

CJEU showdown: Super League score but UEFA take the win

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The Court of Justice of the European Union (CJEU) has recently delivered a preliminary ruling, on request from the Spanish Commercial Court in Madrid, in relation to the controversial European Superleague Company project. The ruling reflects on the unique position that sport possesses within the Treaty on the Functioning of the European Union (TFEU) and whether that position impacts the application of primary EU law, such as competition law principles, to sport.

At the heart of the challenge lies an examination of EU competition law. The Super League has challenged the monopolistic control exerted by UEFA and FIFA over the organisation and commercialisation of football competitions within the EU. The CJEU's findings on this matter could potentially reshape the regulatory framework of the sport, testing the boundaries of market dominance and the principles of fair competition.

European Superleague Company v FIFA & UEFA

In April 2021, twelve of the leading football clubs in Europe (including Barcelona, Real Madrid and Manchester United) announced the European Super League (the **Super League**), a breakaway European competition to primarily challenge the incumbent UEFA Champions League and possibly domestic leagues, such as the Premier League in England and La Liga in Spain. While the majority of the initial twelve clubs subsequently announced they would no longer take part following public backlash, leaving Barcelona and Real Madrid as the only clubs publicly backing the new league.^[1]

In response, UEFA warned of sanctions for any clubs involved in the Super League and being banned from all other domestic, European and world football competitions. In the aftermath of the Super League announcement in 2021 UEFA president, Aleksander Čeferin, stated^[2] that UEFA would look to ban the founding Super League clubs "as soon as possible"^[3]. The Super League applied for and obtained a series of interim protective measures from the Commercial Court in Madrid to restrain FIFA or UEFA from following through on its threat to discipline or sanction clubs and players

participating in the Super League. The Commercial Court also stayed the proceedings while referring a number of questions to the CJEU for a preliminary ruling.

Competition law

The Super League asserted that UEFA and FIFA's restriction on new football competitions, such as the Super League, constituted an abuse of its dominant position pursuant to Article 102 TFEU in the market for organising and marketing football competitions in the EU.

The CJEU found that UEFA and FIFA held a dominant position and its actions of restricting conditions of access to a market for new football competitions constitute an abuse of that position unless those conditions are transparent, objective, non-discriminatory and proportionate. The CJEU found that no such criteria had been applied to the Super League proposal and therefore UEFA and FIFA abused its dominant position. The Court also found that UEFA and FIFA's requirement for prior approval for new competitions without a transparent and objective framework, this constitutes a restriction of competition which has the object of preventing competition pursuant to Article 101.

However, the Super League failed to convince the CJEU that rules adopted by FIFA and UEFA which require its prior approval for new competitions were in principle in breach of competition law. Therefore, it remains open to UEFA and FIFA to implement a pre-approval procedure provided they apply objective, transparent and non-discriminatory criteria.

The nature of sports, according to the TFEU

Article 165 of the TFEU assigns the EU a supportive role in the realm of sport, emphasising the promotion of sports-related activities in Europe with careful attention to the distinctive attributes of sports, their dependence on voluntary participation, and their societal and educational significance. Furthermore, Article 165(2) outlines the EU's objective by advocating for integrity and transparency in sporting events and encouraging cooperation among sports entities.

Nonetheless, the CJEU's ruling recognised that it is imperative to distinguish that Article 165 does not create an exemption for sporting organisations from compliance with the broader spectrum of primary EU law. Sports, when functioning as an economic enterprise, are subject to adherence to regulations that prohibit anti-competitive practices.

Conclusion

The key takeaway for UEFA and FIFA is that if they impose a pre-approval procedure for the authorisation of new competitions, such as the Super League, that are based on objective, transparent and non-discriminatory criteria, they will likely be deemed compliant with EU

competition law.

If you have any queries about the information contained in this article, please contact the authors or your usual Ogier contact.

[1] [ECLI:EU:C:2023:1011](#)

[2] [Threats of expulsion as UEFA confronts Super League rebel 12 | AP News](#)

[3] In April 2021, numerous clubs withdrew formally from the project, Manchester City Football Club being the first team to formally commence procedures, followed by all of the other English clubs involved. Shortly after, Atlético Madrid, Inter Milan, and AC Milan confirmed their exits.

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