources derived from the Champions League always end up in the coffers of only three clubs per league since they are almost always the same teams participating in it.

Another huge problem underlying the current structure of European competitions is related to the excessive level of variance to which the economies of companies are subjected: revenues linked to participation in European cups weigh heavily on a club's balance sheet. The most prestigious teams

[180] Raimondo, F. (2021, March 29). Financial Fair Play, agents, and Covid-19: How can the football system be relaunched?

invest large sums in transfer campaigns in the hope of qualifying for the most prestigious continental competitions. However, being a sport where investments do not always follow the desired sporting results, it can happen that a team is prematurely eliminated from the cups or, even worse, may not participate. This situation creates enormous instability in a club's coffers, and it can happen that, at the end of the year, the estimates made at the beginning of the season may prove to be too optimistic. Football can no longer do without the financial aspect, and clubs must be treated, before being sports companies, as companies in every respect. This scenario of enormous instability generates huge turbulence in the companies' coffers, and with the numbers circulating in the sector, this situation has become almost unsustainable.

Another factor that has significantly influenced the decision of the founding clubs to create a parallel competition lies in the fact that UEFA, the company that manages European football, has not lived up to the important challenges of recent years. The slowness and inefficiency of the decisions adopted are the result of a certain lack of interest in the financial fate of the clubs.

In conclusion, to summarize the economic reasons behind the choice of the Super League, it is sufficient to analyze the scenario resulting from the previously listed problems: eleven of the twelve teams adhering to the project have negative balances with aggregated net financial debts totalling two billion and 735 million euros, more than half of the operating revenues; bankruptcy figures further aggravated by the pandemic that caused revenues to collapse in an already ailing sector where costs for players and agent commissions were already out of control for some time. The push towards creating a richer competition is motivated by the need to find fresh resources to balance the books. However, it is feared that this is only a short-term solution and that, in the long run, this growth in revenues will end up fueling ever higher prices for player transfers and agents. Unless an effective salary and operational cost cap can be introduced, which the Super League seemed to have foreseen.

3.1.3.2. Benefits And Challenges Of The Super League Proposal

To fully grasp the potential benefits arising from the Super League, inspiration is drawn from competitions in other sports where private and closed leagues already exist. The NBA, NFL, and MLB are prime examples of this Breakaway League model, with a fixed number of teams and no promotion or relegation. These leagues emerged from the ashes of their predecessors, causing significant upheaval in their original context. Transforming football in this direction would entail a greater influx of resources, albeit distributed among a smaller number of teams.

In the United States, such models have proven to be effective, as evidenced by numerical data. This new structure has allowed American teams not only to increase their revenues but also to exercise greater control over costs. Among the main benefits brought by the Super League, we can include:

- UEFA distributes only a minimal portion of the common resources to national leagues, while the latter can rely on substantial income from television rights, which could largely be absorbed by a potential creation of the Super League. The project conceived by Perez and other promoters envisages an annual contribution of 434 million euros for solidarity, about 160 million more than the current allocations. It should be considered that the widening gap between the teams participating in the new competition and those excluded would be destined to grow year by year, making national leagues increasingly less attractive to the public. The potential revenues from the new event are estimated to be between five and six billion euros annually in the short term and over ten billion euros annually in the medium to long term. Participating teams would also benefit from greater earnings stability, as they can count on a greater number of guaranteed European matches;
- A huge advantage of this new competition is that the clubs themselves would own the league. As in many other sectors, private management tends to be more efficient than public management. Participating teams would directly assume the risk, eliminating the current asymmetry in risk allocation. This would ensure a greater number of high-profile matches, bringing back a young audience that is increasingly drifting away from the sport. The increase in prestigious matches would lead to even more substantial stadium revenues, allowing founding members to build or further expand facilities (as in the case of Milan and Inter), as the average attendance would increase significantly. Football is a particularly complex sport to follow for fans from other continents, as teams are divided into numerous leagues, and it can be difficult to keep up with all the competitions. Introducing a new European competition with twice as many matches as the current Champions League, and with even more prestigious matches, would also allow distant fans to have a reference tournament. Another significant incentive is the potential for involved teams to acquire an unprecedented international dimension and further strengthen their brand, becoming even more popular;
- Another important innovation proposed by the Super League would be the adoption of a maximum cost ceiling, known as the salary cap. According to Florentino Perez, this limit would be set at 55% of the club's income;

Considering all these factors, it could be concluded that the first prototype of Super League would represent an unmissable opportunity for participating teams. More prominent matches, probably more than doubled revenues, a broader audience, and the guarantee of maintaining their status are just some of the aspects that make this proposal appealing to the top European clubs.

However, it is important not to focus exclusively on the positive aspects but also to carefully analyze the potential risks that could further destabilize the football system:

- While fifteen companies could benefit significantly and rebalance their budgets through this operation, the rest of the system could be put in serious jeopardy without the support of the major teams. Teams excluded from the competition could still participate in a potential Champions League without the main football clubs. However, the television rights of other European competitions would collapse, and clubs usually present in the old European Cup would lose income that, in the absence of the Super League, they would have obtained.
- The creation of the Super League would not only widen the existing economic gap but would mark a definitive gap between the top clubs and the rest of the global football landscape. Championships would be further unbalanced and would be even more dominated by the football elite;
- The introduction of a salary cap would not necessarily solve all economic problems, as it is essential to consider not only expenses but also revenues. Financial Fair Play has not produced the expected results due to questionable financial operations adopted by many companies;
- Furthermore, excluded clubs could not enjoy the revenue stability coveted by founding teams, since only five teams (excluding those already guaranteed) would participate in the new competition. To be competitive, they would have to field teams capable of competing with those with three times their turnover. And if, the following year, a company that has invested significantly did not qualify again for the Super League, it would be forced to sell most of its squad, as it has been able to count on revenues of at least 150 million euros in the previous season. With this project, the variability of revenues would increase enormously for those medium-large clubs that every year would vie for access to the Super League. To solve this problem, the project should have provided for "financial parachutes" (perhaps multi-year) for teams that do not qualify for the most prestigious competition. Furthermore, the project should have guaranteed greater subsidies to teams from leagues not involved in the Super League, although it remains to be seen whether the amount received would offset the losses caused by the departure of top clubs from existing continental competitions. Nevertheless, the fifteen founding companies would continue to participate in their respective national leagues according to the initial plan;
- However, the main problem with the Super League, which is also the cause of its downfall, is the loss of meritocracy in sport. Fans have revolted against the proposal because they consider it unfair for some teams to have a guaranteed place by right. Fans are a fundamental resource for football, and it is crucial to consider their will. Fans follow this sport also for the charm of the "Cinderella teams" that manage to defeat the giants and perhaps win a title. Football

without its fans would be destined to languish, and it would be interesting to see how they would react to this new event.

On the other hand, it should be noted that, with the second model of the Super League proposed by the promoting company A22, part of the aforementioned limits has been downsized, if not entirely eliminated, as the range of teams has been widened, incorporating a significantly higher number of them, taking inspiration from the three competitions organized by UEFA (Champions League, Europa League, and Conference League).

In conclusion, it can be stated, first of all, that European and American models are difficult to compare, as they are based on completely different structures. The Super League project could lead to a considerable increase in earnings but risks undermining the foundations of the sector if mutualistic contributions do not work properly. Therefore, the Super League represents a partial and improvable step, similar to the genesis of the current Euroleague, which could aspire to a model similar to the NBA only over a long period of time.

3.2. The Origin Of The Legal Dispute

On the 18th and 19th of April 2021, the football world woke up to the news of the birth of the European Super League, which elicited a series of responses from the football family and the law. This marked the end of a long period of deliberations and discursive processes on the issue of European football innovation, which was prompted by the losses incurred by the sport due to the COVID-19 pandemic in 2020.

The concept of football tournaments that would be conducted independently from FIFA and UEFA was not a new concept, with the idea dating as far back as the 1990s; however, the plan came to fruition when the Super League was launched. A new tournament which was proposed by the group of twelve of the most successful European clubs was to challenge the hegemony of the Champions League and other similar championships. However, the project faced a lot of opposition from the football stakeholders such as FIFA, UEFA and the European Association of Professional Football Leagues.

The following reactions were received from various parties against the Super League and the clubs involved were threatened to face legal and sporting consequences. FIFA and UEFA along with other similar football organizations strictly refuse to acknowledge the Super League and stated their goal of preventing its creation. On the national level, FIGC changed the legislation preventing clubs from competing in tournaments that are not acknowledged by international bodies.

This hostile atmosphere forced most of the original members of the Super League to pull out of the league, and this was evidenced by the fact that several clubs pulled out of the league just 48 hours

after the launch. This was evident in the Super League episode where the management of European football was seen to be rather intricate and involved, stressing the need to arrive at a reasonable consensus as to how the game should be developed further while still respecting the existing structure. However, it also raised a lingering question: can such structures as "Breakaway Leagues", which are quite different from the existing model, be considered to be compliant with the European law? Over the past three years, it does appear that jurisprudence has provided the last word on the matter, but the discussion is by no means over and remains current.

3.2.1. Can The Super League Exist Within The European Legal Framework?

The legal foundations upon which the creation and existence of the Super League project can be built are rooted in the Charter of Fundamental Rights of the European Union, specifically the following articles:

- Article 12 of the Charter of Fundamental Rights of the European Union[181]: every individual shall have the right to freedom of peaceful assembly and association within both the public and the private sectors. This means that every person should have the right to come together with other people and also to form associations without the interference of the state and other authorities. However, this is not an unfettered right and may only be curtailed in the following circumstances provided by the law; in the interest of national security, public safety, for the maintenance of law and order or the prevention of crime; for the protection of health or for the protection of the rights Measures must be appropriate and strictly necessary in a democratic society and should not be prejudicial to the freedoms and principles which form the basis of the European Union. However, the article recognizes that organization formed under the laws of the Union and the Member State shall have legal personality which is the legal status.
- The Charter of Fundamental Rights of the European Union provides for the right to freedom of enterprise in accordance with Article 16[182]. This entails that every person has the right to establish and operate an economic or commercial activity of his choice under the principles of the law of the European Union and the laws of the member states. The freedom of enterprise

[181] Article 12 - Freedom of assembly and of association
"Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
Political parties at Union level contribute to expressing the political will of the citizens of the Union."

[182] Article 16 - Freedom to conduct a business
"The freedom to conduct a business in accordance with Union law and national laws and practices is recognised."

means the right to open, manage and shut down a business, the right to choose the type of business to be engaged in and the right to make decisions on the goods and services to be produced, distributed and marketed. This right also encompasses the freedom of competition, which contributes to the development of the competitive market. However, it must be noted that this right is qualified; it can be subject to reasonable rules and limitations in the interest of the community or other rights. For instance, rules can be laid down to promote competition, to regulate the quality of products, or to prevent pollution.

- Article 17 of the Charter of Fundamental Rights of the European Union [183] enshrines the right to property, stating that everyone has the right to own and dispose of property and resources. This implies that every individual has the right to acquire property including houses, land, cars, and other property. Nevertheless, this right is not without some form of restriction and modalities. For instance, a person can be denied their property rights only for the benefit of the public interest, for instance in instances where the property is required for building roads or other social projects that will benefit the public in the long run. The deprival of property must be done in a manner that is reasonable and procedurally correct as provided for by the law, while the affected person should be adequately compensated for the loss incurred. The article also provides that the use of property may be subject to control for reasons of public interest by law. This means that authorities may set statutes and prohibitions concerning the utilization of properties including urban or environment measures as long as such statutes or prohibitions conform to the rights of persons and have reasonable objectives.

It is important to note that in addition to the provisions contained in the Charter of Fundamental Rights of the European Union, the Treaty on the Functioning of the European Union (TFEU) provides a series of fundamental rules regulating various economic and commercial issues within the European

[183] Article 17 – Right to Property
"*Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. Intellectual property shall be protected."*

Union. Among these rules, Articles 49[184] and 54[185] of the TFEU guarantee the so-called "right of establishment." These articles prohibit any provision that may impose restrictions on the freedom of establishment of citizens and businesses within the European Union. In other words, they ensure that citizens and businesses of the Union Member States have the right to establish and carry out economic activities in any other Member State, without being subject to unjustified discrimination or arbitrary restrictions.

Similarly, it is essential to remember the presence of Articles 101[186] and 102[187] of the TFEU, which regulate competition within the European market. Article 101 prohibits agreements between companies that may distort competition within the European single market, including agreements that limit production, distribution, or market access. On the other hand, Article 102 prohibits abusive practices by companies that hold a dominant position in the market, such as predatory pricing or discrimination against competitors.

Therefore, Articles 49, 54, 101, and 102 of the TFEU can only be mentioned as they play a crucial role in promoting an open, competitive internal European market and preventing distortions, ensuring the free movement of people and goods and protecting fair competition among companies. These

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[184] Article 49

"Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital."

[185] Article 54

"Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making."

[186] Article 101

"*The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. (...)"*

[187] Article 102

"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. 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."

provisions contribute to creating a favorable economic environment for the growth and development of entrepreneurial activities within the European Union.

The aforementioned legal basis seems to increase the uncertainty regarding the feasibility of creating an elitist league: on the one hand, the right to exercise business (Article 16 of the Charter of Fundamental Rights of the EU) exists, on the other hand, Articles 101 and 102 of the TFEU seem to limit the creation of the Super League, as it would excessively distort competition and could lead to the creation of a dominant position in the market by a few exclusive clubs. It is clear, therefore, that it is necessary to analyze in detail and assess the applicability of the aforementioned rules to the case at hand, and this could be done under a twofold approach, that of considering such competition as a confederation or as a league, in order to address a central question: can the Super League legitimately exist within the European legal framework?[188]

The legal classification of the Super League also constitutes the matter of significance since any qualification influences direct compliance with existing legal rules, including sports and European Union law. Thus, based on the analysis of common characteristics between the categories mentioned above, it is possible to determine into which category the Super League belongs, and, consequently, define its legal status and the corresponding legal consequences. In accordance with the first hypothetical state which established the Super League as comprising a variety of sports companies of different States, it might appropriately be considered more like a confederation. Confederations are an important concept in international sport, as they provide a link between international sports federations and national federations as at the community level. These bodies bear a critical responsibility when it comes to exercising supervision and encouraging development of sports in their respective regions often partnering with National and International Federations in conducting competitions. For instance, we have the UEFA in European football and this body plays an important role of being a continental body in between FIFA and other national bodies such as the FIGC. Its main function is to organize high-level competitions, such as the Champions League and the European Championship, and to apply the rules of the game at the continental level.

Sports confederations can have a significant influence on the growth and promotion of sports in their areas of competence. Thanks to their organizational structure and resources, they are able to facilitate the development of national federations and promote sports at the continental or regional level. Considering the context, the idea may arise that the Super League could also be seen as a kind of confederation. In fact, its stated goal is to organize a competition parallel to existing ones, with a view to promoting and developing football at the European level. However, it is important to note that the

[188] Raimondo, F. (2021). Super League vs. Super Federations: How antitrust law safeguards competition in the organization of sports tournaments. Paperback – June 8, 2021.

Super League has aroused controversy and negative reactions from existing football institutions, highlighting the challenges and complexities associated with its creation and its role in the international sports landscape, and its qualification as a confederation is not immediate, considering the existence of some critical elements.

This is helpful to conclude that without a proper apprehension of the legal and structural characteristics of the sports organizations, it is difficult to evaluate the characteristics of the Super League and its standing within the milieu of international football. These are the bodies called federations and confederations, which are vital for the professional management of sports activities worldwide and are an essential part of the hierarchy of sports. To our mind, confederations occupy a special place in the structure of sports organizations, primarily because they are relevant to the developments of many countries. According to them, they intend to pool individual national federations of a given part of the world, that is, according to geographical zone, so that there would be some form of synergy where the federations could work in coalition with the other federations in a zone. However, it should be borne in mind, that confederations are organized not individually but represent national federations of different sports, companies. The Charter and the functioning of the sports organizations are governed by the national legislation and acts and/or regulations in force. Concerning FIFA, the ultimate authority that governs its operations is called the Congress comprising of delegates of associated international federations. This is the place that holds the authority to accept or reject the request of a new association as a member of FIFA. However, there is an important caveat that needs to be made here and it is that FIFA itself does not accept new members whereby these members must belong to any of the six confederations that are recognized by FIFA. In this regard, it is possible to conclude that the organization of the Super League looks peculiarly, as it is based on individual clubs rather than national federations, thus not always fitting into the traditional definition of a sports confederation. In view of this, it emerges that its nature and structure put into question its propriety of being recognized under the laws of international regulations as a sporting confederation. However, prior to the status of FIFA member, the Super League would have to first be associated with one of the existing confederations. Still, considering the fact that the baseball change was met with controversy and massive resistance from major stakeholders, it remains uncertain whether the Super League would be recognized by organizations such as UEFA which would make the process of the formal integration into the international sports system challenging. The question of the qualification of the Super League as a sports league requires a thorough analysis, considering the typical characteristics and functions of sports leagues in the international and national contexts. Sports leagues are traditionally regulated by a series of rules and regulations: at the European level, the

Treaty on the Functioning of the European Union (TFEU) provides a legal framework for the regulation of sports activities within the European Union.

For example, Articles 49 and 54 of the TFEU guarantee the free movement of people and services, including athletes and sports competitions, within the European Union. These articles could be relevant in assessing the Super League as a transnational organization involving clubs from different European countries. Furthermore, national laws and regulations regarding sports may be relevant in analyzing the Super League as a sports league. For example, many European countries have laws regulating the organization of sports competitions, the structure of leagues, and issues related to the ownership and control of sports clubs. Considering these regulations, it emerges that the Super League presents some peculiarities that make it an entity not easily classifiable within the European sports system. Its transnational nature and its intention to organize a large-scale sports competition raise complex issues concerning sports sovereignty and the regulation of international competitions within the European Union.

Therefore, the analysis of the Super League as a sports league requires a careful evaluation of the relevant rules and regulations, both nationally and internationally, in order to fully understand its legal and regulatory implications in the context of European sports, as it currently appears to be an entity not easily classifiable within the European sports system.

3.2.2. The Influence Of The Court Of Madrid

The reaction of UEFA and FIFA to the establishment of the Super League has sparked a series of legal controversies, particularly concerning alleged violations of competition rules and anticompetitive practices. In response to threats of sanctions from UEFA, clubs remaining loyal to the Super League project, including Barcelona, Real Madrid, and Juventus, have taken legal actions both before ordinary courts and sports tribunals. These legal actions are based on the premise that the sanctions threatened by UEFA are excessive and have the effect of discouraging the organization of an alternative tournament. Reference is made to statements by key figures of UEFA and FIFA following the announcement of the Super League on April 19, 2021: Ceferin stated, "*Players who will participate in the Super League will not play either the World Cup or in Europe. It's a spit in the face to those who love football. The Champions League can go on without the 12." And on Agnelli: "It's the biggest disappointment of all. Never seen a person lie like that*". Gravina, who the next day would be elected to the UEFA Executive Committee: "*Football belongs to the fans. Anyone who joins is outside FIFA."*[189]

[189] SkySport.com. (2023, December 21). Super League, from the 2021 announcement to the EU Court ruling: the story.

In particular, these clubs believe that UEFA is abusing its dominant position in the European football competitions market, thus violating competition rules established within the European Union. Under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), abuse of dominant position and anticompetitive practices are prohibited within the European single market. Article 101 prohibits agreements between companies that limit competition, while Article 102 prohibits the abuse of dominant position by a company in the market. The dominant position of an organization in sports can raise competition issues if it is used to limit the ability of other parties to organize alternative competitions. This raises significant issues regarding free competition and the need to balance the interests of sports organizations with the promotion of competition and the rights of clubs and athletes. In support of these arguments, A22 Sports Management, the company established to sponsor and assist in the creation of the Super League, has initiated legal action toward the Madrid Court. The aim of this legal action is to ascertain the alleged anticompetitive behaviour of FIFA and UEFA, in violation of Articles 101 and 102 of the TFEU. Furthermore, A22 Sports Management has requested the Court to adopt precautionary measures[190] aimed at immediately stopping the actions taken by supranational organizations. The Madrid Court evaluated the situation and, noting the existence of unjust, serious, and irreparable danger, decided to apply precautionary measures to prevent serious consequences.

In conclusion, the legal dispute between the Super League, UEFA, and FIFA highlights the complexity of legal issues arising in the context of professional sports, especially regarding competition regulation and the protection of the rights of clubs and athletes.

Crucial for the development of the judicial case was the Madrid Court, which, by order of April 20, 2021, granted the requested precautionary measures and on May 11, 2021, referred the case to the Court of Justice of the European Union, specifying the following object of the main proceeding: *"(...)*

[190] Interlocutory measures are judicial measures taken before the conclusion of the main trial in order to ensure the protection of a right or to prevent irreparable damage to the parties involved. The purpose of these measures is to maintain the status quo during the legal proceedings, preventing one of the parties from suffering irreparable harm or the right in dispute from being compromised before the conclusion of the trial. Precautionary measures can take different forms depending on the circumstances of the case, for example:

- Impoundment: This consists of ordering the custody of property or documents that are the subject of the dispute in order to preserve them until the conclusion of the trial.
- Prohibition to do: This measure prevents one of the parties from taking certain actions that could harm the other party or compromise the right that is the subject of the dispute.
- Abstention from Action: This is an order preventing a party from taking certain actions or proceeding with legal action until the conclusion of the trial.
- Blocking of bank accounts: In some cases, the court may order the blocking of a party's bank accounts to prevent the dissipation of financial resources before the conclusion of the trial.

In general, precautionary measures are taken when there is a risk of serious or irreparable harm and when it is necessary to protect the rights of the parties involved in the legal proceedings.

Judicial request by which the appellant asks for a declaration that the defendants, by opposing the organization of the European Super League, are engaging in concerted practices and abusing their dominant position in the market for the organization of international club football competitions in Europe in the market for the marketing of rights associated with such competitions. The appellant also requests that precautionary measures be adopted to allow the organization and development of the European Super League..." and formulating the following prejudicial questions:

"1) Whether Article 102 TFEU should be interpreted as prohibiting an abuse of dominant position under which FIFA and UEFA establish in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA statutes, Articles 49 and 51 of the UEFA statutes, as well as any similar article contained in the statutes of member federations and national leagues) that prior authorization is required from such entities, which have been given exclusive competence to organize or authorize international club competitions in Europe, for a third entity to establish a new pan-European club competition like the Super League, particularly when there is no regulated procedure based on objective, transparent, and non-discriminatory criteria, and taking into account the possible conflict of interests affecting FIFA and UEFA.

2) Whether Article 101 TFEU should be interpreted as prohibiting FIFA and UEFA from imposing in their statutes (in particular, Articles 22 and 71 to 73 of the FIFA statutes, Articles 49 and 51 of the UEFA statutes, as well as any article of similar content contained in the statutes of member federations and national leagues) prior authorization from such entities, to which exclusive competence has been granted to organize or authorize international competitions in Europe, for a third entity to establish a pan-European club competition like the Super League, particularly when there is no regulated procedure based on objective and non-discriminatory criteria, and considering the possible conflict of interests affecting FIFA and UEFA.

3) Whether Articles 101 and/or 102 should be interpreted as prohibiting action by FIFA, UEFA, their member federations and/or national leagues aimed at threatening the adoption of sanctions against the clubs participating in the Super League and/or their players for the deterrent effect they could generate. Whether, if sanctions of exclusion from competitions or bans on participating in matches of national teams are adopted, without being based on objective, transparent, and non-discriminatory criteria, such sanctions constitute a violation of Articles 101 and/or 102 TFEU.

4) Whether Articles 101 and/or 102 TFEU should be interpreted as incompatible with Articles 67 and 68 of the FIFA statutes, as they identify UEFA and the national federations as 'original owners of all rights arising from the matches (...) under their respective jurisdiction', depriving participating clubs and any other organizer of alternative competitions of the original ownership of such rights, assuming exclusive responsibility for their commercialization.

5) Whether, if FIFA and UEFA, as entities to which exclusive competence is granted to organize and authorize international club football competitions in Europe, were to prohibit or oppose, based on the above provisions of their statutes, the development of the Super League, Article 101 TFEU should be interpreted as meaning that such restrictions on competition could benefit from the exception established in said provision, since production is substantially circumscribed, the appearance on the market of products alternative to those offered by FIFA/UEFA is protected, and innovation is limited, precluding further formats and methods, eliminating potential competition in the market and limiting consumer choice. Whether such a restriction would benefit from an objective justification allowing it to be considered that there is no abuse of dominant position within the meaning of Article 102 TFEU.
6) Whether Articles 45, 49, 56, and/or 63 TFEU should be interpreted as meaning that a provision like that 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, as well as any other similar article contained in the statutes of member federations and national leagues) constitutes a restriction contrary to some of the fundamental freedoms enshrined in those provisions, requiring prior authorization from such entities for the establishment by an economic operator of a Member State of a pan-European club competition like the Super League (...)"

In the analysis of the case, the Madrid Court has chosen to focus on the following main aspects:

- Structure, objectives, and competences of FIFA and UEFA: it contains information about what FIFA and UEFA, or the International Federation of Association Football and Union of European Football Associations respectively, are in the context of international and European football. As for both organizations, they are responsible for the organization of competitions and the oversight of football activities in their area of purview. FIFA oversees the professional international football fixtures and also frowns on teams engaging in unauthorized fixtures. Furthermore, it had operating rights and ownership of internationals competitions. In the same way, UEFA handles football affairs at continental level the same as it has exclusive rights in conducting competition within the region. These two bodies are able to prohibit or punish clubs and players in the event that they will engage in violation of Football competition rules set on public and international forums.
- Structure, objectives, and operation of the European Super League: defined as limited company that consists of the major pre-established founding members major shareholders are real Madrid, AC Milan, FC Barcelona, Atletico Madrid, Manchester United, AC Inter Milan, Juventus, Liverpool, Tottenham Hotspurs, arsenal, Manchester city and Chelsea. Being the official owner of the Super League, the company supervises several subsidiaries to manage various aspects related to Super League on a daily basis, as well as sell and advertise the

broadcasting rights. It planned as one of the most prestigious football tournaments in Europe that is out of the UEFA with annual format and the presence of highest-level football clubs. There was relief in the proposition that clubs who would be participating in this competition would not be banned from their national leagues. Such agreements cover rights transfers in the relations between clubs and Super League companies, as well as non-trivial questions regarding compensations. Also, management and black out performances for the services of the sports and the commercial management of the Super League are also expected. The issuance of shares will be subject to suspensive conditions such as the recognition of the Super League by FIFA and/or UEFA as a competition that does not contravene its statutes or that there are legal rights that entitle founding clubs to compete without violating their domestic leagues.

- Initiatives taken by both parties before the dispute: founding clubs have in writing informed FIFA and UEFA with the intention of new professional football competition. However, when the clubs and players involved announced the formation of the breakaway tournament, FIFA and UEFA have threatened to prohibit the participating clubs and players from playing in their tournaments, including regional competitions. This warning underlines the necessity of identification and regulation of such competitions by the respective authorities. Later on, a statement entitled 'Appeal of federations and national leagues' and signed on April 18, 2021, reiterates threats to clubs and players involved in the Super League stating that such clubs and players will be banned from playing any other competition at national, European or world level, and they will also lose the right to perform for national teams. These measures undermine the possibility of the standisation of the Super League project which in turn poses a risk to the financial prospects of JP Morgan. The European Leagues Professional Football Association has also united in agreeing with FIFA and UEFA and has also started a coordination of attempts to stop the launching of the New Super League and to start amending disciplinary measures against the clubs and the players involved in the said league.

However, one that bears primary rationale is the explanation with regard to the circumstances that led to the making of the preliminary reference, where the referring judge opts to assess signals pointing to existence of a monopoly by FIFA and/or UEFA in organisation as well as authorisation of international football competitions. It observes that both organizations have 100% control on organizing such competition, indicating monopoly scenario. This point has been discussed earlier in another judgment that gives 90% market share as dominance already. It notes that FIFA and UEFA have been enjoying their dominance in managing the football competitions market for many years

approving rules and applying sanctions to clubs and players while there were no strong competitors on their path.

Furthermore, the judge highlights that the statutes of FIFA and UEFA, together with the application of their respective sanctions and prohibitions, create an insurmountable barrier for new competitors in the market of international football competitions in Europe. These barriers include the discretionary power to authorize the holding of international matches and competitions, without limits or transparent procedures. This power, not justified by reasons of interest for all, may prejudice free competition and does not meet the legal certainty need. Further, the judge also underlines that the sanctions threatened by FIFA and UEFA against clubs and its players to participate in the Super League would have adverse impacts on the organization of football competition by prospective competitors thus reverberating the competition within the domestic market. This monopoly situation causes considerable nationwide repercussions, chiefly since FIFA and UEFA combine absolute control over the economic rights of international football competitions without temporal restrictions. Therefore, the referring judge notes this is an agreement between two private players that has the effect of creating a monopoly, which violates the TFEU Article 101 prohibition on restricting competition. It stresses that such an agreement has an evident effect on competition in the market and may affect trade between Member States. Several judgments of the European Court of Justice are cited to support this assessment, highlighting that agreements between companies that restrict competition can be prohibited even if they pursue legitimate objectives.

In support of its thesis, the judge chooses to focus on the following articles, raising doubts about their compatibility:

- Article 6 of the FIFA Statutes, which provides that FIFA, its confederations, and entities authorized by it are the only entities with exclusive competence in organizing international matches;
- Article 22 of the FIFA Statutes assigns UEFA the task of organizing its international competitions and ensuring that leagues are not formed without their consent or FIFA's approval;
- Article 70 of the FIFA Statutes provides for the Committee to draw up the football calendar;
- Article 71 of the FIFA Statutes grants FIFA, confederations, and member national federations exclusive competence to grant prior authorization to organize international events, prohibiting the possibility of matches and competitions that are not authorized by FIFA;
- Article 72 of the FIFA Statutes provides for the same affiliates, i.e., players and teams, to be prohibited from participating in competitions not authorized by FIFA, granting the international federation the possibility of applying waivers to this prohibition.

The importance of the decision to focus on the fact that both organizations simultaneously acted in the position of a participant and a referee reaches its greatest significance: this is one of the key arguments of the conflict between these organizations and the promoter of the Super League. On one hand, UEFA and FIFA act as regulatory bodies with extensive disciplinary powers in international football: this means that they have the right to set the standards and regulations concerning football internationally and regionally besides setting down the disciplinary measures on errant clubs and players. On the other hand, these same organizations hold a monopoly on organizing major international football competitions such as the Champions League. This dual function raises concerns about possible conflicts of interest and the lack of objective and predefined criteria for granting authorizations for the organization and conduct of alternative or parallel competitions. In fact, the examination of these rules highlights that FIFA and UEFA hold complete monopoly in the market of organizing and managing football competitions, creating an insurmountable barrier for any other competitor wishing to enter the football competitions sector, effectively limiting free competition. Furthermore, the violation of this regulation may infringe other crucial human rights recognized in EU law including freedom to provide services, persons, workers, and capital as well as the freedom of establishment. Abuse of dominant position might make itself known in demanding authorization to undertake program of organization of other sports competitions. Therefore, there are many crucial things to say about the current legal regulation of international football competitions, including the fact that organizations like UEFA and FIFA have the right to decide which entities should be allowed to host such competitions and can also have the power to apply penalties in case of violation of statutory or regulatory provisions. The key question to be raised thus relates to how adequate such sanctioning measures can be conceptualized, or whether, instead, they are best characterized as excessive and/or unjust.

3.2.3. The Evolution Of The Case: The Advocate General's View

On December 15, 2022, the Advocate General of the European Union, Athanasios Rantos, expressed his opinion regarding the Super League case[191]. His words warrant careful analysis as they provide an important insight into the possible legal stance - which was subsequently not adopted in the final decision - published by the European Court of Justice in December of the following year. In his conclusions, the Advocate General examined the preliminary questions referred by the Madrid Court to the Court of Justice of the European Union, suggesting his position on the conformity between

[191] Rantos, A. (2022, December 15). Advocate General's Conclusions presented in Case C-333/21, European Super League Company SL v. Union of European Football Associations (UEFA), Fédération Internationale de Football Association (FIFA), with the intervention of A22 Sports Management SL, Liga Nacional de Fútbol Profesional, Real Federación Española de Fútbol.

certain statutory provisions of FIFA and UEFA (in particular, the system of prior authorization by FIFA and UEFA for the creation of any new competition), as well as the disciplinary sanctions threatened, with EU law and in particular with provisions regarding competition law (Articles 101 and 102 TFEU) as well as fundamental freedoms (Articles 45, 49, 56, and 63 TFEU) of certain statutory provisions of FIFA and UEFA and warnings or (but also threats of) sanctions. In particular, he highlighted the following:

- FIFA and UEFA rules requiring prior authorization for any competition are compatible with EU competition law. Considering the characteristics of the competition, the restrictive effects resulting from the system are inherent and proportionate to achieve the legitimate objectives related to the specificity of the sport pursued by UEFA and FIFA.
- EU competition rules do not prohibit FIFA, UEFA, their federations, or their national leagues from threatening sanctions against clubs affiliated with said federations if they participate in a project to establish a new competition that would risk undermining the legitimate objectives pursued by such federations of which they are members.
- EU competition rules do not preclude restrictions, in FIFA's statutes, regarding the exclusive marketing of rights related to competitions organized by FIFA and UEFA to the extent that such restrictions are inherent and proportionate to the pursuit of legitimate objectives related to the specificity of the sport.
- EU law does not oppose FIFA and UEFA statutes providing for the establishment of a new pan-European football competition between clubs being subject to a prior authorization system, to the extent that such a requirement is appropriate and necessary for this purpose, considering the specifics of the intended competition.

After emphasizing the "constitutional relevance" of the European sports model (Article 165 TFEU) and recalling that this model is based on a pyramid structure (with amateur sport at the base and professional sport at the top), Advocate Rantos specified that: (i) among the objectives of the European sports model is to promote open competitions, accessible to all by virtue of a transparent system in which promotion and relegation maintain competitive balance and privilege sporting merit, (ii) the European sports model is based on a system of financial solidarity, which allows the redistribution and reinvestment of revenues generated by events and activities, from the top to the lower levels of sport, and (iii) one of UEFA's objectives is to ensure that third parties are not unduly excluded from the market created by any new competitions.

Given the above, it is important to analyze in detail the main points underlying the opinion issued. Initially, it should be clarified that the prior authorization system adopted by FIFA and UEFA does not in itself constitute a restriction on competition. Despite these regulations in question regarding

this system, they might restrain UEFA competitors access to this market for organizing football competitions in Europe but it does not mean that such regulations are in contravention of Article 101, paragraph 1, of the Treaty of the Functioning of the European Union (TFEU) where its explicit objective is the restriction of competition.

Additionally, any limitations resulting from the mentioned legislation must be closely linked with only and solely the intent on achieving legitimate aims and must not be greater than necessary to meet such aims. On this aspect, the Advocate General observed that the impossibility to recognize a substantially concluded competition like the Super League could be deemed intrinsically related with the achievement of a number of legitimate FIFA and UEFA's interests, namely: the preservation of principles concerning the participation on the basis of sports performance, non-discrimination and reduction of the membership problem.

Indeed, the Advocate General criticized the Super League system because it was conceived as a closed or semi-closed competition, considering provision for promotion and relegation only for five of the total twenty teams (with fifteen remaining fixed).

This approach, according to Rantos, does not reflect the principles of meritocracy and open access advocated by the European sports model, also highlighting how the latter is based on a system of financial solidarity that allows for the redistribution of revenues generated by sports activities (from the top of the pyramid down to the grassroots levels of the sport). It is crucial to underline that, in the context of competition law infringement, it is up to the accused party to demonstrate that their behaviour meets the conditions set out in Article 101, paragraph 3, of the TFEU or that it is objectively justified under Article 102 of the TFEU. However, in the present dispute, the referral decision was adopted in such a way that FIFA and UEFA were not given an opportunity to be heard, to give reasons and/or evidence to be provided over a situation with regard to compliance of these conditions in the particular situation.

In relation to the alleged contravention of FIFA rules relating to the exploitation and redistribution of revenues generated from sports competitions with Articles 101 and 102 of the TFEU in the case of an existing restrictions of competition, this condition could only be considered as being legitimate and proportional to the goal of balance of football as distinguished by economic interdependence between clubs. Restrictions to core economic rights thus might be justified on the basis of specificity of sporting activities. Thus, though the imposed rules defining the prior authorization system for the new competitions like the Super League might have an influence on the limitation of the free trade norms of the TFEU as to the economic fundamental freedoms, such limitations might be justified by the sound purposes connected with the specificity of the sport.

In other words, the Advocate General appears to suggest that if the contest was proclaimed and run legally and freely and with due adherence to some certain guidelines, FIFA and UEFA' pose no justification for withholding approval. To which, it is implicitly subjected, questions are raised on whether had the Super League been initially planned as an open competition then UEFA might have been compelled into endorsing it. Thus, a significant distinction emerges between closed and open competitions regarding the authorizations and sanctions within FIFA and UEFA's jurisdiction: the latter can legitimately sanction the companies involved in a closed competition as it openly contradicts the principles of solidarity and confederation regulations. These conclusions suggest that if the Super League or similar competitions were structured openly and respected the principles established by the European Treaties, FIFA and UEFA would have no justification to forbid them or impose sanctions.

These reflections open up the possibility of creating football competitions that, with autonomous rules and organization, operate outside the system controlled by FIFA and UEFA (even if not officially recognized by them). All these considerations offer a new understanding of football environments and open more possibilities and opportunities to increase the freedom of football actions and may contribute to the changes in authorization and regulation systems by INTA football organizations.

Finally, it was noted that international federations aggravate their dual function as both legislators and tournament conductors but are not guilty of the violation of the EU competition law. Concerning the legal analysis, it was indicated that, therefore, the objective of UEFA cannot be other than to guarantee that third parties are not deprived of the market of football competitions in Europe.

Therefore, summaries of the rationales provided justify that Rantos took a position to uphold the legal grounds of the disputed rules while at the same time admitting that such rules may restrict UEFA competitors from future market access of football competitions in Europe. Yet, he claimed that these rules per se do not fit into the Article 101 TFEU prohibitions on restrictions of competition and are meant to safeguard the European sports model. It was also pointed out that these rules can also influence the clubs and players in relation to the market but at the same time these rules aim at achieving legitimate objectives and are also commensurate with those aims. Therefore, it is important to clarify first and foremost that this opinion does not have a binding character for the Court of Justice of the European Union (CJEU). The role of the Advocate General was to provide the Court, in full autonomy and independence, with a proposal for a legal solution to the case in question. The Court, which, it is worth recalling, ruled the following year, enjoys full freedom to decide whether to adopt a different position from the conclusions indicated in the opinion. As highlighted in the previous chapter regarding the ISU case, it will be crucial to assess whether the contested rules of FIFA and

UEFA are inherently connected to and proportionate to the pursuit of the objectives they set, even if such objectives are considered restrictive to the market.

3.2.4. The Decision Of The Madrid Court

On January 30, 2023, the Madrid Court issued a decision favorable to the European Super League Company, S.L. (the 'Super League')[192], accepting its appeal against the decision that limited the effectiveness of precautionary measures originally established by the Commercial Court on April 20, 2021, against UEFA and FIFA.

The Madrid Court took a different approach from that of the Advocate General. It observed that FIFA and UEFA, based on their statutes, hold a monopoly in professional football in Europe regarding the organization and authorization of international competitions, that imposing sanctions against the Super League could constitute an abuse of dominant position and, therefore, considered FIFA and UEFA's provisions to be in conflict with Articles 101 and 102 of the Treaty on the Functioning of the European Union.

Therefore, it confirmed the application of the originally granted precautionary measures, rejecting the Super League's appeal. The Madrid Court argued that there are the prerequisites for imposing a precautionary measure, including the protection of the right subject to dispute, the proportionality of the measure, the fumus boni iuris, and the periculum in mora.

Regarding the good law, the Madrid Court examined the validity of the request for a precautionary measure, noting that UEFA and FIFA sought to maintain a privileged position in the market for football competitions by threatening to exclude clubs from participating in the Super League. It concluded that this behaviour violates the principles of non-discrimination and transparency that should characterize FIFA and UEFA's authorization mechanisms. The Madrid Court also observed that the threat to freedom of competition is evident since FIFA and UEFA sought to influence clubs not to participate in competitions outside those organized by FIFA and UEFA, using their dominant position in the market.

Concerning, the role of precautionary measures as an instrument, the Madrid Court noted that precautionary measures are the auxiliary means of the principal legal action that pursues the purpose of providing effective legal protection. It rest stressed the need for these measures as it also pointed out that barriers to competition can also be obtained through pressure to clubs not to compete in any other competitions other than the ones that are conducted by FIFA and UEFA.

[192] La Repubblica. (2023, January 31). Super League: Madrid Court rules against FIFA and UEFA, stating they "cannot hinder competition."

Consequently, the Madrid Court prohibited FIFA and UEFA from threatening sanctions against Super League clubs and ordered them not to exclude these clubs and their players from their respective competitions. In particular, it ordered the following:

- to refrain from obstructing, directly or indirectly, the preparation of the Super League;
- to avoid, threats, initiations, and/or adoption of disciplinary or punitive actions against the companies, managers, and players involved in the Super League;
- to refrain, directly or indirectly, from exclusionary measures against the clubs and/or players participating in the Super League from any national-level competition for which they are regularly eligible.

Recall the described debate that has originally suggested three potential outcomes for the future of competitions in European football. Firstly, it might have happened that the Court justice agreed with the position of advocate General Rantos to support the FIFA and UEFA rules from legal point of view and therefore enhance its support for the regulations. In this perspective, although the Super League could still have been established, it would have done so in open defiance of the two federations, operating outside their established systems. A second conceivable scenario is that the Court would have adhered to the conclusions of the Madrid Court, recognizing the effective monopoly of FIFA and UEFA in the sector and considering a purported violation of Articles 101 and 102 of the Treaty of the European Union. This would have paved the way for legal action against UEFA and potentially for the modification of its regulations, following the FIA precedent that will be analyzed in the following chapter, and hence would have resulted in the possibility for third parties to organize new football competitions.

Third and last, a third possible approach that the Court would have taken to condemn some aspects of FIFA and UEFA's system but which would not have turned upside down their position or the regulation that they apply. It could have been a scenario into which an agreement would have been agreed upon to permit the establishment of new competition(s), possibly under the auspices of the international federations, while at the same time, ensuring freedom of participation amongst clubs willing to partake in such novel ventures.

The difference of opinions between the Madrid Court and the Advocate General thus created an expectation for the pronouncement of the Court of Justice, which was then crucial to clarify the issue and put an end to the long-standing uncertainty about the application of competition law in the football world.

3.2.5. The Court Of Justice Of The European Union's Final Decision

On December 21, 2023, with its ruling on the Super League case (Case C-333/21)[193], the Court of Justice clarified the position of legal entities involved, thereby (at least temporarily) putting an end to the disputes between UEFA, FIFA, and the ESLC. The structure of the aforementioned ruling begins with an examination of the legal context, describing:

- The FIFA Statutes relating to FIFA as an international organisation of individuals based on private law based in Switzerland, containing the letters patent and relevant statutory provisions. In fact, this is envisaged as per the provisions of Article 2 of Statutes of FIFA where the organization aims and objectives are enumerated as follows: organizing FIFA internal competitions; drawing up regulations on football and incidental matters as well as controlling football internationally in order to prevent an infringement of Statutes of FIFA, regulations or decisions thereof. FIFA currently has in its membership over 200 national football associations and every one of them is required by FIFA Statutes to execute FIFA Statutes, regulations, and decisions. FIFA has several organs: the Congress as the FIFA's top-house of legislation, the Council as FIFA's top-house of policy-making at strategic level, and the general secretariat as FIFA's house of policy implementation and technical services. Moreover, FIFA, its associated federation and confederation also possesses exclusive rights on all the competitions and football related events under their authority and jurisdiction in all financial, audiovisual, Broadcasting, marketing or promotional rights and other pecuniary profits. This body and its affiliated federations, and confederations solely hold the copyright to allow issuance of images and sounds of football match and related events. In addition, FIFA also has the duty and power to ratify and control matches and tournaments involving international teams, clubs, or both and / or mixed competitive teams. According to the FIFA's statutory provision, any association, league, or club can engage only in competitions within the territory of other federations under any exceptional circumstances subject to such permit from the concerned federations, confederations and FIFA.
- The FIFA Regulations Governing International Matches: These indicate the provisions regarding the International Matches which are provided for in the FIFA Regulation in effect from the 1st of May, 2014. These regulations set the authorization, notification or other conditions for undertaking an event or any match or competition between the teams of different national football associations that are affiliated to FIFA, undertaking a match or

[193] European Super League Company SL v Fédération Internationale de Football Association (FIFA), Union of European Football Associations (UEFA), Judgment of the Court (Grand Chamber), Case C-333/21, 1 European Super League Company. (December 21, 2023). Request for a preliminary ruling from the Commercial Court of Madrid – Spain.

competition between the teams affiliated to the same national football association but playing in the third country, matches or competition in which one or both the players or teams are or are not affiliated to any national football association whatsoever. The above rules apply to all matches and games that are international based and competitions but excluded those that are being done in competitions administered by FIFA or any of the FIFA extended continental confederations. In the case of international matches, the matches have to be approved by FIFA, the specific continent's body or the member country football associations that are also FIFA members of the teams that are participating and the country on whose soil the games are being conducted. International 'A' international matches between national teams can only be played by FIFA Affiliated Association teams with written permissions from the FIFA and the affiliated continental confederations and the Association concerned. On the other hand, the second-level international match that can only include the 'A' representative team of a single member national association or any other particular classification of the match must be only approved by the respective continental federations and/or the member national associations.

- The UEFA Statutes: These define the statutes of UEFA which is an Association of independent private law seated in Switzerland. UEFA, according to Article 2(1) of its statutes fulfils the following tasks: management of all aspects of football in Europe, promotion of football in Europe regardless of colour, race, religion, nationality or political affiliation, monitor football development in Europe, the organization and supervision of international club and national team competitions and tournaments in Europe, promoting, protecting and defending high ethical standards and good governance in football, enforcing the primacy of sporting Pursuant to articles 5 and 7bis of the UEFA's statutes every member nation of UEFA can be a member under the condition that a national association abides by the statutes, regulations and decisions of UEFA as well as to guarantee the compliance with the statutory provisions by professional leagues, professional clubs and players. As it has been earlier stated, more than 50 countries are members of this organization, which is the Union of European Football Associations. According to the provisions of the Articles 11 and 12 of the Statues, the authorities of the UEFA are as follows; "The supreme authority of the UEFA is entitled "the Congress" and the second mandatory authority of the UEFA is known as the "The Executive Committee". UEFA statutes grants the organization the monopolistic right of setting and organizing or cancelling international competitions in Europe and regulation of rules concerning relations and competitions organized by UEFA and other institutions or individuals which are stated in articles 49 and 51.

After that in the analysis of the facts concerning the main case and preliminary issues, the project presented by ESLC to create the Super League and an outline of the main events of the case up to the moment of examination are listed, providing detailed descriptions of all the procedures that took place before the court's verdict.

Moving into the more particular content of the preliminary observations, the text concerns itself with the ways in which European law on sports associations and leagues can be applied. More specifically, it addresses the analysis of Articles 45, 49, 56, 63, 101, and 102 in the Treaty on the Functioning of the European Union (TFEU) in the context of a dispute related to the rules that two entities, FIFA and UEFA, have developed to regulate football worldwide and in Europe while having only the status of associations of private law that are in charge of organizing and monitoring football games.

These regulations deal with the necessity of obtaining prior authorization of worldwide club contests and the utilization of various rights linked to such contests. The text highlights that, inasmuch as sports are an economic activity, they fall under certain legal rules governing the operation of any EU law economic activity. The general principles of Article 11 as they apply to the concept of State aid, namely, there could be no State aid that where only specific rules adopted for non-economic reason and only in relation to matters of purely sporting interests no economic activities were involved. Measures taken over the remunerated activities or services of players whether absolutely or other professional men, and more broadly the measures that concerned them indirectly could come under the Article 45 and 56 of TFEU. Likewise, regulations made under an association law may be contained within the provisions of Article 49 TEU and perhaps Article 63 of the TEU.

Last but not least, all the rules which FIFA and UEFA have adopted, as well as the behavior of the association that has adopted these rules also falls under the provisions of the treatise on European Union Competition if the necessary conditions for the application of the provisions of the treatise on European Union Competition are provided.

Third, it explains how best to understand Article 165 of the TFEU with regards to the sport realm. Regulation no. 165 establishes the aims and measures for the functioning of the European Union in the sphere of sports. The text underlines the fact that the provision in Article 165 TFEU prescribes the permissibility of the EU to encourage or accompany or supplement the initiatives of its Members in relation to the sphere of sport. The aims involve the advancement of European problems in sports; cooperation between various sports organisations; and preserving the physical and moral totality of sportspersons.

Yet, it has been rightly pointed out that Article 165 cannot be seen as a cross-sectional rule with regard to all fields of activity and it does not exclude the application of any other provision of the EU primary law to sport. The particular qualities of sport may be looked at in relation to other EU

measures like the free movement of individuals and on competition laws as discussed above, but must be judged on the rule and standards of each article.

Lastly, while a rule adopted by a sports association could be an obstacle to the free movement of workers or constitute an anticompetitive agreement, its identification as such needs to be constructed through a specific consideration of the content of that rule with a view towards the setting where it would apply. This evaluation may concern the characteristics of the sport in question, its structure or functioning, or it may concern structures and bodies engaged in its management and functioning on each level.

As a result of the performance of the initial benchmarks set in the aforementioned passage, it then proceeds to the merits of the questions that had been raised by the Madrid Court to give an out and out decision to the issue in hand.

This analysis will follow the same structure as the judgment, in order to maintain the same thread:

1. The first question: *"(...) 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 organise 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? (...)".*

As will be supported by the subsequent analysis, the rule in question relates to prior approval for new interclub football competitions and regulation of club and professional player participation with the associated penalties. This, in the view of the Court, may amount to abuse of a dominant position if the criteria and rules to be complied within its pursuit are not well outlined to eliminate any form of opacity, subjectivity, discrimination or disproportionate regulatory measures. Moreover, it looks at the definition of abuse of a dominant position, making it clear that it is only abused when the above factor of the restrictive effect on competition has been demonstrated. The text states that even if rules like prior approval and participation are reasonable for professional football per se, they must be reasonable pursuant to rule 49 and not be contrary to rules 54 and 55, and be amenable to restrictions, obligations, and review against abuse of a dominant position. The lack of criteria for assessing these restrictions and the lack of clear rules governing the application of sanctions may also amount to abuse if a company dominates the market. Lastly, it notes that regulation must be open and not

stigmatize; the sanctions have to be case-specific and calibrated based on the nature and seriousness of breaches.

2. The second question: *"(...) 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 organise 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? (...)".*

This section examines the issue of interpreting Article 101 of the Treaty on the Functioning of the European Union (TFEU) regarding rules on the prior approval of interclub football competitions and the participation of clubs and athletes in such competitions. The Court of Justice of the European Union (CJEU) is consulted to determine whether the adoption and implementation of such rules by global and European football associations constitute a decision of associations of undertakings having as their object the prevention of competition. The CJEU explains that to assess whether a decision of an association of undertakings has as its object the prevention of competition, it is necessary to examine the nature of the conduct, the economic and legal context, and the objectives pursued. In the case at hand, FIFA and UEFA rules regarding prior approval of interclub competitions limit market access and club and player participation. Although the rules may have legitimate objectives, such as ensuring compliance with game rules, the CJEU believes they restrict competition and thus violate Article 101 of the TFEU. In summary, the CJEU establishes that rules on the prior approval of interclub football competitions, when not accompanied by suitable substantive and procedural criteria to ensure transparency, objectivity, and non-discrimination, have as their object the prevention of competition and violate Article 101 of the TFEU.

3. The third question: *"(...) Must Articles 101 and/or 102 [TFEU] 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 participating in national team matches, would those sanctions, if they were not based on objective, transparent and non-discriminatory criteria, constitute an infringement of Articles 101 and/or 102 [TFEU]? (...)".*

This section deals with the response to the third question that the national referring court posed which effectively requires one to determine if Articles 101 and 102 of the TFEU should be interpreted to mean that the public statements to that effect by entities such as FIFA and the UEFA that any teams and any players in a professional football club will be punished for participating in an unauthorized interclub football competition amount to a decision by associations of undertakings that is anti This is because the text of the answers given to the previous two questions, and the considerations as mentioned in the last parts of this judgment, specifically in paragraphs 148 and 177, indicates that it is sufficient to conclude that the public announcement made falls directly under the rules violating Article 102 and Article 101 of the TFEU and thus falls directly under the prohibitions outlined in the two articles.

4. The fourth question: *"(...) 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 organiser of an alternative competition of the original ownership of those rights and arrogating to themselves sole responsibility for the marketing of those rights? (...)".*

The next section deals with reasoning of the Madrid Court with regard to the fourth question, which reads as follows: Must Article 101 TFEU and the case law of the Court on Article 102 TFEU be interpreted in such a way that the rules which the at a global level associations of football and at the same time carries out multiple economic activities referring to organisation of competitions and which before obtaining permission of these associations intending to organise interclub football by a third-party enterprise, and control the participation of clubs and professional players in such competitions, under threat of sanctions, may benefit from an exemption or be considered justified.

The centrality of the text is to stress that when it comes to the potentiality to identify some certain behaviours beyond Article 101(1) and Article 102 of the TFEU, the laid down case law of the Court asserts that not every agreement between undertakings or decision of an association of undertakings that restricts the freedom of the undertaking party to that agreement or subject to that decision means that the prohibition provided for in Article

As it is described, such restrictions are likely constitutional on grounds of achieving other non-anti-competitive public interest objectives including but not limited to the ones which are in question, insofar and where such restrictions are appropriate and proportionate to the objectives to be achieved. Which is continued with the assertion that this case law does not apply where by their nature such conduct falls under Article 102 TFEU and that objectives that are not manifestly anti-competitive and

where there is no subjective intention to eliminate competition, and where compensation may be available for appended conditions or services, does not determine whether or not there has been a breach of Article 101(1) TFEU.

What is emphasized is that the cited case law is also inapplicable to the situations that for one simple reason reveal a certain degree of harm in relation to competition, while demonstrating that the aforementioned case law, as an object that prevents, limits, or distorts competition, justifies a finding, with a reference to competition. At last, the text describes the conditions for notification under Article 101(3) TFEU and the conditions in which the use of a dominant position might be justified under Article 102 TFEU.

As already noted, it is possible to find that the rules in question should be exempted from the operation of Article 101(1) TFEU, or are justified being qualified as such, only on the basis of evidence and arguments pointing to fulfillment of the requirements necessary to reach this end.

Conclusively, the text analyses the intricate legal concerns arising from the rules on prior authorization of competitions and the participation of clubs and players at professional level in such competitions, and posits that such rules can only be excused or justified if they meet certain standards.

5. the fifth question *"(...) If FIFA and UEFA, as entities which have conferred on themselves the exclusive power to organise 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? (...)".*

The fifth question concerns the interpretation of Articles 101 and 102 of the TFEU in situations involving rules regarding rights related to sports competitions. The referring court essentially asks whether Articles 101 and 102 of the TFEU should be interpreted to prohibit rules established by global and European football associations, which simultaneously pursue various economic activities related to the organization of competitions.

These rules define such associations as the owners of all the rights associated with competitions within their 'territory,' including rights pertaining to the competitions with the help of third parties – thereby endowing the associations with the exclusive right to market such rights. The authors observe

that FIFA and UEFA argue that mere English translation of the rules of Swiss private law referred to by the referring court is intended to apply only to the competitions they organize but not those by third parties.

Consequently, FIFA and UEFA cannot claim in any way to be the owners of rights arising from competitions organized by third parties. However, the court will address the question considering this interpretation as a premise, also taking into account the complementary relationship with the rules on prior approval, participation, and sanctions addressed in the previous questions. As far as the rights in connection with sports competitions are concerned the EU Treaty sued Article 345 of the TFEU does not empower the EU Treaty to bias the propounded rules of property systems in member states. Thus, in principle, Articles 101 and 102 of the TFEU cannot be interpreted as rules that prohibit such provisions as articles 67 and 68 of the FIFA Statutes, which qualify such entities as holders of the rights of preliminary character related to professional interclub football competitions, organized by these subjects in the territory of the European Union. It is even important to understand that the interpretation of these articles has to be done with reference to national laws of the countries of the members of the WTO concerning property and protected brands.

Sanctioning rules that concern the rights relating to sports competitions may be qualified to the decisions of associations of undertakings according to Article 101(1) of the TFEU and behaviours of an undertaking holding a dominant position on the ground of regulation power.

Such rules can eliminate all competition among professional football clubs affiliated with national football associations that are members of FIFA and UEFA in the marketing of rights related to the matches in which they participate. This may result in excessive and abusive prices and reduce competition, harming consumers and television viewers. However, the justification of such rules must be evaluated by the referring court in light of the arguments and evidence presented by the parties, including any efficiency and fair profit redistribution benefits. Finally, it will be the task of the referring court to determine whether the rules in question still allow effective competition for a substantial part of the products or services concerned.

6. The sixth and final question: *"(...) 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 [FIFA and UEFA Statutes] (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 member associations [and] national leagues) constitutes a restriction contrary to one or more of the fundamental freedoms recognised in those articles?' (...)".*

The final section outlines an important legal debate regarding the freedom of movement within the European Union, with particular reference to European and global interclub football competitions. It focuses on the interpretation of Articles 45, 49, 56, and 63 of the Treaty on the Functioning of the European Union (TFEU) and their interaction with the rules established by FIFA and UEFA regarding the organization of such competitions. Initially, the text examines which prevailing freedom of movement is involved in the issue, establishing that although the discussion involves various aspects of freedom of movement (movement of workers, freedom of establishment, freedom to provide services, and freedom of movement of capital), the freedom to provide services appears to be the predominant one in the case at hand. This conclusion is based on the fact that FIFA and UEFA rules make the organization and marketing of interclub competitions subject to their prior approval, thus creating an obstacle to the free provision of services by third parties. Subsequently, the text assesses whether the rules in question constitute an unjustified obstacle to the freedom to provide services, in violation of Article 56 of the TFEU. It argues that since such rules are not accompanied by clear and non-discriminatory substantive and procedural criteria, they effectively prevent access to the market of interclub football competitions by new participants and limit competition. Consequently, it is concluded that such rules constitute an obstacle to the free provision of services in the European Union. Finally, the text examines whether there are valid justifications for such restrictions on freedom of movement. It argues that although legitimate objectives of public interest, such as safeguarding the principles and values of professional football, may in principle justify the regulation of competitions, such rules must be transparent, objective, and non-discriminatory. Since the rules in question lack such criteria, they cannot be justified as measures proportionate and consistent with the objectives of public interest.

In conclusion, the text emphasizes that FIFA and UEFA rules, if not accompanied by clear and non-discriminatory criteria, violate Article 56 of the TFEU and must be considered incompatible with EU law. Therefore, it is requested that such rules be reviewed to ensure compliance with the fundamental principles of the EU regarding freedom of movement and competition.

Having examined all the questions posed by the Madrid Court regarding the Super League case, the European Court of Justice, in its judgment of December 21, proceeds with conclusions that, among other things, summarize everything indicated in the previous sections, identifying specific interpretations of Articles 56, 101, 102, and 103 of the Treaty on the Functioning of the EU and definitively concluding the debate. The CJEU, in summary, analyses whether such rules, which require prior approval of competitions and control the participation of clubs and professional players, violate EU competition provisions or not. According to Article 102 of the Treaty on the Functioning of the European Union (TFEU), the adoption and implementation of such rules by football

associations would constitute an abuse of a dominant position if a clear framework of substantive and detailed procedural criteria ensuring transparency, objectivity, non-discrimination, and proportionality is lacking. This means that football associations cannot impose such rules without adhering to adequate competition standards. Likewise, Article 101(1) of the TFEU establishes that the behaviour of football associations, which impose such rules without an adequate regulatory framework, may be considered a decision of an association of undertakings aimed at preventing competition, thus violating EU antitrust laws.

However, there is a possibility that such rules may be justified under Article 101(3) or Article 102 of the TFEU, provided they meet certain requirements. For example, clear legitimate reasons of public interest justifying such rules must be clearly demonstrated, in addition to demonstrating that the rules themselves are proportionate and necessary to achieve these objectives. Finally, Article 56 of the TFEU specifically prohibits rules that limit the free provision of services in the EU without a clear framework of detailed criteria and rules. Therefore, football associations cannot impose rules that restrict participation in interclub competitions without adhering to adequate standards of transparency and non-discrimination. Aniello Merone, in the analysis of the final decision[194], states that the CJEU's decision has been seen by many as a radical change, especially for its economic implications and the new bargaining and political power that clubs will have. Now, they are empowered to act more independently and with greater determination. From a legal standpoint, although no one has ever questioned the right of clubs in favour of the Super League to create their own independent football competition, it is surprising how firmly the Court declared the current rules requiring prior authorization to be illegitimate. These rules have traditionally been central to how sports competitions are organized, especially within the Olympic movement.

The judgment focuses on violations of competition laws and the free provision of services, classic topics of European law, without considering a possible European sports model or the idea that sports may be exempt from some EU rules. Nor does it discuss the actual or potential nature of alternative competitions. However, Merone continues, the judgment emphasizes that a system of prior authorization established by an international federation may be acceptable under European law, provided that clear and transparent criteria are defined to ensure absence of discrimination and arbitrariness. At the same time, references to the values of openness, merit, and solidarity suggest that a closed and elitist project would still have been rejected if such principles had been applied.

Given the complexity of the decision, it is difficult to predict its consequences on the governance of professional football. It could lead to a realignment that grants major clubs, currently organized in the European Club Association (ECA), greater influence in defining competition formats and revenue

[194] Merone, A. (2023, December 23). The Super League case and the decision of the European Court of Justice.

distribution, while remaining within FIFA and its competitions. The common goal seems to be to maintain the hegemony of European football globally.

CHAPTER IV
The Formula 1 Case: The Global Breakaway League?

Formula 1, not only a powerful battle on the tracks, has been continuously supplying a chain of legal and economic issues that have been gaining their place in its organism since the beginning of the championship. Hence, legal activities represent a virtually constant feature of the F1 – an element that has reflected, complemented, or been connected with economic, political, and social changes in the world. In the years gone by, legal battles have given a window into different aspects of the F1, ranging from television rights, commercial manufacturing rights, rules and regulations of the car design, and ownership of brand names.

Unlike the previous two examples, these aren't simply legal issues but signal internal struggles and disagreements within the expansive Formula 1 system. Side by side with legal battle, there have been economic controversies as to the financial viability of the sport, rights to the revenue streams, the roles and the rights of the financial giants, and commercialization of F1 as a product around the planet. They have provoked legal disputes when business or trade operations' economic stakes override the requirements, rules, and norms regulating the sector. In the current study, and while explain particular legal incidents in Formula 1, it will also be pivotal to be mindful of the economic and societal setting in which these incidents took place, as this setting has acted as a soil for legal activities to thrive. And it will be only proper to analyze both the legal and the economic perspectives only then one may discern all the difficulties and opportunities that were presented to the Formula 1 racing in the course of time and the impact they have brought to the development of formula one racing.

In addition, events as the European Super League and its emergence that occurred recently have impacted the world of sports significantly and have created many legal questions, especially ones connected with the competition law and the regulation of the sporting events as it was discussed in the previous chapter. This has served to bring out the realisation that competition organisers have to keep an eye on the needs of a number of stakeholders like clubs, sporting associations, broadcasting companies and the fans. The relation of the context of the European Super League and formula 1 could offer an interesting focus point of discussion as well. Ideal mastheads for both competitions sum up the highest levels of each sport and remain under pressure for anti-trust litigation, television revenue sharing, and the regulation of competition.

Additionally, both sports share many similarities in terms of organizational complexity and governance structures, but there are also significant differences in economic dynamics and power structures. Formula 1, despite sharing certain organizational and competitive features with traditional sports leagues, stands apart in its structure and format, warranting its classification as more of a series of standalone sporting events rather than a conventional league.

The main distinction between the two cases lies in the attention drawn by European legal operators: while the European Super League saga saw judicial intervention both at the Madrid Court and subsequently at the Court of Justice of the European Union (CJEU), disputes in the automotive sector have largely been resolved through commercial agreements among the parties involved (the so-called "Concorde Agreement"). These agreements, renewable periodically, relieve legal operators from the burden of pronouncing judgments, except in cases where they are directly involved (as rarely occurred).

Therefore, this chapter, after thoroughly analyzing the functioning of the F1 model and the various attempts to create a Breakaway League, aims to analyze the commercial agreement concluded among the parties involved, aimed at placating disputes among the various parties, and a decision by the European Commission aimed at modifying the FIA regulations, recognizing in its conduct an abuse of its dominant position, as well as anti-competitive behaviour. The issue raises a question of interest and potential relevance: to what extent are the judgments and judicial decisions related to the European Super League connected to the context of a global and closed league, such as Formula 1? To what extent can the Formula 1 model be applied to the European sporting scene?

4.1. Unravelling Formula 1 Governance: Fia, Teams, And Regulatory Battles

Formula 1 is governed by the Fédération Internationale de l'Automobile (FIA), which establishes the rules and oversees the development of the sport. The FIA works closely with Formula One Management (FOM), which manages the commercial aspects of the sport, including television rights and sponsorship agreements. These two entities collaborate to ensure the smooth operation and global success of a competition that looks like a series of standalone races rather than an usual league.[195]

Formula 1 teams are the backbone of the sport: each team is an independent entity, responsible for designing, building, and managing its own racing cars. These teams invest significant financial and human resources in the development of cars, conducting advanced research and using cutting-edge technologies to improve the performance of their single-seaters. The cars themselves are engineering masterpieces. Technological innovation is at the heart of the competition, with teams competing to gain competitive advantages through engineering and design. Formula 1 races take place on a variety of circuits around the world. Each race weekend includes several sessions, including free practice, qualifying, and the race itself.

During qualifying, drivers compete to record the fastest possible time on a flying lap, thus determining their starting position on the grid for the race. The race is the culmination of the Formula 1 weekend, with drivers competing to complete a certain number of laps on the circuit. Race strategy is crucial,

[195]Formula 1 Website. What is F1?

with teams balancing speed with resource and tire management to optimize the overall performance of the car. Formula 1 is subject to strict technical and sporting regulations established by the FIA. These regulations cover a wide range of aspects, from car specifications to race management and driver safety. Safety is a top priority, and the FIA constantly works to improve regulations and implement advanced safety measures to protect drivers and personnel.

Additionally, regarding the competition and championship structure, it is possible to divide it into three main stages[196]:

- **Free Practice:** Free practice sessions are essential for teams and drivers. Here, it is about adapting to the circuit, understanding its unique challenges, and experimenting with different car setups. Drivers seek to find the right balance between speed on the lap and consistency over long distances. Technicians collect data on car performance, tire wear, and track conditions to inform setup and strategy decisions.
- **Qualifying:** Qualifying is an intense challenge. Drivers have few chances to record a fast time on a perfect lap. They must balance the risk of pushing to the maximum with the need to avoid errors that could compromise their time. Managing traffic on the track is crucial, as even a small interference can affect the lap time. Qualifying is often characterized by intense emotions and surprises, as even the least expected drivers can emerge with exceptional performances.
- **Race:** The race is the highlight of the Formula 1 weekend. Strategy plays a key role from the start, with teams having to decide when to make pit stops and which tries to use. Drivers must balance attack with conservation, trying to maintain a competitive pace without exhausting the car's resources too early. Tactics are often influenced by variables such as track conditions, on-track traffic, and rivals' actions. During the race, drivers must also manage their emotions and remain focused to face the challenges that arise. Physical and mental fatigue can be significant factors, especially in hot or humid races. Mental resilience and adaptability are crucial to maintaining performance at a high level for the entire duration of the race. In summary, Formula 1 races are a combination of technical skill, tactical strategy, adaptation to changing conditions, and mental endurance. Each race is an epic battle between drivers and teams, and even the smallest mistake or wrong strategic decision can make the difference between victory and defeat.

In motorsport, there have been notable schisms and rebellion attempts against the main regulatory body of the competition, the Fédération Internationale de l'Automobile (FIA), in the past. For instance, in 1996, in the United States, there was a split that led to the formation of two distinct

[196] Formula 1 Website. The beginner’s guide to the F1 Drivers’ Championship.

championships: CART and IRL.[197] The conflict between the Championship Auto Racing Teams (CART) and the Indy Racing League (IRL) was a true theatrical drama, with key figures such as Tony George, the custodian of the traditions of the Indianapolis circuit, and CART itself. Tony George, deeply rooted in the traditions of American racing, opposed the international direction taken by CART, which, despite its series thriving thanks to the influx of international drivers and growing interest from sponsors and the public, was drifting away from the traditions George considered fundamental. The split between the two factions occurred when George founded the IRL in 1994, announcing an alternative championship with the Indianapolis 500 as its main event. This led to a war between the two series, with separate races and defections from both sides. Despite the initial difficulties of the IRL, it ultimately prevailed, leading to CART's bankruptcy in 2003. The IndyCar Series absorbed Champ Car's assets in 2008, reunifying the two series.[198]

In subsequent years, threats of separation among Formula 1 teams, with the creation of parallel championships, have been numerous. Today, F1 is a closed system, with 10 teams receiving television rights money and a strong incentive not to enter the championship with a new team due to the extremely high entry and operating costs. Team names only change if a new wealthy owner capable of inheriting all the material and administrative headquarters of previous administrations arrives. As early as 1961, 11 years after the first World Championship was held, when some British teams (Cooper, Lotus, BRM) supported by engine manufacturer Coventry Climax decided to found a series alternative to F1 (the Intercontinental Formula)[199] to protest against the technical revolution that would have taken place in 1961, which would have aligned F1 regulations with those of F2, reducing the maximum displacement from 2500 to 1500 cc, abolishing engine supercharging via volumetric compressors or turbochargers, introducing a minimum weight for cars of 450 kg, requiring the use of fuel with a maximum of 100 octane, and the provision of starter motors and reverse gears on cars. In particular, the three aforementioned British teams were convinced that the new regulations wanted by the CSI (International Sporting Commission, predecessor of the current FIA) would favour Ferrari and Porsche, who were performing very well in Formula 2. Hence, the idea of establishing an alternative series (the Intercontinental Formula), to which even Ferrari seemed to adhere in an early stage, to the point that races were even planned in Britain, Italy, and eventually in the United States. However, once realizing the absolute competitiveness of their six-cylinder engine in compliance with the new regulations, the Maranello team stepped back, announcing during the 1960 Italian Grand Prix that it would participate in the 1961 Formula 1 World Championship. With Ferrari's withdrawal,

[197] Evans, B. (2021, July 11). "Indy Split: The Big Money Battle that Nearly Destroyed Indy Racing" Reviewed.
[198] Oreovicz, J. (2020, October 27). Looking back on reunification.
[199] Sanz, C. (2024). The History of the Formula 1 Teams: Lotus - Brm – Cooper.

Coventry Climax also decided to withdraw its availability, and in the following weeks, negotiations with Italian circuits also failed, to the point that the founding teams of the Intercontinental Formula (Cooper, Lotus, and BRM) decided to hold the 1961 season exclusively on British circuits. There were five races in 1961, all won by Cooper, with Jack Brabham winning the first and last race (Lombard Bank Trophy at Snetterton and the Guards Trophy at Brands Hatch), while Stirling Moss won the Lavant Cup (at Goodwood), the BRDC International Trophy and the British Empire Trophy, both races at Silverstone. An attempt, that of the Intercontinental Formula, which did not go very well, to the point that in 1962 there were no more races in this series.

Another precedent related to the possible formation of an alternative championship to Formula 1 dates back to the early 1980s and is particularly linked to the war between FOCA (Formula One Constructor Association made up of the main British constructors) led by Bernie Ecclestone and the FISA (Federation Internationale du Sport Automobile, former CSI led by Frenchman Jean Marie Balestre).[200]

The first disagreements between FOCA and FISA occurred at the end of the 1970s: after the confirmation of the skirts for 1978, the association led by Ecclestone asked the Federation to abolish turbo engines for 1979, arguing that only Ferrari, Alfa Romeo, and Renault (loyal to Balestre's FISA) would have been able to afford the expenses for the development and creation of the new engine. FISA responded negatively to Ecclestone's requests: not only were turbo engines not banned at all, but starting from 1981, skirts would have to be strictly banned, as well as any agreement between the organizer of races, competitor, or representative body. A real attack, in short, on the power that Ecclestone had reached until that moment, which will bring FISA and FOCA into direct confrontation starting from the 1980 Belgian Grand Prix, the date on which the Federation strictly requires the presence of drivers at the technical briefings organized by the Race Direction. Not only will the drivers of FOCA teams not participate, but with the exception of Derek Daly, they will not pay the fines imposed by the Federation itself. Thus, it arrives at the Spanish Grand Prix, with the teams aligned with the FISA (Ferrari, Renault, and Alfa Romeo) threatening not to participate in the race if the drivers of FOCA teams who so far have regularly skipped the briefings of the Race Direction, contravening the Federation's request, will not be suspended, as hypothesized by FISA.

An agreement is not reached between the parties, and so the three teams loyal to FISA, as well as the FISA officials themselves, abandon the Grand Prix, which will be run by the FOCA teams and managed by the RACE (the Spanish Automobile Club). A few days later, on June 4, FISA threatens to invalidate the Spanish Grand Prix, and at this point FOCA threatens the teams loyal to FISA not to

[200] Formulemoy1.com. (2020, November 27). When F1 Declared War on Itself.

let them participate in the French Grand Prix.[201] It is clear to everyone that the situation cannot continue like this, and so the parties return to talk to each other, finding an agreement on June 18, 1980, according to which the current technical regulations would be valid until 1984, FISA teams would be allowed to participate in the French Grand Prix, the Spanish Grand Prix is cancelled, as well as the briefings skipped by FOCA drivers with their respective fines being almost forgotten. The championship can thus restart, but with the end of the season, frictions resurface, with on the one hand the issue of skirts that FISA wants to strictly abolish, on the other hand the direct negotiations of FOCA with circuit promoters and television broadcasters for TV rights, which would in fact bypass FISA. It is impossible to find a compromise under these conditions, and so FOCA decides to force the hand, not only founding its own Federation, called the World Federation Of Motorsport but even an alternative series called the World Professional Drivers Championship, of which in 1981, of course, FOCA teams (Arrows, Brabham, Ensigne, Fittipaldi, Ligier, Lotus, McLaren, RAM, Tyrrell, Williams, and ATS) with 15 races in 12 different nations, and a regulation essentially similar to Formula 1 but with the confirmation of the skirts. During the winter, every attempt will be made to avoid a split that would have ended up damaging all the components, with Goodyear (tire supplier) ready to leave Formula 1 due to the serious uncertainty that seemed to reign over the championship. However, the point is that neither FISA nor FOCA seems willing to give in first, so on February 7, 1981, at the Kyalami circuit, what was supposed to be the first Grand Prix of the season (South African Grand Prix) will be run only and exclusively with the single-seaters of the FOCA teams and with the race defined as Formula Libre, and consequently not valid for the Formula 1 World Championship, which will see Argentine Carlos Reutemann's victory with Williams[202]. Just that South African race in which serious problems with tire supply will emerge, will make Bernie Ecclestone and the FOCA teams understand that it is necessary to find an agreement with the Federation. An agreement that will be reached on March 5, 1981, in Paris at the FISA headquarters in Place De La Concorde, and which will be called the Concord Agreement[203], which enshrines the decision-making autonomy of FISA in the development of technical and sporting regulations, as well as the division of economic income between FISA and teams based on the results achieved on the track, with FOCA being able to negotiate with television channels regarding the TV rights of Formula. To find a new battle between teams and Federation with the threat by the historic teams of devising an alternative championship, we must arrive in 2009, with on one side the FIA led by British Max Mosley, on the other the FOTA (Formula One Team Association), the association in which all the

[201] Straw, E. (2021, April 21). The F1 Wars That Threatened a Super League-Style Breakaway.
[202] Formulapassion.it. (2021, February 7). F1 | 7 febbraio 1981: tensione a Kyalami.
[203] Arcari, Z. (2023, December 24). F1, Patto della Concordia 2024: l'elemento cruciale e paritario.

teams participating in the World Championship were enrolled. It all starts at the end of the 2008 season, when Mosley informs all the teams about his intention to reduce costs in Formula 1 in order to involve new teams and thus have more spectacle on the track. The teams (with the exception of Williams and Force India) do not agree, as cost savings (with the addition of some components the same for everyone) seriously risk undermining the economic prestige of the category. In December 2008, the Federation made public the outcome of the auction for the supply of any standardized engines: Cosworth wins it, while as for the transmission, the contract goes to Xtrac and Ricardo Transmissions. Those who do not want to use the standardized engine can either keep the naturally aspirated V8s, whose development was frozen at the end of the 2007 season, or design their own, provided it complies with the new regulations and the indications provided by Cosworth.

A good part of the teams does not agree, with discontent that increasingly spreads, especially after the World Council on April 29, 2009, which establishes the introduction of a budget cap of £40 million, with a series of facilitations (maximum freedom in the number of engines to use and in the rotation regime, freedom to develop aerodynamic components, maximum freedom in the use of the wind tunnel, unlimited tests) for those who would have embraced the new line of the Federation. Hence the decision during a meeting held in Istanbul on June 7, 2009 (a few hours before the Turkish Grand Prix) to seriously evaluate the creation of a FOTA World Championship for 2010 (with live races on Sky) to which Ferrari, McLaren, BMW Sauber, Renault, Toyota, Toro Rosso, Red Bull, and Brawn would participate with three cars each, followed by a further meeting in the evening of June 18 at Enstone in the Renault headquarters where a press release issued late at night will announce the start of the preparation of the new alternative championship. A championship, that alternative one realized by a good part of the FOTA teams, which will have a very short life, and which almost certainly represented a pretext to obtain better conditions from the Federation, which after presenting on June 12, 2009, the final list of teams participating in the 2010 Formula 1 World Championship in which not only Williams and Force India were included but also with reserve the other 8 dissident FOTA teams to Mosley's project, as well as three new teams (Lotus, HRT, and Virgin), had not hesitated to propose to the FOTA teams the possibility of a budget cap of £100 million only for 2010. Proposal rejected. To finally zero out all the controversies between the Federation and the FOTA teams will be the World Council on June 24, 2009, which will confirm for 2010 the same Technical Regulation of 2009 (thus meeting the FOTA's requests), provided, however, with a strong commitment of the teams participating in the Formula 1 World Championship to reduce costs within the 2011-2012 seasons.

4.1.1. The Success Factors Of Formula 1

The Formula 1 Group, a subsidiary of the American company Liberty Media (founded by John C. Malone in 1991), which acquired majority ownership of the F1 Group in 2017, closed the year 2023 surpassing the three billion dollars mark (precisely 3.2) in revenue, a target set at the beginning of the season. This represents a significant increase compared to the previous year, 2022, which ended with revenues of 2.6 billion dollars. The main sources of revenue for Formula 1 primarily stem from three budget items:

- Race promotion (29.3%): This includes the so-called "race sanctioning fees." Each circuit hosting a Formula 1 race worldwide is required to pay a considerable commission to Formula 1 to be included in the calendar. According to statements by Bernie Ecclestone, the former head of Formula 1, all contracts include confidentiality clauses that prohibit promoters from disclosing fees and conditions.
- Media rights (32.2%): Unlike other sports or racing competitions, Formula 1 internally manages the entire television logistics in each country where races are held, providing what is known as the "global feed" to numerous television networks, each of which pays a significant fee for this service. A significant development could be represented by Apple. According to Business F1, the US tech giant intends to secure the TV rights for Formula 1 globally, even through multiple stages, based on the deadlines of agreements with other TV entities. The offer put forward by Apple would be substantial: a whopping 2 billion dollars per year. The first step would be entry among broadcasters through the Apple TV+ streaming platform, with a low percentage of exclusivity. From there, continuous growth is expected until 2028, the year Sky's contract in Europe expires.[204]
- Sponsorship (18%): This is represented by a combination of ticket sales and paid partnerships with companies or products. Besides the considerable sanction fee, circuits must pay a percentage of ticket sales revenue to the race organization, although this is generally stipulated in the initial contract. It would be ideal to state that major revenue for the Formula 1 teams is generated through sponsors. The amounts provided for the advertisement through hood decorations remove financial barriers that would otherwise would not allow teams to make participation in races provided sponsors did not provide adequate funds for branding their products on racing cars. Sponsorship contracts are usually long-term and they usually last for at least two years and at most; they can last for up to five years. This enables the teams to dedicate time to issues pertaining car development and other general overall works without

[204] Mariani, F. (2023, October 31). F1, accordo con Dazn Spagna e Apple sullo sfondo: perché il Mondiale è ancora un affare per le tv.

too much concern on how this is going to be attained in the shortest time, especially knowing that there are adequate funds available for the medium term. Sponsorship is an ingredient that has slowly but significantly found its way into the world of sports for quite some time now. A Formula 1 sponsor is often a company or a person who agrees to contribute financially for a specific project with the intent of gaining profits in image, which can in return be utilized as an instrument in advertising products. It is rare for a group or individual to provide funding solely out of pure passion. Fundamentally, sponsorship represents a marketing activity in which the sponsoring company seeks to associate its name with a successful image to engage fans, build loyalty, and become an integral part of communities, creating a positive perception around its brand and increasing its visibility, and consequently, revenue. Thus, the developments of the sponsorship connected to the world of Formula 1 in the recent decades is a rather evident matter due to the broad popularization of the given competition type, and the continuous augmentation of fans of the events taking place worldwide. Having a large number of sponsors, which is constantly increasing, can become a problem for a team for remarkably high returns to work for it. This framework suggests that it is easy to see that the extent of how well the team is able to select and control partners decreases as a function of the volume of the teams' alliance portfolio. There are many cons that can be observed when there are too many collaborations; this would mean that there is enhanced decision-making process which hinders the proper management of teams and may lead to poor performances and further harm the reputation of the concerned team. Thus, the use of sponsorship revenues for efficient managerial and organizational work is crucial, as well as having adequate managerial skills and staffing capabilities in order to achieve both successful on-field performance and expand the brand.

Besides, it has also been observed that in the following year there has been huge turnout of fans for grand prix events. In 2022, the total number of spectators reached 5.7 million, showing a 36% increase compared to 2019, the last season before the Covid-19 epidemic. For 2023, with the same number of races, 22 plus 6 sprints, the goal was to reach a total of 6 million fans, a target that was actually achieved. Contributing to the increase in numbers, especially in the final quarter of the year, was the inauguration of the Las Vegas Grand Prix, marking the competition's return to the city of Nevada after over 40 years (the last race was held in the 1982 season), with the implementation of a new city circuit that crosses the famous Strip, where some of the most luxurious hotels are located, including the Cesar Palace and the Bellagio. The first edition saw the participation of 315 thousand guests. Thanks to the increase in revenue for the Formula 1 group, there was also an increase in payments to the teams. Other costs, on the other hand, are mainly of a variable nature and are associated with the

promotion and organization of the Las Vegas Grand Prix, for which an investment of 480 million dollars was hypothesized. Championships, worldwide success, and a chance to be written into the history of the automotive industry – these are the goals of Formula 1 drivers; however, it is the Constructors' World Championship that defines the fate of teams in Formula 1 to a great extent. The position of a team in the constructors' championship directly determines the annual revenues generated, and the generated revenues are crucial to building cars for the subsequent season's race. This was enshrined in the Concord Agreement signed in 2021, where the current profit distribution states that 50% of Formula 1 profits should be given to constructors in the form of the Constructors' World Championship prize money. Although the specific value of this prize pool has been kept under wraps, it is possible to make a custom amount estimation. Once again, an auction for six-victory wins in the world championship ahead of time in the 2023 season caused a significant level of success, though the budget increase should have been 10 percent higher year-wide circus revenues, which were estimated to be around 2. 82 billion US dollars.

But, owing to the rising intervention of Liberty Media, even after the aforementioned Concord Agreement, the projected pool of prize money has been diluted by 5%. For historical teams, an additional 25% bonus for the MPS is also included. Ferrari for example is awarded an extra longstanding bonus, equal to 5% of the World Championship prize pool because it is the only team participating in the event since the season one. Same respect goes to teams that have at least won a world module in their history; there is Ferrari, Red Bull, Mercedes, and McLaren. The final outcome are roughly one billion of dollars for distribution through the teams in the Constructors' Championship. The current format is also deemed distinct from the pre-Concord Agreement of the year 2021 when first-place team received 20% of the total prize money while the last team received only 4% of that sum. Now to make better distribution of the share, the team that performance as a champion gets 14% of the total share while the performance of team at last position receives only 6%. Therefore, it is possible to say that with one team and another there may be a difference of 1% within the overall revenues, corresponding to about 10 million of dollars.

According to an estimate by Eurosport.com[205], it is possible to define, for the 2022/23 season, the following breakdown of prize pools among the teams:

[205] Fantini, D. (2023, December 1). Prize money for Constructors' World Championship: How much do the top 10 teams earn? Ferrari, in third place, receives 122 million.

Net Profit F1 teams season 2022/23			
Placement	*Team*	*Percentage*	*Amount in €*
1.	Red Bull	14.0%	140.000.000
2.	Mercedes	13.1%	131.000.000
3.	Ferrari	12.2%	122.000.000
4.	McLaren	11.3%	113.000.000
5.	Aston Martin	10.4%	104.000.000
6.	Alpine	9.5%	95.000.000
7.	Williams	8.7%	87.000.000
8.	AlphaTauri	7.8%	78.000.000
9.	Alfa Romeo	6.9%	69.000.000
10.	Haas	6.0%	60.000.000

Compared to all analyzed competition, the primary specificity of the premier motorsport event, an event that establishes an annual competitive pecking order for the corresponding season, is economic, which can trigger a complete turning of all existing perimeters at any time. A critical aspect of the cars in Formula 1 racing is the technical formula because it makes up vital race factors apart from the organizational system that the entire team undergoes, which is expensive.

In this sport context, access to the top tier requires such a substantial investment as to constitute a significant discriminatory filter, often surpassing mere individual talent, whether in driving or designing cars. It is important to note that most drivers come from affluent backgrounds, without which they would never have been able to enter the world of motorsport. Thus, Formula 1 has endeavoured to change this situation in the recent years by using regulation imposing certain measures to level the teams' performances and using specific measures in an attempt to decrease the overall general costs. While such regulations were introduced into the Formula 1 as a much later than the other forms of sport, as well as other types of motor racing, these are now relatively unmovable component if an aspiring contender wants to succeed. However, the specification has been much more utter and unchanging with the introduction of the budget cap and can be analogised to the salary cap of the NBA nowadays. Because of this notion known as the 'budget cap,' there is a fixed amount that any team is allowed to spend in the course of year. This measure was implemented for the first time in 2021. Initially, the plan envisaged a spending cap of $175 million, but circumstances changed with the advent of the COVID-19 pandemic, leading to a revision, reducing the limit to $145 million. The cars, engines, aerodynamics, technology, strategies and tactics employed in the Formula 1 races also differ significantly depending on the amount of money they can spend: there are teams with virtually unlimited budgets on one hand, and others are struggling to get the most out of a relatively small budget on the other. This is always evident by the variations that are likely to manifest on circuits, therefore making it a herculean task for teams that are constrained financially to claw back this sort of deficit against better endowed rivals. This can be achieved through the introduction of the budget cap to eliminate inequalities together with ensuring that adequate teams into the future is established

to form the starting grid. Besides, in the times when everyone tends to focus on sustainability and cost-saving measures, the budget cap also serves as a sublime measure for the image of Formula 1 which is a world that has been under criticism for its lavishness and carelessness when it comes to the consumption of resources. Within the Formula 1 cost cap, various financial components are allocated as follows: 35% of costs are attributed to labor, 20% are allocated to development and contingencies, while the remaining 45% is allocated to production expenses[206]. In detail, the concept of a cost cap includes all constituent elements of the vehicle, from the smallest component such as the steering wheel to the wheel nuts, as well as all accessories necessary for the car's operation. This definition also encompasses most of the team's affiliated personnel, equipment used in the garage, spare components, and transportation-related expenses. Particular attention is paid to the area of car development, with teams required to carefully assess investment choices, costs associated with producing each individual part, and the relative benefit derived compared to the cost incurred.

Regarding what does not fall within the Formula 1 cost cap, there are several excluded expense items from this financial limitation, including pilots' salaries, compensation for the three highest-paid staff members, travel costs, marketing expenses, legal expenses, and property-related expenses, registration and licensing fees, any activities unrelated to Formula 1 or the automotive sector, payments for parental leave and sickness, as well as bonuses and additional medical benefits for staff.

Violations of the Formula 1 cost cap are subject to a series of rigorously defined sanctions to ensure the integrity and fairness of the competition. In addition to any procedural misconduct related to financial reporting, there is a clear distinction regarding violations of the established spending limit, which is set at 5% above the defined cap. If this limit is exceeded, what is termed a "minor overspend" occurs. However, if this threshold is significantly exceeded, teams face "material overspend," which entails three different forms of sanction: financial penalty, which involves paying a fine whose amount is determined on a case-by-case basis; minor sporting sanction, which may include a combination of reprimands, points deductions from both the Constructors' and Drivers' Championships, bans on participating in certain races, testing restrictions, and a reduction in the spending cap for the following season; finally, a material sporting sanction, which may result in permanent exclusion from the Formula 1 World Championship.

4.1.1.1. Insights On Ferrari S.p.A.

As already done in the second chapter, even in this section, once the framework of how Formula 1 operates has been outlined, it could be interesting to conduct a brief analysis of the economic situation of the sports companies involved. In this case, it is evident that the constant increase in investments

[206] FIA. (2022, February 18). Formula 1 financial regulations.

and, consequently, revenues leads to a general improvement in competitiveness, which positively translates into the economic and financial conditions of the companies involved. Let us take, as a case study, the financial statements for the fiscal year ended in 2022 (the latest available financial statements currently) of Ferrari S.p.A.[207] (hereinafter simply referred to as "Ferrari"), the historic Italian automotive company with an almost century-old history, producing high-end sports cars and competition cars and engaged in motorsport: it is the most titled in the Formula One World Championship. Before proceeding with the analysis, it is necessary to clarify the following: the example of Ferrari S.p.A. in the automotive world cannot be fully appropriate, as it operates in a myriad of businesses and sectors, even those not strictly related to car racing. However, the historic team represents the model of excellence in Formula 1 and motorsport in general and cannot in any way be excluded from this analysis; moreover, the same issue would have been encountered with all the other teams operating in this sector (see Mercedes Benz, Red Bull, etc.); the aforementioned team, operating in different businesses, does not report a seasonal balance sheet (closed in June), as for football and basketball companies, but rather a "classic" annual financial statement, related to the fiscal year ended on December 31 of each year. Analyzing the fundamental items within Ferrari's financial statements, the following can be identified:

- The presence of intangible assets amounting to €1,307,388 thousand, accounting for 35% of non-current assets, including contracts, depreciations, and evaluations of pilots.
- The presence of property, plant, and equipment totalling €1,457,825 thousand, accounting for 38% of non-current assets, including sports facilities, equipment, and other assets used to support the company's activities.
- A high non-current debt share, totalling €2,811,779 thousand, accounting for 55%.
- A profit of €939,294 thousand, with a margin on revenues of 18%.
- A total cash flow, consisting of the sum of cash flow from operating activities (CFFO); cash flow from investing activities (CFI); cash flow from financing activities (CFF), totalling €44,755 thousand.

Based on the data just described, it is possible to use the so-called Key Performance Indicators to analyze the company's performance. In the analysis of Ferrari's financial status, I will proceed to use the same KPIs used in the second chapter, in order to make the analysis comparable:

- Debt Gearing Ratio (static): Total Liabilities/Equity. In the case of Ferrari, the indicator is 2, indicating a low dependence of the company on debt accumulated during the financial years.

[207] Ferrari S.p.A. Annual report 2022

- Golden Financing Rule: Current Liabilities / Current Assets ≤ 1. In the case of Ferrari, the index in question is 0.2, meaning that the company has a low percentage of current liabilities compared to current assets. This can be interpreted in various ways:
    - Financial solidity: a low GFR suggests that the company has a solid financial position because it has more current assets than current liabilities. This could indicate that the company has good working capital management and low dependence on short-term external financing.
    - Short-term obligation coverage: a low GFR implies that the company has enough liquid assets or assets that can be easily converted into cash to cover its short-term obligations. This suggests a lower likelihood of short-term financial difficulties.
    - Operational efficiency: a low GFR could also indicate that the company is effectively managing its working capital, minimizing the need for short-term financing and maintaining a low level of current debt.
- Return on Equity (ROE): Net Profit / Equity. In the case of Ferrari, the indicator is 0.4.

From the analyses conducted, the picture is noticeably clear, even compared to the situation outlined for the New York Knicks: the well-being of Formula 1, with a constant increase in revenues in recent years, is fully reflected in the balance sheets of the companies involved. The famous Italian automotive company stands out for its financial solidity, characterized by low financial leverage and a positive net worth ratio. This solidity is further supported by effective management of current assets and current liabilities, indicating good working capital management. Ferrari, with its iconic brand and reputation in the luxury automotive sector, enjoys a competitive position that is also reflected in its financial stability.

4.2. From Super League To Motorsports: Governance And Controversy

In the following analysis, we will delve into this issue by exploring the controversies surrounding motor racing, with the aim of outlining a (as far as possible) defined framework and subsequently highlighting its coherence with the Super League case and evaluating its applicability to the world of motor racing.

4.2.1. The Concorde Agreement

On March 5, 1981, following yet another dispute between the Fédération Internationale du Sport Automobile (FISA) and the Formula One Constructors Association (FOCA), the Concorde Agreement was concluded in Paris[208]. It was a commercial agreement that regulates the participation

[208] Barretto, L. (2020, August 19). Analysis: What the new Concorde Agreement means for Formula 1. Formula 1 website.

and economic treatment of teams participating in the Formula One World Championship. The main parties of the Concorde Agreement were Formula 1 teams and championship organizers, represented by the Formula One Management—FOM, a company owned by the Formula One Group—FOG. Then, the Formula 1 teams under the Concorde Agreement included the main racing teams, such as Ferrari, Mercedes, Red Bull Racing, McLaren, Williams, Renault, and many others that participated in this event. The Formula One Group or Formula One Management, usually represented by the Formula One Management Ltd., would manage commercial and organizational matters of the Formula 1 championship, such as the selling of television rights, prize distribution, race planning, and all other aspects concerning championship management. In addition, the FIA, formed by the merger, after the agreement, of FOCA and FISA, currently the international governing body of automobile, including Formula 1, was also a party in the process. After the FISA-FOCA merger in 1993, the FIA became the supervisor and regulator of the Formula 1 Championship. The FIA continued to be involved in the negotiation and ratification of the Concorde Agreement along with the teams and organizers of Formula 1.

The terms of the contract were, and still are, largely confidential, although one known aspect concerned the obligation for signatories to attend all races, ensuring a guaranteed spectacle for those purchasing the television rights to the Grand Prix.

The Concorde Agreement had far-reaching consequences for competition law in the context of Formula 1. Here are some key points:

- Exclusive television rights. One of the essential elements of the Concorde Agreement was the exclusive television rights to Formula 1 racing given to the Formula One Management—FOM. This deal limited the competition between television broadcasters for the acquisition of broadcasting rights since only the FOM could sell such rights
- Prize distribution. The Concorde Agreement provided for the prize distribution to teams participating in the Formula 1 championship. This prize distribution system, based mainly on sporting performance and ranking, could be considered a restriction on competition since it would give the larger teams with better performance preference.
- Commercial rights control: The Concorde Agreement granted exclusive control over the commercial rights of Formula 1 to the FOM in relation to rights to television, sponsorship, and merchandising. This could be termed a monopoly within the industry, possibly limiting competition among commercial operators interested in investing in Formula 1.
- Technical and sporting regulations: Under the Concorde Agreement, the FIA had powers to produce technical and sporting regulations for the Formula 1 championship. To the extent that such rules were drafted in a manner that either favored or penalized some teams or

constructors, they may have affected competition in the championship. In sum, although the Concorde Agreement helped in stabilizing and regulating the running of Formula 1, certain provisions of the agreement may have tempered competition in the industry, particularly about access to the rights of television and prize money distribution.

In summary, with this agreement, the FISA still managed to maintain authority over technical and sporting regulations; on the other hand, economic income was divided between the FISA and the teams based on the sporting results achieved by each. In addition, FOCA was given the possibility of developing the racing-related business, particularly being entrusted with negotiating with television channels. This latter aspect would lead Ecclestone to gradually become the patron of Formula One, through a specially created company named Formula One Management, overshadowing the figure of Balestre, despite the latter having become President of the FIA in the meantime and thus at the helm of three motor racing federations simultaneously. An important body defined by the Concorde Agreement is the Formula One Commission, which is supposed to meet regularly for all organizational aspects, but not only for F1. Decisions are then ratified by the bodies of the FIA, the World Motor Sport Council, and the General Assembly. The Federation can decide autonomously only for safety-related needs. Moreover, Ferrari has, also due to the Concorde Agreement, the right of veto. That is, it can oppose all the decisions made in the world of F1 unless they are decisions made on safety matters.

The original Concorde Agreement, signed in 1981, has been renewed numerous times over the years. However, the renewal period has not always been constant. Usually, the Concorde Agreement had a duration of several years, during which the conditions for the operation of Formula 1 were negotiated and established. For example, the 1981 Concorde Agreement was renewed in 1987, 1992, 1997, 2009, and 2013. Each renewal involved modifying the contractual conditions and agreements among the various parties involved, including teams, the FIA, and race organizers. The latest Competition Agreement was renewed in 2021 for a duration of five years.

The Agreement stood as one of the core values within the Formula 1 framework and had greatly influenced the competition dynamics in the automotive sector. The legal implications helped bring stability to the Championship with a clear and binding regulatory framework for all parties concerned, such as teams, organizers, and commercial rights holders. The Agreement, through contractual and regulatory instruments, aimed at balancing the competition with a fair distribution of prizes and financial resources, avoiding anticompetitive and monopolistic practices. At the same time, the minimum level of competitiveness among participants was assured; it fostered technology and sports innovation, guaranteeing the principles of fair competition and equal treatment of all participants. Monopoly control by the Formula One Group (FOG) over commercial rights was covered by

provisions on the protection of competition and the limitation of abuses of dominant position to preserve a competitive and dynamic environment. The Concorde Agreement had, therefore, been an essential legal instrument in the governance of Formula 1, which balanced the various interests of the parties and ensured a balance of interests between regulatory stability and promotion of competition, in respect of the right to competition and protection of the rights of the parties involved.

4.2.2. Early Developments: The Amendment Of The Fia Regulations.

The issue of the Super League model began to attract the attention of European institutions as early as 1999, when the Commission initiated proceedings for violation of Articles 81[209] and 82[210] of the EC Treaty against the FIA, identifying in its conduct an abuse of its dominant position, as well as conduct detrimental to competition. In particular, the notification to the European Commission concerned five FIA regulations relating respectively to the FIA's statute, the Code of Ethics, general provisions applicable to any FIA event, regulations for FIA international championships, and information contained in the FIA yearbook and bulletin, as well as other agreements entered into by the FIA specifically relating to the Formula 1 sector. The FIA, being responsible for the organization, management, and promotion of international motor sports championships, required a license from anyone wishing to participate or organize events, compete as drivers, build vehicles, or hold races.

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[209] Article 81

"The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which: directly or indirectly fix purchase or selling prices or any other trading conditions; limit or control production, markets, technical development, or investment; share markets or sources of supply; apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; make 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. Any agreements or decisions prohibited pursuant to this article shall be automatically void. The provisions of paragraph 1 may, however, be declared inapplicable in the case of: any agreement or category of agreements between undertakings, any decision or category of decisions by associations of undertakings, any concerted practice or category of concerted practices, which contributes 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 which does not: impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

[210] Article 82

"*Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States. 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."*

Once licensed, these entities were required to participate only in events approved by the FIA to avoid the risk of license revocation and subsequent exclusion from any international competition. According to the Commission, this situation had, in some instances, resulted in an abuse of their power aimed at excluding competing promoters. Specifically, in 1994, the Formula 1 championship was organized based on an agreement between the FIA and the Formula One Administration (FOA). In that year, both organizations had jointly decided to make changes to their regulations and commercial agreements regarding various championships managed by the FIA (including Formula 1), communicating the new regulations and agreements to the Commission, pursuant to the relevant legislation/Article 3, No. 2, of Regulation No. 17/1962[211]. However, the changes to their regulations had triggered a fundamental discussion concerning the authority and role of the FIA as the regulatory entity for international motorsport and its involvement in commercial activities related to the sport.[212] The Commission focused on the legitimacy of the role played by the FIA as a regulatory body, also considering the commercial implications of its activities, which, being of an economic nature, had to comply with EU competition regulations. Analyzing in detail the "*Communication published pursuant to Article 19(3) of Council Regulation No 17, Case COMP/35.163 — Notification of FIA Regulations, COMP/36.638 — Notification by FIA/FOA of agreements concerning the FIA World Formula One Championship, COMP/36.776 — GTR/FIA and others (Text with EEA relevance)*"[213], the following structure emerges:

- Examination of the cases in question: On July 22, 1994, the Fédération Internationale de l'Automobile (FIA) notified its regulations to the European Commission, and subsequently, an agreement between the FIA and International Sports world Communicators Ltd (ISC) concerning the marketing of broadcasting and press rights for some FIA championships, excluding Formula 1, was brought to the attention of the Commission. Commercial agreements related to the FIA World Formula One Championship were notified separately by the FIA and Formula One Administration Limited (FOA) on September 5, 1997. Subsequently, the Commission issued communications summarizing the notified agreements and invited third parties to submit any observations. Between 1997 and 1998, the Commission received three complaints concerning these notifications, respectively from: i) AE TV Co-operation GmbH, a television broadcaster that lodged a complaint mainly concerning the

[211] EEC Council. (1962, February 21). Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty. Official Journal of the European Communities, 13, 204–211.

[212] Nascimbene, B., & Bastianon, S. (2011). Diritto europeo dello sport. G. Giappichelli Editore. (pp. 60-61).

[213] Council Regulation No 17: First Regulation Implementing Articles 85 and 86 of the Treaty.European Commission. (1962). Council Regulation No 17: First Regulation Implementing Articles 85 and 86 of the Treaty. Official Journal of the European Communities, 13, 204–211.

European Truck Racing Championship; ii) the GTR organization, organizer and promoter of international events for "gran turismo" (GT) cars. Following that, all three complaints were dropped, and the cases were concluded. The allegations were communicated by the Commission on June 29, 1999, and the parties concerned provided written observations in February 2000. In response to the Commission's concerns, on April 26, 2000, the FIA and FOA suggested a number of significant revisions to the notified agreements. The final correspondence between the parties took place on January 12, 2001, although they kept in touch. Drawing from the aforementioned proposals, modifications, and exchanges of information, this correspondence outlines the FIA regulations and the business arrangements among the FIA, FOA, and ISC.

- The individuals concerned: a summary of the major companies in charge of running and marketing motor racing events, especially Formula 1, and their connections to the Fédération Internationale de l'Automobile. After the sale of the company to David Richards in the fall of 2000, ISC is now responsible for promoting the FIA World Rally Championship and regional rally championships, all organized by the FIA. FOA/FOM, controlled by Bernie Ecclestone, manage the commercialization of the FIA Formula 1 World Championship. The 1998 Concorde Agreement grants FOA the commercial rights to the FIA Formula 1 World Championship, including those relating to television broadcasting and other forms of commercialization. FOA was renamed Formula One Management Limited (FOM) on May 28, 1999, and is responsible for managing commercial rights, while the actual rights were transferred to a subsidiary also called FOA.
- The notified agreements regarding the FIA statutes, the FIA International Sporting Code, its appendices, the general provisions applicable to any FIA championship, race, trophy, and cup, the regulations of FIA international championships, and the information contained in the FIA yearbook and bulletin.

It is worth noting that in the June 2000 communication of charges, *"(...) according to an initial assessment by the Commission, the FIA found itself in a conflict of interest situation, having used its regulatory powers to block the organization of competing events to FIA events (i.e., events from which the FIA derives commercial benefit). Furthermore, for a certain period, the FIA may have abusively exploited a dominant position, infringing Article 82 EC, by claiming television rights to the motorsport events it authorized. A similar situation arose in the Formula 1 championship with the imposition of certain clauses in the Concorde Agreement. Finally, some notified contracts appear to be in conflict with Articles 81 and/or 82 EC, by erecting further obstacles to the activities of potential competitors: contracts with organizers prevented, for a period of ten years, the circuits used for*

Formula 1 from being made available for other events that could compete with Formula 1 itself; agreements with broadcasters included a financial penalty if competing motorsport events of the Formula 1 championship were shown. Some agreements between FOA and broadcasters seemed to restrict competition under Article 81 EC, offering exclusivity in their respective territories for an excessive duration (...)."

It is clear, therefore, how the European Commission had identified a conflict of interest: the FIA was using its organizational power to obstruct events competing with its own.

Following this, in 2001, the FIA agreed to make significant changes to its rules and commercial agreements relating to Formula 1, in order to comply with EU laws, with the following objectives in mind:

- Completely separate commercial functions from FIA regulatory competencies, regarding the FIA World Formula 1 Championship and the FIA World Rally Championship, with new proposals for agreements for the commercial exploitation of these two championships;
- Improve the transparency of decision-making processes and appeal procedures, so that decisions are not beyond scrutiny;
- Ensure free access to motorsport to anyone meeting safety and fair play requirements;
- Guarantee freedom to enter the international sports calendar and remove any restrictions on the ability to seek external recourse;
- Change the duration of contracts relating to free-to-air broadcasting of the FIA World Formula 1 Championship.

The changes to the regulatory framework and proposed commercial agreements seem to introduce structural corrections that can reduce the risk of possible abuses in the future and promote a healthy competitive environment in the motor sports sector. The new rules provided for a clear separation between marketing and regulatory activities in motor sports. The FIA, with the intention of implementing this separation, chose a "commercial rights holder" for each of its World Formula 1 and rally championships starting from 2010, receiving a fixed upfront fee in return. The new provisions and assurances provided to the Commission seem to convince the latter that the FIA regulations are not used to obstruct or exclude races or participation of competitors, except for safety reasons.

Furthermore, the proposals put forward by the FIA provided avenues of appeal against its decisions, both within the organization and before national courts. This contributed to ensuring a higher level of transparency and access to justice for interested parties. The changes to commercial agreements seemed to remove barriers that had previously limited competition among brands and allowed for the

possibility of competing events and races both within Formula 1 and in other motor sports disciplines, in favour of increased competition among brands and a wider variety of sports events for spectators. The FIA essentially had to reduce its position, giving up on business interests and concentrating only on athletic ones, paying special attention to safety and fairness in motor racing events. The primary modifications included opening up competitions to anybody who complied with the rules, separating the roles of the commercial and regulatory sectors, and increasing decision-making transparency. The regulations governing Formula 1 television broadcasts, which have the greatest influence on business interests, were also examined. Following two years of observation, oversight ended in 2003 when the Commission declared that the FIA had complied with the agreements. The EU, on that occasion, clarified for the first time that sports federations cannot limit their members' participation in events organized by third parties, nor control the economic activities resulting from such events. Consequently, the FIA had to allow its members to participate in events organized by third parties, relinquishing television rights and removing anti-competitive clauses. Faced with these changes, the European Commission deemed it appropriate to close the case as the doubts expressed during the communication of charges had been dispelled. The first episode of legal debate in the competition field, therefore, closing with the approval of the Commission, underscored the need to preserve competition in the world of sport and remove obstacles to free competition.

4.2.3. Still An Open Case? The Andretti-Cadillac Rejection

Despite the conclusion of the debate and subsequent modification of the FIA regulations, the European Commission's decision to close the case, recent developments can only once again focus attention on the issue of competition in Formula 1. In January 2024, Formula 1 rejected Cadillac's request to enter the competition. In an extended statement issued in the afternoon of January 31, the championship organizers formally rejected the proposal for Andretti-Cadillac's participation, confirming the reservations previously expressed by the ten Formula 1 teams following the official announcement of the candidacy promoted by the FIA. The American team, led by Michael Andretti, had expressed its intention to enter the championship as early as 2025, as evidenced by the presentation of a scale model of the car in the wind tunnel in the days leading up to the announcement. However, technological support from General Motors as a power unit supplier was only planned to begin in 2028.[214]

Opposition to the project was evident both from Liberty Media and from the participating teams since the opening of applications last year, raising objections of an economic nature. The presence of an eleventh team on the grid would have entailed not only logistical challenges related to the number of

[214] Andretti-Cadillac: respinta la richiesta di ingresso in F1. Se ne riparlerà nel 2028. Gazzetta Motoril.

boxes and available space in the paddocks of the circuits but also a reduction in revenues for each participant. Therefore, in the official statement, Liberty Media left open the possibility of considering any requests for entry into the championship for 2028, provided they were supported by a power unit supplied by General Motors, either as an official team or as a GM customer designing all components internally. The prospect of a new and prominent automaker entering the competition was seen favorably in terms of value addition. But the intricacy and difficulty of joining Formula 1 as an engine supplier were again underlined, showing that, despite General Motors' money and reputation, success is not assured. The admission request was denied because, from a financial perspective, Formula 1 specialists determined that Andretti had not proven he could make a meaningful contribution to the championship's value. Formally, the reasons for the refusal include the fact that the proposed team does not seem to have the necessary requirements to be competitive, which could compromise the prestige of the championship. Furthermore, the need for a third-party power unit supply for several seasons was considered a negative factor. It was finally noted that the addition of an eleventh team may put an organizational strain on race promoters, leaving less room for other competitors in terms of technology, operations, and business. But considering what has happened since, one must ask: did the 2001 European Commission ruling that changed the FIA regulations truly result in the transformation that was expected? In other words, have the obstacles to free competition actually been removed, as envisaged by the Court, or, in substance, has there been no revolution? Beyond the technical reasons mentioned, it is clear that the Andretti-Cadillac issue raises doubts once again about the limits to competition imposed by regulatory bodies and teams in order to preserve solely economic interests. However, the regulatory body has stated that the issue could be reconsidered in the future, but it remains uncertain if there will be further discussion on the matter at this time.

4.2.4. The Anneliese Dodds Case

Another case that required a ruling from the European Commission on the Formula 1 issue dates back to 2014, when Member of the European Parliament Anneliese Dodds notified Margarethe Verstager, the then Commissioner for Competition, about the possibility of opening an investigation into the distribution model of proceeds to smaller teams, further expanded in 2015 thanks to the complaints from Sauber and Force India[215]. Indeed, in February of the following year, the Commission, with 467 votes in favour, decided to open an investigation against Formula 1 regarding the distribution of prize money by the FOM (fueling suspicion of anti-competitive behaviour), and regarding the recent consent of the FIA (International Automobile Federation) to the acquisition of the Circus by the Americans of Liberty Media. Before the pronouncement of the European Commission, the entire

[215] Guerrin Sportivo. (2017, February 16). Focus: il Parlamento Europeo e l'indagine sulla F1. Formula-1.

automotive landscape posed an important question about the repercussions that such an investigation could have, in case the anti-competitive practices denounced by the previously mentioned actors were proven. In addition to the fine that the FOM would have to pay, equal to 10% of its turnover (about €168,000,000 in total), it would have been necessary to review the same Concorde Agreement, which was due for renewal at the end of the 2020 season.

Furthermore, regarding the potential conflict of interest related to the acquisition of F1 by Liberty Media: the MEP argued that before granting permission for the sale of Formula 1 to Liberty Media, the International Federation owned only 1% of the rights to that competition, acquired by Delta Topco in 2013. If Formula 1 had been sold by CVC Partners, the English fund managed by David McKenzie on behalf of Ecclestone, the FIA would have earned around £33 million (US$79.5 million) thanks to this share. However, this would have gone against the investigations conducted by the European Commission on Formula 1 between 1999 and 2001, which provided that the FIA had only a supervisory role, without any financial interest to avoid possible conflicts of interest, which the British MEP considered to be present.

If the existence of a conflict of interest had been confirmed, the acquisition of Formula 1 by Liberty Media would also have been called into question, leaving the championship without owners, especially after Ecclestone's removal. This possibility could have created serious difficulties for the highest level of motorsport.

During the same day in February 2015, the FIA's response promptly arrived, denying any wrongdoing in approving the transfer of the commercial rights of F1 to Liberty Media, despite benefiting from its own 1% share. The FIA emphasized that, in the sale of F1, there was no conflict of interest, also distancing itself from the commercial agreements between the rights holder and the teams. Moreover, the FIA stated that it could have denied permission for the sale only if the prospective holders of the commercial rights were found to be unable to fulfill their obligations. To quell the dispute (and the concerns of the FIA), the pronouncement of the European Commission arrived, which, not even fifteen days later, rejected the request of British MEP Anneliese Dodds to instruct an investigation into Formula 1.

In fact, European Commissioner for Competition Margrethe Vestager informed British MEP Anneliese Dodds that the body she chaired would not investigate F1 because "*the transaction in question did not meet the turnover thresholds necessary to fall within the Commission's competence*".[216]

[216] FormulaPassion.it. (2017, February 28). Commissione Europea respinge inchiesta sulla F1.

4.2.4.1. Insights on MotoE Case

In a different context but with notable parallels (not only in the field of motorsports), a situation similar to that faced by the Court of Justice regarding the FIA case emerges in the MOTOE affair (C-49/07) of July 1, 2008[217]. This organization, defined in the paragraph on "*Controversy in the main proceedings and prejudicial questions*", as non-profit, deals with the organization of motorcycle races in Greece. It had applied to the Minister of Public Order for authorization to organize, as part of a Pan-Hellenic trophy, six races in November 2000. According to Article 49, paragraph 2, of the Greek Road Code, this request had to be evaluated by ELPA (the Greek Automobile and Touring Club, a legal entity and nonprofit association), which represents the FIM (International Motorcycling Federation) in Greece, to obtain a favorable opinion for the authorization. However, ELPA never issued the requested opinion to the minister, arguing that its implicit refusal was illegitimate. Consequently, MOTOE appealed to the Administrative Court of First Instance of Athens, arguing that Article 49 of the Greek Road Code violated the constitutional principle of administrative impartiality and Articles EC 82 and 86 (now TFEU 102 and 106), allowing ELPA to create a monopoly in the sector and abuse it, as it directly organized motorcycle races. In the first instance, the Court dismissed MOTOE's appeal, arguing, in particular, on the one hand, that Article 49 of the Greek Road Code allows ensuring compliance with international rules relating to the organization, safely, of motorcycle races, and, on the other hand, that MOTOE did not argue that the said provision implied a dominant position in the common market or that the same provision could influence trade between Member States or that ELPA had abused such a position.

MOTOE appealed, and during the appeal process, the Greek judges decided to ask the Court of Justice two prejudicial questions:

- *"(...) Whether Articles 82 and 86 of the EC Treaty must be interpreted as meaning that they include within their scope the activities of a legal entity which has the status of national representative of [FIM] and which carries out economic activities such as those previously described, through the conclusion of sponsorship, advertising, and insurance contracts, relating to the sports events organized by it in the motor vehicle sector (...)".*
- *"(...) In the event of an affirmative answer, whether [Article 49 of the Greek Road Code] is compatible with the aforementioned provisions of the EC Treaty, since, for the granting by the national public authority (in this case the Minister of Public Order) of an authorization*

[217] In Case C-49/07. (2008, July 1). Judgment of the Court (Grand Chamber) on the Articles 82 EC and 86 EC – Concept of 'undertaking' – Non-profit-making association representing, in Greece, the International Motorcycling Federation – Concept of 'economic activity' – Special legal right to give consent to applications for authorisation to organise motorcycling events – Exercise in parallel of activities such as the organisation of motorcycling events and the conclusion of sponsorship, advertising and insurance contracts

for the organization of a motor vehicle race, it grants the aforementioned legal entity the power to issue a favorable opinion on the organization of the race, without setting limits, obligations, and controls on the exercise of that power (...)".

In other words, the MOTOE issue raises whether the dual role of an entity, which acts both as the national representative of an international federation and directly organizes economic activities related to sports events, is lawful.

To answer this, the Court considers that EU competition law applies to any entity, regardless of its legal status, if it engages in economic activity, such as offering goods or services on a market. Even if an activity is related to sport, this does not exclude the application of Treaty rules. A distinction is made between the administrative activities carried out by ELPA and its economic activities, such as the organization and commercial exploitation of races. Furthermore, the fact that ELPA is non-profit does not exclude it from being considered an undertaking.

To establish whether ELPA has a dominant position, it is necessary to define the relevant market, both in terms of products or services and geographical area. It is noted that ELPA's activities mainly concern the Greek market. However, it is up to the national judge to verify whether there are similar competitive conditions in the market. Regarding the issue of Article 86 EC, which concerns undertakings with special rights, it is concluded that Greek law, which grants ELPA the power to issue favorable opinions, may be considered a violation of competition rules if it favours abuses of a dominant position. In summary, ELPA may be considered an undertaking subject to EU competition rules, and Greek law granting it powers without limits could violate those rules.

In conclusion, the Court states the following: *"(...) A legal entity whose activities consist not only in participating in administrative decisions authorizing the organization of motorcycle races but also in directly organizing such races and concluding sponsorship, advertising, and insurance contracts in that context falls within the scope of Articles 82 EC and 86 EC. Such provisions preclude national legislation from granting to a legal entity, which organizes motorcycle races and concludes sponsorship, advertising, and insurance contracts, the power to issue a favorable opinion on applications for authorization submitted for the organization of such races, without setting limits, obligations, and controls on the exercise of that power (...)*".

The Court of Justice, therefore, concerning ELPA, has clarified that although part of the pyramid structure that regulates sport, its decision-making power on motorcycle race authorizations must not be exploited for economic purposes to the detriment of fair competition. If this power is not objectively justified for sporting interests but rather used for economic advantages, it becomes an abuse. The Court emphasized, finally, that ensuring fair competition requires equal opportunities for

all economic operators, and entrusting decision-making power to an entity directly involved in competitions creates an evident conflict of interest.

CHAPTER V
Personal Reflections on Future Perspectives: An Outline of the Legal Implications of Breakaway Leagues

Efforts have been made historically, not just in Europe but globally, through judicial decisions and partially supported by legal doctrine, to exempt the sports phenomenon - considered self-contained within legal systems - from the application of competition rules. The argument hinges on the notion that sports possess a unique "specificity" feature[218]. It has been posited that the nature of sporting events, participants, and the organizations involved, from small clubs to international federations, is primarily non-economic or non-commercial. Consequently, the principles of competition rules and the objectives of antitrust legislation are deemed inapplicable to the sports domain.

Even in the United States of America, the antitrust exemptions regarding sports got the green light from the Supreme Court, at least for baseball, which is the oldest American sport in the country. On the same premise within the dynamics of the federal system, this view was fuelled by the fact that the events were mostly state levelled and their cross-state impacts were restricted. Although the reflected feature is meaningless in and of itself, it is not in the framework of US law because the Sherman Act, for which application is sought, is a piece of federal law[219]. Therefore, using state jurisdiction, the local organizations sought and were able to secure further exemptions and privileges from the state legislatures.

The prominence of the non-commercial character of sports, which originally justified immunity, waned – again first in the United States than in Europe – with television, its associated commercial features of retransmission rights. As such, the change of the overall result in this evolution affected the scenario. Firstly, because certain sporting events and leagues ceased to be local in nature and started covering more than one state or requiring changes in federal laws. Secondly, the importance of events and media presence in growing athletic profiles enhanced their contractual strength – or their lack of it - which was hitherto limited to the union level (this is why, to preserve the original purpose of collective bargaining to ensure that the private law autonomy of sports organizations, certain exemptions were passed so as to restore individual athletes bargaining and economic power). This led to the reconsideration of the initial base for differential treatment. Last of all, the sports broadcasting opened the opportunity of economic interest (apart from the Non-commercial interest)

[218] Closius, P. J. (1985). Professional sports and antitrust law: The ground rules of immunity, exemption, and liability. In A. T. Johnson & J. H. Frey (Eds.), Government and sport. The public policy issues.

[219] Professional football immune from Sherman Act as a team sport not constituting interstate commerce, 105 U. Pa. L. Rev. 110 (1956).

such as the use and selling of the programs and pictures of events and athletes, sponsoring, betting etc.[220]

That argument for immunity, which also had its charm and reasonableness in Europe, gradually crumbled in judicial decisions on sports with respect to national antitrust authorities and the European ones. When shared, this argument, even before it is a legal one, was logically contradictory because the particularity of sport activities should enhance the need and call for surveillance of the behaviours of the parties. This can be explained by their nature and purpose that are in fact the retention of the competitiveness of certain processes which in turn is directly associated with the essence of sports activities. [221]

Of course, economic competition and competitive sports can be kept apart, but this may not always be the case, even if an analysis's main focus is on sports themselves rather than on organized sports. However, awareness of the fact that sports is not just about competitions and regulations generated a more progressive and developing view and, therefore, a *sub specie juris* analysis based on competition regulations. From one different angle, the specificity argument as the weapon to call for a free zone for sports is neither flesh nor unique to sports in this regard. Since antitrust laws have been in place, one has in fact been able to hear a variety of economic activities declare, one after another, that in their case, specific interests actually exist that pose a threat to the activity in question, and that each time the antitrust laws make sense, they should "intervene with force". It is appropriate to point out that, for quite a long time, the banking sector – as an economic sector by definition – has insisted (and has been given) on a privileged and preferential treatment due to the discussed concept of systemic risk.

The outcome is well-known, for banking, as well as for sports and, in general, for all activities that have an impact on the market: antitrust regulation is ubiquitous – or, more precisely, it was ubiquitous in Europe too since it assumed a normative stance for the process of EU integration – and it has grown in influence over time, all but exclusion’s spheres of life that are not regulated by the rules on competition law, and this, considering the progressively widening scope of goals attributed to antitrust itself[222].

Turning to the sports world and considering the self-interest unabashedly providing grounds for efforts to exclude ant-trust rules, it becomes apparent. First of all, as regards the general legal system

[220] MCoccia, M. (1999). Television rights on sports events and competition. Market, Competition, Rules.

[221] Bastianon, S. (2017). From Cassis de Dijon to Meca Medina: The specificity of sport between prohibitions and exceptions in European Union law. European Union Law. Greco, G. (2014). The social value of sport: A new limit to the so-called specificity? In Journal of Administrative Law. Di Nella, L. (2011). Sport in the primary law of the European Union: The new regulatory framework of the sports phenomenon. Review of Sports Economic Law, 5. Carbone, S. M. (2010). Sport and European Union law after the Treaty of Lisbon. Studies in European Integration.

[222] Osti, C. (2015). What is the point of antitrust? Italian Forum, V.

features, the sports movement without exception is autonomous, and this is evidenced by its characteristics in terms of regulation, organization, and jurisdiction[223].

I am inclined to agree with the notion that the organizational aspect is an essential prerequisite for both the identified competitive actions, which generate various kinds of sports, and the regulatory and jurisdictional actions performed at the sports associations' and national and international federations' levels. As anti-competitive legislation mainly affects the organizational and behavioural aspects, the incurred social control poses threat to the very compression of the sports system autonomy as an entire complex. Indeed, antitrust actions while having to do with sporting activities (and not the economic activities related with some of the sport related to product management like television rights or sale of event tickets), have focused on organizational as well as regulatory element and, as per certain literature available, the fact that antitrust control has grown to cast its net in to the professional sporting world has been credited with having contributed to the definition of the financial aspect of sports[224].

As is obvious based on the abovementioned premises, one might question what purpose the argument of specificity contains today, and if, as will be tried to be shown, it has a role in the application of the rules regarding antitrust at the European level affecting sports.

To begin, let me analyze who the subjects in the world of sports are that are (or would become) relevant from an antitrust perspective. Of course, the individual athlete is at the very foundation of the sports system, as a competitor and subject and further, on more than one occasion, starting with the case of Bosman – questions arise as to the importance of the individual as a direct beneficiary of the rules of competitions.

Far more often, the central subjects of antitrust cases have been teams, and (most of all) the federations and leagues, and the foregoing for both collective conduct and/or from the perspective of abuse of the dominant position respectively held by federations national and international, possibly in a joint dominance[225].

Considering the functional approach the Commission took in attempting to determine what qualifies as an economic activity indicator, it is now undeniable that these companies are entrepreneurial in character. The emphasis is placed on the actions or functions of sports cases rather than their formal legal classification, reinforcing the established general tendency that the content of sports matters more than its legal classification. Individual and collective profiles have components that could be helpful in presenting the specificity argument. It has also been observed that an athlete's role in

[223] Granieri, M. (2006). Forms of sports justice. In C. Vaccà (Ed.), Sports Justice and Arbitration. Milan.

[224] Bartee, H., Jr. The role of antitrust laws in the professional sports industry from a financial perspective.

[225] AGiannaccari, A. (2010). Antitrust immunity and American sports leagues: "Zero titles". Italian Forum, IV.

relation to their team, league, or federation assumes a particular relevance in the context of evaluating collective bargaining agreements, whether from a labor perspective or more directly addressing a crucial question regarding whether the collectively exercised contractual autonomy becomes a counterweighing force in bargaining processes. From this vantage point, the case is comparable to standard antitrust laws that deal with labor relations collective bargaining[226].

Sport actors have primarily been composed by teams, leagues, and federations and have always been the defendants directly affected by that constant and understated aspect of antitrust laws that also affect organizational, jurisdictional, and regulatory features and settings. The exercise of what is described as regulatory power by national and international federations has been deemed an element of abusive conduct which has occasioned their subsequent accountability to judges and authorities. The regulatory power has been used to create game rules that are viewed as merely recreational or entertaining when the exemption was granted on the grounds that the regulated activities are not primarily commercial in nature and the exemption is based on the concept of sports activities. The same power, with regards to the economic (or primarily economic) goals within its framework, can turn into – and has indeed turned into – a form of oppression with vast economic consequences.

While the subjection of collective entities to antitrust is somewhat established and necessary given the ongoing changes, the position of the individual is not yet fully clarified, although antitrust authorities have so far excluded the possibility of considering the professional athlete as equivalent to an enterprise as a recipient of the mandatory rules of competition law. Instrumentally, in the Bosman case, the player's lawyers attempted to argue in this sense, to present the professional player as directly harmed by the abusive conduct of the federation to which he belonged. Apart from the logical difficulties in supporting such a reconstruction, it should be noted that the legislative framework on antitrust damages has evolved, and the range of injured parties has been expanded to the point of rendering the reconstruction of the player as an entrepreneur unnecessary for the recognition of his standing to bring an action for damages against abusive conduct.

The enforcement of antitrust law and, particularly, Articles 101 and 102 TFEU requires a delicate analysis of a number of factors within certain contexts. First, the presence of moderate restrictions, and therefore the interference with the competitive process is also significant. Secondly, for agreements and determining the impact of restrictive conduct on the relevant market, and for non-agreement cases, the configuration of abuse of a dominant position. These are obligatory procedures and in doing this the sports world has also endeavoured to explain its reasons in front of Court of Justice also. For example, in Meca-Medina, the athletes complained against the IOC on three distinct but interconnected grounds of abuse (these arguments were met with opposing theses from the

[226] Ichino, P. (2000). Collective bargaining and antitrust: An open problem. Market, Competition, Rules.

defendants)[227]. First of all, they complained about the presence of the agreement appeared in the form of regulatory terms and based on the 'meagre evidence' regarding the ban of doping substances, whereas, creating a zero-tolerance policy and exclusion of those people whose concentration of hormones or food consumed exceeds usual levels or those people who were simply caught with prohibited doping substances by chance or due to employ of subjective opinions. Secondly, they complained in the organizational profile of the international committee for making that certain of a strict liability meant that the athlete is deemed guilty and has no power to prove the case. They also pointed out that the creation of the bodies endowed with the competence would be jointly insufficiently independent of the IOC (thus, on the judicial level) and would serve to strengthen the already anti- liberal tendencies of the agreement.[228] As a result, it is evident that although the Olympic Committee and the federation itself are reflected in the ways that their autonomy is expressed, there is also a distinct structural focus of an architecture that manifests a restrictive agreement to the clear detriment of the athlete, who is, after all, the center of the entire organization. It is also clear that admitting antitrust intervention on the profiles precisely these ones mean a direct interference in the core of effect.

Among all the aspects that must be distinguished during the implementation of antitrust rules, behaviour itself must be considered very closely since this aspect contains ideas about all the factors that relate to the compatibility of the specific case and its impact on the market.

If it must be true that no arguments can remove the nature of an agreement or the presence of a joint dominant position among the entities of sports, and if it is undeniable that some behaviours are restrictive (regulatory, organizational, judicial), the problem becomes, what about the remnants of the argument of specificity? To sharpen the question: Could the argument of specificity still play a role in the concrete evaluation of effect of conduct and thus is the factor capable of excluding or mitigating antitrust liability?

Therefore, the previous argument of specificity in accommodation of immunity has been put to a wash. Still, it is unclear in how many ways it can affect the development (and the impact it has had) of the antitrust rules in the field of sport, as identified – at an institutional relevance level – by the European Commission in a number of policy papers on sports produced during the past years.

Looking at genuinely sports-related disputes (not those tied to interests external to the competition, such as television rights or betting), it is a constant that the litigation is almost always initiated by athletes who claim to be harmed by the regulatory powers of the organizations. Athletes, bosses and

[227] Fabiano, L. (2006). Sports disciplinary law and competition protection: Some reflections on the relationship between community law and the phenomenon of doping. Administrative Justice.

[228] Vigoriti, V. (2000). The Court of Arbitration for Sport: Structure, functions, experiences

federations are not in a contract or competition-based relationship as has been discussed earlier, athletes do not have the legal status of entrepreneurs as has been ruled by the Court of Justice. However, as has been said, since Bosman, the conduct of the sports organizations to which they belong has been considered as plural offensive, that is to say, it is capable of pursuing more than one practical opposite aim which can interfere inter alia with the freedom of movement and the right to receive services on the one hand and, on the other, it is capable of overriding the normal operation of the market.

At least once there has been a misunderstanding as to this characteristic of being multi-offensive. Something similar has been called in Meca-Medina, in which the Court of First Instance (later corrected by the Court of Justice) made a legal mistake when, considering that a regulation that only has a sporting content (namely, doping controls) does not have to do with free movement rules and therefore neither with the competition law. The choice is clear: even if the restrictions resulting from measures taken by sporting associations are not regarded as falling foul of the free movement rules as has been postulated here, where the restrictions allegedly do not violate Art. 45 because they concern matters that are sporting and therefore outside economic activities, it does not follow that sporting activities are *a priori* outside the reach of Arts 81 and 82 of the EC Treaty [now 101 and 102].

In passing, remembering the case of Meca-Medina, it was a legal mistake of the Court of First Instance that led to the annulment of a verdict and the desire for a decision on the merits under the Statute of the Court opened up new opportunities for the addition of new considerations concerning the specificity of sports activities in assessing compliance with the restrictions stipulated in Article 101.

Doing away with the possibility of a strict application of sporting rules thus removing the only mechanism devoid of the ability to protect from the competition rules, uncharted, in Meca-Medina the Court of Justice proceeded with an interpretative achievement that exported the Wouters test to the whole sporting world which has been deemed as quite doubtful by some. This decision entailed a subjective parallel, extending, with reference to the sports sphere, to a profession regulated on the basis of the Wouters case law, an interpretative key designed for the provision of legal and accounting services.

This decision involved an undeniable stretch, applying by analogy to sports an interpretive standard created for a regulated profession (the provision of legal and accounting services) as established in the Wouters jurisprudence[229]. While the use of analogy by the apex court is arguably contentious, it

[229] Bastianon, S. (2017). Sport, antitrust. European Union Law.

remains incontestable[230]; precedents are set at this level and, despite being debatable, must be accepted as part of living law. The only plausible, if weak justification for relating these two domains is their supposed specificity; in both instances, the activities involved considerations other than the purely commercial interest of an ideal customer and could not be simply reduced to the provision of services typical of unregulated markets.

In response to criticism following the Meca-Medina case, it is necessary to determine whether the Wouters test is inappropriate or if, because of the unique characteristics of sports, which are akin to those of other independent but regulated professions, the mere use of the test offers a tactical advantage to the accused sports organization looking to avoid accountability for engaging in behavior that has been alleged to be restrictive, distorting, or harmful to competition in the relevant sport-related market. It remains unclear whether such a secondary meaning was intended by the Court of Justice; it might have been the case that the Court was not entirely sure how it would read its own ruling at the time, given the tendency of CJEU to be much more cautious in its decisions and not unmask itself in them, and at the same time telling interpretive decisions that certain steps had to be taken, thus leaving the specifics of implementation in the hands of interpreters.

In the usual nature of antitrust actions, the dynamics of the actions in sports matters missing out on the methodological indication from the Court of Justice would then take the following tropism: the authority (in Europe, the Commission) has to prove the restrictive character of the measures under consideration and the counterparty, on the other hand, could either put forth contrary facts or in the event the restriction of competition was proved, arguments or facts which could, satisfy (cumulatively) the four conditions of Article 101(3).

Thus, I suppose having good grounds for suggesting that, at least in the context of the activities of the sports federations, the three components of the Wouters test are not only less rigorous, but also to some extent suitable for bringing into an argument as to the specificity of sport activities, thereby making the process of defending against accusations of behaviour falling under Article 101 (1), during sports activities, easier. This does not set up an exemption regime but instead creates a way to balance the requirement for the competition rules to apply across the board with the fact that some fields are more specialized.

Broadly going by Wouters, the Court of Justice pointed out that not all the contracts and agreements between the undertakings having repercussions on competitive pressure constitute Article 101 (previously Article 85)[231] case, indicating elements it considered relevant for a proper appraisal. With

[230] Eisenberg, M. A. (2010). The nature of common law.

[231] § 97 of Judgment.

reference to this observation, the Court brought in the evaluative elements which was later renamed as the Wouters test and contains three important terms.

Indeed, merely 'meeting' the requirements of this part of the test would even prevent the agreement or decision of the association of undertakings from falling under Article 101, with the important consequence of forcing the Commission not only to abandon the maximization of the 'restriction by object' argument but also to ensure that even the most complex assessment of the specific circumstances of the case is undertaken.

Thus, the references to keeping the global context in mind will be confined to stating that it is necessary to bear in mind the objectives of the adoption of the allegedly restrictive decision, particularly, to bear in mind such concepts as the typical reasons for the restrictive decision making in the sports context, competition and organization of the competition. In this context, the used approach implies that the Commission must take on the internal viewpoint of the sports sphere and indicate that, albeit receding, non-pecuniary concerns do exist and are deemed relevant.

Secondly, it is necessary to check whether the findings attributed to the so-called restrictive decision stem from the tendency to achieve its goals. Any effects derived from it are likewise subject to this kind of evaluation to determine how the restriction applies in understanding the circumstance where these effects come into play.

Lastly, the possibility of the restriction belonging to the scale of proportionality must be considered, which being put in unavailability of less restrictive measures in the practice.

Despite the narrow interpretation of clause four and erosion of means-end fit in the context of sports, it is crucial to recognize that the proportion between objectives and means leaves considerable discretion to the sporting body that adopts the so-called restrictive measure. This is especially so since the goal is internal with the sports paradigm and therefore, open to any and all objections under the heads of specificity, as well as to the large number of values inherent in the sporting process and structure.

Shifting focus to the Wouters test, the issue at stake is that it is not of universal application, but that it points to a specific regime which, in the present context entails a considerable margin of discretion for sport entities, at least as far as the argument is concerned.

This leeway is significantly broader than what would be the range of opportunity if the Commission were certain about a practice's Article 101(1) involvement on the grounds of its being restrictive by object. Such a circumstance would easily alter the burden of proof back to the sports organisation to prove that, notwithstanding the bargaining power disparity or the precautionary restraint imposed under the agreement or decision, the four criteria in Article 101(3) have been satisfied. The suggestion here is that consequently, while the Wouters test has been implemented in investigatory proceedings

without the rule of reason being institutionalised in the sphere of sports, it has even served to heighten the burden of proof on the Commission.

Indeed, when one contemplates the fact that the Court of Justice moved the Wouters test to the sports world an individual may sit back and wonder whether the move was appropriate, it could have been made on impulse but from a practical point of view it is not necessarily a sad thing. This is particularly because all three aspects of the Wouters test can be verified for the sake of the conclusion; it lets the Commission as well as sports entities examine and argue not only over the matters of sport specificity but of the specificity of a given discipline as well.

This does not mean a privilege for the sports world but an effort—whose effectiveness only future evolution will manifest in its favour—an attempt to offer a space to the specificity argument without constantly having to face barriers of antitrust application.[232]

Furthermore, noting that this evaluative standard employs the assessments of relevance and rationality criteria, the Wouters test inform the sports institutions that they can still undertake a preliminary measure of the possible legal offensiveness of the internal regulations by assessing for the feasible better alternatives. This is important in a decentralized legal exception, where it is the sports organisation's role to measure the distance between its behaviour and the provisions of Article 101. They would rather have some information, no matter how small, than zero at all; it is better to have the 'light' of guidance, however faint it might be.

5.1. The Impact Of The European Court Of Justice Sentence

On December 21, 2023, the CJEU explained why the preliminary questions, posed by the Madrid Court, do not concern themselves with the nature of the Super League initiatives and whether the strategy is compliant with the laws of the European Union, but rather the compatibility of the system of prior permission of the competitions organized by third parties, as well as the participation of clubs and players in such competitions with Articles 56, 101, and 102. Moreover, the judgment assesses legal conformity of FIFA system comprehending sale rights to competitions related to football organized by FIFA and UEFA with the TFEU Articles 101 and 102.

The judgment starts with the reconstruction of the preamble and the principles to be applied to sport through European law focusing on how the judges, on the basis of the value of football as a sport that involves millions of people and the related media attention, justified common rules in the organization and conduct of international competitions when the purpose is to achieve homogeneity and coordination of such competitions into a single calendar, and on the principles of open stakes that, it must be pointed out, are rather dissimilar to the other project that, in its turn, was initially offered by

[232] Van Rompuy, B. (2017). Van Rompuy.

the European Super League Company S. L. , which, as it was distinguished earlier, intended a closed competition that would interfere with the other international tournaments. Likewise, the idea of admitting, as the UEFA and the FIFA have done, the prior approval of competitions and the participation of clubs and players in their rules is generally considered lawful, for the purpose of compliance with common rules. However, the legitimate adoption or implementation of such rules and sanctions requires the prior establishment of a framework of substantive criteria and procedural rules that qualify the system of prior authorization as transparent, objective, non-discriminatory, and proportionate.

Likewise, sanctions must be governed by the same criteria and determined in accordance with the principle of proportionality, taking into account the nature, duration, and severity of the established violation in each case. The noted absence of this framework of regulatory principles (substantive and procedural) determines that the adoption and implementation of rules on the prior approval of competitions, participation in them, and related sanctions cannot be considered transparent, objective, non-discriminatory, and proportionate, therefore constituting an abuse of a dominant position under Article 102 TFEU. Also, EU Court of Justice further observes that the rules concerning the prior approval of football competitions introduced and applied by FIFA/UEFA, on paper based on legitimate concerns, actually entitle it to regulate and dictate the terms for access to the reference market of football-related business for any potentially competing enterprise for otherwise anti-competitive purposes, additionally strengthening them with the rules governing clubs' and players' participation in such competitions and related sanctions because the absence of restrictions, that can ensure its transparency, objectivity, precision and non-discriminatory character. Once again, the lack of a framework of principles defined *ex ante* leads to the conclusion that the rules in question cause harm to competition and violate the prohibition provided for by Art. Article 101(1) TFEU, constituting a decision by associations of undertakings having as its object the restriction of competition, in the insofar as it allows UEFA and FIFA to prevent any company wishing to organise a competition potential competitor to access the resources available on the market, i.e. clubs and players. Similar is the conclusion that the EU Court of Justice made in relation to the compatibility of the system of prior authorization and the sanctions related to it as applied by UEFA and FIFA with the Treaty articles governing freedom to provide services under Article 56 TFEU.

All these observations made so far concerning the lack of substantive and procedural standards (that would guarantee the transparency, objectivity, non-discrimination, the proportionality of the control measures) and on the discretionarily of the control measures mentioned lead the Court to conclude that this violation is also given, as well.

In particular, as has been informed earlier by the EU Court of Justice, these rules effectively preclude the chance for any third-party enterprise to provide and market football competitions between clubs in the territory of the European Union and the right for any European professional club in football and, more generally, for any other enterprise to engage and to provide services connected with the organization and marketing of such competitions.

For each of the violations identified, the Court introduced the issue of possible justifications, even though the related analysis is largely left to the Madrid Court. Concerning the breach of the prohibition of abuse of a dominant position, the Court explains how, such conclusion rises from the foregoing, appears to be anything but random and objective to dismiss the idea that dominant companies, when engaging in conduct that may breach Article 102 TFEU, can disconnect it where the conduct complained of is said to be *"objective justification defence"*, because of the discretionary feature of the system of pre-authorization. As for the so-called *"efficiency defence*", namely the possibility for the dominant undertaking to show that the conduct in question, is capable of producing efficiencies that will be sufficient to balance the harm caused to consumers, in reiterating that failure to provide definitive, precise, verifiable, and non-discriminatory criteria makes clear that both UEFA and FIFA exist and operate in a monopolistic regime, effectively preventing any form of competition in this market.

A similar reasoning is made regarding the decisions of associations of undertakings in violation under Article 101 TFEU: on the one hand, the Court did not deem it necessary to analyze the actual effects of such decisions as well as, on the other hand, pointed out that the operation of the exemption would require FIFA and UEFA to show evidences for the fact that the above-mentioned conduct is aimed at achieving efficiency gains, whose effects fall adequately on users, without imposing restrictions not indispensable for their achievement and without eliminating all effective competition for a substantial part of the products or services concerned.

It should, however, noted that the evaluation on this point should be left to the referring judge, such had been the reconstructive structure of observations and the judgment offered, that it could not easily be seen how the allegation of discretion accorded to UEFA and FIFA in the adoption of rules intended to prevent any rivalry in the organization of football competitions between clubs in the territory of the European Union could be answered. Also, it is quite imperative to remember the existing jurisprudence of the Court of Justice and, in particular, some fundamental principles laid down therein which state that measures being of non-state origin and restricting the fundamental freedom, outlined in the Article 56 TFEU, can only be regarded as compatible with the European legislation if, on the one hand, their application being reasonably justified by the existence of certain legal value, and, on the other hand, that such restrictions comply with the principle of proportionality.

On this point, the judgment wished to stress, that the laying down of rules concerning the prior approval of football competitions between clubs and as regards the participation of professional football clubs and players in such competitions, can, in principal, be legitimized with the need, on one hand, to guarantee that such competitions states that they are in compliance with the principles, values and rules on which professional football is founded, and on the other hand, to guarantee their integration into the "organized system" of national, European, and international competitions that characterize sports discipline

In addition, to the further ancillary question posed by the Madrid court to determine whether, according to FIFA regulations, they and UEFA, together with the national federations that are members of the aforementioned Union, claim exclusive ownership of all rights resulting from competitions taking place in their jurisdictions, thus assuming full responsibility for another sale, the Court is entirely categorical regarding their illegitimacy, especially since their operation is linked to prior authorization, participation, and sanctions for which similar conclusions have already been reached.

Since the rights associated with the commercialization of football competitions belonging to the clubs that takes part in the competitions and any other organizer of the games are taken away by these rules, when it is impossible to come up with an alternative model, such regulations can be deemed as restrictive of competition under Article 101 TFEU and as an abuse of the dominant position under Article 102 TFEU. In this case as well, it will be up to the referring judge to assess the possible existence of justifications, according to an analysis that is particularly interesting, considering that already during the proceedings before the Court, UEFA and FIFA, with the support of various national governments and the Commission, argued that these rules allow: (i) enhancing some levels of production and distribution that are relevant to contributing to the reduction of pertinent transaction costs as well as the uncertainty that rivals and buyers would face if they would need to negotiate with the member clubs on an individual basis and which could, perhaps, have different objectives and profits; (ii) to reinvest in the users the part of the superior profit that stems from the aforementioned production and distribution improvements as well as from the financing by UEFA and FIFA, of projects for solidarity redistribution of proceeds in favour of all other football clubs, whether professional or amateur, athletes, women's football, young players, and thereby, to fans, consumers, and all EU citizens involved in amateur football.

With reference to this, it remains very hard to argue that the overarching viability of football appears always boosted by the impact that internationals bring to professionals and amateurs, who while they may not compete, derive social benefits by funding the scouting and development of young

individuals, creating extensive social returns regardless of the absorption of these talents into professionalism and elite football.

The judgment of the Court of Justice has been hailed by many as revolutionary, especially considering its economic implications and the different negotiating and political power that clubs, empowered to take autonomous initiatives with renewed strength, will have. From a legal standpoint, notwithstanding that no one (not even Advocate General Rantos in his conclusions) has ever raised doubts about the right of the clubs supporting the Super League to establish their own independent football competition, it is surprising how peremptorily the Court of Justice has found the illegitimacy of the current rules on prior authorization, despite them being a cornerstone of the pyramidal and vertical conception in the organization of sports competitions within the so-called Olympic movement. In the same way that no consideration is given to the actual or potential characteristics of the potential antagonistic competition, the judgment concentrates its attention on the classic themes of European law—violations of competition and the free provision of services—without providing any room for the reconstruction of a purported European sports model or the notion that sport is thus exempt from compliance with certain provisions of Union law. Nevertheless, in the broader context of the judgment, it can be observed that a system of prior authorization established by an international federation might be compatible with European law, as long as there is a pre-defined framework of substantive criteria and procedural rules to ensure transparency and objectivity, preventing discriminatory and arbitrary exercise of such power. Additionally, the frequent references to the values of open competitions, merit, and solidarity suggest that even with the required principles in place, the authorization of a closed and elitist project, like the one at the center of this case, would still have been denied.

Also in light of these observations, it is really difficult to hypothesize what the consequences of the described decision will be on the governance of European and global professional football, but it would not be so surprising if, rather than leading to a dissolution of the current model, it were to lead to a restructuring that helps the main clubs, currently organized in the ECA, to have a greater weight in defining the formats and the distribution of revenues, remaining firmly within FIFA and its competitions, driven by the common intent to preserve the hegemony, widely supported by the figures, that European football exercises globally.

5.1.1. What Will Happen Next?

Foreseeing future developments is easier said than done because the full impact of the interpretation of the law by the ECJ is numerous and extremely hard to anticipate. However, the merit of these precedents is clear: it gives the aspiring rival solid legal framework within which they hope to counter

the sports regulators. In order to attempt to provide an opinion on the matter, I would support the thesis presented by lawyer Felice Raimondo in his analysis of the Super League case[233].

Until December 21, 2023, any individual could be punished not only in the Community Cour but also according to the rules that the Federations recognize as legal.

However, as the ECJ has stated, the current approval rules have been deemed unlawful since it violates EU antitrust regulation. This means that should these regulatory bodies fail to change these rules and expunge all conflicts with EU law (as there are several), then they act entirely outside the bounds of what is permissible under Community law, and are therefore completely illegitimate.

It is important to remember that any domestic rule that conflicts with EU law must be disregarded: simple non-application of the national rule, which is contrary to European Union law, particularly in the event of the conflict with EU law that has been identified by the EU Court of Justice, constitutes a clear legal obligation for the member state and all its branches must adhere to it.

In effect the state legal system acknowledges and encourages independency of the national sports legal system; in the same respect there is the understanding that while the sports legal system is provided with the measures of independency, such is accorded in the extent of compliance and in the extension of technical rules[234]. This is so aligned to the AGCM which, based on the European case law, pointed out that the regulation by a Sports Federation of other economic activities within the sports world par excellence, falls fully within the antitrust regulation. It has been aptly stated by the European Court of Justice that the prohibition, as stated above, of an activity shall not, for the sole reason that it relates to sport, be immune from the provisions of the Treaty, including the competition law rules of the Treaty[235].

Therefore, restrictions arising from sports regulations must be assessed based on the context in which they were introduced and the objectives pursued, and in any case, they must not exceed what is strictly necessary and proportionate to ensure coordination with the sporting activities to which they are connected, solely to preserve the proper conduct of these activities[236]. The Italian sports legal system, therefore, except for purely technical rules, cannot escape compliance with Community law. The first consequence is that, if a club or athlete were sanctioned with exclusion from the championship, cups, or the national team as a consequence of joining an alternative tournament repudiated by UEFA, this decision could be challenged: first before the sports courts, then before the Antitrust Authority (in Italy, the AGCM has jurisdiction), and finally in ordinary courts to seek compensation for millions in damages.

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[233] Raimondo F. (2022). Super League.

[234] Supreme Court of Cassation, Civil United Sections, Judgment, February 2, 2022, No. 3101

[235] Court of Justice of the European Union, MOTOE v. Hellenic Republic, Case C-49/07.

[236] ISU Case.

In the latter case, the dispute will not necessarily be judged based on Community law and will never reach the offices of the ECJ. In the case of the Italian federal legal system, there is currently an anti-Super League rule that prevents any Italian club from participating in competitions not recognized by UEFA. It should be noted that this is a de facto prohibition, so there is not even the semblance of an approval regulation. Thus, if the FIGC does not voluntarily eliminate Article 16 of the NOIF, introducing an approval procedure very different from that already implemented by UEFA (i.e., transparent, objective, non-discriminatory, and proportionate), there is a risk of opening a procedure before the AGCM and, in the event of revocation of affiliation against a club, opening a dispute first before the Italian sports courts and then in ordinary courts for a gigantic compensation claim. An analogous situation applies to other championships and European countries.

Regarding English teams, the most powerful from an economic perspective, many commentators have hastily dismissed the issue by thinking that post-Brexit, they are not subject to EU law; this decision does not affect them. Although formally true, the UK also has an antitrust authority, the CMA. Well, UK antitrust law has so far been permeated by the same principles as EU antitrust law. Therefore, at present, a competition violation committed in EU territory will likely also be a violation in UK territory. However, this will have to be confirmed by the antitrust authority, and the timing of this evolution is unpredictable. Moreover, any potential legislative intervention by the UK government must respect the existing antitrust framework, and the regulator's stance cannot be changed at the flick of a switch.

Considering the aspects mentioned so far, we can assert that the Super League has achieved a significant victory in battle, but the war is far from won. The reactions of FIFA and UEFA still intimidate many clubs. The ECJ's decision needs to be digested, understood by all, and, above all, the A22 company must position itself as a credible interlocutor, changing its approach from the initial attempt launched. The presentation of the new tournament is a step towards significant improvement, as it appears to respect the solidarity and meritocratic principles of European football.

In my view, it is highly likely that, at least initially, the Super League will become a separatist competition, as happened in basketball, with some clubs choosing to play in the new competition at the expense of UEFA tournaments. It will also be crucial for A22 to provide legal assistance to all participants (clubs and players) who may face punitive reprisals from FIFA and UEFA. These details, as well as potential revenues (which could change the minds of many clubs), will likely emerge in the coming months. The definitive solution will come only after further rulings by antitrust authorities and local courts, which will have to adapt to the historic precedents set by the European Court of Justice. The hope is that dialogue will prevail, respecting Community principles, to expedite the process and avoid clogging up the courts. After all, the most important court has already spoken,

opening the doors, not to the old Super League, but to the competition that FIFA and UEFA have never had and will now have to accept, albeit reluctantly.

APPENDIX

1. BIBLIOGRAPHY AND SITOGRAPHY

- A. Giannaccari, A. (2010). Antitrust immunity and American sports leagues: "Zero titles". Italian Forum, IV.
- Accusations Against Donaghy,Eurosport, July 21, 2007.
- Andretti-Cadillac: respinta la richiesta di ingresso in F1. Se ne riparlerà nel 2028. Gazzetta Motoril.
- Arcari, Z. (2023, December 24). F1, Patto della Concordia 2024: l'elemento cruciale e paritario.
- Ballketing. (2022, February 7). Euroleague Basketball: The mirror the European Super League looked itself into.
- Barretto, L. (2020, August 19). Analysis: What the new Concorde Agreement means for Formula 1. Formula 1 website.
- Bartee, H., Jr. The role of antitrust laws in the professional sports industry from a financial perspective.
- Bastianon, S. (2007). Antitrust sport and competitive balance in EU law.
- Bastianon, S. (2007). Antitrust sport and competitive balance in EU law.
- Bastianon, S. (2017). From Cassis de Dijon to Meca Medina: The specificity of sport between prohibitions and exceptions in European Union law. European Union Law.
- Bastianon, S. (2017). Sport, antitrust. European Union Law.
- Bellinazzo, M. (2021, April 22). Calcio, Superlega naufragata, resta il nodo dei deficit dei club. Il Sole 24 Ore, p. 29.
- Bertolino, F. (2022, December 15). Serie A, the Melandri Law reform arrives: TV rights can be sold for five years.
- Bevacqua, M. (2011, July 1). Perché si è fermata l'NBA. Cos'è il "lockout" che ha sospeso il campionato di basket americano, e cosa c'è in ballo.
- Blake, A. (2017, September 23). Golden State Warriors reject White House invitation after Trump rescinds offer to Stephen Curry. The Washington Times.
- Brockinton, L. (1999, February 1). NBA launches new programming deal aimed at Britain's swinging set. *SBJ Sports Business Journal.
- Calcio e Finanza. (2023, March 6). UEFA reports €4.5 billion in revenues in 22/23 but expected deficit.
- Calcio&Finanza. (2021, June 11). Caos diritti tv in Francia: Canal + si ritira dopo l'arrivo di Amazon.

- Calcio&Finanza. (2021, March 31). Bundesliga, -5% per i diritti tv 21/25: 1,1 mld a stagione.
- Calcio&Finanza. (2023, December 31). Serie A, political mess: the law for youth sectors never applied.
- Calcio&Finanza. (2023, July 10). UEFA anticipates €3.5 billion in revenues in 23/24: 78% to clubs.
- Calcio&Finanza. (2024, February 3). TV Rights, the Premier League-Serie A Comparison: The Latest English League Earns 40% More Than the First Italian One.
- Calcio&Finanza. (2024, March 1). Serie A, more money for those who play young players: how much do clubs earn.
- Caprioli, R. (2007). Il significato dell'autonomia nel sistema delle fonti nel diritto sportivo nazionale. Nuova giurisprudenza civile e commerciale, 2007(II), 285
- Carbone, S. M. (2010). Sport and European Union law after the Treaty of Lisbon. Studies in European Integration.
- Cares.Nba.com
- Cesarini Sforza, W. (1963). Il diritto dei privati, il corporativismo come esperienza giuridica. Milano.
- Cesarini Sforza, W. (1969). La teoria degli ordinamenti giuridici e il diritto sportivo. Rivista di Diritto dello Sport.
- Chelsea FC and Manchester United FC Annual Reports 2008-09.
- Closius, P. J. (1985). Professional sports and antitrust law: The ground rules of immunity, exemption, and liability. In A. T. Johnson & J. H. Frey (Eds.), Government and sport. The public policy issues.
- D'Andrea, A., & Masciandro, D. (2016). Financial Fair Play in European Football: Economics and Political Economy. BAFFI CAREFIN Centre Research Paper, (2016-15).
- De Marzo, G. (2003). Ordinamento statale e ordinamento sportivo tra spinte autonomistiche e valori costituzionali. Corr. Giur., 1254.
- Deloitte Football Money League 2024.
- Desideri, L. (2023). Football clubs and Financial Fair Play.
- Di Nella, L. (2011). Sport in the primary law of the European Union: The new regulatory framework of the sports phenomenon. Review of Sports Economic Law, 5.
- Dunkest.com (2022). Euroleague vs NBA: History of a Challenge. How the NBA was born and the differences with the Euroleague. Why the NBA is the most beloved league by basketball fans.
- Efosi, S. (2016, October 27). BAA and ABL: Basketball in America before the NBA.

- Eisenberg, M. A. (2010). The nature of common law.
- Eurodevotion.com. (2021). Euroleague Story 2000/2001: The Beginning of a New Era. Balbo.
- EuroLeague to distribute 79% of the 2020-21 season revenues to clubs via the market pool. (2020, July 9). EUROHOOPS.NET.
- European Commission (2022, April). Study on the European Sport Model.
- European Commission. (2020, December 3). Guidelines on Horizontal Cooperation Agreements.
- European Commission. (2021, October 26). Definition of Relevant Market.
- Eurosport. (2023, december 21). How will the new super league be? 64 teams in 3 leagues: star, gold, and blue. Promotions and relegations: how does it work?
- Evans, B. (2021, July 11). "Indy Split: The Big Money Battle that Nearly Destroyed Indy Racing" Reviewed.
- F.P. Luiso, La giustizia sportiva. Milano, 1975.
- Fabiano, L. (2006). Sports disciplinary law and competition protection: Some reflections on the relationship between community law and the phenomenon of doping. Administrative Justice.
- Fantini, D. (2023, December 1). Prize money for Constructors' World Championship: How much do the top 10 teams earn? Ferrari, in third place, receives 122 million.
- Fantoni, F. (2017, October 6). Success in the NBA? It's not a matter of money.
- Ferrara, L. (2007). L'ordinamento sportivo: meno e più della libertà privata, Journals. Diritto pubblico. Issue 1/2007
- Ferrari S.p.A. Annual report 2022
- FIA. (2022, February 18). Formula 1 financial regulations.
- Fiba.com (2022, August 15). Basketball takes big leap with First McDonald's Open.
- fibabasketball.com. (2022, June 9). FIBA's second Secretary General Borislav Stankovic altered course of international basketball.
- fibabasketball.com. (2022, November 15). Third Secretary General Patrick Baumann led modernization of FIBA.
- Figus Diaz, J., Marini Balestra, F., & Scassellati Sforzolini, G. (2016, June 10). La ripartizione dei ricavi derivanti dalla vendita collettiva dei diritti audiovisivi degli eventi calcistici. Controversie tra le squadre e prospettive antitrust.
- FIRSTonline. (2021, December 14). Calcio, Dazn sbarca in Spagna: dalla Serie A alla Liga.
- Flanagan, K. (2015, April 22). Basketball's Shot Clock: A Brief History.
- Formula 1 Website. The beginner's guide to the F1 Drivers' Championship.

- Formula 1 Website. What is F1?
- FormulaPassion.it. (2017, February 28). Commissione Europea respinge inchiesta sulla F1.
- Formulapassion.it. (2021, February 7). F1 | 7 febbraio 1981: tensione a Kyalami.
- Formulemoy1.com. (2020, November 27). When F1 Declared War on Itself.
- G. Manfredi. Plurality of systems and judicial protection. The relationships between state justice and sports justice. Ibid.
- G. Vidiri (2003). Organization of competitive activity, autonomy of the sports system, and Legislative Decree No. 220 of 2003. In Giustizia Civile, II, 509+; F. Ghignone (2006).
- G. Vidiri (2007). Autonomia dell'ordinamento sportivo, vincolo di giustizia e azionabilità dei diritti in via giudiziaria. Corriere Giuridico, 7, 1115+.
- Ganglani, N. (2022, May 3). How David Stern eradicated the use of drugs in the NBA.
- Ginesta, X., & Viñas, C. (2023, March 7). The geopolitics of the European super league: A historiographical approach and a media analysis of the failed project in 2021.
- Granieri, M. (2006). Forms of sports justice. In C. Vaccà (Ed.), Sports Justice and Arbitration. Milan.
- Greco, G. (2014). The social value of sport: A new limit to the so-called specificity? In Journal of Administrative Law.
- Guerrin Sportivo. (2017, February 16). Focus: il Parlamento Europeo e l'indagine sulla F1. Formula-1.
- History of the 3-Pointer. (2014, January 1).
- History.com Editors. (2009, November 16). NBA merges with ABA. HISTORY. Retrieved May 15, 2024.
- Hohmann, F. (2021). The Financial Motivation Behind the Super League Attempt.
- Ichino, P. (2000). Collective bargaining and antitrust: An open problem. Market, Competition, Rules.
- ilBIancoNero.com. (2024, March 4). Calendario Juve in Champions League: quando ci sarà la prossima partita.
- International Communication Gazette. (2011). Global media, business and politics: A comparative analysis of News Corporation's strategy in Italy and the UK, 73(8), 670-684.
- J. Tognon (2003). Law and policies of Sport in the European Union, 81-85. For further insights, see J. Tognon, Sport and the Treaty of Lisbon: The unresolved problem of specificity.
- J. Zylberstein (2008). The specificity of sport in the European Union. Journal of Sports Law and Economics, IV(1).
- Ju29ro.com. (2010, December 27). Insights: Financial Fair Play. Initial reflections.

- Jugo Mobile. (2023, August 11). Premier League prize money by position: what each team can win in 2023/24?
- Kunkel, T. (2023, April 3). How Michael Jordan revolutionized the sneaker industry—and our relationship to shoes. Faculty Experts, Thought Leadership, The School of Sport, Tourism and Hospitality Management.
- La Repubblica. (2023, December 5). Premier League TV rights at record levels: double Serie A.
- La Repubblica. (2023, January 31). Super League: Madrid Court rules against FIFA and UEFA, stating they "cannot hinder competition."
- Leone, L. (2006). La promozione dello sport in ambito internazionale ed europeo. Giustiziaamministrativa.it, (III).
- Luca Marotta Blog Spot.
- M. Buoncristiano, La responsabilità oggettiva delle società sportive: problemi, limiti, prospettive, in Giur. Civ., 1989, IV.
- M. Coccia, M. (1999). Television rights on sports events and competition. Market, Competition, Rules.
- Madison Square Garden Annual Report 2022.
- Mariani, F. (2023, October 31). F1, accordo con Dazn Spagna e Apple sullo sfondo: perché il Mondiale è ancora un affare per le tv.
- Matić, Đ. (2020, August 16). Crvena Zvezda to receive at least 500,000 euros from EuroLeague.
- Merrell, C. (2024). 2024 NBA Play-In Tournament Explained: Teams, schedule, how it works.
- Milano Finanza. (2022, July 27). Sport analytics: turnover will go from 3 billion in 2022 to 8 billion in 2026.
- Mirto, P. (1959). L'organizzazione sportiva italiana. Autonomia e specialità del diritto sportivo. Rivista di Diritto dello Sport, 352.
- Morzenti Pellegrini "Prime osservazioni sugli ordinamenti giuridici sportivi" published in Rivista di Diritto dello Sport, pages 12-13. (Morzenti Pellegrini, R. (2007). The Evolution of Relationships Between the Sports Phenomenon and the State Legal System, p. 21)
- Napolista.com. (2017, May 25). Dossier Napolista – I criteri di ripartizione dei diritti televisivi in Europa.
- Nascimbene, B., & Bastianon, S. (2011). Diritto europeo dello sport. G. Giappichelli Editore. (pp. 60-61).

- Olympics.com. This is the dream team.
- Oreovicz, J. (2020, October 27). Looking back on reunification.
- Osti, C. (2015). What is the point of antitrust? Italian Forum, V.
- Ozanian, M., & Teitelbaum, J. (2023, October 26). NBA Valuations.
- Panja, T., & Smith, R. (2021, April 19). Europe's New Super League, Explained. The New York Times.
- Parrish, R. & Miettinen, S. (2008). The sporting exemption in European Union Law, The Hague.
- Perez, R. (1988). Disciplina statale e disciplina sportiva nell'ordinamento dello sport. Studi in onore di Massimo Severo Giannini, vol. I, Milano, 507 ss.
- Professional football immune from Sherman Act as a team sport not constituting interstate commerce, 105 U. Pa. L. Rev. 110 (1956).
- Quinn, S. (2022, June 30). NBA salary cap explained: Glossary for the terms you need to know ahead of basketball free agency.
- Raimondo F. (2022). Super League.
- Raimondo, F. (2021). Super League vs. Super Federations: How antitrust law safeguards competition in the organization of sports tournaments. Paperback – June 8, 2021.
- Raimondo, F. (2021, March 29). Financial Fair Play, agents, and Covid-19: How can the football system be relaunched?
- Redazione Pianetabasket.com. (2023, June 13). Gran Canaria, no EuroLeague. President: "Costs too high for travel".
- Roberts, G. R. (2003, November 4). The Case For Baseball's Special Antitrust Immunity. Tulane University.
- Roberts, G. R. (2003, November 4). The Case For Baseball's Special Antitrust Immunity. Tulane University.
- Romano, S. (1977). L'ordinamento giuridico (3rd ed.). Florence.
- Ronzulli, D. (2021, April 23). Has the EuroLeague truly saved European basketball?
- S. Bastianon (2017). From Cassis de Dijon to Meca Medina: the specificity of sport between prohibitions and derogations in EU law. In European Union Law Journal, 3/2017, 418.
- Santomier, J., Dolles, H., & Kunz, R. (April 2023). The National Basketball Association's (NBA) Digital Transformation: An Explanatory Case Study.
- Sanz, C. (2024). The History of the Formula 1 Teams: Lotus - Brm – Cooper.
- Schön, M. (2018). Joint Selling of Television Rights: An EU Competition Law Perspective and a Comparative Analysis of the Impact of Regulation 1/2003.

- SkySport.com. (2023, December 21). Super League, from the 2021 announcement to the EU Court ruling: the story.
- Skysport.com. (2024, February 21). NBA, un business da quasi 11 miliardi di dollari all'anno: ecco come.
- SportBusiness Staff. (2019, September 2). Euroleague Basketball's great leaps forward. In association with Euroleague Basketball.
- Stephen F. Ross, "Monopoly sports leagues," University of Minnesota Law School Scholarship Repository, 1989
- Straw, E. (2021, April 21). The F1 Wars That Threatened a Super League-Style Breakaway.
- Štrumbelj, E., Vračar, P., Robnik-Šikonja, M., Dežman, B., & Erčulj, F. (2013, October 8). A Decade of Euroleague Basketball: an Analysis of Trends and Recent Rule Change Effects.
- Sylvers, E. (2004, March 24). The Murdoch Empire Looks to Italian TV.
- T. Piccirilli, Attività sportiva e responsabilità civile, in Giur. It., 1999.
- Thorp, J., & Shah, R. (2008).
- Tissotwatches.com. Sport Partnerships.
- UEFA (2012). Club Licensing and Financial Fair Play Regulations. Budzinski, O. (2014, March). The competition economics of Financial Fair Play. Ilmenau Economics Discussion Papers, 19(85).
- UEFA. (2012, July 31). Club licensing.
- UEFA. (2020, June 18). Temporary emergency measures for Financial Fair Play.
- UEFA. (2024, May 7). New format for Champions League post-2024: Everything you need to know. Retrieved from uefa.com
- Van Rompuy, B. (2017). Van Rompuy.
- Vigoriti, V. (2000). The Court of Arbitration for Sport: Structure, functions, experiences
- Wojnarowski, A. (2022, December 20). Mat Ishbia agrees to Suns purchase for record $4 billion. ESPN.
- Yglesias, M. (2015, May 13). Donald Sterling's racist outburst. Vox.

2. TABLE OF LEGAL PRECEDENTS

- 15 U.S.C. § 1 (1890).
- 15 U.S.C. § 2 (1890).
- AGCM. (2006, December 21). "Indagine conoscitiva sul settore del calcio professionistico", Provv n. 16280. Boll. Uf., n. 51-52/2006.
- American Needle, Inc. v. National Football League, 560 U.S. 183 (2010).

- Article 7 of Law 8 August 2019, n. 86.
- Case C-49/07. (2008, July 1).
- Cass. Pen., sez. V, 2 June 2000, n. 8910.
- Communication of 18 January 2011, entitled "Developing the European Dimension of Sport" by European Commission.
- Constitutional Law of 18 October 2001, n. 3, Art. 117, 3rd paragraph.
- Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984). Argued December 5, 1983. Decided June 19, 1984.
- Council Regulation No 17: First Regulation Implementing Articles 85 and 86 of the Treaty.European Commission. (1962). Council Regulation No 17: First Regulation Implementing Articles 85 and 86 of the Treaty. Official Journal of the European Communities, 13, 204–211.
- Court of Justice of the European Union, MOTOE v. Hellenic Republic, Case C-49/07.
- D.lgs. 28 February 2021, n. 38.
- Declaration on Sport - Annex No. 29 to the Treaty of Amsterdam.
- Directive no. 298 of October 17, 1989, §§ 23 et seq., Official Journal of the European Communities (OJEC) and Directive no. 202 of June 30, 1997, §§ 60 et seq., Official Journal of the European Communities (OJEC) [or Official Journal of the European Union (OJEU)].
- District Court (1953) Eastern District of Pennsylvania US Federal District Court Case Law.
- EEC Council. (1962, February 21). Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty. Official Journal of the European Communities, 13, 204–211.
- European Super League Company SL v Fédération Internationale de Football Association (FIFA), Union of European Football Associations (UEFA), Judgment of the Court (Grand Chamber), Case C-333/21, 1 European Super League Company. (December 21, 2023). Request for a preliminary ruling from the Commercial Court of Madrid – Spain.
- Final Report From The Commission To The European Council
- Flood v. Kuhn, 407 U.S. 258 (1972). Argued March 20, 1972. Decided June 19, 1972.
- Italian Parliament. (1990). Law no. 287 of October 10, 1990. Competition and market protection regulations.
- Judgment of the Court (Grand Chamber) on the Articles 82 EC and 86 EC.
- Judgment of the Court (Sixth Chamber) of 13 April 2000. Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB). Tribunal de première instance de Bruxelles - Belgium.
- Judgment of the Court 11 April 2000.

- Judgment of the Court of 11 April 2000. Christelle Deliège v Ligue francophone de judo et disciplines associées ASBL, Ligue belge de judo ASBL, Union européenne de judo (C-51/96) and François Pacquée (C-191/97).
- Judgment of the Court of 12 December 1974. B.N.O. Walrave and L.J.N. Koch v Association Union cycliste internationale.
- Judgment of the Court of 14 July 1976. Gaetano Donà v Mario Mantero.
- Judgment of the Court of 15 December 1995. Union des associations européennes de football (UEFA) v Jean-Marc Bosman.
- Judgment of the Court of 19 February 2002. J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten, intervener: Raad van de Balies van de Europese Gemeenschap.
- Judgment of the Court of First Instance (Fourth Chamber) of 26 January 2005. Laurent Piau v Commission of the European Communities. Fédération Internationale de Football Association (FIFA) Players' Agents Regulations - Decision by an association of undertakings - Articles 49 EC, 81 EC and 82 EC - Complaint -No Community interest - Rejection.
- Law 10/1990, No. 287.
- Law no. 59 of 15 March 1997.
- Legislative Decree no. 242 of 23 July 1999.
- Rantos, A. (2022, December 15). Advocate General's Conclusions presented in Case C-333/21, European Super League Company SL v. Union of European Football Associations (UEFA), Fédération Internationale de Football Association (FIFA), with the intervention of A22 Sports Management SL, Liga Nacional de Fútbol Profesional, Real Federación Española de Fútbol.
- Royal Decree-Law 5/2015, April 30, on urgent measures in relation to the commercialization of rights to exploit audiovisual content of professional football competitions. BOE, no. 104.
- Sherman Antitrust Act of 1890, Section 1.
- Sports Broadcasting Act of 1961, Pub. L. No. 87-331, 75 Stat. 732 (1961).
- Supreme Court of Cassation, Civil United Sections, Judgment, February 2, 2022, No. 3101
- The Helsinki Report on Sport - 10.12.1999 COM (1999) 644 final.
- Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007
- U.S. Supreme Court. (1953). Toolson v. New York Yankees, Inc., 346 U.S. 356. Argued October 13, 1953. Decided November 9, 1953.

- United States Supreme Court (1922). Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs.

3. CITED ARTICLES

- Italian Constitution Art. 2: "*La Repubblica riconosce e garantisce i diritti inviolabili dell'uomo, sia come singolo sia nelle formazioni sociali ove si svolge la sua personalità, e richiede l'adempimento dei doveri inderogabili di solidarietà politica, economica e sociale"*.
- CONI Statute Art. 2 - Funzioni di disciplina e regolazione:
- "*1. Il CONI presiede, cura e coordina l'organizzazione delle attività sportive sul territorio nazionale. 2. Il CONI detta i principi fondamentali per la disciplina delle attività sportive e per la tutela della salute degli atleti, anche al fine di garantire il regolare e corretto svolgimento delle gare, delle competizioni e dei campionati. 3. Il CONI promuove i principi e i valori dell'olimpismo, in armonia con l'ordinamento sportivo internazionale, nonché la massima diffusione della pratica sportiva in ogni fascia di età e di popolazione, con particolare riferimento allo sport giovanile. 4. Il CONI, nell'ambito dell'ordinamento sportivo, garantisce la parità di genere attraverso le procedure elettorali e detta principi contro l'esclusione, le diseguaglianze, il razzismo e contro le discriminazioni basate sulla nazionalità, il sesso e l'orientamento sessuale e assume e promuove le opportune iniziative contro ogni forma di violenza e discriminazione nello sport. Il CONI esercita poteri di vigilanza sui soggetti che riconosce, facenti parte dell'ordinamento sportivo, al fine di assicurare che le relative attività siano svolte in armonia con gli orientamenti e le regole stabiliti dal CONI e dal CIO, in conformità del principio di autonomia sportiva previsto dalla legge nazionale. 4-bis. Il CONI, nell'ambito dell'ordinamento sportivo, detta principi ed emana regolamenti in tema di tesseramento, anche degli atleti minorenni, e utilizzazione degli atleti di provenienza estera al fine di promuovere la competitività delle squadre nazionali, di salvaguardare il patrimonio sportivo nazionale e di tutelare i vivai giovanili. 5. Il CONI, nell'ambito dell'ordinamento sportivo, detta principi per conciliare la dimensione economica dello sport con la sua inalienabile dimensione popolare, sociale, educativa e culturale. 6. Il CONI, nell'ambito dell'ordinamento sportivo, detta principi per assicurare che ogni giovane atleta formato da Federazioni Sportive Nazionali, Discipline Sportive Associate, società o associazioni sportive ai fini di alta competizione riceva una formazione educativa o professionale complementare alla sua formazione sportiva. 7. Il CONI detta principi per prevenire e reprimere l'uso di sostanze o di metodi che alterano le naturali prestazioni fisiche*

degli atleti nelle attività agonistico-sportive. 8. Il CONI garantisce giusti procedimenti per la soluzione delle controversie nell'ordinamento sportivo e ne fissa la disciplina attraverso il proprio codice di giustizia sportiva da applicare a tutte le Federazioni Sportive Nazionali e alle Discipline Sportive Associate, nonché attraverso il presente Statuto e propri Regolamenti dedicati."

CONI presides over, manages, and coordinates the organization of sports activities throughout the national territory. 2. CONI establishes the fundamental principles for the discipline of sports activities and for the protection of athletes' health, also in order to guarantee the regular and correct conduct of races, competitions, and championships. 3. CONI promotes the principles and values of Olympism, in harmony with the international sports system, as well as the maximum diffusion of sports practice in every age group and population, with particular reference to youth sports. 4. CONI, within the sports system, guarantees gender equality through electoral procedures and establishes principles against exclusion, inequalities, racism, and discrimination based on nationality, gender, and sexual orientation, and undertakes and promotes appropriate initiatives against all forms of violence and discrimination in sports. CONI exercises supervisory powers over the subjects it recognizes, which are part of the sports system, in order to ensure that their activities are carried out in accordance with the guidelines and rules established by CONI and the IOC, in accordance with the principle of sports autonomy provided for by national law. 4-bis. CONI, within the sports system, establishes principles and issues regulations concerning membership, including of underage athletes, and the use of athletes from abroad in order to promote the competitiveness of national teams, safeguard the national sports heritage, and protect youth academies. 5. CONI, within the sports system, establishes principles to reconcile the economic dimension of sport with its inalienable popular, social, educational, and cultural dimension. 6. CONI, within the sports system, establishes principles to ensure that every young athlete trained by National Sports Federations, Associated Sports Disciplines, clubs, or sports associations for high-level competition purposes receives complementary educational or professional training in addition to their sports training. 7. CONI establishes principles to prevent and repress the use of substances or methods that alter athletes' natural physical performances in competitive sports activities. 8. CONI guarantees fair procedures for resolving disputes within the sports system and sets out the rules through its own sports justice code to be applied to all National Sports Federations and Associated Sports Disciplines, as well as through this Statute and its own dedicated Regulations.

- Italian Constitution Art. 117: "*La potestà legislativa è esercitata dallo Stato e dalle Regioni nel rispetto della Costituzione, nonchè dei vincoli derivanti dall'ordinamento comunitario e dagli obblighi internazionali.*

  Lo Stato ha legislazione esclusiva nelle seguenti materie: […]

  Sono materie di legislazione concorrente quelle relative a: […] ***ordinamento sportivo****; […]*

  Spetta alle Regioni la potestà legislativa in riferimento ad ogni materia non espressamente riservata alla legislazione dello Stato.

  […]

  La potestà regolamentare spetta allo Stato nelle materie di legislazione esclusiva, salva delega alle Regioni. La potestà regolamentare spetta alle Regioni in ogni altra materia. I Comuni, le Province e le Città metropolitane hanno potestà regolamentare in ordine alla disciplina dell'organizzazione e dello svolgimento delle funzioni loro attribuite.

  Le leggi regionali rimuovono ogni ostacolo che impedisce la piena parità degli uomini e delle donne nella vita sociale, culturale ed economica e promuovono la parità di accesso tra donne e uomini alle cariche elettive [3].

  La legge regionale ratifica le intese della Regione con altre Regioni per il migliore esercizio delle proprie funzioni, anche con individuazione di organi comuni.

  Nelle materie di sua competenza la Regione può concludere accordi con Stati e intese con enti territoriali interni ad altro Stato, nei casi e con le forme disciplinati da leggi dello Stato. "

  The legislative power is exercised by the State and the Regions in compliance with the Constitution, as well as with the constraints deriving from the community legal system and international obligations. The State has exclusive legislation in the following matters: […] Matters of concurrent legislation include those relating to: […] sports organization; […]. Legislative power in reference to any matter not expressly reserved to the State's legislation belongs to the Regions. […] Regulatory power belongs to the State in matters of exclusive legislation, subject to delegation to the Regions. Regulatory power belongs to the Regions in every other matter. Municipalities, Provinces, and Metropolitan Cities have regulatory power over the organization and conduct of functions assigned to them. Regional laws remove any obstacles preventing full equality between men and women in all spheres of social, economic, and cultural life and promote equal opportunities for men and women to enjoy civil and social rights and perform public functions.
- EC Treaty: *Articolo 82: (ex-art. 86 TCE)*

Ogni abuso da parte di una o più imprese delle loro posizioni dominanti nel mercato interno o in una parte sostanziale di esso è incompatibile con il mercato comune, in quanto può pregiudicare il commercio tra Stati membri.

Tali abusi possono consistere, in particolare, nell'imporre direttamente o indirettamente, prezzi d'acquisto o di vendita o altre condizioni di transazione non equi o nell'applicare condizioni dissimili a prestazioni equivalenti nei confronti di partner commerciali, comportandosi in modo discriminatorio nei confronti di alcune imprese contraenti creando barriere all'ingresso sul mercato che favoriscano, direttamente o indirettamente, l'impresa dominante o impediscano ai suoi concorrenti di affrontarla sul mercato, quando tali pratiche sono suscettibili di pregiudicare il commercio tra Stati membri.

L'eventuale constatazione dell'esistenza di un'impresa in posizione dominante non pregiudica l'applicazione delle disposizioni del paragrafo 1. Se, in seguito all'applicazione del paragrafo 3, è accertato che l'impresa interessata ha commesso un abuso, può essere data l'ingiunzione di porre fine a tale abuso.

Misure che neghino alle imprese il beneficio di un regime giuridico obiettivamente giustificato, il quale applicabile agli scambi tra Stati membri, in particolare misure che neghino il beneficio del regime di approvazione o di registrazione previsto dalla legislazione nazionale per l'esercizio di un'attività economica, sono incompatibili con il mercato comune, nella misura in cui possano pregiudicare il commercio tra Stati membri, salvo che siano giustificate da ragioni di interesse generale."

- Law 106/2007: art. 1 *"Allo scopo di garantire l'equilibrio competitivo dei soggetti partecipanti alle competizioni sportive e di realizzare un sistema efficace e coerente di misure idonee a stabilire e a garantire la trasparenza e l'efficienza del mercato dei diritti di trasmissione, comunicazione e messa a disposizione al pubblico, in sede radiotelevisiva e su altre reti di comunicazione elettronica, degli eventi sportivi dei campionati e dei tornei professionistici a squadre e delle correlate manifestazioni sportive organizzate a livello nazionale, il Governo è delegato ad adottare, su proposta del Ministro per le politiche giovanili e le attività sportive e del Ministro delle comunicazioni, di concerto con il Ministro dell'economia e delle finanze, con il Ministro per le politiche europee e con il Ministro dello sviluppo economico, sentite le competenti Commissioni parlamentari, entro il termine di sei mesi dalla data di entrata in vigore della presente legge e in conformità ai princìpi e criteri direttivi di cui ai commi 2 e 3, uno o più decreti legislativi diretti a disciplinare la titolarità e l'esercizio di tali diritti e il mercato degli stessi, nonché, entro dodici mesi dalla data di entrata in vigore di ciascuno dei decreti legislativi, eventuali decreti legislativi integrativi e*

correttivi dei medesimi, adottati con le medesime procedure e gli stessi princìpi e criteri direttivi previsti dai commi 2 e 3."

- Royal Decree-Law 5/2015, Article 5. Criteria for the distribution of profits among participants in the National League Championship. *"1. The proceeds obtained from the exploitation and joint commercialization of the audiovisual rights of the National League Championship will be distributed among the companies and entities participating in the First and Second Division according to the criteria established in this article. 2. 90% of the revenues will be allocated to the clubs and entities participating in the First Division of the National League Championship and the remaining 10% to the clubs and entities of the Second Division. 3. The National Professional Football League will distribute the amounts corresponding to each category according to the agreed criteria, always respecting the following rules and limits: a) A percentage will be distributed among the participants of each category equally. The amount to be distributed will be 50% in the First Division and at least 70% in the Second Division. b) The remaining amount, after deducting the item indicated in letter a), will be distributed among the clubs and entities of each category in a variable manner. Each half of this amount will be distributed according to each of the following criteria: 1. The achieved sporting results. In the First Division, the sporting results of the last five seasons will be taken into account, with a weight of 35% for those obtained in the last season, 20% in the penultimate, and 15% in each of the three previous ones. In the Second Division, only the last season will be considered. For the application of these criteria, the amount to be distributed will be allocated to each of the seasons considered, according to the weighting criteria established in the previous paragraph. The amount assigned to each season will be distributed among the participants as follows: – 1st place: 17%. – 2nd place: 15%. – 3rd place: 13%. – 4th place: 11%. – 5th place: 9%. – 6th place: 7%. – 7th place: 5%. – 8th place: 3.5%. – 9th place: 3%. – 10th place: 2.75 out of 100. – 11th place: 2.5 out of 100. – 12th place: 2.25 out of 100. – 13th place: 2%. – 14th place: 1.75 out of 100. – 15th place: 1.5 out of 100. – 16th place: 1.25 out of 100. – 17th place: 1 out of 100. – 18th place: 0.75 out of 100. – 19th place: 0.5 out of 100. – 20th place: 0.25 out of 100. If the competition has more or fewer than 20 participants, these percentages must be adjusted according to what is provided in the following paragraph, respecting the progressiveness based on the results. 2. Social implementation. One-third of the evaluation of this criterion will be determined by the revenue from subscriptions and the average ticket sales of the last five seasons, and the other two-thirds by its participation in generating resources from the commercialization of television broadcasts. To apply the social implementation criteria, a proportional distribution system*

will be established, with no entity receiving an amount exceeding 20% of this item. If a participant exceeds this limit, the excess will be distributed proportionally among the remaining participants. None of the participants may receive an amount less than 2% of this item for this concept. 4. The criteria to be applied for the distribution provided in the previous paragraph must be approved by the governing bodies of each category, with a qualified majority of two-thirds of the votes, after the signing of each contract for the commercialization of rights by the National Professional Football League. If no proposal obtains such a majority after three votes in the assembly convened for this purpose, the criteria of the previous period will be maintained. If they do not exist, the distribution criteria will be decided by the Higher Council for Sports. 5. In both categories, once the amounts corresponding to the criteria indicated in this article have been distributed, the difference between the clubs and entities receiving the most and those receiving the least cannot exceed 4.5 times. If this circumstance occurs, the share of all entities will be proportionally reduced as necessary to increase those that need to reach that maximum difference. To the extent that the overall distribution exceeds one billion euros, this difference between those who earn the most and those who earn the least will progressively decrease to a maximum of 3.5 times, which would be reached with an income equal to or greater than one billion five hundred million euros. In both cases, both the amounts that could be received from the compensation fund provided for in letter a) of article 6.1, and the proceeds that the participating entities receive from the assignees of the exclusive exploitation of audiovisual rights as consideration for any other commercial relationship. 6. The settlement of the amounts corresponding to each club or participating entity as consideration for the commercialization of their audiovisual rights will be made on a seasonal basis, before the conclusion of the calendar year in which each season begins. Promotions and relegations at the end of a season will not affect the corresponding settlement for the same and will only take effect from the following season."

- UEFA Club Licensing and Financial Fair Play, Article 60 – Notion of break-even result

  "The difference between relevant income and relevant expenses is the breakeven result, which must be calculated in accordance with Annex X for each reporting period. 2 If a licensee's relevant expenses are less than relevant income for a reporting period, then the club has a break-even surplus. If a club's relevant expenses are greater than relevant income for a reporting period, then the club has a breakeven deficit. 3 If a licensee's financial statements are denominated in a currency other than euros, then the break-even result must be converted into euros at the average exchange rate of the reporting period, as published by the European Central Bank. 4 The aggregate break-even result is the sum of the break-even results of each

reporting period covered by the monitoring period (i.e. reporting periods T, T-1 and T-2). 36 5 If the aggregate break-even result is positive (equal to zero or above) then the licensee has an aggregate break-even surplus for the monitoring period. If the aggregate break-even result is negative (below zero) then the licensee has an aggregate break-even deficit for the monitoring period. 6 In case of an aggregate break-even deficit for the monitoring period, the licensee may demonstrate that the aggregate deficit is reduced by a surplus (if any) resulting from the sum of the break-even results from the two reporting periods prior to T-2 (i.e. reporting periods T-3 and T-4)."

- UEFA Club Licensing and Financial Fair Play, Article 61 – Notion of acceptable deviation
  "The acceptable deviation is the maximum aggregate break-even deficit possible for a club to be deemed in compliance with the break-even requirement as defined in Article 63. 2 The acceptable deviation is EUR 5 million. However it can exceed this level up to the following amounts only if such excess is entirely covered by contributions from equity participants and/or related parties: a) EUR 45 million for the monitoring period assessed in the licence seasons 2013/14 and 2014/15; b) EUR 30 million for the monitoring period assessed in the licence seasons 2015/16, 2016/17 and 2017/18; c) a lower amount as decided in due course by the UEFA Executive Committee for the monitoring periods assessed in the following years. 3 Contributions from equity participants and/or related parties (as specified in Annex X D) are taken into consideration when determining the acceptable deviation if they have occurred and been recognised: a) in the financial statements for one of the reporting periods T, T-1 or T-2; or b) in the accounting records up to 31 December of the year of the reporting period T. The onus is on the licensee to demonstrate the substance of the transaction, which must have been completed in all respects and without any condition attached. An intention or commitment from owners to make a contribution is not sufficient for such a contribution to be taken into consideration. 4 If contributions from equity participants and/or related parties occurring up to 31 December of the year in which the UEFA club competitions commence are recognised in a club's reporting period T+1 and have been taken into consideration to determine the acceptable deviation in respect of the monitoring period (T-2, T-1 and T) assessed in the licence season commencing in that same calendar year, then for later monitoring periods the contributions will be considered as having been recognised in reporting period T."
- UEFA Club Licensing and Financial Fair Play, Article 62 – Break-even information
  "By the deadline and in the form communicated by the UEFA administration, the licensee must prepare and submit: a) the break-even information for the reporting period T-1; b) the

break-even information for the reporting period T-2, if not already previously submitted; c) the break-even information for the reporting period T, if it has breached any of the indicators defined in paragraph 3 below. 2 The break-even information must: a) concern the same reporting entity as that for club licensing as defined in Article 46; b) be approved by management, as evidenced by way of a brief statement confirming the completeness and accuracy of the information, and signature on behalf of the executive body of the licensee. 3 If a licensee exhibits any of the conditions described by indicators 1 to 4, it is considered in breach of the indicator: i) Indicator 1: Going concern The auditor's report in respect of the annual financial statements (i.e. reporting period T-1) and/or interim financial statements (if applicable) submitted in accordance with Articles 47 and 48 includes an emphasis of matter or a qualified opinion/conclusion in respect of going concern. ii) Indicator 2: Negative equity The annual financial statements (i.e. reporting period T-1) submitted in accordance with Article 47 disclose a net liabilities position that has deteriorated relative to the comparative figure contained in the previous year's annual financial statements (i.e. reporting period T-2), or the interim financial statements submitted in accordance with Article 48 disclose a net liabilities position that has deteriorated relative to the comparative figure at the preceding statutory closing date (i.e. reporting period T-1). iii) Indicator 3: Break-even result The licensee reports a break-even deficit as defined in Article 60 for either or both of the reporting periods T-1 and T-2. iv) Indicator 4: Overdue payables The licensee has overdue payables as of 30 June of the year that the UEFA club competitions commence as further defined in Articles 65 and 66. 38 4 In addition, the UEFA Club Financial Control Body reserves the right to ask the licensee to prepare and submit additional information at any time, in particular if the annual financial statements reflect that: a) employee benefits expenses exceed 70% of total revenue; or b) net debt exceeds 100% of total revenue."

- UEFA Club Licensing and Financial Fair Play, Article 63 – Fulfilment of the break-even requirement

  "The break-even requirement is fulfilled if no indicator (as defined in Article 62(3)) is breached and the licensee has a break-even surplus for reporting periods T-2 and T-1. 2 The break-even requirement is fulfilled, even if an indicator (as defined in Article 62(3)) is breached, if: a) the licensee has an aggregate break-even surplus for reporting periods T-2, T-1 and T; or b) the licensee has an aggregate break-even deficit for reporting periods T-2, T-1 and T which is within the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60(6)). 3 The break-even requirement is not fulfilled if the licensee has an aggregate break-

even deficit for reporting periods T-2, T-1 and T exceeding the acceptable deviation (as defined in Article 61) having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 (as defined in Article 60 (6)).”

- UEFA Club Licensing and Financial Fair Play, Article 58 – Notion of relevant income and expenses

  “Relevant income is defined as revenue from gate receipts, broadcasting rights, sponsorship and advertising, commercial activities and other operating income, plus either profit on disposal of player registrations or income from disposal of player registrations, excess proceeds on disposal of tangible fixed assets and finance income. It does not include any non-monetary items or certain income from non-football operations. 2 Relevant expenses is defined as cost of sales, employee benefits expenses and other operating expenses, plus either amortisation or costs of acquiring player registrations, finance costs and dividends. It does not include depreciation/impairment of tangible fixed assets, amortisation/impairment of intangible fixed assets (other than player registrations), expenditure on youth development activities, expenditure on community development activities, any other non-monetary items, finance costs directly attributable to the construction of tangible fixed assets, tax expenses or certain expenses from non-football operations. (…)”.

- Procedural rules governing the UEFA Club Financial Control Body, Art. 29*: “The following disciplinary measures may be taken against any defendant/appellant other than an individual: warning; reprimand; fine; deduction of points; withholding of revenues from a UEFA competition; prohibition on registering new players in UEFA competitions; restriction on the number of players that a club may register for participation in UEFA competitions, including a financial limit on the overall aggregate cost of players registered on the List A for the purpose of UEFA club competitions; disqualification from competitions in progress and/or exclusion from future competitions; withdrawal of a title or award.*

  The following disciplinary measures may be imposed against any defendant/appellant who is an individual: warning, reprimand; fine; suspension for a specified number of matches or for a specified or unspecified period; suspension from carrying out a function for a specified number of matches or for a specified or unspecified period; ban on exercising any football-related activity. Disciplinary measures may be combined.”

- Article 12 - Freedom of assembly and of association

  “Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of

everyone to form and to join trade unions for the protection of his or her interests. Political parties at Union level contribute to expressing the political will of the citizens of the Union."

- Article 16 - Freedom to conduct a business

  "The freedom to conduct a business in accordance with Union law and national laws and practices is recognised."

- Article 17 – Right to Property

  "*Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. Intellectual property shall be protected."*

- Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE IV: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL - Chapter 2: Right of establishment - Article 49 (ex-Article 43 TEC): *"Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.*

  Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital."

- Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE IV: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL - Chapter 2: Right of establishment: Article 54

  "Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

  'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making."

- Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE IV: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL - Chapter 2: Right of establishment: Article 101 "*The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. (...)"*
- Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE IV: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL - Chapter 2: Right of establishment - Article 102 *"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. 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."*
- Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE VII: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - Chapter 1: Rules on competition - Section 1: Rules applying to undertakings - Article 81:

  "The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which: directly or indirectly fix purchase or selling prices or any other trading conditions; limit or control production, markets, technical development, or investment; share markets or sources of supply; apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; make 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. Any agreements or decisions prohibited pursuant to this article shall be automatically void. The provisions of paragraph 1 may, however, be declared inapplicable in the case of: any agreement or category of agreements between undertakings, any decision or category of decisions by associations of undertakings, any concerted practice or category of concerted practices, which contributes 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 which does not: impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

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  "*Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States. 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".*