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Economists' Perspective**

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Should Organizing Premier-Level European Football Be a Monopoly? And Who Should Run It? – An Economists’ Perspective

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Abstract: The controversy around the breakaway European Super League, set to conquer the UEFA Champions League, and the surrounding antitrust proceedings revive the academic discussion about the monopoly power of sport-internal governing bodies (like the UEFA), the justification for and limits of their powers, and potential abuses of their power. Against this background, we discuss how much monopoly is unavoidable in premier-level European football and how its powers can be limited and, thus, scope and incentives for power abuse may be reduced. We particularly find that championship management can be periodically assigned to third-parties (like the Super League organizers) by tender procedures, thus, creating a periodical competition for the market, fueling innovation incentives and strengthening the influence of fans’ preferences.

Keywords: sports economics, Super League, UEFA Champions League, monopoly, market power, sport associations, rival leagues

JEL Codes: D02, D42, D47, K21, L12, L30, L40, L83, Z20

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I. Introduction

In early April 2021, twelve clubs agreed to form a mid-week pan-European football club competition, the Super League, which would be in direct competition to the Champions League (UCL) organized by the Union of European Football Associations (UEFA). Besides a strong public backlash from football fans, UEFA, the Fédération Internationale de Football Association (FIFA), the English, Spanish, and Italian football associations as well as the respective league organizations have immediately opposed and publicly condemned the project. In a subsequent press release, the above-mentioned governing bodies of football announced that the twelve involved clubs will be banned from playing in any competition at domestic, European or world level organized by those governing bodies if they pursue this idea further. Furthermore, the players from the twelve Super League clubs were threatened that they could be denied the opportunity to represent their national teams.

In late April 2021, the clubs and the company (A22 Sports Management) behind the Super League received legal protection from a Spanish commercial court. In mid-May 2021, the concerned court referred a preliminary question to the Court of Justice of the European Union (CJEU). Here, the question to be clarified is whether FIFA and UEFA have violated articles 101 and 102 of the TFEU and especially if UEFA's monopoly position as (1) the solely governing body, (2) the disciplinary institution, and (3) income distributor is illegal according to European Union competition law. Furthermore, the court also investigates a potential abuse of a dominant position by UEFA through (a) actions to press the involved clubs to abandon the project, (b) issuing sanctions, and (c) threatening to exclude the involved clubs from all UEFA competitions.¹

The aim of this analysis is to provide insights into the question whether UEFA (or other premier-level governing bodies in sports) can take on the three roles as sole regulator, operator, and gatekeeper at the same time without infringing European competition law.

II. Monopolies, Cooperation, and Power in (Sports) Economics

II.1 A Single Premier-Level League?

The crucial role of market competition is the decentralized coordination mechanism of demand and supply (*Smith 1776; Hayek 1948*). By discovering, generating and utilizing coordination

¹ See for early analyses of the Super League vs. Champions League controversy: *Wagner, Storm & Cortsen 2021; Brannagan et al. 2022; Budzinski, Feddersen & Kunz-Kaltenhäuser 2022; Houben, Blockx & Nuyts 2022; Macedo, Ferreira & Mourao 2022.*

knowledge through decentral market interaction, the dynamic system “market” – that is exposed to numerous forces driving individual demand and supply away from each other – contains an inherent force of coordinating individual demand and supply, i.e. bringing them together again (*Hayek 1978; Budzinski 2004; Kerber 2006, 2011*). According to current scientific knowledge, market competition is the only mechanism that can prevent demand and supply to permanently drift away from each other in an uncoordinated way. The decentralized coordination mechanism “market competition” creates a number of welfare effects for society, in particular efficiency of (i) allocation (static welfare), (ii) innovation (dynamic welfare) as well as (iii) reactive capacity (evolutionary welfare). Furthermore, competition is simultaneously a precondition and a consequence of the individual freedom to act in economic affairs (freedom of consumption choice, freedom of supply). However, market competition is only workable and effective if anticompetitive arrangements and conduct by the market participants themselves is absent or prevented, for instance by competition/antitrust policy combating the (ab-)use of market power as well as collusion among market participants that erodes competitive forces. Notwithstanding the need for freedom of consumption and supply choice, markets are social institutional arrangements and the design of the “rules of the game” influence the market outcome.

While these fundamental insights hold true for the “ordinary goods market”, the emergence of sports economics as a discipline is strongly connected to special characteristics of sports markets, distinguishing them from ordinary goods markets. These special characteristics do not primarily refer to the question whether sports markets are business and commercial in nature – those organized by professional leagues with billion-dollar turnovers are without doubt. Yet, there is a broad consensus that sports markets require a different level of cooperation among the competitors than ordinary markets (*Rottenberg 1956; Neale 1964*): in order to set up a championship or league as a marketable good, the competitors in the sports market must cooperate on, inter alia, the rules of the game, their enforcement, the schedule, etc. In economic language this implies the need for a market-internal governance structure with market-internal institutions (rules of the game) that are enforced by a market-internal regulator (*Budzinski & Szymanski 2015; Budzinski 2019*). This stands in contrast to ordinary goods market, which usually do not require such an additional layer between public regulation (as market-external institutions and regulators) and market participants/competitors. This special characteristic goes hand in hand with a notable difference in the incentive structure of sports market participants compared to ordinary markets: while competitors in ordinary markets may strive for a monopoly position (detering all competitors), this makes no sense in a sports league or championship because the good itself – at the end of the day a form of entertainment for the consumers – can only be produced by sporting competition between different competitors. A monopoly by one competitor would erode the

business of the monopolist. Since much of the skepticism in economics against cooperation among competitors (collusion) originates from monopolies being associated with severe consumer (fan) welfare loss and massive dynamic inefficiencies, the special characteristics of sports markets could be and are used as a justification to accept more cooperation among competitors in sports markets than in ordinary markets.

However, the need for a market-internal regulator who sets and enforces market-internal institutions merely shifts the monopoly problem to another level. While there is no economic logic for a sports team to monopolize a championship, i.e. being the sole competitor in it, the market-internal regulator (often called sports association) enjoys strong incentives to monopolize the market for championships. The majority of premier-level sports leagues and championships organizes itself in a way that there is one single championship, tournament, or league.² A monopoly of premier-level sports championship and leagues can be viewed to promote consumer (fan) welfare by

- offering a competition of the best talent (teams, athletes, etc.), i.e. the highest quality talent-wise (including athletic prowess),
- allows to identify the very best, which is an important motivation for sports consumption,
- provides the highest competition intensity, i.e. the best competitive balance among competitors and thus the best quality in terms of uncertainty of outcome and tension/entertainment,
- facilitating the building up of (specific) consumption capital (*Stigler & Becker, 1977*).

However, the commercial attractiveness of competing championships at the premier level, where some of the best talent competes here and some there, is generally viewed to be considerably lower. Historic examples show that competing championships (so-called rival leagues) have mostly existed for only a few years and that then either the two rival leagues merged, or one league went bankrupt.³ On the other hand, competition among premier-level leagues may also offer some advantages for consumer/fan welfare (*Ross 1989; 2003*):

- an increase in the number and frequency of premier-level sports events (*Houben et al. 2022*),
- a decrease in prices for tickets and broadcasting⁴,
- a reduction of incentives and power to lobby for taxpayer money and public privileges,

² Counter examples include commercial boxing, other martial arts, and to some extent motorsports.

³ Examples for (forced) mergers of rival leagues after a few years are NFL vs AFL (1960–1966) in US football, NBA vs. NBL (1937–1949) and NBA vs. ABA (1967–1976) in US basketball, as well as CART vs. Indy Racing League (1996–2008) in US open-wheel single-seater racing.

⁴ Decreasing prices for broadcasting rights directly benefit the media companies who buy these broadcasting rights but indirectly also benefit consumers/fans through lower subscription prices and through more investment in alternative programs by the media companies.

- an increase in the variety of sporting rules and, at least for some consumer, increased attractiveness of the sport.

Nonetheless, monopolies of championship and league organizers are widely accepted – as it is in the EU with the so-called pyramidal structure of sports associations governing professional (and commercial) sports (as described, inter alia, in the EU White Book on Sports: *European Commission 2007a, 2007b*).

II.2 The Market Power of the Governing Sports Association

However, all the things that speak in favor of having a single (“monopolistic”) premier-level championship or league do not change a relevant problem that comes with it: the market-internal regulator (i.e. the competent sports association) enjoys significant market power. And with their actions, the market-internal regulators will virtually always affect competition within the league or championship – regardless of whether they appear to be of

- *sporting nature* like the dimensions of a goal and a playing field or the number of participants including the conditions of their qualification (at the end of the day: the conditions of market entry), or
- *commercial at heart* like the marketing of the championship brand and the sale of media rights including the (re-)allocation of revenues.

In fact, many sports associations change sporting rules with a view to the television-marketability of the sports, i.e. to make the game more attractive for a television audience, so that sporting and commercial nature are inextricably interwoven. Thus, the market-internal regulator usually combines championship management with government-like regulation in its daily business. In doing so, the market power that the market-internal regulator derives from its monopoly-like position may be abused at the detriment of consumers/fans (e.g. high prices, reduced quantities, lower quality, less innovation) but also at the detriment of participants (e.g. player wages, market entry, allocation of centralized revenues, cheerleader compensation, manipulating the competitive order, etc.)⁵ – and of course at the detriment of possible competitors challenging their monopoly.⁶

While we so far have reasoned the existence of scope for market power and its abuse, the question remains: why should sports associations and their officials as acting market-internal regulators do such things, i.e. act anticompetitively? In other words, what are the incentives to

⁵ See for a case of market power abuse where the governing body colludes with selected teams against some of the other competitors in Formula One motor racing *Budzinski & Müller-Kock (2018)*.

⁶ In their legal analysis, *Houden et al. (2022)* report insightful provisions and actions of UEFA as well as from the International Skating Union (ISU) which follow the objective of blocking all challenges to their monopoly position and are also in effect achieving this goal. There are similar provisions and arrangements in motor racing (*Budzinski 2012; Budzinski & Müller-Kock 2019*).

abuse the existing power in an anticompetitive way? Looking at mission statements of sports associations and respective interviews and speeches by their leading officials, the emphasis is usually on the social contribution of sports and its cultural value. However, in economics, theoretical and empirical analysis has long shown that most individuals do not exclusively follow goals of the common good but also act according to self-interest, depending on the incentive schemes they find themselves in. According to political economics, this is not only true for individuals on markets or in companies but also for officials in politics, governments, administrations, regulators, etc. (political system: *Downs* 1957; bureaucracy and administration: *Niskanen* 1968).⁷ Thus, in order to discuss possible incentives for market-internal regulators in sports, we need to take a look at the possible elements of the utility function of a monopoly sports association and its officials and managers:

- Social goals: conceptualizing officials in sports associations as self-interested and utility-maximizing individuals does not imply that they are not driven by desires to do good things for society. Socially valuable goals (like promoting social values, public health, identification, social inclusion, anti-racism, peace, etc.) certainly play a relevant role among the targets that most officials in sports pursue.
- Prestige of their sports: sports officials in disciplinary sports associations (like a football association) will usually have a special relation to “their” sports and strive to enhance the prestige and popularity as well as to improve the reputation of “their” sports.
- Profit, revenue or budget maximization of the respective sports association: furthermore, the welfare of the sports association for which the individual officials act matters. In sports economics, there is a long-standing and controversial discussion on whether organizations in sports act as profit-maximizers.⁸ Among the sports associations acting as a market-internal regulator, only some will be profit-oriented entities and their officials will have incentives to try to maximize profits. However, many sports associations are not-for-profit organizations. Here, maximizing profits is not the agenda. Notwithstanding, their officials may still seek to maximize revenues of the association because being able to distribute more money to their stakeholders gives them more power and more prestige. Furthermore, not-for-profit organizations are likely to resemble administrations and, thus, be

⁷ Unfortunately, a modern political economy of sports associations and officials is underdeveloped. It would serve to explain numerous relevant phenomena in commercial and professional sports as well as in more amateur and grassroots areas.

⁸ See, inter alia, *Sloane* (1971), *Garcia-del-Barrio & Szymanski* (2009), *Fort* (2015), and *Terrien et al.* (2017).

subject to the incentive schemes of bureaucracies (*Niskanen 1968*). Within bureaucracies, maximizing budgets becomes an important goal for the acting officials, again because it is associated to increasing power, influence, prestige, and career options – as well as the relevance of the organization as a whole.

- Personal prestige and career including empire building: from the literature on organizations, it is well-known that managers and officials may pursue their own goals in addition to (or instead of) the goals of the organization (inter alia, *Jensen 1986*). The personal prestige and/or power can be a value of its own for officials, which may lead to so-called empire building (*Roll 1986; Shleifer & Vishny 1988; Trautwein 1990*), i.e., tasks and size of organizations get overblown at the expense of the original goals and functions of the organization. Together with the incentive for budget-maximization, empire building may lead to diseconomies of scale like x-inefficiencies and power abuse (*Leibenstein 1966*). Furthermore, personal prestige and power may also serve as instruments to improve career options within the organizational hierarchy and beyond the organization.
- Personal income: Increasing your own income motivates individuals everywhere in society and sports officials are certainly no exception.

All these factors are present in the utility functions of sports officials but, from individual to individual, their weights differ significantly: some officials will be driven much more by social goals than anything else – and some others will be driven much more by prestige and income categories.⁹ In any case, together with market power (i.e. the lack of competitive restrictions, see above), principal-agent-problems (i) between associations and clubs as well as (ii) between association and officials/managers create scope for abuse and (at least partly) self-interested officials experience incentives for (ab-)use this scope in order to maximize their individual utility functions. The second dimension of principal-agent problems resembles classic agency theory (inter alia, *Jensen 1986*): organizations (as principals) are not perfectly able to control their managers/officials (as agents), so that the officials only imperfectly pursue the goals of the organization and may use varying scope for following personal goals that deviate from the welfare of the sports association. However, in the context of a powerful market-internal regulator, the first dimension of principal-agent problems becomes particularly relevant. Many market-internal regulators are sports association in the guise of a membership association where

⁹ An interesting avenue of research that we cannot pursue here would be to analyze whether the structures, power hierarchies, and typical career paths within sports associations favors officials who have an emphasis on social goals or those who have an emphasis on prestige and empire building.

the participants of the leagues and championships are the members (“owner”) of the association.¹⁰ This is typical in European football, where national football associations are formed by the clubs and international associations are formed by national associations. Through the chain of regional, national, and supranational associations, the competitors (e.g., the football clubs) “own” the market-internal regulator (e.g., the UEFA), so that the market-internal regulator as the agent should act in the interest of the competing teams (as the principals). However, control mechanisms through the chain of associations are rather weak and especially higher-level associations and their officials can act highly independent from the clubs – offering relevant scope for pursuing self-interests and (ab-)using their power to these ends (*Budzinski & Szymanski 2015*). Actually, single relevant big teams may have a more effective influence on the association through direct lobbyism than the group of teams through the hierarchy of association memberships (*Budzinski 2014*).

Most recent economic theory on digital ecosystems demonstrates that incentives to abuse market-internal regulatory power increase with so-called dual role situations, e.g., the same associations and officials acting in different parts, segments, and stages of the sports market in question. Through self-preferencing strategies, these dual role agents can anticompetitively increase their own utility, manipulate consumers and stakeholders within the system and exploit co-producers of the ecosystem good.¹¹ In this analogue, the market-internal regulator acts as a gatekeeper and enjoys both the scope and the incentives for abusing its gatekeeping power (*Budzinski 2021*). The similarities are interesting: both ecosystem providers and sports associations define the rules of the game within their systems and pursue their own commercial interests within the system. Just like sports associations define the conditions for participating in a league, a marketplace service provider (like Amazon, like an app store provider, like a streaming service provider, etc.) defines the conditions for access to the marketplace and for the commercial conditions of doing business. And although the dual role situations may differ in detail (i.e., the sports association does not run its own team), the own commercial interest of the “regulator” only partly overlaps with those of the participants.

¹⁰ Note that this is not always the case. Instead of this bottom-up approach, the Olympic Committees, for instance, are organized top down with the International Olympic Committee forming national subsidiaries. Another case is motor racing: while the Fédération Internationale l’Automobiles (FIA) does consist of national motor racing associations, these are not built from the competing teams. See for more details on the competitive implications of different organizational models *Budzinski & Szymanski (2015)*.

¹¹ In digital ecosystems, such dual role situations refer, for instance, to companies offering a marketplace service while at the same time acting as a shop owner on this marketplace or to companies providing a streaming service and, at the same time, competing on the content stage of the market. See, inter alia, *de Cornière & Taylor (2019)*, *Marty (2021)*, *Bougette et al. (2022)*, *Bourreau & Gaudin (2022)*, *Hagiu et al. (2022)*.

Altogether, the absence of competition among market-internal regulators implies that there is scope and incentives for sports associations as market-internal regulators to abuse their power. Therefore, the fact that cooperation among the participants is elementary for the common product to be produced is both constitutive for establishing sports market competition and, at the same time, restricts competition. The derived reasoning that a monopoly championship on the premier level is superior to competing championships is sound. However, it does not imply that the resulting market power problem is of no concern. Here, standard economics wisdom is applicable to sports markets. Also, in cases where monopolies are potentially efficient (e.g., natural monopolies) or virtually unavoidable (e.g., in special cases of strong network effects), the theoretical superiority of the monopoly usually does not transform into superior empirical performance. Because of the lack of incentives to exploit the hypothetical efficiencies in the mid- and long-run as well as because of the incentive to invest in rent-seeking rather than in market performance (*Tullock 1967; Tollison 1982, 2012*), even theoretically superior/efficient monopolies often turn out to harm social welfare. Consequently, such monopolies are usually put under strict abuse control regulation (like certain online platforms in the EU with the new Digital Markets Act), sector-specific or gatekeeper regulation (like often energy or railway nets) or are organized as a public utility (like the water network in many countries). In other words, even if one accepts the monopoly structure, the resulting market power still remains a problem that requires control.

Looking into the existing regulation of hard-to-avoid monopolies, two important elements catch the eyes:

- (i) deconstruction of the market in order to identify the monopoly bottleneck that cannot be avoided – and allow monopolies only there.
- (ii) implementation of checks and balances by the public government (i.e., a market-external regulator) in order to limit the abuse of market power by the remaining monopoly area.

In the next section, we apply these two principles to the problem of market-internal governance of European football. In doing so, we unbundle the monopoly governance by identifying specific tasks that require a single supplier/organizer and those that can be subject to market competition.

III. How Much Monopoly Do We Need in European Football?

It has been established in EU antitrust practice that anticompetitive restrictions set by professional sports governing bodies could be justified (e.g., exempted from Article 101 and

102 TFEU) if these restrictions are inherent in the pursuit of legitimate objectives and are proportionate to these. The European Commission clarified in the ISU case that legitimate objectives might be (a) the integrity of sport, (b) the protection of health and safety, (c) the organization and proper conduct of competitive sport (including the protection of the proper functioning of the sports calendar and the protection of uniform rules of sport), (d) solidarity between participants, and (e) the protection of the volunteer model of the sport (*Houben et al., 2022: 6*). Additionally, another objective that is not included in this list but that is brought forward by sports governing bodies regularly, is the preservation of competitive balance.

In the following, we will identify the key tasks associated with the organization of a sporting championships and, especially, assess if these constitute legitimate objectives as outlined above. The key tasks are:

- championship design (selection of participants, tournament mode, scheduling, etc.),
- rule setting,
- rule enforcement,
- revenue sharing agreements incl. sale of commercial (media) rights, and
- licensing.

Additionally, we want to put a strong emphasize on the question whether granting monopoly governance over individual tasks are proportionate – an aspect that is often overlooked and taken for granted in the public debate once a legitimate objective has been established. Finally, we will use the clarifications for legitimate objectives as stated by the European Commission in the ISU case as a guiding principle for analyzing and deconstructing the key tasks even further in order to clearly identify the monopoly bottleneck(s), which cannot be avoided.

Defining what constitutes the integrity of the sport is a complex question and a variety of rationales can be brought forward. For example, there is convincing anecdotal evidence that consumers' preferences for crowning an unambiguous champion are so strong that rival leagues do not seem to be able to survive for more than a couple of seasons and that the rival situation will end, after a short period of co-existence, in either the bankruptcy of one of the leagues or in a merger of the two leagues. Thus, it can be derived that, compared to a situation with two or more rival leagues at the premier level, consumers receive strong utility from just one single championship or league at the premier-level, which guarantees the unambiguously crowning of a sporting champion in a given sport, a given time-period (e.g., year, season), at a given level, and a given geographical dimension (e.g., country, region/continent, world).

Thus, if consumers prefer an unambiguous premier level championship, it can be assumed that the “championship design” is a central element of the integrity of the sport and, hence, this task should generally reside with the market-internal regulator. However, we would argue that one could go even more in-depth and further deconstruct the task “championship design” into sub-elements like selection of participants, tournament mode, scheduling and – at its core – maybe merely the sanctioning of the championship itself. If the governance monopoly would only be granted for the sanctioning of a championship as the premier-level championship but the business side of the championship (incl. selection of participants, tournament mode, scheduling) would be outsourced to a different, legally independent organization or company, the integrity of the sporting championship would still be preserved.

Furthermore, the lack of competition *in* the market may be partly compensated by a periodical competition *for* the market: If a license to organize this championship would be exposed to regular competition – e.g., in form of a tender every few years/seasons offered and monitored by the market-internal regulator –, negative effects of the general restriction of competition would be limited while significant benefits for consumers would be provided. Additionally, opening the tasks “championship design” – except of the sanctioning of the championship itself – to competition periodically, will provide options for innovations in areas like tournament modes, scheduling, etc., which is likely to benefit consumers too. Without competition – neither in the market, nor periodically for the market – the incentives to consider fans’ interests (beyond sheer viewing and attendance figures) are comparatively weak. Finally, whether the championship design in a broader sense including all sub-elements will be located with the market-internal regulator or whether it is only the sanctioning of the competition, there is no reason that the sporting championship should be organized by the market-internal regulator itself. Here, it is important to highlight that separating the role of the market-internal regulator as sanctioning body from the role as supplier on the market will not interfere with the integrity of the sport (e.g., the pyramidal model).

However, a strong case can be made that the sanctioning of the competition and, thus, enforcing that only one unambiguous championship at the premier-level exists during the period determined in the tender, should reside with the market-internal regulator. Here, it might be easily justifiable that the market-internal regulator can set the rules for the tender procedure and select the winner based on clear and transparent criteria in order to protect the integrity of the sport by, for example, preserving the pyramidal model. However, it needs to be made sure that the tender procedure only contains requirements that address those aspect that are necessary to protect the integrity of the championship from the perspective of the consumers while allowing

for the greatest degree of competition for the right to organize the championship and, thus, innovations through the bids.

Following *Houben et al. (2022, p. 7)*, preserving uniform rules of the sport – the tasks “rule setting” and “rule enforcement” – might fall under the second possible legitimate objective (“the organization and proper conduct of competitive sport”). Since, at least in the European sports tradition, any premier-level championship will be part of the pyramidal model of open competitions, (relatively) consistent rules and rule enforcement throughout the pyramid will be strongly preferred by the consumers. However, it is not clear that both tasks (rule setting and rule enforcement) necessarily need to be located with the (same) market-internal regulator. One could easily argue in favor of separating these two tasks. This is, anyway, presently practice within the (European) football system, where the rules are set by the International Football Association Board (IFAB) – a board consisting of representatives of the four football associations from the United Kingdom as well as from the Fédération Internationale de Football Association (FIFA) – while the rule enforcement lies with the association organizing the respective championship (i.e., UEFA). Thus, it seems to be reasonable to, first, separate the two tasks and, second, entrust the market-internal regulator with the task of enforcing the rules. Such a separation of powers for setting and executing rules would also fit to social models that are generally deemed to be advantageous incentive-wise.

Revenue sharing agreements (incl. central sale of broadcasting rights), which are normally set and enforced by the market-internal regulator, are intended to generate funds for solidarity payments which benefit many participants and levels of the sports pyramidal system.¹² While the aim of solidarity payments in order to improve competitive balance in directly affected championships, to fund development projects in non-premier-level professional leagues, or to fund grassroots sports projects, can be seen as a legitimate objective, it seems obvious that this can also be achieved if the organization of a championship does not reside with the market-internal regulator but with a third-party organization/company. Here, a tender procedure for organizing a premier-level championship that includes clear rules for a solidarity fee, which the third-party organization/company must pay to the market-internal regulator who will then redistribute the money in the form of solidarity payments, will satisfy the (legitimate) objective of solidarity in the sports system without generating too much negative effects through the restriction of competition.

¹² However, see *Budzinski & Müller-Kock (2019)* for an overview of the revenue redistribution schemes of several premier-level professional championships. Often these redistribution schemes seem to follow more sports political reasons than true solidarity.

Furthermore, another reason to establish revenue sharing agreements is maintenance of competitive balance – a concept that refers to the preferences of consumers for the uncertainty of outcome and balanced financial and sporting competition. A notion that dates to the seminal sports economics articles from Rottenberg (1956) and Neale (1964). However, empirical evidence does not sufficiently support the claim that consumers show a strong preference for competitive balance.¹³ If consumers do not perceive improvements in competitive balance as beneficial and, thus, no significant benefits can be brought forward in order to outweigh the negative effects of the (strong) competitive restrictions, it is clear that market interventions implemented by the market-internal regulator to alter competitive balance (e.g., the central sale of commercial rights or revenue sharing agreements), do not justify granting monopoly power. Even if the claim of positive effects of revenue sharing agreements on competitive balance is theoretically accepted,¹⁴ it seems to be reasonable to generate the revenues in a competitive environment and redistribute a share of these revenues among the (participating) clubs and/or the sports system afterwards.

By contrast, however, the goal of maximizing common revenues by bundling broadcasting rights and selling them in a cartel- or monopoly-style fashion does not constitute a legitimate objective – and is very likely to harm consumer/fan welfare (*Késenne* 2000, 2009; *Falconieri et al.* 2004; *Gürtler* 2007; *Peeters* 2011, 2012). Since the illegitimate objective of pocketing monopoly rents may be hidden in the shadows of the legitimate objective of solidarity payments, the specific design of re-allocation mechanisms is crucial for identifying the true objectives or the ones effectively pursued by the revenue sharing agreement (*Budzinski* 2018). Similar considerations need to be considered when it comes to ostensible competitive balance objectives.

Finally, licensing systems are implemented by sports associations to make sure that teams are not going bankrupt during a running season. Since this would reduce the utilities of consumers strongly and, especially in the long-run, undermine the trust of consumers in the product, strict rules to guarantee that no mid-season bankruptcies occur can be seen as important to protect the integrity of the sport. Thus, a legitimate objective can be assumed here. Furthermore, in contrast to more severe market interventions that are intended to, inter alia, prevent intra-season bankruptcies (e.g., salary caps, luxury tax systems), licensing systems seem to be proportionate.

¹³ For a comprehensive overview of the empirical literature, see *Coates, Humphreys & Zhou* (2014) as well as *Pawlowski & Nalbantis* (2019). Furthermore, they show theoretically and empirically that even the opposite can be found as they find evidence that consumers show reference-dependent preferences and loss-aversion.

¹⁴ Under specific conditions, this can at least be shown in theoretical models (*Fort & Quirk*, 1995; *Késenne*, 2000).

As we initially emphasize in this section, the question of proportionality is crucial to the (anti-) competitive effects of the actions by the market-internal regulator. Striking examples include the championship design as well as the sale of commercial media rights. Championship design includes, *inter alia*, the selection of the participants in the sporting competition as well as the total number of contestants on the premier level. Both decisions – selection and limitation of contestants – must be made; a design without setting such decisions is hardly conceivable. However, the criteria that determine these decisions can be pro- and anticompetitive:

- the total number of contestants (e.g., the number of teams in the premier-level league) can be chosen according to capacity and feasible scheduling – or it can be chosen according to revenue maximization. The latter criterion would involve an artificial reduction of the quantity of top-level sporting competitions (so that revenues are allocated among fewer teams), which would be both anticompetitive (foreclosure; deterrence of competitors) and fan welfare-reducing (less games to watch/attend).
- entry into the premier-level championship can be decided on sporting performance criteria (i.e. promotion/relegation) – or it can be decided on financial and political considerations (like, for instance, in closed leagues where newcomers are required to buy out an existing team or are only admitted if they fill a geographic void, for instance). The question whether (i) all European states/regions should be represented in premier-level football competition, (ii) performance-based the best clubs should compete there even if this means a geographic concentration on the big five football countries, or (iii) teams should be selected according to their reputation and market value constitutes one of the dividing lines between the UEFA and Super League proposal for championship design.

Unfortunately, sports economic research has rarely ever addressed the important questions when contestant selection and quantity rules are procompetitive and when they constitute an abuse of market power.¹⁵ Such research is an important desiderate.¹⁶ This is particularly true since the separation of powers and the limitation of the governance monopoly reduce but not perfectly erode the scope and incentives for abusive/anticompetitive rules. Yet, only deconstructing the monopoly scope offers the option to include a criterion like proportionality

¹⁵ See for an overview on the literature on competition policy in sports markets *Budzinski* (2019) and for an overview on the conditions for anticompetitive effects from market-internal financial regulations *Budzinski* (2018).

¹⁶ See, for instance, for an analysis whether fans from smaller countries prefer superstar club duels over the representation of local clubs in the Champions League *Budzinski, Feddersen & Kunz-Kaltenhäuser* (2022).

for the selection of championship designs, i.e. providing incentives to suggest and select procompetitive solutions through the tender procedure. As long as the market-internal regulator does it all by itself, anticompetitive incentives are likely to prevail.

IV. Results and their Relevance for Sports Competition Policy

As we explain, the dual role of sports associations of commercially exploiting a sporting championship and, at the same time, performing a regulatory function should be broken up as this would benefit, at least, consumers/fans and competitors. It seems necessary to analyze and deconstruct the market to identify the monopoly bottleneck(s) which cannot be avoided, like the sanctioning of unambiguous premier-level championships, and allow monopoly governance only there. Granting monopoly governance and exemptions from EU competition law to a market-internal regulator might be justifiable for tasks like rule enforcement, licensing, and championship design. With respect to the task championship design, it can be further shown that, after deconstructing it into sub-tasks, not the organization of the sporting championship constitutes the unavoidable monopoly but merely the sanctioning of the championship. One solution, that would allow for (a) protecting the integrity of the pyramidal organization model of sports championships and (b) competition for the right to organize the sporting championship by independent organizations/companies, would be a tender procedure controlled and monitored by the monopolistic sports organization. Periodical competition for the market can be an imperfect proxy for competition in the market and may serve here to avoid a relevant portion of the problematic incentives to abuse market power.

The analysis in this paper can only present a starting point for an important research program: what separation of powers in internal governance would be optimal for different types of sports, leagues, and championships as well as which rules do actually serve fan welfare and which rules rather secure overcompetitive rents and protect the market position of insiders of commercial sports markets. Both due to a lack of research and also a lack of enforcement activity, the potential of abuse control (as part of competition policy) for preventing welfare-reducing arrangements in commercial sports markets has not yet been exploited. More far-reaching interventions like specific gatekeeper regulation for market-internal regulators in sports or public utility regulation (i.e., externalizing (parts of) the regulation to public authorities) should only come onto the agenda after the potential of competition policy has been fully employed. Still, given relevant cases like the fight between UCL and Super League are happening now, the topic deserves and requires more treatment.

References

- Bougette, P., Budzinski, O. & Marty, F. (2022), Self-Preferencing and Competitive Damages: A Focus on Exploitative Abuses. *The Antitrust Bulletin*, 67(2), 190-207.
- Bourreau, M. & Gaudin, G. (2022), Streaming Platform and Strategic Recommendation Bias. *Journal of Economics and Management Strategy*, 31(1), 25-47.
- Brannagan, P. M., Scelles, N., Valenti, M., Inoue, Y., Grix, J., & Perkin, S. J. (2022). The 2021 European Super League attempt: motivation, outcome, and the future of football. *International Journal of Sport Policy and Politics*, 14(1), 169–176.
- Budzinski, O. (2004), *An Evolutionary Theory of Competition*, <http://dx.doi.org/10.2139/ssrn.534862>.
- Budzinski, O. (2012), The Institutional Framework for Doing Sports Business: Principles of EU Competition Policy in Sports Markets. *International Journal of Sport Management and Marketing*, 11(1-2), 44-72.
- Budzinski, O. (2014), The Competition Economics of Financial Fair Play. In: Budzinski, O. & Feddersen, A. (eds.) *Contemporary Research in Sports Economics: Proceedings of the 5th ESEA Conference*. Frankfurt a.M.: Lang, 77-98.
- Budzinski, O. (2018), Financial Regulation as an Anticompetitive Institution, in: M. Breuer & D. Forrest (eds.), *The Palgrave Handbook on the Economics of Manipulation in Professional Sports*, Basingstoke: Palgrave, 159-179.
- Budzinski, O. (2019), Competition Policy in Sports Markets, in: P. Downward et al. (Eds.), *The SAGE Handbook of Sports Economics*, Los Angeles: Sage, 144-153.
- Budzinski, O. (2021), Gatekeeping in the Audiovisual Sector: Economic Background, Competition, and Regulation, in: M. Cappello (ed.), *Unravelling the Digital Services Act Package*, IRIS Special 2021-01, Strasbourg: European Audiovisual Observatory, 94-109.
- Budzinski, O., Feddersen, A. & Kunz-Kaltenhäuser, P. (2022), Demand for TV Broadcasts of UEFA Champions League Games in Danish Television – The Impact of Uncertainty of Outcome, Team Reputation, and Superstars, *Ilmenau Economics Discussion Paper* 27(165), 1-20.
- Budzinski, O. & Müller-Kock, A. (2018), Is the Revenue Allocation Scheme of Formula One Motor Racing a Case for European Competition Policy? *Contemporary Economic Policy*, 36(1), 215-233.
- Budzinski, O. & Szymanski, S. (2015), Are Restrictions of Competition by Sports Associations Horizontal or Vertical in Nature? *Journal of Competition Law & Economics*, 11(2), 409-429.
- Coates, D., Humphreys, B.R., & Zhou, L. (2014), Reference-dependent Preferences, Loss Aversion, and Live Game Attendance. *Economic Inquiry*, 52(3), 959–973.
- De Cornière, A. & Taylor, G. (2019), A Model of Biased Intermediation. *Rand Journal of Economics*, 50(4), 854-882.
- Downs, A. F. (1957), *An Economic Theory of Democracy*, New York: Harper & Row.
- European Commission (2007a), *The White Paper on Sport*, COM (2007) 391 final, Brussels.
- European Commission (2007b), *The EU and Sport: Background and Context*, Commission Staff Working Paper, SEC(2007)935, Brussels.

- Fort, R. (2015), Managerial Objectives: a Retrospective on Utility Maximization in Pro Team Sports. *Scottish Journal of Political Economy*, 62(1), 75–89.
- Fort, R., & Quirk, J. (1995), Cross-Subsidization, Incentives, and Outcomes in Professional Team Sports Leagues. *Journal of Economic Literature*, 33(3), 1265–1299.
- Garcia-del-Barrio, P. & Szymanski, S. (2009), Goal! Profit Maximization Versus Win Maximization in Soccer. *Review of Industrial Organization*, 34(1), 45–68.
- Gürtler, O. (2007), A Rationale for the Coexistence of Central and Decentral Marketing in Team Sports. *German Economic Review*, 8(1), 89-106.
- Hagiu, A., Teh, T.-H. & Wright, J. (2022), Should Platforms Be Allowed to Sell on their own Marketplaces? *Rand Journal of Economics*, 53(2), 297-327.
- Hayek, F. A. von (1948), The Meaning of Competition, in: Hayek, F. A. von (ed.): Individualism and Economic Order, Chicago (University of Chicago Press), 92-106.
- Hayek, Friedrich A. von (1978), *Competition as a Discovery Procedure*, in: NEW STUDIES IN PHILOSOPHY, POLITICS, ECONOMICS AND THE HISTORY OF IDEAS, CHICAGO: CHICAGO UNIVERSITY PRESS, 179–190.
- Houben, R., Blockx, J. & Nuyts, S. (2022), UEFA and the Super League: Who Is Calling Who a Cartel? *The International Sports Law Journal*, <https://doi.org/10.1007/s40318-021-00201-2>, 1-12.
- Jensen, M. C. (1986), Agency Cost of Free Cash Flow, Corporate Finance, and Takeovers, *The American Economic Review*, 76(2), 323-329.
- Kerber, W. (2006), Competition, Knowledge, and Institutions, in: *Journal of Economic Issues*, XL(2), 457-463.
- Kerber, W. (2011), Competition, Innovation, and Maintaining Diversity through Competition Law, in: Drexl, J., Kerber, W. & R. Podszun (eds.), *Economic Approaches to Competition Law: Foundations and Limitations*, Cheltenham: Edward Elgar, 173-201.
- Késenne, S. (2000), Revenue Sharing and Competitive Balance in Professional Team Sports. *Journal of Sports Economics*, 1(1), 56–65.
- Késenne, S. (2009), The Impact of Pooling and Sharing of Broadcasting Rights in Professional Team Sports. *International Journal of Sport Finance*, 4(3), 211-218.
- Leibenstein, H. (1966), Allocative Efficiency vs. X-Efficiency, *The American Economic Review*, 56(3), 392-415.
- Macedo, A., Ferreira, M. & Mourao, P. R. (2022), A new Paradigm for European Football? The Demand for the Super League, ESEA Conference Paper.
- Marty, F. (2021), Competition and Regulatory Challenges in Digital Markets: How to Tackle the Issue of Self-Preferencing, <http://www.gredeg.cnrs.fr/working-papers/GREDEG-WP-2021-20.pdf>.
- Neale, W. C. (1964), The Peculiar Economics of Professional Sports: a Contribution to the Theory of the Firm in Sporting Competition and in Market Competition. *Quarterly Journal of Economics*, 78(1), 1-14.
- Niskanen, W. A. (1968), Nonmarket Decision Making: The Peculiar Economics of Bureaucracy, *The American Economic Review* 58(2), 293–305.
- Pawlowski, T. & G. Nalbantis (2019), Competitive Balance: Measurement and Relevance, in: P. Downward et al. (eds), *Handbook of Sports Economics*, London: Sage, 154-162.

- Peeters, T. (2011), Broadcasting Rights and Competitive Balance in European Soccer. *International Journal of Sport Finance*, 6(1), 23-39.
- Peeters, T. (2012), Media Revenue Sharing as a Coordination Device in Sports Leagues. *International Journal of Industrial Organization*, 30(2), 153-163.
- Roll, R. (1986), The Hubris Hypothesis of Corporate Takeovers, *Journal of Business*, 59(2), 197-216.
- Ross, S. F. (1989), Monopoly Sports Leagues. *Minnesota Law Review*, 73(3), 643-761.
- Ross, S. F. (2003), Competition Law as a Constraint of Monopolistic Exploitation by Sports Leagues and Clubs. *Oxford Review of Economic Policy*, 19(4), 569-584.
- Rottenberg, S. (1956), The Baseball Player's Labour Market. *Journal of Political Economy*, 64(3), 242-258.
- Shleifer, A. & Vishny, R. W. (1988), Value Maximization and the Acquisition Process, *Journal of Economic Perspectives*, 2(1), 7-20.
- Sloane, P. J. (1971), The Economics of Professional Football: the Football Club as a Utility Maximizer. *Scottish Journal of Political Economy*, 18(2), 121-146.
- Smith, A. (1776), *The Wealth of Nations*, Glasgow.
- Stigler, G. J. & Becker, G. S. (1977), De Gustibus Non Est Disputandum. *The American Economic Review*, 67(2), 76-90.
- Terrien, M., Scelles, N., Morrow, S., Maltese, L. & Durand, C. (2017), The Win/Profit Maximization Debate: Strategic Adaptation as the Answer? *Sport, Business and Management: An International Journal*, 7(2), 121-140.
- Tollison, R. (1982), Rent-Seeking: A Survey, in: *Kyklos*, 35(4), 575-602.
- Tollison, R. (2012), The Economic Theory of Rent-Seeking, in: *Public Choice*, 152(1-2), 73-82.
- Trautwein, F. (1990), Merger Motives and Merger Prescriptions, *Strategic Management Journal*, 11(2), 283-295.
- Tullock, G. (1967), The Welfare Costs of Tariffs, Monopolies and Theft. *Western Economic Journal*, 5(2), 224-232.
- Wagner, U., Storm, R. K., & Cortsen, K. (2021). Commercialization, Governance Problems, and the Future of European Football—Or Why the European Super League Is Not a Solution to the Challenges Facing Football. *International Journal of Sport Communication*, 14(3), 321-333.