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Competition and Professional Sports – Note by Poland

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This document reproduces a written contribution from Poland 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
www.oecd.org/daf/competition/competition-and-professional-sports.htm.

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Poland

1. In Poland, sports operate within the regulatory framework of the Sports Act. According to the Sports Act, sporting activities are conducted in the form of sports clubs, which are privately owned legal entities. For each sport, a sports association can be established to organize competitions. Such a sports association should be approved by the Minister of Physical Culture. Sports clubs are members of sports associations. Polish sports associations have the exclusive right to organize the Polish championship and to set and enforce sports, organizational, and disciplinary rules in sports competitions organized by the association, except for doping rules.

2. Sports associations create professional leagues that are managed by specially established capital companies. If over half of the clubs participating in the top tier of competitions take the form of joint-stock companies, there is an obligation to establish a professional league, also in form of joint-stock company. The shareholders of these companies are clubs (not necessarily all) and the sports association. The ownership structure varies depending on the discipline; for example, in the case of basketball, the sports association holds about 70% of the shares, while the remaining shares belong to four clubs. On the other hand, in the case of football and speedway, shares are evenly divided among the clubs participating in a given season, while the associations themselves hold approximately 7% and around 45% of the shares, respectively. In the case of establishing a league, the rules of the competition are determined in an agreement between the league and the sports association. This agreement requires the approval of the Minister of Sport.

3. This professional sports leagues and sport associations are privately-owned entities responsible for creating and enforcing their own rules. These organizations oversee various aspects of the sport, including rulemaking, athlete development, and organizing competitions. On the other hand, some aspects of sports in Poland are governed by public bodies. An example of this model is the Polish Olympic Committee, which manages Poland's participation in the Olympic Games and collaborates with national sports committees.

4. Leagues and tournaments in Poland are organized in open systems. Clubs or teams can move between divisions based on their performance. It is common for leagues and tournaments within a sport to be organized by one main entity, especially in the case of professional sports. For example, the Ekstraklasa organizes the top-tier football league, and the Polish Basketball League (Polska Liga Koszykówki) oversees top-level basketball competitions and there are an only competition at this level in the country. There are no competing leagues in main sports. However, exceptions to this rule are individual sports, such as cycling, tennis, or swimming, where several competitions are organized by different entities during the season. For disciplines in which competitions are organized by one entity, there have been no attempts to create alternative competitions by another entity. The UOKiK has no experience in cases involving the prevention of players' participation in alternative tournaments imposed by the game organizer or sports associations.

5. Revenue in the Polish sports industry comes from various sources, and these can differ depending on the specific sport and market conditions. The primary revenue sources for teams include ticket sales, broadcasting rights, sponsorships, advertising, and merchandise sales. One of the main sponsors for clubs is the local government of the cities in which they are based. The best clubs also receive support from the government. Sports associations also receive revenues mostly from sponsors, ticket sales, and broadcasting rights. Another source of revenue is transfer fees. However, they also receive government

subsidies, which can constitute a large part of the revenue (e.g., it was around 40% of yearly revenue at some point for the Polish Football Association). The main sources of revenue for athletes are contracts for the provision of sports services concluded with clubs and prize money from competitions and tournaments. Additionally, athletes also have marketing agreements for image use, concluded directly with sports clubs or via marketing agencies. Athletes can also conclude separate marketing agreements with particular brands.

6. The distribution of revenue in the Polish sports industry can vary widely. In some cases, revenues are obtained individually by teams and athletes. For example, individual athletes often negotiate their contracts and endorsement deals independently. In contrast, some revenues are collected collectively by leagues or sports association bodies in Poland. These organizations then distribute the income among participants. The distribution can be based on various factors, including performance, revenue-sharing models, and collective bargaining agreements.

7. Competition law applies to the sports industry in Poland, with no specific exceptions excluding sports from the scope of competition law. Anti-competitive practices in the sports industry are assessed using the same principles as in other sectors. The Polish Competition Authority, the Office of Competition and Consumer Protection (UOKiK), investigates cases of collusion, abuse of dominance, and anti-competitive agreements within the sports industry. When evaluating practices in the sports sector, UOKiK takes into account the specifics of the sector, such as the issue of the exclusivity of a sports association or league to organize tournaments.

8. Rules governing professional sports are typically decided by private organizations and associations, such as sports leagues and national sports associations. While these organizations have the authority to establish rules, the competition authority, UOKiK, can intervene if those rules are found to be anti-competitive. UOKiK has jurisdiction over reviewing and challenging rules that harm competition within the sports industry. At the same time, it should be stressed that even if the rules were created by public entities, they could still be subject to standard review by UOKiK. The UOKiK also has the relevant authority to evaluate the actions of public entities for compliance with competition regulations. Polish regulations do not provide for any sectoral exemptions for sports entities from competition regulations.

9. Competition law applies to the sports labour market in Poland. It prohibits anti-competitive practices in labour agreements, including no-poach agreements and wage-fixing agreements. UOKiK has conducted two investigations into the sports labour market in recent years. One case was on the basketball market (Decision DOK-1/2022), and the second on speedway (Decision DOK-1/2023). The first case emerged as a result of the COVID pandemic. In March 2020, the Polish Basketball League (organizer of the professional men's club basketball league) decided to finish the 2019/20 season due to the coronavirus outbreak. All 16 basketball clubs that played in the Polish highest division (namely Energa Basket Liga) agreed that, in relation to the pandemic and the decision to terminate the 2019/20 season, they wouldn't pay the full amount of the players' salaries for the 2019/2020 season. Specifically, they agreed that no salary due after March 17, 2020, would be paid to any player despite the fact that, according to the contracts, the players were entitled to be paid until May/June. All clubs also publicly informed that "it was agreed between all clubs of the Energa Basket Liga that paying the full amount of the player's salary would not be possible in this season." It diminished the risk of bad reputation of a single club among the players which may have discouraged them from further cooperation. UOKiK considered that all basketball clubs playing in the same league compete for players as employees. Salary is then the price that clubs pay for the services of the players. Accordingly, the clubs' arrangements were classified as price agreements, regarding the

purchase price of basketball players' services. The second case concerned the Polish Motorcycle Association and the speedway league. The Polish motorcycle association annually set regulations governing the relationship between riders and speedway clubs. Starting in 2013, the bylaws began to specify the maximum amount of remuneration that a club could offer riders. In doing so, the regulations were accepted by the organizer of the competition - the speedway league. Again, it was stated that the remuneration paid to riders represented the price paid by clubs for their services. In view of this, the regulations issued by the Polish motorcycle association constituted an agreement of the business association, setting maximum purchase prices. In both cases, the undertakings have appealed to the court, and the judicial stage is currently underway.