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More documentation related to this discussion can be found at oe.cd/laccf.

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Session III: Competition and Sports*

This background note addresses the main competition issues related to the sports industry, with a focus on Latin American and Caribbean countries. It first covers the specificities of the sports industry, including the need for some co-operation between participants for its functioning (e.g. agreement of competitors on rules of the game and calendar of tournaments) as well as a distinctive governance model often driven by private associations (e.g., International Olympic Committee – IOC and International Association Football Federation – FIFA). Then, it discusses the competition issues in the organisation of sports leagues, particularly the existence of monopolies and the potential abusive behaviour by their organisers. As sports broadcasting rights and athletes emerge as the most valuable assets of the sports industry, the competition issues related to them are also analysed, including the sale of broadcasting rights and labour markets issues, such as no-poaching and wage fixing agreements, as well as transfer rules. The paper concludes by highlighting that sports are intrinsically related to national culture, being a relevant instrument of economic and social development including in Latin American and Caribbean countries.

* This background note was prepared by Marcelo Guimarães and benefited of comments from Ori Schwartz, Antonio Capobianco, Federica Maiorano and Paulo Burnier (all from the OECD Competition Division).

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1 Introduction

1. Sports are embedded in national cultures and are a relevant tool in the promotion of social development objectives, such as crime reduction, health improvement and social cohesion. Football is the most popular sport in continental Latin America, while baseball is the prime sport in the Caribbean. Other sports are also popular in the region, such as athletics, basketball, boxing, car racing, cricket, horse racing, tennis, and volleyball (Sotomayor, 2020[1]).

2. In addition to its social and cultural dimension, sports have a significant economic importance. Sports industry revenue worldwide exceeded USD 486 billion in 2022 and it is expected to reach around USD 512 billion in 2023 and USD 623 billion in 2027 (The Business Research Company, 2023[2]).

3. Professional sports are particularly relevant for the economy, in light of their progressive commercialisation. For instance, the International Association Football Federation (FIFA) increased its World Cup revenue in the last four-year cycle (2018 to 2022), from USD 6.4 billion to USD 7.5 billion (The Guardian, 2022[3]). Likewise, the International Olympic Committee (IOC) has experienced a rise in its revenue, from USD 5.7 billion in the 2013-2016 cycle to USD 7.6 billion in the 2017-2021 cycle (SportsPro Media, 2022[4]). Popular sport leagues have also reached substantial revenue, such as the National Football League – NFL (USD 11 billion in the 2021 season) in the United States (Sportico, 2022[5]), the Major League Baseball – MLB (USD 10.8 billion in the 2022 season) (Forbes, 2023[6]) and the National Basketball Association – NBA (USD 10 billion in 2021-2022 season) (Front Office Sports, 2022[7]), in the United States and Canada; and the Premier League – EPL (USD 6.63 billion in the 2021-2022 season) (SportsPro Media, 2022[8]), in the United Kingdom.

4. Women's sports are also increasingly growing, including in their commercial dimension. The levels of interest, attendance, viewership, media coverage, and investment in women's sports have never been higher (Deloitte, 2023[9]). For example, the audience of women's sports has increased by almost 20 times in the last 10 years (The Telegraph, 2022[10]). In addition, sponsorship revenue for the Women's Euro increased by 5 times in the last 5 years, i.e., from EUR 3.5 million in 2017 to EUR 16.5 million in 2022 (Sports Business, 2022[11]).

5. The global value of sports broadcasting rights, which is one of the biggest sources of revenue for sports organisations, reached USD 55.2 billion in 2022, 4.5% of which in Latin America (Sports Business, 2022[12]). Furthermore, global players' transfers football market generated USD 7.4 billion worldwide in 2019, 12% of which involved clubs in Latin America (Sports Value, 2022[13]).

6. In Argentina, the football main league (Primera División) generated around USD 176.3 million in the 2018-2019 season (Ámbito, 2019[14]), while the Mexican football league (Liga MX) had revenues of USD 555 million in 2017 (Portada, 2017[15]). Moreover, the sale of broadcasting rights of Mexican Liga MX generated USD 225.7 million in the 2021-2022 season (El Míster, 2021[16]). In Brazil, the sale of broadcasting rights of the national football league (Brasileiro Serie A) led to around USD 270 million in 2018 (Statista, 2023[17]) and the revenue from the leading football clubs reached USD 1.3 billion in 2021 (Reuters, 2022[18]).

7. Several competition issues arise in professional sports, as opposed to amateur sports, given their nature of economic activity and their increasing commercialisation. Professional sports have certain characteristics, such as the special link with social and cultural life, specific economics – including the notion of sports competition and the need for some co-operation between clubs –, and a distinctive governance model that should be taken into account. Despite an overall consensus that competition law applies to the professional sports market, the specific features of the industry may raise particular challenges that competition authorities should consider.

8. The sports industry involves various economic activities, such as sports labour market, organisation of tournaments, broadcasting of events, advertising and sponsorship, sale of events tickets, merchandising, among many others. The main actors within the sector include athletes, clubs (teams), leagues, sports governing bodies (i.e., national and international sports federations/associations), sponsors, broadcasters, advertisers, and supporters, among others. Athletes (sports players) have a central role in sports competitions, as they are the ones who take part in contests, either individually (individual sports) or collectively through a sports club (team sports). Clubs usually compete in a league championship, which can be open (i.e., promotion and relegation systems, where clubs are transferred between divisions according to their performance) or closed (i.e., in which the number and identity of clubs do not change from season to season according to their performance).

9. Furthermore, every sport has a governing body that sets the rules of the game and promotes the sport. This includes international and national sports federations/associations, although the governance framework, including its forms and functions, varies substantially across sports and jurisdictions. Sports governing bodies are also often responsible for organising competitions such as leagues, but there are examples of leagues that operate independently. Broadcasters, sponsors, and supporters are also important stakeholders in the professional sports industry and provide substantial funds to develop and organise sporting activities.

10. In this context, this background note discusses key competition issues related to the sports industry, more specifically professional sports. It deals with competition in the organisation of sports leagues (such as the existence of a monopoly in that market, as well as potential anti-competitive behaviour by their organisers), the sale of sports broadcasting rights and the application of competition law in sports labour markets, particularly as regards restrictions imposed on athletes by sports associations or agreed among clubs. While this paper mainly focuses on the topics above, which have raised most competition concerns and also reflect more directly the specific features of the sports industry, one should note that there are also other issues that have been examined by competition authorities (including in Latin America), such as sale of tickets to sports events[1] – with a recent cartel case in Colombia,[2] state aids,[3] sporting equipment issues[4] and e-Sports.[5]

11. This background note builds on and complements past OECD work on the topic and related issues. In particular, the OECD had the opportunity to explore the competition issues in the sports industry in two roundtables held in 2010 (OECD, 2010[19]) and 1996 (OECD, 1996[20]). The discussions highlighted that the sports industry has specificities, which require careful attention by competition authorities. Additionally, other roundtables held by the OECD indirectly addressed the topic, for example on competition issues in television and broadcasting (OECD, 2013[21]) and in labour markets (OECD, 2019[22]).

[1] See, for example, (Budzinski, 2012, pp. 9-10[29]) and (Weatherill, 2014, pp. 135-148[44]).

[2] See (SIC, 2020[123]).

[3] See, for instance, (Alexiadis and Asenov, 2020[112]) and (García, 2017[113]).

[4] See, for instance, (OECD, 1996[20]) and (Lopatka, 2009[116]).

[5] See, for example, (Löwhagen and Ianc, 2020[114]) and (Nam, Robertson and Ziermann, 2022[115]).

12. This background note is organised as follows:

a. **Section 2** describes the specificities of the sports industry, including its social values, the notion of sports competition, the governance set-up, as well as how competition law is applied to the sector.

b. **Section 3** focuses on competition issues in the organisation of sports leagues, particularly the trend towards monopoly and potential anti-competitive behaviour.

c. **Section 4** analyses competition aspects in the sports broadcasting sector, notably the sale of rights to broadcast sports events.

d. **Section 5** discusses the main competition issues in sports labour markets, namely no-poach and wage-fixing agreements, as well as transfer rules.

e. **Section 6** concludes.

2 Specificities of the sports industry

13. This section describes the main specificities of the sports industry, namely its core social values (Section 2.1), the notion of sports competition (Section 2.2) and the governance of sports, including its institutional set-up and the responsibilities of its members (Section 2.3). Then, it assesses whether and how competition law is applied to the sports industry (Section 2.4).

2.1 Social values of sports

14. Beyond the impact on the economic sphere, sporting activities have a relevant value in promoting social development. Indeed, the United Nations recognises the role of sport for the "realisation of development and peace in its promotion of tolerance and respect and the contributions it makes to the empowerment of women and of young people, individuals and communities as well as to health, education and social inclusion objectives" (United Nations, 2015[23]). In addition, sports are a significant dimension of national identity, as they provide citizens with a sense of belonging, creating boundaries between "us" and "them", but in a healthy, competitive manner (Seippel, 2017, p. 45[24]; Levinson and Pfister, 2016[25]).

15. For instance, the Olympic Movement sees sports as a way to promote peace and understanding among nations and cultures by "educating youth through sport practiced without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play" (International Olympic Committee, 2023[26]).

16. Therefore, although sports activities are economic in nature, particularly as regards professional sports, they also pursue important non-economic objectives (i.e., social, health, educational and cultural ones), unlike most ordinary economic activities.

17. The sports sector also presents a unique relationship between consumers (i.e., supporters) and suppliers (individual athletes or clubs). In fact, most consumers of the sports industry are personally connected to a particular club/athlete, and are not likely to move to other club/athlete if they do not win or if other clubs/athletes deliver better results (i.e., low demand elasticity). This loyalty connection to clubs/athletes is non-economic, as one becomes supporter of a club/athlete not because of the outcome (better or cheaper product), but for other reasons, such as attachment to a community or mere familiarity. Moreover, athletes are not seen as mere inputs, and often cannot be easily separated from their clubs. Indeed, athletes are usually regarded as heroes by their supporters, which can further facilitate building up the feeling of identification with a club.

2.2 Sports competition

18. Another specific feature of the sports industry is the notion of sports competition, which may not always be consistent with the principles of economic competition.

19. First, sports activities depend on a sufficient number of competitors to take place, as a participant alone is unable of organising a sport competition. In most sectors, increasing a player's market power to the detriment of rivals is a positive and desired outcome. In sports, nevertheless, participants in a competition (a match, a race, or a tournament) do not benefit from the exclusion of competitors from the market. On the contrary, they are in need of each other to provide an economically viable product (Budzinski and Pawlowski, 2017[27]). This indicates that there must be a certain degree of co-operation between the participants of a sport competition, for example to establish the rules of the game and their enforcement, the number of participants and the calendar. Given the need for co-operation to produce a sport competition, a governance structure becomes fundamental (Colomo, 2022, pp. 326-328[28]), as discussed in section 2.3 below.

20. Second, the uncertainty of the outcome of sports competitions must be preserved. Indeed, sports economics rests on the so-called uncertainty of outcome hypothesis, according to which consumers value close, competitive contests. The increasing outcome uncertainty of sports competitions raises the marginal utility of consumers and the demand for sports, which means that guaranteeing uncertainty of outcomes is an essential dimension of the quality of the product. As a consequence, the success and viability of sports competitions rely on sustained rivalry among competitors, who are required to have similar playing strength. This involves ensuring the integrity of competition and achievement based on merit, as well as a competitive balance. While the integrity of competition refers to guaranteeing the absence of match-fixing or sports collusion (which is different from the notion of economic competition collusion) and doping, competitive balance relates to a competitive closeness of all participants in the sporting contest (i.e., competitors who are sufficiently closed matched) (Budzinski, 2012, pp. 5-6[29]; Budzinski and Pawlowski, 2014, p. 2[30]; Budzinski and Pawlowski, 2017[27]).

21. In sum, the central element of sports competition is the competitive struggle to win, not necessarily the win itself (i.e., the process is more relevant than the result). Thus, their relationship can be considered as co-opetitive,[6] since they co-operate as much as they compete with one another (Colomo, 2022, p. 328[28]).[7] While this could be considered a cartel in other industries, in sports it can be justified to allow sports competition. This indicates that, in some circumstances, it may be necessary to restrict economic competition in order to achieve sports competition.

2.3 Governance structure

22. As mentioned above, competitors in the sports industry must co-operate to set up a championship or a league as a marketable good. Indeed, being the only club in the market would not be useful in the sports sector, as sports competition requires the existence of different competitors. This co-operative relationship requires a market-internal governance structure to establish, update and enforce the rules of the game, settle disputes, co-ordinate and organise sports events, including championships and leagues,

[6] (Brandenburger and Nalebuff, 1996[120]) define co-opetition as the outcome of the dynamic relationship between competition and co-operation.

[7] It should be noted that this particular feature is similar, to some extent, to heavily regulated sectors (such as some energy markets), where competition is designed to take place in a strictly pre-defined conditions, and may also require competitors to interact with each other.

as well as generally promote the development of the sport (Budzinski and Feddersen, 2022, p. 3[31]; Hoehn, 2006, p. 227[32]).

23. These functions are performed by the so-called sports governing bodies (SGBs), usually national and international sports federations/associations (e.g., FIFA; the South American Football Confederation – CONMEBOL; the Confederation of North, Central America and Caribbean Association Football – CONCACAF; the Argentine Basketball Confederation – CAB; the Brazilian Volleyball Confederation – CBV; and the Mexican Football Federation – FMF).[8] The sports governing bodies carry out legislative, executive, and judicial roles (Hoehn, 2006, pp. 228-229[32]; Budzinski and Szymanski, 2015, p. 413[33]; Houben, 2023[34]):

a. Legislative (regulatory) roles: set the rules of a sport (e.g., the size of the field, how the game is played, how athletes are contracted by clubs), as well as review and update these rules when necessary;

b. Executive (organisational) roles: organise and promote competitions in their own rights, including leagues; and

c. Judicial roles: monitor and enforce the rules, manage disciplinary procedures, and arbitrate disputes.

24. Leagues are often established to enhance the attractiveness of the game by incorporating new forms of competition (e.g., the race for the title in addition to the result of the match itself), making competitions more systematic, increasing the ability of supporters to recognise success, and establishing a consistent basis for historical comparisons of team performance (Hoehn, 2006, p. 234[32]). Moreover, leagues reduce transactions costs, since they allow teams to co-ordinate scheduling, instead of depending on a series of bilateral arrangements (Noll, 2003, p. 532[35]). Leagues also increase the economic value of competitions, since they lead to a product that is more than the sum of the parts, i.e., they are more valuable than a mere collection of disparate matches (Colomo, 2022, p. 327[28]).

25. Especially in team sports, leagues and other tournaments tend to be organised by sports governing bodies, such as the FIFA World Cup, the CONMEBOL Libertadores, the Argentinian Primera División (organised by the Argentine Football Association - AFA) and the Brazilian Serie A (organised by the Brazilian Football Confederation – CBF). Given the close relationship and common overlap between leagues and sports governing bodies, they are collectively referred as sports organisations (Rompuy, 2022[36]). Many authors indicate that the fact that sports governing bodies often concentrate the legislative, executive and judicial roles in sports competitions lead to a conflict of interest that could raise competition concerns, as will be discussed in section 3 below.

26. It should be noted that the dynamics of sport leagues, including the relationship between clubs, organisers, supporters, viewers, broadcasters, and sponsors, can be considered a multi-sided market, with direct and indirect network effects. There are strong and positive indirect network effects, as more top clubs attract more supporters, viewers, broadcasters and sponsors; more viewers and supporters attract more top participants that want to make their reputation and generate more sponsorship income. In addition, there may be positive direct network effects, since the participation of more top participants can increase incentives for other top participants to take part in the league (Klein, 2023, pp. 7-8[37]).

27. The organisation and governance of sports can vary substantially across jurisdictions. For example, the so-called European sports model is characterised by a single governance structure for each sport (one sports governing body per sport), integrating all levels of sport, from grassroot to professional sport, in a pyramid structure. Each sports governing body has jurisdiction over both amateur and professional competitions, with a comprehensive approach to rules, regulations, standards, calendars and

[8] According to some authors, this is the basis of the lex sportive, a transnational autonomous private order that governs sports. See, for example, (Duval, 2020[117]).

qualification for competitions. This set-up allows, at least in theory, that a participant can progress from the bottom (grassroot) to the top (professional) levels of the pyramid, through a system of promotion and relegation based on sporting merit that rewards success in the lower tiers and penalises defeat in the upper ones (the so-called open system/leagues). In addition, the European pyramid structure aims to ensure financial solidarity between elite and grassroot participants, as more commercially lucrative top-tier participants contribute to promote lower-tier participants and commercially less attractive competitions, including developing training and education (Klein, 2023, pp. 17-18[37]; Colomo, 2022, pp. 329-331[28]; Budzinski and Szymanski, 2015, p. 410[33]; Council, 2021[38]). This model is also followed, albeit with some differences, by most Latin American jurisdictions.

28. The United States presents a very different model, in which amateur and professional sports are independent and run under separate structures. While amateur sports are governed by different layers of authority (e.g., community leagues, school athletic associations, the National Collegiate Athletic Association – NCAA and the US Olympic Committee), professional sports are generally organised by leagues, such as NBA, NFL, MBL and NHL, owned by the clubs (more often referred as franchises) that play in the league. The league (i.e., the franchises within the league) has absolute power to set the rules of the game. New franchises are only admitted in the league through the approval of a supermajority of the existing ones, subject to the payment of a substantial entry fee. Thus, in the US closed system, the participants are pre-determined and there is no promotion or relegation (Healey, 2012, p. 42[39]; Colomo, 2022, p. 330[28]; Szymanski, 2006, p. 685[40]; Budzinski and Szymanski, 2015, pp. 409-412[33]). Formula One is another example of a closed system.

2.4 Application of competition law to the sports industry

29. Despite the specificities of the sports industry, notably the co-operative relationship between rivals and the notion of sports competition, there is an overall consensus on the applicability of competition law to the sector, particularly due to the increasing commercialisation of sports activities. However, competition authorities should take into account the special features of the sector when applying competition law, which in some circumstances may justify restrictions arising from behaviours of sports organisations and/or clubs, as already highlighted in previous OECD discussions (OECD, 2010[19]).

30. There is little doubt that professional sporting activities are economic in nature, and the fact that some stakeholders of the sports industry are non-profit making bodies does not change that conclusion (Colomo, 2022, p. 324[28]; Rompuy, 2022[36]).[9] Indeed, apart from very amateur sports, all sports events (premier-level sports but also other professional and semi-professional sports) involve business elements (money flows) (Budzinski, 2012, pp. 7-8[29]).

31. Therefore, in principle competition law is applicable to sports market participants (including sports governing bodies, leagues and clubs), both as regards merger review and anti-competitive behaviour. Most of the discussions on competition and sports concern anti-competitive practices, and merger cases are not numerous (Orth, 2021[41]).[10] However, some recent changes in Brazilian law, more specifically related to football, have raised some questions on the issue (see Box 1).

[9] For example, the United States sports governing body for amateur collegiate athletics (National Collegiate Athletics Association – NCAA) is subject to the Sherman Act, regardless of its allegedly non-profit or social character (National Collegiate Athletic Association v. Alston et al., 594 U.S. ___ [2021]).

[10] For example, the merger between OGC Nice football club and Ineos was assessed by the French competition authority in 2019, which cleared the transaction unconditionally (Autorité de la Concurrence, 2019[118]).

Box 1. Merger review of investments in football clubs in Brazil

In 2021, Law No. 14.193/2021 introduced a new corporate structure to encourage football clubs to be transformed into corporations in Brazil (so-called SAF – *Sociedade Anônima de Futebol*). Since 1998, Brazilian football clubs are allowed to be incorporated under for-profit associations, but 91% of Brazilian football clubs were operating as non-profit associations in 2019. Law No. 14.193/2021 aimed at attracting new investors in Brazilian football clubs, which at the time accounted for only 2% of global football revenue. The new legal framework allows the implementation of a solid corporate governance, the issuance of specific debt instruments (debentures) to fund the activities and the possibility to sell equity to third parties. More than 20 SAFs were created in the first year after the Law entered into force.

The enactment of Law No. 14.193/2021 raised the question of whether these new corporations (SAF) are subject to merger control in Brazil. In this regard, the *Conselho Administrativo de Defesa Econômica* (CADE) has decided that if the parties of a transaction involving the creation of a football corporation (SAF) meet the Brazilian merger notification thresholds, the notification is mandatory, regardless of whether the football club previously operated as non-profit association. Moreover, although Law No. 14.193/2021 establishes cross-ownership limitations, CADE must still assess the effects of the transaction on competition, including on other related markets, such as broadcasting and labour markets.

Source: CADE's Administrative Proceedings No. 08700.003312/2022-11 and 08700.003313/2022-58; Kim and Dixon-Ward (2022[42]), Law No. 14,193: The resurrection of Brazilian football?, https://www.nortonrosefulbright.com/en/inside-sports-law/blog/2022/04/law-no-14193-the-resurrection-of-brazilian-football; Meira and Crepaldi (2023[43]), The Mergers & Acquisitions Review: Brazil, https://thelawreviews.co.uk/title/the-mergers-and-acquisitions-review/brazil.

32. Some competition authorities have differentiated between "purely sporting rules" and business activities. On the one hand, "purely sporting rules" would refer to the laws of the game, i.e., the rules that are essential to produce a sportingly viable competition (e.g., the size of the field, the weight and dimensions of the ball, the number of players, the calendar and structure of the tournament and anti-doping rules). These rules would be non-business in nature and would fall outside the scope of the application of competition law. On the other hand, other decisions that are not essential for a sport competition (e.g., the sale of broadcasting rights, ticket arrangements and marketing tournament products) would constitute business activities and would be subject to competition law (Budzinski, 2012, pp. 6-7[29]; Colomo, 2022, pp. 331-332[28]). While the first category would reflect the regulatory roles of sports organisations, the second would be within their executive mandates.

33. However, this distinction has been criticised for a long time. Indeed, the difference between "purely sporting rules" and business activities is artificial, since defining the nature of sports competition (i.e., sports-related aims) has also economic repercussions (Weatherill, 2014, pp. 384-385[44]).[11] For instance, sports organisations can shape the so-called "purely sporting rules" to increase the attractiveness of the sport in order to maximise fan numbers and revenues (Budzinski, 2012, p. 7[29]).

[11] (Colomo, 2022, pp. 331-334[28]), for example, proposes a more nuanced taxonomy of sporting rules, comprising four different categories: (i) laws of the game (the rules of "purely sporting interest"); (ii) rules governing the behaviour of participants in a competition (e.g., salary caps and anti-doping rules); (iii) rules dealing with the relationship between participants (or governing bodies) and third parties that are peripheral to the system (e.g., regulation of activities of players' agents); (iv) strategies to monetise the value generated by the organisation (e.g., sponsors, advertisers and broadcasters).

34. In the European Union, *Meca Medina* (2006) is the landmark case on the application of competition law to the sports industry. In that case, the European Court of Justice (ECJ) ruled 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".[12] In other words, the ECJ established that even "purely sporting interest rules" could be scrutinised under the EU competition law.

35. As for the competition assessment of the sports industry, apart from some specific harmful behaviours in the sports labour market (as discussed in section 5), the European Commission follows a case-by-case approach, based on the ECJ caselaw, according to the rule of reason, which provides enough flexibility to address the specific features of the sector (European Commission, 2007[45]). To analyse whether a sporting rule infringes articles 101 (anti-competitive agreement) or 102 (abuse of a dominant position) TFEU, it should be examined whether the sporting rule is liable to distort competition and, if this is the case, whether the restrictive effects of the sporting rule are inherent in the pursuit of a legitimate objective and proportionate to it. Legitimate objectives purposed by sports organisations are usually related to the "organisation and proper conduct of competitive sport".[13] A restriction to competition is considered proportionate if it does not go beyond what is necessary to achieve the legitimate objective and if it is applied in a transparent, objective, and non-discriminatory fashion (Colomo, 2022, p. 337[28]). If the restrictive effects of the sporting rule are not inherent in the pursuit of a legitimate objective, it must be assessed whether the sporting rule fulfils the conditions for an exemption (Budzinski, 2012, p. 9[29]).[14]

36. Likewise, the United States has generally applied competition law to behaviours carried out by sports organisations, following the rule-of-reason approach in order to establish whether restrictions are undue (i.e., whether their harm to competition outweighs their pro-competitive effects). "Per se" rule has not been accepted even for horizontal agreements between clubs due to the specificities of the industry, in particular the need for co-operation between clubs to produce their product (Farzin, 2015, pp. 80-92[46]).[15] This approach is similar to the analysis the European Commission, but the review differs regarding the burden of proof. Unlike EU competition law, in the United States, if the defendant justifies the challenged restraint, the plaintiff has the burden to demonstrate that the same legitimate objective could have been achieved by a less restrictive mean. Furthermore, sports organisations in the United States are not required to employ the least restrictive alternative to achieve their legitimate business objective (Rompuy, 2022[36]).

[12] Case C-519/04 P (Meca-Medina and Majcen v. Commission), judgment of the European Court of Justice (Third Chamber) of 18 July 2006.

[13] For example, this may include "the ensuring of fair sport competitions with equal chances for all athletes, the ensuring of uncertainty of results, the protection of the athletes' health, the protection of the safety of spectators, the encouragement of training of young athletes, the ensuring of financial stability of sport clubs/teams or the ensuring of a uniform and consistent exercise of a given sport" (European Commission, 2007, p. 35[45]).

[14] According to article 101 (3) TFEU, behaviours can escape the prohibition of article 101 if they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose unnecessary restrictions on competition and do not eliminate competition in a substantial part of the concerned products. Practices can also be exempted if they can be objectively justified under article 102 TFEU, as its beneficial effects may outweigh its negative effects.

[15] Therefore, restraints from behaviours of sports organisations are subject to a fact-specific assessment of their actual effect on competition. The objective of the analysis is to determine whether the restraints have anti-competitive effects that are harmful to the consumer or whether the restraints stimulate competition in the consumer's best interest (National Collegiate Athletic Association v. Alston et al., 594 U.S. ___ (2021)).

37. Another specificity of US competition law is that professional baseball has been historically exempted from federal antitrust law (see Box 2). In addition, arrangements made by the professional leagues for baseball, hockey, basketball and American football are exempted from US competition law as regards collective sale of their media rights, as will be further discussed in section 4. There are also antitrust exemptions related to union activities and collective bargaining, as examined in section 5.

Box 2. The baseball's antitrust exemption in the United States

Professional baseball is exempted from federal antitrust law in the United States, following *Federal Baseball Club v. National League* (1922), where the Supreme Court ruled that the baseball business did not constitute interstate trade or commerce and therefore was outside the scope of the Sherman Act. Later, in *Flood v. Kuhn* (1972), although recognising that the baseball exemption was "an established aberration", since professional baseball is undeniably engaged in interstate commerce, the Supreme Court upheld the baseball exemption in the interest of *stare decisis* (respect for precedent) and the Congress inaction on the topic. Other professional sports are not exempted from antitrust law, despite the similarities with baseball.

The Curt Flood Act of 1998 partially abolished the baseball exemption, only as regards practices directly relating to or affecting employment of Major League Baseball (MLB) players. However, the 1998 Act did not change much in practice, as MLB players are unionised, and therefore prevented from filing antitrust suits against their league to resolve labour disputes, in light of the antitrust exemption on collective bargaining agreements.

Currently, there are several ongoing cases where the baseball exemption is being challenged, including a case brought by minor league clubs and supported by the United States Department of Justice.

Source: *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs,* 259 U.S. 200 (1922); *Flood v. Kuhn,* 407 U.S. 258 (1972); Gaglio and Stross (2022[47]), United States: antitrust in organised sports, https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2023; Rompuy (2022[36]), Antitrust challenges to sports governance: EU and US perspectives.

38. Another issue that generated a lot of debate in the United States refers to the characterisation of sports organisations (in particular, sports leagues) as joint ventures of separately owned clubs, and not as a single economic entity, for competition law purposes. In 2010, the US Supreme Court established that sports leagues are considered a joint venture between independent clubs and are subject to scrutiny under Section 1 of the Sherman Act (OECD, 2010, pp. 28-31[19]).[16]

39. Recent cases in Latin America demonstrate that competition law is also applied to the sports sector. Indeed, competition law is flexible enough to assess restrictive practices in the sports industry taking into account the specific features of the industry. These cases have been scrutinised under the rule of reason, allowing that any restriction on competition can be justified if it is necessary to achieve legitimate sports objectives.

[16] Indeed, sports leagues have always argued that since member clubs need to co-operate to produce sports competitions, they should be viewed as single economic entities for antitrust purposes and would therefore escape from the application of Section 1 of the Sherman Act (anti-competitive agreements). Nevertheless, in 2010 the US Supreme Court has rejected this argument and concluded that member clubs of a league are "a substantial, independently owned, independently managed business, whose 'general corporate actions are guided or determined' by 'separate corporate consciousness,' and whose 'objectives are' not common' (…) they compete with one another, not only on the playing field, but to attract fans, to gate receipts, and for contracts with managerial and playing personnel" (American Needle, Inc. v. National Football League et al., 560 U. S. 183 (2010)).

40. As will be discussed below, sports organisations usually do not face significant competitive pressure due to the *de facto* monopoly they have in the organisation of leagues/tournaments. Therefore, they often have significant market power and incentives to abuse their dominant position not only in the organisation of sports competitions, but also in related markets, with anti-competitive effects that may impact athletes, clubs, supporters, broadcasters, sponsors and advertisers. For instance, the following markets may be affected by behaviours of sports organisations: (i) organisation of sports leagues/tournaments (e.g., prohibition of establishing breakaway leagues and charge excessive prices from clubs); (ii) sports broadcasting (e.g., collective sale of exclusive rights to broadcast sports events); (iii) sports labour markets (e.g., wage-fixing and no-poach agreements, as well as transfer rules); (iv) sale of tickets to sports events (e.g., discriminatory sales, exclusivity agreements and collusive practices); (v) sports sponsorship and advertising (e.g., exclusive product licensing and sporting equipment standards). Ultimately, all these practices may have negative impact on consumers (supporters), who might face less choice (e.g., less tournaments or clubs) and lower quality (e.g., less attractive competitions and innovations), as well as higher prices (e.g., higher fees for attending or watching matches).

41. The remainder of this paper will address key competition challenges in the organisation of sports leagues, sports broadcasting, and sports labour markets, building on recent cases that competition authorities have been facing. It should be noted that most cases have dealt with team sports, especially (but not limited to) football, but there are also some cases involving individual sports. Moreover, while each sport has its own specificities – which should be considered in concrete cases –, there are many commonalities across sports, and the experiences in one sport can provide useful insights to others.

3 Organisation of sports leagues

42. This section will analyse how competition works in the market for organising sports competitions (leagues and other tournaments), in particular whether this market should constitute a monopoly or whether there is room for competing leagues (Section 3.1). It will then address issues related to potential anti-competitive behaviour – mindful of the particularities of the sports industry (Section 3.2).

3.1 Monopoly of sports leagues

43. As discussed above, unlike other sectors, in the sports industry competitors are essential to produce sports competitions, and therefore there is no economic rationale for clubs to monopolise a championship (i.e., be the only competitor). Nonetheless, sports governing bodies have significant incentives to monopolise the market for the organisation of competitions and reap the benefits of a monopoly (e.g., higher profits). In practice, in most sports there is only one premier/top league/tournament, organised by the respective sports governing body (Budzinski and Feddersen, 2022, p. 4[31]).[17]

44. On the one hand, it is argued that a monopoly in the organisation of premier leagues/tournaments would make economic sense. A monopoly would increase consumer (supporter) welfare, as it offers a competition of the highest quality competitors, with the best competitive balance among competitors and the best quality regarding the uncertainty of outcome (Budzinski and Feddersen, 2022, p. 4[31]). Only one international/regional/national/local champion could be crowned annually, and therefore a monopoly would deliver the best possible competition organising services (Budzinski and Szymanski, 2015, p. 424[33]; Noll, 2003, p. 547[35]). Conversely, competing leagues or tournaments, where the best talents are split, would be less attractive (Budzinski and Feddersen, 2022, p. 4[31]). Moreover, as already discussed, sports leagues can be viewed as multi-sided markets, and network effects push markets towards a monopoly of the sports organiser (Klein, 2023, p. 5[37]).

45. Indeed, there are very few successful examples of competition between competing leagues within the same territory in history.[18] For instance, in the United States there were many attempts of new competing leagues (breakaway or rival leagues), but they only existed for few years and ultimately went bankrupt or merged with the incumbent league (Budzinski and Feddersen, 2022, p. 4[31]; Noll, 2003, p. 547[35]). Additionally, the European sports model (followed by most Latin American countries), according to which each sport has a single governance structure at each geographical level (i.e., national/regional/international), seems to confirm the rationale for a monopoly in the organisation of competitions. Indeed, the organisation of sports in Europe is characterised by a “monopolistic pyramid

[17] Exceptions can be found, for instance, in padel, commercial boxing and other martial arts, as well as, to a certain extent, motor sports (Budzinski and Feddersen, 2022, p. 4[31]; Klein, 2023, p. 18[37]).

[18] An interesting example regards darts, where two competing organisations have been managing rival tournaments for the last three decades (Nauright and Parrish, 2012, p. 70[127]).

structure" (European Commission, 2007[45]),[19] and sports associations have, "within their geographical jurisdiction, a monopoly over the governance and the organisation of the sport".[20]

46. On the other hand, it has been suggested that introducing competition within the market for the organisation of sports competitions would be both possible and positive. From this perspective, the current scenario would be a result of the search of market power by major leagues, in both input (athletes/clubs) and output (supporters, broadcasters, sponsors etc.) markets. As commonly known, monopoly power allows firms – in this case, major leagues – to eliminate competitive pressure and to increase prices, lower levels of output, as well as reduce quality and innovation to the detriment of the other market participants – in this case, athletes/clubs, consumers (supporters), and other stakeholders (e.g., broadcasters, sponsors, and advertisers) (Klein, 2023, p. 5[37]; Ross, 2003, pp. 569-571[48]).

47. Some could suggest that there is competition between organisers in different sports (inter-sport competition), which could exercise competitive pressure and constrain the exercise of market power by sports organisations. However, if substitutability between teams in the same league is low (which seems to be supported by empirical evidence), it can be expected to be much lower across leagues of different sports or other types of entertainment (Winfree, 2009[49]; Ross, 2003, p. 570[48]). Furthermore, even if inter-sport competition were substantial,[21] sports organisations would still be able to exercise their market power against athletes/clubs without being subject to significant constraints in light of the absence of intra-sports competition (i.e., competition between different organisers within the same sport) (Klein, 2023, p. 5[37]).

48. Promoting competition between premier/top leagues would also be financially attractive (Noll, 2003, pp. 547-548[35]) and increase consumer welfare, as it would expand the number and frequency of premier-level events, reduce prices for tickets and broadcasting, as well as produce more innovative and interesting products (Budzinski and Feddersen, 2022, pp. 4-5[31]; Houben, Blockx and Nuyts, 2022, p. 207[50]). Competing leagues could also benefit clubs, since they could attract more supporters and, consequently, more revenue (Houben, Blockx and Nuyts, 2022, p. 207[50]). At the same time, this could also be positive to other stakeholders operating in the multi-sided market (such as broadcasters and sponsors), since the market power of current dominant leagues would be reduced.

49. In recent years, there have been several attempts to establish breakaway leagues worldwide. For example, this was the case of Icederby International speed skating competitions (vis-à-vis International Skating Union events), the football European Super League (vis-à-vis FIFA and UEFA league), LIV golf events (vis-à-vis Professional Golfers' Association events), Confederation of Professional Baseball Softball Clubs competitions in India (vis-à-vis Amateur Baseball Federation of India). In these cases, the incumbent leagues reacted energetically to the creation of alternative tournaments (see section 3.2 Anti-competitive behaviour in the organisation of sports leagues).

50. According to (Houben, 2023, pp. 20-21[34]), determining whether there should exist a monopoly depends on each sport, since this will be the case only if the minimum efficient scale relative to the aggregate market of the particular sport is equal or greater than the market size for that sport. Some sports, particularly those which are not highly mediatised and monetised, with few high-quality athletes, tend to lead to a monopoly, where there is only room for one organiser of leagues/tournaments. Conversely, where

[19] According to the European Commission, "traditionally, there is a single national sport association per sport and Member State, which operates under the umbrella of a single European association and a single worldwide association. The pyramid structure results from the fact that the organisation of national championships and the selection of national athletes and national teams for international competitions often require the existence of one umbrella federation" (European Commission, 2007[45]).

[20] Opinion of Advocate General Rantos, delivered on 15 December 2022, European Super League Company SL v. UEFA and FIFA (Case C333/21).

[21] In this regard, see (Wallrafen, Nalbantis and Pawlowski, 2022[119]).

the minimum efficient scale is lower than the aggregate market size of the sport concerned, there will be space for multiple parallel competing leagues/tournaments. Whether a given sport fits in one or other category requires a case-by-case analysis.

51. Finally, regardless of the existence of a monopoly in the market for organising sports tournaments/leagues, there are policy alternatives for sports governance that could provide significant benefits to stakeholders, such as clubs, supporters, broadcasters, and sponsors.

52. According to some authors, giving a sports governing body both regulatory and organisational powers is problematic as it can lead to a conflict of interest and create incentives for abuse, since the same organisation responsible for making and applying the rules of the game also operates as a commercial player in the market (Houben, 2023, p. 21[34]). Although this conflict of interest is not itself anti-competitive, the current set-up would facilitate restrictions on competition by the dominant sports organisations, such as preventing rivals from entering the market (Colomo, 2022, pp. 339-340[28]). To address this issue, some suggest to separate the role of market-internal regulator from the role of commercial organiser of major leagues/tournaments, as implemented in the Formula One case discussed below (Houben, 2023, pp. 21-22[34]; Budzinski and Feddersen, 2022, p. 11[31]).

53. From this perspective, where the existence of a monopoly makes economic sense the organisation of leagues/tournaments could be outsourced to a third party, and the absence of competition in the market could be compensated by regular competition for the market. Accordingly, a licence to organise the league/tournament could be awarded through a competitive tender process with clear and transparent criteria, which would ultimately result in more options for innovation (e.g., as regards tournament modes, scheduling etc.), as well as significantly reduce the incentives to abuse market power (Budzinski and Feddersen, 2022, pp. 11-12[31]).

54. Other more intrusive interventions could include specific gatekeeper regulation for sports organisations or public utility regulation to be enforced by public authorities (Budzinski and Feddersen, 2022, p. 15[31]).[22]

3.2 Anti-competitive behaviour in the organisation of sports leagues

55. In the market of the organisation of sports leagues/tournaments, there are two types of conducts by incumbent sports leagues where competition concerns can emerge: (i) behaviours against competing leagues and (ii) behaviours against clubs that participate or might participate in the league.

56. The conducts of sports organisations can be assessed under a horizontal or vertical approach. On the one hand, sports organisations are associations of clubs created to implement the necessary co-ordination among the competitors within a sports league/championship. In that sense, sports organisations would be a cartel among the participants of the league/tournament, and decisions of the organisation would reflect the decisions of its own members. Anti-competitive behaviours of sports organisations should therefore be assessed under the rules on horizontal agreements, focusing on anti-competitive effects on potential organisations of competing events. On the other hand, sports organisations can be seen as an undertaking that acts independently from their members and has a dominant position in the market of organising sports events, controlling access to the market. Under this approach, anti-competitive restrictions would be vertically imposed on different levels of the market, affecting for instance the members of the sports organisation (clubs or athletes) (Budzinski and Szymanski, 2015[33]).

[22] The United Kingdom has recently announced that a new independent regulator for men's football will be established in law to oversee the financial sustainability of the game. The independent regulator will also analyse requests from clubs to join new competitions, in consultation with the football governing body and fans (United Kingdom, 2023[126]).

57. Although each of these different approaches depend on special features of the case at stake and may impact the theories of harm that will be used to build the antitrust case, the methodology that will be guide the competition assessment will not vary substantially. As described above, these behaviours are reviewed by competition authorities under the rule of reason, which means that the actual or potential effect on competition of the sports leagues' behaviours should be examined case by case. Moreover, even if their behaviours restrict competition, they still can be justified if the anti-competitive effects are inherent in the pursuit of a legitimate objective and proportionate to it. However, these justifications should be specific and detailed, and therefore abstract or vague references to the integrity of sports, ethics, fair play and similar principles should not be enough to justify restrictions on competition (Houben, Blockx and Nuyts, 2022, p. 210[50]; Houben, 2023, p. 11[34]).

58. The most common behaviour in the organisation of sports leagues/tournaments that has been raising competition concerns in many jurisdictions refers to non-compete obligations or eligibility rules often imposed by sports organisations on their members (clubs or individual athletes). In fact, most sports organisations establish an *ex ante* control system over third-party events (such as breakaway leagues), i.e., new competitions require a prior approval by the sports organisation. In addition, their members are prohibited from participating in unauthorised events and those who take part in such competing events are sanctioned (including with fines and/or the withdraw of licence to participate in "official" events).

59. As already mentioned, sports organisations usually perform both organisational and regulatory functions simultaneously. This creates a potential conflict of interest, as carrying out the commercial organisation of competitions could prevent them from performing the regulatory role (including the authorisation of new events) independently. Indeed, when sports organisations assess requests for new competing events, they often do not follow objective, transparent, and non-discriminatory pre-established criteria. Furthermore, their decisions are rarely subject to review by an independent authority. Then, sports organisations not only have the power to prevent competitors from entering the market, but also have an economic interest in denying market access and favouring their own events. It is also common that sports organisations tie up the inputs required to stage a rival tournament through exclusive contracts with prohibitive sanctions in case of non-compliance.[23] Therefore, these practices can be characterised as anti-competitive infringements, affecting not only organisers of competing leagues, but also clubs and individual athletes (as they cannot join breakaway events), as well as consumers (who may not benefit from alternative and potentially more innovative events). The existence of very few examples of successful competing sports leagues, as described above, can result from such anti-competitive practices.

60. Nevertheless, sports organisations claim that non-compete or eligibility rules are necessary to achieve legitimate sports objectives, such as the integrity of sports, the protection of health and safety, the organisation and proper conduct of competitive sport, and solidarity between participants. For instance, the *ex ante* control system would ensure the proper functioning of the match calendar, guaranteeing that all clubs are able to complete all matches and that players have a healthy balance between rest and matches. Moreover, this system would ensure uniform sporting rules and would be necessary to implement solidarity payments among clubs. Eligibility rules could also protect the economic interests of sports organisations preventing free riding by a rival (Colomo, 2022, p. 335[28]; Houben, 2023, pp. 11-12[34]).

61. Thus, to determine whether there is an anti-competitive infringement, competition authorities should assess on a case-by-case approach (i) whether the objectives pursued by the allegedly anti-competitive practices are legitimate, but also (ii) whether these practices are inherent and proportionate to those objectives (i.e., whether the legitimate objectives cannot be achieved without a less restrictive behaviour).

[23] For instance, this was the case in the FIA case before the European Commission in the early 2000s (Parrish, 2003, pp. 135-138[51]).

62. The European Union has analysed practices of sports organisations that prevented the establishment of breakaway leagues or tournaments. For example, in 2011 an investigation involving the organisation of Formula One and other motor racing series was closed after the relevant governing body (*Fédération Internationale de l'Automobile* – FIA) agreed to implement several changes in its internal rules. This included (i) unbundling the tying in of all relevant factors necessary to organise a motor racing championship, abolishing the exclusivity contracts and the contractual sanctions, and (ii) splitting the regulatory and commercial activities to avoid any conflict of interests (Budzinski, 2012, pp. 14-17[29]; Parrish, 2003, pp. 135-138[51]). Later on, in the *MOTOE* case (2008),[24] the ECJ provided further clarification on the competition analysis of the dual roles of sports organisations. Although the ECJ considered that concentrating within the same entity the roles of running sports events and authorising events by third parties is not itself anti-competitive, it stated that there could be an abuse of dominance if the power to authorise events was not subject to restrictions, obligations and review (Houben, 2023, p. 6[34]; Rompuy, 2022[36]).[25]

63. More recently, exclusionary restrictions in sports have been under intense discussion in the European Union, with both supranational and national cases (e.g., in Belgium, Finland, Germany, Ireland, Italy, Spain and Sweden), involving different sports such as basketball, bodybuilding, equestrian sports, football, ice hockey, motor racing, padel, sailing, wrestling and swimming (Orth, 2021, pp. 2-3[41]; Szyszczak, 2018, pp. 192-194[52]; Klein, 2023, p. 3[37]). See Box 3 on the leading cases on this topic in the European Union.

Box 3. International Skating Union (ISU) and European Super League (ESL) cases in the European Union

International Skating Union (ISU)

The International Skating Union (ISU) is the international skating governing body, being responsible for regulating and managing ice skating and speed skating on ice. Under ISU eligibility rules, speed skaters participating in competitions that are not authorised by ISU are subject to severe sanctions, including a lifetime ban from all major international speed skating events. In 2014, two professional speed skaters have lodged a complaint before the European Commission, alleging that ISU rules infringed EU competition law and prevented them from taking part in a new event organised by Icederby International Co. Ltd, a Korean company.

In December 2017, the European Commission decided that ISU rules were in breach of Article 101 TFUE, enabling ISU to pursue its own commercial interests to the detriment of athletes and organisers of competing events. Indeed, the European Commission considered that the eligibility rules prevented independent organisers from establishing their own speed skating competition because they were unable to attract top athletes. While it was not set a fine, the decision required ISU to stop its illegal practice, particularly imposing or threatening to impose unjustified penalties on athletes who participate in competition that pose no risk to legitimate sports objectives. If the eligibility rules are maintained, they should be based on objective, transparent and non-discriminatory criteria.

[24] Case C-49/07 (Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio), judgment of the Court (Grand Chamber) of 1 July 2008.

[25] Subsequently, the ECJ confirmed that MOTOE caselaw also applies in cases concerning horizontal agreement rules (Rompuy, 2022[36]).

The European Commission's decision was mainly upheld by the General Court of the European Union in December 2020. ISU appealed against the General Court's ruling, and a decision by the ECJ is pending. In December 2022, the Advocate General's non-binding opinion was issued, proposing to set aside the judgment of the General Court.

European Super League (ESL)

In 2021, twelve European football clubs signed an agreement to create a new tournament, the European Super League (ESL), in parallel with the UEFA Champions League. UEFA and FIFA refused to recognise the new league and warned that any club or player who join the new competition would be expelled from competitions organised by FIFA and its confederations (including UEFA).

The ESL lodged a complaint against FIFA and UEFA before the Commercial Court of Madrid, alleging that the behaviour of the football governing bodies was anti-competitive. In April 2021, an interim measure was imposed by the Spanish Court to prevent FIFA and UEFA from adopting any measure or announcement to impede or hinder the organisation of the ESL. The Spanish Court also requested the ECJ to rule on whether certain FIFA and UEFA rules, as well as the warnings or threats of sanctions comply with EU competition law. The preliminary ruling of the ECJ is still pending, but in December 2022, an Advocate General delivered his non-binding opinion, concluding that the rules providing for prior approval by FIFA or UEFA of new competitions are inherent in and proportionate to the pursuit of the legitimate objectives related to the specific nature of sport, and therefore compatible with EU competition law.

The interim measure imposed by the Commercial Court of Madrid in 2021 was lifted in 2022 but reimposed in February 2023 after a decision of the Provincial Court of Madrid.

Source: Case AT.40208; Case T-93/18; Case C-124/21 P; Pieza de Medidas Cautelares 150/2021 – 0001; Recurso de Apelación 1578/2022; Case C-333/21 (ESL)

64. The issue has also been attracting attention outside the European Union, for example in the United States as regards golf (The Wall Street Journal, 2022[53]; The Washington Post, 2022[54]) and in India on baseball (Competition Commission of India, 2022[55]), table tennis (Competition Commission of India, 2021[56]) and cricket (Competition Commission of India, 2018[57]).

65. Besides behaviours aiming to prevent new sports tournaments/leagues, other conducts of sports organisations within the established competition and directly related to the clubs (either incumbents or potential new entrants) can also raise competition concerns. These practices are also examined under the rule-of-reason approach, and potential justifications to achieve sports objectives are taken into account, following the same methodology described above on behaviours against competing leagues.

66. One example is the imposition of economic requirements on clubs as a condition to participate in the league. While such practices may seek to ensure the financial stability of clubs and the long-term viability of sports competitions, they can also distort competition by limiting the ability of clubs to invest and recruit new talents, which could prevent smaller or new clubs from being promoted or entering the market.[26] Likewise, rules that prevent clubs from operating beyond their home territory or from being incorporated

[26] For example, the Financial Fair Play Regulations (FFP) imposed by UEFA on clubs in order to participate in the Champions League has generated debate in Europe. These rules concern the solvency of clubs, as well as how they are founded and how their funds are used. Despite the objectives these rules aim to achieve, including to ensure more discipline and rationality in club finances and protect long-term viability of clubs, it has been argued that these regulations have many anti-competitive effects, such as restriction of investments, fossilisation of the current market structure, reduction of the number of transfers of players, and foreclosure of competing organisers from entering the market (Kalashyan, 2022[121]).

as a commercial company can also affect competition, by limiting investments and innovation within the current format of competitions.[27]

67. In Latin America, competition issues in the organisation of sports tournaments/leagues have not been a focus of competition authorities. Nevertheless, the Chilean competition authority has recently sanctioned the national football association for having imposed entry fees that clubs must pay to join the league, preventing new clubs from entering the market or distorting the playing field vis-à-vis the clubs that are already in the league (see Box 4).

Box 4. Illegality of entry fee imposed on clubs by the Football Association in Chile

In 2016, the *Fiscalía Nacional Económica* (FNE) opened an investigation regarding an entry fee (of approximately USD 2 million, later reduced to around USD 1 million) imposed by the Chilean National Professional Football Association on clubs promoted from the third to the second division of the professional football league in Chile. After concluding that the fee constituted a barrier to entry to the market of sports events, FNE requested the *Tribunal de Defensa de la Libre Competencia* (TDLC) to order the termination of the practice and the imposition of fines.

In 2020, TDLC sanctioned the practice of the Chilean National Professional Football Association with fines of around USD 2.7 million. This decision was confirmed by the Chilean Supreme Court in 2021.

Source: Chile (2022[58]), Annual Report on Competition Policy Developments in Chile, https://one.oecd.org/document/DAF/COMP/AR(2022)5/en/pdf.

68. The recent competition enforcement example in Chile, as well as ongoing discussions on structural changes in national leagues, such as in Brazil (Financial Times, 2023[59]), indicate the relevance of the topic for the region and may be informative for other jurisdictions in Latin America.

[27] For instance, Swift Hesperange, a Luxembourg football club, has recently filed a complaint against UEFA and the national football governing body (FLF) for infringement of competition law. In particular, UEFA requires football clubs to operate within the borders of their home territory (regardless of its size). This territorial lock-in allegedly prevented clubs from growing and consumers from benefiting from better quality of entertainment. FLF also prohibits football clubs from being incorporated as commercial companies, which could restrict investments (PaRR, 2022[109]). Moreover, FIFA and the US Soccer Federation, Inc. (USSF) are currently under investigation in the United States for alleged anti-competitive practices related to their geographic market division policy that prohibits soccer leagues and clubs from playing official season matches outside their home territory (PaRR, 2023[122]).

4 Sports broadcasting

69. This section will assess the main competition issues in the sports broadcasting market, in particular the sale of broadcasting rights to TV channels and Over-the-top (OTT) platforms. It should be noted that the topic of broadcasting has already been explored by the OECD several times, including in a recent LACCF discussion focused on media mergers (OECD, 2022[60]), as well as in an OECD roundtable on television broadcasting held in 2013 (OECD, 2013[21]).

4.1 Relevance of sports broadcasting rights

70. The broadcasting of sports events refers to the media coverage of sports competitions on television, radio or other broadcasting means, such as OTT platforms.

71. Traditionally, sports are broadcast in two main ways: (i) free-to-air TV, comprising public service broadcasters (funded by taxpayers) and commercial broadcasters (financed by advertising revenues); and (ii) pay-TV, based on subscription fees (either with a flat rate price or with a pay-per-view arrangement) (OECD, 2013[21]; Budzinski, Gaenssle and Kunz-Kaltenhäuser, 2019, p. 10[61]).[28]

72. However, the market has been undergoing significant transformations due to the impact of new technologies, namely the Over-the-top (OTT) services. OTT services provide consumers with access to content from any compatible device (e.g., smartphones, tablets and smart TVs), anytime at their ease, without requiring subscription to traditional pay-TV providers (Fortune Business Insights, 2022[62]). This has been changing consumers behaviour, driving a shift from TV to online video consumption, even though traditional TV appears to remain relevant, especially for popular live content, such as sports and major events (Deloitte, 2018[63]). The supply side is also changing, with an increase of different business models, such as Advertisement Based VoD (free access to content with sponsored ads), Subscription VoD (access to content in exchange for a recurring fee) and Transactional VoD (charging viewers a one-time fee to watch a piece of content) (Emily Krings, 2022[64]), with both young online-only competitors and incumbent media players taking part in the sector (Budzinski, Gaenssle and Kunz-Kaltenhäuser, 2019, pp. 11-12[61]).

73. In the sports industry, sports organisations are upstream suppliers of audio-visual “raw content” to downstream broadcasters, through the commercialisation of broadcasting rights. Broadcasters package these rights and sell sports programmes to audiences in the downstream market. In the downstream market, broadcasters compete for viewers (competition for attention) and sell audiences to advertisers (Evens, Iosifidis and Smith, 2013, pp. 38-39[65]; Szymanski, 2006, p. 430[66]; de Oliveira Júnior, 2023[67]).

[28] Although pay-TV and (more recently) OTT platforms dominate the sports broadcasting market, jurisdictions usually establish that certain events of major importance to society should be covered by free-to-air TV. For instance, this is the case in the European Union and Latin American countries such as Argentina, Brazil, Mexico and Uruguay. Moreover, often broadcasters have the right to short reporting on events of high interest (Cabrera Blázquez et al., 2016[128]; Santos, 2021[129]).

74. The deregulation of the sector and many technological changes from the last decades transformed broadcasting into a competitive and dynamic sector, allowing the expansion of the sports business into a global industry. The commercialisation of broadcasting rights has therefore become one of the main revenue sources of most sports organisations, accounting for around 40% to 60% of revenues. Furthermore, since broadcasting sports events has a great potential to attract large audience shares, the acquisition of broadcasting rights for sports events represents a large share of broadcasters' total spending on programming (Weatherill, 2014, p. 334[44]; Evens, Iosifidis and Smith, 2013, p. 32[65]; UNCTAD, 2018[68]; WIPO, 2023[69]).

75. Indeed, having access to sports content often drives a relevant part of the demand for pay-TV and OTT services. However, given the limited number of premium sports events every year, sports content has become scarcer and therefore a bottleneck in the broadcasting market (OECD, 2013, pp. 22-23[21]).

76. On the demand side, the buyers of sports broadcasting rights are usually broadcasters that use the content to fill programme schedules. On the supply side, the providers are often limited to sports organisations and/or clubs who own sports broadcasting rights. In practice, this results in high prices for sports broadcasting rights: high demand and limited offer considering the scarcity of sports broadcasting rights and the low substitutability between sports content and other types of contents (and even between different sports). As a consequence, an owner of sports broadcasting rights might take advantages from being the sole supplier with intense demand-side rivalry (Evens, Iosifidis and Smith, 2013, p. 40[65]).

77. The main competition issues assessed by competition authorities in the sports broadcasting sector relate to the sale of the rights to broadcast sports events, and therefore will be the focus of the next section. It should be recognised, however, that other stages of the value chain, such as the wholesale supply channels and content distribution, have also been examined by competition authorities, including in Latin America. This is the case, for instance, in Chile (FNE, 2020[70]) and Paraguay (CONACOM, 2021[71]), as well as the Disney/Fox transaction – which was analysed by several Latin American jurisdictions, including Argentina (CNDC, 2022[72]), Brazil (CADE, 2019[73]), Chile (FNE, 2019[74])and Mexico (IFT, 2019[75]).

4.2 Sale of sports broadcasting rights

78. The sale of sports broadcasting rights can be done individually (by each team) or by joint selling. When done individually, each club usually sells the broadcasting rights of its home matches. When done jointly, all clubs of a league or championship bundle the broadcasting rights of all the respective matches and sell them together, either through an assigned association formed by the participating clubs or through the sports organisation governing the sport at stake. In the latter case, the revenues from the sale of broadcasting rights are shared among all participating clubs, either equally or (more commonly) based on criteria such as performance, prestige and market size (Budzinski, Gaenssle and Kunz-Kaltenhäuser, 2019, p. 3[61]; Evens, Iosifidis and Smith, 2013, p. 41[65]; Bergantiños and Moreno-Ternero, 2021, p. 58[76]).

79. Collective selling of exclusive packages has been the dominant model for commercialising sports broadcasting rights worldwide (Evens, Iosifidis and Smith, 2013, p. 41[65]) – for example, FIFA reported that 88% of broadcasting rights of top-tier football competitions are sold collectively (FIFA, 2023[77]). However, collective selling could constitute – at least in theory – a cartel, where the competitors (clubs) collude to artificially create a monopolistic package and extract supra-competitive rents from their customers (broadcasters), increasing prices and limiting output (Budzinski, Gaenssle and Kunz-Kaltenhäuser, 2019, p. 4[61]).

80. On the one hand, when clubs and/or leagues negotiate the prices of broadcasting rights through collective selling they can exploit their market power, allowing them to inflate these prices. In addition, sellers have incentives to restrict the availability (i.e., the number and extent) of rights for sports events (so-called blackout) in order to further increase prices and reduce the impact on attendance revenue.

Collective selling can also undermine the development of innovative submarkets, such as new media markets and cross-border broadcasting, to ensure rents from the exclusive sale to pay-TV broadcasters. As a consequence, these arrangements can reinforce the market position of dominant incumbent broadcasters, as they may be the only ones that are able to bid for all the rights within the package. If each club sells its rights individually, other broadcasters could have more ability to obtain rights, which could increase competition in the market. For these reasons, some support the view that collective selling can restrict competition, leading to higher prices, decreased quantities and less innovation, affecting both broadcasters and consumers (Budzinski, Gaenssle and Kunz-Kaltenhäuser, 2019, pp. 4-5[61]; UNCTAD, 2018, p. 7[68]; Evens, Iosifidis and Smith, 2013, pp. 89-90[65]).

81. On the other hand, collective selling of sports broadcasting rights is argued to have several benefits. For instance, this model would increase competitive balance in sports by ensuring more financial equity among the clubs participating in the league, through the redistribution mechanism to allocate the revenues arising from the sale of sports broadcasting rights. Individual sales of broadcasting rights related to the matches of each club could create significant income disparities between clubs, as the rights for matches of the most popular clubs are much more valuable than those of the other clubs. Yet, this outcome depends on the redistribution system, which often takes account of the performance and the prestige of clubs. Moreover, creating a single point of sale would increase efficiency by lowering transaction costs for broadcasters and clubs, especially in single-elimination tournaments. Collective selling would also establish a common brand of the league, increasing recognition and attractiveness of its products and services. Additionally, this model allows the sale of the entire league, which may be more valuable than the sum of the individual matches, creating more incentives for the broadcaster to invest in promoting the league as a whole, as well as more money to the clubs, which should increase the quality of the matches. Most importantly, this may also be beneficial for consumers, who need to pay just one subscription to watch all matches of a certain league (Budzinski, Gaenssle and Kunz-Kaltenhäuser, 2019, pp. 4-6[61]; UNCTAD, 2018, p. 8[68]; Evens, Iosifidis and Smith, 2013, pp. 90-93[65]; OECD, 2010, p. 40[19]; de Oliveira Júnior, 2023[67]).

82. In the United States, the major professional sports leagues are allowed to sell collectively sports broadcasting rights, since the practice is exempted from competition law by the Sports Broadcasting Act of 1961.[29] The main argument for this exemption is that joint selling agreements increase the distribution of broadcasting income equally among clubs, ensuring a competitive balance among them. The exemption, however, applies only to free-to-air-TV, and not to pay-TV or OTT services, which could help explain why free-to-air TV is dominant in sports broadcasting in the United States. The Sports Broadcasting Act also provides for the so-called “blackout rules”, which allow home clubs to prevent local broadcast of matches on days when they are played at home (Evens, Iosifidis and Smith, 2013, pp. 93. 217-218[65]).

83. In the European Union, the collective selling of exclusive sports broadcasting rights (particularly regarding football) has also been accepted provided that some conditions are fulfilled. These remedies were first designed in three leading cases[30] in the 2000s to ensure that the advantages of joint selling outweigh its disadvantages: (i) limited duration of exclusive contracts (typically three seasons); (ii) partial unbundling and no-single-buyer rule (division of broadcasting rights into a number of separate packages to be sold to different broadcasters, including as regards traditional broadcasting and online streaming); (iii) transparent and non-discriminatory competitive bidding process to sell the rights, with trustee

[29] It should be noted that the Sports Broadcasting Act of 1961 was a response to a judicial decision that had stated that a contract between NFL and CBS on all NFL matches had violated the Sherman Act (Evens, Iosifidis and Smith, 2013, p. 217[65]).

[30] Case COMP/C.2-37.398 (Joint selling of the commercial rights of the UEFA Champions League), Commission Decision of 23 July 2003; Case COMP/C-2/37.214 (Joint selling of the media rights to German Bundesliga), Commission Decision of 19 January 2005; Case COMP/38.173 (Joint selling of the media rights to the FA Premier League), Commission Decision of 22 March 2006.

supervision; (iv) fall-back clause (unused rights must fall back to the individual clubs for parallel, competitive exploitation; if the club's home match is not covered by a live package, the club must have the right to individually sell the corresponding broadcasting right) (Budzinski, Gaenssle and Kunz-Kaltenhäuser, 2019, pp. 7-8[61]). National competition authorities have been applying these guidelines in local cases, albeit not always in a systematic way (Orth, 2021[41]). It should be noted that even some EU jurisdictions that traditionally required individual sales by clubs have changed to a centralised sales model, which is the case of Spain[31] (2015) and Portugal[32] (2021).

84. In Latin America, competition case law on the sale of sports broadcasting rights is limited. For example, the *Comisión para Promover la Competencia* (COPROCOM) in Costa Rica carried out an investigation in the football broadcasting market, which was dismissed in 2021 for lack of evidence. Although the case focused on sublicence agreements between TV channels, it provided the authority with an opportunity to assess how the broader football broadcasting market works in Costa Rica, including how the rights to broadcast football events are sold (Costa Rica, 2022, p. 12[78]; COPROCOM, 2021, pp. 34-43[79]). In addition, CADE in Brazil has been particularly active on this topic, with a set of cases in the last years (see Box 5).

Box 5. Competition enforcement on sports broadcasting in Brazil

In Brazil, several investigations on the sale of sports broadcasting rights took place in the last decades.

The most relevant case was settled in 2010, involving a joint selling by the Brazilian biggest football clubs of the exclusive rights to broadcast matches of the Brazilian football league to Globo, Brazil's leading broadcaster. The investigated parties signed an agreement with CADE to close the investigation, including the following commitments: (i) elimination of the "preference clause" (i.e. according to which for new contracts rival broadcasters had to submit every bid to Globo, who could then match the bid and win the contract); (ii) introduction of an auction, with clear and objectives rules, to award the broadcasting rights; (iii) unbundling of broadcasting rights in five relevant media platforms (free-to-air TV, pay-TV, Pay Per View, mobile and internet). Nevertheless, the settlement was ultimately circumvented as individual clubs engaged in bilateral negotiations outside the joint agreement framework.

In 2019, CADE initiated a new investigation on the sale of the broadcasting rights of football events, which is still ongoing. CADE opened another proceeding in 2022 to investigate an alleged international cartel, with effects in Brazil, in the market of broadcasting rights for sports events. CADE alleged that the investigated parties fixed prices, shared the market and rigged bids in competitive bidding processes for sports events broadcasting rights.

Source: CADE (2020[80]), Cadernos do Cade - Mercado de TV Aberta e Paga, https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Mercado-de-tv-aberta-e-paga-2020.pdf; OECD (2020, pp. 228-229[81]), OECD Telecommunication and Broadcasting Review of Brazil 2020, https://doi.org/10.1787/30ab8568-en; Mattos (2012[82]), Broadcasting Football Rights in Brazil: The Case of Globo and "Club of 13" in the Antitrust Perspective; CADE (2020[83]), NOTA TÉCNICA Nº 1/2020/GAB-SG/SG/CADE, https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?DZ2uWeaYicbuRZEFhBt-n3BfPLlu9u7akQAh8mpB9yOFT-6GFdjT9OZv1f6gYgfanJrJVBldHQThI7j4Q_q_A1BZIY72MKMLriNWn2VCEfr_K8ZIfmZDmp4DM5104TKQ; CADE (2022[84]), CADE investigates international cartel of broadcasting rights for sporting events, https://www.gov.br/cade/en/matters/news/cade-investigates-international-cartel-of-broadcasting-rights-for-sporting-events.

[31] Royal Decree-Law No. 5/2015, of 30 April.

[32] Decree-Law No. 22-B/2021, of 22 March.

85. Despite the very few cases in Latin America, there have been discussions on the sale of sports broadcasting rights in other Latin American countries, particularly Peru. Indeed, the Peruvian football governing body (FPF) has recently decided to implement a joint selling of broadcasting rights. This change, however, was not accepted by several clubs and broadcasters, who are now litigating in court against FPF (infobae, 2023[85]). While this is not a competition case, it confirms the relevance of the issue for the region and may suggest that there may be room for further competition discussions in this regard.

5 Sports labour markets

86. There has been much debate in recent times about the application of competition law to labour markets. The OECD explored the topic in a recent roundtable to discuss anti-competitive issues in labour markets (OECD, 2019[22]; 2019[86]).

87. Competition law enforcement (both anti-competitive practices and merger review) is relevant to address the anti-competitive creation or maintenance of monopsony power in labour markets. As in product markets, collusion is the most detrimental anti-competitive practice in labour markets. Typical practices in this regard include collusive agreements among employers to fix wages or working conditions, as well as no-poach agreements. In addition, non-compete clauses on workers that are not justified by pro-competitive efficiencies, as well as abuses of employer's monopsony power, such as predatory hiring to prevent market entry, could also be tackled by competition law enforcement. Likewise, further anti-competitive concentration of labour input markets could be prevented via merger control (OECD, 2019[22]).

88. It is widely accepted that competition laws apply equally to anti-competitive restrictions on the demand and the supply side of markets, including labour markets. However, collective bargaining agreements between employees and employers are typically not subject to the application of competition law, considering the social objective they pursue (OECD, 2019, p. 9[22]).[33] This is especially relevant in the US sports labour markets, where collective bargaining agreements between clubs and players' unions are very common (Rompuy, 2022[36]).[34]

89. Even if competition law is generally applicable to labour markets, enforcement in this area has been limited.[35] Nevertheless, a trend towards more action from competition authorities in labour markets has been emerging worldwide. So far, the focus has been on restrictive agreements whose effects do not require to be demonstrated, such as wage-fixing and no-poach agreements (including in cases related to sports labour markets, as further discussed below). For instance, some jurisdictions (such as Hong Kong, Japan, Portugal, the United Kingdom and the United States) have developed guidelines to highlight the risks of these practices and to clarify that they are unlikely to generate efficiencies (OECD, 2019[22]).

90. In Latin America, competition authorities are also looking at labour markets, both in enforcement and advocacy activities, including Brazil (CADE, 2022[87]), Colombia (SIC, 2021[88]), Mexico (COFECE, 2021[89]) and Peru (Indecopi, 2020[90]; 2022[91]).

[33] Yet, it is argued that the exemption for collective bargaining agreements would not prevent the application of competition law to self-employed individuals that qualify as enterprises, nor to collective agreements that do not seek to improve working or employment conditions (OECD, 2019, p. 9[22]).

[34] Nevertheless, there is still debate in the United States on the availability and scope of the exemption beyond expiration of a collective bargaining agreement, as well as on the effects of decertification of a union (Rompuy, 2022[36]).

[35] Indeed, competition authorities face several challenges when applying competition law to labour markets. For instance, this regards how to assess negative effects of labour monopsony under the consumer welfare standard and how to adapt to labour markets competition tools that were built for the exam of product markets, such as the hypothetical monopolist test for market definition (OECD, 2019[86]).

91. When it comes to sports labour markets, it should be noted that professional athletes have characteristics that differentiate them from most ordinary professionals. First, most professional sporting careers are short by nature. For example, the average career length in the United States' major leagues (NFL, NBA, NHL, MLB and MLS) is less than six years (Forbes, 2015[92]) and elite football players have an average career duration of eight to eleven years (Rey et al., 2022[93]). Second, gender pay gap is substantially high in the sports industry (Forbes, 2019[94]). For example, in a study that covered 460 occupations, athletes had the worst gender pay gap (around 150% difference) (Time, 2016[95]). Third, the sports industry is labour intensive, and the final product is not easily separated from the workers themselves. This means that players have substantial personal contributions in sports. Moreover, the value of one player relies on the performance of others, not only within his/her club, but also between clubs. In other words, the quality of athletes of rival clubs impacts the value of a player of any club (Rosen and Sanderson, 2001, pp. F48-F49[96]). Fourth, professional athletes are exposed to substantial labour market power, as players are highly specialised workers and have few employment alternatives compared to employees in many other industries in light of limited-cross sectoral employability (Humphreys and Pyun, 2015, p. 2[97]; Araki et al., 2022, p. 19[98]). Indeed, except for specific cases (such as football), most clubs in major leagues do not face significant competition for the services of players from outside the league – since the revenues disparities outside the league are so prominent that playing there is not a viable substitute –, and therefore are likely to exercise monopsony power over their athletes (Ross, 2004, p. 51[99]).

92. In this context, restrictions on athletes are often imposed by sports associations or agreed among clubs, which could restrain competition for players. While some of these restrictions can be justified considering the specificities of the sports labour market, in some circumstances they can be considered competition infringements.

93. The following sections will discuss key competition issues in sports labour markets that have received the most attention from competition authorities, namely no-poach and wage-fixing agreement (Section 5.1 Wage-fixing and no-poach agreements), as well as transfer rules (Section 5.2 Transfer rules), although there are other topics that have also been assessed by competition authorities, such as athletes' advertisement and sponsorship opportunities,[36] student athletes[37] and minimum-age requirements.[38]

5.1 Wage-fixing and no-poach agreements

94. No-poach agreements are a particular type of employers' cartel through which they agree to refrain from soliciting, hiring or recruiting one another's employees, therefore renouncing to compete for the employees' labour. Wage-fixing agreements are also collusive practices between employers through which they agree on salaries and wages or on any other aspect of the compensation policy to employees, thus controlling the wage or benefits level or their range (OECD, 2019, p. 28[22]).

95. In the sports labour markets, wage-fixing agreements refer to salary caps, implemented by clubs – often with the involvement of the sport organisation – aiming at harmonising or co-ordinating wages. Salary caps can involve different levels of restrictions, such as individual salary caps (maximum wages paid to individual players), club salary caps or payroll limitations (maximum total wage expenses, without directly restricting the wage of individual players) or luxury taxes (surcharges levied on clubs whose payrolls exceed the salary caps, distributing the proceeds to clubs with lower payrolls) (Rosen and Sanderson, 2001, pp. F64-F65[96]).

[36] See, for example, (Bundeswettbewerbsbehörde, 2021[125]) and (Budeskartellamt, 2019[124]).

[37] See, for instance, National Collegiate Athletic Association v. Alston et al., 594 U.S. ___ (2021) and (PaRR, 2023[130]).

[38] See, for example, O.M. v. National Women's Soccer League, LLC, 554 F. Supp. 3d, 1171, 1176 (2021).

96. No-poach and wage-fixing agreements have been the focus of competition enforcement in labour markets, including in Latin America (see Box 6). Many of these cases refer to the sports labour market, suggesting that this sector is particularly vulnerable to such anti-competitive behaviours, probably because of the limited cross-employability mentioned above, which creates substantial labour market power (Araki et al., 2022, p. 19[98]).

Box 6. Competition enforcement against no-poach and wage-fixing agreements in sports labour markets

Colombia

In 2021, the *Superintendencia de Industria y Comercio* (SIC) initiated an investigation against the organiser of the national football league, 16 football clubs and 12 individuals for allegedly participating in a no-poach agreement. The investigated parties would have created a list of players with whom other clubs could not negotiate, restricting competition in the market for football players' rights. The investigation was closed in 2022 after the parties submitted several commitments, including to stop the conduct and reform the statutes and disciplinary code of the football league to ensure players' contractual freedom; to appoint a compliance and ethics officer; and to adopt governance guidelines.

In March 2023, SIC raided the headquarters of 11 football clubs within a new investigation in the football players' market, including female players. SIC requested detailed information on labour contracts in order to detect any potential irregularity.

Mexico

In 2021, the *Comisión Federal de Competencia Económica* (COFECE) sanctioned 17 football clubs, the Mexican Football Federation and 8 individuals for having colluded to impose maximum wage caps for female football players. The anti-competitive practice prevented clubs from competing for hiring female players through better wages. The conduct had a negative impact on female players' income, but also increased the gender pay gap. The practice also affected the markets of male football players, particularly by a no-poach agreement in which clubs agreed to apply a right of retention (i.e. each club had the right to keep their players at the expiration of their contracts). In practice, the clubs segmented the market of players, limiting competition of clubs in the hiring of athletes, which restricted the mobility of players and reduced their bargaining capacity to get better wages.

It was estimated that the illegal practices generated a harm of almost USD 4 million to the market. COFECE imposed fines totalling around USD 8 million.

Portugal

In 2022, the *Autoridade da Concorrência* (AdC) sanctioned 31 football clubs and the national football league for implementing a no-poach agreement, through which the clubs agreed not to hire players who unilaterally terminated their employment contracts between 2019 and 2020 due to the Covid-19 pandemic. Thus, a player who took the initiative to terminate his contract would not be hired by other clubs either in the first or second football leagues in Portugal. This was the first sanctioning decision of AdC in labour markets. The authority imposed a total fine of approximately EUR 11.3 million.

Source: SIC (2021[88]), SIC abre investigación contra DIMAYOR y 16 clubes de fútbol, por presuntos actos, https://www.sic.gov.co/boletin/juridico/integraciones-empresariales/sic-abre-investigaci%C3%B3n-contra-dimayor-y-16-clubes-de-f%C3%BAtbol-por-presuntos-actos-anticompetitivos; SIC (2022[100]), Resolución número 50188 de 2022, Radicación 21-171129, 29 Jul 2022, https://www.sic.gov.co/content/resoluci%C3%B3n-50188-29-07-2022-aceptaci%C3%B3n-de-garant%C3%ADas-f%C3%BAtbol-ii; PaRR (2023[101]), Colombia's SIC raids headquarters of 11 football clubs (translated), https://app.parr-global.com/intelligence/view/intelcms-4nd3nw; COFECE (2021[89]), COFECE sanctions 17 clubs of the Liga MX, the Mexican Football Federation and 8 natural persons for colluding in the market of women and male soccer players' draft, https://www.cofece.mx/wp-content/uploads/2021/09/COFECE-028-2021_ENG.pdf; Autoridade da Concorrência (2022[102]), AdC issues sanctioning decision for anticompetitive agreement in the labor market for the first time, https://www.concorrencia.pt/en/articles/adc-issues-sanctioning-decision-anticompetitive-agreement-labor-market-first-time.

97. As highlighted in the 2019 OECD roundtable on competition in labour markets, no-poach and wage-fixing agreements have been considered as "by object" or "per se" infringements by competition authorities, since they would be unlikely to generate efficiencies and therefore no evidence of the effects of the conduct are required (OECD, 2019, p. 28[86]).

98. Indeed, as in labour markets in general, these practices are likely to produce anti-competitive effects on the sports sector. While no-poach agreements reduce the number of clubs looking for players, wage-fixing agreements lead to similar cost structures among competitors, reducing the strategic uncertainty that characterises economic competition. Both practices may limit athletes' mobility, lower salaries and ultimately restrict the ability of clubs to expand their labour force,[39] as well as reinforce the clubs' bargaining power. Such behaviours can also affect investment in training and result in inefficient allocation of athletes among clubs, preventing the recruitment of athletes according to the needs of the clubs and ultimately forcing talented athletes to leave for abroad. This may ultimately reduce the quality of the game and its attractiveness to consumers (Araki et al., 2022, pp. 19-20[98]; Ross, 2003, p. 51[48]; Autoridade da Concorrência, 2021, pp. 11, 37-38[103]; Autoridade da Concorrência, 2022[102]).

99. Additionally, these negative effects might be even more harmful in the sports labour markets than in other sectors. As mentioned above, in the sports industry the output (the game) cannot be easily distinguished from the inputs (the players), and therefore the output includes direct valuation of the inputs themselves. This means that a potential impact on the labour force might more directly affect output and consumers' welfare. For example, as no-poach and wage-fixing agreements may incentivise athletes to move to foreign markets, not only the quality of the games may be compromised, but also the connection of supporters to their club.

100. Nevertheless, some argue that these practices, especially salary caps, are necessary to ensure competitive balance, and therefore should be treated differently in the sports sector. Accordingly, in the absence of limits to spend in wages, the clubs with more resources would hire the best players from the clubs with less resources, leading to a source of imbalances, which in turn would reduce the uncertainty and excitement of competitions. Thus, salary caps would be a mechanism to limit inequality among clubs and to better distribute talents across teams, making sports competition more intense. In fact, these limitations would be an element of the collaborative relationship of clubs, reflecting the shared nature of the wealth produced by the tournament (Colomo, 2022, pp. 347-348[28]). Other arguments in favour of salary caps are the need to maintain financial stability (Dietl, Lang and Rathke, 2008, pp. 2-3[104]) and the impact on ticket prices and the public financing of new facilities that may be required to generate enough revenues to pay very high salaries (Rosen and Sanderson, 2001, p. F48[96]).

[39] For example, as wage-fixing agreements are likely to reduce salaries, they might discourage the development of new players, who may prefer to follow other professions. In addition, if all clubs pay the same salary, players will not have incentives to move to another club.

101. According to these arguments supporting salary caps, at the very least salary caps should be assessed under the rule of reason. Following this rationale, even if more restrictive types of wage-fixing agreements (such as individual salary cap) should be avoided, less restrictive practices (e.g., club salary caps or luxury taxes) could be justified, in contrast with the current practice of considering these practices "per se" violations.

102. It should be noted that several sports leagues, especially in the United States, implement salary caps (e.g., NBA, NFL and NHL). In those cases, however, wage-fixing agreements are part of collective bargaining agreements between clubs and players unions, and therefore exempted from the application of competition law (Hoey, Peeters and Principe, 2021, p. 16[105]). This argument would not hold outside a collective bargaining agreement, and therefore salary restrictions would still be considered anti-competitive infringements.

5.2 Transfer rules

103. The transfers of players are regulated by a complex set of rules established by sports organisations, varying substantially across jurisdictions and sports. For instance, these rules may refer to: (i) specific formalities to be followed (e.g., a prior authorisation from the association or the league; authorisation from the former club); (ii) transfer windows outside which players cannot, without exception, move to another club; (iii) limitation of the number of players that a club can employ; (iv) restriction of the nationality of players (e.g., nationality quotas); and (v) financial conditions (e.g., registration fees, training fees, compensation due to early termination of the contract) (KEA; CDES, 2013, p. 95[106]).

104. While in Europe and Latin America clubs are to some extent free to buy and sell players (although conditions usually exist, such as transfer fees), in the United States the transfer of players is much more regulated,[40] through collective bargaining agreements. For instance, in the United States transfer fees are strictly limited and players are usually traded for other players or draft picks. Under the draft picks system, new players coming into professional leagues are allocated through a draft system, where clubs take turns in selecting from a pool of eligible players – the lowest-ranked club from the previous season choosing first, followed by the next-to-last and so forth. When a club selects a player, the team receives exclusive rights to hire that player, and other clubs in the league are prevented from signing a contract with the player. Unlike in the EU and Latin America, clubs do not have incentives to invest in the development of young players, which is outsourced to high schools and colleges (Hoey, Peeters and Principe, 2021, p. 16[105]; KEA; CDES, 2013, p. 81[106]).

105. On the one hand, transfer rules aim to ensure contractual stability and competitive and financial balance among clubs. For instance, contractual stability rules can guarantee that players commit to the club for the duration of their engagement. Transfer periods (or windows) prevent movement of players during a tournament or before decisive matches, which could affect the fairness of competitions. Setting limits on transfer of players could also prevent that the richest clubs take the best players at any time. In addition, transfer rules seek to protect minors and guarantee the search for and development of new talents, for example by redistribution and solidarity mechanisms (i.e., compensation of clubs that invested in the training of young athletes and contributed to the development of elite players). Moreover, as supporters are usually attached to some players (especially the

[40] However, it should be noted that the US sports labour market was much more restrictive in the past. For instance, until the 1970s the reserve clause applied to all professional sports. This clause gave clubs the exclusive property rights to players' work, since only his/her club had the legal right to transfer performance rights of players to other clubs. The reserve clause was abolished because of players' unions and antitrust threats. Since then, free agency was emerged, allowing players to sell their services to the highest bidder at the completion of their contracts (Rosen and Sanderson, 2001[96]).

most popular ones), regular changes in the team rosters could lead to disappointment and might undermine the connection with clubs. Therefore, transfer rules could help ensure team loyalty. In addition, nationality requirements could ensure the development of national players (including for the relevant national team), which could also boost the identification of supporters with their club. On the other hand, transfer rules also limit free movement of players from one employer to another, generate substantial monopsony power and might therefore restrict competition for players (Ross, 2004, pp. 49-50[99]; KEA; CDES, 2013[106]).

106. Unlike no-poach and wage-fixing agreements, practices that limit the transfer of players are usually assessed under the rule-of-reason approach, allowing clubs and leagues to justify restrictive effects as an inherent mean to achieve legitimate sports goals in a proportionate fashion.

107. Antitrust enforcement on transfer rules has been much more common in the European Union, where the freedom of movement of work is often invoked alongside competition law arguments (see Box 7). In the United States, rules limiting the mobility of players are usually included in collective bargaining agreements, and therefore are exempted from the application of competition law. This explains why there have been so few antitrust challenges to labour restraints in the United States (Rompuy, 2022[36]).

Box 7. Antitrust enforcement on transfer rules in the European Union

In the last three decades there were several cases dealing with transfer of players in the European Union.

For example, *Bosman* (1995) banned the nationality requirements that limited the permissible number of players from other EU Member States within clubs in national leagues; and allowed players to move freely to another club after the end of a contract, regardless of the payment of transfer fees. Pre-Bosman, players were not free to go to the marketplace and conclude a new contract with another employer on the expiry of a contract, unless the new club had paid the former club a transfer fee. The decision considered that such transfer fees were not proportionate to the alleged objective of the restrictions, namely (i) maintaining a financial and competitive balance between clubs and (ii) supporting the search for talent and the training of young players. According to the ECJ, the transfer rules did not prevent the richest clubs from securing the services of the best players, and thus was not able to change the balance between clubs. Moreover, transfer fees were considered contingent, uncertain and unrelated to the actual cost of training athletes. Thus, they would not be a decisive factor in incentivising recruitment and training of young players and could be achieved by other means that dis not distort freedom of movement for workers.

In 2001, in an investigation carried out by the European Commission, FIFA agreed to change their rules on international football transfers, seeking to establish a balance between the right of free movement and the stability of contracts between clubs and players. Some of the relevant changes included: (i) for players aged under 23 years, training compensation fees were allowed to encourage and reward the training efforts of clubs (in particular small ones); (ii) setting of minimum (1 year) and maximum (5 years) duration of contracts; (iii) creation of one transfer period per season and a further mid-season window, with a limit of one transfer per player per season; (iv) unilateral breaches of contract are only possible at the end of a season; (v) financial compensation can be paid if a contract is breached unilaterally, whether by the player or the club; and (vi) the creation of solidarity mechanisms to redistribute a significant proportion of income to clubs involved in the training and education of a player, including amateur clubs.

Moreover, in the *Bernard* case (2010) the ECJ established that financial compensation to a club providing training for young players could be justified but should related to the actual costs of the training.

Currently, there are a set of ongoing cases concerning transfer rules. Among other topics, they concern the competition impact of rules related to (i) a mandatory inclusion by clubs of a minimum number of "home-grown" players (i.e., players trained by a club or others in the same national association); (ii) a scale of prices for football players; and (iii) the compensation due to players who terminates a contract without just cause.

Source: Case C-415/93 (*Union Royale Belge des Sociétés de Football Association and others v. Bosman and others*), judgment of the Court of 15 December 1995; European Commission (2002[107]), Commission closes investigations into FIFA regulations on international football transfers, https://ec.europa.eu/commission/presscorner/detail/en/IP_02_824; KEA; CDES (2013, p. 89[106]), The Economic and Legal Aspects of Transfers of Players, https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf; Case C-325/08 (*Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC*), judgement of the Court (Grand Chamber) of 16 March 2010; GCR (2023[108]), UEFA rule gives home-grown footballers anticompetitive advantage, AG Szpunar says, https://globalcompetitionreview.com/article/uefa-rule-gives-home-grown-footballers-anticompetitive-advantage-ag-szpunar-says; PaRR (2022[109]), Luxembourg football club lodges UEFA damages suit seeking ECJ guidance, https://app.parr-global.com/intelligence/view/intelcms-q33cxr; PaRR (2022[110]), Belgian court asks ECJ to rule on legality of FIFA player transfer rules, https://app.parr-global.com/intelligence/view/intelcms-xxg6f6.

108. While competition in the market of transfer of players does not seem to have gained much attention in Latin America (including from competition authorities), international experience may shed some light in this regard. After all, many talents are discovered in the region, especially as regards football. For example, three Latin American countries were listed among the top five nationalities by number of international transfers of professional football players (FIFA, 2021, p. 20[111]). Thus, ensuring a competitive environment for transfer of players seems particularly relevant to the region.

6 Conclusions

109. Sports are interconnected with national culture and are a relevant instrument to improve social development, being particularly important to Latin American and Caribbean countries. In addition, professional sports have an increasingly economic dimension that cannot be disregarded, which indicates that ensuring economic competition – in addition to sports competition – is essential to the well-functioning of the industry.

110. Competition law provides enough flexibility to take into account the specificities of the sector, such as the interdependence between participants, the need to ensure the integrity of the game and the competitive balance, as well as a genuine governance framework. Indeed, apart from some specific harmful behaviours (namely, no-poach and wage-fixing agreements), the conduct of sports organisations is assessed under the rule-of-reason approach. In other words, restrictions on competition can be justified when necessary to achieve sports legitimate objectives where there is no less restrictive alternative to do so. This means that in some circumstances economic competition may be limited to guarantee sports competition.

111. Sports have attracted the attention of competition authorities for a long time worldwide, but more recently there has been increasing interest in the topic, including in Latin America. For example, competition authorities have been looking at the competitive dynamics within and between leagues and the application of competition law to the sports labour markets.

112. Looking forward, competition authorities will continue to have a relevant role to play in overseeing competition in the sports industry. Ultimately, this will guarantee that consumers will benefit from more attractive and more affordable products.

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