



How UEFA can react to the Super League ruling

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Abstract

According to the European Superleague Company ruling of 21 December 2023, the UEFA rules for the approval of football competitions are inadequate. In search of better rules, this paper proposes three criteria for the approval of competitions: they should (1) improve welfare; (2) reflect the preferences of the consumers (football fans); and (3) be compatible with competition law. All Super Leagues proposed before 2022 would not have met criteria 1 and 3 in any case, as they would have reduced welfare and would have reduced the competition in consumer markets in a way incompatible with competition law. The same holds (or is likely to hold) for the reforms of the Champions League that UEFA has made since 1998 in reaction to threats of big clubs to start a Super League. However, if UEFA improves its own competitions in line with the criteria above, it should be able to outcompete the organizers of alternative competitions.

Keywords Sports law · Super League · Football · Competitive balance · Competition Law

1 Introduction

The European Superleague Company (ESLC) ruling of 21 December 2023 of the Court of Justice of the European Union (CJEU) is a preliminary ruling made at the request of a Spanish court. It concerns the UEFA rules for the approval of club football competitions and the sanctions for clubs and players that participate in competitions that have been rejected by UEFA.¹ The ruling makes it likely that the Spanish court will decide that the way UEFA defends its monopoly on the organization of European club competitions is incompatible with competition law because the UEFA rules fail to be transparent, objective, non-discriminatory and proportionate.

This paper discusses how UEFA can react to this ruling. Section 2 prepares the ground by discussing the European model of sports. Section 3 makes a proposal for criteria that UEFA could use for the approval of competitions. Section 4 prepares the ground for subsequent sections by discussing

the relation between competitive balance and market competition. Section 5 investigates whether the reforms of the Champions League that UEFA has made in reaction to threats of a Super League meet the criteria of Sect. 3. Section 6 does the same for the Super Leagues that have been proposed before 2022. Section 7 shortly discusses the most recent Super League proposal. Section 8 discusses UEFA's choices for the future, and whether it can outcompete other competition organizers.

2 The European sports model

In the traditional European sports model, clubs were not aiming for profits. Focusing on football, it can be said that all European football clubs were not-for-profit organizations until the 1980s, with most clubs, and their umbrella organizations, being democratic associations. Conversely, most clubs in the US team sports were, since the 1870s, owned by entrepreneurs or firms that were at least partly aiming for profits. Their efforts led, in each team sport, to the establishment of a Major League with a limited number of clubs that could never be relegated. This provided every Major League club with high market power, in its own region especially. Therefore, clubs could demand high prices, and profits increased.

¹ Case C-333/21, European Superleague Company SL v FIFA and UEFA.

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Let us compare the economic effects of these two models, focusing on the year 1960. At the time, baseball was still by far the most popular sport in the US. In 1960, the price of the average ticket for a Major League Baseball match was three-and-a-half times as high as that of the average ticket in the highest English football division. The number of spectators for all Major League Baseball matches was 20 million, while it was 14 million (30% less) in the highest English football division. However, if one includes Minor League Baseball and the lower English professional football divisions into the comparison, baseball attracted only 3% more visitors. Since the US had four times the population of England and football also attracted millions of spectators in other European countries, it can be concluded that the not-for-profit European football clubs did much better in giving pleasure to many sports fans (also called consumers hereafter) than the American baseball entrepreneurs. Thus, they generated more welfare. Indeed, the European sports model, which has helped make football the most popular sport in the world, has generated a great amount of welfare.²

Since the 1980s some professional European football clubs have been taken over by shareholders, some of which are aiming for profits. However, there are also many professional clubs that are not-for-profit organizations at present still. All non-professional clubs are still using the traditional model, but they will be neglected in this paper.

3 Improved criteria for the approval of competitions: some suggestions

This section proposes three criteria for the approval of competitions (including those of UEFA). Here they are, each one being accompanied by a motivation.

3.1 The competition improves welfare

Welfare (or aggregate welfare) is the sum total of the welfare of all individuals in a country or group of countries. Improving (aggregate) welfare is a sensible goal for a government that intends to improve the lives of its citizens. UEFA can contribute to this social goal by improving the welfare generated by the professional football sector. That would be in line with the social, not-for profit character of the European sports model. It would also be in line with the spirit of competition law, since high welfare is one of the goals of that law.

The welfare generated by the football sector is the sum total of the football-related welfare of different groups of people, among which are the football fans (the consumers),

the players, the club owners, and other groups of people (e.g., the coaches). The football-related welfare of the consumers, for instance, consists of the pleasure they get from football expressed in money terms, after deducting the money they pay for football's commercial products (e.g. match tickets). To give a second example, the football-related welfare of the players consists of their salaries, after deducting the income they would have earned if they had not played football but taken another job (and after taking account of some other issues, such as the effect of playing football on players' health).

Given the existence of such different groups, it can be difficult to estimate the effects of a new competition on (aggregate) welfare. To simplify the explanation in this paper we follow Beck et al.,³ who have argued the following: if a new competition improves the welfare of the football consumers, the (total) welfare generated by the football sector will (usually) also improve. This means that the criterion that a competition improves the welfare of the consumers (usually) leads to the same decision as the criterion that it improves welfare.

Note that it is possible that the welfare generated by the football sector improves while the welfare of the club owners (and/or the welfare of the players) decreases at the same time. In such a case, the increase in the welfare of the consumers outweighs the decrease in the welfare of the club owners (and/or the players). It is also possible that the welfare of the consumers improves while the welfare of part of the consumers decreases. This means that the welfare decrease for one part of the consumers is outweighed by the welfare increase for the other part.

3.2 The competition reflects the preferences of (the majority of) the football consumers

This criterion is in line with the traditional European sports model. In the past, many European football clubs (though not all) were associations, in which the main decisions had to be approved by the majority of the members. In the national football associations, the majority of the clubs was decisive, and in UEFA the majority of the national associations. This implied that decisions reflected the wishes of the members of the clubs to a large extent. These members were people who liked football.

How can UEFA take account of the preferences of the football consumers in present days, given that most professional clubs are no longer associations? It may consider new options to take account of consumer preferences, such as referenda about new competitions among all season ticket

² The previous paragraphs were based on Van der Burg (2014).

³ Beck et al. (2022).

holders of professional football clubs. Future research may be useful here.

If a new competition is in line with the preferences of most consumers, it will probably increase the sum of the pleasure of the consumers and therefore welfare. This means criteria 1 and 2 are reasonably in line with one another. However, if the majority of consumers is in favor of a new competition but will only benefit slightly from it, while the minority will be seriously harmed, the new competition may decrease welfare. How to deal with this problem is a question for future research.

In some cases, it may be difficult for economists to predict whether a new competition will increase the pleasure of the consumers. Given that criteria 1 and 2 are reasonably in line with one another, it may then be considered to neglect criterion 1 and focus on criterion 2 (and 3) instead.

3.3 The competition is compatible with competition law

This may seem to be a superfluous criterion. After all, the courts deal with violations of the law already. However, if UEFA uses this criterion and applies it correctly, UEFA may help to prevent (some) long court cases and the related uncertainties. More importantly, the EU legal authorities have incorrectly neglected the effects of changes in the league system on the competition in consumer markets until now (see below), and UEFA may play a useful pioneering role here.

4 Competitive balance and market competition

In the discussions about the ESLC case, much attention has been paid to the market where (potential) organizers of competitions can offer their services to football clubs. The ESLC ruling has clarified the rules for this market. Now, time has come to pay attention to the markets where match tickets, club merchandise, television pictures and other goods or services are offered to consumers by football clubs (or by broadcasters that have bought the broadcasting rights from one or more clubs, with the price of the rights depending on the number of viewers the club(s) are expected to get). In these markets, clubs compete with other clubs for consumers.

This competition occurs in national markets to a large extent. For instance, to attract consumers Olympique Lyon is mainly competing with other French clubs. This means that national consumer markets are relevant markets. Apart from preferring domestic clubs, many consumers also like to follow a top club, i.e. a club that has a realistic chance

of winning national or European titles in the foreseeable future.

Over the past 75 years, competitive balance has decreased in many football competitions. This means that many countries now have fewer clubs that can win national or European titles. In other words, the number of top clubs has decreased in many countries, which implies that consumers who like to follow a top club from their own country have fewer options. Put differently, competition has decreased in many national consumer markets. Several reasons can account for this development. Some of them, such as the rise of television, can never be contested in court.⁴ However, in other cases a legal investigation may be useful.

5 Champions League reforms, welfare, market competition and the law

Since 1998, big clubs have threatened every now and then to leave the Champions League and start a Super League. In all cases, UEFA has reacted by reforming its own competitions to the benefit of the big clubs. This has made these clubs stronger, also on the pitch.⁵ As a result, competitive balance has (further) decreased. It is likely that this has reduced the (total) pleasure of the football fans and therefore welfare.⁶

It follows from Sect. 4 that the reduction in competitive balance has also led to a (further) decrease in the competition in consumer markets. Due to lack of research, there is no hard statistical evidence here, but it is likely that this reduction in market competition has led to higher prices, and higher prices normally lead to lower consumption levels and therefore lower welfare.⁷

After the 2021 Super League threat, UEFA has announced a new format for the Champions League again, to be introduced in 2024. It is likely to further benefit the big clubs.⁸ This may further reduce competitive balance and hence welfare and market competition.

Part of the above can be illustrated with the example of a nine-year old girl from the Scottish Highlands. She plays football, is not yet a supporter of a club, but is thinking about that. She would like to become a fan of a club from Scotland. The club should be able to win the Scottish title now and then at least, and it would be fantastic if it would win a European title one day. At present, this girl can choose between two clubs: Celtic and Rangers. These clubs are about equally strong, so both are attractive candidates. If

⁴ Van der Burg (2020).

⁵ Parrish and Miettinen (2008); Pijetlovic (2015); Franck (2018).

⁶ Beck et al. (2022).

⁷ Van der Burg (2020).

⁸ Ramchandani et al. (2023).

Celtic wants the girl to become a Celtic fan, it better keeps its ticket prices low (for instance, because this might stimulate the father of the girl to take her to Celtic Park one day).

How will the 2024 reform of the Champions League affect a child like this one? One possibility is that Celtic plays quite often in the new Champions League for some years, (probably) earning 40 million euros at least in every year it participates, while Rangers plays Champions League rarely at best. In that case, Celtic may earn so much extra money that Rangers may never be able to bridge the gap with Celtic again. The best choice for children like the one above will then be Celtic. Thus, Celtic can increase its ticket prices with a lower risk that this will cause many children to become a Rangers fan. This means the competition in the Scottish consumer market has decreased. Note that this is just one possible scenario, only meant to clarify the analysis above.

Article 101 TFEU forbids ‘all agreements between undertakings ... and concerted practices which ... have as their ... effect the prevention, restriction or distortion of competition.’ Professional football clubs are undertakings that are subject to EU competition law.⁹ Any threat of clubs to start a Super League must be based on an agreement between the participants (or on concerted practices). As argued above, the past reforms of the Champions League that were the result of a Super League threat have reduced the competition in consumer markets. It follows that all these reforms, and all underlying Super League threats, are incompatible with article 101 TFEU.¹⁰

The European Commission could investigate whether (certain) proposals for a Super League are indeed incompatible with competition law. If the answer is positive, it could say so officially. That could end some of the threats of a Super League at least. This would give UEFA more power vis-a-vis the big clubs, giving it more room to introduce criteria such as, for instance, the ones proposed in Sect. 3.

A more general conclusion is that the past Champions League reforms do not meet criterion 3 of Sect. 3, and they probably do not meet criterion 1. Whether they meet criteria 2 has not been investigated.

6 Pre-2022 Super League proposals, welfare, market competition and the law

A Super League is a football competition for the best European clubs that is introduced by an organization other than UEFA as an alternative to the Champions League, and possibly to other UEFA competitions too. This section focuses on Super Leagues proposed before 2022 and compares them with the Champions League. UEFA competitions other than the Champions League are neglected here; including them into the comparison would not change the main conclusions.¹¹

Why will an investor announce he is going to set up a Super League? He may act on behalf of big clubs that like to use the Super League idea as a threat to UEFA, causing it to reform the Champions League in their favour. Such threats have been discussed in Sect. 5. The present section, however, focuses on investors that sincerely intend to start a Super League. Such an investor will think that a Super League can generate more money than the Champions League, so that he can pay the big clubs more money than UEFA to induce them to play in his own league, and possibly also make a nice profit himself.

Why does an investor think a Super League can generate more money than the Champions League? There are four possible answers. First, the investor is too optimistic about his project. However, a question is whether this can apply to all investors that have tried to start a Super League since 1998.

The second possible answer is that the Super League gives the fans more pleasure than the Champions League. This would imply that the many fans and supporters’ federations that have opposed Super Leagues do not understand what is best for them. A question is whether that is likely. Beck et al. argue that any Super League proposed before 2022 reduces the (total) pleasure of the football consumers, and it also reduces the pleasure of the fans of clubs that can play in the Super League.¹²

The third possibility is that the investor can run the competition more efficiently than UEFA. Due to lack of information a scientific judgment is impossible here, but one should always be open to the possibility that a new competition organizer can produce at lower costs. However, if such cost savings are possible, they will probably be a few percent of the total revenues of the new competition at most.¹³

¹¹ See Van der Burg (2020) and Beck et al. (2022).

¹² This argument is based on a long analysis of the different pros and cons of different types of Super Leagues (Beck et al. 2022); it cannot be explained shortly in this paper.

¹³ In the 2021/22 season, the total revenues of UEFA were 4.1 billion euros (all figures in this note are from UEFA 2023). The revenues from the Champions League (plus the UEFA Super Cup) were 3.1 billion

⁹ Weatherill (2014); Houben et al. (2022).

¹⁰ This argument is based on Pijetlovic (2015) and Van der Burg (2020). Pijetlovic also argues that threats of a Super League are possibly incompatible with article 102 TFEU. For brevity, article 101 remains the focus of the present paper.

This raises the question whether efficiency gains can be an *important* reason for starting a new competition.

The fourth possibility is that the investor thinks Super League clubs (and their broadcasters) can charge consumers higher prices because they have more market power. This would mean that the business model of the Super League aims to reduce the competition in consumer markets. This is not unrealistic. Van der Burg and Beck et al. analyse the effects of Super Leagues on the competition in national consumer markets. They show that every Super League proposed before 2022 would have reduced this competition (as compared to the contemporaneous Champions League). They also argue it would have reduced the total pleasure of the fans, and therefore welfare.¹⁴

The Super League proposed by the ESLC in 2021 can serve as an illustration here. This league was planned to have 20 participants, which would also play in the domestic competitions. 12 of these participants could never be relegated. These permanent members would come from England, Spain, Germany, Italy and France. No other club from these five countries would play Super League. Germany, for instance, would have two permanent Super League members and these would be the only German clubs that would still have a chance to win the highest European title. They would also get very high revenues from the Super League, which would enable them to strongly dominate the German Bundesliga. A nine-year old girl from Hamburg wishing to become a fan of a top club from her own country would then have two options only. In other words, there would be less competition in the German consumer market.

As stated before, article 101 TFEU prohibits agreements between professional football clubs that prevent, restrict or distort market competition. Every Super League must be based on an agreement between such clubs. As argued above, every Super League proposed before 2022 would have reduced market competition. Consequently, it would have violated competition law.

A more general conclusion is that the pre-2022 Super Leagues proposals did not meet criteria 1 and 3 of Sect. 3. The views of football fans on these Super Leagues have not

euros. 89% of the total revenues were distributed to the football clubs and the national football associations, and efficiency gains are impossible here. An amount equal to 14% of the total revenues was spent on the following six items: (1) event expenses; (2) referees and match officers; (3) information and communication technology; (4) depreciation and amortization; (5) employee salaries and benefits; and (6) other expenses such as travel, hotels, and daily allowances. The expenditures on the last two items taken together equalled 4.7% of the total revenues. Even if, for instance, these expenditures were halved, the costs would only be reduced by an amount equal to 2.35% of the total revenues. (Note that UEFA's net financial result was negative in 2021/22, which explains why total expenditures were 3% higher than total revenues.)

¹⁴ Van der Burg (2020); Beck et al. (2022).

been investigated, but the massive protests against the 2021 Super League initiative suggest that criterion 2 was not met in one case at least.

7 The most recent Super League proposal

On 21 December 2023 a new Super League was proposed by A22 Sports Management,¹⁵ a company supported by Real Madrid and FC Barcelona.¹⁶ The new league differs substantially from the Super League proposed in 2021 by ESLC. It is too early to give a comparison between this new league and the Champions League, but some remarks about the way of comparing can be made.

An important question is whether the new Super League should be compared to the Champions League that will start in the summer of 2024 or to an earlier version of the Champions League. At first sight comparing it to the former may seem best, because both alternatives are placed in the same time frame then. However, this would imply a situation where the big clubs have first made unlawful threats of a Super League in order to get the Champions League to be reformed in their favour, thus reducing competitive balance, market competition and welfare, and can subsequently argue that their Super League is better than the reformed Champions League in terms of competitive balance, market competition and welfare. This could be unfair.

8 UEFA's choices for the future

The ESLC ruling has given organizers of competitions like a Super League more room to compete with the UEFA competitions. How can UEFA react to this challenge?

It could react like it has always reacted to Super League threats: reform the Champions League in favour of the rich clubs. If it goes that way, the Champions League will eventually not be much different from a Super League that fully meets the demands of the big clubs. Some Super League might then still replace the Champions League one day, because of a small advantage perhaps.

The alternative for UEFA is to fundamentally change its course. This paper has offered some suggestions for that. In Sect. 3, new criteria for the approval of competitions have been proposed. If UEFA, in its role of regulator of football, further specifies these criteria (or similar ones), and applies them in a transparent, objective and non-discriminatory way, the courts may well allow it to impose hard sanctions on participants in competitions that it has rejected.

¹⁵ A22 Sports Management (2023); see <https://a22sports.com/en/competition/>.

¹⁶ MacInnes (2023).

UEFA is not only a regulator of football, but also a competition organizer. Here, the ESLC ruling, which will promote the disciplinary function of the market, forces UEFA to be better than (potential) rivals. Therefore, it should continuously try to further improve its competitions and to produce them at lower costs. For instance, if UEFA reduced its operating costs, more money could be distributed to the football clubs and the national associations.

UEFA has some natural advantages in organizing competitions. It is a not-for-profit association that does not need to pay dividends to shareholders. This cost advantage can help it bring advantages to clubs and consumers. In addition, UEFA possesses the first-mover advantage in organizing competitions, and it is heir of highly valued traditions. However, this may not be enough. To really outcompete its rivals, UEFA should let its competitions, and the distribution of their revenues, be such that they improve competitive balance. This would significantly increase the pleasure of the fans, and so welfare.¹⁷ It would also improve market competition (as argued in Sect. 4). Given the criteria of Sect. 3, alternative competitions could then be rejected if they are not as good at least in terms of pleasure and welfare, support from the fans, and market competition. This could be very difficult for new investors that also want to make a profit.

The results of this new course will be favourable: higher revenues for small clubs, more competitive balance and hence more pleasure for consumers, a broader choice menu for consumers in terms of top clubs to choose from, more market competition and so lower prices and larger audiences enjoying the game. Put shortly, welfare will increase. This development will be in line with the European sport model, the ESLC ruling, and competition law. Could any court reject this?

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Data availability No datasets were generated or analysed during the current study.

Declarations

Competing interests The authors declare no competing interests.

¹⁷ Beck et al. (2022).

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References

- Beck H, Prinz A, Van der Burg T (2022) The league system, competitive balance, and the future of European football. *Managing Sport Leisure*. <https://doi.org/10.1080/23750472.2022.2137056>
- Franck E (2018) European club football after five treatments with financial fair play – time for an assessment. *Int J Financial Stud* 6(4):97: 1–19. <https://doi.org/10.3390/ijfs6040097>
- Houben R, Blockx J, Nuyts S (2022) UEFA and the Super League: who is calling who a cartel? *Int Sports Law J* 22:205–216. <https://doi.org/10.1007/s40318-021-00201-2>
- MacInnes P (2023) Revamped European Super League may flop but the door for change is now open. *The Guardian*, 21 December
- Parrish R, Miettinen S (2008) The sporting exception in European Union law. T.M.C. Asser, The Hague
- Pijetlovic K (2015) EU sports law and breakaway leagues in football. Springer, Berlin
- Ramchandani G, Plumley D, Mondal S, Millar R, Wilson R (2023) You can look, but don't touch': competitive balance and dominance in the UEFA champions League. *Soccer Soc* 24(4):479–491. <https://doi.org/10.1080/14660970.2023.2194512>
- UEFA (2023) UEFA Budget 2023/24. https://editorial.uefa.com/resources/0280-17b3d146cdc3-dfe49e70a6e3-1000/en_in_uefa_budget_2023-2024_final.pdf
- Van der Burg T (2014) *Football Business*. Infinite Ideas, Oxford
- Van der Burg T (2020) EU competition law, football and national markets. *Managing Sport Leisure* 28(2):135–148. <https://doi.org/10.1080/23750472.2020.1863851>
- Weatherill S (2014) *European Sports law*. Collected Papers, 2nd Edition. Springer, Berlin

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