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Why the European Court of Justice should rule against the European Super League

*On 15 December, the European Court of Justice is due to issue an initial ruling on whether UEFA and FIFA's opposition to the creation of a European Super League in 2021 breached EU competition law. **Tsjalle van der Burg, Hanno Beck and Aloys Prinz** explain the significance of the case for European football, and why the Court should rule against the Super League.*

In 2021, twelve European football clubs [announced their intention](#) to create a 'European Super League'. After fierce opposition from fans, excluded clubs and politicians, as well as threats from UEFA and FIFA that participating players and clubs would be sanctioned, nine of the twelve clubs withdrew and the project collapsed.

However, the remaining three clubs, Barcelona, Real Madrid and Juventus, still want the Super League to be established. They think UEFA and FIFA have no right to impose sanctions on the participants. Their complaint has been brought to the European Court of Justice, which had a two-day hearing about it in July. An initial ruling is due on 15 December.

The argument of the Super League lawyers is simple and clear. UEFA and FIFA have a monopoly on organising international football competitions for clubs and national teams. The Super League challenges (part of) this monopoly. UEFA and FIFA have harmed a new competitor with their sanctions, which include a ban for Super League players participating in the FIFA World Cup and the UEFA Nations League among other things. This is an abuse of their monopoly position, and is incompatible with EU competition law.

Consumer markets

However, one should also consider the markets for the end products of the football industry, such as stadium tickets, food and beverages, TV broadcasts, and club merchandise. Here, clubs compete at the national level to a large extent. For instance, Arsenal is strongly competing with other Premier League clubs in England for fans. So, the national consumer markets are 'relevant markets', which are the focal points of economic competition and competition law.

In many countries, the number of clubs with a serious chance of winning national and European championships has decreased over the years. For instance, in the 1960s and 1970s 'small' English clubs like Nottingham Forest had a realistic chance of winning the top European title (called the European Cup then), but at present the number of English clubs that can realistically win the Champions League someday may be around eight at most, from our point of view.

In many other countries, people who would like to follow a domestic club that can win the top European title also have fewer options than before. This means that competition in national markets for top-level football has decreased. One of the main reasons for this development is the financial advantage successful clubs gain when they make it into the Champions League. The

distribution of Champions League earnings helps the top clubs to get (even) more money and better squads.

How would a Super League affect this process? One might argue that for instance a closed Super League, so a league without relegation and promotion, is a solution to the issue as it intensifies competition among the top clubs that play in it. However, as discussed below, this kind of reasoning suffers from several significant flaws.

Let us first consider the 2021 plan. It concerned a Super League that was an alternative to the Champions League, with the participants continuing to play in their national competitions. This Super League would be a semi-closed league, with (possibly) 15 of the 20 participants being permanent members that could never be relegated. England would have six participants, all permanent members.

This would imply that the English market for top-level football would get six suppliers only (if the Super League would be successful and include, as proposed, the best European clubs). This means that competition in the *English* consumer market would be further reduced. A similar conclusion holds for the other countries with permanent members (Spain, Italy, Germany and France). The reduced competition would result in higher prices to attend a top club football match or buy other products of the club, and thereby reduce fan welfare.

The 2021 Super League also had some non-permanent members, which could be relegated. These were clubs from smaller footballing countries, such as Ajax Amsterdam. Ajax would likely play in the Super League on a regular basis, and more regularly than any other Dutch club. The resulting high revenues would make it easier for Ajax to beat its domestic rivals, thus increasing its market power in the Dutch market for top-level football.

Although this was not part of the 2021 plan, we can also discuss the possibility of a fully closed Super League of 20 teams – which may appear, for instance, after a semi-closed league has operated for some years. In such a league, the Netherlands would probably have one participant only, Ajax, giving the club a monopoly on top-level football in the Dutch market.

Thus, the prices of tickets for Ajax fans might even become higher than the prices for fans of English top clubs. Alternatively, for instance, there could be a closed Super League of 48 teams. In this scenario, two or three Dutch clubs could then participate, and probably one Danish club which would then get a monopoly in Denmark. Indeed, any closed Super League would reduce market competition in *national* markets.

A fully open Super League, which includes the possibility of relegation and promotion for all clubs, would also affect competition in national markets. Some clubs would play more regularly in it than other clubs, and with the related revenues they could beat other domestic clubs more easily, thus reducing the national league's competitive balance.

As noted above, the present Champions League has a similar effect, but because any proposal for an open Super League provides the participants with more matches (often against attractive top clubs) than the Champions League, an open Super League would magnify the effects of the Champions League.

Therefore, the choices for people who wish to follow a domestic club that can win, for instance, European titles would be further reduced, and market competition would be lower too. In an [accompanying paper](#), we show that a Super League with participants that no longer play in national competitions would also reduce competition in national consumer markets.

The Court of Justice hearing

At the July hearing, the Super League lawyers [presented](#) their argument about UEFA and FIFA abusing their monopoly position (described above). Opposing their view, UEFA's barrister Donald Slater argued that a closed or semi-closed Super League was a "[textbook example of a cartel](#)". Super League lawyer Luis Alonso replied that the Super League proposed in 2021 was a tentative format, [subject to dialogue](#). When the court asked whether this meant that it could also become an open league, Alonso's [response](#) was vague but he did not rule out the possibility.

However, even an open Super League may not be compatible with EU competition law. As argued above, both a closed and an open Super League restrict competition on national consumer markets. Obviously, a Super League can only start if several clubs agree to join. This would imply the clubs agree to start something which restricts market competition, and article 101 TFEU prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices ... which have as their object or effect the prevention, restriction or distortion of competition within the internal market".

In essence, we have two opposing arguments. On the one hand, the sanctions of UEFA and FIFA illegally restrict competition in the market for organising competitions. On the other hand, a Super League illegally restricts competition in consumer markets.

One of the aims of EU competition law is to promote consumer welfare. In our [accompanying paper](#), we argue that the present league system can give fans more satisfaction than a system with a Super League, and so create a superior welfare level, especially when the revenues of the Champions League would be distributed more equally. In addition, increased competition in consumer markets leads to lower prices, which in turn leads to greater welfare too. Therefore, the argument about competition in consumer markets, which supports the current system, should prevail.

The threats of a Super League

Since 1998, there have been several threats by rich European clubs to start a breakaway Super League. They have often resulted in UEFA reforming its competitions in favour of the rich clubs, enabling them to play in the Champions League more often and getting a larger share of the revenues. The breakaway plan of 2021 has also been followed by a new format for the Champions League from 2024 on.

There is no deal about the revenue distribution yet, but the change may well cause big clubs to become even stronger and improve their chances of winning European and national titles – thus reducing competition in national consumer markets. So, the threats may be described as concerted actions that have resulted in a decrease of competition in the past and may well do so in the future. According to this line of reasoning, they are incompatible with article 101(1) TFEU.

Taking fan welfare seriously, the European Commission is therefore bound to stop the threats, thus reducing the power of the top clubs. The decision-making of UEFA would then once again be based strongly on the democratic principle of ‘one member, one vote’.

Most members of UEFA are football associations from smaller countries, and within each national association the small clubs have most of the votes. Thus, a more democratic decision-making process can be expected to give small clubs a better chance to win major trophies and titles, improve the excitement of the existing competitions, reduce consumer prices, and so improve consumer welfare. Unfortunately, the Commission has not acted so far, and it has been left to the Court to deal with one specific complaint made by advocates of the Super League.

The specific nature of sport

Article 165 TFEU states: “The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function”. In this context, the barristers of UEFA and FIFA argued at the hearing that an exemption to article 101(1) TFEU could be granted for the sanctions of UEFA and FIFA.

FIFA’s lawyer Alvaro Pascual, for instance, [said](#) that the Super League would “undermine the aims of solidarity, competitive balance and the promotion of grassroots football”. Opposing such views, barrister Miguel Odriozola [stated](#) that the Super League “could easily beat the £250million or so UEFA distributes in solidarity payments as it was promising to raise more like £350million a year for the greater good”.

We do not discuss numbers here, but as a matter of fact, UEFA competitions and the distribution of their revenues do not benefit small clubs and grassroots activities as much as they could. Thus, it would be relatively easy for a challenger to do better. However, the reason for UEFA’s weak performance is that elite clubs have regularly threatened to start a breakaway Super League if UEFA stops favouring the elite.

In our view, the question for the Court should not be whether the Super League will provide increased solidarity payments after having just forced UEFA to reduce such payments. The question should be rather whether the Super League will provide increased solidarity payments than UEFA if such threats are ruled out or even legally forbidden. As argued in our [accompanying paper](#), the answer is no.

So, article 165 TFEU provides a valid argument in favour of the sanctions. How much it should weigh *vis à vis* the other arguments is a question for legal scholars. But even if we neglect article 165, our point remains this: a Super League violates EU competition law because it reduces competition in national markets as well as consumer welfare.

For more information, see the authors’ accompanying paper in [Managing Sport and Leisure](#) and Tsjalle van der Burg’s [previous EUROPP article](#) on this topic.

Note: This article gives the views of the authors, not the position of EUROPP – European Politics and Policy or the London School of Economics. Featured image credit: [Shutterstock](#)

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