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Soccer and EU competition law: The “Super-League” judgment

Sport has always played a key role in international relations. Article 165 of the Treaty on the Functioning of the European Union (TFEU) specifies that the European Union contributes to developing the European dimension in sport. However, the Court of Justice of the European Union (CJEU) has recalled in the past that sport must not hinder the application of the competition rules set forth in Article 101 (cartels and other agreements that disrupt free competition) and Article 102 (abuse of dominant position) of the TFEU[1].

The three judgments issued by the CJEU on December 21, 2023 have generated as much discussion as the “Bosman” judgment in 1995[2] which prohibited the imposition of quotas on foreign players in European soccer.

This article discusses the most notable of the three judgments, i.e., the so-called “Super League” judgment[3].

The *Fédération Internationale de Football Association* (FIFA) and the *Union of European Football Associations* (UEFA) have each a set of rules making the creation of international competitions conditional on a prior approval concerning the clubs affiliated to a national federation.

European Superleague Company SL is a Spanish company grouping together several European soccer clubs and wishing to set up a new international professional soccer competition known as the “Super League”.

Following the announcement of the creation of the Super League on January 21, 2021, FIFA and UEFA not only expressed their refusal to recognize this new competition but also warned that disciplinary measures could be taken against any football club or player taking part to it (including exclusion from competitions organized by affiliated associations).

European Superleague Company SL initiated proceedings before the Commercial Court of Madrid which, on April 19 and 20, 2021, considered that the behavior of UEFA and FIFA might infringe EU competition law, and consequently referred the matter to the CJEU for a preliminary ruling.

In its December 21, 2023 judgment, the Grand Chamber of CJEU held that FIFA’s and UEFA’s rules cannot derogate from the provisions of the TFEU on freedom of movement and competition. Indeed, FIFA and UEFA must be categorized as “undertakings” within the meaning of EU competition law because they organize sporting competitions and exploit the rights related thereto, and because sport is an economic activity.

The Grand Chamber underlined that professional soccer may require specific rules to subject the organization and conduct of international professional soccer competitions to common rules intended to guarantee the homogeneity and coordination of fair competitions.

However, it recalled that, despite this specificity, regulations subjecting the organization of new international competitions to a prior approval - and sanctions provided for by way of adjunct thereto - must be based on substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate.

For example, the rules governing the organization of international competitions must not differ from those of FIFA and UEFA, or be extremely difficult or impossible to comply with.

Following a detailed analysis, the CJEU held that UEFA and FIFA have control over access to the market by subjecting any competitor wishing to organize and operate a competition to their prior approval.

For the CJEU, these rules are designed to prevent competition and, therefore, have an anti-competitive purpose. UEFA and FIFA use their dominant position to regulate the market and control access to it by means of disproportionate sanctions.

As such, FIFA’s and UEFA’s powers are not placed within a framework of substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate. FIFA and UEFA are, therefore, abusing a dominant position within the meaning of Article 102 TFEU and restricting competition within the meaning of Article 101 TFEU.

The role of the CJEU is not to rule on the merits of the dispute, but to answer the questions asked by the referring court (in the present matter, the Madrid Commercial Court). In the case at hand, it did not authorize

the creation of the Super League, but merely examined the rules of the two associations with regard to EU competition law.

FIFA and UEFA will, therefore, have to demonstrate before the Madrid Commercial Court that their rules pursue an objective of general interest or consumer protection, or invoke the exemption provided for in Article 101 of the TFEU.

[1] July 1, 2008, MOTOE, C-49/07, and January 26, 2005, Piau v Commission, T-193/02

[2] 15 décembre 1995, BOSMAN, C-415/93

[3] Case C-333/21 European Superleague Company SL v Fédération internationale de football association (FIFA), Union of European Football Associations (UEFA)

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