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Executive summary of the Roundtable on Competition and Professional Sports

Annex to the Summary Record of the 76th meeting of the Working Party 2

4 December 2023

This Executive Summary by the OECD Secretariat contains the key findings from the roundtable on Competition and Professional Sports held during the 76th meeting of Working Party 2 on 4 December 2023.

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Executive summary of the Roundtable on Competition and Professional Sports

By the Secretariat¹

On 4 December 2023, Working Party No. 2 on Competition and Regulation held a roundtable to discuss competition and professional sports. Considering the background note prepared by the OECD Secretariat, the written contributions, as well as the discussion by delegates and expert panellists, the following key points emerged:

1. Competition law applies to the professional sports industry, with its specificities taken into account by competition authorities and courts.

There is consensus on the applicability of competition law to the professional sports industry, both as regards merger review and anti-competitive behaviour. Professional sporting activities are economic in nature, which is reinforced by the increasing commercialisation of these activities in the last decades. The special features of the sports sector, such as its social and cultural dimension, its specific economics – including the notion of sports competition and the need for some co-operation between participants – and a distinctive governance model, are considered by competition authorities and courts when they apply competition law.

Except for particularly harmful practices in the sports labour markets (namely no-poach and wage-fixing agreements), behaviours in the sports sector are assessed under the rule of reason, balancing their pro- and anti-competitive effects.

Competition authorities worldwide closely scrutinise the sports sector, with cases ranging from the organisation of sports tournaments, to sports labour markets, commercialisation of broadcasting rights, sale of tickets to sports events, sports betting and the market for exclusive product licensing and branded products. Anti-competitive practices in the sports sector may affect different stakeholders (e.g. competing leagues, clubs, athletes, broadcasters, sellers of tickets, sponsors, advertisers and betting companies) in different ways, ultimately impacting consumers, who might face less choice, lower quality and higher prices.

2. While investors can mobilise additional funds for the sports industry, this can tilt the playing field among participants.

In recent years, there has been a trend towards investors (commonly foreign) acquiring ownership and control of clubs and leagues worldwide, many of which are now run by professional managers. While this increases professionalisation and commercialisation of sports, it also raises concerns about competitive balance and the true spirit of sports. Indeed, some clubs can obtain additional funds, often detached from sports activities, to foster their performance. This might distort the competitive balance among participants, increasing the gap in the performance of clubs and undermining uncertainty of outcomes, which has been called “financial doping”.

Some jurisdictions, especially in Europe, have reacted to the excessive commercialisation of sporting activities, for instance by establishing restrictions on clubs’ ownership to ensure

¹ This executive summary does not necessarily represent the consensus view of the Working Party participants. It does however identify key points from the discussion at the Roundtable, including the views of the expert panellists and the participants’ oral and written contributions.

they are controlled by not-for-profit organisations or by introducing an independent regulator to oversee clubs' governance and protect the values of the game.

3. Sports governing bodies concentrate legislative, executive and judicial roles in sports competitions, which may generate conflicts of interests and create incentives to engage in anti-competitive behaviour against competing leagues, as well as clubs and athletes that participate or might participate in a tournament.

Sports governing bodies – usually under the form of national and international sports federations and associations – have legislative, executive and judicial roles in sports competitions. In fact, these entities regulate the market, by setting the rules of the game and the rules of the leagues, and also organise and promote competitions (including leagues), as well as monitor and enforce the rules and arbitrate disputes. While combining regulatory and commercial functions within the same body is not itself anti-competitive, this may create a conflict of interest that may lead to anti-competitive behaviour in the organisation of sports events. Sports governing bodies typically have significant market power and incentives to prevent the organisation of sports events by competing leagues, clubs and/or athletes.

Sports governing bodies often impose an *ex-ante* control system over third-party sports competitions, such as breakaway leagues, according to which new events must obtain a prior approval by the incumbent sports organisation under penalty of clubs and athletes being subject to sanctions, such as fines and exclusion from official competitions. When this control system does not follow objective, transparent and non-discriminatory, pre-established criteria, providing for review by an independent body, it may be characterised as an anti-competitive practice, with negative effects on competing leagues, clubs, athletes and consumers. Several cases regarding conducts of incumbent organisers of sports events against breakaway leagues have been sanctioned by competition authorities worldwide.

In addition, sports governing bodies can engage in anti-competitive behaviour against clubs and athletes that participate or might participate in a competition. For instance, these conducts may relate to the imposition of entry fees to clubs promoted from lower divisions, as well as to rules that prevent clubs from operating beyond their home territory or from being incorporated as a commercial company.

4. Anti-competitive behaviour in sports labour markets is likely to distort the level playing field and reduce the overall attractiveness of sports.

Professional sports labour markets are significantly different from most ordinary labour markets. Athletes have very short careers, and gender pay gaps are high. Professional athletes are also frequently subject to significant labour market power, since these workers are highly specialised and have few employment alternatives compared to employees in most industries thanks to limited-cross sectoral employability.

In this context, restrictions on athletes are typically imposed by sports associations or agreed among clubs. Although these restrictions can sometimes be justified in light of the specificities of the sports labour market, in some cases they can constitute competition law infringements.

Wage-fixing and no-poach agreements between competing clubs have been the focus of competition enforcement in labour markets, with many cases relating to sports labour markets. In many jurisdictions, such practices are considered as “by object” or “per se” infringements, meaning that competition authorities do not need to assess the effects of the conducts, since they would be unlikely to generate efficiencies and would undermine the quality of the game and affect consumer welfare. In contrast, several leagues establish

salary caps through collective bargaining agreements with players' unions, exempting such practices from the application of competition law.

Transfer rules, such as financial conditions and restriction of the nationality of players, can also amount to competition infringements. While these restrictions may guarantee contractual stability and promote competitive and financial balance among clubs, they may also restrict free movement of players, create significant monopsony power and distort competition for athletes. Unlike wage-fixing and no-poach agreements, transfer rules are examined under the rule of reason, allowing sports organisations and clubs to justify restrictions as a necessary way to achieve legitimate sports objectives.

5. The sale of sports broadcasting rights constitutes a major source of income for sport clubs and the distribution schemes of these revenues among participants can impact the competitive balance.

The commercialisation of sports broadcasting rights has become the most relevant funding source of professional sports, accounting for around 40% to 60% of the clubs' revenues. Broadcasting rights can be sold individually or collectively. When sold individually, each club of a tournament sells the broadcasting rights of its home matches. Through joint selling, the rights to broadcast the matches of all clubs are bundled and sold collectively by an association formed by the participating teams or the relevant sports organisation, and the revenues are split among the clubs.

Most jurisdictions follow the collective approach, although competition authorities have regularly intervened to ensure that competition is not distorted, for instance by imposing limited duration of exclusive contracts and the need to sell broadcasting rights through transparent and non-discriminatory competitive bidding processes. While this system can theoretically foster competitive balance among clubs, in practice this outcome depends on the redistribution system to share revenues, which often are not equally shared among clubs, relying on specific criteria such as performance, prestige and market size. On the other hand, when the broadcasting rights are sold individually, the most popular teams tend to obtain higher returns, as the rights for their matches are much more valuable than those of the other clubs. Individual sales can also harm consumers, who might need to subscribe to different broadcasters to watch all games of a championship. Although there is no one-size-fits-all approach regarding the sale of broadcasting rights, competition authorities can play an important role in monitoring these activities to ensure that they are pro-competitive.