

# Kluwer Competition Law Blog

## The Super League and its related issues under EU Competition Law

Dwayne Bach (Universität Düsseldorf) · Thursday, April 22nd, 2021

The [Super League](#) (SL) might have had the lifespan of a fly, the legal questions it raised will linger on. These legal issues are of particular importance for other sports, considering that comparable questions have been raised in European American football and basketball. Therefore, the legal issues associated with the SL have the potential to shape the world of sports law for many years to come.

### **Bans announced by the governing bodies – banned by competition law?**

UEFA and other national federations issued a [joint statement](#), saying that they will remain united in efforts to stop the SL. “The clubs concerned will be banned from playing in any other competition at domestic, European or world level, and their players could be denied the opportunity to represent their national teams.” Immediately, this announcement raised questions about its compliance with EU competition law.

While the extent to which sport is subject to EU law was previously still quite controversial, the ECJ has [clarified](#) that EU law applies in any case to sporting constellations regarding economic activities. All the above-mentioned measures are economically related, as the income of players and clubs would be affected by the bans. Therefore, they are under EU law scrutiny.

Implementing the aforementioned measures would constitute a restrictive agreement between undertakings. However, not every restriction violates Art. 101 TFEU.

The federations’ measures would not constitute a violation of Art. 101 TFEU, if they [pursue](#) a legitimate objective, are inherent to these objectives, necessary and proportionate. UEFA and other federations argue that they intend to preserve the principles of open competitions and sporting merit. Furthermore, the EGC 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. Courts may also take the [specific nature of the sports](#) into account, because “it is necessary to ensure that sporting competitions comply with common standards, seeking, in particular, to ensure that competitions take place fairly and the physical and ethical integrity of sportspeople is protected.”

Even if there are legitimate objectives from the federations’ perspective, it is questionable, if one

looks at the court decisions that have been issued, whether these are sufficient to justify the restriction of competition.

The ruling most commonly mentioned in regard to the SL is the [ISU decision](#) of the EGC. In this case, the Court dealt with a regulation that prohibited ISU affiliated athletes to take part in competitions not authorised by the ISU and that contained penalties up to lifetime bans in case of a violation. These sanctions were classified as disproportionate. Moreover, they hinder the development of alternative and innovative speed skating competitions.

However, it should not be underestimated that this decision is based on the fact that there are very limited opportunities for professional ice-skaters to earn money with their sport. Therefore, these athletes depend on participating in economically profitable competitions, „in order to make their living“. Hence, a limited ban on football players (either limited in time or only to specific competitions) is a clear difference to the situation of a professional ice-skater.

Furthermore, the possibility of a lifetime ban was one key factor to classify the regulation as disproportionate. If a federation does not plan to introduce such a sanction, then the case would have to be considered in a more differentiated manner. Nevertheless, the ISU ruling could at least indicate how a court would rule in the future. Measures that prevent players from participating in competitions must therefore be subject to a strict proportionality test. To extend the ruling to clubs seems far-fetched since it was exclusively related to the participation of athletes, who are in an entirely different economic situation than football clubs.

Still, the aforementioned measures can constitute an abuse of UEFA's dominant position within the meaning of Art. 102 TFEU. In this regard, a decision issued by the Regional Court of Munich can be addressed. The Court [criticised](#) FIBA's rule that, in the case of participation in a competition not organised by FIBA, the respective athlete could be excluded from the national team and considered this practice as an abuse of FIBA's dominant position. In addition, a [ruling](#) (under appeal) by the Regional Court in Frankfurt illustrates, that if federations completely renounce criteria of a selection based on sporting performance in regard to their registration decisions for international tournaments, then an unjustified abuse of a dominant market position has to be assumed. Consequently, the ban of players may well be in violation of competition law, depending on the specific aim and wording of the regulation. Moreover, a violation of the freedom of movement of workers (Art. 45 TFEU) would also be imaginable.

Lastly, the relevance of the “[One Sport, One Federation](#)“ principle must be discussed. A certain sport is primarily governed and regulated as a whole under one governing federation structure, which flows down from international, to continental and national level e.g. FIFA, UEFA, The FA. Generally, a federation has the exclusive right to organise official competitions for a certain sport within the respective jurisdiction. The extent to which this principle gives the federations broad authority to organise a specific sport and the extent to which this is at all legally justifiable is highly controversial. However, [arbitration rulings](#) and the aforementioned court decisions show that this principle is rather not sufficient to regulate breakaway leagues such as the SL.

### **The Super League as a cartel?**

The league's [agreement](#) with its founding members constitutes that these members will not be relegated and therefore, would earn hundreds of millions every year with no sporting risk. This has

the potential to strongly influence the competitive balance in the national leagues and in European football in general.

Take the Italian football league as an example. Juventus F.C., A.C. Milan and Inter Milan are supposed to participate in the SL. In recent years, Atalanta B.C. often reached a better place in the final table than A.C. Milan and even played for the championship title last year. However, [according to reports](#), the three Italian participants in the SL shall receive over EUR 200 million, which is far more than the Champions League winner [receives](#) in total. In the next few years, more millions in payments would be distributed to the SL clubs. Unlike other teams such as Atalanta B.C., the SL clubs can invest this money to improve their squads. Therefore, it is foreseeable that the chances of Atalanta B.C. to play for the championship title in the future will decrease. Thus, the permanent members of the SL have the potential to add market power and further restrict competition in the long term.

The Champions League, by the way, certainly has a very similar problem, since every year quite similar teams participate. At least, there are no formally fixed participants in the Champions League and the competition is open to every team based on sporting merit.

After all, the SL plans to pay higher solidarity levies to the national leagues than UEFA and will have several spots for which teams can qualify. Therefore, it is not possible to speak of a completely closed league.

In addition, the EU Commission's [MasterCard decision](#) has been [considered](#) as a precedent. 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. Similarly, the barriers to entry to the SL shall not be necessary to ensure that it functions effectively, and may therefore be anticompetitive.

## Conclusion

To sum up, it will be up to the competition authorities and courts to decide how the measures are to be assessed. At least with regard to player bans, it can be argued that these are more likely to be in violation of competition law, although this also depends on the individual case.

The EU Commission, however, has [announced](#) that it intends to stay out of this topic. Nevertheless, the first judgement in regard to the SL has already been delivered. In a [preliminary ruling](#) issued on April 20, a commercial court in Madrid found that the planned measures by the federations violate EU competition law.

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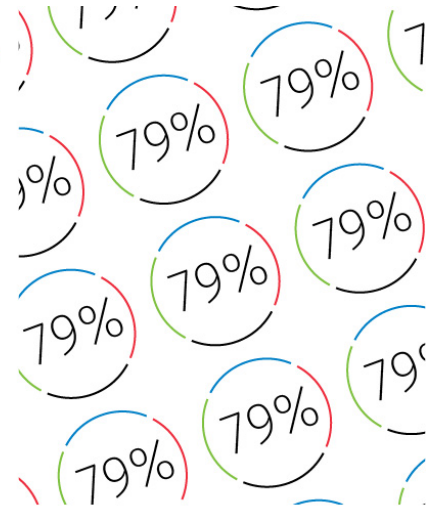
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