

# MARKET POWER AND COMPETITION LAW IN PROFESSIONAL SPORTS: AN ANALYSIS OF CASE C-333/21 (EUROPEAN SUPERLEAGUE COMPANY)

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**ABSTRACT** *This essay examines the European Court of Justice's preliminary ruling in Case C-333/21 concerning the European Super League and its implications for the application of EU competition law to professional football. Focusing exclusively on Articles 101 and 102 TFEU, the analysis explores the tension between UEFA and FIFA's regulatory autonomy and the constraints imposed by EU law. The essay assesses the legitimacy of prior approval mechanisms, the role of justifications, and the conditions under which restrictions may be permissible. It also evaluates the ruling's significance for private enforcement, offering insights into the future governance and legal accountability of football bodies.*

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**KEY-WORDS & JEL Classification Codes** EU law – European Super League – sport law – competition law – free movement law – European Sport Model- K21.

## 1. INTRODUCTION

The European Court of Justice's (ECJ) preliminary ruling in Case C-333/21 concerning the European Super League (ESL) represented a pivotal moment in the application of EU competition law to professional sports.<sup>1</sup>

The ESL, founded in Spain as a privately governed company and driven by a coalition of top tier European clubs, was intended to serve as a rival competition to the UEFA Champions League.<sup>2</sup> Its implementation would

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1 Ford & Sten-Ziemons, 2023

2 Wagner & Hackl, 2024.

have necessitated the withdrawal of the participating clubs from UEFA's flagship tournament.<sup>3</sup>

Consequently, the initiative faced substantial opposition from both UEFA and FIFA, which threatened severe sanctions against the clubs and players involved, including bans from other competitions.<sup>4</sup> These threats were legally grounded in the statutes of UEFA and FIFA, which prohibit the creation of unauthorised, competing tournaments.<sup>5</sup> The regulations established by both the UEFA and FIFA stipulate the necessity of prior authorisation for all competitions within their respective jurisdictions.<sup>6</sup> Furthermore, these regulations prohibit the participation of clubs and players in competitions that have not received the requisite authorisation.<sup>7</sup>

Whilst numerous other football clubs withdrew from the Super League project in light of the threats and associated risks, the Spanish clubs opted to initiate legal proceedings against UEFA and FIFA.<sup>8</sup> They accused both organisations of abusing their dominant position in the market for the organisation of European football competitions.<sup>9</sup>

At the request of the claimants, the Commercial Court of Madrid submitted a preliminary reference to the European Court of Justice under Article 267 TFEU.<sup>10</sup> The reference raises the significant legal question of whether the actions of UEFA and FIFA violate EU competition law and the fundamental freedoms guaranteed by the TFEU.<sup>11</sup>

This essay will focus exclusively on the competition law aspects of the case, setting aside issues related to the freedom of movement. It undertakes a critical analysis of the ECJ's judgment and its implications for the enforcement of competition law in the context of sports governance. Particular attention will be paid to the balance between the regulatory autonomy of sporting associations and the constraints imposed by EU competition law, the

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3 Ibid.

4 Wagner & Hackl, 2024; Delgado, 2024.

5 Ibid.

6 Article 71 of the FIFA Statutes and Articles 49 and 51 of the UEFA Statutes; Wirtz & Schulz, 2024: 191; Ghelardi, 2024.

7 Wirtz & Schulz, 2024: 191.

8 Wagner & Hackl, 2024.

9 Ibid.

10 Wagner & Hackl, 2024; Delgado, 2024.

11 Ibid.

application of Articles 101 and 102 TFEU<sup>12</sup>, and the broader consequences for private enforcement and the governance of European football.

## 2. ECJ'S FINDINGS

The ECJ begins by briefly affirming that the organisation of football competitions and the commercial exploitation of their media rights constitute economic activities.<sup>13</sup> As such, they fall within the scope of EU competition law.<sup>14</sup>

The judgment proceeds in two analytical steps: first, it considers whether UEFA and FIFA hold a dominant position under Article 102 TFEU; second, it examines whether their rules and conduct may constitute anti-competitive agreements or concerted practices prohibited by Article 101 TFEU.<sup>15</sup>

### 2.1. The market power of UEFA/FIFA under Article 102

The primary question that the Court was whether the prior approval rules contained in the FIFA and UEFA Statutes, along with the associated sanctions for teams and players who did not comply, constituted an abuse of a dominant position in accordance with Article 102.<sup>16</sup>

Article 102 says that it is illegal for dominant companies, i.e. monopolies and near-monopolies, to abuse their strong market power.<sup>17</sup> Although the ECJ recognises that UEFA and FIFA exert significant control over the organisation of international football competitions, the judgment does not centre on the mere existence of that control. Rather, the Court classifies both organisations as “undertakings” operating in a dominant and potentially monopolistic position within a specific market.<sup>18</sup> This market encompasses the organisation and commercial promotion of international football competitions, as well as the exploitation of the associated rights.<sup>19</sup>

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12 All of the following articles are those of the TFEU, unless otherwise indicated.

13 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §§83-93; Wagner & Hackl, 2024.

14 Ibid.

15 Wagner & Hackl, 2024.

16 Ghelardi, 2024.

17 Calliess & Ruffert, 2022, para.1-3.

18 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §139; Iñiguez, 2024: 4.

19 Ibid.

The Court further clarified that the imposition of prior authorisation requirements and related sanctions does not, in and of itself, constitute an abuse of a dominant position within the meaning of Article 102 TFEU.<sup>20</sup> Such measures may nonetheless be justified, provided they pursue legitimate objectives specific to the context of professional football, particularly the effective coordination of competitions and the safeguarding of sporting merit.<sup>21</sup>

The fact that the Treaties do not inherently prohibit regulations is founded on the profound social and cultural importance of football in the EU and its distinct characteristics.<sup>22</sup> Consequently, within the distinctive paradigm of professional football, such approval regulations, participation constraints, and the sanctions that enforce them cannot be deemed inherently anti-competitive “by object”.<sup>23</sup>

However, it was determined that these rules and sanctions constituted an abuse of dominant position if they lacked a framework based on “transparent, objective, precise, and non-discriminatory” criteria and procedures.<sup>24</sup>

While the judgment entrusts the referring court with assessing the compliance of FIFA and UEFA rules with these standards, it also outlines certain conditions that those rules must meet.<sup>25</sup> Firstly, any such rules must be clearly documented in a way that is easily accessible.<sup>26</sup> Secondly, decision-makers like UEFA and FIFA cannot impose stricter conditions on breakaway competitions than those applied to their own tournaments.<sup>27</sup> Thirdly, these conditions must be practical and not excessively burdensome to meet.<sup>28</sup> Lastly, sanctions must be “proportionate and determined on a case-by-case basis”.<sup>29</sup> Failure to meet these requirements could result in a breach of Article 102.<sup>30</sup>

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20 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §129; Íñiguez, 2024: 5.

21 Ghelardi, 2024.

22 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §§141,144; Íñiguez, 2024: 5.

23 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §§144-46; Íñiguez, 2024: 5.

24 Íñiguez, 2024: 5; Ghelardi, 2024.

25 Íñiguez, 2024: 5.

26 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §151; Íñiguez, 2024: 5.

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.

## 2.2. Potential anti-competitive agreements under Article 101

Furthermore, the Court contemplated whether the prior approval regulations and sanctions could be regarded as a decision that restricted competition under Article 101(1).<sup>31</sup> Article 101 states that it is illegal for companies to enter into agreements to restrict competition, essentially making cartels illegal.<sup>32</sup>

The Court concludes that the rules established by FIFA and UEFA constitute a “decision” within the meaning of Article 101.<sup>33</sup> It further determines that these rules are inherently restrictive “by object.”<sup>34</sup> While the requirement for prior approval of interclub competitions and the imposition of related sanctions may be justified by the “specific nature of football competitions,”<sup>35</sup> the absence of a framework characterized by “transparent, objective, precise, and non-discriminatory” criteria renders these rules and sanctions inherently restrictive.<sup>36</sup> Consequently, there was no need to evaluate their actual restrictive effects.<sup>37</sup>

The Court further observes that the absence of a clearly delineated framework could potentially empower FIFA and UEFA to prohibit a breakaway competition in an arbitrary manner, even if it were to introduce an innovative format and adhere to the “principles, values, and rules” fundamental to European football.<sup>38</sup>

## 2.3. Justifications and Proportionality

The Court next examined potential justifications for FIFA and UEFA’s prior approval rules and associated sanctions.<sup>39</sup> It determined that it is ultimately within the competence of the referring court to assess whether the

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<sup>31</sup> Ghelardi, 2024.

<sup>32</sup> Íñiguez, 2024: 6.

<sup>33</sup> C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §118; Íñiguez, 2024: 6.

<sup>34</sup> C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §179; Íñiguez, 2024: 6

<sup>35</sup> C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §176; Ghelardi, 2024; Íñiguez, 2024: 6.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §176; Íñiguez, 2024: 6.

<sup>39</sup> Ghelardi, 2024.

competition restrictions can be justified under Article 101(3) TFEU and the relevant case law concerning Article 102 TFEU.<sup>40</sup>

While the referring court is at liberty to consider the core principles and values of professional football, merely citing these objectives is insufficient to exempt UEFA and FIFA from the rules of Article 101(1).<sup>41</sup> It is essential that UEFA and FIFA provide substantial evidence to demonstrate that all legal obligations are fulfilled.<sup>42</sup>

The Court further noted that, without the necessary framework it is unlikely that the fourth condition, namely that the decision does not enable the undertakings involved “to eliminate all effective competition” in a significant part of the market, will be met.<sup>43</sup>

In accordance with Article 102, dominant organisations such as FIFA and UEFA are subject to stringent requirements with regarding the justification of their actions.<sup>44</sup> They are required to demonstrate that their actions are objectively necessary, or that any detrimental impact on competition is outweighed by the efficiency benefits for consumers.<sup>45</sup>

However, the Court bluntly states that the “discretionary” nature of FIFA and UEFA’s rules cannot be justified by technical or commercial needs.<sup>46</sup> Instead, it is argued that these rules are designed to impede the emergence of alternative competitions, thereby risking the elimination of all third-party competition.<sup>47</sup>

The Court is also sceptical that FIFA and UEFA can meet the second justification, related to efficiency benefits.<sup>48</sup> In order to succeed, it is imperative that they demonstrate four key points: that their actions result in genuine efficiency gains, that these gains outweigh any potential harm to competition and consumers, that their conduct is indispensable in achieving

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40 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §199; Ghelardi, 2024; Íñiguez, 2024: 10.

41 Íñiguez, 2024: 11.

42 Ibid.

43 Ibid.

44 Ibid.

45 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §202; Íñiguez, 2024: 11.

46 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §203; Íñiguez, 2024: 11.

47 Ibid.

48 Íñiguez, 2024: 11.

these gains, and that effective competition is not eradicated.<sup>49</sup> The Court finds it unlikely that FIFA and UEFA can meet the fourth condition, as their rules appear designed to stifle all competition in the market.<sup>50</sup>

In the context of sanctions enforcement pertaining to the FIFA-UEFA regulations, the Court has stipulated that such measures cannot be arbitrary<sup>51</sup> and must follow “substantive and detailed procedural rules” to ensure transparency, objectivity, precision, non-discrimination, and proportionality.<sup>52</sup> In the absence of such a framework, the sanctions would contravene Articles 101 and 102.<sup>53</sup>

This requirement has two key implications: UEFA and FIFA are prohibited from issuing sweeping threats of bans against players in advance<sup>54</sup> and any sanctions must be subject to procedural safeguards originating from a clear framework and assessed individually.<sup>55</sup> This ensures compliance with the principle of effective judicial protection.<sup>56</sup>

### 3. IMPLICATIONS FOR PRIVATE ENFORCEMENT IN COMPETITION LAW

The Court in Madrid partially uphold the claims of the ESL and implemented the guidance provided by the ECJ.<sup>57</sup> It found that UEFA and FIFA abused their dominant market position by blocking the ESL initiative, ordering the organizations to amend or eliminate the contested provisions in their statutes.<sup>58</sup>

While this case arose as a preliminary ruling referred to the ECJ the Madrid decision opens the door for private enforcement actions.<sup>59</sup> It is

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49 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §§204-205; Íñiguez, 2024: 11.

50 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §207; Íñiguez, 2024: 11.

51 Íñiguez, 2024.

52 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §148; Íñiguez, 2024: 12.

53 C-333/21 – *European Superleague Company*, ECLI:EU:C:2023:1011, §§148, 172-179; Íñiguez, 2024: 12.

54 Íñiguez, 2024: 12.

55 Ibid.

56 Ibid.

57 Nahar, 2024.

58 Ibid.

59 Ibid.

important to note that violations of Articles 101 and 102 can lead to claims for damages.<sup>60</sup> The Damages Directive (2014/104/EU) even presumes harm in such cases, making it easier for affected parties.<sup>61</sup>

UEFA introduced new competition approval regulations in June 2022 in anticipation of the ECJ's decision.<sup>62</sup> These revised rules were deemed outside the scope of the Madrid ruling.<sup>63</sup> However, doubts remain about whether UEFA's current framework will withstand further legal scrutiny under EU law, particularly if it is challenged for lacking the transparency or objectivity required by the ECJ's criteria.<sup>64</sup> It is anticipated that a more definitive ruling will be issued in the coming years, which could result in ESL and other clubs initiating follow-on damages claims against FIFA and UEFA.<sup>65</sup> These claims would seek compensation for the alleged loss of potential profits from a profitable competition.<sup>66</sup> However, it should be noted that, despite the presumption of harm, the onus will be on these parties to provide evidence and quantify the damages they have suffered.<sup>67</sup>

There is precedent for the award of damages in sports-related competition law cases.<sup>68</sup> For instance, the Spanish basketball league was fined €200,000 for imposing discriminatory conditions on its members<sup>69</sup>, and an Andorran basketball club successfully claimed €1.8 million in damages for similar conduct.<sup>70</sup> These cases indicate that damages claims against FIFA and UEFA could also be successful, provided that the clubs can substantiate their losses.<sup>71</sup>

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60 Martínez Luna, 2024.

61 Ibid.

62 Nahar, 2024.

63 Martínez Luna, 2024.

64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.

68 Ibid.

69 Ibid.

70 Ibid.

71 Ibid.



#### 4. CONCLUSION

A striking feature of the judgment is its dual stance on the regulatory authority of UEFA and FIFA.<sup>72</sup> On the one hand, the Court condemns the discretionary nature of their prior approval rules, emphasising the necessity for transparent, objective, precise, and non-discriminatory criteria.<sup>73</sup> Conversely, the Court acknowledges and endorses the legitimacy of FIFA and UEFA's prior approval power, provided it is exercised within a properly defined and fair framework.<sup>74</sup>

This nuanced approach does not diminish the authority of FIFA and UEFA as governing bodies; instead, it reaffirms their central authority over European and global football.<sup>75</sup> By delineating the boundaries within which their powers must operate, the judgment effectively legitimises their regulatory role while imposing safeguards against arbitrariness.<sup>76</sup> Instead of weakening FIFA and UEFA's dominance, the decision serves to reinforce their position as vital coordinators of the sport, on the condition that they adhere to principles of good governance and respect for competition law.<sup>77</sup>

The decision of the Madrid Court provides a foundation for significant private enforcement actions. By underscoring the possibility of damages claims under Articles 101 and 102 and the supportive framework of the Damages Directive, the ruling paves the way for affected clubs to seek redress. While the revised approval framework proposed by UEFA aims to address these legal challenges, its compliance with EU law remains uncertain. The evolving legal landscape indicates the potential for further scrutiny and litigation, which may result in a redefinition of the balance between governance and competition in European football.

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<sup>72</sup> Ghelardi, 2024.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ghelardi, 2024; Legal Tribune Online, 2023.

<sup>77</sup> Ghelardi, 2024.

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