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**Competition and Professional Sports – Note by Romania**

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## Romania

### 1. Competition Law in Sports

1. Competition law is highly relevant in the sports industry because it helps ensure that sports competitions are fair, transparent, and free from anti-competitive behavior. In the context of sports, it addresses issues related to commercial rights, market access, and the overall integrity of competitions. The sports industry involves significant economic activities, such as broadcasting, sponsorships, and ticket sales, making it vital to prevent practices that could harm competition, limit consumer choice, or unfairly advantage certain stakeholders.
2. Being part of the European Union, Romanian competition legislation and regulation is influenced by both national and European legislation in sports, as in other domains. On one hand, the EU has specific guidelines for sports associations and governing bodies to ensure that competition is not unduly restricted. On the other hand, at the national level, Romania has, among other regulations, the Law on Physical Education and Sports<sup>1</sup>, which governs the sports sector.
3. This law plays a significant role in shaping and regulating various aspects of sports in Romania. It addresses issues related to physical education, sports activities, and the overall development of sports within the country. Additionally, the Law on Physical Education and Sports aligns with European Union directives and recommendations, ensuring that Romanian sports associations and governing bodies adhere to European competition standards.
4. According to this law, performance sport aims to harness an individual's aptitudes within an organized system of selection, training, and competition, with the goal of improving sports outcomes, achieving records, and securing victory. Furthermore, performance athletes are individuals who systematically and methodically engage in sports, participating in competitions to secure victory over their rivals, self-improvement, or the pursuit of record-breaking achievements. To partake in official local or national sports competitions, a performance athlete must be affiliated with a sports club.
5. In this context, the registration of athletes and their transfers falls under the purview of national sports federations, professional leagues, and county and municipal associations, categorized by sports branches, in accordance with the statutes and regulations of the national sports federations.
6. The official sports competition system, categorized by sports branches, is developed and organized by national sports federations, in accordance with their statutes and regulations.
7. In the following sections, the Romanian football industry will be of main focus, as the expertise of the Romanian Competition Council (RCC) primarily pertains to this specific sector within the sports industry.

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<sup>1</sup> No. 69/2000.

## 2. RCC case study

### 2.1. Preliminary Aspects

8. Through an order issued by the President of the RCC, an *ex officio* investigation was initiated in 2009 to examine the possible violation of Article 5, paragraph (1) of the Competition Law no. 21/1996, as amended and republished, and Article 101 of the Treaty on the Functioning of the European Union (referred to as the Treaty). This investigation focuses on the joint sale of commercial rights for football competitions by the Professional Football League and its members, as well as by the Romanian Football Federation and its members.

9. The Romanian Football Federation (RFF) was established through the collaboration of sports clubs, county football associations, and the municipal football association of Bucharest. The RFF operates in accordance with its Statute (RFF Statute<sup>2</sup>). Sports clubs that are members of the RFF in the top-tier competitive category, (Liga I) have formed the Professional Football League (PFL). The PFL operates under the authority of the RFF, based on its Statute (PFL Statute<sup>3</sup>).

10. The entities in question have been assessed interdependently, given that the county football associations (CFA) and the municipal football association of Bucharest (MFAB) are affiliated with the RFF, and the sports clubs belonging to the PFL are also members of the RFF (in fact, a sports club cannot join the PFL without RFF membership). In practice, the decision-making authority within the RFF is responsible for regulating the activities of both the PFL and CFL/MFAB. This is not only because they approve their statutes, thereby influencing their organizational structure and decisions, but also because the RFF has the ultimate authority when it comes to organizing domestic football competitions.

11. What is also important to highlight, due to the structure of the football domain, sports clubs affiliated with CFA/MFAB aim to move up from the Fourth Division to the Third Division. If they succeed, they essentially become members with voting rights in the General Assembly of the RFF. In this manner, sports clubs in the Third Division aim to advance to the Second Division, while those in the Second Division strive for promotion to the First Division. Therefore, clubs in the First Division seek to achieve high rankings in their competitive category, not only to avoid relegation to the Second Division but, more importantly, to qualify for European and global competitions.

12. Furthermore, at the end of each competitive year, following the promotion of top-performing teams and the relegation of teams that finished at the bottom of each competitive category, the composition of members in the First, Second, Third, and Fourth Divisions changes. Consequently, on an annual basis, some of the First Division teams lose their membership status in the PFL (4 during the 2009/2010 competitive year) due to relegation but maintain their membership within the RFF. Simultaneously, a similar number of Second Division teams get promoted to the First Division and thus acquire PFL membership in addition to their RFF membership. The same scenario applies to county football associations: each year, a portion of Fourth Division teams (21 during the 2009/2010 competitive year) are promoted to the Third Division, while Third Division teams that get relegated lose their direct RFF membership and become members of CFA/MFAB.

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<sup>2</sup> A document adopted by its General Assembly.

<sup>3</sup> Adopted by its General Assembly and approved by the RFF.

13. As indicated in the introduction, the sole interest of these sports clubs is of an economic nature. For instance, all football clubs strive every year to climb the rankings to ultimately reach the highest competitive level (Liga I) and once they reach it, they seek to maintain a top position. Additionally, all football clubs, including those from Liga IV which are not members of RFF, compete in the Romanian Cup.

14. The longer a sports club, and consequently its football team, remains among the top positions in the higher leagues or achieves higher rankings in the Romanian Cup, the greater their visibility and corresponding revenues grow (sponsorships, ticket sales, TV rights, advertising, etc.). In the context described, this reflects the economic rationale of the entire situation.

15. Therefore, categorizing sports clubs based on the competitive levels they participate in (Liga I, II, III, or IV) is not suitable. While it is possible for a club currently in Liga IV to reach Liga I in over three years and become a PFL member, the possibility for a sports club currently in Liga I to get relegated in the following years, thereby losing its PFL membership status and its direct membership in the RFF, becoming a member of CFA/MFAB, is equally valid.

## 2.2. B. Relevant market and anticompetitive behavior

16. Given the circumstances of the investigated situation, the relevant market has been defined as the national market for the sale of commercial rights to football matches in competitions that take place regularly every year.

17. Regarding the anticompetitive practice implicated, the following points were to be clarified:

1. The RFF Statute is, in fact, a document approved by the RFF members with voting rights in the General Assembly of the federation (which can only be modified or supplemented by a two-thirds majority of the present members). Because they have committed to adhere to it the document represents their expressed will.
2. Representatives of the federation's members in the Executive Committee of the RFF „approve regulations and other normative acts related to football activity in Romania, except those falling under the authority of the General Assembly." These include the Regulations for the Organization of Football Activities (ROFA) and the Disciplinary Regulations.

18. After analyzing these documents, approved either by the RFF members in the General Assembly or their representatives in the Executive Committee of the RFF, certain provisions proved to have violated national competition law.

19. In this respect, the RFF Statute contains provisions that result from the decision of the RFF members to collectively sell, through the federation, the rights related to advertising, publicity, and television and/or radio broadcasts for the competitions in which they participate on their behalf. These competitions include the national championship Liga II, Liga III, national FUTSAL championships, national women's football championships, national Junior A and B championships, matches in the „Cupa României” held on neutral ground, the „Cupa României” final, as well as matches in any other competitions organized under its authority. This situation expresses an overly broad expression of RFF members that could encompass virtually any type of competition.

20. The RFF Statute explicitly states that the **RFF holds all rights** arising from the competitions and other events under its jurisdiction without any restrictions regarding content, date, location, or legal status.

21. Previous versions of the RFF Statute had similar provisions. For instance, Article 39 of the RFF Statute adopted on July 28, 1997, includes the following: "For matches organized within its competence, the Romanian Football Federation has the **exclusive right** to authorize audiovisual or radio transmission, as well as all rights of exploitation and dissemination through visual and audio means, directly or indirectly, in whole or in part."

22. In essence, regardless of the wording, football clubs' intentions were clearly reflected in the Statute: to collectively sell these rights. The members of the RFF have equal voting rights in the General Assembly of the RFF, regardless of the category or competitive level in which they operate.

23. It should be noted that RFF members, as sports entities, engage in economic activities and are, in fact, „undertakings” under the Competition Law. Furthermore, from an economic perspective, football clubs are competing enterprises in their relationships with buyers of commercial rights (such as radio stations, television networks, websites, etc.), regardless of the category and competitive level in which they operate. Additionally, the associations of football clubs (RFF, PFL, CFA, MFAB) represent associations of undertakings as defined in Article 5(1) of the Romanian Competition Law.

24. The phrases "**RFF is the rights holder**" and "**RFF holds exclusivity**," introduced in Article 51 of the RFF Statute, signify that RFF members have chosen to transfer these commercial rights to the RFF for the purpose of collectively selling them. Collective selling is an anticompetitive practice that involves price fixing, a practice expressly prohibited by Article 5(1) of the Competition Law.

25. Within the same complex plan of collective sales, the RFF members belonging to the competitive level of Liga I decided, through the Statute of the „Liga Profesionistă de Fotbal” (PFL), to collectively sell their broadcasting rights, including direct transmission, recording, and retransmission in full or in summary through radio and television or any audiovisual means for football events organized within the PFL. Additionally, they decided that advertising and publicity rights within the stadiums and related to professional sports competitions should be individually monetized by each club.

26. The anticompetitive practice of collective sales of commercial rights for football matches in competitions held regularly every year began in 1997 (the year the Competition Law came into effect). Regarding the implementation of the anticompetitive agreement, both the Federația Română de Fotbal and the Liga Profesionistă de Fotbal have actively participated in the adoption of secondary regulations, the conclusion and management of contracts for the sale of these commercial rights, as well as in monitoring the compliance with the anticompetitive agreement established by the football clubs.

27. How compliance with the anticompetitive agreement established by RFF members is monitored is outlined in the Disciplinary Regulations, a document approved by the Executive Committee of the RFF. Article 83 – Non-Compliance with Game Organization Obligations, paragraph 15 states: "Acceptance of televised broadcasting of a game in violation of the rules established by the Executive Committee of the RFF/PFL or of contracts entered into for this purpose shall be sanctioned with a sports penalty ranging from 200,000 to 300,000 lei. The amount of the penalty will be distributed to the other teams in the respective category championship according to the established grid. In case the club does not pay the amount within 5 days from the date of the decision, it will be penalized with non-scheduling in official competitions."

28. Taking into consideration the arguments presented and considering the following:

- the provisions of the constitutive documents of RFF and PFL and the regulations adopted by the two;

- the conclusion of exclusive assignment contracts of commercial rights belonging to football clubs,

it was concluded that there is an anticompetitive practice on the market for the sale of commercial rights to football matches held regularly every year, which is prohibited by Article 5 of the Romanian Competition Law and Article 101 of the Treaty, consisting of the collective sale of these commercial rights.

29. This conduct has intentionally built barriers to entry on the market for providers of audiovisual media services in the field of television program services, for providers of radio program retransmission services, providers of communication channels for mobile telephony, mobile phone operators, and website operators interested in the transmission of sports events, ultimately resulting in limiting the coverage area for the broadcast of football matches to the detriment of consumers.

30. The jurisprudence covers the distinction between anticompetitive practices that have an anticompetitive object and those that have an anticompetitive effect, and notes that the anticompetitive object and effect are not cumulative conditions, but rather alternatives to assess whether a practice falls under the prohibition provided in Article 5 of the Competition Law and Article 101 of the Treaty. The alternative nature of this condition, indicated by the conjunction "or," first leads to the necessity of analyzing the very object of the anticompetitive agreement, taking into account the economic context in which it is to be applied. In this case, as it involves an anticompetitive practice with the object of collectively selling commercial rights by competing economic agents, a practice assimilated to price-fixing, it can be noted that the anticompetitive practice had the inherent ability to restrict, distort, or impede competition.

31. Furthermore, the anticompetitive practice targeting the collective sale of commercial rights is a complex, unique, and continuous violation, with the sole anticompetitive economic purpose of preventing price competition among clubs and resulting in the closure of the affected markets.

32. Currently, considering the anticompetitive practice at hand, which is ineligible for exemption from the prohibition stipulated by the Competition Law in Article 5, as well as Article 101, paragraph 1, of the Treaty, the case team recommended that the Romanian Competition Council affirm the existence of a complex anticompetitive practice involving the collective sale of commercial rights related to annual football matches within regularly held competitions.

33. In conclusion, the inclusion of clauses regarding the collective sale of commercial rights for football matches in the governing documents of the structures formed by the members of the Romanian Football Federation (RFF) was established as a breach of Romanian competition law between 1997 and 2009 and of the TFEU between 2007 and 2009. These documents include the Statute of RFF, the Statute of PFL (Professional Football League), the Regulation on the Organization and Conduct of Football Activities, and the Disciplinary Regulation. The practice in question has been executed through the execution of exclusive assignment agreements for these rights.

34. That legal accountability for the infringement of Article 5 of the Competition Law and Article 101 of the Treaty was attributed to the following parties:

- Each member of the RFF, due to their participation in forming an anticompetitive agreement for the collective sale of commercial rights for football matches within regularly held competitions every year.

- The Romanian Football Federation (RFF), as it has played a direct role in implementing the anticompetitive agreement for the collective sale of commercial rights for football matches within regularly held competitions every year.
  - The Professional Football League (PFL), which has also been directly involved in executing the anticompetitive agreement for the collective sale of commercial rights for football matches within regularly held competitions every year.
35. Fines were proposed for all of the above.

### 2.3. Commitments

36. On November 15, 2010, both the Romanian Football Federation (RFF) and the Professional Football League (PFL) submitted initial sets of commitments to the Romanian Competition Council. Upon analyzing these proposals, the competition-related concerns arising from the joint sale of commercial rights for football events under their jurisdiction by the RFF and PFL were not adequately addressed by the parties. Consequently, the RCC provided comments on the proposed commitments from both RFF and PFL, allowing them to further enhance their commitments.

37. In this respect, the RCC published a summary of the case and the essential content of the commitments that RFF and PFL had undertaken to rectify potential competition issues stemming from the way they collectively sold commercial rights for football matches within competitions they organized for approximately one month.

38. In addition to the online publication, the RCC, in writing, solicited opinions from various businesses, including TV channels, radio stations, and mobile network operators, regarding the commitments proposed by RFF and PFL.

39. According to the prevailing legal framework, following the conclusion of the public consultation, the RCC has the authority to request companies, if necessary, to modify their commitment proposals within a timeframe not exceeding 30 days. If the company does not modify its commitment proposal within the specified period, it is considered that they have abandoned the option to offer commitments. In such a scenario, the competition authority will proceed with the investigative process.

40. Following the public procedure, both RFF and PFL submitted to the competition authority the final versions of the commitments, amended according to the RCC's requests, along with draft agency contracts and the proposals for agents. The RCC had the option to make selections for monitoring compliance with the commitments from these provided agents.

41. In April 2011, the Plenum of the RCC convened for a session and deliberation on this case. The commitments made by RFF and PFL imply a change in their behavioral practice regarding the sale of commercial rights for regular football matches in Romania in various ways. These commitments were assessed by the competition authority, taking into consideration the specifics of the Romanian market. Furthermore, the commitments were evaluated as a whole, rather than separately for each set of commitments proposed by RFF and PFL, due to the close connections between these entities. Finally, the RCC considered that the commitments forwarded were **sufficient to address the competition issues identified during the investigation.**

42. The final commitments enhanced competition by ensuring that rights are sold through an open, transparent, and non-discriminatory auction procedure. The auction procedure is designed to allow all media service providers interested in sports content rights to compete for them.

43. The final commitments also improve the accessibility of content for television, radio, internet, and mobile network operators, ensuring that all rights are available for the market and thus contributing to its development and meeting consumer demands. For the first time in Romania, special rights packages are created for the internet and mobile networks, allowing for the growth of new media markets.

44. The duration for which the packaged rights will be sold will not exceed 3 years, ensuring that interested operators have the opportunity to compete regularly and frequently for the acquisition of these rights. This measure was taken to prevent a longer duration for the allocation of rights that could potentially allow the buyer to obtain a dominant position in the downstream market, which they could use to limit competition in future auctions. At the same time, a longer duration for the allocation of rights may have anticompetitive effects by acting as a barrier to entry, as a new operator attempting to enter the market may not be able to acquire the necessary rights to offer a product to consumers.

45. Contracts resulting from the auction will not include any automatic renewal clause upon their expiration, thus preventing the elimination of competition for a particular right. Such a clause can, in practice, act as a market closure, leading to the consolidation of the market position of the operator who previously held and exploited the rights in question.

46. Contracts resulting from the auction will not contain any contractual clause granting the assignee the "right of first refusal" concerning the acquisition of rights for subsequent editions. In practice, such a clause can lead to the consolidation of the market position of the operator who previously held and exploited the rights, which is not conducive to the competitive process.

47. The commitments ensure that the rights for matches in the national football championship (Liga I) and the Romanian Cup will not be acquired by the same buyer, thus allowing for competition in the markets where these rights are exploited.

48. In light of the commitments offered, the RCC concluded that there were no longer grounds to continue the investigation, and the procedure in this case was closed. Therefore, the RCC deemed the commitments undertaken by the Romanian Football Federation and the Professional Football League to be sufficient for competition protection, and their fulfillment led to the removal of the circumstances that initiated the investigation, thereby eliminating the need for further action by the competition authority.

### 3. Conclusions

49. In conclusion, the investigation into the collective sale of commercial rights in the context of football matches has unveiled a complex web of agreements and practices that have persisted for years. These practices, as identified by the RCC, have raised concerns related to market competition, pricing, and transparency. The essence of these practices revolved around the collective sale of broadcasting and advertising rights across various football competitions, thus stifling the competitive forces that could have otherwise shaped the industry.

50. The investigation underscored the significance of the principle of competition, which formed the backbone of modern market economies. The pursuit of excellence and the drive to outperform one's competitors are at the core of sporting events like football. However, when competition becomes distorted, it can lead to adverse effects such as market closure, reduced choices for consumers, and a skewed distribution of benefits.

51. It is crucial to recognize the broader context in which sports operate. Sports, including football, serve not only as a source of entertainment but also as an important

vehicle for education, public health, and cultural expression. Recognizing this, the RCC has proposed mitigating circumstances, acknowledging the socio-cultural importance of football, which should be factored into the enforcement of competition rules.

52. These measures must continue to be monitored and evaluated to ensure their effectiveness in maintaining a competitive sports industry. The RCC, working in conjunction with sport's governing bodies, can play a pivotal role in establishing a fair and level playing field for all market participants. Ultimately, the purpose of these actions is to protect the interests of consumers and sustain the vitality of sports as a cultural, social, and economic force.

53. Lastly, the investigation into the collective sale of commercial rights in football is proof of the enduring value of competition, both in sports and in the marketplace. It serves as a reminder that a competitive environment, governed by transparent rules, benefits not only the athletes but also the millions of fans and enthusiasts who make sports an integral part of our society.