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Competition and Professional Sports – Summaries of contributions

4 December 2023

This document reproduces summaries of contributions 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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Argentina

Sports, football in particular, are a major component of Argentina's national identity. In addition to its cultural dimension, professional sports have a significant economic importance — and observers only expect this significance to increase.

Because it has a much larger economic impact than other professional sports, the contribution will be football-centred, and it delves into the strategy used by the National Commission for the Defence of Competition (CNDC, for its Spanish acronym) in various cases involving markets associated with football events. The unique features of the football sector have influenced the competition interventions implemented over time.

The first section of the contribution examines the current structure for Argentine football clubs' governance. The second section delves into how football leagues and tournaments are organised. The third part revises how the local federation, *Asociación de Fútbol Argentino* (AFA) (Argentine Football Association) deals with the joint sale or licensing of media and publicity rights, and it describes recent competitive issues concerning broadcasting rights for football events. In the fourth section, certain conclusions on the subject are outlined.

BIAC

Business at the OECD (BIAC) welcomes the opportunity to comment on the topic of competition and professional sports that is an important part of national culture while also having significant economic relevance.

The application of competition law to professional sports is complex as sports have some unique features that may justify some degree of cooperation or coordination among competitors that are not required in other areas of economic activity. For instance, competitors need to work together to create a contest that involves arranging games, leagues, or championships for the sport. Competitors also have to maintain the quality and integrity of the sport, foster its growth and social benefits, and respect its specific rules and traditions.

However, effective competition is still essential to ensure market-based efficiencies when sport leagues and associations engage in economic activities. When applying competition law in sport, competition authorities and courts usually examine each case on its own merits, taking into account the particular features of each sport, as well as the nature and effects of the conduct or transaction that requires an assessment of less restrictive alternatives that generally follows a rule of reason approach. Such an approach is generally preferred as it preserves flexibility and is able to adapt to the individual circumstances of each case.¹

In these comments, BIAC will address two specific topics: the monopoly status of and potential anti-competitive behavior in sports leagues, and wage fixing and no-poach agreements in sports labor markets. These submissions include examples where traditional competition law tools were relied upon to address possible competition law concerns in professional sports markets.

¹ See, e.g., *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 117 (1984) (“Our decision not to apply a per se rule to this case rests in large part on our recognition that a certain degree of cooperation is necessary if the type of competition that petitioner and its member institutions seek to market is to be preserved.”).

Brazil

The market of sporting events represents a significant portion of the global economy. The importance of this economic sector in the Brazilian economy gives rise to considerations on the relationship between competition and the sporting sector.

We highlight that the Brazilian Competition Law (Law 12529/2011) sets forth the prevention and suppression of antitrust violations, expressly indicating its imposition in case of violations committed in the Brazilian territory, in full or in part, or that produce, or may produce effects thereon. In addition, the Article 31 addresses the general provisions on punishing antitrust violations, illustrating the broad reach of the Brazilian Competition Law, including public and private agents.

Regarding the sporting sector, the organisational structure of sports modalities in Brazil involves the public and private sectors. These include confederations, federations, clubs, and considering the sports subject, diverse economic agents, such as media conglomerates, investment funds, advertising agencies, advertisers, among other stakeholders of the sporting sector.

Recently, the enactment of the law on football corporations, Law of Sociedades Anônimas de Futebol (Law 14193/2021), enabled Brazilian football clubs to move from a model of non-profit organisation to a new model, the so-called Sociedade Anônima de Futebol (SAF), a special type of football club corporation. From the perspective of CADE, the corporate changes made by certain football clubs from association models to SAF models may result in notifiable mergers. Therefore, the Brazilian competition authority must dwell on the competition aspects of these transactions.

CADE analysed different topics in the review of the mergers and conducts in the sector. The most relevant ones are the potential antitrust violations in domestic and international negotiation markets of broadcasting rights for sporting events and the recent trend of mergers, because of the Brazilian football clubs moving from the association model to the new corporation model, named SAF.

Bulgaria

The organization of sport activities in Bulgaria follows the most common pyramidal model, consisting of sport clubs of particular sport at the bottom of the structure, governed by a national federation, which in its part is governed (as a member) by the corresponding international federation. The general legislative framework as to the structure and the functioning of the sports is set in the Law on Physical Education and Sports (LPES), new one adopted in 2018. The sport organizations, as provided in the LPES, are the sport clubs, joint sport clubs, single or multisport federations, professional sport leagues, etc. Public financing of sport activities and organizations is also provided for in the law.

With **Decision No 538/2016** the Bulgarian Commission on Protection of Competition (CPC), at request by the (then) Minister of Youth and Sports, adopted advocacy opinion on draft of new Law on Physical Education and Sports. The CPC availed itself of this opportunity to inform the Minister and the general public (as the CPC opinion is public on its Internet site) of the instances where the sport rules could be assessed as to their compliance with competition rules. The CPC pointed out that both the national Law on Protection of Competition (LPC) and the EU antitrust rules (Art. 101 and 102 TFEU) could be applied to the sport sectors, as set by the Court of Justice (CJ) (formerly the European Court of Justice – ECJ) in a number of cases (Walrave case, Bosman case, Meca Medina case, Piau case, MOTOE case, etc.).

In its advocacy opinion the CPC pointed out that some of the activities of the sport organization may be considered as being of economic natures and correspondingly the sport entities performing these activities may fall under the definitions of “undertakings” or “association of undertakings” under the competition rules.

The CPC noted some potential restrictions of competition that could arise from some of the provisions of the draft LPES. In particular, the CPC underlined, that:

The CPC noted that some competition related problems might arise with some of the provisions of the draft LPES. The CPC recommendations covered the following:

- The administrative procedures for licensing of sport federations was envisaged to be on “first come-first serve” basis, and not on some objective criteria.
- Restrictions on the activities of the sport clubs and their freedom to establish joint sport clubs. The draft LPES, assessed by the CPC, provided for that only registered sport clubs that are members of licensed sport federation could perform the full scope of allowed activities, many of them being of economic nature, and could establish joint sport clubs, whose activities are mainly economic – constructing, managing and using sport facilities.
- The provisions on public financing of sport activities and organization should observe state aid rules, where the European Commission has exclusive power to investigate and pronounce on. The sport organizations should not be included in the existing exceptions under the Public Procurement Act for having negotiation procedure without preliminary notice.
- The sport federations could approach the CPC to assess their draft organizational rules as part of the CPC powers for competition advocacy.

The new and now acting LPES, adopted in 2018, has numerous references to state aid rules, as advised by the CPC. The law does not envisage procurement in sports to enjoy the

existing exceptions in Public Procurement Act. As regards the other CPC considerations and proposals, concerning the organizational issues and regulations for sport organizations, the only significant change to the draft law, assessed by the CPC in 2016, provides for the selection of sport federation to be licensed to be made according to the number of the participating clubs, and not on “first come-first serve” basis. Nonetheless, the Bulgarian CPC considers its advocacy opinion on sport regulation as part of its overall advocacy efforts, raising the awareness of the relevant state authorities on the applicability of competition rules to sport activities in certain cases.

Chile

The National Economic Prosecutor's Office (“FNE”) has conducted several investigations in which the markets involved are related to sports and in all of them it has highlighted the importance of sports content for consumers. This contribution describes four cases in which the FNE has addressed relevant competition issues related to the sports industry. The first case refers to a complaint filed by the FNE against the Chilean National Association of Professional Soccer for the creation of an artificial barrier to entry consisting in the establishment of an incorporation fee charged to soccer teams promoted to a higher division. The second case concerns an investigation regarding the allocation of TV broadcasting rights of the 2023 Pan American Games. Lastly, we describe two merger cases which were approved with remedies: the acquisition of the Soccer Channel by Turner International Latin America, Inc and the acquisition of Twenty First Century Fox by the Walt Disney Company.

Colombia

The purpose of this contribution is to describe how the competition authority in Colombia could contribute to the debate on gender equity in some sports markets. This analysis will be based on the experience of the women's soccer case, which has been investigated at the Superintendence of Industry and Commerce since September 2023.

Competition protection in Colombia ensures free participation in the market, the welfare of consumers and the economic efficiency of markets. As will be shown, the guarantee that men and women have the same conditions in relation to the same indicator, far from sacrificing economic dynamism and growth, is a requirement for its efficiency.

The challenge that the Colombian competition authority is facing, like other authorities around the world, is to identify gender gaps as a relevant factor for free economic competition. Furthermore, for this important task, the authorities must overcome the problem of the lack of data identifying women's preferences in the markets, which could make gender inequality more evident.

For the development of this contribution, the document will be organized in four parts. First, an exposition will be made of the legal and constitutional framework that allows the intervention of the competition authority in markets where gender gaps could be evidenced. Second, there will be a brief analysis of the challenges faced by the authorities in relation to the intervention to reduce gender gaps. Third, the case of women's soccer in Colombia will be presented. Finally, the conclusions of the analysis will be presented.

Costa Rica

In 1998, Costa Rica enacted Act 7800, which governs sports in general and establishes the *Instituto del Deporte y Recreación* [ICODER, Sports and Recreation Institute, if translated] as a semiautonomous institution of the State that has the objective of promoting, supporting, and fostering individual and team sports and recreation. As the governing entity, it has other functions, such as fostering the strengthening of private organizations related to sports and recreation under a legal, regulatory framework that allows their development.

All the associations and federations that wish to subject themselves to the valid regulations and the governance of the ICODER must be registered before the National Register after the ICODER has qualified whether such registration is appropriate. At the time of registration, the Institute and the Register shall certify that the associations and federations comply with the democratic principles to elect their board of directors, functioning, and organization. The Institute is authorized to invalidate any election that violates the stated principles and guarantees.

The regulations that govern competition in Costa Rica does not establish any exemptions for companies or associations of the sports sector. Hence, the Comisión para Promover la Competencia [Commission to Promote Competition, if translated] (COPROCOM) can investigate anti-competitive behaviors and sanction them accordingly, as well as analyze the economic concentrations of any companies that meet the requirements that such regulations establish.

In the same vein, the Telecommunication's Superintendency (SUTEL), as this sector's competition authority, is responsible for investigating and sanctioning anticompetitive practices. Likewise, SUTEL is in charge of conducting preliminary analyses of economic concentrations by the network operators and the telecommunications service providers that meet regulatory requirements (including networks that support free access to radio and television broadcasting services).

It is not clear whether Costa Rican competition laws can fully apply to the sports labor market, specifically to "no-poach" agreements, which refer to agreements between competitors that state that employees from other teams cannot be solicited, which restricts competition in the labor market.

In Costa Rica, the rights to broadcast the matches of the first division of football (FPD) belong exclusively to the football teams and can be negotiated individually. Hence, the clubs enter into temporary exclusive broadcasting rights agreements that award a license to rebroadcast their games. These agreements can be terminated when better offers are received or otherwise due to circumstances beyond the parties' control, such as the team no longer being part of the first division.

Both COPROCOM and SUTEL have investigated cases related to rights to broadcast sporting events.

Czech Republic

The contribution is mainly focused on the very recent practice of the Czech NCA regarding the collective sale of broadcasting rights in football and ice hockey. The article also explains how football and ice hockey, the most popular sports in the Czech Republic, are organised. Additionally, some general insights of the Czech NCA in relation to the application of competition law to sports are addressed.

Denmark

The Danish Competition and Consumer Authority (hereinafter “the DCCA”) made a survey among Danish consumers in 2022 in order to investigate the importance of the Danish national football league, the Superliga. The survey showed that the Superliga plays a more significant role for Danish consumers compared to other football leagues and other sports. The survey also showed that both Champions League and Premier League are of great importance to the consumers.

The DCCA and the Danish Competition Council (hereinafter “the DCC”) have dealt with the joint sale of the media rights to the Superliga since 2007 and most recently in a decision from December 2022.

The joint sale of the media rights to the Superliga is regulated through commitments to the DCC.

Based on the results from the survey and the market developments the DCC granted a temporary and partial dispensation from the current commitments in 2022.

The sale of the media rights to the Superliga was completed in 2023 and the rights were sold under the current commitments from 2014 for a period of 6 years to two Danish broadcasters. The temporary and partial dispensation was therefore not used in connection with the sale of the media rights.

Ecuador

This paper presents an analysis of the quantitative effects of the application of Resolution No. 019-2019 of the Plenary of the Foreign Trade Committee (August 12, 2019) and the Ministerial Agreement No. 586 of the Ministry of Sports (December 3, 2020); the former reformed Ecuador's tariff, granting a tariff benefit to the import of footwear and specialized implements for sports. Nonetheless, economic operators who want to access this benefit must previously obtain the *Certificate for the Importation of Footwear and Specialized Sports Implements* granted by the Ministry of Sports, which, among other requirements, requests a Customs Import Declaration with a validity of two (2) years prior to the application date, so the Certificate could only be obtained by a reduced number of importers.

For the quantitative analysis, this paper used econometric methods taking into account the products that benefited and did not benefit from the tariff reduction provided in Resolution No. 019-2019, with the objective of verifying the possible economic effects in the market. Likewise, the Autoregressive Distributed Lag (ARDL) model was used to identify possible asymmetries in the transmission of import prices to final consumer prices.

France

In France, the governance of sports relies on a unique model of a "single federation per sport," in which both the State and the sports industry are *impact players*: the increasing involvement of the State aligns with a fully structured sports industry.

While having some specificities, the sports sector legitimately falls under the legal rules governing all economic activities, particularly those governing competition law. In sports, as in competition law, fair play must take precedence and contribute to a level playing field. The actors in the sports sector are doubly subject to these rules, as French competition law rules are added to those of European Union law. The application of European competition law to activities related to sports is not a new issue; many recent preliminary questions, mainly in the football sector, for which French authorities, the Competition Authority ("AdLC"), and the Directorate General for Competition Policy, Consumer Affairs and Fraud Control ("DGCCRF") may be asked to contribute observations, highlight its relevance.

The decision-making and advisory practice of the French authorities over the past decade is based on a continuous search for a relevant balance between the specificity of the sports sector and the application of competition law, between the degree of cooperation allowed and the degree of competition required. In this sense, the flexible approach to the specificity of sports with regard to labor law in France is part of a desire to provide an application of competition law adapted to the various interests at stake. While French authorities take into account the specificity of the sports discipline and the organization of competitions, such specificity is, however, assessed only with regard to the possibilities of derogation offered by positive law. French authorities consider that this specificity is assessed on a case-by-case basis to verify that the regulation in question is legitimate in its foundation and proportional in its effects. They have thus been led to apply to different actors, including federations, competition law rules, whether in terms of broadcasting rights for sports competitions, rules relating to players' agents, or acquisitions by professional sports clubs.

Germany

The Call for Contributions of 24 July (COMP/2023.098) for this roundtable notes several specificities of the professional sports industry, such as the industry's special link with social and cultural life and the distinctive governance model of sports organizations, that call for a specific approach towards the application of competition law to the industry. In the case law of the European Court of Justice, that need for a specific approach has long been recognized in the *Meca-Medina* case law, which provides an avenue to recognize, evaluate and balance sports-specific aspects within the context of an application of the European law competition rules.²

German case practice – in the form of public enforcement by the Bundeskartellamt, but also in the form of various civil court decisions up to the level of the Federal Court of Justice (Bundesgerichtshof) – has in recent years started to more frequently apply the *Meca-Medina* case law. On the public enforcement side, the Bundeskartellamt has considered sports specific aspects first in the *IOC* case, concerning Olympic athletes' advertising opportunities, and subsequently in the *50+1* case, concerning the governance structure of German football clubs, the latter of which being an ongoing procedure. On the private enforcement side, perhaps the most significant consideration of sports specific aspects in German civil law litigation concerns the attempts made by football associations to regulate the activities of football player agents. Such attempts form the factual substance of recent referrals by German courts, including the Federal Court of Justice, to the European Court of Justice that seek guidance on the interpretation of the *Meca-Medina* exemption.

² The Background Note contains a detailed description of the factual details of and the methodology employed by the European Court of Justice in the *Meca-Medina* case (p. 17).

India

The document presents an overview of the Competition Commission of India's (CCI) approach in dealing with antitrust issues within the sports sector, focusing on cases involving sports associations and federations. These entities frequently contested CCI's jurisdiction, arguing that they are not 'enterprises' under the Competition Act 2002. However, the CCI countered this by stating that being an 'enterprise' is not solely dependent on having a profit motive; rather, it is defined by engagement in economic activities. This includes organising events, handling media rights, and securing sponsorships, all of which are typical activities of sports federations.

In cases concerning the abuse of dominant position, the CCI was tasked with defining the relevant market and assessing the dominance of these federations. A key aspect of its analysis was the recognition of the uniqueness of each sport, thereby rejecting the idea that different sports could be considered interchangeable forms of entertainment. This approach led to a nuanced understanding of market dynamics in various sports formats, such as the Indian Premier League (IPL) in cricket.

The document also delves into specific competition issues that arose from the dual role of sports federations as regulators and as economic entities. CCI examined instances where these federations restricted market access, engaged in restrictive practices, or had structural conflicts of interest.

In conclusion, CCI's decisions in these matters showcase how competition analysis intersects with the specific characteristics of sports. CCI imposed both monetary and non-monetary sanctions for anti-competitive conduct. Furthermore, CCI considered corrective actions taken by the federations during the course of the investigations as mitigating factors when determining monetary penalties. This approach highlights the CCI's commitment to addressing the unique challenges at the intersection of competition law and sports, ensuring that sports federations' economic activities are in line with competition laws despite their regulatory roles.

Indonesia

Indonesian Football Association (PSSI) exists as an organization that aims to ensure that football in this country can develop in a healthy and orderly manner. As a self-regulatory organization, PSSI has several main roles that are very important in maintaining the integrity and quality of the sport of football in Indonesia. PSSI appointed the league organizer, namely LIB (the Indonesian New League company) and PSSI also provides authority to regulate broadcasting rights, exclusive areas, merchandise, and promotions to LIB. PSSI is involved in the process of offering broadcasting rights, determining time periods and geographical areas, and sharing income with broadcasting rights holders. All commercial rights are held by PSSI and LIB, including broadcasting rights, promotions, merchandise, etc. This is due to the centralization of commercial management, uniformity and consistency, regulatory control, brand and copyright protection, and finance and sports development in Indonesia.

In the football market, sales of broadcasting rights have become the main source of revenue for sports organizations and clubs. Joint selling and buying of TV rights exclusively is so important in broadcasting sports events. One of the case examples was when ICC found violations in the granting of broadcasting rights for sports events in 2008. The ICC examined and provided a decision regarding alleged violations Law Number 5/1999 relating to Barclays Premier League Broadcasting Rights which broadcasts the English Premier League (BPL's broadcasting rights) season 2007 – 2010.

From this case ICC see that the vertical integration of the parties has the effect of substantially preventing or lessening competition in a market. This integration hinders competition in downstream markets and has the potential to harm consumers. The granting of exclusive broadcasting rights should be done openly by giving all existing TV stations the right to compete in a fair process.

Additional issue in the Sports Sector is apparel business management in Indonesia. Indonesia is a country that produces textiles from upstream to downstream, from yarn to finished clothing products. The existence of safeguards for thread and clothing products makes the apparel industry less competitive. The domestic fabric industry also cannot import cheap raw materials from abroad. This safeguard aims to protect domestic industry; however, this treatment makes the price of apparel (including sports apparel) in Indonesia not affordable compared to abroad. This issue has become one of the ICC's recent concerns. The issue related to apparel business management in relation to the intersection of competition policy and safeguard policy is provided in Annex I of this contribution.

Italy

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 (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.

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.

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 (i.e., professional sports events), by hindering the organization of sports activity outside this institutional pyramidal framework (non-professional or amatorial sports events) or by imposing eligibility rules concerning non-professional athletes' participation into other events or affiliation to other clubs. This has been the case for a number of sports such as volleyball, football, equestrian sports and motor sports.

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

Finally, an important success of the AGCM advocacy has been the reform of the transfer rules of athletes in the non-professional sector.

Japan

In June 2019, the Japan Fair Trade Commission (JFTC) publicized the "Guidelines concerning Transfer Restriction Rules in the Sports Business Fields under the Antimonopoly Act" (Guidelines) with respect to transfer restriction rules in sports business fields. The Guidelines were built on the "Report of the Study Group on Human Resource and Competition Policy" published in February of the previous year (2018) by the Competition Policy Research Center (CPRC) of the JFTC.

The Guidelines indicate: if transfer restriction rules are established, competition among teams for acquiring players may be halted or suppressed; and, as a result, competition in business fields of sports activities using players also be halted or suppressed, and possible new entrants in the field could not acquire the necessary players and be prevented from entering the market. On the other hand, the Guidelines also indicate that transfer restriction rules may have pro-competitive effects. Therefore, the Guidelines state that the necessity and reasonableness of transfer restriction rules are decided based on whether the purpose is reasonable from the viewpoint of promoting competition, as well as on whether the rules are proportionate as a means to achieve the purpose, and whether or not they cause a problem under the Act is determined on a case-by-case basis in line with the content and actual state of a specific rule. In conjunction with the publication of the Guidelines, the JFTC recommended each sports governing body to voluntarily review its transfer restriction rule.

The JFTC, after the publication of the report, investigated a suspected arrangement that the Nippon Professional Baseball organization (NPB) have its member teams refuse to contract with a certain baseball player. The NPB voluntarily abolished the arrangement, publicized the abolishment and informing related organizations of the abolishment. At the end, the JFTC decided that these measures dispelled the suspicion of violation of the Antimonopoly Act, and announced that the JFTC closed the investigation in November 2020.

Also, among the individual consultation cases, we have a case related to the sports business fields in 2011. In this case, the JFTC responded that a restriction against professional players by an enterprise that organizes athletic events could cause a problem under the Antimonopoly Act.

Lithuania

This Note overviews the Lithuanian practice of the application of competition rules to the undertakings operating in sports industry. The Note touches upon the legal framework relevant to the evaluation of their actions for the purposes of competition law. It also discusses whether the described examples of the case law demonstrate that specificities of sports, such as the special link with social and cultural life, make an impact on the application of competition rules to the sports.

In the view of the Lithuanian Competition Council, the current Lithuanian case law suggests that although no exemptions of competition law are established for economic activities related to sports industry, national courts consider (explicitly or implicitly) the peculiarities of sports sector when applying competition rules.

Mexico

The Federal Economic Competition Law (LFCE) is applicable to all areas of economic activity, and of general observance throughout the country, which includes the sports sector and its labour markets. In Mexico, sports are of great importance among the population, even the Constitution recognizes physical culture and the practice of sport as a right for all Mexicans. Thus, this contribution presents how the sports sector in Mexico is made up and its regulations, specifically football and baseball, as well as a case in which the Federal Economic Competition Commission (Cofece or Commission) sanctioned both legal and natural persons for anticompetitive practices in the football labour market. The Commission investigated two conducts, salary caps and no poach agreements. Finally, the contribution briefly explores Cofece's recent actions in sports and competition matters.

Poland

The text provides an overview of the regulatory framework for sports in Poland. It outlines the organization of sports activities under the Sports Act, highlighting the role of sports clubs, associations, and professional leagues. Ownership structures in professional leagues vary by sport, but in general there are private entities. Additionally, public bodies, like the Polish Olympic Committee, govern certain aspects of sports. The open system allows clubs to move between divisions based on performance. Revenue in the Polish sports industry comes from various sources, including government subsidies, ticket sales, broadcasting rights, and sponsorships. Distribution of revenue varies, with some collected individually by teams and athletes and others collectively by leagues or sports associations. The text characterizes the application of competition law in the sports industry, including investigations by the Office of Competition and Consumer Protection (UOKiK). UOKiK evaluates anti-competitive practices, even in rules established by private organizations, and has jurisdiction over the sports labor market, prohibiting practices like wage-fixing agreements. Two recent cases involving basketball and speedway illustrate UOKiK's scrutiny of anticompetition agreements in the sports sector.

Portugal

The characteristics of sports markets require a detailed understanding of the legal framework and functioning of the sports market at stake in the assessment of cases.

In order to ensure competition in the acquisition and distribution of football broadcasting rights, the Portuguese Competition Authority (Autoridade da Concorrência - hereinafter “AdC”) has intervened on several occasions and in 2018 issued a **Recommendation to the Government proposing a centralised system for the sale of the broadcasting rights of professional football**.³

In accordance with the Recommendation, the auctions should comply with specific rules and procedures subject to the approval of the AdC, including rules to promote competition that guarantee the existence of at least two acquirers (no-single-buyer rule) and prevent the joint participation of competing firms in the premium sports channels or telecom markets via a common company (participation rules).

Following this Recommendation, the Government adopted the Decree-Law No 22-B/2021, of 22 March 2021, stating that the broadcasting rights beyond the 2027/2028 season shall be marketed on a centralised basis, in accordance with the terms and conditions proposed by the Portuguese Professional Football League and the Portuguese Football Federation until the end of the 2025/2026 season, subject to the approval of the AdC.

The AdC has also addressed **anticompetitive agreements in the labour market for professional football players**. In 2022, the AdC sanctioned 31 professional football clubs participating in the 2019/2020 edition of the First and Second Leagues and the Portuguese Professional Football League, imposing fines of €11,3 million for a no-poach agreement in the football sector.⁴ The case concerned a joint decision by the clubs not to hire away from each other players who unilaterally terminated their employment contract due to issues caused by the Covid-19 pandemic.

The investigation allowed concluding that the agreement had the object of keeping the players tied to the football clubs, with the purpose of reducing salaries, by limiting their incentive to terminate their contracts and was therefore not aimed at cooperation objectives which could be regarded as essential in the context of the Covid-19 pandemic. The AdC assessed the legal and economic context of the agreement and took into consideration several factors, such as the covid context, the market power of the clubs both upstream (labour market) and downstream (TV broadcasting, stadium viewing) and the fact that the football players are a critical input and have transferrable skills.

³ Available [here](#) (in PT).

⁴ See, AdC press release [here](#) (in EN) and decision [here](#) (in EN).

Romania

Sport holds a significant place within Romanian culture and is recognized as a contributor to social development. The most popular professional sport in Romania is by far football. Moreover, the economic relevance of sports, particularly professional sports, has seen a substantial increase in recent decades and is poised for further growth. For instance, the Romanian Football Federation anticipates⁵ total revenues of 31.5 million euros in 2023, marking a notable increase compared to the combined revenues in the previous fiscal year, which amounted to 26.5 million euros.

The professional sports industry in Romania encompasses various economic activities, including the organization of tournaments, event broadcasting, advertising, sponsorships, ticket sales, merchandising, and the labor market for professional athletes, among other components. Despite resembling traditional markets, professional sports in Romania possess unique characteristics. These include their deep connection to social and cultural life, specific economic dynamics (involving the concept of sports competition and the need for collaboration among clubs), and a distinctive governance model.

In this context, ensuring competition from an economic overview (in addition to sports competition) is paramount to the well-functioning of the industry.

⁵ <https://www.agerpres.ro/sport-intern/2023/04/26/federatia-romana-de-fotbal-estimeaza-venituri-totale-de-31-5-milioane-de-euro-in-anul-2023--1098105>.

Spain

This contribution by the Spanish National Markets and Competition Commission (CNMC)⁶ addresses the topic of the Roundtable on “Competition and sports” to be hosted by the OECD in December 2023.

Sport is a very specific activity from the standpoint of its economic and social dimension. At the same time, some features of its organisation and dynamics are of relevance for the application of competition policy. For instance, sport competitions are typically organised by entities with a substantial degree of market power (if not monopoly power). Sometimes domestic law may establish special provisions. This is the case of Spain with the joint commercialization of audiovisual rights by the organisers of professional football competitions.

Therefore, competition law is fully applicable to sports (and this is the case in Spain: a conduct would be exempt only if is mandated by law). The case law in the European Union has applied competition law to sports using the Meca-Medina doctrine: restrictions on competition constitute an infringement of competition law unless they are inherent and proportionate to legitimate objectives.

The CNMC applied the Meca Medina doctrine in case affecting the main basketball football League, finding that certain conditions imposed on clubs were an infringement of competition law (and the Spanish Highest Court, the Supreme Court, recently ratified the decision). EU courts and Spanish commercial courts have also dealt with cases, some of which are ongoing.

The CNMC has also approached sports from an advocacy perspective, with reports on audiovisual rights, the access to the coaching profession and third-party ownership of the economic rights of football players.

⁶ 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

Sweden

This contribution focuses on the application of competition law to decisions taken by sports federations in Sweden, and especially on rules that restrict athletes from participating in competitions outside the traditional pyramid structure.

The contribution begins by explaining the organisation of sports in Sweden, describing the pyramid structure and governing bodies. It then turns to competition law cases concerning sports in Sweden, two of which have been decided in court, namely cases regarding short-term contracts in the Swedish ice hockey league, and motorsports.

The contribution concludes with some observations, touching on the question of loyalty clauses, which have been the most common concern in sports-related complaints and tip-offs to the Swedish Competition Authority, and finally the question of in which situations restrictions may be considered necessary and proportionate to achieve legitimate objectives.

United States

By 1890, when Congress passed the Sherman Act, the U.S.’ seminal antitrust law, professional sports had become a mainstay of American life. While members of Congress took to the House and Senate floor to debate the future of competition enforcement in the United States, many Americans may have skipped out of work early to catch an afternoon game of the Brooklyn Bridegrooms, who were on their way to winning the 1890 National League baseball pennant.⁷ Others may have been among the crowd of a few thousand that witnessed Grace and Ellen Roosevelt, cousins to future President Franklin Roosevelt, compete in tennis doubles and become the first pair of sisters to win a major tennis title together at the 1890 Women’s U.S. National Tennis Championships.⁸

Concerns with competition issues arising from the organization of professional sports leagues had already begun to arise in 1890, with professional baseball players forming that year a short-lived Players League and confronting “reserve clauses” in the National League’s team contracts that restricted baseball players’ movement to other teams.⁹ The National League filed suit against defecting baseball players in several state courts alleging breach of contract.¹⁰ Though the National League lost the contract disputes in court, the Players League failed after one season.¹¹ With no competitor left to challenge the reserve clause agreements, the National League continued to use these restrictive clauses, and the use of reserve clauses was widespread in professional major league baseball well into the 1970s. The 1890 state court disputes heralded the start of a long debate about the use of reserve clauses in professional baseball, and competition in sports labor markets more generally, that would eventually be taken up by Congress and U.S. federal courts and is still ongoing today.¹²

Sports as a business has grown exponentially since the 1890s and today, as ever, competition issues remain front and center. Competition issues do not just impact the large, professional leagues in the U.S.; competition issues are being debated at all levels of sport. Recent cases brought against Varsity Brands for monopolization of the market for competitive cheerleading events¹³ and new state laws and NCAA rules relating to the

⁷ The Bridegrooms were the precursor to the Brooklyn Dodgers, now the Los Angeles Dodgers. In the early days of baseball, electricity was not available at many stadiums, so games were scheduled before the sun went down. The advent of “night baseball” did not arrive until stadium lighting become more widely available in the 1930s. “Franchise Timeline”, MLB.com, <https://www.mlb.com/dodgers/history/timeline-1890s>.

⁸ The second pair of sisters to clench the Grand Slam title was, of course, the indomitable Venus and Serena Williams, who won the title together over 100 years later, in 1999. “TENNIS; A Consolation for Williamses”, The New York Times (June 7, 1999), <https://www.nytimes.com/1999/06/07/sports/tennis-a-consolation-for-williamses.html>.

⁹ Banner, Stuart, *The Baseball Trust: A History of Baseball’s Antitrust Exemption* (New York, 2013; online edn, Oxford Academic, 16 Mar. 2015), <https://academic.oup.com/book/11629>.

¹⁰ *Id.*

¹¹ *Id.*

¹² The history of the reserve clause debate is discussed further in Part II(B).

¹³ *Fusion Elite All Stars v. Varsity Brands, LLC*, 20-cv-2600-SHL-tmp (W.D. Tenn. Jan. 28, 2022)

monetization of college athletes' names, images, and likenesses¹⁴ following a landmark Supreme Court case¹⁵ show the importance of competition laws to amateur athletes of all ages.

This submission will provide an overview of the application of competition law to the business of sports in the United States, highlighting historical precedent in this area as well as recent advocacy actions taken by the U.S. antitrust agencies and private sector antitrust challenges.

¹⁴ Interim NIL Policy, NCAA.org, https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_InterimPolicy.pdf; S. 1385, 87th Leg., (Tx. 2021). Discussed further in Part III(A).

¹⁵ NCAA v. Alston, 141 S. Ct. 2141 (2021). Discussed further in Part III(B).