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Competition and Professional Sports – Note by France

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1. Introduction

1. As the Paris 2024 Olympic and Paralympic Games approach, there is a growing ambition for French sport and a clearer governance structure is emerging.
2. In France, the governance of sport is based on a unique model, with both the State and the sports movement playing significant roles: the increasing involvement of the State aligns with the completed structuring of the sports industry. The public sector is involved in all areas of sports activities, both in terms of sport for all and high-level sport, providing support to the tune of 20 billion euros per year, a contribution that represents 2.6 % of GDP¹.
3. While the sports sector has its own specificities, it is subject to the legal rules governing all economic activity, including the provisions of competition law. In sports, as in competition law, fair play must prevail and be part of the level playing field. Sports sector actors are doubly subject to regulation, with French competition law rules complementing those of European Union law. The application of European competition law to sports-related activities is not a new issue, and many recent preliminary questions, particularly in the football sector, remind us of its relevance. The French authorities, including the Competition Authority ("AdlC") and the Directorate General for Competition Policy, Consumer Affairs and Fraud Control ("DGCCRF"), may be called upon to contribute to these discussions.
4. Over the past ten years, the decision-making and consultative practice of the French authorities has been based on the continuous search for a relevant balance between the specificity of the sports sector (§1) and the application of competition law (§2), between the degree of cooperation allowed and the degree of competition required.

2. The specificity of the sports sector with regard to competition law

5. The European Court of Justice ("ECJ") has long recognized the specificity of sport, whose unique characteristics distinguish it from other economic sectors. Article 165 of the Treaty on the Functioning of the European Union ("TFEU") and two landmark ECJ decisions² have also emphasized the need to protect these characteristics. The sport sector is characterized by a high degree of interdependence among sports clubs, which rely on each other for the organization and competition in sports tournaments. As Advocate General Mr. Athanasios Rantos highlighted in his general conclusions last December, some features "distinguish sport from other sectors, where competition between economic operators ultimately leads to the exclusion of inefficient companies from the market"³. Contrary to traditional markets, participants in a sports tournament do not benefit from the exclusion of other companies from the market in question, nor from their inability and/or

¹ BPC L'Observatoire, L'Economie du sport, « La filière sport : les challenges d'une championne », janvier 2023.

² CJCE, 1974, Walrave et Koch contre Union Cycliste Internationale, aff. C-36/74 ; CJCE, 2006, Meca-Medina & Majcen, aff. C-519/04.

³ CJUE, n° C-333/21, Conclusions de l'avocat général de la Cour, 15 décembre 2022, pt. 41.

lack of incentive to compete. Instead, their success and viability depend precisely on a sustained rivalry with other sports teams (Budzinski and Pawlowski, 2017)⁴. While competition law is primarily based on the principle of prohibiting all forms of collusion, a form of agreement among sports teams is necessary in the sports sector. The relationship between participants can be seen as cooperative, since they cooperate as much as they compete (Colomo, 2022)⁵. It follows that a degree of equality and a certain competitive balance between competition and cooperation are necessary.

6. To prevent the game from turning into a danger, the specificity of the sports sector does not escape labor market rules in France. Although there are specific adjustments in the sports field, the rules of the Labor Code must apply⁶. If the national collective agreement for sport (“CCNS”), signed on July 16, 2005, recognizes the sector as a separate professional branch, the relationships between clubs and players are centered around specific guarantees imposed by the French Labor Code. Before 1969, French leagues were based on a lifetime contract, with a player only transferable after the agreement of his club's management and the acceptance by the acquiring club to pay a transfer fee, in a player retain and transfer system. Clubs and players have since been linked by a fixed-term contract (“CDD”) with regulated conditions⁷, namely an initial four-year contract, followed by the possibility of concluding contracts of at least one year negotiated on a case-by-case basis. The fixed-term contract thus provides clubs with temporary stability of their staff, constitutes for them a counterpart to the player's freedom to contract, and allows for the articulation between the economic efficiency of clubs and the legal protection of professional sportsmen⁸. In this sense, in a preliminary ruling on the rules relating to player transfers, the French authorities recalled that the transfer system pursues various legitimate objectives⁹, the first of which is the protection of contractual stability between professional players and clubs. The contractual situation of athletes and coaches is also guaranteed by the law of November 27, 2015, which aims to protect high-level and professional athletes and to secure their legal and social situation¹⁰. In France, the flexible approach to the specificity of sport in relation to labor law is less about bending the rigor of a principle than about giving it an adapted application corresponding to the different interests involved that recommend it.

7. A movement of deregulation has taken hold of the sports labor market of French professional sports leagues over the past few decades, notably through the Bosman decision

⁴ Budzinski, O. et T. Pawlowski (2017), "The behavioral economics of competitive balance: Theories, findings, and implications", *International Journal of Sport Finance*, Vol. 12/2, pp. 109-123.

⁵ Colomo, P. (2022), "Competition Law and Sports Governance: Disentangling a Complex Relationship", *World Competition Law and Economics Review*, Vol. 45/3, pp. 323-350.

⁶ G. Simon (dir.), *Les contrats des sportifs. L'exemple du football professionnel*, PUF, 2003 ; J. Mouly, Sur le recours au contrat de travail à durée déterminée dans le sport professionnel. Le droit commun du travail a-t-il encore un avenir dans le domaine du sportif ? *Dr. soc.* 2000. 507.

⁷ Code du travail, articles L. 1242-1 et suivants.

⁸ W. Andreff, « Équilibre compétitif et contrainte budgétaire dans une ligue de sport professionnel », *Revue économique*, vol. 60, no. 3, 2009.

⁹ Ministère de l'Europe et des affaires étrangères, Observations du gouvernement de la République française dans l'affaire C-650/22, 20 février 2023

¹⁰ Loi n° 2015-1541 du 27 novembre 2015 visant à protéger les sportifs de haut niveau et professionnels et à sécuriser leur situation juridique et sociale

of December 1995¹¹. Deregulation has led to a soaring, on the one hand, of international mobility and, on the other hand, of players' salaries.

8. International mobility has greatly favored the arrival of foreign nationals in collective sports teams, often to the detriment of young national athletes. This is not without consequences for national teams, which, lacking players trained to the highest level, see their competitiveness called into question due to the significant decrease in professional teams of players of the nationality of the country where the championship is organized. In light of this, France has introduced quotas for locally trained players in professional teams in accordance with the European Union¹². To this end, the French volleyball, basketball and rugby leagues have adopted provisions to implement quotas that have been legislatively recognized¹³ since February 1, 2012. More specifically, the National Rugby League (“LNR”) has implemented a system since 2010 that requires clubs at a certain level to have at least 17 licensed players who have spent three seasons in a training center or have been licensed to the French Rugby Federation (“FFR”) at least five years before the age limit of 23 to benefit from JIFF status (player from training channels). The system, validated by the Council of State in 2019¹⁴, aims to require clubs to have a minimum number of players trained in France to curb the influx of foreign players into French professional rugby championships (Top 14, division 1 and Pro D2, division 2).

9. Moreover, the 1995 decision accentuated the segmentation of the French sports labor market between a segment where superstars (Rosen, 1981)¹⁵, in a monopoly position over their non-substitutable talent, benefit from unprecedented inflation of salaries and transfer fees, and another segment where less talented players (journeymen players) find themselves in oligopsonic situations that are unstable and precarious. In France, to counteract the risks of this strong market segmentation, the national collective agreement for sport sets the obligation of minimum conventional salaries that apply to all structures managing facilities and/or offering sports activities¹⁶. In 2019, the French Competition Authority (AdIC) addressed the professional football player transfer market¹⁷ for the first time, delineating that players' choices are influenced by factors such as net remuneration, the club's reputation, contract duration, the competitiveness of the national league, and the international competitions in which the club participates.

10. While salaries are partially a result of the basic supply and demand dynamics in the labor market, these dynamics are shaped by the conventional actions of player agents operating on both sides of the market. In this regard, the French authorities have recently highlighted, in a preliminary ruling concerning rules related to player agents¹⁸, that the role

¹¹ CJUE, Cour, 15 déc. 1995, Bosman, C-415/93

¹² Livre blanc sur le sport du 11 juillet 2007 (COM (2007) 391)

¹³ Code du sport, article L. 131-16

¹⁴ Conseil d'État, 2ème - 7ème chambres réunies, 01/04/2019, 419623, Publié au recueil Lebon

¹⁵ S. Rosen, « The Economics of Superstars », *The American Economic Review*, vol. 71, n°5, déc. 1981

¹⁶ Convention collective nationale du sport du 7 juillet 2005 étendue par arrêté du 21 novembre 2006 - Textes Salaires - Avenant n° 170 du 30 juin 2022 relatif aux salaires

¹⁷ Décision 19-DCC-160 du 21 août 2019 relative à la prise de contrôle exclusif par le groupe Ineos de la SASP Olympique Gymnaste Club de Nice.

¹⁸ Ministère de l'Europe et des affaires étrangères, Observations du gouvernement de la République française dans l'affaire C-209/23, 30 août 2023.

of an agent is also intrinsic to the uniqueness of sport. As representatives of players' interests, as well as potentially clubs and coaches, agents directly impact the organization and smooth functioning of the market for player services, particularly concerning transfers. Although the regulation of sports agents is not specifically mandated by the European Union, France has chosen to regulate the profession. Consequently, a dual-level control system is in place: through sports federations via their management control bodies and agent commissions, reinforced by the law of March 1, 2017¹⁹; and through the Interfederal Commission of Sports Agents (CIAS) of the French National Olympic and Sports Committee. The significant market concentration of sports agents affirms France's commitment and specificity in regulating the activity to preserve a stable and viable environment within the French sports landscape.

3. The Relevant Balance between the Specificity of the Sports Sector and Competition Law

11. Over the past decade, the decision-making and consultative practices of French authorities have been grounded in the pursuit of a relevant balance between the specificity of the sports sector and the application of competition law. The European Union's special designation and ensuing special treatment of sports are duly taken into account in the French authorities' competition analysis. While they consider the unique nature of the sports discipline and the organization of competitions, such specificity is acknowledged only in relation to the allowances provided by positive law. The French authorities believe that this uniqueness should be assessed on a case-by-case basis to ensure that the regulation in question is legitimate in its foundation and proportionate in its effects. As a result, they have applied competition rules to various actors, including federations.

12. **In the area of sports competitions' audiovisual exploitation rights**, sports federations can freely transfer, in whole or in part, the audiovisual exploitation rights of events or competitions they organize, to sports companies, provided they participate²⁰. The sports code thus combines a set of provisions (tendering, splitting, contract duration, etc.) aimed at limiting the ability of providers to abuse the market power they possess, while creating favorable conditions for competition on the buyers' side. In this regard, the principle of regulating audiovisual exploitation rights stems from the need to limit competition risks associated with centralized rights marketing. The situation of professional football has raised complex and structural questions for the sector in recent years. In this context, the sports competitions' rights, particularly those of the French first division football championship, Ligue 1, marketed by LFP, have mostly been purchased, to date, by pay-TV operators. For example, Amazon offers a video-on-demand service, Prime Video, included in the Amazon Prime service, which, as the Competition Authority has already noted²¹, is pursuing a strategy of acquiring sports rights in several countries. To maintain the attractiveness of French professional football championships' audiovisual exploitation rights in European markets, a decree adopted last September extended the maximum contract duration for the marketing of audiovisual exploitation rights of sports competitions from four to five years²². Committed to the principle of access to sports for

¹⁹ Loi n° 2017-261 du 1er mars 2017 visant à préserver l'éthique du sport, à renforcer la régulation et la transparence du sport professionnel et à améliorer la compétitivité des clubs.

²⁰ Code du sport, article L. 333-1 et articles R. 333-2 et R. 333-3.

²¹ Décision n° 21-D-12 du 11 juin 2021 ; Décision n° 22-D-22 du 30 novembre 2022.

²² Décret n° 2023-864 du 8 septembre 2023 relatif à la commercialisation des droits d'exploitation audiovisuelle mentionnés à l'article L. 333-2 du code du sport.

all, the French authorities are particularly vigilant regarding the risk of anticompetitive agreements that could reserve the allocation of attractive rights to an operator offering paid broadcasting, thereby restricting access to the sporting spectacle²³.

13. **In the professional sports clubs market**, the Competition Authority recently examined the professional football sector in the context of merger control²⁴, a first at both the national and European levels. While the Authority authorized the acquisition of exclusive control of the OGC Nice football club by the INEOS group at the time, it also granted an exemption to the suspensive effect of merger control to enable player recruitment during the summer transfer period (mercato), which is structuring and often decisive for football clubs' results. This is another illustration of the pragmatism of French authorities concerning the specific organization of the sports sector.

14. **Regarding the rules relating to player agents**, the French authorities were called upon to provide observations during a preliminary ruling²⁵ in August of last year, considering that the new FFAR (“FIFA Football Agent Regulations”) by FIFA on player agents, specifically provisions relating to the granting of a license to operate and the modalities for setting their remuneration, is not contrary to European competition law. In this regard, the French authorities believe that the competitive analysis should integrate the specificity of the sports sector to which the activity of an agent belongs, as well as the balance between commercial and sporting aspects that a regulation aims to achieve in this matter.

15. To date, French authorities have succeeded in finding the right balance in their decision-making practices between recognizing the specificity of sports competitions and respecting the fundamental principles of competition law. The application of competition law thus proves to be protective of the uniqueness of the sports legal order.

²³ Décision 14-MC-01 du 30 juillet 2014 relative à la demande de mesures conservatoires présentée par la société beIN Sports France dans le secteur de la télévision payante.

²⁴ Décision n°19-DCC-160 du 21 août 2019 relative à la prise de contrôle exclusif par Ineos de la Olympique Gymnaste Club de Nice.

²⁵ Ministère de l’Europe et des affaires étrangères, Observations du gouvernement de la République française dans l’affaire C-209/23, 30 août 2023.

Annex

The specificity of sports sector governance in France

16. The cooperative relationship that exists between participants to produce a sports competition necessitates an internal market governance structure to establish, update, and enforce the rules of the game, resolve disputes, coordinate, and organize sports events. The French sports model is a specific organization model in which both the State and the sports industry play a prominent role: the State's active involvement coincides with a fully structured sports industry.

A unique governance structure for each sport

17. French governance, like European governance, adheres to the principle of "one federation per sport". In France, the organization of a single federation for each sport is a legal monopoly under Article L. 131-14 of the sports code, which stipulates that "only one accredited federation receives delegation from the minister in charge of sports". Combined with Article L.333-1 of the same code, the codified text recognizes, through the assertion of an exploitation monopoly, a property right over the sports event. French authorities are regularly called upon to reaffirm this principle in their preliminary ruling observations. In this regard, during a preliminary ruling concerning the rules for organizing a new competition, the authorities had considered that the rules of the Fédération Internationale de Football Association ("FIFA") and the Union of European Football Associations ("UEFA") were compatible with European Union competition law, particularly those subjecting the organization of a new competition to prior authority, and that threats of sanction against affiliated clubs are not prohibited under Community rules²⁶.

18. The sports sector, particularly at the professional level, is structured around different entities, such as the sports association²⁷, the sports company²⁸ established in this form upon exceeding one of the two thresholds (€1.2 million and €0.80 million), the sports federation²⁹, and the professional league³⁰.

19. The sports federation is formed as a sports association that has received approval from the Ministry of Sports and sometimes a public service delegation. If we take football as an example, FIFA confers on national federations such as the Fédération Française de Football ("FFF") and the German Football Federation ("DFB") the organization of national football competitions. The FFF has specifically created an association under its authority, the Ligue de Football Professionnel ("LFP"), for this purpose. However, international federations can also grant the right to organize a sports competition to third-party legal entities. For example, the Union Cycliste Internationale ("UCI") grants the right to a French company, Amaury Sport Organisation, which belongs to the Amaury Group, to organize the Tour de France.

²⁶ Ministère de l'Europe et des affaires étrangères, Observations du gouvernement de la République française dans l'affaire C-333/21, 18 octobre 2021

²⁷ Code du sport, article L. 121-1 et suiv.

²⁸ Code du sport, article L. 122-1

²⁹ Code du sport, article L. 131-9

³⁰ Code du sport, article L. 132-1

20. The professional league allows a federation to delegate its monopoly on organizing professional competitions to these bodies, which will be responsible for representing, managing, and coordinating the professional sporting activities of affiliated associations and sports companies. Each federation with a professional league must create a body³¹ with independent decision-making power, ensuring the continuity of associations and sports companies, compliance with sports equity, and economic regulation of competitions.

21. More broadly, the Ministry of Sports aims to organize French national and international sports, both in civil and school and university settings. It is responsible for developing, implementing, and evaluating policies concerning physical and sports activities, for both high-level sports and sports for all or professional sports.

A pyramid-shaped governance structure with vertical progression

22. The sports industry in France relies on an open league system, that is, a promotion-relegation system in which clubs move from one division to another based on their performance. Competition results from the league being open each year to the entry of new clubs through a promotion system for winners and relegation of losers: in French football, this means three promoted to Ligue 1 (renewing 15% of clubs), six entering Ligue 2 which receives three relegated from Ligue 1 and three promoted from National (renewing 30 % of clubs). The mobility of clubs is not geographical but vertical along the hierarchy and depends on the sports performance of the sports club. In French football, sporting uncertainty occupies a central place and links economic success to sporting success in two ways: a French football club must avoid relegation to a lower category and seek the means for successful promotion.

23. However, the pyramid-shaped governance model mainly applies to team sports, while other sports have different structures. For example, motorsports and cycling are organized in partially or fully closed leagues, and the organization of golf and tennis largely deviates from the pyramid structure (CE, 2007)³².

The project for new and shared governance of sports policy in France

24. In a desire to coordinate the State's policy and the framework of action of the association of sports movement actors and representatives of local authorities, the adoption of the law of August 1, 2019, pursues the ambition of establishing shared governance with distributed responsibilities³³, a goal for which the Agence Nationale du Sport was created. The Agency contributes to the renovation of the French sports governance model by, on the one hand, guiding sports federations towards even greater excellence, and on the other hand, guiding sports associations and local authorities towards the development of access to sports for all audiences throughout the entire national and overseas territory. Since its creation, the Agency has seen a very substantial increase in the resources allocated to it, mainly by the State, reaching €461 million in 2022³⁴.

³¹ Code du sport, article L. 132-2

³² CE (2007), *L'UE et le sport : Background and Context, Commission Staff Working Document, Accompanying document to the White Paper on Sport, (SEC(2007) 935 final*

³³ Loi n° 2019-812 du 1er août 2019 relative à la création de l'Agence nationale du sport et à diverses dispositions relatives à l'organisation des jeux Olympiques et Paralympiques de 2024

³⁴ Cour des comptes, Rapport, L'Agence nationale du sport et la nouvelle gouvernance du sport. Des défis qui restent à relever », juillet 2022

25. Through the adoption of the law of March 2, 2022, aiming to democratize sports in France³⁵, the State continues its ambition to develop sports practice for the widest audience. Moreover, the law renews the governance framework of federations, their decentralized branches, professional leagues, and representative and conciliation bodies, creates a national platform to combat the manipulation of sports competitions, and places at the heart of its missions the fight against illicit broadcasting of sports events and competitions, and the feminization of sports governing bodies.

26. Indeed, the development and promotion of women's participation in sports constitute a major challenge for French sports. France has been committed for several years to identifying levers for the development of women's sports, particularly through the impulse given by the "Assises Nationales Femmes et Sports". The "Ethics and Professional Sports"³⁶ law of March 1, 2017, thus created the Permanent Commission for Women's Sports ("CPSF"), which contributes to measuring and directing policy in favor of the development of women's sports practice. More than ever, the challenge is to contribute to the progress of women's integration into the French sports movement.

³⁵ Loi n° 2022-296 du 2 mars 2022 visant à démocratiser le sport en France

³⁶ Loi n° 2017-261 du 1er mars 2017 visant à préserver l'éthique du sport, à renforcer la régulation et la transparence du sport professionnel et à améliorer la compétitivité des clubs