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**Competition and Professional Sports – Note by Czech Republic**

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## *Czech Republic*

### 1. Introduction: Sports in the Czech Republic

1. In the Czech Republic, the sports sector is characterized by a multitude of associations and organizations, each with its unique role in governing and supervising sports activities. These entities collectively contribute to the vibrant sporting culture of the country and play a crucial role in shaping and managing domestic sports leagues, ensuring that they operate smoothly and efficiently. These associations are entities formed voluntarily, comprising private actors, while adhering to internal regulatory mechanisms to govern their activities.

2. One aspect of the Czech sports governance is the division of responsibilities between domestic and international bodies. Global governing bodies, such as FIFA for football or FIBA for basketball, are primarily responsible for establishing and enforcing international sports regulations that apply universally. These regulations encompass fundamental aspects of the sport, including its rules, safety standards, and competitive structures. However, when it comes to the organization and regulation of domestic sports leagues within the Czech Republic, the role of Czech sports associations becomes important. These associations set rules and guidelines specific to the country's sporting environment. This includes aspects such as the number of participants allowed in a league, match scheduling, players' eligibility, the operation of promotion and relegation systems, etc.

3. The most popular sports in the Czech Republic are football and ice hockey, and professional clubs engaged in these sports also generate the highest revenues in the country (compared to other sports, such as e.g. basketball or floorball). With regard to football in the Czech Republic, the primary income for clubs are sponsorships and advertising partnerships with various corporate entities. Additionally, ticket sales, including seasonal ticket sales, are a significant contributor to income of the clubs. The income from the sale of television and broadcasting rights is generally much lower compared to European football clubs commonly participating in tournaments that take place at the European level (e.g. UEFA Champions League, UEFA Europa League). Additionally, the income derived from participating in European tournaments is also important for the Czech football clubs. In ice hockey, the primary sources of revenue more or less mirror those in football, with sponsorships and advertising partnerships being the primary contributors. Players are then rewarded based on contracts with individual clubs. The amount of compensation varies depending on the specific club, player's position, skills, and experience.

4. Sports, as entertainment, leisure activity and an overall passion, attract millions of people worldwide. Sports events, from local tournaments to major sports events, have an incredible impact on the economy, social cohesion, and national pride. However, with the increasing popularity and commercialization of sports, questions regarding competition and the legal aspects of this phenomenon have arisen.

### 2. Organisation of Sports

5. In general, every sport has its own association responsible for organizing competitions and regulating the rules. There are sports, such as tennis, motor racing or boxing, where there may be multiple associations or organizations. However, in the

majority of sports, there is a centralized governing body that entrusts regional or local organizations with the responsibility for lower-level events. This hierarchy of sports organizations is closely tied to the level of monetization, which is a key factor in terms of the impact of sports on competition.

6. This chapter focuses on the organisation of football and ice hockey, the most popular sports in the Czech Republic. As discussed below, the Czech NCA has expertise in the application of competition law in the field of these particular sports.

## 2.1. Football

7. The primary authority supervising football in the Czech Republic is FAČR, the Football Association of the Czech Republic. FAČR is in charge of organizing all Czech leagues, with the exception of the top two leagues – the First League and the Second League. Additionally, FAČR is entrusted with the organization of the prestigious Czech Cup competition.<sup>1</sup> Having been a member of FIFA (Fédération Internationale de Football Association) since 1907 and a member of UEFA since 1954, FAČR boasts a long-standing and distinguished international presence. One distinctive feature of FAČR is its robust and well-structured framework, reflecting its dedication to promoting football and cultivating fan support. Within the Czech sports environment, FAČR plays a key role, actively participating as a member in numerous organizations operating within this area.

8. The control over the management of the First League and the Second League is held by LFA, the League Football Association. Established in 2011, LFA is an association composed of football clubs from the country's top two football leagues. It operates under the umbrella of FAČR. In 2016, FAČR and LFA formalized their partnership through a comprehensive framework contract. This agreement empowered LFA to assume responsibility for the governance and organization of the two top Czech leagues. Additionally, LFA took on key roles related to the marketing, public relations, and management of broadcasting rights for these leagues.

9. Similar to leagues worldwide, Czech football leagues adhere to the regulations set forth by IFAB (International Football Association Board) and FIFA. FAČR is authorized to implement rules aligned with those of IFAB and FIFA. These rules are not only adopted by FAČR but are also binding for all Czech leagues and are enforced under FAČR's jurisdiction. For disciplinary matters arising during matches in the top two Czech leagues, the LFA disciplinary commission takes charge of making decisions and imposing sanctions.

10. All Czech football leagues operate on an open system; for the First and the Second League, detailed relegation and promotion rules are outlined in the Schedule of National Competitions by LFA.<sup>2</sup> These rules are subject to periodic changes, typically under the authority of the league board, the highest governing body within LFA, based on proposals from the league committee. In recent years, there have been several rule adjustments, driven by factors like the COVID-19 pandemic and the aim to enhance the competitiveness of the leagues. For the current season, the bottom-placed team in the First League faces direct relegation, while the top team in the Second League earns direct promotion. The other two teams ranked lowest in the First League, engage in relegation play-offs against the teams finishing 2nd and 3rd in the Second League. These modifications aim to ensure dynamic and exciting competition within the Czech football environment.

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<sup>1</sup> Recently called The MOL Cup.

<sup>2</sup> [https://www.lfafotbal.cz/dokumenty?text=&id\\_category=7&id\\_month=0&is\\_secure=0&start=0](https://www.lfafotbal.cz/dokumenty?text=&id_category=7&id_month=0&is_secure=0&start=0).

11. The First and the Second League each comprise 16 clubs, while lower leagues typically consist of between 16 and 18 clubs. Revenue for these leagues can be categorized into several sources, including broadcast revenues (in recent seasons estimated at 150 million CZK per year),<sup>3</sup> matchday revenues, and other revenues.

12. It's worth noting that the majority of these revenues go directly to the individual teams, with the exception of broadcast revenues. Broadcast revenues are distributed by LFA, partly based on the performance of the teams. This distribution mechanism ensures that teams are compensated according to their success and contribution to the league, promoting fairness and competitiveness within the Czech football leagues.

13. There are no known attempts to establish a competing league or tournament within the Czech Republic. There are also no known attempts to prevent teams/players from participating in leagues/tournaments except in cases of, e.g., corruption.

## 2.2. Ice Hockey

14. Czech ice hockey leagues are overseen by two primary governing bodies: ČSLH (Czech Ice Hockey Association) and APK LH (Association of Professional Clubs in Ice Hockey). APK LH's primary role is to organize, manage, and advance the Czech Extraliga (hereinafter referred to as "Extraliga"), which is the Czech Republic's top ice hockey league. APK LH comprises of all clubs participating in the Extraliga and serves as their representative body. APK LH adopts and enforces statutes, internal regulations, and various other documents, including competition and disciplinary rules. These regulations are applicable to the Extraliga and cover various aspects of league operations, such as rules governing promotion and relegation, commercial breaks, and others. APK LH's goal is to ensure the smooth functioning of the Extraliga and maintain the league's standards and integrity.

15. ČSLH also holds a significant role in the Czech ice hockey sector as it supervises all other organized ice hockey activities within the country. As a member of the IIHF (International Ice Hockey Federation), ČSLH is the primary governing body for ice hockey in the Czech Republic.

16. The Czech ice hockey leagues operate as open leagues and are jointly organized by the two associations mentioned above. Extraliga is comprised of 14 teams and typically kicks off its season in September. As the season progresses, the top 12 teams earn qualification for play-offs, where they compete to determine the national champion. Conversely, the team that finishes at the bottom of the Extraliga enters a play-out phase with the first-place team from the lower league (which is the First Ice Hockey League in the Czech Republic). This play-out series is crucial in deciding which teams will participate in the following season of Extraliga, adding a competitive element to the league's structure and ensuring that the best-performing teams advance to the top tier (the Extraliga).

17. The revenue sources and their acquisition in ice hockey do not significantly differ from football in the Czech Republic.<sup>4</sup> In both sports areas, the revenues from the sale of broadcasting rights are based on the principle of solidarity. Similarly, the issuance and enforcement of rules in ice hockey are overseen by the international governing body, in this case, the IIHF. Based on the information at the disposal of the Czech NCA, there have been no reported cases of endeavours to create new leagues or tournaments, and there have

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<sup>3</sup> I.e. approximately 6 mil EUR per year. An increase in the price is expected following the currently ongoing tender.

<sup>4</sup> However, the revenue amount differs, in football being significantly higher.

been no initiatives to hinder clubs from taking part in existing leagues and tournaments within the Czech Republic.

### 3. Application of Competition Law to Sports

#### 3.1. General Insights

18. In accordance with the established decision-making practice of the European Commission and European courts, the Czech NCA acknowledges the application of competition law to athletes, sports associations/organizations, and sports-related activities in general.<sup>5</sup> The determining factor for the application of competition law is the question of engagement in economic activities. With regard to athletes, engaging in economic activities includes athletes' active participation in sports (tournaments etc.) alongside other athletes. The condition for conducting economic activity is usually met by adult professional athletes who engage in this activity for the purpose of earning income. However, this does not mean that amateur athletes cannot engage in economic activities.<sup>6</sup> A sports association is considered an undertaking within the meaning of Articles 101 or 102 TFEU if it conducts economic activities, such as entering into contracts for advertising, sponsorship agreements, or television rights contracts. On the contrary, a sports association is recognized as an association of undertakings within the meaning of Article 101 TFEU if it brings together sports clubs/teams for which the operation of sports is an economic activity.

19. Competition law thus plays a significant role in regulating sports in the Czech Republic, as it does in many other countries. There are no specific legal exceptions explicitly designated for sports in the Czech Republic. However, the Czech NCA generally acknowledges the unique aspects of sports and strives to carefully assess the balance between the restriction of competition on the one hand and the benefits for consumers and sport as such on the other, considering the need to ensure the viability and attractiveness of the sport. This becomes particularly apparent, for instance, in the context of the collective selling of broadcasting rights.

#### 3.2. The Practice of the Czech NCA

20. In the Czech Republic, competition law is reflected in sports particularly through broadcasting rights: the Czech NCA has investigated several arrangements related to sports events broadcasting in ice hockey and football (discussed in a separate chapter below).

21. Furthermore, the Czech NCA has also dealt with the issue of football player transfers governed by the regulations of FAČR, the Football Association of the Czech Republic. In this case, the Czech NCA issued a formal opinion stating that professional football clubs face each other as competitors on the related markets, such as markets for advertising sales, broadcasting rights sales, ticket sales and others. Professional football clubs can therefore be classified as undertakings conducting economic activities closely related to their primary sports activities. In this case, the Czech NCA also recognized that FAČR represents an association of undertakings within the meaning of Par. 3 of the Czech Competition Act (equivalent of Art. 101 TFEU); thus, confirming that competition rules

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<sup>5</sup> ECJ, Walrave and Koch C-36/74, 12 December 1974, (ECLI:EU:C:1974:140), ECJ, David Meca-Medina a Igor Macjén v. Commission, C-519/04 P, 18 July 2006 (ECLI:EU:C:2006:492), etc.

<sup>6</sup> ECJ, Deliège, C-51/96 a C-191/97, 11 April 2000 (ECLI:EU:C:2000:199).

apply to the behaviour of sports governing bodies. The NCA requested FAČR to amend potential anticompetitive rules for player transfers, particularly certain provisions establishing the amount of compensation for the transfer of former professional players (“free players”) between clubs and the requirement of consent of the player's former club for the transfer. Ultimately, FAČR has amended the rules accordingly.

22. In relation to player transfers and related arrangements, it can be noted that the Czech NCA has recently issued guidelines on no-poaching and wage-fixing arrangements. Although the NCA has not yet dealt with a relevant case in the field of sports, in its guidelines it has drawn attention to numerous decisions of other competition authorities and declared its readiness to apply competition rules to these issues as well.

23. In addition to matters related to broadcasting rights, player transfers and the behaviour of sports governing bodies, competition rules in the Czech Republic may also apply to ticketing and pricing (preventing or punishing price-fixing or abuse by clubs and organisations), sponsorship and merchandising (evaluating sponsorship and merchandising agreements to avoid undue competition restrictions), licensing and access (ensuring equitable access to sports facilities for clubs, organizations and others).

### 3.3. Collective Sale of Broadcasting Rights

24. Broadcasting rights in sports are a crucial aspect that influences how sports events are presented and made accessible to fans through various media channels. These rights are important not only for athletes and sports organizations but also for television companies and other media entities. The sale of broadcasting rights is a significant source of funding for many sports' competitions and the teams participating in them. In recent years, the revenues of the most prominent European football clubs from the sale of broadcasting rights have ranged between 40% and 50% of their total income.<sup>7</sup>

25. In the case of professional team sports like football and ice hockey, broadcasting rights are owned by at least two entities: the visiting and home teams. This leads to two basic methods of selling broadcasting rights: individual and collective (centralized). Individual sale involves clubs owning rights to their home matches and selling them to broadcasters. The collective sale typically involves clubs agreeing to entrust the sale of their media rights to a national or international sports association, which sells them collectively on their behalf. Sports associations either sell these rights directly to the interested parties (e.g. television broadcasters) or do so through intermediaries (sports media agencies) that have the relevant market knowledge and contacts, charging a commission for their services. In the Czech Republic, however, the model of selling premium sports broadcasting rights (football and ice hockey) involves sports media agencies purchasing broadcasting rights as a whole (not acting merely as an intermediary) and subsequently selling them to end buyers, such as television broadcasters.<sup>8</sup>

26. Regarding the competitive aspect of collective broadcasting rights sale, it restricts competition among clubs as they are prevented from independently negotiating with television broadcasters or other entities and selling their rights individually. On the other hand, collective sale brings efficiencies, such as creating a common product and sales channel and increasing the overall value of rights, making them more attractive to

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<sup>7</sup> <https://www2.deloitte.com/uk/en/pages/sports-business-group/articles/deloitte-football-money-league.html>

<sup>8</sup> Currently, there is an ongoing tender for the sale of broadcasting rights of the two top football leagues which is potentially open to both sports media agencies and television broadcasters.

broadcasters and sponsors. In addition, the collective sale strengthens solidarity among clubs, preventing significant income imbalances that could weaken the competitiveness and prestige of the competition. For these reasons, the collective sale has become more common in the EU sports environment.

27. In conclusion, agreements among clubs for collective broadcasting rights sales have the potential to restrict competition within the scope of Art. 3 of the Czech Competition Act (equivalent of Art. 101 TFEU) and an *ad hoc* assessment is required to determine whether they can be justified under Par. 3 Art. 4 of the Czech Competition Act (equivalent of Article 101(3) of the TFEU). In this respect, it is essential to strike a balance between promoting competition and maintaining the financial stability and attractiveness of sports competitions.

28. Various approaches to addressing the matter of collective trading of broadcasting rights have emerged across the EU, as proven by the practices of competition authorities. The European Commission in its three decisions related to the UEFA Champions League<sup>9</sup> (2003), the Bundesliga<sup>10</sup> (2005), and the FA Premier League<sup>11</sup> (2006), determined that agreements for collective sales fall under the scope of Article 101(1) of the TFEU because they lead to the restriction of competition. Concerns of the Commission included market closure, price unification, and output restrictions. On the other hand, the Commission also recognized efficiencies of collective selling, such as the creation of a single sales point, facilitation of league product branding, and reduced transaction costs. However, since the benefits were insufficient to outweigh the anticompetitive effects of collective sales, sports organizations were required to undertake a series of behavioural commitments to meet the exemption criteria under Article 101(3) of the TFEU, particularly selling broadcasting rights via a transparent tender procedure and for a limited period. From the perspective of other competition authorities, whereas the German NCA, for example, applied a more restrictive approach in assessing the sale of broadcasting rights when applying (subsequently even strengthened) no single buyer rule,<sup>12</sup> the Danish approach indicates a shift towards greater liberalism in this area as Denmark temporarily removed the rule prohibiting a single buyer in 2022.<sup>13</sup> According to the opinion of the Czech NCA, these different approaches demonstrate the significance of the economic and legal framework for all agreements in the field of sports.

### 3.4. Recent Cases of the Czech NCA

#### 3.4.1. Football Case

29. In 2022, the Czech NCA initiated an investigation based on a complaint submitted by the First League football club SK Slavia Praha, alleging potential anticompetitive behaviour. The complaint related to the actions of the LFA. Specifically, the LFA had entered into an exclusive agreement with a sports media agency, granting it audio-visual

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<sup>9</sup> European Commission, COMP/C.2-37.398 – Joint selling of the commercial rights of the UEFA Champions League, 23 July 2003.

<sup>10</sup> European Commission, COMP/C-2/37.214 – Joint selling of the media rights to the German Bundesliga, 19 January 2005.

<sup>11</sup> European Commission, COMP/C-2/38.173 – Joint selling of the media rights to the FA Premier League, 22 March 2006.

<sup>12</sup> Bundeskartellamt, Decision of 20 March 2020, B6–28/19.

<sup>13</sup> Konkurrence- og Forbrugerstyrelsen, Decision of 21 December 2022, 21/09213.

rights of its members (football clubs) without conducting a transparent open bidding process. Furthermore, the LFA had intentions to extend this collaboration into subsequent seasons. The sports media agency had already been the exclusive audio-visual rights holder for both highest football leagues since 2014. SK Slavia Praha, as an LFA member, raised concerns that this long-term exclusive arrangement hindered the entry of television broadcasters and other media entities into the market for broadcasting First and Second Football League matches.

30. As a result of the NCA's investigation and based on consultations, the LFA revised its approach to the sale of audio-visual rights. This decision was influenced, among other factors, by the majority support from football clubs (members of the LFA) for conducting fair tender procedure to select entities to whom their audio-visual rights would be granted. The LFA maintained persistent communication with the NCA and assured it that the sale of audio-visual rights for the upcoming seasons would be conducted based on the outcomes of a transparent and non-discriminatory tender procedure. Additionally, discussions between the LFA and the NCA encompassed the scope and method of dividing rights into individual packages to be offered for sale, the time frame (number of seasons) for which contracts to provide rights would be concluded, and other related matters. The LFA presented several potential approaches for conducting the tender to the NCA during these discussions.

31. Based on the consultations held with the NCA, the LFA opened its first tenders at the end of August 2023 for selected audio-visual rights packages covering the seasons from 2024/25 to 2028/29. These packages included rights for broadcasting the First Football League matches on television within the Czech Republic and Slovakia, domestic broadcasting of the Second Football League, and rights for streaming the First Football League matches for sports betting purposes within the Czech Republic. The tenders for broadcasting rights are open to both licensed broadcasters as well as intermediaries and media agencies, while the tenders for streaming rights for sports betting purposes are open to both licensed operators of gambling activities and media and intermediary agencies. The conditions of the tender and the manner of its execution were preliminarily assessed<sup>14</sup> by the NCA as being suitable for maintaining a fair competitive environment. LFA plans to conduct tenders for the remaining audio-visual rights packages for broadcasting matches of the First and Second Football Leagues during the autumn of 2023. The Czech NCA is currently monitoring the course of these tenders.

### ***3.4.2. Ice Hockey Case***

32. In 2022, the Czech NCA received several complaints related to the collective sale of marketing<sup>15</sup> rights for the Extraliga and the First Ice Hockey League.

33. In its assessment, the NCA first focused on the centralization of marketing rights within the Extraliga, which occurs at the league association level under the APK LH. The NCA concluded that regarding broadcasting rights, centralization was deemed necessary due to the need to secure triple rights<sup>16</sup> for each match broadcast. However, as for the remaining rights – the advertising rights – the NCA found out that despite some of these rights might not need centralization (clubs could sell these rights themselves), they represented only a minority part of advertising rights; the combined trading still allowed

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<sup>14</sup> The tender is currently ongoing.

<sup>15</sup> i.e. not only broadcasting but also advertisement and players' personality rights.

<sup>16</sup> Broadcasting rights of the home team, the visiting team, and the broadcasting rights of the Extraliga as such.

enough competition among clubs. Given that the APK LH only handles a part of marketing rights, and the revenue from their sale constitutes only a small part of individual club's incomes, the NCA concluded that centralization did not entirely determine the business activities of individual clubs. This limited restriction of competition among clubs was thus deemed necessary and proportionate.

34. Furthermore, the NCA addressed the issue of the transfer of marketing rights to a marketing partner. In this context, the NCA concluded (also referencing the Commission decisions<sup>17</sup>) that dual centralization was possible, but the league association had to ensure that the marketing partner acted in compliance with competition law. Regarding the selection of a marketing partner, the NCA perceived the conduct of a tender as pro-competitive but would not consider its eventual absence as a violation of competition law.

35. In addition, the NCA thoroughly examined the sale of marketing rights by marketing partner to broadcasters and other broadcast rights bidders. In the case of broadcasting rights, the marketing partner divided them into several separate packages and subsequently sold them through an open tender procedure, the exclusive agreements lasting up to five years. Considering the economic context of the Czech ice hockey environment and following the precedents set by the Commission and other competition authorities, the Czech NCA deemed this procedure and the assigned duration to be in accordance with competition rules.

36. Besides, the NCA also evaluated the incorporation of the obligation to transfer selected marketing rights or the obligation for clubs to enter into agreements with the marketing partner within the internal regulations of the league association, deeming it reasonable given its intended goals. Without such an obligation, some clubs might not engage with the marketing partner and it might potentially negatively impact other clubs or the Extraliga and devalue the rights transferred by other clubs.

37. In the case of the First Ice Hockey League, the NCA reached similar conclusions as with the Extraliga. However, it recognizes a difference in the way how broadcasting rights for the First Ice Hockey League are exercised. Without any doubts, these rights are less attractive than those of the Extraliga, leading to lower interest from broadcasters, etc. Consequently, the NCA aligns with the findings of the decision of the French competition authority regarding Pro D2,<sup>18</sup> concluding that the broadcasting rights for the First Ice Hockey League should currently be considered as non-premium rights. This means the rights might not need to be sold through a transparent and non-discriminatory selection process, although such an approach would better promote competition among potential bidders.

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<sup>17</sup> E.g. point 3.2 of the attachment (Commitments of the League Association) of European Commission, COMP/C-2/37.214 – Joint selling of the media rights to the German Bundesliga, 19 January 2005: „*The League Association shall be able to sell the exploitation rights as a whole or in substantial blocks to a marketing partner, or to conclude agreements direct with exploiters. The direct sale of exploitation rights by the League Association to exploiters shall be by an official public invitation to tender. Should the League Association sell the exploitation rights to a marketing partner, it must ensure that the award procedure which applies to it is used by its marketing partner.*“

<sup>18</sup> Autorité de la concurrence, Decision of 23 March 2016, 16-D-04.

## 4. Conclusion

38. The sports sector in the Czech Republic is characterized by a rich spectrum of associations and organizations that play central roles in governing and managing sports activities within the country. While international governing bodies like FIFA and FIBA establish global sports regulations, the Czech sports associations take charge of shaping and enforcing rules specific to domestic sports leagues, ensuring their integrity and competitiveness.

39. Competition law not only applies to sports in the Czech Republic without (legal) exceptions, but in fact, it plays a crucial role in the Czech sports sector, addressing various aspects like broadcasting rights, player transfers, ticket sales, and more, to ensure fair competition and prevent anticompetitive practices.

40. The recent practice of the Czech NCA regarding the collective sale of broadcasting rights in football and ice hockey demonstrates that it is inevitable to search for a balance between the potential anticompetitive aspects of centralized trading of these rights and preserving the financial viability and attractiveness of sports, with careful consideration of the unique aspects of each sport.

41. The Czech NCA fully recognizes the specific role and nature of sports in society. However, especially concerning professional sports, their organization and monetization, it deems it necessary and appropriate to apply competition law to ensure competitive and well-functioning markets that directly stem from sports activities, as well as markets related to them.