

Unclassified

English - Or. English

28 July 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Latin American and Caribbean Competition Forum

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session III: Competition
and sports**

- Contribution from Colombia -

28 and 29 September 2023

The attached document from Colombia is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 28–29 September 2023 in Quito, Ecuador.

Mr Marcelo Guimarães, Competition Expert - Marcelo.Guimaraes@oecd.org.

JT03523763

Session III: Competition and sports

- Contribution from Colombia -*

1. Sports play a fundamental role in the Colombian context, as a useful tool that creates both social and economic benefits. Although sports such as cycling, baseball, skating and boxing have a significant number of followers in Colombia, football is undoubtedly the nation's most popular sport. It has even been said that "... there is no other sport that identifies us more as a nation, that unites us without political, racial, sexual or religious distinctions."¹

2. In light of the above, and given the importance of football in our country, this contribution presents the actions taken by the Superintendence of Industry and Commerce (in its capacity as the national authority for the protection of competition) when applying the competition regulations to this sector. The text is divided into two parts: (i) will show how football is organised in the country; and (ii) will address the most relevant cases in which free economic competition rules have been applied to this sport.

1. Organisation of football in Colombia

3. Following the issuance of Act No. 1967 of 11 July 2019, the Ministry of Sports is the government entity responsible for formulating, adopting, directing, co-ordinating, inspecting, monitoring, controlling and executing public policy, plans, programmes and projects in the field of sports.²

4. Three entities are playing a fundamental role in developing football as a private-sector event: (i) the Colombian Football Federation (**FCF**); (ii) the Major Division of Colombian Professional Football (**DIMAYOR**); and (iii) the Colombian Amateur Football Division (**DIFÚTBOL**). The role of each of these sporting organisations is outlined below.

1.1. FCF

5. Founded in 1924, FCF is the only governing body for football in the country. It is affiliated with the International Federation of Association Football (**FIFA**) and the South American Football Confederation (**CONMEBOL**), and is also responsible for Colombia's national men's and women's football teams, including all youth categories, as well as the futsal and beach football teams. Its competencies include providing guidelines to **DIMAYOR** and **DIFÚTBOL**, which are exclusively in charge of professional and amateur football-related matters in the country.

* Contribution from the Superintendence of Industry and Commerce (Superintendencia de Industria y Comercio).

¹ Centro Nacional de Consultoría (2014), *El Poder del Fútbol* [The Power of Football], Ministry of Interior, Bogotá, https://encuestanc.com/attachments/article/108/El_poder_del_futbol.pdf, p. 11.

² Act No. 1967 of 2019, Articles 3 and 4.

1.2. DIMAYOR

6. DIMAYOR is the entity in charge of organising, administering and regulating professional football tournaments in Colombia. Specifically, it is responsible for five championships: **(i)** the first-division professional football league; **(ii)** the second-division tournament; **(iii)** the Copa Colombia; **(iv)** the Superliga; and **(v)** the women's professional league. These competitions operate as follows:

- The professional league comprises 20 first-division professional football teams. It is played twice a year, with two champions per year: the winners of the *Apertura* [opening] tournament in the first half of the year and the winners of the *Finalización* [final] tournament in the second half of the year. Each tournament comprises three knockout stages.
- The second-division tournament is also played twice-yearly among the 16 professional football teams that make up the second division, and has three knockout stages.
- Teams from both the first and second divisions compete for the Copa Colombia. It takes place annually, with five knockout stages played throughout the year.
- The Superliga is played by the *Apertura* and *Finalización* professional league winners, with two games (home and away) to determine the champion.
- Seventeen professional teams compete in the women's professional league, which is played in four stages once a year. It should be noted that this league does not have a second division.

1.2.1. Promotion and relegation system

7. DIMAYOR established the championships described above as an open system, allowing teams to move from one division to another. This ensures that the best second-division teams can be promoted to the first division, while the worst-performing first-division teams are relegated. In summary, the promotion and relegation system works as follows:

- Promotion from the second to the first division: In accordance with the *BetPlay DIMAYOR I 2023 Tournament Regulations*,³ the two best-performing teams in the second division will be promoted to the first division. To achieve this they must, for example: **(i)** win the two second-division tournaments in the same year; **(ii)** win the Grand Final of the second-division tournament; or **(iii)** have the best score in the reclassification table⁴ to compete in other competitions that allow them to access the first division.

³ DIMAYOR Colombia (2023), *Reglamento Torneo BetPlay DIMAYOR I 2023* [BetPlay DIMAYOR I 2023 Tournament Regulations], <https://dimayor.com.co/wp-content/uploads/2023/01/Regla-Torneo.pdf>.

⁴ Overall table for the year, combining the total points obtained in the *Apertura* and *Finalización* tournaments.

- Relegation from the first to the second division: According to the *BetPlay DIMAYORI 2023 League Regulations*,⁵ the two teams at the bottom of the league's relegation table (average table)⁶ will be relegated to the second division.

1.3. DIFÚTBOL

DIFÚTBOL is the entity in charge of organising men's and women's amateur football tournaments. These include the Categoría Primera C (third division) tournament, and the U-20, U-17, U-15 and U-13 tournaments. Colombia does not have a promotion and relegation system between the third and second divisions, so the only way to access professional football is through the teams that play in the first and second divisions.

2. Cases of competition law application in football

8. Football has a very important role for our country as it generates significant economic impact. In fact, evidence shows that:

“Every year, the football industry strengthens its position as one of the most lucrative sporting activities for the global economy through stadium tickets, television rights, advertising, contracts, sale of inputs, betting, player transfers, clothing, sports accessories and formal and informal employment, among other aspects.”⁷

9. The Colombian Superintendency of Industry and Commerce (in exercising its inspection, oversight and control functions) has needed to intervene in the football sector to investigate alleged anti-competitive behaviour, and to sanction those found to be in violation of the provisions protecting economic competition. The following proceedings are relevant in this regard.

2.1. Preliminary inquiry in the player transfers case

10. In 2013, the Superintendence of Industry and Commerce conducted preliminary investigations into alleged anti-competitive agreements that prevented professional footballers from signing with a team in Colombia after having resigned from another team, alleging just cause.

11. These proceedings found that the conduct examined did not pass the significance test necessary to open an administrative investigation. An analysis of the material collected during the inquiry revealed that the related complaints were not representative. In addition, there were other mechanisms (Enabling figure in charge of the Players' Status Commission) that allowed these controversies to be resolved in under 40 days, meaning that the authority do not need to intervene.

⁵ DIMAYOR Colombia (2023), *Reglamento Liga BetPlay DIMAYOR I 2023* [BetPlay DIMAYOR I 2023 League Regulations], <https://dimayor.com.co/wp-content/uploads/2023/03/R-Liga-I-2023.pdf>

⁶ Contains the score obtained in the last three years for the round-robin stages.

⁷ Centro Nacional de Consultoría (2014), *El Poder del Fútbol* [The Power of Football], Ministry of Interior, Bogotá, https://encuestacnc.com/attachments/article/108/El_poder_del_futbol.pdf, p. 92.

2.2. Sanction in the ticket office case

12. In 2020, the Superintendence of Industry and Commerce decided to conduct an administrative investigation, with co-operation from a company acting as a whistleblower. The company admitted its participation, acknowledged its responsibility and provided documents, e-mails and statements by company officials on the existence and operation of a business cartel.

13. In this case, it was found that the **FCF** and two ticketing companies had established an illegal agreement. Through this agreement, they devised and implemented a system that limited free competition, enabling one of the companies to be favoured in the awarding of a ticketing contract for the 2018 Russia World Cup qualifiers, and thus massively divert tickets for resale purposes at mark-ups of up to 350%.

14. The anti-competitive system was designed at the time that the “FIFA Gate” scandal was exposed, because Colombian football leaders were concerned about the international case. They therefore decided to select the ticketing agency for the Russia 2018 World Cup via an invitation to tender, in order to simulate a bidding process among multiple operators, despite having already agreed on an anti-competitive system.

15. The cartelists co-ordinated their conduct to ensure that the ticketing contract was awarded to one particular company, and thus to exclude bids from the other companies participating in the process. They took various actions to achieve their goal, all unequivocally aimed at favouring the preparation, presentation and evaluation of the company’s proposal to the **FCF**.

16. When developing this anti-competitive system, the cartelists carried out various activities designed to favour one particular company, specifying a concrete value for the advance payment to be stated in the favoured company’s proposal in order to win. Likewise, they jointly established the value of the economic tender to be submitted by the favoured company, to ensure that it would win. To do this, they accessed confidential information, allowing them to review, in real time, each of the proposals submitted by other competitors to the **FCF** and thus co-ordinate to decide the value of the proposal that the favoured company should submit.

17. Employing a fully concerted strategy, members of the **FCF** Executive Committee unanimously chose, without any objections or deliberations, the proposal of the company favoured by the illegal agreement. This secured the illicit favouring, while giving the selection process the appearance of legality so as not to arouse any suspicion.

18. Once they secured the ticketing contract, they signed a joint venture accounts contract to hide the illegal tactics implemented for the massive diversion of tickets. Under this guise, the favoured company massively diverted ticket sales to another operator for the 2018 Russia World Cup qualifying matches that the Colombian national team played at home against Peru, Argentina, Ecuador, Venezuela, Uruguay, Chile, Bolivia and Brazil.

19. The anti-competitive agreement resulted in the tickets being resold at prices far higher than those established by the **FCF**. For example, in the Colombia vs. Brazil match, considered by the cartelists as “the jewel in the crown”, a ticket with an established value of COP 60 000 (Colombian pesos) was sold for at least COP 270 000. This was a 350% increase for a consumer wanting a ticket for that match (and this was just the first link in the chain).

20. In regard to the above, upon corroborating the existence of a system designed to limit free economic competition, proscribed in Article 1 of Act No. 155 of 1959 (General Prohibition), the Superintendence of Industry and Commerce imposed sanctions of

USD 6 million (United States dollars) on the agents involved in this anti-competitive conduct.

2.3. Opening of the sports rights case

21. In 2021, the Delegation for the Protection of Competition opened an administrative investigation into some Colombian professional football clubs, as well as some individuals. This was triggered by the discovery that they allegedly violated Article 1 of Act No. 155 of 1959, which refers to the limitation of free competition in the market, in particular with respect to the sports rights of Colombian footballers.

22. The investigation aimed to establish the existence of a co-ordinated and anti-competitive practice, used by the presidents of professional football clubs to send communications to their competitors, expressly requesting that they not negotiate the sports rights of some players as a sanction for these players having terminated (or being close to terminating) a contractual relationship without their employer's approval (in this case, the team).

23. Specifically, it was found that three different types of communications were exchanged between professional football clubs. The first type was used when the teams considered that players had no just cause to unilaterally decide to terminate the employment relationship, alleging a cause attributable to the club. In these cases, the club considered that the contract was still in force and that the sporting rights were therefore not transferable. The second type was used when the clubs prevented the transfer of players who, in their opinion, terminated their employment without just cause and without completing the term agreed. Finally, the third type was used when players were vetoed for not wanting to renew employment contracts that were coming to an end. All of these communications were designed to pressure those players wishing to join another team to negotiate their sports rights through their former employer, rather than as free players.

24. In addition to the above, the evidentiary material evaluated by the Superintendence of Industry and Commerce brought to light two motivations that seemed to explain the restrictions imposed on the players: i) the clubs' claim to be recovering the investment in human capital they had made by training the players; and ii) the clubs' interest in obtaining additional income from the temporary or definitive transfer of the players' sports rights.

25. The parties investigated offered a series of guarantees aimed at ending the administrative investigation. Through these guarantees, they committed, among other things, to: (i) comprehensively reform the **FCF** and **DIMAYOR** Statutes, the **FCF** Sole Disciplinary Code, and the **FCF** Player's Statute, so that these documents recognise, guarantee and protect free competition in the negotiations of footballers' sports rights; (ii) establish the **DIMAYOR** "Compliance and Ethics Officer" as an independent supervisory body; (iii) implement an early-complaint management system to protect players, clubs and other market participants from anti-competitive conduct; and (iv) implement an information system on the contractual situation of professional players.

26. In 2022, the Superintendence of Industry and Commerce decided to accept the investigated parties' offer and, therefore, to close the administrative investigation against them. This decision was based on the finding that these commitments were sufficient to modify and cease the conducts under investigation. In addition, the guarantees aimed to increase efficiency, innovation and competitiveness in the market for the sports rights of professional and amateur Colombian footballers. This unquestionably translates into a boost for the well-being of the players, the game and, therefore, the end consumer.

27. Although the aforementioned decision is not final, it should be noted that the Superintendency emphasised the importance of applying the free competition regime in labour markets, given the potential adverse effects of anti-competitive conduct on economic efficiency in such markets. Indeed, the authority stressed the need to intervene in these markets because of the great benefits for workers and employees that could be generated by allowing them access to better job opportunities, either by increasing their salaries or by granting them other benefits. In addition, it pointed out the benefit to consumers, as ensuring favourable working conditions for workers will motivate them to perform their best, which is likely to lead to the creation or development of more or improved products.

3. Conclusion

28. In exercising its functions, the Superintendency of Industry and Commerce has intervened in sports through a range of actions, implemented mainly in the field of football. When considering the above, it is important to take into account the social and economic importance of this sport for the country. The national authority for the protection of competition has therefore made the necessary efforts to prevent, counteract and sanction anti-competitive practices relating to this sport, including intervening in cases of anti-competitive ticketing agreements and in cases relating to the football labour market.