

Unclassified

English - Or. English

24 November 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

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

4 December 2023

This document reproduces a written contribution from Italy submitted for Item 4 of the 76th meeting of Working Party 2 on 4 December 2023.

More documents related to this discussion can be found at  
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Federica MAIORANO  
Federica.Maiorano@oecd.org

**JT03532588**

## Italy

### 1. Introduction

1. In Italy, there is no general legislative exemption in the application of competition law to sports: thus, economic activities related to professional sports can be scrutinised from an antitrust perspective. In the experience of the Autorità Garante della Concorrenza e del Mercato (the Italian Competition Authority, hereafter the Authority or the AGCM), competition issues have emerged in a series of areas, involving the activities of sports organisations and clubs but also other stakeholders of the industry, such as sports agents. Hence, the Authority welcomes this OECD Roundtable as an opportunity to share its country experience as it has evolved since 2010, when the topic of competition and sports was first addressed by the OECD.

2. More specifically, after an overview of sports organization and governance in Italy (section 2), this contribution focuses on the AGCM interventions against anticompetitive conducts or restrictions put in place by sports federations mainly in the non-professional category: in particular, with reference to the organisation of non-competitive sports tournaments as well as the eligibility rules concerning athletes' participation into other events or affiliation to other clubs (section 3). With respect to sports labour markets, competition issues related to access to the profession of sports agents and other figures will be also highlighted. Section 4 concludes.

3. While the commercialisation of sport broadcasting rights is not the focus of this roundtable, it is important to note that the AGCM has addressed competition concerns in this area through enforcement actions<sup>1</sup> as well as advocacy opinions<sup>2</sup>.

### 2. Organization and governance of the sports industry in Italy

4. The discipline of the sports sector in Italy is based on a pyramid system that is formed, at the international and apex level, by the International Olympic Committee (IOC), and at the national level by CONI, which liaises with the international bodies and exercise guidance and control at the national level.

5. CONI was established in 1914 by the delegates of the various National Sports Federations in order to organise the participation of Italian athletes in the Olympic Games, in liaison with the IOC. CONI, defined as the confederation of the National Sports Federations, has statutory regulatory powers over the central and peripheral sports organisations affiliated to it, as well as their functioning. CONI was reorganised by Legislative Decree No. 242 of 23 July 1999 (the so-called Melandri Law)<sup>3</sup>.

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<sup>1</sup> Competition issues in commercialisation of sport broadcasting rights was the main focus of the AGCM submission to the [2010 OECD Roundtable on Competition and Sports](#) (from page 141).

<sup>2</sup> Since 2008 the Authority has been given a key advocacy role in the design and organization of tenders for the sale of the audio-visual rights, also with regard to the pricing of packages. See: Legislative Decree No. 9/2008 (Regulation of the ownership and marketing of sports audio-visual rights and related allocation of resources - the so-called "Melandri" decree).

<sup>3</sup> By Law No. 426 of 16 February 1942, CONI was qualified as a non-economic public law body subject to ministerial supervision. CONI was reorganised by Legislative Decree No. 242 of 23 July

6. For each sport, CONI only approves one National Sports Federation (NSF) or, in case of newer or non-Olympic sports, one Disciplina Sportiva Associata (DSA). CONI currently recognises 45 NSFs, 18 DSAs and 14 Sports Promoting Entities (EPSs). The Statutes of NSFs and DSAs must comply with the fundamental principles issued by the CONI National Council. Therefore, the NSFs recognized by CONI carry out a sporting activity on the national territory and, at the international level, are affiliated to an International Federation, managing the sporting activity in accordance with the Olympic Charter and the rules of the International Federation to which they belong.

7. National Sports Federations “*carry out their sporting activity in accordance with the resolutions and guidelines of the IOC, the International Federations and CONI, also in consideration of the public value of specific types of activities identified in the CONI Statute*” (Article 15, Melandri Law). NSFs are no-profit associations with legal personality under private law (paragraph 2) and their budgets are approved by CONI (paragraphs 2 and 3). Pursuant to Article 16, the NSFs have statutory and regulatory powers in accordance with the fundamental principles established by CONI<sup>4</sup>.

8. Hence, the Italian framework adopted a monopolistic model for the governance and organisation of sports (only one federation per sport). However, outside the circuit of the pyramidal structure, sports activities can be organised by other entities, such as the Sports Promoting Entities (EPSs). Unlike NSFs, EPSs are associations whose institutional purpose is the promotion and organisation of sporting activities with recreational and educational purposes. Such bodies therefore do not have the objective of selecting the best and directing them to the highest levels of a single discipline, but to spread the practice of that discipline as much as possible. Some AGCM interventions have indeed tackled competition between EPSs and NSFs in organising non-professional sports events.

9. Moreover, National Sports Federations carry out a mix of regulatory<sup>5</sup>, executive (i.e., organizational) and judicial roles. Therefore, the dual nature of NSFs as sports governing bodies and organisers of leagues could lead to conflicts of interest which in turn could raise competition concerns, as discussed in sections 3.1 and 3.2 below.

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1999 (the so-called Melandri Law) and subsequently by Law No. 178 of 8 August 2002 and Legislative Decree No. 15 of 8 January 2004 (the so-called Pescante reform).

<sup>4</sup> CONI's Statute provides that Federations “*are recognised as having technical, organisational and management autonomy, under the supervision of CONI*” (Article 20, paragraphs 3 and 4 of Melandri Law). Moreover, pursuant to Article 15(1), CONI Statute shall identify the activities of public relevance of the Federations “*relating to the admission and affiliation of clubs, sports associations and individual members, to the revocation (...) of admission or affiliation measures; to the control of the regular running of professional sports competitions and championships; to the use of public contributions; (...), as well as the activities relating to the preparation and management of sports clubs and associations, under the supervision of CONI*” (Article 20, paragraphs 3 and 4). ), as well as “*the activities relating to Olympic and high-level preparation, the training of coaches, the use and management of public sports facilities*” (Article 23); “*the public value of the activity does not modify the ordinary private law regime of the individual acts and the related subjective legal situations*” (Article 23, paragraph 1-bis). The current CONI Statute was last amended by the National Council on 9 March 2022 by Resolution No. 1707 and approved by the Prime Minister's Decree of 19 July 2022.

<sup>5</sup> In general, the technical regulations, adopted by each Federation in compliance with the rules established by the relevant International Federation, concern the organization of sporting events of competitive nature while the technical rules for amatorial and recreational sports events are adopted independently by the Federations and are not subject to the control and approval of the CONI National Council.

### 3. The application of competition law and policy in the sports industry: the Italian experience

10. The Authority has repeatedly dealt with the application of competition law in the sports sector. The appropriateness of the AGCM's action has been confirmed by the judicial review, including following a recent case A378E concerning the equestrian sector. Upon an appeal by the Italian Equestrian Sports Federation, FISE, the Court of First Instance dismissed claims of undue interference and argued that FISE's conduct could be subject to antitrust scrutiny even though it was aimed at ensuring compliance with sports federal regulations.

11. The Court emphasized that, according to European and national case law, they are still subject to competition law despite their peculiarities. As also highlighted in the Background Note of the OECD Secretariat, according to the EU jurisprudence if sports regulations do not relate to the unique aspects of sports or the internal organization of sports associations, they must comply with competition rules. In other words, "purely sporting rules" fall outside the scope of competition law. Moreover, any restrictions imposed by "purely sporting rules" must serve a legitimate objective, be proportionate and necessary in order to preserve the smooth operation of sports activities: the three-stage test developed in *Meca-Medina and Majcen* by the European Court of Justice<sup>6</sup>.

12. The same position has been further reaffirmed by the Italian Supreme Administrative Court in case no. 1812<sup>7</sup>. The Court concurred with the Authority that the federal regulations adopted by the Italian Football Federation (FIGC) concerning four specific professional figures (the Sports Director, the Sports Management Collaborator, the Football Observer and the Match Analyst) went beyond the regulatory power attributed *ex lege* to FIGC to discipline purely sports figures (athletes, coaches, technical-sports directors and athletic trainers) as exhaustively listed in Article 2 of Law No. 91/1981.

13. Hence, under the Italian case-law, the "institutional" function of National Sports Federations and the associated monopolistic model (only one federation per sport) do not exclude the possibility of scrutinising, from an antitrust perspective, the manner in which sports federations carry out economic activities in the organisation of sporting events in which they operate and other tasks. Thus, as representatives of members carrying out economic activity, they are considered as entities that perform economic activity, qualifying as "undertakings" or "associations of undertakings", and their decisions and conducts are subject to competition rules. This has been the case for a number of federations

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<sup>6</sup> Lazio Regional Administrative Court in its ruling of 13 July 2021, no.8326. Indeed: "*the fact that an economic activity is related to sport does not preclude the application of the rules of the Treaty, including those governing competition law*' (Court of Justice 1 July 2008, C-49/07, *MOTOE*; Commission 8 December 2017, *International Skating Union*). *Where the regulation does not concern either the peculiarities of the world of sport or the freedom of internal organisation of sports associations, its compatibility with Community law must be verified to the extent to which it collides with competition rules* (Court of First Instance, 26 January 2005, Case T-193/02, *Piau*, referred to by T.A.R. Lazio, Rome, Sec. I, 4 June 2019, no. 7177). *Any restrictions arising from sporting regulation must therefore be assessed in the light of the context in which they are introduced and the objectives pursued and, in any event, may not exceed what is strictly necessary and proportionate to ensure their coordination with the sporting activities to which they are connected, for the sole purpose of preserving the smooth running of the latter* (Court of Justice of the EU, 18 July 2006, *Meca Medina*, Case C-519/04P, recalled by Commission Decision of 8 December 2017, Case IV.40208 - *International Skating Union*)".

<sup>7</sup> Council of State, judgment No. 5546/2021, published on 26 July 2021. See section 3.3 for more details on this AGCM case.

including: the Italian Volleyball Federation (FIPAV); the Italian Football Federation (FIGC); the Italian Equestrian Sports Federation (FISE); the National Association of Automotive Clubs (ACI).

14. The following sub-sections focus on the three main areas in which the Authority has encountered competition issues.

### 3.1. Competition issues in the organization of amatorial sport events

15. Most sport organizations establish an ex-ante control system by requiring a prior approval of sports events organised by third parties. The AGCM has addressed in several occasions the conducts or regulations put in place by national sports federations which attempted to extend their exclusivity on sports events (e.g., tournaments) that are relevant to participation in Olympic and international competitions (for simplicity, professional sports events), by hindering the organization of sports activity outside this institutional pyramidal framework (non-professional or amatorial sports events)<sup>8</sup>.

16. For instance, in case no. A378E concerning equestrian sports, the Italian Court of First Instance shared the Authority's finding that FISE, the national sports federation, by virtue of its institutional role, which translates into the exercise of powers to regulate and coordinate equestrian activity throughout the national territory, holds a dominant position in the relevant market of the organisation of equestrian events, which implies that FISE's conduct can be reviewed pursuant to Article 102 TFEU.

17. The Court highlighted that the exclusivity claimed by FISE in running professional tournaments could not allow the equestrian federation to prevent the organisation of all other types of events. The AGCM investigation found that FISE had surreptitiously extended the scope of the sports activity reserved to it, continuing to limit the activity of competing operators in the organisation of sports events of amatorial nature, thereby infringing Article 102 TFEU.

18. In that case, the Court of First Instance stated that FISE's conduct did not concern technical aspects of the sporting activity but the perimeter of FISE's exclusivity in organising and managing competitions. Moreover, the judges confirmed that the Authority had legitimately exercised its power to assess whether the federal discipline and the conduct of FISE on this issue infringed competition law. Furthermore, in line with the AGCM view, the Court dismissed FISE justifications based on safety concerns. FISE has appealed the sentence of the Court of the First Instance and the judicial review is pending.

19. Two Art. 102 investigations have been recently launched following similar competition concerns in the organization of sports events.

20. In April 2023, the AGCM opened proceedings (case no. A562) against the Italian Football Federation (FIGC): the federation allegedly extended its dominant position in the organization of tournaments at professional level. In particular, FIGC would prevent CNS Libertas, a sport promoting entity (EPS) recognised by CONI, from organising tournaments at amateur level targeted to the youth. Like other EPSs, CNS Libertas affiliates several

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<sup>8</sup> With respect to the professional category, the question whether conducts by a sports federation aimed at hindering the access to the market for the organization of breakaway tournaments could constitute an abuse of dominant position pursuant to Art. 102 TFEU is at the heart of two cases at the attention of the European Court of Justice: case T-93/18 - *International Skating Union v Commission* and case C-333/21, *European Superleague Company SL Contro Unión de Federaciones Europeas de Fútbol (UEFA), Fédération internationale de football association (FIFA)*.

amateur sports associations which carry out recreational and cultural sports activities for their members (athletes). FIGC behaviour seriously impacts on CNS Libertas and other similar sports promotional entities: by hampering their ability to organise events, the number of amateur sports associations willing to become affiliated to them and to participate in events organised by them will likely reduce, and consequently also the number of their members (athletes). Moreover, FIGC conduct could indirectly harm amateur sports associations, which would no longer be free to choose the tournaments in which their athletes can participate.

21. In October 2023, the Authority launched an investigation against Automobile Club d'Italia (ACI), an association with exclusive powers of regulating and organising professional motor sport tournaments at national level (case no. A570). According to the Authority, ACI would hinder or prevent sports promotion entities (EPSs), amateur sports associations and automobile clubs from organising amatorial sports events and exhibitions, in order to expand its position in this market and increase the number of its associations and athletes.

22. The above-mentioned cases are further illustrated in Box 1 below. They highlight how legal and regulatory uncertainty in identifying the limits and characteristics of competitive sports activities subject to exclusive regulatory and organizational powers by sports federations, particularly for professional sports activities, may facilitate abuses of dominant positions.

23. This problem was underlined by the Authority in the context of parliamentary discussions on a general reform of the sports sector in 2021<sup>9</sup>. The Authority outlined that existing regulations - such as the Ministerial Decree of February 18, 1982 concerning the "health protection rules for competitive sports activities" - delegate the qualification of professional sports activity to national sports federations. However, such regulations do not clearly distinguish professional sports activity from amatorial activities, thus increasing uncertainty in the legal framework and undermining competition among entities that can legitimately perform amatorial sports activities.

24. Against this backdrop, the Authority called for a new legal framework which would confine the exclusivity of national sports federations only to strictly professional sports activities and precisely define them in their salient features in order to prevent instrumental interpretations and undue limitations of economic activities falling outside the exclusivity.

25. In addition to ensuring the exact definition of the exclusive areas, the Authority also highlighted that it is important to limit potential conflicts of interest for national sports federations due to their dual functions. For instance, with respect to the organization of motor sports events, conflicts of interests may arise within ACI, the national federation recognised by CONI. In its opinion AS1307<sup>10</sup>, the Authority noted that ACI is called to assess the regularity of motor sports events organised by its competitors and therefore enjoys an unjustified competitive advantage. Furthermore, according to the AGCM, concerns such as the safety of persons (pilots and spectators), which must be taken into

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<sup>9</sup> See AGCM opinion no. [AS1718 - DECRETI DI RIFORMA SETTORE SPORTIVO](#), published on the AGCM Bulletin no. 8/2021. This opinion also addressed issues related to sports agents, as described in section 3.3.

<sup>10</sup> See AGCM opinion no. [AS1307 - PROBLEMI DI NATURA CONCORRENZIALE NEL SETTORE DELL'AUTOMOBILISMO SPORTIVO CON VEICOLI A MOTORE](#), published on the AGCM Bulletin no. 40/2016.

account when organising motor events, could be pursued by ACI through measures that are less restrictive of competition than impeding events *tout court*.

### Box 1. Competition investigations in the sports sector

#### Case no. A378E - FEDERITALIA/FEDERAZIONE ITALIANA SPORT EQUESTRI (FISE)<sup>11</sup>

In May 2018, the Authority opened formal proceedings against the Italian Equestrian Sports Federation (FISE) for an alleged non-compliance with the Authority's commitments decision of June 2011 as well as an alleged infringement of Art. 102 TFEU for its conducts aimed at preventing the organization of equestrian competitions by FISE rival sports associations, companies and organizations.

In 2011, the FISE committed to modify its regulations and statute to in order to clarify that: i) FISE legal monopoly only concerns competitive Olympic equestrian sports (as identified by the International Olympic Committee and the International Equestrian Sport Olympic Federation); ii) equestrian sports associations other than FISE are allowed to organize events related to non-competitive Olympic equestrian sports, as well as to non-Olympic equestrian sports.

Preliminarily, the Authority considered that FISE is both the sector regulator and one of the competing players in the organization of equestrian events: on the one hand, FISE is in charge of setting the rules and the procedures for equestrian sports in Italy; on the other hand, FISE is an association of undertakings which actively organizes equestrian events. Also, in consideration of its exclusive regulatory and coordination powers, FISE was found to be an undertaking in dominant position in the market for the organization of equestrian sports events of all types (professional vs amatorial, competitive vs non-competitive, recreational).

The investigation showed that FISE adopted regulations which arbitrarily extended its legal reserve area thus unjustifiably compressing the perimeter of the liberalised market for the organisation of equestrian events. In addition, FISE refused to make arrangements with sport associations and other entities that would allow them to operate in the equestrian event sector, even if FISE was required to enter into such arrangements by the sector regulation as well as by the AGCM's commitments decision.

More specifically, the AGCM found evidence confirming the infringement of the commitments as well as substantiating a new infringement of Art. 102 of the TFEU. In particular, having regard to the discipline of the carriage driving, the evidence showed that FISE introduced a new regulation which was more restrictive than the regulation of January 2012 approved by the AGCM following the commitments decision. In addition, with regard to the regulation of equestrian jumping, FISE failed to comply with its commitments and adopted a new regulation in 2017 which extended its exclusivity beyond the perimeter agreed with the AGCM. Other evidence points out to the existence of an overall strategy adopted by FISE in order to limit rival activities in organising and performing amateur and professional equestrian competitions. Only in 2018 did FISE make agreements with other organisers and sport associations to allow them to operate, even if such arrangements were already foreseen by the 2011 commitments.

<sup>11</sup> See AGCM case [A378E - FEDERITALIA/FEDERAZIONE ITALIANA SPORT EQUESTRI \(FISE\)](#), infringement decision no. 27947, published on the AGCM Bulletin no. 42/2019.

Therefore, on the basis of the evidence gathered, the AGCM took a final decision ascertaining both the non-compliance with the 2011 commitments as well as the infringement of Art. 102 TFUE (with a sanction of 451,090 EUR).

**Case no. A562 - FIGC-REGOLAMENTO ORGANIZZAZIONE TORNEI LUDICO AMATORIALI<sup>12</sup>**

In May 2023, the AGCM opened formal proceedings on an alleged abuse of dominant position by the Italian Football Federation (FIGC) concerning the participation of affiliated clubs (Amateur Sports Associations - ASDs) in youth recreational football competitions organized by Sports Promotion Entities (EPSs).

According to the Authority, FIGC holds a dominant position in the organization of football sporting events of a professional nature, as well as a primary position in the organization of events and competitions of a promotional and recreational nature, particularly in the youth sector, due to its special and exclusive rights that enable FIGC to determine whether and under what conditions the affiliated ASDs and their members may participate in competitions of a recreational and amateur nature, and if and which EPSs can access the market of organizing these events.

FIGC has allegedly implemented a strategy aiming at hindering or preventing EPS from carrying out their activity of organizing recreational tournaments in the youth sector and limiting the freedom of ASDs to choose which tournaments their athletes could participate in.

In particular, the Authority contested FIGC an act by which a significant number of individuals (ASDs and their managers), affiliated to the FIGC, were referred to the Interregional Federal Prosecutor's Office for not having requested prior authorization for participation in tournaments organized by some EPSs in Campania Region in the 2021-2022 season.

Secondly, FIGC allegedly used its regulatory powers to include - in the official notices for the Youth and Scholastic Sector – a number of provisions requiring EPS-FIGC affiliation (2021-2022 season) and prior authorisation in order to organise youth recreational-amateur tournaments (2022-23 season), which could be outside the scope of the EPS Regulations approved by CONI. Specifically, these provisions appear to unduly restrict the organisational freedom of EPSs, which, therefore, would have fewer opportunities to plan youth events of a recreational-amateur nature.

The investigation followed a complaint from CNS Libertas, an EPS recognised by CONI.

**Case no. A570 - ACI-MANIFESTAZIONI AUTOMOBILISTICHE LUDICO AMATORIALI<sup>13</sup>**

In October 2023, the Authority initiated formal proceedings against the Italian Automobile Club (Automobile Club d'Italia) to investigate an alleged abuse of dominant position in the market for the organisation of non-competitive automobile

<sup>12</sup> See AGCM case no. [A562 - FIGC-REGOLAMENTO ORGANIZZAZIONE TORNEI LUDICO AMATORIALI](#), opening decision no. 30636, published on the AGCM Bulletin no. 20/2023.

<sup>13</sup> See AGCM case no. [A570 - ACI-MANIFESTAZIONI AUTOMOBILISTICHE LUDICO AMATORIALI](#), opening decision no. 30807, published on the AGCM Bulletin no. 40/2023.

events. ACI is the only national sports federation recognised by CONI for competitive motor sport in Italy.

The Authority has identified two relevant markets: the market for the organization of agonistic automobile events and that one for automobile events of non-competitive, recreational-amateur nature.

According to the AGCM, ACI can be viewed either as an undertaking or an association of undertakings (due to its associative nature). In this case, ACI was considered as an undertaking with a dominant position in the market for the organization of competitive automobile events, due to the exclusive regulatory powers and the coordinating role recognised to it by CONI.

The opening decision states that ACI - also through its in-house company ACI Sport S.p.A. and a cultural association Club ACI Storico – has allegedly adopted behaviours to hinder or prevent sports promotion entities (EPSs), amateur sports associations and automobile clubs from organising non-competitive events, in order to expand its position in this market and increase the number of its affiliates/members. In other words, ACI, by leveraging on this dominant position and making instrumental use of its regulatory and coordinating powers, has allegedly implemented conducts aimed at hindering the organisation of non-competitive (i.e. not agonistic) motor sport events (including those with vintage/classic automobiles) promoted by other organisations recognised by CONI, for instance several EPSs some of which complained to the Authority.

In particular, it appears that ACI had sent numerous warning letters to various competent authorities (such as prefectures) in order to obtain the cancellation or, in any case, the suspension of non-competitive events organised by other organizations. In these letters, ACI did not sufficiently substantiate its claims that the events were in fact competitive, thus requiring its approval pursuant to Italian legislation. Moreover, the warning letters were sent just a few days before the events took place, showing the instrumental aim of the conduct.

In the Authority's view, ACI conducts would likely be capable of causing a general decrease in the number of non-competitive events, with both a reputational and economic damage to EPSs and their affiliated sports clubs. Moreover, such conducts could force (i) EPSs to choose to co-organise amatorial events with ACI (which are normally more expensive) and (ii) members of EPSs to change affiliation and join. Finally, ACI behaviour could also affect participants and consumers, by reducing their choice both in terms of events and sports associations. ACI conducts affected numerous amateur motoring events organised in different Italian regions, at least since 2016.

The investigation is expected to be closed by December 2024.

### 3.2. Competition concerns on athletes' participation in events and transfer rules

26. Sports organisations tend to have rules that prohibit athletes from participating in unauthorised events, envisaging penalties on those who take part in such competing events. In the already mentioned case concerning the equestrian federation FISE (case no. A378E), the Authority raised competition concerns with respect to a provision in the federal statute prohibiting the participation of its affiliates and members in other events not organised by FISE, under penalty of disciplinary sanctions and subsequent exclusion from the federation itself, thus closing the equestrian market to both existing and new equestrian associations. The AGCM questioned the proportionality of such an exclusivity constraint imposed on

FISE members, who were *de facto* obliged to necessarily chose their affiliation (either FISE or other equestrian organizations), not only with reference to Olympic disciplines, but also with regard to all recreational-rehabilitative activities that require the presence of horses (for example, to traditional equestrian activities and exhibitions).

27. The AGCM has also dealt with transfer rules. Across all sporting activities, there existed restrictions – the so-called “sports bonds” - binding athletes to perform sporting activity for a specific club for a duration set by the different sports federations, with the effect of limiting transfer of players among sports clubs or associations. The scope and duration of such a restriction did vary depending on the sports federations. The sports bond was justified in order not to discourage investments by the sports clubs in training athletes. In other words, this clause was considered to be indispensable in order to reduce the potential free-riding on training activities by sports clubs. In 1981, this restraint was lifted up for professional players when a separate discipline was introduced to regulate the contractual relations between athletes and sports clubs (Law no. 91/1981).

28. As part of a broader effort to reorganize and reform the sports system, the government made changes to sports regulations with Legislative Decree No. 36 on February 28, 2021. The Authority welcomed one of the key changes, contained in Article 31, that is, the abolition of the sports bond also for the non-professional category, so to support the freedom of choice of athletes and attribute them more bargaining power. To encourage the training of young athletes, the revised Article 31 introduced the possibility to grant amateur clubs a training compensation whenever one of their young athletes signs their first professional sports contract with another club<sup>14</sup>. The abolition of the sports bond, initially set for July 1, 2022, was subsequently postponed to 1 July 2024 for new members and to 31 December 2023 for those who are already members (upon renewal).

29. However, in September 2023, a sports bond with a maximum two-year period was reintroduced despite the AGCM negative opinion<sup>15</sup>, which asserted that a sports restraint exceeding one year could significantly limit the contractual freedom of amateur athletes, preventing them from freely changing sports clubs from one year to the next. In the Authority’ view, a period longer than one year may lead to an unjustified and unreasonable “lock-in” effect, which restricts competition among sports clubs. This competition can manifest in lower registration fees, reduced membership costs, or better services, such as improved sports facilities for training and games, and qualified sports personnel available through different clubs. In other words, a more competitive environment for clubs would offer young athletes a more suitable environment to pursue their talents and aspirations.

30. The one-year term for the sports bond was the commitment offered by the Italian Volleyball Federation, FIPAV, in the context of an antitrust investigation and made binding by the Authority<sup>16</sup>. In this case, FIPAV Statute initially contained a sports bond lasting for a period of up to 10 years (see Box 2 below). Furthermore, athletes wishing to change club

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<sup>14</sup> In such cases, training compensation shall be paid to all the athlete’s training clubs proportionally to the duration and the extent of the athlete’s training at each club. The quantification criteria are delegated to each sport federation. The AGCM suggested that the determination of the training compensation for the amatorial clubs should be based on objective, transparent and proportionate criteria, so not to create unjustifiable obstacles to the mobility of athletes.

<sup>15</sup> See AGCM opinion no. [AS1900 DISPOSIZIONI URGENTI IN MATERIA DI VINCOLO SPORTIVO](#), published on the AGCM Bulletin no. 28/2023.

<sup>16</sup> FIPAV and other sports federations which had already set the duration of the sports bond to one year, did not adapt their regulations to the new two-year period introduced in September 2023.

in advance of the expiration of the sports bond had to bear, in some instances, a financial cost as a compensation to the club for the technical training provided up to that moment.

31. The AGCM preliminary concerns were that this restriction could harm competition among clubs as well as the interests of athletes, leading to market segmentation and a consequent crystallization of clubs' positions. Due to sports bonds with an excessive duration, amatorial sports clubs belonging to FIPAV were not forced to compete with one another by offering better services and more favourable conditions to their athletes. The investigation was closed without ascertaining an infringement since FIBAV committed to reduce the duration of the sports bond to one year.

## Box 2. Restriction on athletes' transfer across clubs

### Case no. I861 - FEDERAZIONE ITALIANA PALLAVOLO/VINCOLO SPORTIVO<sup>17</sup>

In September, 2022, the Authority initiated an investigation against the Italian Volleyball Federation (FIPAV) for a suspected breach of Art. 101 TFEU.

FIPAV Statute had a rule providing that athletes could not change clubs, for up to 10 years. In October 2021, FIPAV reduced the duration of this constrain from 10 to 6 years for athletes aged 12 to 24. However due to a special provision of a transitional phase, the reduction of the duration of this restriction was considerably postponed for all athletes, who were already "tied" with a sports club, including even young children, to whom the new duration period would have only applied upon reaching the age of 24. In particular, for those who were 17 years old at the time of the entry into force of the new statutory rule, the new regulation would have applied only in the 2027/28 sports season.

FIPAV is the only national sports federation recognised by CONI responsible for regulating and coordinating volley activities. Its members include associations, sports clubs and companies active in this sport. Since it is responsible for the organization of volley events entailing economic activities, FIPAV can be viewed as an association of undertakings under the antitrust perspective.

FIPAV statutory restriction was therefore seen as a decision of an association of undertakings hindering competition among sports clubs: by limiting the free movement of athletes, this restraint could lead to market segmentation of customers (the athletes) and a consequent crystallization of the market position of volley clubs.

The lock-in effect generated by this restriction on transfer could lessen the various forms by which competition between sports clubs can take place: for example, through lower registration costs and fees or through the provision of better services, such as the sports facilities for training and matches, the technical sports staff employed (coaches) by the different clubs.

The anticompetitive nature of this restriction could be even more appreciated in light of the consideration that most of the services provided by sports clubs or associations are increasingly sold at market prices to their members (including when they are very young). Furthermore, athletes wishing to change club prior to the expiration of the restriction period, sometime may have to face a financial cost since the federal rules

<sup>17</sup> See AGCM case no. [I861 - FEDERAZIONE ITALIANA PALLAVOLO/VINCOLO SPORTIVO](#), commitment decision no. 30676, published on the AGCM Bulletin no. 26/2023.

provide for a monetary compensation to the club which trained the athlete up to that moment.

The Authority also noted that the rules adopted by the volleyball federation were contrary to the new principle, under approved by the legislator (at the time of the investigation) in the context of an overall reform of the sports sector (Legislative Decree no. 36 of February 28, 2021), to abolish altogether any restriction on athlete transfers across clubs by December 31, 2023. As described above, the implementation of this reform was postponed twice and eventually a two-year restriction on transfers.

During the formal proceedings, FIPAV submitted commitments to change its Statute by limiting the membership restriction to one year only and eliminating the transitional phase. The commitments were accepted and made binding by the AGCM.

The narrower restriction applies from the sport season 2023/2024 for all “new” athletes (that is, who have not yet registered with FIPAV). For the existing athletes already affiliated with FIPAV, the new restriction will be applied from the following season 2024/2025. Moreover, the elimination of the transitional phase has avoided the postponement of application of the new provision for certain athletes until the season 2027/2028.

### 3.3. Restrictions on sports agents and other sports-related professions

32. The Authority has used its enforcement and advocacy powers to prevent the introduction of anticompetitive restrictions related to access to the profession of sports agents and other sports-related activities.

33. In 2018, the Authority ascertained a breach of Art. 101 TFEU by the Italian Football Federation (FIGC) for having adopted regulations limiting the supply of professional services to football teams, notably the activities offered by sport directors (both for Serie A and for Serie B tournaments), talent scouts, match analysts<sup>18</sup> and football assistant managers<sup>19</sup>. More specifically, since 2010 FIGC regulations had imposed quantitative limits on the number of professionals eligible to offer these services to football teams, as well as access restrictions based on requirements such as the residence in Italy or Italian citizenship of the providers. Moreover, FIGC had ruled that access to these professions ought to be subject to compulsory training courses whose organisation and management were under FIGC’s exclusive competence. The AGCM’s infringement decision was upheld by the Courts.

34. On the advocacy front, in the context of parliamentary discussions concerning a wider reform of the sports sector, the Authority urged the legislator to reflect on some restrictions concerning the incompatibility regime and the compensation for sports agent

<sup>18</sup> They carry out the statistical analysis of the performance data of individual players and teams.

<sup>19</sup> Case no. [1812 - F.I.G.C. REGOLAMENTAZIONE DELL'ATTIVITA' DI DIRETTORE SPORTIVO, COLLABORATORE DELLA GESTIONE SPORTIVA, OSSERVATORE CALCISTICO E MATCH ANALYST](#), infringement decision no 27249, published on the AGCM Bulletin no. 27/2018. In this respect, FIGC was considered as an association of undertakings representing several professional services (incl. sports directors, talent scouts, match analysts etc.) and its regulations as decisions of an association of undertakings.

profession included in the proposed framework. The framework was eventually approved in spite of the AGCM's remarks<sup>20</sup>.

35. According to the Authority, the new framework unduly limits the activities of sports agencies and narrowly defines the profession of sport agents, setting wide incompatibility rules instead of specific rules to address potential conflicts of interest arising from engaging in other activities.

36. Similarly, the new framework contains unduly restrictive clauses on the compensation for sports agents. For example, agents can only be paid a fixed amount or a percentage of the transaction value for transfers, implying that agents cannot agree on other forms of payment. Additionally, the new framework envisages parameters for setting sports agents fees (to be fixed by regulation and reviewed every five years) which could serve as a focal point for operators, fostering collusive behaviour on the price of agent services: by limiting competition among sports agents on their fees, the new framework carries the risk of providing low incentives for sports agents to offer higher quality services.

#### 4. Final remarks

37. The AGCM's extensive enforcement and advocacy experience in the sports sector has shown that competition problems in the sport sector typically originate from certain features of its vertical and pyramidal institutional structure, based on an exclusive role of a federation for each discipline and a mixture of roles between the regulation and coordination of Olympic disciplines and the management of the related economic activities. In this context, federations may be tempted to expand their monopolistic position in areas not directly related to their exclusive mission, which can (and should) be left to free competition. As acknowledged by the EU jurisprudence, if sports regulations do not relate to the unique aspects of sports or the internal organization of sports associations, they must comply with competition rules.

38. Most sport organizations establish an ex-ante control system by requiring a prior approval of sports events organised by third parties. The AGCM has addressed in several occasions the conducts or regulations put in place by national sports federations (NSFs) which attempted to extend their exclusivity on sports events (e.g., tournaments) that are relevant to participation in Olympic and international competitions (i.e., professional sports events), by hindering the organization of sports activity outside this institutional pyramidal framework (non-professional or amatorial sports events).

39. A recurrent form of leverage of the dominant position held by sports federations consists of conducts aimed at preventing the organization of sports events. Although limited to the amatorial and non-professional sports, competition in the organization of tournaments is likely to be compromised in presence of dominant sports organisations with conflict of interests, that is, with the dual role of regulator and commercial organiser, as highlighted by the AGCM, for instance with respect to motor sports. A discussion on sports governance is therefore important, and policy alternatives may depend on each sport and the stage of its development.

40. The argument typically invoked by sports federations to justify competition restrictions is the safeguard of legitimate objectives (e.g., health protection and safety).

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<sup>20</sup> Legislative Decree No. 37 of 28 February 2021 provides for a set of regulations addressing sporting agents operating within the Italian framework. See the AGCM opinion no. [AS1718 - DECRETI DI RIFORMA SETTORE SPORTIVO](#), published on the AGCM Bulletin no. 8/2021.

This issue lies at the intersection between purely sporting rules and competition law and in the AGCM experience can be involved ex-ante authorization of competing sports events and eligibility rules limiting transfers among athletes. In this respect, the national and EU jurisprudence has established that such restrictions must be proven to be necessary, proportionate and strictly related with the objective, in an effort of striking a balance between the different needs and incentives of the various stakeholders involved in each sport<sup>21</sup>.

41. This balancing act can be challenging and legislators and judges are generally better placed to assess potential trade-offs. As noted in section 3.3, the introduction of a training compensation premium for clubs when athletes move to a new club can be seen as an attempt by the Italian legislator to balance out the interests of both athletes and sports clubs.

42. The increasing commercialisation of sports activities, especially those carried out at professional level, will likely raise further issues at intersection with competition law. As a consequence, trade-off situations whereby social, educational and cultural values of sporting activity are to be weighed against competition principles might become more frequent in future, also in light of the growing recognition of the value of sports in our societies<sup>22</sup>.

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<sup>21</sup> This question, and in particular the perimeter of the “purely sporting rules”, has been recently posed to the attention of the ECJ in the context of a request for a preliminary ruling concerning certain provisions of FIFA Football Agent Regulations. The ECJ is asked to address “whether the three-stage test is applicable also solely to rules of a purely sporting nature which directly affect sporting competition itself (such as, for example, the doping rules at issue in *Meca-Medina and Majcen*) or whether it is also applicable to other rules adopted by a sporting association, that are only indirectly linked to the organization and functioning of a sports league”. See Case C-209/23, *RRC Sports*. Request for a preliminary ruling from the Landgericht Mainz (Germany) lodged on 31 March 2023 — *FT and RRC Sports GmbH v Fédération Internationale de Football Association (FIFA)*.

<sup>22</sup> On September 20, 2023, Italy’s Parliament approved an amendment to Article 33 of the Constitution, which expressly recognise for the first time the role of sports: “The Republic recognises the educational and social value of sporting activity in all its forms as well as its role in promoting psychophysical well-being”.