

COMPETITIVE ASSESSMENT OF NATIONALLY CLOSED MARKETS IN PROFESSIONAL EUROPEAN FOOTBALL ?

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Introduction

It is well known that professional football is on the one hand connected to serious competition law concerns for instance in the field of restrictive market entry or joint selling of commercial rights and on the other hand to law exemptions and public tolerance.

This toleration is mainly backed up by the specific nature of sport, a legal concept established by the Court of Justice of the European Union. The concept recognizes specific sport characteristics, like for instance the freedom of internal organization of sport associations with the typical monopolistic pyramid structure, that are automatically taken into account when assessing whether sporting rules or the organisation of sport comply with EU competition law.

However, there is no automatic exemption from the Community competition rules for sport organisations and their activities as soon as economic activities were pursued. This is reflected in the so called Bosman judgement in 1995 and the more recent Murphy judgement in 2011. As a matter of fact, European jurisprudence hereby showed decisive action to provide open purchase markets and open sales markets in line with provisions of internal European market and contrary to arguments referring to the specificity of sport.

Different from widely opened purchase and sales markets, the football league event markets still remain separated on national lines. This sport specific peculiarity is enforced by the relevant pyramidal structure provisions of sport associations, notably the articles 49 and 51 of the UEFA statutes. These statutes have not been challenged legally irrespective of obvious legal concerns.

With this in mind, the research question arises, whether the artificial market partitioning on European football event markets is compatible with EU competition law.

Methods

To answer this question, a legal and economic analysis was conducted. The methodological approach comprised the three-step legal evaluation, devised by the European Commission in the wake of the much-quoted Meca-Medina-judgement. Consequently, this procedure is applied in order to evaluate whether the relevant UEFA provisions infringe Articles 101 and/or 102 TFEU. With attention to the obvious incompatibility of the UEFA provisions with the internal European market, the study focuses on the regional market definition and the possibility of factual justifying. Correspondingly, the assessment is complemented by an economic and longitudinal analysis of the overall market power relations using Herfindahl-Hirshman indices.

Results

In fact, there are good reasons to assume an infringement of community law. This result is based on previous statements of EU legislation, chiefly the Murphy judgement in joint cases C-403/08 and C-429/08 in 2011. Furthermore, the assessment can rely on several research contributions (Monti, 2000; Pijetlovic, 2015; Weatherill, 2005). In like manner, the empirical market structure results supply further arguments against the assumption of a legitimate objective.

All things considered, the results contribute to a new perspective in terms of serious antitrust concerns about the current European football landscape. In particular, the national market foreclosure of professional football leagues is presumably incompatible with European competition rules (Article 101 of the TFEU) and the European single market.

Discussion

The results would seem to indicate, that an sport policy antitrust exception does not apply on geographical portioning of football product markets. Hence and in the light of polarised football competitions in Europe, these contentious issues suggest several policy and management implications.

In the event of an appeal against the geographical pyramid of sports associations or an proactively motivated policy action, the possible consequence might be an event market liberalisation. This liberalisation might include league mergers or the supranational assembling of first tier football leagues, providing clubs and leagues the opportunity to join or create larger markets (Kesenne, 2007; Vrooman, 2007). Notably, a hypothetical market opening even might affect non-European associations and in particular the wealthy Arab football leagues by giving Arab clubs the chance to play in regular competitions against European top teams.

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