



MASTER THESIS

Navigating the Legal Playing Field:

Unraveling the Antitrust Implications of UEFA and FIFA's Prior Authorization Rules and Analyzing the Super League's Compliance with Article 101 TFEU

Ben Baeten

ANR: 137094; SNR: 2106730

Supervisor Giorgio Monti

Master International Business Law

Date of final submission: 09/06/2023

PREFACE

I would like to begin this thesis by expressing my gratitude to my supervisor, Giorgio Monti, whose guidance and support have been invaluable throughout this research endeavor. His expertise in competition law (in correlation with sports) and insightful feedback have greatly contributed to shaping the direction of this study.

Furthermore, I would like to extend my sincere appreciation to my parents and friends for their encouragement and belief in my academic pursuits. Their constant support has been a source of inspiration, motivating me to delve into the intricacies of this subject matter.

Since my youth, football has been an integral part of my life. The tension between UEFA and the proposed breakaway league has captured the attention of football enthusiasts worldwide, transcending the boundaries of the sport itself. As a passionate football fan, I have closely followed the legal and regulatory dimensions of this conflict, which have sparked a particular fascination within me. The clash between tradition and innovation, the struggle for power and control, and the potential ramifications for the competitive landscape of football have elevated this topic to a matter close to my heart, both as a fan and from a legal standpoint.

Introduction	3
Part 1: The application of EU law to sports	5
Chapter 1: European competition law: institutions, legislation, case law	5
§1 Background	5
§2 Institutions	5
§3 Legislation	6
§4 Walrave, Bosman, Piau, Meca Medina: Article 101 TFEU	7
§5 MOTOE: Article 102 TFEU	11
§6 Justifications in terms of appropriate restrictions, obligations and review	12
§6.1 International show jumping	12
§6.2 ISU decision	13
§6.3 ISU response	15
§6.4 Judgment of Court	16
§7 Conclusion	18
Chapter 2: Assessment of measures taken by UEFA	19
§1 Background	19
§2 Restriction under Article 101(1) TFEU?	21
§2.1 Collusion between undertakings	21
§2.2 Appreciable effect on trade between member states	22
§2.3 Object or effect of restricting competition within the internal market	22
§2.4 Legitimate objectives – inherency and proportionality	25
§2.4.1 Integrity of sport: fair and open competition	26
§2.4.2 Solidarity model	28
§2.4.3 Organization and proper conduct of competitions: protection and well-functioning of the sports calendar	29
§3 Exception under Article 101(3) TFEU?	32
§4 Abuse of dominant position under Article 102 TFEU?	33
§4.1 Dominant position	33
§4.2 Abuse	33
§4.3 Defences	34
Part 2: Is the Super League a cartel?	34
Chapter 1: Compatibility of Super League with competition law	35
§1 Background	35
§2 Restriction under Article 101(1) TFEU?	35
§2.1 Collusion between undertakings	36
§2.2 Appreciable effect on trade between member states	36
§2.3 Object or effect of restricting competition within the internal market	36
§2.4 Legitimate objectives – inherency and proportionality	40
§3 Exception under Article 101(3) TFEU?	42
Conclusion and recommendations	43
Bibliography	46

INTRODUCTION

1. On April 18, 2021, twelve European top clubs exploded a bomb under the economic structure of European professional football. The twelve clubs - six English, three Spanish and three Italian - launched their own international competition, separate from the governing body for football between European clubs UEFA. In addition, the twelve rebels guaranteed themselves a permanent right to participate in their format. No more difficult qualifications, no more descenders and risers. The clubs created their own cocoon.¹

2. It soon became clear that the top clubs had overplayed their hand. Football fans, politicians and policy makers from other clubs expressed their outrage.² Obviously, FIFA and particularly UEFA were quick to swear off the proposed breakaway competition. Under pressure from their own fans and players, Chelsea and Manchester City withdrew from the initiative within 48 hours. Most other clubs soon followed suit.

3. To this day Juventus, FC Barcelona and Real Madrid still refuse to say goodbye to the new format. UEFA and national football associations saw reason to impose sanctions against the splitting off of top clubs. Although the arrival of competition is now very unlikely, it does raise a number of interesting legal questions such as: how far does competition law apply to sport? And is the Super League a cartel?

4. In other words, the above concerns can be distilled into a main research question and corresponding sub-questions:

- Do the prior authorization rules by UEFA and FIFA lead to anti-competitive business practices, and is the Super League's own set-up compliant with Article 101 TFEU?
 - How far does competition law apply to sport?
 - Do the sanctions imposed by UEFA restrict competition and is UEFA itself not a cartel when it installs control and sanction mechanisms?
 - Is the Super League a cartel?

¹ European Super League Company S.L., 'The Super League', < <https://thesuperleague.com/press.html> > accessed 15 May 2023.

² Ali Walker and Alex Wickham, 'European politicians slam breakaway football 'super league' plan, (Politico, 18 April 2021) <<https://www.politico.eu/article/emmanuel-macron-european-super-league-football/>> accessed 15 May 2023; Luke Hurst, 'Why is the football world up in arms over the European Super League plans?', (Euronews, 20 April 2021) <<https://www.euronews.com/my-europe/2021/04/20/football-vs-greed-what-is-behind-the-outrage-over-the-european-super-league>> accessed 15 May 2023.

5. To answer these questions, I have taken a structured approach to stimulate a legally well-informed reader. The method I used for this is the classic legal research method. This method involves a comprehensive analysis of primary and secondary sources, which is necessary for a thorough understanding of the subject matter. A thesis about the Super League requires a deep understanding of the legal framework and regulations surrounding competition law in Europe. By using the classic legal research method, I will be able to analyze primary legal sources such as regulations, court decisions, and legal commentary to develop a comprehensive understanding of the legal implications of the Super League.

6. The thesis is divided into two parts. In the first part, chapter 1 provides an overview of European competition law in sports, including the relevant institutions, legislation, and case law. It specifically examines landmark cases such as *Walrave*, *Bosman*, *Piau*, *Meca Medina*, and *MOTOE*, which are related to Article 101 and Article 102 TFEU. The chapter also explores justifications for restrictions imposed under EU law. Finally, it concludes the chapter. With this information under our belts, we are able to assess the measures taken by UEFA, the governing body of football in Europe in Chapter 2. It examines whether these measures can be considered as restrictions under Article 101(1) TFEU. Additionally, it analyzes whether any exceptions under Article 101(3) TFEU may apply. Furthermore, it considers the possibility of abuse of dominant position under Article 102 TFEU. The second part delves into the specific case of the Super League. Even if the UEFA rules are deemed illegal this does not mean that the Super League is allowed because it too is possibly anticompetitive. Chapter 1 starts by providing background information on the Super League concept. It then explores whether the Super League can be deemed compatible with competition law. This includes examining whether the Super League constitutes a restriction under Article 101(1) TFEU and assessing potential exceptions under Article 101(3) TFEU. Finally, the thesis concludes by summarizing the key findings and recommendations drawn from the analysis conducted in the preceding chapters.

PART 1: THE APPLICATION OF EU LAW TO SPORTS

CHAPTER 1: EUROPEAN COMPETITION LAW: INSTITUTIONS, LEGISLATION, CASE LAW

§1 Background

7. Immediately at the 18th of April, UEFA and other national federations, like the Premier League, issued a joint statement³, saying that they will remain united in efforts to stop the – stated by them – “cynical project of the Super League”. The phrase that “the clubs concerned will be banned from playing in any other competition at domestic, European or world level” and that “their players could be denied the opportunity to represent their national teams” raised questions about its compliance with EU competition law.⁴

§2 Institutions

8. Before moving on to applicable law, it is important to define who the prominent institutions are that are mandated to apply and enforce EU competition law. In the areas where the European Union has exclusive competence, a fundamental role is held by the European Commission.⁵ The European Commission has the power to act in the event of distortion of competition, for example in the case of price agreements between companies. The Commission also checks whether large companies are not abusing their strong position. In other words, their task is to enforce competition law. Additionally, it can investigate and sanction in relation to conduct that might infringe European Union Law.⁶ Through the opening of an investigation, negotiations and commitments on the part of the undertakings, but also through the issuing of guidelines and soft law measures the Commission aims to steer the conduct of the private operators towards forms of better governance.⁷ In the European Union, public enforcement is by far the most used means of enforcement. In contrast with private enforcement, public

³ Statement by UEFA, the English Football Association, the Premier League, the Royal Spanish Football Federation (RFEF), LaLiga, the Italian Football Federation (FIGC) and Lega Serie A (UEFA, 18 April 2021) <<https://www.uefa.com/insideuefa/mediaservices/mediareleases/news/0268-12121411400e-7897186e699a-1000--joint-statement-on-super-league/>> accessed 27 March 2023.

⁴ Dwayne Bach, ‘The Super League and its related issues under EU Competition Law’, (Kluwer Competition Law, 22 April 2021) <<https://competitionlawblog.kluwercompetitionlaw.com/2021/04/22/the-super-league-and-its-related-issues-under-eu-competition-law/>> accessed 9 April 2023.

⁵ Andrea Cattaneo, ‘The application of EU competition law to sport’, (Master thesis, Edge Hill University 2017) 18.

⁶ Alison Jones and Brenda Sufrin, *EU competition law: text, cases, and materials*, (5th edn, Oxford University Press 2013) 102.

⁷ Andrea Cattaneo, ‘The application of EU competition law to sport’, (Master thesis, Edge Hill University 2017) 19.

enforcement by the Commission does not award damages for the parties harmed by the infringements.⁸

9. On the other hand, with regard to competition law, the Court of Justice of the European Union (hereinafter: CJEU) has an important role in enforcing and interpreting competition law within the European Union. Specifically, the CJEU is responsible for interpreting and enforcing the provisions of Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter: TFEU)⁹, which deal with anticompetitive agreements and abuse of dominant market positions, respectively. So it can happen that a national court comes to the CJEU for a preliminary ruling on the interpretation of an EU norm that has to be applied in a specific case¹⁰ or the CJEU might be called upon to review the legality of acts adopted by EU institutions.¹¹ Please note that the CJEU does not come up in the first instance. Private enforcement starts in the national courts (direct effect) when private parties who have been harmed by infringements of competition rules bring an action of damages against the offenders in a national court of law, based on Articles 101 and 102 TFEU. These can be follow-on actions, when they are brought following a finding of infringement through public enforcement, or stand-alone actions, which are completely independent from public enforcement.¹² The CJEU only gets involved if the national court has some questions.

10. In short, EU competition law is enforced both by the European Commission and by national competition authorities within the EU member states. The CJEU acts as a final arbiter in disputes regarding the interpretation and application of EU competition law, which helps to ensure a unified approach to competition law enforcement throughout the EU.

§3 Legislation

11. In the previous subheading, we already spoke about articles 101 and 102 TFEU. Together with Articles 106 and 107, they are the main norms that provide the discipline of competition

⁸ Laura de Schryver, 'Private enforcement of competition law in the UK and Belgium', (Master thesis, KU Leuven 2013) 3.

⁹ Art. 101 and art. 102, Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/88.

¹⁰ Article 267, Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/164.

¹¹ Article 263 TFEU, Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/162.

¹² Laura De Schryver, 'Private enforcement of competition law in the UK and Belgium', (Master thesis, KU Leuven 2013) 3.

law within the European Union. Since we are dealing with conduct and arrangement adopted by private undertakings, we focus on Articles 101 and 102 TFEU.

12. Article 101 TFEU and its equivalents under the national laws of each EU Member State prohibits anti-competitive agreements. The concept of an “agreement” is widely drawn for these purposes and, in particular, includes decisions by associations of undertakings.¹³ The wide phrasing also means competition authorities must be wary of illegal collusion when competitors in a market are in contact or have a meeting of the minds.

13. There are three conditions for an agreement to be declared incompatible with the internal market in accordance with Article 101 TFEU. Firstly, there must be proof that there is some form of collusion between undertakings. Secondly, that collusion must affect trade between member states, and have an appreciable effect upon such trade. Thirdly, the agreement must have the object or effect of preventing, restricting or distorting competition within the internal market.

14. Notwithstanding, Article 101 TFEU contains an exemption clause, namely Article 101 (3) TFEU, which would allow anticompetitive behavior to be deemed acceptable if the agreement achieves efficiency benefits that are passed on to consumers and, crucially, that the restrictions in the agreement go no further than is necessary to achieve those benefits.¹⁴

15. Alternatively, Article 102 TFEU deals with unilateral conduct by preventing an undertaking that has a “dominant position” in a market from abusing this position. Dominance in this context means a position of market power that enables an undertaking to act independently of competitors and the ability to prevent effective competition from rival undertakings.¹⁵

§4 Walrave, Bosman, Piau, Meca Medina: Article 101 TFEU

16. The EU has competences to apply EU and internal market law to certain aspects of sports. However, it’s important to note that the EU’s competence in relation to sport is not unlimited,

¹³ Alex Haffner and Krish Mistry, ‘The Law On Banning Athletes From Competing In Rival Sports Leagues’ (Law in Sport, 5 October 2016) < https://www.lawinsport.com/topics/competition-law/item/the-law-on-banning-athletes-from-competing-in-rival-sports-leagues?category_id=125> accessed 10 April.

¹⁴ Alex Haffner and Krish Mistry, ‘The Law On Banning Athletes From Competing In Rival Sports Leagues’ (Law in Sport, 5 October 2016) < https://www.lawinsport.com/topics/competition-law/item/the-law-on-banning-athletes-from-competing-in-rival-sports-leagues?category_id=125> accessed 10 April.

¹⁵ Case 27/76 *United Brands v Commission* [1978] ECR 207, para. 65.

and its involvement is generally focused on addressing specific issues related to the internal market and other policy areas. Generally, this competence lies with Member States and national and international sport federations. Notwithstanding, from the *Walrave & Koch*¹⁶ case it follows, among other cases, that EU law may apply when sport constitutes an economic activity. In addition, it follows from the TFEU that the EU is committed to promoting the fairness and openness of sports competitions.¹⁷ The relationship between Article 165 (2) TFEU and competition law lies in their shared objective of preventing distortions of competition law and ensuring a level playing field in the sports sector. The most important take-away of *Bosman*¹⁸ was the fact that sporting associations are firmly subject to observance of the relevant Treaty rules, their claim to complete self-regulatory autonomy lay in shatters.¹⁹

17. A detailed explanation of all the concepts contained in Article 101 TFEU (the notion of undertaking, the effects on trade between Member States, the relevant market) is beyond the scope of this thesis, but there's no question that the presence of economic activity also is important for the applicability of competition law. Every entity that carries out an economic activity is regarded as an undertaking and therefore falls within the scope of competition law.

18. In *Piau*²⁰, the General Court (hereinafter: the Court) elaborated further on what should or should not be regarded as an undertaking within the sports sector. In a case that arose from a complaint to the European Commission lodged by Laurent Piau, claiming that the FIFA rules on player's agents were breaching Article 101 TFEU (and less importantly art. 102 and 56 TFEU), the Court held that football clubs are undertakings²¹, and hence, the governing bodies constitute undertakings of associations.²² Furthermore, the application of Article 101 (3) TFEU within the sports sector was also discussed in more detail. The FIFA rules, that required player's agents to possess a license issued by the competent national football association, were designed to impede and deter market access by imposing dual requirements on agents: demonstrating their proficiency and expertise, and submitting a substantial monetary deposit (*i.e.* entry barriers for the market of player's agents). The Court ruled that the rules related to the license

¹⁶ Case 36/74 *Walrave & Koch v Association Union Cycliste Internationale* [1974] ECR 1405.

¹⁷ Art. 165 (2), Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/120.

¹⁸ Case C-415/93, *Union des Associations Européennes de Football (UEFA) and others v Jean-Marc Bosman* [1995] ECR I-04921.

¹⁹ Stefaan van den Bogaert, 'The rise and fall of the European Super League: A case for better governance in sport' (2022) 59 *Common Market Law Review* 25, 32.

²⁰ Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22.

²¹ Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22, para. 70.

²² Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22, para. 71 and 78.

requirement can only be accepted in so far as the conditions set out in Article 101 (3) TFEU are satisfied.²³ Hence, although the requirements set in the FIFA rules could be deemed to fall under Article 101 TFEU, in light of their restrictive effects, they were held to potentially satisfy the criteria to be exempted under Article 101 (3) TFEU.²⁴ In this regard, the European Commission took account of some specific qualitative characteristics of the sports industry, such as the brevity of careers or the absence of an internal organization overlooking the activity of agents.²⁵ For the thesis, it is helpful that the Piau case clarified that rules adopted by national or international sports associations are likely to constitute agreements or decisions by association of relevance of public policy also in the context of Article 101 (3) TFEU.²⁶ In light of the lack of a public rule-setting competence of FIFA, the Court had to exempt the rules under Article 101 (3) TFEU.²⁷ Therefore, it recognized the legitimacy of the objective, and the proportionality of the restriction caused in relation to the benefits that could be granted to sport.²⁸

19. While the extent to which sport is subject to EU law was previously still quite controversial, the CJEU clarified in the *Meca Medina*²⁹ case that EU law applies in any case to sporting constellations regarding economic activities. In first instance, this judgement was the first time the EU court applied competition law to a sporting rule adopted by a sports association in relation to a sporting activity.³⁰ From then on, purely sporting rules did not automatically fall outside the scope of the TFEU. Following this judgment, there was ongoing controversy and debate how to determine what constitutes a purely sporting rule and how competition law should be applied in the context of sports. The Court has handled subsequent cases that touched upon these issues. The Court has attempted to distinguish between purely sporting rules and commercial activities, with the latter always falling outside the scope of competition law. In the context of UEFA setting out the rules of the game, such as decision on the use of virtual referees or the size of the football pitch, the application of competition law would depend on the specific circumstances and impact on economic activities. If these decision primarily relate to the

²³ Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22, para. 101.

²⁴ Andrea Cattaneo, 'The application of EU competition law to sport', (Master thesis, Edge Hill University 2017) 129.

²⁵ Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22, para. 100.

²⁶ Andrea Cattaneo, 'The application of EU competition law to sport', (Master thesis, Edge Hill University 2017) 132.

²⁷ Heike Schweitzer, 'Competition Law and Public Policy: Reconsidering an Uneasy Relationship. The Example of Art. 81', (2007) 30 EUI Working Papers Law 1, 4.

²⁸ Andrea Cattaneo, 'The application of EU competition law to sport', (Master thesis, Edge Hill University 2017) 132.

²⁹ Case C-519/04 *P David Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991.

³⁰ Robert Siekmann, *Introduction to the international and European sports law – Capita Selecta* (T.M.C. Asser Press 2012) 9.

sporting aspects and the integrity of the game without significant economic implications, they may be considered sporting rules and fall outside the scope of competition law. However, if such decisions have a significant economic impact, such as influencing broadcasting rights, sponsorship agreements, or affecting the market for sports-related goods and services, they may be subject to competition law scrutiny. The determination would depend on the specific facts and the analysis conducted by the court, taking into account the overall objectives of EU law, including the promotion of competition and the internal market (*supra* no. 16).

20. Secondly, the case created a methodological framework for the examination of the compatibility of organizational sporting rules under Articles 101 and 102 TFEU.³¹ In particular, the case established a two-step approach to analyze the compatibility of such rules with EU competition law. The first step involves determining whether the organizational sporting rule has a restrictive effect on competition. This requires assessing whether the rule has the potential to hinder, distort, or restrict competition within the internal market. If the rule is found to have a restrictive effect, the second step involves examining whether the restrictions contained in rules set by professional sports governing bodies are inherent in the pursuit of legitimate objectives of general interest and are proportionate to them. If so, the restrictions contained in the rules may escape the prohibition of Article 101 and (102) TFEU.

21. The *Walrave & Koch*, *Bosman*, *Piau* and *Meca Medina* case are all landmark rulings by the CJEU that have had significant implications for the application of EU law in the field of sports. While each case addresses different aspects, they are interconnected in terms of establishing key principles related to the relationship between EU law and the sports sector.

22. Not much later, more precisely in 2007, the European Commission launched the White Paper on Sport as a product of a comprehensive consultation.³² It provides a helpful framework for analysis, but adds nothing new compared to *Meca Medina*. In line with this established case law, the specificity of sport will continue to be recognized, but it cannot be construed so as to justify a general exemption from the application of EU law.³³ The Commission's endorsement of *Meca Medina* as the main focus of analysis signifies the readiness of EU competition law to oversee and govern sports organizations in Europe. The White Paper underscores that any

³¹ Robert Siekmann, *Introduction to the international and European sports law – Capita Selecta* (T.M.C. Asser Press 2012) 87.

³² European Commission, *White Paper on Sport* COM (2007) 391, 11 July 2007.

³³ European Commission, *White Paper on Sport* COM (2007) 391, para. 4.1.

activity with economic implications must adhere to EU law, and that while interpreting and implementing it, the distinctive characteristics and peculiarities³⁴ of sports must be considered. In addition to competition policy considerations, there are other non-competition policy considerations that may be relevant when analyzing the application of EU law to sports. These considerations (social and educational function of sport, integrity and governance of sport, public health, cultural and media policy, ...) recognize the specific nature of sport and aim to strike a balance between the objectives of EU law and the unique characteristics and objectives of sports.

§5 MOTOE: article 102 TFEU

23. Following the *Meca Medina* ruling, which clarified that sports organizations and governing bodies were not exempt from competition law, numerous challengers have lodged complaints or initiated legal proceedings in an attempt to facilitate changes to rules that impede their ability to operate rival competitions or even prohibit them entirely.

24. In the *MOTOE* case³⁵, on article 102 TFEU, the Grand Chamber of the European Court of Justice was asked by a Greek court to opine on whether the body charged by Greek law with organizing motorcycling events was justified in refusing a request by a private organizer for a series of events. Although this case is not an ordinary ‘Article 102 TFEU judgment’, its content is certainly relevant. The court confirmed in its judgement that: *“a legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC”*. The CJEU agreed that these circumstances places that entity at an obvious advantage over its competitors.³⁶ Moreover: *those articles preclude a national rule which confers on a legal person, which organises motorcycling events and enters, in that connection, into sponsorship, advertising and insurance contracts, the power to give consent to applications for authorization to organise such competitions, without that power being made subject to restrictions, obligations and review.*”³⁷

³⁴ European Commission, *White Paper on Sport* COM (2007) 391, para. 4.1.

³⁵ Case C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio* [2008] ECR I-04863.

³⁶ Case C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio* [2008] ECR I-04863, para 51.

³⁷ Case C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio* [2008] ECR I-04863, para. 53.

25. This verdict confirms once again that a sporting context does not hinder the application of EU competition rules.³⁸ It can be inferred that the Court finds the combination of regulatory and operating power not in itself restrictive of competition or an abuse of a dominant position.³⁹ That combination does however conflict with competition law when access to the market is unduly denied to the point that competition on that market is thereby distorted *i.e.* when there are no limits or restrictions, obligations and power of review over the legal entity performing both functions.⁴⁰ The ISU case witnessed the Court advancing a similar line of reasoning (*infra* no. 37).⁴¹

§6 Justifications in terms of appropriate restrictions, obligations and review

26. Two relatively recent cases involving show jumping and speed skating bring us to the heart of the matter, which is what can be justified in terms of appropriate restrictions, obligations, and review.

§6.1 International show jumping

27. A particularly good example of the tensions referred to above is a case of 2015, fought before the Belgian Competition Authority (BCA)⁴² and the national Belgian courts⁴³ between the governing body for equestrian, the International Equestrian Federation (FEI), and an organizer of international show jumping, the Global Champions League (GCL). Under its General Regulations, the FEI has the exclusive right to approve any international equestrian competition. When GCL decided to run a new league format to exist alongside its existing competitions and approached FEI for approval, FEI decided that it could not give its approval based on a number of criteria. For that reason the GCL complained to the BCA that the exclusivity clause, which prevented horse riders from participating for six months in show-jumping competitions not approved by the FEI, was anti-competitive. Because the sport takes place all year round, the sanction clearly aimed to discourage riders from participating in non-FEI events.

³⁸ An Vermeersch, “Case C-49/07, *Motosykletistiki Omospendia Ellados NPID (MOTOE) v. Elliniko Dimosio*, judgement of 1 July 2008, nyr (2009) 46 (4) *Common Market Law Review* 1327, 1340.

³⁹ Robby Houben, ‘Super League vs. UEFA: Why UEFA should lose?’ (2023) 1 *SpoPrax* 9, 9.

⁴⁰ Robby Houben, ‘Super League vs. UEFA: Why UEFA should lose?’ (2023) 1 *SpoPrax* 9, 9.

⁴¹ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610.

⁴² Autorité belge de la Concurrence (Belgian Competition Authority) [2015] Décision n° ABC-2015-V/M-23 <https://www.belgiancompetition.be/sites/default/files/content/download/files/2015vm23-abc-pub.pdf>.

⁴³ Cour d’appel Bruxelles, [2015] Case no 2015/MR/1,

https://www.mededinging.be/sites/default/files/content/download/files/20151022_cab_hvbb_2015mr1_fei.pdf.

28. GCL filed a complaint that included a request for interim measures to stop FEI from enforcing its exclusivity clause while the investigations was ongoing. Upon initial examination of the case, the Competition College of the BCA concluded that GCL's request was valid and ordered FEI to halt the implementation of the exclusivity clause. The BCA stated, among other things, that the information FEI required from GCL was beyond what was reasonably necessary to ensure their concerns of welfare and integrity. In fact, similar to *Meca Medina* (*supra* no. 20), the BCA emphasized that any conditions for the approval of a new competition had to be clear and unambiguous and relate specifically to legitimate sporting considerations.⁴⁴ It became clear that FEI was only pursuing its own commercial interests.⁴⁵

29. The cases dealt with show that there is a general concern that an association will protect its events from competition. The concern arises from the potential anti-competitive effects of such practices. Restricting competition in the organization of sports event can limit market access for new or competing organizers, reduce consumer choice, and hinder innovation and diversity in the sports sector. It can also lead to higher prices for broadcasting rights and restrict the availability of sports content to fans. To address these concerns, competition authorities, such as the BCA and the Commission, have closely examined the compatibility of sports association rules and practices with EU competition law. The international show jumping case, the MOTOE case, as well as the recent reactions to the proposed Super League by UEFA (*supra* no. 2) highlight the importance of ensuring that sports associations do not unduly restrict competition and that their actions are justified by legitimate sporting considerations.

§6.2 ISU decision

30. An even more illuminating case in this regard is the *International Skating Union* (hereinafter: ISU).⁴⁶ The ISU serves as the global governing body for figure and speed skating, responsible for regulating the sport and coordinating major international competitions. Professional skaters must adhere to the ISU's guidelines, including preapproval protocols for external events and eligibility criteria outlining the requirements for participation in ISU competitions. Historically, violating these regulations by participating in unauthorized skating events resulted in a lifetime ban from ISU competitions.

⁴⁴ Autorité belge de la Concurrence (Belgian Competition Authority) [2015] Décision n° ABC-2015-V/M-23, 91 para. 79, <https://www.belgiancompetition.be/sites/default/files/content/download/files/2015vm23-abc-pub.pdf>.

⁴⁵ Autorité belge de la Concurrence (Belgian Competition Authority) [2015] Décision n° ABC-2015-V/M-23, 49 para. 150, <https://www.belgiancompetition.be/sites/default/files/content/download/files/2015vm23-abc-pub.pdf>.

⁴⁶ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9.

31. In 2017, the European Commission had to deal with a complaint brought by two Dutch professional speed skaters, Mark Tuitert and Niels Kerstholt, arguing that the so-called eligibility rules of the ISU restricted competition are contrary to Article 101 TFEU. These eligibility rules entailed a lifetime ban for athletes and officials taking part in competitions not authorized by the ISU and prevented the organisation of the Dubai Icederby Grand Prix.⁴⁷ By possibly participating in the Dubai-event, the Dutch skaters feared they would be banned from future events like the Winter Olympics, World and European Championships. Icederby's proposal to hold a series of skating events was denied by the ISU due to Icederby's original intention of incorporating betting activities into the events. Despite later informing the ISU that they would no longer include such activities, the ISU persisted with their refusal.

32. The complaint raised by the speed skaters differs from the aforementioned Belgian international show jumping in that it does not aim to reverse the ISU's decision regarding Icederby. Instead, the focus of the complaint is on the ISU's regulations, specifically their power to enforce lifetime bans on individuals who take part in unsanctioned events. The skaters argue that this penalty is excessive in relation to the legitimate aims of the rules, such as safeguarding the integrity of competitions.

33. Now, what did the European Commission decide? Firstly, it determined that the eligibility rules constituted a decision taken by an association of undertakings pursuant to the meaning of Article 101 TFEU. In line with the Meca Medina ruling⁴⁸, the Commission considered that the integrity of sport, the protection of health and safety, the organization and proper conduct of competitive sport⁴⁹, the solidarity between participants⁵⁰, and the projection of the volunteer model of a sport⁵¹ could all constitute legitimate objectives to justify some restrictions imposed by the ISU. However, it found that the current applicable eligibility rules were not inherent in the pursuit of these legitimate objectives and restricted competition by object and effect as the rules restricted the possibilities for professional speed skaters to take part freely in international events organized by third parties, and, therefore, deprived potential organizers of competing

⁴⁷ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 21-22.

⁴⁸ Case C-519/04 *P David Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991, para. 43 and 45.

⁴⁹ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 212 and 219.

⁵⁰ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 222.

⁵¹ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 223.

events of the services of the athletes which are necessary in order to organize those events.⁵² In fact, there was not even any formal authorization procedure in place.⁵³ Even if the eligibility rules were inherent, the sanctions, such as the lifetime ban, imposed on athletes were found manifestly disproportionate.⁵⁴ In other words, the rules are in breach of Article 101 TFEU. Notwithstanding, the EC concluded that a prior authorization system, as it already existed, could work, but that it is only efficient if it is based on objective, transparent and non-discriminatory criteria and procedures for authorization.⁵⁵

34. The EC also took issue with the compulsory arbitration system of the ISU which gave exclusive jurisdiction to the CAS over actions against ineligibility decisions. Although parties in proceedings before the CAS can rely on EU competition law as mandatory rules, there is no assurance that CAS arbitrators will interpret and apply it to the requisite standards. As a result, the Commission concluded that recourse to CAS reinforced the restriction of competition (but, crucially, was not itself deemed to be an infringement).⁵⁶

§6.3 ISU response

35. In the decision, the Commission had to ask themselves a couple of questions. How easy is it for ‘rivals’ or ‘independent organizers’ to organize a competing event? Indeed if a process is available, why is there a potential lifetime ban from all key skating competitions for non-accreditation events? Before the decision was published, it was unclear how the Commission would answer these kind of questions. One of the available options to it may have been to settle by amending its rules to satisfy any concerns the European Commission might otherwise raise. Eventually, it didn’t come to that. What is clearer, however, is that federations can no longer rely on their role as the “guardian” of a sport to deal summarily with the threat posed by organizers of breakaway competitions.

36. Despite the precise and comprehensive decision, the ISU believes that the claims made by the EC are unfounded. In a statement issued on 27 September 2016, the ISU stated, among

⁵² *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 163.

⁵³ *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 175.

⁵⁴ *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 260.

⁵⁵ *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 297.

⁵⁶ *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 275-277.

other things, that the EU has long recognized the “*autonomous governance structure of sport*” and continued to say “*independent organizers are able to organize international tournaments on the ISU international calendar*”.⁵⁷ For these reasons, the ISU appealed the Commission decision before the Court. On 16 December 2020, the Court delivered its judgment.

§6.4 Judgment of Court

37. In their judgment of 16 December 2020, the Court largely confirmed the Commission’s decision and ruled that the eligibility rules of the ISU effectively infringed EU competition law.⁵⁸ The Court stressed that the ISU, on account of its dual role as market regulator and operator, had a special responsibility to ensure undistorted competition on the market.⁵⁹ That dual role (commercially exploiting competitions/events and performing a regulatory function) “*is capable of giving rise to a conflict of interest*”.⁶⁰ Particular in the context of sports governing bodies’ prior approval requirements for third party events, the body “*must ensure when examining applications for authorization, that those third parties are not unduly deprived of market access to the point that competition on that market is distorted*”.⁶¹

38. Despite the fact that the rules were judged to be “*extremely severe*” to the extent that they provided for manifestly disproportionate penalties (with athletes facing a lifetime ban from the ISU competitions)⁶², the Court did accept that it was legitimate for the ISU to “*establish rules seeking to prevent sports betting from creating risks of manipulation of competitions and athletes*”.⁶³ In addition, the Court noted that the fact that a federation seeks to protect its own economic interests is not in itself anti-competitive.⁶⁴ The Court recognized the legitimacy of protecting the integrity of sport as recognized by Article 165 TFEU. However, the Court determined that the ISU’s eligibility rules exceeded what was necessary to achieve their objectives and were not proportional. In other words, we can assume that the severity of the penalty imposed by the eligibility rules could be taken into account and is particularly relevant in assessing the objective of those rules and not just in relation to their proportionality.

⁵⁷ ‘ISU believes that the European Commission’s antitrust allegations are unfounded’, (ISU Press Release, 27 September 2016) < <https://www.isu.org/media-centre/press-releases/2016/2076-press-release-ec-antitrust2/file> > accessed 3 April 2023.

⁵⁸ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610.

⁵⁹ Donald Slater and others, ‘EU General Court issues judgment in International Skating Union case’ (2021) 1(8) < www.ashurst.com/-/media/ashurst/documents/news-and-insights/legal-updates/2021/feb/competition-law-newsletter-february-2021.pdf > accessed 12 April 2023.

⁶⁰ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 75.

⁶¹ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 75.

⁶² Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 92.

⁶³ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 102.

⁶⁴ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 109.

Regarding the content of the eligibility rules, the bottom line is that the applicable rules must be “*clearly defined, transparent, non-discriminatory, reviewable and capable of ensuring effective access to the market for competing event organisers*”.⁶⁵

39. As already mentioned, the Court concluded that the Commission was right to rule that the eligibility rules reveal a sufficient degree of harm, in particular in view of their content and objectives, to be considered as restriction of competition by object within the meaning of Article 101 TFEU.

40. For the sake of completeness, we also mention that, contrary to the first part of the ruling, the Court disagreed with the EC with regard to the compulsory arbitration by the CAS. The Court found that the Commission was wrong in concluding that the arbitration rules made effective judicial protection against a potentially anti-competitive decision of the ISU more difficult.⁶⁶ Namely, the Court found that the arbitration of the CAS did not violate the athletes’ right to a fair hearing and did not compromise the effectiveness of EU competition law as athletes have the possibility to seize national courts and/or one of the competition authorities of the EU.⁶⁷ In short: skaters cannot evade CAS and its jurisdiction to determine the legitimacy of the eligibility rules, but they have always the possibility to file a complaint in a national court. Therefore, the Court annulled the Commission decision insofar as it referred to the arbitration of the CAS as a ‘reinforcing’ element of the restriction of the competition.

41. Although the Commission decision had cast doubt on the jurisdiction of CAS, its role has now been explicitly established within the framework of European law, following the Court’s ruling.

42. The precise impact of ISU is not yet clear. In fact, the ISU case is not entirely over. An appeal was filed by the federation before the CJEU.⁶⁸ ISU’s main plea alleges that the Court and the Commission, contrary to the Court’s case-law, held that the ISU rules had as their object the restriction of competition. The CJEU will have the last say on the interface between authorization systems and EU competition law. What we do have already are the two

⁶⁵ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 88.

⁶⁶ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 141.

⁶⁷ Donald Slater and others, ‘EU General Court issues judgment in International Skating Union case’ (2021) 1(8) <www.ashurst.com/-/media/ashurst/documents/news-and-insights/legal-updates/2021/feb/competition-law-newsletter-february-2021.pdf> accessed 12 April 2023.

⁶⁸ Reference Case C-124/21.

complementary Opinions of AG Rantos that examine the role of European (competition) law, in the governance of sport. In *European Superleague*, he examined the general principles that inform this field, while in *International Skating Union*, some of these principles are applied.⁶⁹

43. Despite these caveats, claims that the ISU ruling will facilitate the implementation of breakaway competitions in Europe are misconceived. Whilst independent parties cannot be unduly deprived of market access in sports, and any criteria limiting such access must be inherent and proportionate to the pursuit of legitimate sporting objectives, the ISU judgment provides authority for the right of sport governing bodies to regulate (potential) events through prior authorizations systems/eligibility rules.⁷⁰

§7 Conclusion

44. Competition law is applicable to the sports sector despite its unique organization and distinctive features (specificity of sport). The scope of EU law includes the sports sector, and EU competition law is enforceable when the entities involved are considered undertakings and engage in economic activities. The interpretation of the sporting exception, as evidenced by the Walrave and Bosman case and subsequent case law, establishes a low threshold for economic activity. Consequently, the sports sector is bound by EU competition law, requiring sports governing bodies and other actors to comply with these regulations.

45. Regarding Article 101 TFEU, a restriction of competition under Article 101 (1) TFEU may fall outside the scope of this provision if it meets the criteria outlined in the Meca Medina framework. Alternatively, an undertaking could rely on Article 101 (3) TFEU, as demonstrated in the Piau case.

46. In relation to Article 102 TFEU, the court ruling in MOTOE highlighted that the entrustment of the right to authorize sporting events with an undertaking that itself also organizes those events puts that undertaking at a competitive advantage.⁷¹ This advantage raises the risk of the undertaking distorting competition under Article 102 TFEU. Therefore, restrictions, obligations and review mechanisms must be implemented to prevent the

⁶⁹ Giorgio Monti, 'Sport Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union' (2023) TILEC Discussion Paper 1, 1.

⁷⁰ Benoît Keane and Ben Foster, 'Survey on Competition Policy Developments in the Sports Sector 2018-2021' (2021) 12 *Journal of European Competition Law & Practice* 655, 657.

⁷¹ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 36.

undertaking from distorting competition by favoring events which it organizes itself or in which organization it participates.

CHAPTER 2: ASSESSMENT OF MEASURES TAKEN BY UEFA

§1 Background

47. After outlining the application of EU competition law of the sports industry, this chapter employs the established framework to examine the potential infringement of Article 101 and Article 102 TFEU by UEFA's and FIFA's regulation on prior authorization. The analysis begins by assessing whether there exists a restriction under Article 101 (1) TFEU, followed by a discussion of potential legitimate objectives that could justify such a restriction. Subsequently, the chapter investigates whether the legal exemption specified in Article 101 (3) TFEU can be applied to the prior authorization rules. Ultimately, an investigation start on whether the prior authorization rules constitute an abuse of a dominant position under Article 102 TFEU.

48. In their joint statement (*supra* no. 7), UEFA, FIFA and their member associations said they “*will consider all measures available to them, at all levels, both judicial and sporting in order to prevent the Super League happening*”. From this we deduce that UEFA refers to their rules in the UEFA Statutes⁷², in particular Article 49.1, 49.3 and 51.1. In that first Article, UEFA appropriates the sole jurisdiction to organize or abolish international competitions in Europe. In fact, according to UEFA, the Super League would infringe Article 49.3, which states that competitions which are not organized by UEFA but are played on UEFA's territory should have prior authorization. Article 51.1 adds that no alliances between UEFA member associations, leagues or clubs may be formed without the permission of UEFA.

49. As far as FIFA regulation is concerned, Articles 22.3 of the FIFA Statutes⁷³ is a relevant regulation that mandates FIFA members, including UEFA, to prevent the establishment of international leagues without FIFA's permission. Additionally, Article 71 stipulates that no competition can occur without the consent of FIFA and/or the relevant member association. Finally, Article 73 requires that clubs associated with a FIFA member organization may only

⁷² ‘Rules of Procedure of the UEFA Congress: Regulations governing the Implementation of the UEFA Statutes’ (UEFA Statutes 18 June 2020) < https://documents.uefa.com/v/u/_CJ2HRiZAu~Wo6ytIRy1~g > accessed 6 April 2023.

⁷³ ‘Regulations governing the application of the statutes: standing orders of the congress’, (FIFA Statutes May 2022) < https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf > accessed 7 April 2023.

participate in tournaments or join another member association's territory after obtaining prior authorization from both the member organization and FIFA.

50. All these rules, both of UEFA and of FIFA, will be referred to as the 'prior authorization rules' throughout the thesis. Naturally, other federations would also have had the opportunity to impose measures based on their regulations, but since we assume that the Super League belongs to the same already existing 'relevant market'⁷⁴ as the competitions organized by UEFA and FIFA (e.g. Champions League, Europa League, ...), this thesis only deals with the prior authorization rules that UEFA and FIFA wanted to apply if the Super League had taken place.

51. Another side note: the 'prior authorization rules' (we are referring to) are a number of disciplinary measures against clubs which contravene the UEFA Statutes, and have - although FIFA states it would ban clubs and players - nothing to do with measures against players. These measures are not assessed in this thesis. In my opinion, it would have been distinctly unjust if players had been punished for a breakaway league such as the Super League. However, under Article 6(2)(c) of the FIFA Disciplinary Code, to which players are subject, FIFA has the ability to impose a ban on any natural person from "taking part in any football-related activity". In this case, players are employees of clubs, and it is questionable what (if any) input players had in creating the breakaway league proposals. It is highly doubtful whether FIFA would have penalised players, as opposed to their clubs, over the breakaway league. The Commission would probably find the punishment a breach of the EU rules on restraint of trade and free movement, and therefore not allow any punishment for football players. Also AG Rantos states that imposing a penalty on players seems disproportionate because they are not responsible for the ESL scheme.⁷⁵

§2 Restriction under Article 101 (1) TFEU?

52. Before we assess whether the Super League itself is compatible with Article 101 TFEU (*infra* no. 86), we must first check whether this Article prohibits UEFA/FIFA's approach to breakaway leagues, in particular the Super League. First, we need to go over the three

⁷⁴ When reading the plan of the Super League, it became clear that they also want to play a double role: a commercial/operating role on the one hand, and a regulatory on the other. The Commission's identification of relevant markets in both MOTOE and ISU bears similarities to the matter at hand, as it involves the organization of sporting events and their subsequent commercial exploitation.

⁷⁵ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 121.

conditions for an agreement to be declared incompatible with the internal market (*supra* no. 13).

§2.1. Collusion between undertakings

53. In *Piau* (*supra* no. 18), the Court clarified that FIFA, UEFA, and national member associations, and football clubs constitute (associations of) undertakings within the meaning of Article 101 TFEU.⁷⁶ Just like the ISU, they conduct “*commercial activities related to the organisation and marketing of international ice sport events*”⁷⁷, besides their regulatory activities of course. Indeed, in the past, we saw UEFA doing multiple deals for sponsorship agreements⁷⁸ or licensing agreements of broadcasting rights⁷⁹, which can all be seen as commercial activities. As UEFA and FIFA engage in economic activity, and by being the governing bodies of national associations, they can be surely regarded as undertakings. This implies that the regulations set by the sport governing bodies, which are mandatory for their members, qualify as a decision made by (an association of) undertakings within the meaning of Article 101 TFEU. In his opinion, Rantos agrees with this standpoint.⁸⁰

§2.2. Appreciable effect on trade between member states

54. Denying authorization for the Super League is expected to impact trade between member states, given that FIFA and UEFA are international organizations while the Super League comprises football clubs from various countries. Several news sources showed that the appreciability is clearly present: while a German newspaper revealed that Barcelona and Real Madrid were set to receive 60 million euros over and above what other clubs would receive⁸¹, a British newspaper confirmed JP Morgan would inject 4.8 billion euros into the new project.⁸² On their website, the European Super League Company predicted the solidarity payments would grow in line with league revenues and are expected to be in excess of 10 billion euros

⁷⁶ Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22, para. 72.

⁷⁷ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 147.

⁷⁸ For example: Tariq Saleh, ‘UEFA adds Turkish Airlines as Champions League sponsor, fines clubs for FFP breaches’ (Sportcal 5 September 2022) <<https://www.sportcal.com/sponsorship/uefa-adds-turkish-airlines-as-champions-league-sponsor-fines-clubs-for-ffp-breaches/>> accessed 7 April 2023.

⁷⁹ For example: Tariq Saleh, ‘Canal Plus snaps up rights to UEFA club competitions in France for 2024-27 cycle’ (Sportcal 30 June 2022) <<https://www.sportcal.com/news/media/canal-plus-snaps-up-rights-to-uefa-club-competitions-in-france-for-2024-27-cycle/>> accessed 7 April 2023.

⁸⁰ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 59.

⁸¹ Oliver Fisher, ‘Milan and Inter were set to get less than Juve from Super League as contract details emerge’ (Sempremilan, 23 April 2021) <<https://sempremilan.com/der-spiegel-milan-and-inter-were-set-to-get-less-than-juve-from-super-league-as-contract-details-emerge/>> accessed 9 April 2023.

⁸² Kate Ng, ‘Football club shares leap as JP Morgan to inject £4.3bn into new European Super League’ *The Independent* (London, 19 April 2021) <<https://www.independent.co.uk/news/business/european-super-league-jp-morgan-b1833783.html>> accessed 9 April 2023.

during the course of the initial commitment period of the founders.⁸³ Together with AG Rantos⁸⁴, we deduce from this information that a potential refusal by UEFA or FIFA to authorize this league would have an appreciable effect on trade between member states.

§2.3. Object or effect of restricting competition within the internal market

55. The only question that remains is whether the rules, in particular Articles 49.1 and 49.3 of the UEFA Statutes, have as their object or effect the restriction of competition. The two conditions are not cumulative, and the arrangement will be caught if either the object, or its effect, is to restrict or distort competition.⁸⁵

56. To determine whether the prior authorization rules constitute a restriction of competition by object, we know from the case law that regard must be had inter alia to the content of the provisions, the objectives it seeks to attain and the economic and legal context of which it forms a part.⁸⁶ Also in ISU, although the MOTOE case assessed Article 102 TFEU, the Court used the MOTOE reasoning in a case concerning Article 101 TFEU (knowing from previous case law it could be applied by analogy⁸⁷). It was held that when an entity organizes competitions itself, but also holds the power to authorize events organized by third parties, this power grants that entity an obvious advantage over its competitors and may lead to a conflict of interest.⁸⁸

57. Applied to the rules that UEFA and FIFA could impose, it is quite clear that the prior approval requirement has as effect – and indeed as its object – the restriction of competition. Following the ISU reasoning, UEFA/FIFA can, through their rules, deny competing football competition organizers access to the market.⁸⁹ In line with MOTOE (*supra* no. 24), their previous discussed double role (*supra* no. 50) places them at a competitive advantage over their competitors and may lead to a conflict of interest when receiving requests for prior

⁸³ European Super League Company S.L., ‘The Super League’, < https://thesuperleague.com/#who_we_are > accessed 9 April 2023.

⁸⁴ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 60.

⁸⁵ Andrea Cattaneo, ‘The application of EU competition law to sport’, (Master thesis, Edge Hill University 2017) 30. In this thesis, he refers to: Case C-209/07, *Competition Authority v. Beef Industry Development Society Ltd and Barry Brothers (Carrigmore) Meals Ltd (BIDS)* [2008] ECR I-8637, para. 15.

⁸⁶ *International Skating Union’s Eligibility Rules under 101 TFEU* (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 155; Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 67.

⁸⁷ Case C-1/12 *Ordem dos Técnicos Oficiais de Contas* [2013] EU:C:2013:127, para. 88 and 92.

⁸⁸ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 70 (see, to that effect, Case C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio* [2008] ECR I-04863, para. 51 and 52).

⁸⁹ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 32.

authorization filed by their (potential) competitors.⁹⁰ In accordance with ISU, the rules relating to breakaway competitions have therefore as their object the restriction of competition.⁹¹

58. Contrary to the previous two conditions, the AG suggest in his ISU opinion to annul the Court's verdict, arguing that the Court wrongly qualified the ISU's prior approval right as a restriction by object and suggesting to refer the case back to the Court for a further assessment on the 'effects' on competition of the ISU's prior approval right.⁹² To amount to a restriction of competition by effect, the parties to the agreement must have some degree of market power, and the agreement must contribute to the creation, maintenance, or strengthening of that market power or allow the parties to exploit it.⁹³ The AG in the ESL opinion reaches a similar conclusion to ISU, stating that UEFA's prior approval rights do not amount to a restriction by object. However, the AG deviates from ISU in terms of the procedural background and promptly proceeds to assess the impact on competition, taking into account all relevant facts. In his view, several points⁹⁴ indicate the AG's disagreement with the Court's analysis and suggests that further considerations, such as the authorization of rival events and elements of intent, may be relevant for an effects analysis rather than a strict object analysis.

I personally think it can be argued that Article 49.1 and Article 49.3 of the UEFA Statutes potentially restrict competition by object. Article 49.1 grants UEFA exclusive control over the organization of such competitions, limiting the participation of other entities or organizers. By granting UEFA sole jurisdiction, it appears to have the object of preventing or restricting competition from other organizers within Europe. Article 49.3 introduces a regulatory framework that imposes additional requirements for non-UEFA organized competitions on UEFA's territory, potentially creating barriers for alternative competition organizers. Thus, by their very nature, this has the purpose of restricting competition, *i.e.* a feature of restriction by object.

⁹⁰ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 41.

⁹¹ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 123.

⁹² Robby Houben, 'Super League vs. UEFA: Why UEFA should lose?' (2023) 1 *SpoPrax* 9, 11. In this paper, he refers to: Case C-124/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:988, para. 123 and 136-137.

⁹³ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 52. In this paper, she refers to: Commission, *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty COM 2004/C 101/08*, para. 17-27, as summarized by Alison Jones, Brenda Sufrin and Niamh Dunne, *Jones & Sufrin's EU competition law: text, cases and materials* (7th edn, OUP 2019) 246.

⁹⁴ See for an extensive analysis: Giorgio Monti, 'Sport Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union' (2023) *TILEC Discussion Paper* 1, 20-21.

59. As a side note, some authors rightly pointed out that a breakaway league is not the same as the reform of competition formats within UEFA's structure.⁹⁵ Examples of reform of formats are the Royal League including Scandinavian countries or the proposed BeNeLiga between leading football clubs of the Netherlands and Belgium. These formats do not constitute real breakaway leagues, as they remain within the traditional, pyramid sports model, with the participation of clubs and/or athletes belong to that traditional sports model.⁹⁶ From the perspective of UEFA and FIFA a breakaway league, such as the Super League, constitutes a threat to the traditional pyramidal football model, which they operate. Contrary to the goals of the Super League, new formats within the UEFA's structure attempt to create a more attractive transnational, but still local, competition, to enhance the quality of the game within that region and to increase revenue streams for the participating clubs.⁹⁷ This, and the fact that the traditional model is undermined, makes UEFA reluctant to new leagues that do not take into account different interests, such as the share of the audience's attention and smaller clubs' benefits. What I want to say: the Super League organizers could try some kind of reform of competition format within UEFA's structure to make their project succeed, and avoid a restriction of competition by object or effect.

60. We can conclude the three conditions are fulfilled. However, just because the conditions of Article 101 TFEU are met, does not mean necessarily the aforementioned measures would constitute a restrictive agreement between undertakings.

§2.4. Legitimate objectives – inherency and proportionality

61. As hinted at just above, not every restriction violates Article 101 TFEU, as was also acknowledged by the European Commission and the Court in ISU: "*Not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them is necessarily caught by the prohibition laid down in Article 101 (1) TFEU*".⁹⁸ In this respect, the Commission and the European Courts have, over the years, developed some sympathy for the specific need to organize sport competitions.⁹⁹ Referring to Meca Medina, the Court states that the application of Article 101

⁹⁵ Robby Houben, Jan Blockx, Steve Nuyts, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205, 209.

⁹⁶ Robby Houben, Jan Blockx, Steve Nuyts, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205, 209.

⁹⁷ Robby Houben, Jan Blockx, Steve Nuyts, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205, 209.

⁹⁸ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 77.

⁹⁹ Robby Houben, Jan Blockx, Steve Nuyts, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205, 210.

(1) TFEU in a particular case requires the overall context, and more specifically the objectives of the decision to be taken into account, after which it must be examined whether the restrictions arising therefrom are inherent in the pursuit of legitimate objectives and are proportionate to those objectives.¹⁰⁰ What these legitimate objectives that could justify restriction of competition by a sport governing body could be, we discussed earlier when we talked about what the European Commission argued in the ISU decision (*supra* no. 33). More specifically (and as a repetition), legitimate objectives can be about protecting “the integrity of sport, the protection of health and safety and the organization and proper conduct of competitive sport”¹⁰¹, but also about safeguarding “the solidarity model”¹⁰² or “the volunteer model of a sport”.¹⁰³

62. Our next task is to evaluate if UEFA/FIFA’s strategy towards breakaway leagues, specifically the Super League, is supported by legitimate objectives.

§2.4.1. Integrity of sport: fair and open competition

63. In the rules of UEFA or FIFA, we do not immediately find objectives that would justify the restriction of competition that the measures entail. Yet in their joint statement (*supra* no. 7) they emphasize that “*football is based on open competitions and sporting merit; it cannot be any other way*”.¹⁰⁴ The openness of sporting competitions was not only emphasized in the joint statement, but also recently as a key feature of the European model of sport in a resolution¹⁰⁵, as also expressly covered by primary EU law, in particular Article 165 TFEU. The Super League appeared to be a semi-closed league, contradicting the principle of openness that underpins European sports. As such, according to many authors, that could prove problematic. For example, in his opinion, Advocate General Rantos attaches great importance to the openness of competitions, and stresses the possible negative impact.¹⁰⁶ He does not only

¹⁰⁰ Fleur Louise Westenend, ‘The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?’, (Master thesis, Lund University 2022) 42. In this thesis, she refers to: Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 77; C-519/04 *P David Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991, para. 42. (See, to that effect, Case C-309/99 *Wouters and Others* [2002] ECR I-01577, para. 97).

¹⁰¹ *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 212 and 219.

¹⁰² *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 222.

¹⁰³ *International Skating Union’s Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 223.

¹⁰⁴ ‘Statement by UEFA, the English Football Association, the Premier League, the Royal Spanish Football Federation (RFEF), LaLiga, the Italian Football Federation (FIGC) and Lega Serie A (UEFA, 18 April 2021) <<https://www.uefa.com/insideuefa/mediaservices/mediareleases/news/0268-12121411400e-7897186e699a-1000--joint-statement-on-super-league/>> accessed 27 March 2023.

¹⁰⁵ Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the key features of a European Sport Model [2021] OJ C501/01.

¹⁰⁶ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 101 ff.

consider the underlying objectives of UEFA and FIFA to be legitimate, but even states that they “stem from the European Sports Model and are therefore expressly covered by primary EU law”.¹⁰⁷ Still, the AG avoids any clear statement as to whether the one-place-principle forms part of the European Sports Model and thus is an “ancillary restraint” to be considered in the competition analysis. Also according to doctrine, the need to protect the traditional European model of sports, characterized by an open competition with promotion and relegation and qualification based on merit may turn out to be the most forceful legitimate objective.¹⁰⁸

64. In my opinion, it should not be considered so problematic. The known facts are very little, and, as acknowledged by the AG, the project was probably still in a development stage. Rejecting the Super League based on incomplete information that has not been fully presented as a concrete proposal¹⁰⁹, without engaging in a conversation with the proponents of the league beforehand, may be premature and inconsistent with the objective of safeguarding the European model of sport. As a result, the AG’s opinion seems disproportionate too because it is not his job in a preliminary ruling to answer questions of fact. Moreover, the argument that UEFA’s own European competitions, especially the Champions League, in fact resembles features of a closed league, is not unheard of either, questioning whether UEFA itself succeeds in the pursuit of the European model of sport and openness of competitions in particular.¹¹⁰ Even more remarkable is that in March 2019, there was a meeting spearheaded by elite European clubs to discuss Champions League reforms, that would turn it from a cup into a semi-closed league competition, with 32 guaranteed participants, and only 4 places available based on promotion and relegation via domestic leagues.¹¹¹ Please note: only the big teams were heard.

65. The protection of openness in sporting competitions could potentially be a first legitimate objective, but in my opinion, the UEFA’s position is a bit premature and deceptive for the reasons mentioned above. Also, as mentioned before, the rules need to be inherent in the pursuit of the legitimate objectives and proportionate to them. It appears that UEFA’s opposition is not towards semi-closed formats in general, but rather towards semi-closed formats that are arranged by a third party. Hence, it might be hard to argue that the restriction of competition is

¹⁰⁷ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 93.

¹⁰⁸ Peter Sloane, “The European Model of Sport” in Wladimir Andreff and Stefan Szymanski (eds), *Handbook on the Economics of Sport*, (Edward Elgar 2006).

¹⁰⁹ The AG seems to confirm the premature nature of the proposal as at the refusal by UEFA: Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 22.

¹¹⁰ Robby Houben, ‘Super League vs. UEFA: Why UEFA should lose?’ (2023) 1 *SpoPrax* 9, 11.

¹¹¹ Conor Pope, ‘European Super League: Is it just a bluff to get more out of the Champions League?’ (FourFourTwo, 18 April 2021) <<https://www.fourfourtwo.com/features/european-super-league-teams-champions-league-reforms-arsenal-man-utd-city-liverpool-tottenham-chelsea>> accessed 11 April 2023.

inherent to the protection of openness in this competition. What can be advantageous for UEFA and like we saw in ISU, the Court explicitly noted that the fact that a federation seeks to protect its own economic interests is not in itself anti-competitive and moreover, the integrity of sports also constitutes a legitimate objective (*supra* no. 33). Moreover, AG Rantos assigns the prior approval scheme as an essential sports governance mechanism for European football¹¹² and argues that “*without an ex-ante control mechanism*”¹¹³ FIFA and UEFA could not achieve the objectives pursued. According to the AG, this also applies in a comparable way to the envisaged sanctions, because “*any rule adopted by a sports federation would be meaningless without disciplinary measures intended to ensure its effectiveness*”.¹¹⁴

66. Nevertheless, I believe that unclear mentions to the integrity of sports, fair play, ethics, ... should be avoided in Spanish court when there is a full hearing in the Super League case. To convince the court, UEFA has to bring forward the legitimate objectives it pursues, demonstrate that it adequately pursues those, and that the alternative competition would jeopardize the objectives pursued.¹¹⁵ The CJEU’s role here is expected to just explain what the law is.

§2.4.2. Solidarity model

67. One of these legitimate objectives that has a chance of success, is the development of football that UEFA tries to protect through a solidarity model. Solidarity is built into all levels of the football pyramid, e.g., solidarity payments with regard to players transfers, distribution schemes for media rights revenue, funding of grassroots football projects, distribution of funds to clubs of which players participate in international tournaments between national member associations, and so on.¹¹⁶ By creating a breakaway league, it is situated outside of the established football pyramid, and consequently, any redistribution would only benefit the teams involved in the breakaway league. If all significant football clubs were to exit the current football pyramid, this would result in the collapse of the current solidarity model.¹¹⁷ In this respect, the solidarity aspect in football can be regarded as part of the specific nature of football and contributes to the social function thereof.¹¹⁸ From the ISU judgment we know that courts may take the specific nature of the sports into account, because “*it is necessary to ensure that*

¹¹² Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 96.

¹¹³ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 97.

¹¹⁴ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 100.

¹¹⁵ Robby Houben, ‘Super League vs. UEFA: Why UEFA should lose?’ (2023) 1 *SpoPrax* 9, 10.

¹¹⁶ Robby Houben, Jan Blockx, Steve Nuyts, ‘UEFA and the Super League: who is calling who a cartel?’ (2022) 22 *The International Sports Law Journal* 205, 211.

¹¹⁷ Fleur Louise Westenend, ‘The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?’, (Master thesis, Lund University 2022) 44.

¹¹⁸ Katarina Pijetlovic, *EU sports law and breakaway leagues in football* (T.M.C. Asser Press 2015) 270.

sporting competitions comply with common standards, seeking, in particular, to ensure that sporting competitions take place fairly and the physical and ethical integrity of sportspeople is protected".¹¹⁹ In this case, the existence of an *ex-ante* control system, intended to ensure that any organizer, such as the Super League, respects such standards seems acceptable.

68. However, once again we have to question the inherency and proportionality of the solidarity objective. In terms of inherency, the ISU decision showed that arguments about the preservation of the solidarity and volunteer model were not inherent, and thus not accepted to justify a prior authorization system.¹²⁰ Obviously, the situation between professional football players and professional ice-skaters is different. Latter athletes have very limited opportunities to earn money with their sport and therefore depend on participating in economically profitable competitions in order to make their living.¹²¹ There is not a direct system of compensation from successful athletes to less successful ones in figure skating. That could make a difference regarding solidarity. Nevertheless, the ISU decision demonstrates that it will be hard for UEFA/FIFA to argue that the prior approval requirement is inherent to the objective of developing football through a solidarity model. Besides, according to the Super League Company and like we saw earlier (*supra* no. 54), the Super League's solidarity payments would be substantially higher than those generated by the current European competition and were expected to be in excess of 10 billion euros during the course of the initial commitment period of the clubs.¹²² Since these solidarity payments will follow a new model with full transparency and regular public reporting¹²³, the question is how UEFA is going to prove their solidarity model would be subverted. Therefore, I'm not sure if the inherency of the objective is sufficient. Rantos is not meant to answer this question of fact and passes it on to the Spanish court as it should be: "*it is for the referring court to ascertain whether the profit redistribution mechanism provided for by UEFA does indeed allow the objectives pursued to be achieved.*"¹²⁴

¹¹⁹ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 108.

¹²⁰ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 247.

¹²¹ Dwayne Bach, 'The Super League and its related issues under EU Competition Law', (Kluwer Competition Law, 22 April 2021) <<https://competitionlawblog.kluwercompetitionlaw.com/2021/04/22/the-super-league-and-its-related-issues-under-eu-competition-law/>> accessed 9 April 2023.

¹²² European Super League Company S.L., 'The Super League', <https://thesuperleague.com/#who_we_are> accessed 9 April 2023.

¹²³ European Super League Company S.L., 'The Super League', <https://thesuperleague.com/#who_we_are> accessed 9 April 2023.

¹²⁴ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 99.

§2.4.3. Organization and proper conduct of competitions: protection and well-functioning of the sports calendar

69. A last potential legitimate objective to justify UEFA/FIFA's prior authorization system for breakaway leagues concerns the need to control the organization and proper conduct of UEFA/FIFA's competitions, in particular the match calendar. Unlike in the ISU case, the Super League competition could cause calendar clashes, as the UEFA's European club tournaments are also mid-week competitions.¹²⁵ However, the Super League clubs have made clear that they won't participate in the UEFA's European club tournaments anymore.¹²⁶

70. In the ISU case, the European Commission did not accept that the eligibility rules were inherent to the legitimate objective, as ISU did not demonstrate that the Dubai Icederby Grand Prix 2014 would conflict with other ice skating matches and therefore would prevent the good functioning of the ISU events calendar.¹²⁷ The fact that there is no overlap and that the Super League clubs continue to play in their domestic league indicates that the restriction of competition cannot be seen as being inherent to the protection and well-functioning of the match calendar.

71. In the foregoing we have always tested the inherency, but not much has been said about the proportionality of the *ex-ante* control system to achieve the legitimate objectives. If one or more of the objectives were recognized as legitimate by the Court, everything will boil down to the test of proportionality.¹²⁸ Again, we turn to the ISU case. Despite the Commission recognized that some of the objectives could be legitimate, the restrictions were disproportionate, partly because of the wide margin of discretion ISU had to accept or reject an application filed by a third party.¹²⁹ The Court largely upheld the Commission's decision by saying that the prior authorization system was not be considered to be based on objective, transparent, non-discriminatory and proportionate criteria.¹³⁰

¹²⁵ Tom Verdonk, 'The Clash of the Titans: The Compatibility of the Super League and UEFA's Response with EU Competition Law' (CCM Ku Leuven, 21 april 2021) < <https://law.kuleuven.be/ccm/blog/?p=12>> accessed 12 April 2023.

¹²⁶ European Super League Company S.L., 'The Super League', < https://thesuperleague.com/#who_we_are> accessed 9 April 2023.

¹²⁷ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 242-245.

¹²⁸ An Vermeersch, 'De impact van de ISU-zaak. Het Europees mededingingsrecht als kader en scheidsrechter in het conflict rond de European Super League?' (2021) *Voetbal- & Sportjuridische Zaken* 3, 7.

¹²⁹ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 257.

¹³⁰ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 88.

72. It is clear from the Commission's decision and the Court's ruling that sports associations are actually allowed to prohibit participation in unauthorized events, provided that the authorization criteria are adequate.¹³¹ As for the UEFA statutes¹³², we must conclude that UEFA cannot rely on a procedure which is objective, transparent and non-discriminatory relating to the organization of third-party competition. As long as proportionality is not established, it is quite useless to have a legitimate aim and to demonstrate inherency. How can UEFA solve this? It has a monopoly over the organization of European football club competitions; what to do to avoid the conclusion that it is induced or led to abuse this dominant position when issuing decisions impacting on its commercial interests?¹³³ It will have to install an authorization procedure, if it remains in place, that will have to comply with high standards of impartiality and objectivity that fulfill the discussed criteria set forward both in ISU and MOTOE.

73. Additionally, the ISU case did not clarify whether a breakaway league like the Super League could coexist with the national competitions, but did address the sanctions imposed on athletes in case of a breach of their eligibility rules. Since measures against athletes are not assessed in this thesis, we are not going to elaborate on that. Football clubs are in a totally distinct economic situation than athletes, which means the ISU ruling on proportionality is not useful for this thesis. In his opinion, the AG ultimately concludes that the restrictive effects of UEFA's prior approval scheme are proportional. He states that even if the "*criteria established by UEFA were not to satisfy the criteria of transparency and non-discrimination [a refusal to authorize] a third party competition running counter to legitimate sporting objectives*"¹³⁴ can be justified. This is remarkable, since he first sketches an analytical framework for the assessment of the proportionality and says that it is up to the referring court to make a final judgment on the case.¹³⁵ While AG Rantos provides an opinion on the matter, it is important to note that the final judgment lies with the referring court. AG's role is to provide legal analysis and advice to the court, but the Court itself has the authority to make the final decision based on the legal arguments and evidence presented before it. Nevertheless, I believe that it is highly questionable whether some of the measures proposed by UEFA or its representatives, in particular the exclusion of clubs from the current UEFA's Champions League tournament could

¹³¹ Tom Verdonk, 'The Clash of the Titans: The Compatibility of the Super League and UEFA's Response with EU Competition Law' (CCM Ku Leuven, 21 april 2021) < <https://law.kuleuven.be/ccm/blog/?p=12> > accessed 12 April 2023.

¹³² In particular Article 49.3 of the UEFA Status requires prior approval.

¹³³ Stefaan van den Bogaert, 'The rise and fall of the European Super League: A case for better governance in sport' (2022) 59 Common Market Law Review 25, 37.

¹³⁴ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 118.

¹³⁵ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 111-117 and 123.

be deemed proportionate to the objective pursued.¹³⁶ In any case, it is certain that these measures will not have much effects as the clubs involved see the Super League as a replacement for the Champions League, the AG also notes.¹³⁷

74. For these reasons and looking at the court decisions that have been issued, we can assume that the prior authorization rules of UEFA/FIFA cannot be justified by legitimate objectives.

§3 Exception under Article 101(3) TFEU?

75. When an arrangement falls under the scope of Article 101(1), the only possible exemption from its prohibition might come from the fulfilment of the four conditions set by Article 101(3) TFEU.¹³⁸ As we have not done in previous chapters, we do not proceed to a more detailed explanation of these conditions. A correct application of Article 101(3) is not only mentioning the legitimacy of the objective pursued through the rules, and how the restrictions are necessary and proportionate to it, like they did in Piau. Instead, a correct application should have given full account to the fact that the Authority examining the conduct will have to weigh up the restrictive effects produced, with the pro-competitive effects that the arrangement creates.¹³⁹

76. In line with the justifications regarding legitimate objectives and inherency and proportionality, it will be difficult to demonstrate any efficiencies (first condition), as the protection of traditional pyramidal football model and the protection of the functioning of the (international) sports calendar were not accepted as constituting efficiencies in ISU.¹⁴⁰ Even if accepted, demonstrating that consumers receive a fair share of the benefits becomes even more challenging (second condition), particularly in the light of the restrictions imposed by UEFA and FIFA regulations, which limit consumer choice by denying them access to alternative football competitions. The rules are also not indispensable to the attainment of any objectives (third condition), since we saw (*supra* no. 71) that the proportionality might be a difficult hurdle to take for UEFA and FIFA, as their rules do not set out any criteria regarding prior

¹³⁶ Tom Verdonk, 'The Clash of the Titans: The Compatibility of the Super League and UEFA's Response with EU Competition Law' (CCM Ku Leuven, 21 April 2021) <<https://law.kuleuven.be/ccm/blog/?p=12>> accessed 12 April 2023.

¹³⁷ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para. 120 ff.

¹³⁸ Andrea Cattaneo, 'The application of EU competition law to sport', (Master thesis, Edge Hill University 2017) 33.

¹³⁹ Kati Cseres, 'The Controversies of the Consumer Welfare Standard' (2007) 2 *The Competition Law Review* 156.

¹⁴⁰ *International Skating Union's Eligibility Rules* under 101 TFEU (Case AT.40208) Commission Decision 2018/C148/06 [2018] OJ L148/9, para. 295-296.

authorization.¹⁴¹ Lastly, the prior authorization rules eliminate competition (fourth condition) since the rules constitute an entry barrier for potential competitors by limiting market access.¹⁴²

77. We can conclude that the four conditions are not fulfilled. Therefore, it is improbable that UEFA and FIFA can indeed rely on Article 101(3) TFEU.

§4 Abuse of dominant position under Article 102 TFEU?

78. Since there is little case law regarding another key regulation of European competition law, Article 102 TFEU (which prohibits the abuse of a dominant position), and the present thesis topic, it is logical that our focus is more on the application of Article 101 TFEU. Yet it cannot be denied that Article 102 TFEU (and the European free movement rules) can indeed have an impact on breakaway leagues, such as the Super League. Both provisions are designed to prevent anti-competitive behavior and promote a level playing field for businesses operating within the EU. They serve as complementary tools in the EU's competition law framework. Although it should be noted that the objectives differ, Article 101 TFEU applies to anti-competitive agreements or practices regardless of the market position of the undertakings, while Article 102 TFEU deals with abuse of a dominant position of economic strength.¹⁴³ Article 102 TFEU can provide an additional avenue to consider the behavior of a dominant undertaking, in this case, UEFA and FIFA, and whether their actions impede competition. By considering both provisions, a comprehensive analysis of UEFA and FIFA's conduct can be conducted, taking into account different legal aspects and potential anti-competitive effects.

79. In (*supra* no. 53), it became clear that UEFA and FIFA can be regarded as associations of undertakings. Nonetheless for Article 102 TFEU to apply, an association of undertakings must have a dominant position, and what's more: it is the abuse of such a dominant position which is illegal.¹⁴⁴ In other words, we distil two important elements from that.¹⁴⁵

¹⁴¹ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 46.

¹⁴² Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 46.

¹⁴³ Richard Whish and David Bailey, *Competition Law* (10th edn, OUP 2018) 28.

¹⁴⁴ Case C-322/81 *Michelin I* [1983] ECR 03461, para. 57.

¹⁴⁵ We are not going to repeat that other elements, such as "within the internal market or in a substantial part of it" and "having an effect on trade between member states" are satisfied.

§4.1 Dominant position

80. Since 1955 UEFA has been the sole, 100% market share, operator of European club competitions and it is therefore a monopoly operator with a dominant position.¹⁴⁶ Several authors confirm that it is typical for a sports federation to be in a monopolistic position.¹⁴⁷ In *Tetrapak*, the Court agreed with the Commission that the fact that an undertaking holds 90% of the market shares is in itself and in the absence of exceptional circumstances evidence of the existence of a dominant position.¹⁴⁸ Based on this information, we can conclude UEFA and FIFA clearly have a collective dominant position.

§4.2 Abuse

81. According to Article 102 TFEU, a dominant undertaking may abuse a dominant position where it engages in conduct which seeks to: (1) maintain or exploit its dominant position; (2) hinder market development, including new entry; or (3) eliminate competition. For example, the outrage and public damnation (*supra* no. 2) of all demonstrated a closed shop mentality which could be viewed as a hindering market development. The threat of bans and expulsion for clubs and players from UEFA and FIFA competitions could be viewed as an attempt to eliminate competition in the market for the organization of European sporting events and their subsequent commercial exploitation. They are entitled to protect their position, but not to abuse it.¹⁴⁹

82. However, as emphasized in *MOTOE*, the combination of regulatory and operating power is not in itself restrictive of competition or an abuse of a dominant position (*supra* no. 25). A system of undistorted competition can only be guaranteed if equality of opportunity is secured between undertakings.¹⁵⁰ In this case, UEFA and FIFA's power is not subject to restrictions, obligations and review, as it should be according to *MOTOE* (*supra* no. 24-25). The lack of these safeguards, coupled with the three elements to prove a 'monopoly' (*supra* no. 81), make me conclude that the UEFA and FIFA prior authorization rules amount to abuse of dominance under Article 102 TFEU.

¹⁴⁶ 'The case at the Court of Justice of the European Union' (A22 Sports Management, 2022) <<https://a22sports.com/en/the-case-at-the-court-of-justice-of-the-european-union/>> accessed 15 May 2023.

¹⁴⁷ Lars Halgreen, *European Sports Law* (Karnov Group Denmark 2013) 65; Stephen Weatherill, 'Is the Pyramid Compatible with EC Law?', in *European Sports Law: Collected Papers* (2nd edn, Asser Press 2014) 3.

¹⁴⁸ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 48. In this thesis, she refers to: Case T-83/91 *Tetra Pak v Commission* [1994] ECR II-00755, para. 109.

¹⁴⁹ Stefaan van den Bogaert, 'The rise and fall of the European Super League: A case for better governance in sport' (2022) 59 *Common Market Law Review* 25, 36.

¹⁵⁰ Case C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio* [2008] ECR I-04863, para. 51.

§4.3 Defences

83. The legitimate objectives we discussed under §2.4 (*supra* no. 61-74) could possibly also constitute objective justifications under article 102 TFEU, seeing that they are external to UEFA and FIFA.¹⁵¹ In fact, AG Rantos suggests that the criteria used to justify the non-application of Article 101 TFEU are the same that may be used if a case against the sports association is brought for abuse of dominance under Article 102 TFEU or for restricting the free movement rights of market actors.¹⁵² Nevertheless, the conduct would have to be in any case indispensable and proportionate to the objectives pursued by UEFA and FIFA.¹⁵³ This is always required to establish if the conduct is objectively necessary. Due to the lack of inherency and proportionality we can conclude that this is not the case.

84. Another path UEFA and FIFA can take, is to successfully rely on efficiencies capable of justifying the *ex-ante* control system. Like we saw under §3 (*supra* no. 75-77), it would be demanding for UEFA and FIFA to rely on Article 101(3) TFEU, as there would probably not be any efficiencies, and even if the existence of efficiencies would be accepted, the prior authorization rules would not be indispensable to the attainment of any objectives as they are not proportionate.¹⁵⁴ Despite the fact that the efficiency defences of both provisions are different (Article 101(3) requires a fair share of benefit to flow to the consumer, whereas Article 102 requires that the efficiencies outweigh any negative effects on competition), they both require a balancing of pro- and anti-competitive effects so they pretty much come down to the same thing. In this respect, again, it will be hard for UEFA and FIFA to rely on an efficiency defence as a means to justify their abusive behavior within the scope of Article 102 TFEU.

PART 2: IS THE SUPER LEAGUE A CARTEL?

85. What appealed to me to write this thesis is the legal tension that exists between leagues of the classic sport governing bodies, UEFA (and FIFA), on the one hand, and the new Super League on the other hand. In the first part, we tried to find out if the UEFA and FIFA prior authorization rules impose unjustified and disproportionate restrictions in breach of Article 101 TFEU, and constitute abuse of dominant position under Article 102 TFEU. The tension lies

¹⁵¹ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 49.

¹⁵² Giorgio Monti, 'Sport Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union' (2023) TILEC Discussion Paper 1, 15. In this paper, he refers to: Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para 131.

¹⁵³ Communication from the Commission, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings* COM 2009/C45/02.

¹⁵⁴ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 50.

with me in the following: I think it should be noted that the assessment of these measures taken by UEFA does not change the fundamental principle that any single event must comply with both EU and national competition rules. Sport governing bodies cannot be forced to authorize events that are in breach of competition laws any more than they could be required to authorize an event that would be unsafe. That's where we ask ourselves: is the Super League itself not a cartel?

CHAPTER 1: COMPATIBILITY OF SUPER LEAGUE WITH COMPETITION LAW

§1 Background

86. With the Super League, the founders want to start a football competition of twenty clubs, fifteen of which are permanent participants and five clubs would be able to participate through some form of qualification. Probably they will have to qualify annually by performing well in their national competition.

87. As we evaluate the competition law implications of UEFA's and FIFA's authority to halt the establishment of the Super League, we will also analyze the compatibility of the Super League itself with competition law, particularly considering its closed nature. However, it is not possible to speak of a completely closed league: the Super League plans to pay higher solidarity payments to the national leagues than UEFA and will have several spots for which teams can qualify.¹⁵⁵

§2 Restriction under Article 101 (1) TFEU?

88. Before we answer this legal question, we note that the format of the Super League was merely a draft when it was initially announced and, since the plug has been pulled out, it is probable that it will remain in that draft form. Due to the lack of precise disclosure regarding the participation criteria in the league, the complete knowledge of these rules may remain elusive, thereby rendering our analysis of their compliance with Article 101 TFEU inevitably incomplete. Anyway, the evaluation will be conducted based on the limited information outlined in §1 Background of this chapter (*supra* no. 86-87), forming the basis for our assessment. First, similar to the UEFA assessment, we need to go over the three conditions for an agreement to be declared incompatible with the internal market.

¹⁵⁵ Dwayne Bach, 'The Super League and its related issues under EU Competition Law', (Kluwer Competition Law, 22 April 2021) <<https://competitionlawblog.kluwercompetitionlaw.com/2021/04/22/the-super-league-and-its-related-issues-under-eu-competition-law/>> accessed 9 April 2023.

§2.1 Collusion between undertakings

89. In order for the Super League to be subject to EU competition law, it must involve either multiple undertakings engaging in collusive behavior or an association of undertakings. As we saw in previous case law, it is clear that football clubs engage in economic activity. Hence, they are undertakings within the meaning of Article 101 TFEU and therefore national associations grouping them together are associations of undertakings within the meaning of that same Article.¹⁵⁶

90. Besides, for Article 101 TFEU to apply, the collusive behavior by the undertakings must be in the form of an agreement between undertakings, a decision of an association of undertakings or a concerted practice. The establishment of the Super League by the founding football clubs reflects a shared intention among these clubs regarding their future actions, thereby constituting an agreement.¹⁵⁷ With previous case law in mind, there is no doubt that it is a decision of an association of undertakings. As we saw, the latter is explicitly covered by Article 101 TFEU.

§2.2 Appreciable effect on trade between member states

91. For the same reasons as revealed in part 1 of thesis (*supra* no. 54), the Super League set-up will have an appreciable effect on trade between member states.

§2.3 Object or effect of restricting competition within the internal market

92. We already discussed the definitions of a restriction of competition by object or by effect. To assess whether an agreement has an anti-competitive object, regard must be had to the content, objectives and context of the agreement (*supra* no. 56).

93. Concerning the content of the agreement, the most problematic aspect of the Super League is the semi-closed nature of the league, which means that most participants are permanent members which cannot be relegated.¹⁵⁸ According to AG Rantos, this represents a break with the European Sports Model (*supra* no. 63), and especially with “*the principles of participation based on sporting results, equal opportunities and solidarity upon which the*

¹⁵⁶ Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22, para. 69-71.

¹⁵⁷ Case T-41/96 *Bayer v Commission* [2000] ECR II-03383.

¹⁵⁸ In a fully closed league, all participants are permanent members.

pyramid structure of European football is founded'.¹⁵⁹ Due to the fact that the founding clubs are guaranteed of a starting place and other clubs only can join on invitation only, we could say that the format could be a market-sharing agreement. Let's imagine that in the Super League format, the founding clubs collude to fix prices for various aspects of football, such as ticket prices, merchandise, or broadcasting rights. This collusion effectively eliminates competition between the clubs in terms of pricing, resulting in artificially inflated costs for consumers. This scenario would resemble a market-sharing agreement where the clubs, instead of dividing territories, conspire to control and manipulate prices, similar to how companies agree on prices to eliminate price competition. The Court has held that market-sharing agreements are considered to restrict competition by object.¹⁶⁰

94. On the other hand, one could also argue that it is necessary for a sports league that members (clubs) are obliged to refuse to deal with clubs outside of the league. Otherwise the league would not be a league. Or more in 'competition law terms': an agreement that imposes a system providing product quality which requires participants to deal only with firms whose goods meet the prescribed quality standard is permitted. What's more is that the backers of the Super League clearly wanted to avoid a completely closed league¹⁶¹, knowing there is still a limited amount of non-founding clubs allowed. This findings blur the previous argument about the possible restriction of competition by object. In addition, the very nature of a new European competition is pro-competitive, as it introduces a (first prominent) rival tournament to the Champions League.¹⁶² By establishing the Super League, competition in the market for top-tier European football would increase (and more clubs would be able to participate overall), while also offering fans more choice in deciding which competition to watch.¹⁶³ Moreover, competitive pressure following from the Super League could potentially lead to UEFA and FIFA improving their own product, being the Champions League and possibly the Europa League and Conference League.¹⁶⁴

¹⁵⁹ Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993, para 110.

¹⁶⁰ Richard Whish and David Bailey, *Competition Law* (10th edn, OUP 2021) 133.

¹⁶¹ Robby Houben, Jan Blockx, Steve Nuyts, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205, 210.

¹⁶² 'A football competition with no real competition? How the breakaway Super League could become a widely contested competition law matter' (Osborne Clarke, 21 April 2021) <<https://www.osborneclarke.com/insights/football-competition-no-real-competition-breakaway-super-league-become-widely-contested-competition-law-matter>> accessed 24 May 2023.

¹⁶³ 'Half-time analysis: what's next for the European Super League?' (Osborne Clarke, 22 February 2022) <<https://www.osborneclarke.com/insights/half-time-analysis-whats-next-european-super-league>> accessed 24 May 2023

¹⁶⁴ 'Half-time analysis: what's next for the European Super League?' (Osborne Clarke, 22 February 2022) <<https://www.osborneclarke.com/insights/half-time-analysis-whats-next-european-super-league>> accessed 24 May 2023.

95. With regard to the objectives of the agreement, the Super League press release indicates that the league's goal is to enhance the quality and intensity of football while also generating additional financial resources.¹⁶⁵ In paragraph §2.4 (*infra* no. 102) and §3 (*infra* no. 107), we elaborate on it.

96. Finally, considering the legal and economical context of the agreement, the barriers to entry to the Super League shall not be necessary to ensure that it functions effectively, and may therefore be anticompetitive.¹⁶⁶ Similarly, in the EU Commission's MasterCard decision, the Court viewed the setting of high bank fees to be in violation of EU competition law because these fees were not necessary for credit cards to work effectively and increased consumer prices.¹⁶⁷ Both in the case of the Super League and MasterCard, the key concern is that the restrictions imposed are not justified by any legitimate need or objective. In both instances, these anti-competitive practices can harm consumers, limit competition, and potentially lead to higher prices or reduced access. In a more recent case, Visa was fined for refusal of access to a system without objective justification.¹⁶⁸ The 'only by invitation'-barrier the Super League sets, could be eliminated by an objective justification, but from what we know now, it is clearly not on the basis of sport performance. The lack of criteria on which clubs could get invited to the Super League and the positive discrimination towards the permanent members are a possible anti-competitive combination. Apart from this case law, the European Model of Sport and the accompanying one-federation-per sport principle create additional entry barriers.

97. All thing considered, it is questionable whether the Super League restricts competition by object. Therefore, it is necessary to assess whether the agreement gives rise to likely restricted effects on competition.

98. To assess whether an agreement is anti-competitive by effect, we refer to Part 1 (*supra* no. 58). Applying this to the Super League, the already dominant permanent participants are assured of a high income. Their market power will only be strengthened by the accompanying TV-rights income for the fifteen clubs that will qualify regardless of their sporting

¹⁶⁵ European Super League Company S.L., 'The Super League', < <https://thesuperleague.com/press.html> > accessed 15 May 2023.

¹⁶⁶ Dwayne Bach, 'The Super League and its related issues under EU Competition Law', (Kluwer Competition Law, 22 April 2021) <<https://competitionlawblog.kluwercompetitionlaw.com/2021/04/22/the-super-league-and-its-related-issues-under-eu-competition-law/>> accessed 9 April 2023.

¹⁶⁷ *MasterCard* (COMP 34.579) Commission Decision 19/XII/2007 [2007] OJ C 264.

¹⁶⁸ Case T-461/07 *Visa Europe v Commission* [2011] ECLI:EU:T:2011:181, para. 161-191.

performance.¹⁶⁹ That financial advantage will translate into better performance and that income guarantee will enable them to invest heavily in their team every year. For example, Tottenham Hotspur and Arsenal FC were supposed to participate in the Super League. In recent years¹⁷⁰, Leicester City often reached a better place in the final standings than Tottenham Hotspur and Arsenal FC and even won the championship in the 2015-2016 season. However, according to reports¹⁷¹, the two latter shall receive over 200 million euros, which is far more than the UEFA Champions League winner receives in total.¹⁷² Over the coming years, a substantial increase in payments is expected to be allocated to the Super League clubs, presenting them with the opportunity to invest this substantial sums into enhancing their squads. Consequently, the likelihood of Leicester City, unlike the Super League clubs, competing for the championship title in their domestic league in the future is expected to diminish. Automatically, Leicester receives less money domestically. In time, all of this will strengthen their top position and may adversely affect competition with non-participating teams in the national league. In the long term, the gap between the breakaway clubs and the other clubs will become even wider. In this context, a number of authors have pointed to the fact that a closed league with no possibility for ‘new’ clubs to enter is contrary to EU competition law.¹⁷³ The bottom line is that the permanent members have the potential to add market power and further restrict competition in the long term. It can be concluded that the Super League restricts competition by effect.

99. Even if the Super League breach of Article 101 TFEU were to proceed on the basis of these findings, the decisions of the Super League could possibly benefit from the justification laid down in *Meca Medina* or be inherent and proportionate to legitimate objectives, and therefore fall outside of the prohibition contained in that Article.

¹⁶⁹ Andreas Stephan, ‘Do plans for a European Super League breach competition law?’ (*Competition Policy Blog*, 20 April 2021) < <https://competitionpolicy.wordpress.com/2021/04/20/do-plans-for-a-european-super-league-breach-competition-law/>> accessed 24th May.

¹⁷⁰ In season 2019-2020, Leicester City finished 5th in the standings, Tottenham 6th, Arsenal 8th. In season 2020-21, Leicester City finished 5th in the standings, Tottenham 7th, Arsenal 8th.

¹⁷¹ Murad Ahmed and Arash Massoudi, ‘Super League clubs net €200-€300m ‘welcome bonus’’ *Financial Times* (London, 19 April 2021) < <https://www.ft.com/content/f00bb232-a150-4f7d-b26a-e1b62cd175c3>> accessed 22 May 2023.

¹⁷² Mike Ozanian, ‘European Super League will make soccer’s most valuable teams and their owners richer’ *Forbes* (New York, 19 April 2021) < <https://www.forbes.com/sites/mikeozanian/2021/04/19/super-league-will-make-soccers-most-valuable-teams-and-their-owners-richer/?sh=259f6ea965e1>> accessed 22 May 2023.

¹⁷³ Katarina Pijetlovic, *EU sports law and breakaway leagues in football* (T.M.C. Asser Press 2015) 304-305; Richard Parrish and Samuli Miettinen, *The Sporting Exception in European Union Law* (Asser Press 2008) 213.

§2.4 Legitimate objectives – inherency and proportionality

100. If we apply the methodological framework (*supra* no. 20) of Meca Medina (both the UEFA and FIFA rules and the Super League set-up operate within the realm of sports, thereby sharing a similar context), we could say that first of all it has the potential to hinder, distort, or restrict competition within the internal market. The closed character of the league and uncertainty about the qualification criteria are the negative effects on competition that lead to that conclusion. Nevertheless, the question remains: are there legitimate objectives that could underpin the Super League's set up? To answer that question, it is necessary to take into account the specific characteristics of sports in general and of its social and education function¹⁷⁴, as the Court also emphasized in ISU.¹⁷⁵

101. One of these specific characteristics of the Super League that derives from the press release, is to ensure financial viability of the Super League. The creation of a league requires certain financial commitments from some clubs, which they would not be willing to take on if they could not expect a certain return on their investment, and that this return is ensured through their participation in the league.¹⁷⁶ The argument that financial viability justifies the closed structure of the Super League is not sufficient in my opinion, as it prioritizes financial gains over the wider interest and values of the sport. Another characteristic of a sports league such as the Super League is the limitations of the number of participating teams. However, that does not say anything yet about which teams are selected or how they are selected.¹⁷⁷ In other words, without more explanation about the qualification criteria, it remains a thorny issue.

102. What also counts is what we briefly touched on in paragraph §2.3 of this chapter (*supra* no. 95): the aim to enhance the quality and intensity of football, while also establishing a consistent platform for top clubs and players to engage in regular competition. Just as it can serve as a legitimate aim to justify UEFA/FIFA's prior authorization system for breakaway leagues, the organization and proper conduct of sports can, albeit in a different way, justify the negative effects on competition. On the contrary, the creation of a format for top clubs and players inevitably also entails that it is organized in a way to generate as much revenue as

¹⁷⁴ Fleur Louise Westenend, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022) 53.

¹⁷⁵ Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610, para. 79.

¹⁷⁶ Robby Houben, Jan Blockx, Steve Nuyts, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205, 212.

¹⁷⁷ Robby Houben, Jan Blockx, Steve Nuyts, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205, 212.

possible by making the best possible product with only the top teams and thus attracting most of the consumers. This does not relate to the social and educational function of sport.

103. For the exception of Meca Medina to apply, the restriction of competition must also be inherent in the pursuit of the legitimate objectives.¹⁷⁸ When it comes to securing the financial viability of the Super League, it is difficult to justify the notion that restriction of competition would be inherent in the pursuit of that legitimate objective.¹⁷⁹ There are numerous alternative approaches that could be considered to ensure that the permanent members/teams attain a return on their investment, without relying on a predominantly closed league where the permanent members are immune to relegation. At the very least, the guaranteed participation of certain clubs could be limited in time to offer the clubs a certain but not unlimited return on their investment.¹⁸⁰ In case of relegation, it would be an option to allow the clubs to withdraw a part of their investment. In the same sense, it could be interesting that all founding teams, even if some of them get relegated, would still receive broadcasting revenues, based on the example of ‘parachute payments’ in the Premier League.¹⁸¹ Parachute payments are financial compensations (usually annual payments over a set period, typically three seasons) provided to clubs that have been relegated from the Premier League to the lower divisions, specifically the EFL Championship. Under these conditions the aim would be to strike a balance between promoting competition and financial viability, while also ensuring fair competition for all participating teams. As for the limitations of number of teams, the question remains not how many, but how participants will be selected. If the Super League ever takes place, the qualifying criteria will have to be specified.

104. Concerning the organization and proper conduct of sports, the inherency is doubtful. Even if maximizing the number of matches between top European clubs is a legitimate objective, it could also be established in other ways, with less restrictive measures. Besides, it would be hard to argue that the restrictions of competition that the predominantly closed and non-relegating league brings are proportionate to the organization and proper conduct of sports.

¹⁷⁸ Fleur Louise Westenend, ‘The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?’, (Master thesis, Lund University 2022) 54.

¹⁷⁹ Fleur Louise Westenend, ‘The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?’, (Master thesis, Lund University 2022) 54.

¹⁸⁰ Robby Houben, Jan Blockx, Steve Nuyts, ‘UEFA and the Super League: who is calling who a cartel?’ (2022) 22 *The International Sports Law Journal* 205, 214.

¹⁸¹ Robby Houben, Jan Blockx, Steve Nuyts, ‘UEFA and the Super League: who is calling who a cartel?’ (2022) 22 *The International Sports Law Journal* 205, 214.

Also according to doctrine, a breakaway league will be less able to rely on the Meca Medina-test and sporting objectives, such as the organization and proper conduct of sports.¹⁸²

105. We can conclude that the Super League set-up is essentially not inherent and proportionate to achieve the discussed legitimate objectives.

§3 Exception under Article 101 (3) TFEU?

106. Even if there are no legitimate objectives that might exempt the Super League set-up from Article 101 TFEU, these legal construct could in principle still be justified by the fulfilment of the four conditions set by Article 101(3) TFEU (*supra* no. 75-76).

107. The first two conditions pose no problem to meet. A number of efficiency gains may be put forward within the framework of Article 101(3) TFEU, such as offering a new attractive ‘football product’, innovation in sport and attracting additional financial resources.¹⁸³ The formation of the Super League leads to an increase in revenue, enabling the founding clubs to make substantial investments in their squads. As a result, the league brings about a notable enhancement in quality of matches. Due to the high quality of matches, the league would potentially attract more spectators, as well as investments of broadcasting and sponsors agencies, which could lead to an increased turnover for these consumers.

108. In order to fall fully within the third and fourth condition of Article 101(3) TFEU, it will have to be demonstrated that a residual competition remains and that the restrictions imposed are indispensable, which therefore also entails a proportionality test.¹⁸⁴ As highlighted in §3 of this chapter, the semi-closed nature of the league and the exclusion from relegation for founding clubs cannot be considered proportionate, and therefore not indispensable to the achievement of the benefits.¹⁸⁵ If the predominantly closed model is not necessary for its financial viability, it can also not be indispensable to the creation of the new product which consumer would enjoy.¹⁸⁶ Also with regard to the ‘residual competition remains’ condition, we have to repeat ourselves. Like we discussed in §2.3 of this chapter (*supra* no. 98), the gap between the

¹⁸² An Vermeersch, ‘De impact van de ISU-zaak. Het Europees mededingingsrecht als kader en scheidsrechter in het conflict rond de European Super League?’ (2021) Voetbal- & Sportjuridische Zaken 3, 8.

¹⁸³ An Vermeersch, ‘De impact van de ISU-zaak. Het Europees mededingingsrecht als kader en scheidsrechter in het conflict rond de European Super League?’ (2021) Voetbal- & Sportjuridische Zaken 3, 8.

¹⁸⁴ An Vermeersch, ‘De impact van de ISU-zaak. Het Europees mededingingsrecht als kader en scheidsrechter in het conflict rond de European Super League?’ (2021) Voetbal- & Sportjuridische Zaken 3, 8.

¹⁸⁵ Fleur Louise Westenend, ‘The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?’, (Master thesis, Lund University 2022) 56.

¹⁸⁶ Katarina Pijetlovic, *EU sports law and breakaway leagues in football* (T.M.C. Asser Press 2015) 155.

breakaway clubs and the other clubs will widen in the long run due to extra investment possibilities in their own squad. This is likely to adversely impact the competitive landscape of the market. That could lead to the fact that no residual competition remains. In other words, the Super League set-up could eliminate competition.

109. Since the third and fourth condition will likely not be met, we can conclude the Super League set-up will probably not allow a justification on the basis of Article 101(3) TFEU.

CONCLUSION AND RECOMMENDATIONS

110. This thesis tried to answer the research question whether the prior authorization rules by UEFA and FIFA lead to anti-competitive business practices, and whether the Super League's own set-up is compliant with Article 101 TFEU. From the first part, we can conclude that the prior authorization rules indeed infringe Article 101 and/or 102 TFEU. Secondly, we saw that the Super League set-up itself violates Article 101 TFEU as well.

111. The ISU case has once again confirmed that European competition law is an important framework that the sports sector must take into account. Federations such as UEFA and FIFA have the power and responsibility to organize and regulate football, while respecting European law, in particular competition law. However, we discovered that an article (Article 49.3 of UEFA Statutes) that expresses this power to authorize other leagues does not respect European competition law enough: UEFA's (and FIFA's) power to authorize is namely not subject to restrictions, obligations, and review. Besides, an *ex-ante* control system for competitions and competitions organized by other organizers is possible, if objective, transparent, non-discriminatory, and verifiable criteria are provided and if any sanctions are proportionate, mindful of the ISU judgment. These findings allow us to say that the rules are disproportionate. Consequently, UEFA's and FIFA's prior authorization rules amount to a restriction of competition by object under Article 101(1) and abuse of a dominant position under Article 102 TFEU. Also the current set-up of the Super League does not stand up to antitrust scrutiny. The establishment of a breakaway league would likely impede competition by effect, resulting in an infringement of Article 101 TFEU. Such a league would enable the founding clubs to augment their market power, thereby limiting competition in the relevant market.

112. As also indicated, there are possibilities within competition law to fall outside the prohibition of Article 101(1) TFEU. For instance, UEFA can rely on a number of sporting objectives. However, due to the disproportionate *ex-ante* control mechanism, the rules cannot benefit from any objective justifications or efficiency defences under both Article 101 and 102 TFEU. Obviously, a breakaway league can also use efficiency and related arguments. As for the Super League set-up, although its semi-closed model seems to pursue legitimate objectives of general interest, it is probably not inherent in the pursuit of these objectives nor proportionate to them. What arguably distinguishes it from the inherent and proportionate need to have restrictive practices in sports, is the extent to which it guarantees commercial success for those clubs regardless of how well they actually play football.¹⁸⁷ In the end, for both the prior authorization rules and the Super League set-up, compatibility with competition law ultimately comes down to a proportionality test, the outcome of which cannot be predicted with certainty.

113. It remains to be seen how the Court will rule after it received a request for a preliminary ruling from a Madrid Commercial Court the European Super League Company took its *ESL* case to. The case law from the CJEU may perhaps not provide a ready-made solution to the questions referred by the Madrid Commercial Court, but it is nevertheless very instructive.¹⁸⁸ In essence, the *ESL* case does not differ very much from *MOTOE* and *ISU*. It is uncertain whether the Court will base its judgment upon Article 101 or rather Article 102 TFEU.¹⁸⁹ Arguably, this should not matter very much.¹⁹⁰ If the Court were to adopt the reasoning presented in this thesis, it would likely be compelled to rule against the prior authorization rules implemented by UEFA and FIFA. By doing so, it would essentially have no alternative but to condemn these rules. Unfortunately, the Madrid court's questions do not cover the legality of the proposed Super League format, so we may not receive additional information on that matter through this legal process. Nevertheless we can conclude the following: even if the UEFA rules were deemed to be illegal, it does not automatically grant permission to the Super League, as it too exhibits anti-competitive characteristics. While we assessed that the *ex-ante* control system restricts competition by object, we similarly assessed that the Super League set-up restricts

¹⁸⁷ Andreas Stephan, 'Do plans for a European Super League breach competition law?' (*Competition Policy Blog*, 20 April 2021) < <https://competitionpolicy.wordpress.com/2021/04/20/do-plans-for-a-european-super-league-breach-competition-law/> > accessed 24th May.

¹⁸⁸ Stefaan van den Bogaert, 'The rise and fall of the European Super League: A case for better governance in sport' (2022) 59 *Common Market Law Review* 25, 35.

¹⁸⁹ Ibanez Colomo, "Competition Law and Sports Governance: Disentangling a Complex Relationship" (2022) 45 *World Competition* 323, 324.

¹⁹⁰ Stefaan van den Bogaert, 'The rise and fall of the European Super League: A case for better governance in sport' (2022) 59 *Common Market Law Review* 25, 35.

competition by effect. Although the model of the league seemingly aims to achieve legitimate objectives, it lacks inherent necessity and proportionality in pursuit of these objectives.

114. Ideally, the ESL judgment presents an opportunity for collaborative efforts between clubs, politicians, and a proactive European Commission to devise and execute a new framework for European professional football, fostering progressive reform. Unfortunately, the Commission has already taken a cautious stance in this case and indicated that disputes concerning the ‘governance’ or the organization of sport and the mutual relationship between the actors involved are best dealt with by the competent arbitration bodies and the national court.¹⁹¹ Since football leagues regularly come into contact with competition policy, because they introduce all kinds of rules that would undoubtedly lead to an infringement of competition law in other sectors, it seems however desirable to me that the Commission takes a proactive role herein. The Commission should therefore in the future monitor much more strictly the regulations that UEFA and the national federations implement in their competitions. The Commission should draw up a detailed framework within which sports regulation is compatible with European competition policy. It has already been argued that this case might lead to a reconsideration of the current role of the EU in the sports, possibly awarding the EU a greater role in sports than so far has been the case.¹⁹² Thus, the Commission becomes the independent regulator that the football industry lacks.

115. A new framework in European professional football could also mean that a Super League format will still be accepted if it is in line with that framework. A open-minded league, receptive to domestic leagues and smaller clubs seems to me have the best chance of passing the competition test. Such a league, aligned with the European model of sport, would arguably take away many of the objections against the initial semi-closed set up of the Super League brought forward by the AG in his opinion of 15 December 2022.¹⁹³ In fact, in February 2023, the European Super League Company presented a new-look, open Super League which could contain up to 80 teams in a multi-divisional format.¹⁹⁴ UEFA, the ball’s in your court!

¹⁹¹ An Vermeersch, ‘De impact van de ISU-zaak. Het Europees mededingingsrecht als kader en scheidsrechter in het conflict rond de European Super League?’ (2021) *Voetbal- & Sportjuridische Zaken* 3, 8.

¹⁹² Stephen Weatherill, ‘EU Law Analysis: Never let a good fiasco go to waste: why and how the governance of European football should be reformed after the demise of the ‘Super League’ (EU Law Analysis 21 April 2021) <<http://eulawanalysis.blogspot.com/2021/04/never-let-good-fiasco-go-to-waste-why.html>> accessed 28th May 2023.

¹⁹³ Robby Houben, ‘Super League vs. UEFA: Why UEFA should lose?’ (2023) 1 *SpoPrax* 9, 13.

¹⁹⁴ Bill Connelly, ‘What would the new Super League proposal look like? Could it save football as its supporters suggest?’ (ESPN 21 February 2023) <https://www.espn.com/soccer/story/_/id/37636528/what-new-super-league-proposal-look-like> accessed 27 May 2023.

BIBLIOGRAPHY

Books

Halgreen L, *European Sports Law* (Karnov Group Denmark 2013)

Jones A and Sufrin B, *EU competition law: text, cases, and materials*, (5th edn, Oxford University Press 2013)

Jones A, Sufrin B and Dunne N, *Jones & Sufrin's EU competition law: text, cases and materials* (7th edn, OUP 2019)

Parrish R and Miettinen S, *The Sporting Exception in European Union Law* (Asser Press 2008)

Pijetlovic K, *EU sports law and breakaway leagues in football* (T.M.C. Asser Press 2015)

Siekmann R, *Introduction to the international and European sports law – Capita Selecta* (T.M.C. Asser Press 2012)

Sloane P, "The European Model of Sport" in Wladimir Andreff and Stefan Szymanski (eds), *Handbook on the Economics of Sport* (Edward Elgar 2006)

Weatherill S, 'Is the Pyramid Compatible with EC Law?', in *European Sports Law: Collected Papers* (2nd edn, Asser Press 2014)

Whish R and Bailey D, *Competition Law* (10th edn, OUP 2018)

Whish R and Bailey D, *Competition Law* (10th edn, OUP 2021)

Cases

Court of Justice of the European Union

Case 36/74 *Walrave & Koch v Association Union Cycliste Internationale* [1974] ECR 1405

Case 27/76 *United Brands v Commission* [1978] ECR 207

Case C-322/81 *Michelin I* [1983] ECR 03461

Case T-83/91 *Tetra Pak v Commission* [1994] ECR II-00755

Case C-415/93, *Union des Associations Européennes de Football (UEFA) and others v Jean-Marc Bosman* [1995] ECR I-04921

Case C-309/99 *Wouters and Others* [2002] ECR I-01577

Case C-519/04 *P David Meca-Medina and Igor Majcen v Commission* [2006] ECR I-6991

Case C-49/07 *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio* [2008] ECR I-04863

Case C-209/07, *Competition Authority v. Beef Industry Development Society Ltd and Barry Brothers (Carrigmore) Meals Ltd (BIDS)* [2008] ECR I-8637

Case C-1/12 *Ordem dos Técnicos Oficiais de Contas* [2013] EU:C:2013:127

Case C-124/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:988

Case C-333/21 *Opinion AG Rantos* [2022] ECLI:EU:C:2022:993

General Court

Case T-41/96 *Bayer v Commission* [2000] ECR II-03383

Case T-193/02 *Piau v Commission* [2005] ECLI:EU:T:2005:22

Case T-461/07 *Visa Europe v Commission* [2011] ECLI:EU:T:2011:181

Case T-93/18 *International Skating Union v Commission* [2020] ECLI:EU:T:2020:610

National courts

Autorité belge de la Concurrence (Belgian Competition Authority) [2015] Décision n° ABC-2015-V/M-23

<https://www.belgiancompetition.be/sites/default/files/content/download/files/2015vm23-abc-pub.pdf>

Cour d'appel Bruxelles, [2015] Case no 2015/MR/1,

https://www.mededinging.be/sites/default/files/content/download/files/20151022_cab_hvbb_2015mr1_fei.pdf

Commission Decisions, Notices, Working Papers, Guidelines, Rapports and Communications

Commission, *Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty* COM 2004/C 101/08

Commission, *White Paper on Sport* COM (2007) 391, 11 July 2007

MasterCard (COMP 34.579) Commission Decision 19/XII/2007 [2007] OJ C 264

Communication from the Commission, *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings* COM 2009/C45/02

International Skating Union's Eligibility Rules under 101 TFEU (Case AT.40208)
Commission Decision 2018/C148/06 [2018] OJ L148/9

Journal articles

Colomo I, "Competition Law and Sports Governance: Disentangling a Complex Relationship" (2022) 45 *World Competition* 323

Cseres K, 'The Controversies of the Consumer Welfare Standard' (2007) 2 *The Competition Law Review* 156

Houben R, Blockx J, Nuyts S, 'UEFA and the Super League: who is calling who a cartel?' (2022) 22 *The International Sports Law Journal* 205

Houben R, 'Super League vs. UEFA: Why UEFA should lose?' (2023) 1 *SpoPrax* 9

Keane B and Foster B, 'Survey on Competition Policy Developments in the Sports Sector 2018-2021' (2021) 12 *Journal of European Competition Law & Practice* 655

Van den Bogaert S, 'The rise and fall of the European Super League: A case for better governance in sport' (2022) 59 *Common Market Law Review* 25

Vermeersch A, "Case C-49/07, *Motosykletistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio*, judgement of 1 July 2008, nyr (2009) 46 (4) *Common Market Law Review* 1327

Vermeersch A, 'De impact van de ISU-zaak. Het Europees mededingingsrecht als kader en scheidsrechter in het conflict rond de European Super League?' (2021) *Voetbal- & Sportjuridische Zaken* 3

Papers

Monti G, 'Sport Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union' (2023) *TILEC Discussion Paper* 1

Schweitzer H, 'Competition Law and Public Policy: Reconsidering an Uneasy Relationship. The Example of Art. 81', (2007) 30 *EUI Working Papers Law* 1

Websites

European Super League Company S.L., 'The Super League', <<https://thesuperleague.com/press.html>> accessed 15 May 2023

Fisher O, 'Milan and Inter were set to get less than Juve from Super League as contract details emerge' (Sempere Milan, 23 April 2021) <<https://sempremilan.com/der-spiegel-milan-and-inter-were-set-to-get-less-than-juve-from-super-league-as-contract-details-emerge>> accessed 9 April 2023

Haffner A and Mistry K, 'The Law On Banning Athletes From Competing In Rival Sports Leagues' (Law in Sport, 5 October 2016) <https://www.lawinsport.com/topics/competition-law/item/the-law-on-banning-athletes-from-competing-in-rival-sports-leagues?category_id=125> accessed 10 April

Hurst L, 'Why is the football world up in arms over the European Super League plans?', (Euronews, 20 April 2021) <<https://www.euronews.com/my-europe/2021/04/20/football-vs-greed-what-is-behind-the-outrage-over-the-european-super-league>> accessed 15 May 2023
'ISU believes that the European Commission's antitrust allegations are unfounded', (ISU Press Release, 27 September 2016) <<https://www.isu.org/media-centre/press-releases/2016/2076-press-release-ec-antitrust2/file>> accessed 3 April 2023

Pope C, 'European Super League: Is it just a bluff to get more out of the Champions League?' (FourFourTwo, 18 April 2021) <<https://www.fourfourtwo.com/features/european-super-league-teams-champions-league-reforms-arsenal-man-utd-city-liverpool-tottenham-chelsea>> accessed 11 April 2023

Saleh T, 'Canal Plus snaps up rights to UEFA club competitions in France for 2024-27 cycle' (Sportcal 30 June 2022) <<https://www.sportcal.com/news/media/canal-plus-snaps-up-rights-to-uefa-club-competitions-in-france-for-2024-27-cycle/>> accessed 7 April 2023

Saleh T, 'UEFA adds Turkish Airlines as Champions League sponsor, fines clubs for FFP breaches' (Sportcal 5 September 2022) <<https://www.sportcal.com/sponsorship/uefa-adds-turkish-airlines-as-champions-league-sponsor-fines-clubs-for-ffp-breaches/>> accessed 7 April 2023

Statement by UEFA, the English Football Association, the Premier League, the Royal Spanish Football Federation (RFEF), LaLiga, the Italian Football Federation (FIGC) and Lega Serie A (UEFA, 18 April 2021)
<<https://www.uefa.com/insideuefa/mediaservices/mediareleases/news/0268-12121411400e-7897186e699a-1000--joint-statement-on-super-league/>> accessed 27 March 2023

'The case at the Court of Justice of the European Union' (A22 Sports Management, 2022) <<https://a22sports.com/en/the-case-at-the-court-of-justice-of-the-european-union/>> accessed 15 May 2023

Walker A and Wickham A, 'European politicians slam breakaway football 'super league' plan, (Politico, 18 April 2021) <<https://www.politico.eu/article/emmanuel-macron-european-super-league-football/>> accessed 15 May 2023

Newspaper articles

Ahmed M and Massoudi A, 'Super League clubs net €200-€300m 'welcome bonus'' *Financial Times* (London, 19 April 2021) < <https://www.ft.com/content/f00bb232-a150-4f7d-b26a-e1b62cd175c3>> accessed 22 May 2023

Ng K, 'Football club shares leap as JP Morgan to inject £4.3bn into new European Super League' *The Independent* (London, 19 April 2021) < <https://www.independent.co.uk/news/business/european-super-league-jp-morgan-b1833783.html>> accessed 9 April 2023

Ozanian M, 'European Super League will make soccer's most valuable teams and their owners richer' *Forbes* (New York, 19 April 2021) < <https://www.forbes.com/sites/mikeozanian/2021/04/19/super-league-will-make-soccers-most-valuable-teams-and-their-owners-richer/?sh=259feca965e1>> accessed 22 May 2023

Blogs

'A football competition with no real competition? How the breakaway Super League could become a widely contested competition law matter' (Osborne Clarke, 21 April 2021) < <https://www.osborneclarke.com/insights/football-competition-no-real-competition-breakaway-super-league-become-widely-contested-competition-law-matter>> accessed 24 May 2023

Bach D, 'The Super League and its related issues under EU Competition Law', (Kluwer Competition Law, 22 April 2021) < <https://competitionlawblog.kluwercompetitionlaw.com/2021/04/22/the-super-league-and-its-related-issues-under-eu-competition-law/>> accessed 9 April 2023

'Half-time analysis: what's next for the European Super League?' (Osborne Clarke, 22 February 2022) < <https://www.osborneclarke.com/insights/half-time-analysis-whats-next-european-super-league>> accessed 24 May 2023

Slater D and others, 'EU General Court issues judgment in International Skating Union case' (2021) 1(8) < www.ashurst.com/-/media/ashurst/documents/news-and-insights/legal-updates/2021/feb/competition-law-newsletter-february-2021.pdf> accessed 12 April 2023

Stephan A, 'Do plans for a European Super League breach competition law?' (*Competition Policy Blog*, 20 April 2021) < <https://competitionpolicy.wordpress.com/2021/04/20/do-plans-for-a-european-super-league-breach-competition-law/>> accessed 24th May

Verdonk T, 'The Clash of the Titans: The Compatibility of the Super League and UEFA's Response with EU Competition Law' (CCM Ku Leuven, 21 april 2021) < <https://law.kuleuven.be/ccm/blog/?p=12>> accessed 12 April 2023

Weatherill S, 'EU Law Analysis: Never let a good fiasco go to waste: why and how the governance of European football should be reformed after the demise of the 'Super League' (EU Law Analysis 21 April 2021) <<http://eulawanalysis.blogspot.com/2021/04/never-let-good-fiasco-go-to-waste-why.html>> accessed 28th May 2023

Legislation

Art. 101 and art. 102, Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/88

Art. 165 (2), Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/120

Article 263 TFEU, Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/162

Article 267, Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/164

Theses

Cattaneo A, 'The application of EU competition law to sport', (Master thesis, Edge Hill University 2017)

De Schryver L, 'Private enforcement of competition law in the UK and Belgium', (Master thesis, KU Leuven 2013)

Westenend FL, 'The FIFA and UEFA prior authorisation rules and the European Super League in light of competition law: a red card?', (Master thesis, Lund University 2022)

Other documents

'Rules of Procedure of the UEFA Congress: Regulations governing the Implementation of the UEFA Statutes' (UEFA Statutes 18 June 2020) <https://documents.uefa.com/v/u/_CJ2HRiZAu~Wo6ytlRy1~g> accessed 6 April 2023

Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the key features of a European Sport Model [2021] OJ C501/01

'Regulations governing the application of the statutes: standing orders of the congress', (FIFA Statutes May 2022) <https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf> accessed 7 April 2023