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

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More documents related to this discussion can be found at  
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## *Spain*

### 1. Introduction: sports in Spain<sup>1</sup>

1. Playing sports and following the main sporting competitions are part of Spanish culture. A distinction should be made between physical activity carried out in an informal or unregulated manner, and participation in a competition organised by the corresponding sports federation (amateur or professional). The most popular organised sports in Spain are football (25% of federation licences), hunting (9.3%), golf (7.8%), mountaineering and climbing (7.5%) and basketball (7.5%)<sup>2</sup>.

2. In Spain, a number of competitions stand out due to their economic significance and importance to markets such as the audiovisual rights and pay-TV markets<sup>3</sup>. To illustrate the economic significance of some of these competitions, the audiovisual rights to first-division football were valued at EUR 4,950 million<sup>4</sup> for the domestic market for the 2022–2023 to 2026–2027 seasons.<sup>5</sup>

3. Sport is a multidimensional phenomenon, with educational repercussions, a social function and economic importance. In recognition of this social function, the Spanish Constitution itself establishes that the public authorities shall promote sport<sup>6</sup>. The Treaty on the Functioning of the European Union (TFEU) specifies, among other values or principles to be promoted, the European dimension of sport, and fairness and openness in European competitions<sup>7</sup>.

4. The second section describes issues related to the organisation of sports in Spain. The third section addresses the relationship between sports and competition law. The fourth

<sup>1</sup> This contribution has been prepared by the staff of the CNMC and shall not be regarded as the official position of the CNMC unless it refers to CNMC approved documents. See also the contribution to the LACCF covering similar issues. <https://www.oecd.org/competition/latinamerica/2023forum/>

<sup>2</sup> Ministerio de Cultura y Deporte, Anuario de Estadísticas Deportivas 2022 [Yearbook of Sports Statistics]. <https://www.culturaydeporte.gob.es/servicios-al-ciudadano/estadisticas/deportes/anuario-de-estadisticas-deportivas.html>. Page 119.

<sup>3</sup> The CNMC itself, in the resolution authorising the Telefónica DTS merger (C/0612/14), designated “some live sporting events of the La Liga first-division football league, Copa del Rey, Champions League football, Europa League football, Football World Cup, Basketball World Cup, Formula 1, Moto GP and the Olympic Games” as premium content.

<sup>4</sup> The CNMC also issues reports on the joint commercialization of audiovisual football rights, mandate by Royal Decree-Law No. 5/2015. See a wider explanation and the main recommendations in Section 5 of the contribution on “Competition ad Sports” for the Latin American and Caribbean Competition Forum (2023). <https://www.oecd.org/competition/latinamerica/2023forum/> These recommendations are the following: (i) rights must be awarded through a public, transparent, competitive and non-discriminatory procedure; (ii) the award must be divided into lots (in general with “no single buyer” rule, with some qualifiers) (iii) the duration of the contracts must not exceed three years and (iv) disproportionate restrictions on advertising must be avoided.

<sup>5</sup> [www.laliga.com/noticias/laliga-consigue-una-venta-historica-de-tv-para-los-clubes-y-los-aficionados-del-futbol-espanol](http://www.laliga.com/noticias/laliga-consigue-una-venta-historica-de-tv-para-los-clubes-y-los-aficionados-del-futbol-espanol).

<sup>6</sup> Article 43.3.

<sup>7</sup> Article 165.

section summarises some of the main competition cases connected to sports<sup>8</sup>. The fifth section includes some CNMC's initiatives on sport in the advocacy area. The sixth section concludes with the main takeaways.

## 2. The organisation of sports in Spain

5. Spanish legislation has created a model for organising official sport activities based around sports federations. The main features of this model that may be relevant to competition law enforcement are discussed below<sup>9</sup>.

6. Sports federations are the entities responsible for promoting, organising and regulating the different official sports competitions at the state level. All the groups involved in each sport (such as athletes, clubs, judges and referees) are members of the sports federation. The corresponding regional federations are also integrated into each national sports federation.

7. These private (non-profit) associations are in the public interest: they have priority in obtaining subsidies, and the law entrusts them with a series of public administrative functions by delegation. These functions include organising official non-professional sports competitions, issuing licences to clubs and athletes to participate in these competitions, and granting and controlling subsidies to clubs and sports associations.

8. Setting out these public functions is important for the application of competition law, since the Law on the Defence of Competition itself provides that conduct resulting from the application of a law may not constitute an infringement of competition. In this regard, and by way of illustration, it should be noted that according to the Sports Act, the marketing or exploitation of the audiovisual rights to the different competitions organised by the federations is not a public function entrusted to them (although in the specific case of certain football competitions, commercialisation is regulated by a specific regulation).

9. Federations are responsible for organising non-professional competitions, and there can only be one federation per sport. In the case of professional competitions, clubs may associate and form a league, which will be in charge of organising the competition autonomously but in co-ordination with the corresponding federation (which in any case will maintain its public functions). Only one professional competition per sport is permitted, although this competition may have different divisions or categories.

10. The public administration, through the Supreme Sports Council, is responsible for classifying Spanish competitions as professional and consequently authorising the creation of a league. To agree on this classification, the economic relevance of the competition (including its capacity for economic exploitation) or the regular participation of professional athletes will be taken into account, among other factors.

11. At present, the Spanish competitions classified as professional and organised by professional leagues are the first and second division of men's football, the first division of men's basketball, the first division of women's football and the first division of men's handball.

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<sup>8</sup> This contribution has been prepared by CNMC staff and should not be considered as an official CNMC position, except for the official documents mentioned throughout the text.

<sup>9</sup> Act 39/2022, of 30 December, on Sports. It provides for the basic regulations of sports federations. The following paragraphs will be based on this act.

12. This regulation on the power to organise official championships is relevant within the framework of competition law, in terms of defining markets and identifying their structure. In this sense, the main consequence is that there is essentially only one organiser per competition, as seen in the most economically relevant competitions, such as football or basketball<sup>10</sup>.

13. In addition to the granting of organising power to the corresponding association of clubs, classification as “professional” – in the football sector specifically – has an additional, very significant, implication in terms of the marketing and exploitation of audiovisual rights: the sale of said rights is entrusted to the league, not to the federation.

14. On the other hand, Spanish legislation does not expressly regulate whether official competitions (whether organised by the federation or by professional leagues) must be open or closed. In practice, the most economically important official Spanish competitions, such as football or basketball (and many others such as futsal or volleyball) are open, in the sense that access to them is determined by sporting merit through promotion and relegation, without prejudice to the application of administrative, financial and technical membership requirements (e.g. minimum facilities).

15. At the European level, however, the main basketball competition (Euroleague) is a relevant example of a semi-closed league, organised by a group of European clubs, outside the International Basketball Federation (FIBA).

### 3. Sport and Spanish and European Union competition law

16. Within the Spanish and EU body of competition law, sport does not have any specific treatment or any type of legal exemption of its own. The treatment accorded to sports by competition law is defined by the application of the Law on the Defence of Competition, its corresponding regulatory developments and the TFEU, as well as the accumulated decision-making practice and case law of the courts.

17. As sports federations perform certain public tasks – and sports clubs, associations of clubs and sports federations sometimes have their own legal forms (often not for profit) – the provisions of the Law on the Defence of Competition (that exempt conduct resulting from the application of a law from the prohibition of anti-competitive agreements and abuse of a dominant position) are particularly relevant. It is also necessary to consider the definition of an economic undertaking in the sense of competition law, which encompasses any person or entity exercising an economic activity, irrespective of the entity’s legal status and its means of funding.

18. In terms of case-law, the Meca-Medina judgment by the Court of Justice of the European Union (CJEU) should be mentioned, which confirmed that the organisational rules of sport are subject to EU competition law, to the extent that sport is an economic activity. EU and Spanish case law have incorporated the “specificity of sport”, considering that the organisational rules of a sport do not constitute an infringement of competition law if they are inherent and proportionate to legitimate objectives<sup>11</sup>. This consideration of “legitimate objectives” is the way in which competition law takes into account the aforementioned social function of sport and the other values recognised, for example, in

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<sup>10</sup> This does not preclude the existence of other scenarios. For example, in paddle tennis there has been, at least until recently, more than one international professional circuit (each organized by different private entities), some of whose events take place in Spain.

<sup>11</sup> Judgment of the CJEU of 18 July 2006, Meca-Medina, C-519/04P.

the TFEU, such as a proper sporting competition, antidoping rules. There is some similarity in that regard with the regulation of some liberal professions.

19. Clubs or athletes are competitors, but they derive value from participating in a championship and therefore need the co-operation and participation of other clubs. Then, in the case of seasonal or long-term competitions, such as football or basketball competitions, each club may participate in a maximum number (typically two competitions: one national and one European), due to scheduling conflicts. This may have implications for the competitive assessment of club relationships and the possibility of entry or emergence of alternative competitions.

#### 4. Cases of competition law application in sports

20. In Spain there have been three competition cases where certain organization norms were investigated. In the ACB and Pedro León cases, the authorities investigated if certain organization rules created an uneven playing field among teams or clubs (that is, cases where competition among teams might be affected). In the Super League case, which is ongoing at the time of drafting this contribution, the issue at stake is of a different nature: whether certain organization rules create market power for incumbents (that is, a case where competition among organisers might be affected). These cases are presented below<sup>12</sup>.

##### 4.1. The ACB case<sup>13</sup>

21. In this case the CNMC concluded that the rules governing the main basketball competition did not ensure a level playing field and violated competition law. This case is the only instance so far of application of the Meca Medina case law by the Spanish competition authority.

22. The Basketball Clubs Association (ACB) organises the main national basketball championship. It is an open league: the two clubs that finish in the top two positions in the league immediately below are promoted to the ACB league each season, and the two clubs that finish in the last two positions of the ACB are relegated.

23. The ACB had also established a series of administrative and financial requirements to enter its league, including auditing the club's financial situation, certifying that the facilities meet a series of minimum requirements and paying an entry fee, this last requirement being the most burdensome. If a club did not meet these requirements, it could not be promoted to the ACB, meaning that a team that was to be relegated could remain in the top flight.

24. Following a complaint, the CNMC investigated these requirements in 2015-2017. The Spanish authority concluded that the ACB had engaged in an anti-competitive agreement by introducing the entry fee. The fee had a restrictive effect, since it prevented or made it difficult for clubs promoted on sporting merit to compete with the incumbent clubs, which were protected, thereby altering the normal conditions of competition on the

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<sup>12</sup> There have also been a number of cases arising from disputes between organisers and clubs over the commercial exploitation of competitions, as well as cases regarding the acquisition and resale of audiovisual/broadcasting rights from sport competition. However, as these cases involve activities and markets other than the organization of sports itself, they will not be further developed in this contribution.

<sup>13</sup> CNMC Council Resolution of 11 April 2017, ACB, S/DC/0558/15, [www.cnmc.es/expedientes/sdc055815](http://www.cnmc.es/expedientes/sdc055815).

merits. The CNMC applied the Meca-Medina test, considering that the legitimate objectives that a restrictive sports rule may pursue include: "... the protection of the health of participating athletes, the safety of spectators, the uncertainty of sports results, the sports training of young people and, also, the financial stability of the teams and clubs participating in the competition." The CNMC concluded that the entrance fee was not intended to improve the competition or achieve any legitimate objective (since it was distributed among all clubs), that it was not proportionate (since it was higher than the average income of a second-division club) and that it was discriminatory (since the eight founding clubs had never paid it).

25. The question of the separation of public and private activities and the possible legal protection of the ACB's conduct is of particular interest. The ACB argued that the Supreme Sports Council approved its rules and that it therefore had legal protection. The CNMC considered that the Supreme Sports Council's approval of statutes does not mean that its conduct results from the application of a law. Therefore, the CNMC confirmed the restrictive interpretation of the legal protection of sports federations' actions, which had already been put forward in previous cases concerning audiovisual/broadcasting rights.

26. A second issue of relevance in the CNMC resolution is the mention of open and closed leagues. The ACB argued that the CNMC was actually ruling against closed leagues and that this lacked precedent. In response, the resolution does not prejudge on the model.

27. The CNMC's decision was upheld after two rounds of judicial review:

28. It was first overturned in 2021, by the National High Court (Audiencia Nacional)<sup>14</sup>. The National High Court did not rule on the position of dominance, the separation of activities, the question of the open or closed model, or the application of the Meca-Medina test. It annulled the Spanish competition authority's resolution on the grounds that the market definition had been too narrow and that the conduct had been incorrectly classified. The National High Court considered, in contrast to the CNMC's assessment that the ACB was the only possible bidder, there was the possibility that other professional leagues could emerge that could compete with the ACB. The National High Court also argued that if the conduct constituted an anti-competitive agreement between the ACB member clubs, these clubs should have been sanctioned, not the association – otherwise, the conduct was in fact unilateral (abuse of a dominant position).

29. Finally, in 2023, the Supreme Court upheld the CNMC's appeal confirming the existence of a violation. The Supreme Court has established, among other things, that the agreements within the ACB governing bodies are agreements between undertakings and decisions of an association of undertakings and are therefore included in the conducts prohibited in Article 1 of the Law on the Defence of Competition, as the CNMC had ruled, and that it is possible to fine the association in this case. On the issue of separating activities, the Supreme Court considered that the oversight of the Supreme Sports Council does not exempt the ACB from liability, but it must be taken into account in order to reduce such liability. For this reason – and for other reasons initially appealed by the ACB, which were also upheld – the Supreme Court reduced the amount of the fine<sup>15</sup>.

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<sup>14</sup> [www.cnmc.es/expedientes/vs055815](http://www.cnmc.es/expedientes/vs055815)

<sup>15</sup> [www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Oficina-de-Comunicacion/Archivo-de-notas-de-prensa/El-Tribunal-Supremo-sanciona-a-la-ACB-por-conducta-anticompetitiva-por-las-condiciones-economicas--desproporcionadas-y-discriminatorias--que-exigia-para-el-ascenso](http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Oficina-de-Comunicacion/Archivo-de-notas-de-prensa/El-Tribunal-Supremo-sanciona-a-la-ACB-por-conducta-anticompetitiva-por-las-condiciones-economicas--desproporcionadas-y-discriminatorias--que-exigia-para-el-ascenso)

## 4.2. The Pedro León case<sup>16</sup>

30. This case, dealt in court following a private lawsuit, investigated the financial fair play rules adopted by the Spanish football premier league.

31. According to the information available, the aforementioned professional footballer brought an action against the National Professional Football League (LNFP) before the ordinary courts for having refused his playing licence, as his club had exceeded the maximum spending thresholds for squad, all in application of the LNFP's economic control rules. The player filed a complaint against the LNFP for abuse of a dominant position, considering that these economic control rules intervened disproportionately in the clubs' ability to compete.

32. After a long judicial process, the Provincial Court of Madrid ruled in favour of the LNFP in 2019. The judicial body concluded, in what constituted an application of the Meca-Medina test in judicial proceedings, that the restrictive effects of the expenditure control rules are inherent and proportional to the achievement of a legitimate objective: the financial sustainability of the club and, consequently, of the competition as a whole.

## 4.3. The Super League court case

33. In contrast to the two previous cases, the issue at stake here is the competition among organizers, including the possibility of the emergence of new or alternative competitions.

34. This case is being clarified in the Spanish courts. According to the information available, in 2021, the promoter of the proposed new European football competition – the Super League – filed a complaint against the clauses in the International Federation of Association Football (FIFA) and Union of European Football Associations (UEFA) statutes that require clubs to seek their authorisation if they wish to organise or participate in alternative international championships, and to cede the exploitation rights to the competitions in which they participate. The complaint is also against threats that these organisations made to clubs participating in the new project. The Super League considers these clauses and threats to be an abuse of a dominant position and an anti-competitive agreement.

35. The main competition concern is that pre-authorisation rules for joining break away or alternative leagues might be affected by a conflict of interest within FIFA and UEFA, as these benefit from the economic exploitation of current leagues. Denial of authorization would deprive alternative organisers of the minimum number of clubs required to launch a new league, thus acting as a barrier to entry and reinforcing the current market position of said federations. This market position is already supported by a long-standing monopoly situation with a strong image and reputation, and by the need to have a minimum scale for entry.

36. Should the existence of a restriction to competition be accepted, application of the Meca Medina case law should follow: is the restriction inherent and proportional to a legitimate objective? In this test, the effect of the restriction should be pondered against the protection of European values of sports, enshrined in article 165 of the TFEU, which mentions, among others, the openness of competitions.

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<sup>16</sup> See the following public news for a summary: <https://www.laliga.com/en-ES/news/official-statement-33> and <https://iusport.com/art/80995/la-audiencia-avala-la-actuacion-de-laliga-en-el-caso-de-pedro-leon>

37. In an order granting interim measures to the plaintiffs, the Spanish court has argued that, far from undermining the European values of the sport, the creation of a new professional competition would boost competition and increase supply. The court points out that football's socio-educational function is guaranteed, regardless of the emergence of a new competition. In addition, the court considers that the mechanism of redistribution to grassroots football used by UEFA is neither necessarily the best possible mechanism nor better than the mechanism proposed by the Super League. The court therefore concluded that UEFA's conduct cannot be justified as protecting the general interests of European football, but that it "has all the characteristics of an unjustifiable abuse of a position of dominance"<sup>17</sup>.

38. In any case, the Spanish courts have submitted a preliminary question to the Court of Justice of the European Union (CJEU), which is pending judgment. In essence, the Spanish court asks whether the disputed clauses are compatible with the TFEU and, in particular, with the articles referring to anti-competitive agreements, abuses of a dominant position and fundamental freedoms<sup>18</sup>.

39. At the time of writing, the CJEU judgment has not yet been pronounced. The opinion of the Advocate General has taken the view that the prior authorisation required by UEFA to participate in alternative competitions and the threats made by UEFA to the Super League promoters would not violate the TFEU. The only exception would be the threat to expel players from their national teams, which would be disproportionate. The Advocate General argues that, although the FIFA and UEFA statutes restrict market access, not authorizing a closed competition such as the Super League may be justified in order to achieve the objective of protecting the European model of sport as set out in article 165 of the TFEU<sup>19</sup>.

40. Some of the relevant facts in this analysis would be that the organization of the main European football competition has an indisputable and very significant economic component, that the Super League has committed to redistribute funds to grassroots and youth football, or that the Super League is a league semi-closed in which some clubs have a guaranteed place in the competition and only a handful can access it on merit, compared to the open pyramid model in which any club can be promoted and access the competition on merit. Other voices consider relevant the possibility of some clubs participating in one of the leagues of the UEFA ecosystem (and, in particular, the national leagues), but not in others (and in particular, the Champions League or the Europa League, which would be the league that would be abandoned by the Super League clubs).

41. Experts and lawyers following the case consider that the European pyramid model of sport is at stake, including the autonomy of the organizers. According to public information, all Super League teams have abandoned the project except two (Real Madrid and Barcelona). Therefore, it is not clear what the practical impact of the ruling will be for this specific project. There could certainly be an impact for future similar projects or for other sports (although not all sports are organized in a pyramidal way in Europe).

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<sup>17</sup> Order of 30 January 2023 of the Provincial Civil Court of Madrid, section 28, appeal1578/2022, [www.poderjudicial.es/search/indexAN.jsp#](http://www.poderjudicial.es/search/indexAN.jsp#).

<sup>18</sup> Order of 11 May 2021 of the 17th Commercial Court of Madrid, appeal 150/2021, [www.poderjudicial.es/search/documento/AN/9523335/Real%20Decreto%20alarma%20sanitaria%20Covid-19/20210518](http://www.poderjudicial.es/search/documento/AN/9523335/Real%20Decreto%20alarma%20sanitaria%20Covid-19/20210518).

<sup>19</sup> Conclusions of 15 December 2022 of the Advocate General of the Court of Justice of the European Union, <https://curia.europa>

## 5. Advocacy activity

42. The CNMC has also analysed part of the regulatory framework and several practices associated with it from the point of view of effective competition in the markets and efficient economic regulation. In this regard, the following actions can be highlighted, referring in one case to the commercialization of audiovisual rights and, in others, to possible restrictions on access or exercise of certain professional or service activities:

- [Report](#) on competition in the markets for the acquisition and exploitation of football audiovisual rights in Spain (2010), which addressed the centralized sale of football audiovisual rights with a time limitation, as well as improvements in the conditions of exploitation or resale of the rights.
- [Report](#) on the compliance with competition rules of the practices of the *Real Federación Española de Fútbol* regarding access to the coaching profession (2015). The most relevant recommendations highlighted the need to assess (a) the obligation to hold a licence to exercise the coaching profession in its sporting competitions as there is no "overriding reason relating to the public interest" to justify it (as required by national and European regulation) and (b) the establishment of disproportionate licence fees (unrelated to the costs involved in the granting of the licence) and potentially discriminatory.
- [Report](#) on the prohibition of third-party ownership of the economic rights of football players (2015). The CNMC pointed out that if the market has facilitated the emergence of these operations by third parties, it is because the intervening agents have considered it to be in their best interests. Therefore, the prohibition of third-party ownership is a limitation on the ability to act and the freedom to conduct a business. Therefore, the CNMC recommended considering other regulatory options that are less strict than the mere prohibition.

## 6. Conclusions

43. Despite some social specificities sport can also be an economic activity which has to be addressed as such by competition authorities. From the enforcement perspective, the Meca Medina doctrine may be applied to see whether restrictions may constitute an infringement of competition law if they are not inherent and proportionate to legitimate objectives. From the advocacy perspective, the principles of efficient economic regulation may be applied.