

EUROPEAN SUPER LEAGUE SKATING BY COMPETITION LAW

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The announcement from twelve of Europe's top football clubs of their plan to form a breakaway league (the so-called European 'Super League') sparked an impassioned response from many quarters. One of the threatened sanctions involved both UEFA and FIFA, the respective European and world football authorities, indicating that any player who participated in the 'Super League' would not be able to compete in other European and international football competitions whilst they played for a team competing in the breakaway league. However, enforcing such a ban might prove easier said than done and it appears that the Super League founders may even have been emboldened by recent EU case law developments, in particular the European General Court judgment in the International Skating Union (ISU) case which concerned a restriction of competition under Article 101 TFEU.¹

The ISU case involved a speed skating event that was to occur in Dubai but, since the event was not authorised by the ISU, the organiser found it difficult to engage participation from professional skaters which led it to abandon its plan. If a skater were to participate in such an unauthorised event they could be subject to a lifetime ban from ISU-organised competitions. The General Court, upholding the European Commission's decision, found that the requirements the ISU imposed for authorisation of an event were not clearly defined, transparent, or non-discriminatory and that they lacked reviewable criteria. In tandem, the General Court determined that the penalties imposed by the ISU on athletes who would participate in such events to be disproportionate. In all, the ISU's eligibility rules surrounding permissible competitions revealed a sufficient degree of harm to be regarded as restricting competition 'by object.'

The judgment was handed down on 16 December 2020 and appears to have been closely considered by the 'Super League' founders, not least because it is a rare instance of the European Courts being asked to rule on the compatibility of regulations adopted by a sporting body with EU competition law.² From a practical perspective, the judgment appears to reduce the scope for governing bodies to sanction athletes who participate in unauthorised competitions (especially where the rules around permissible competitions do not withstand scrutiny) - but is currently on appeal to the Court of Justice of the EU.

Additional considerations may well have applied in the 'Super League' scenario, including the proposals by FIFA and UEFA to exclude also the participating clubs and not only the teams' players themselves from competing in the Champions League, Europa League and potentially from their domestic competitions including the English Premier League, making the ban possibly even more disproportionate than in the ISU case. However, there may be stronger justifications for a ban in the 'Super League' case given the Champions League and Europa League offer more support and opportunity to lower tier clubs and is from that perspective pro-competitive.

The 'Super League' founders tried to get in front of any potential bans for players or clubs by filing a request with the [Spanish commercial court in Madrid](#).³ On 20 April 2021, the judge issued interim measures that purported to prohibit either FIFA or UEFA or any of their members from taking “*any measure that prohibits, restricts, limits, or conditions in any way*” the launch of the 'Super League.'

Of course, the arguments around the legitimacy of the ban are only one aspect of the dispute. For instance, queries were raised as to whether the UK Competition and Markets Authority or European Commission could also initiate an investigation into the members of the 'Super League' perhaps on the basis of a suspected anti-competitive collective boycott of the Champions League or of a collective abuse of a dominant position. However, the authorities might just as easily investigate the possible banning of players and teams by UEFA and FIFA. Indeed the Commission was asked to consider this issue in 1998 by Media Partners when they were considering setting up a similar 'Super League'.⁴ In the current instance, Margaritis Schinas, a Commission vice-president, [remarked](#) that he does not consider the dispute a matter for the Commission; reflective perhaps of a wariness among competition authorities of being used as a tool to resolve power plays between the most lucrative sporting bodies.

These competition law arguments might have kept the courts busy in the years to come but, at the time of writing, the progress of the 'Super League' seems to have been halted by withdrawals of the majority of the proposed Super League's members from the Project following the negative reaction from fans, pundits, politicians and even some club [managers](#). We may instead see the full impact of the ISU case playing out across other regulated sports before the question arises in football again.

FOOTNOTES

¹ Judgment of the General Court of 16 December 2020 – *International Skating Union v Commission* (Case T-93/18)

² Previous cases include the Commission's 2001 investigation into the FIA Formula One World Championship and the Greek motorcycling association case where the Court of Justice of the EU gave a preliminary ruling (Case C-49/07).

³ Juzgado de lo Mercantil N° 17 De Madrid, NIG: 28.079.00.2-2021/0091553. Procedimiento: Pieza de Medidas Cautelares 150/2021 - 0001 (Medidas Cautelares Previas LEC 727)

⁴ *Football: Uefa winning 'super league' war*, The Independent, 23 October 1998

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