

(ANTI)COMPETITIVE FOOTBALL LEAGUES

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Abstract

This Article discusses recent decisions from the European Court of Justice dealing with football (soccer) leagues and their governing bodies. Governing bodies adopt a number of rules allegedly necessary for the good functioning of their leagues. However, many of these rules violate the competition laws. One way to circumvent competition scrutiny is through multi-club ownership. This business model may become more attractive given these recent decisions. This business model may, however, deplete the trust we have in sport competitions. More effective merger regulation may well be the last savior of sporting competition.

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INTRODUCTION

Sports leagues have always had an awkward relationship with the antitrust laws since the 1922 decision *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*.¹ In this case, members of a baseball association sued two associations

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1. *See generally* 259 U.S. 200 (1922).

claiming that the associations formed a cartel when they convinced members to leave the plaintiff's league, which attempted to compete, to join the defendants' league.² The U.S. Supreme Court decided that the competition laws did not apply to baseball because baseball was not "a subject of commerce."³

The question of whether sports leagues engage in commerce seems to be a historical quirk. But, sports leagues have enjoyed more leeway than most industries. For many years, the European competition authorities have ignored the anticompetitive behavior of sports leagues. In December 2023, the European Court of Justice rendered three decisions that have shaken sport-governing bodies across Europe and sent out a clear message: competition law considers sports a business,⁴ and the governing bodies have impeded competition in that industry.

This Article discusses the consequences of the two 2023 European Court of Justice cases linked to football: *European Superleague Company SL v. Fédération internationale de football association (FIFA) & Unión de Federaciones Europeas de Fútbol (UEFA)*⁵ (hereafter European Superleague) and *UL, SA Royal Antwerp Football Club v. Union royale belge des sociétés de football association ASBL & UEFA* (hereafter Royal Antwerp).⁶ The third December 2023 case, *International Skating Union v. European Commission*,⁷ discusses rules imposed by skating governing bodies on athletes. In many respects, this case and the *Royal Antwerp* case mirror each other because they focus on the regulation of athletes. The *International Skating Union* case is not discussed in depth below, but it demonstrates that football is not the only sport posing competition law issues.

2. *Id.* at 207.

3. *Id.* at 209.

4. In many countries, sports play an important part of the economy. For example, a report ordered by the Spanish football league found that the football industry created 185,000 jobs and amounted to 1.37% of gross domestic product in Spain. *Economic, Fiscal and Social Impact of Professional Football in Spain*, LA LIGA (Dec. 2018), <https://assets.laliga.com/assets/201902/28182301economic--fiscal-and-social-impact-of-professional.pdf> [<https://perma.cc/GDU7-KQPH>]. The report considers the direct impact (e.g., sale of matchday tickets) and indirect effect (e.g., media, bars). By comparison, the tourism industry (football tourism included) directly contributed that same year over 10% to the Spanish economy. *OECD Tourism Trends and Policies 2020*, OECD (2020), <https://t4.oecd.org/cfe/tourism/OECD-Tourism-Trends-Policies%202020-Highlights-ENG.pdf> [<https://perma.cc/UH3G-AQLV>]. However, the social impact of football is hard to capture.

5. Case C-333/21, Eur. Superleague Co. v. FIFA (2023).

6. Case C-680/21, SA Royal Antwerp Football Club v. URBSFA (2023).

7. Case C-124/21 P, Int'l Skating Union v. Eur. Comm'n (2023). This case focuses on the rules of the International Skating Union (ISU), which penalize athletes who compete in non-ISU unauthorized competitions. The ECJ found that these rules violated the competition because they are not transparent, objective, non-discriminatory and proportionate. The rule gave the ISU a competitive advantage and increased prices.

These cases are discussed on the backdrop of the rise of multi-club ownership. Multi-club ownership occurs when the same entity owns more than one football club.⁸ This ownership model creates problems with maintaining the competitive spirit of the sport.⁹ For example, in 1980, Real Madrid F.C. beat Real Madrid F.C. Castilla in the final to win the Copa del Rey.¹⁰ Castilla gave a subdued performance in comparison to its previous efforts in the competition.¹¹ The two clubs are owned and operated by the same parent entity, with Castilla being Real Madrid's reserve team. That year, the final of the biggest Spanish cup competition, the Copa del Rey, was a farce. It was a slap in the face of sporting competition.

Since that Copa del Rey final, the Spanish league has changed its rules: they now prohibit two clubs owned by the same parent entity to compete in the same competition.¹² Many national football governing bodies have followed the Spanish example and have prohibited the participation of clubs owned by the same parent entity in the same competition.¹³

However, even with a rule in place, multi-club owners have found some wiggle room. In 2023, Union of European Football Associations (UEFA) acknowledged the sporting problem caused by multi-club

8. Ivan Cherpillod & Juan de Dios Crespo Pérez, *Club Ownership, in CAS AND FOOTBALL: LANDMARK CASES 11, 12* (Alexander Wild ed., 2011).

9. "In other words, the main issue regarding the 'integrity of the game' was whether multi-ownership within the same football competition could be perceived by the public as affecting the authenticity of sporting results or, put in a different way, whether the public could perceive a conflict of interest which might alter the competitive process when two commonly owned clubs play in the same sporting event." *Id.* at 16.

10. Guillermo Rai, *When Real Madrid Played... Real Madrid (Reserves) in the Copa del Rey Final*, THE ATHLETIC (May 5, 2023), <https://theathletic.com/4487793/2023/05/05/real-madrid-copa-del-rey-castilla/> [https://perma.cc/5JUA-828V].

11. Euan McTear, *When Real Madrid Castilla Reached the Copa del Rey final and Played in Europe*, THESE FOOTBALL TIMES (Sept. 5, 2018), <https://thesefootballtimes.co/2018/09/05/when-real-madrid-castilla-reached-the-copa-del-rey-final-and-played-in-europe/> [https://perma.cc/S6J5-27LU].

12. The Spanish football governing body took ten years to change the rule. See Mario de la Riva, *El Año en el que el Castilla Llegó a la Final de Copa del Rey y Desde Cuándo se Prohibió Jugar a los Filiales*, AS (May 6, 2023, 1:04 PM), https://as.com/futbol/copa_del_rey/el-ano-en-el-que-el-castilla-llego-a-la-final-de-copa-del-rey-y-desde-cuando-se-prohibio-jugar-a-los-filiales-n/ [https://perma.cc/SG5R-Y5C3]. Current rules only allow one club with the same parent to participate in any division or competition. See also *Reglamento General*, Real Federación Española de Fútbol Title I Ch.II § 2 ¶ 5, <http://www.rfef-cta.com/site/docs/Reglamento%20General%20RFEF.pdf> [https://perma.cc/GY73-QJVM].

13. See, e.g., *Regulations of the UEFA Champions League*, UEFA, Article 5 (2021), <https://kassiesa.net/uefa/files/2023-24-uefa-cl-rules.pdf> [https://perma.cc/9LF2-JT3N]; Rory Smith, *UEFA Approves Entry of 2 Red Bull-Branded Teams in Champions League*, N.Y. TIMES (June 20, 2017), <https://www.nytimes.com/2017/06/20/sports/soccer/uefa-soccer-red-bull-champions-league.html> [https://perma.cc/7CM9-EGZJ].

ownership but nonetheless allowed those clubs with common ownership to participate in the same competition—despite some remote chance that the club could come face to face.¹⁴

The multi-club ownership also causes problems for the competition laws. At the most basic level, clubs compete for consumers, the fans. However, clubs cannot entertain audiences if they do not cooperate to create a product, the league. This cooperation skirts with the competition laws: the clubs can only cooperate on what is necessary for the league to exist but cannot cooperate on any ancillary aspects.¹⁵ The multi-club ownership model requires the competition authorities to revisit which aspects are essential and which are ancillary. In 2002, the European Commission investigated whether the UEFA rule on multi-club ownership was anticompetitive.¹⁶ It decided that the rule was necessary to ensure sporting competition.¹⁷

However, the European Commission failed to act in preventing multi-club ownership through its competition laws. The multi-club ownership model is often referred to as the franchise model because when an entity acquires a club, it often amounts to foreign direct investment: it buys an existing entity in a foreign country. For example, the City Football Group has been acquiring clubs all over the world since 2013: it owns Manchester City Football Club in the United Kingdom, New York City Football Club in the United States, and Melbourne City Football Club in Australia, amongst many others.¹⁸ Some of its clubs operate in the same intercontinental league: Manchester City Football Club, Girona Fútbol Club, Palermo and Espérance Sportive Troyes Aube Champagne are all (indirect) members of the UEFA.¹⁹ These clubs would indirectly vote through their member associations in unison as members of the UEFA when the vote concerned the regulations of football—the same regulations that have been found to violate the competition laws in December 2023.

14. *The CFCB Renders Decisions on Multi-Club Ownership Cases for the 2023/24 UEFA Club Competitions*, UEFA (July 7, 2023), [https://www.uefa.com/returntoplay/news/0283-186f6a2609f6-77d919fb7eff-1000--the-cfcb-renders-decisions-on-multi-club-ownership-cases-for/\[https://perma.cc/2T8H-WJAR\]](https://www.uefa.com/returntoplay/news/0283-186f6a2609f6-77d919fb7eff-1000--the-cfcb-renders-decisions-on-multi-club-ownership-cases-for/[https://perma.cc/2T8H-WJAR]).

15. *See generally* NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984) (cementing this principle in the U.S.). In Europe, it was confirmed in Case C-415/93, *Union Royale Belge des Sociétés de Football Ass’n ASBL v. Bosman* (1995). Those cases are discussed in more details below.

16. Eur. Comm’n Press Release IP/02/942, *Commission Closes Investigation into UEFA Rule on Multiple Ownership of Football Clubs*, EUROPEAN COMM’N (June 27, 2002).

17. *Id.*

18. *Our Story*, CITY FOOTBALL GROUP, [https://www.cityfootballgroup.com/our-story/\[https://perma.cc/58HR-KE2F\]](https://www.cityfootballgroup.com/our-story/[https://perma.cc/58HR-KE2F]).

19. *Id.*

This Article questions whether the multi-club ownership model could be used to subvert the competition laws. Part I provides background information on multi-club ownership. It provides data on the top three European football leagues, and it discusses some rationales behind multi-club ownership. Part II discusses the market failures associated with sports leagues. This Part argues that multi-club ownership can solve and/or worsen those market failures depending on the context. In many instances, the solutions of those failures also breach the competition laws. Part III discusses the *Superleague* case and its implication for the multi-club ownership model. Competition authorities disagree on the market definition for football clubs. This lack of agreement makes responding to club ownership difficult.

I. THE FOOTBALL LANDSCAPE: HOW COMMON IS MULTI-CLUB OWNERSHIP?

In Saudi Arabia, four clubs are owned by the same entity.²⁰ This could be an isolated example or a glimpse into the future. This Part looks at the top three leagues in Europe during the 2023–2024 season: the Premier League in the United Kingdom, the Bundesliga in Germany, and La Liga in Spain. Those leagues are among the most successful leagues in terms of country coefficients,²¹ so they tend to attract the most investments. They also have different rules with regard to club ownership that help best illustrate the issues raised in the rest of this Article. Within these leagues, over one-third of clubs are owned by an entity that owns multiple clubs. The discussion below details those entities.

A. *England*

The Premier League, the English top division, has twenty member shareholding teams, and the Football Association, the football governing body, holds the twenty-first share.²² The Premier League requires that the clubs disclose any significant interest in the club ownership.²³ Of those

20. See, e.g., Josh Noble, *Saudi Arabia Passes Four Domestic Football Teams to Sovereign Fund*, FIN. TIMES (June 5, 2023), <https://www.ft.com/content/f222ec8a-7982-4a94-b3a0-06322b41765a> [https://perma.cc/KR2T-MKVQ].

21. These three leagues are selected based on their European Coefficient. See *2023/24 Country Coefficients*, UEFA (2023), <https://www.uefa.com/nationalassociations/uefarankings/country/#/yr/2024> (last visited Dec. 15, 2023). Most scholarship focuses on the top five leagues but looking at the Italian and French leagues do not add to the analysis.

22. *Governance*, PREMIER LEAGUE, <https://www.premierleague.com/about/governance> [https://perma.cc/CA4Q-NC3M].

23. See PREMIER LEAGUE, HANDBOOK: SEASON 2022/23 § 149 (2022), https://resources.premierleague.com/premierleague/document/2022/07/19/40085fed-1e9e-4c33-9f14-0bcf57857da2/PL_Handbook_2022-23_DIGITAL_18.07.pdf [https://perma.cc/PAC2-LR XQ].

twenty teams, two-thirds of the club owners have interests in other clubs. The average club owner owns in whole or in part 2.95 clubs.²⁴

The club ownership information is summarized in Table 1. I first compiled the information based on club disclosures on ownership and other sources discussing club ownership as of December 31, 2023.²⁵ These numbers vary frequently because ownership tends to change in those clubs. For example, in November 2023, Manchester United was mooted for a partial purchase from Sir Jim Ratcliffe.²⁶ Ratcliffe owns two other clubs (through a fund called INEOS): OGC Nice (France) and FC Lausanne-Sport (Switzerland).²⁷ On December 24, 2023, the deal went through, thus increasing the number of clubs with multi-club owners.²⁸

24. *Premier League: Who Owns Your Club and What Does It Mean?*, BBC SPORT (Feb. 6, 2024), <https://www.bbc.com/sport/football/67497377> [<https://perma.cc/68WK-S6GX>]. Although the standard deviation is around 3, which shows that the differences between the clubs is significant. Each of the clubs, according to Premier League, must disclose any significant interest in their club. For example, the website for Chelsea F.C. contains the following information:

Ownership

The investors holding a Significant Interest (as defined in the Premier League Rules) in Chelsea Football Club are:

Todd Boehly

Blues Investment Holdings Parent, L.P.*

Mark Walter

See Club Personnel, CHELSEA FC, <https://www.chelseafc.com/en/club-personnel> [<https://perma.cc/E7HH-B82R>]. I collected this publicly available information on each Premier League website about the ownership of each club. Table 1 Column 2 reflects these findings. Then, I did research on each of the owners. Some owners keep their own website and disclose their ownership in other clubs. For example, the City Group, owner of Manchester City, has a website where it discloses its interest in other clubs. *See Our Clubs*, CITY FOOTBALL GRP., <https://www.cityfootballgroup.com/our-clubs/> [<https://perma.cc/9546-YEL4>]. Most owners, however, keep their holding private. For those owners, I conducted research in newspapers of record in the city where the clubs are located. These findings are reflected in Table 1 Column 3. This average is calculated using the number of clubs in Table 1 Column 3.

25. *See* Giles Turner et al., *Who Really Owns Your Football Club?*, BLOOMBERG (June 8, 2023), <https://www.bloomberg.com/graphics/2023-european-football-owners-premier-league-la-liga-serie-a/> [<https://perma.cc/NF48-CHXU>].

26. *See* Will Unwin & Sean Ingle, *Ratcliffe Hopeful of Sealing Manchester United Deal in Next Fortnight*, THE GUARDIAN (Nov. 10, 2023, 8:10 AM), <https://www.theguardian.com/football/2023/nov/10/sir-jim-ratcliffe-hopeful-manchester-united-deal-next-fortnight> [<https://perma.cc/68RF-F9W3>].

27. *Id.*

28. *Club Statement*, MANCHESTER UNITED (Dec. 24, 2023, 11:00 AM), <https://www.manutd.com/en/news/detail/man-utd-reaches-agreement-for-sir-jim-ratcliffe-to-acquire-25-per-cent-shareholding> [<https://perma.cc/F5G4-C7VY>].

Meanwhile, 777 Partners agreed to purchase Everton FC,²⁹ but the purchase has run into some problems because 777 Partners has yet to produce the financial documentation proving that they have the ability to finance the deal.³⁰ So, the interest number discussed above could well be higher by the time of the publication of this Article.

Table 1: Ownership of Premier League Clubs (December 2023)³¹

Club	Owners	Other Football Clubs owned by the same owner
Arsenal	Kroenke Sports & Entertainment	Colorado Rapids (US)
Aston Villa	Nassef Sawiris & Wes Edens	Vitoria Sport Clube (Portugal)*
Bournemouth	Turquoise Bidco Limited (Black Knight Football Club)	Lorient (France)
Brentford	Matthew Benham	
Brighton & Hove Albion	Anthony Grant Bloom	Royal Union Saint-Gilloise (Belgium)
Burnley	Calder Vale Holdings Limited	
Chelsea	Todd Boehly Blues Investment Holdings Mark Walter	Racing Strasbourg (France)
Crystal Palace	John Textor: 45% Josh Harris: 18% David Blitzer: 18% Steve Parish: 10%	Textor: Olympique Lyon (France & US), Botafogo (Brazil), RWD Molenbeek (Belgian); Blitzer: Real Salt Lake (US), AD Alcorcon (Spain), Brøndby IF (Denemark), ADO Den Haag (Netherlands), GD Estoril Praia (Portugal), SK Beveren (Belgian), FC Augsburg (Germany)*
Everton	Farhad Moshiri	
Fulham	Shahid Khan	
Liverpool	Fenway Sports Group (John W. Henry & Tom Werner) –	Redbird: AC Milan (Italy) Toulouse (France)

29. Samuel Agini & Andrew Edgecliffe-Johnson, *Miami Firm 777 Partners Agrees to Buy Everton Football Club*, FIN. TIMES, <https://www.ft.com/content/a79678b5-dfac-4fe9-9fd0-3a408ca6b2fc> [https://perma.cc/H23C-TPF2] (Sept. 15, 2023).

30. Tariq Panja, *Everton Sale Stalls Amid Questions About Buyer's Financials*, N.Y. TIMES (Oct. 18, 2023), <https://www.nytimes.com/2023/10/18/world/europe/everton-sale-777-partners.html> [https://perma.cc/3V7U-4PSF].

31. This ownership table was compiled based on the method discussed in footnote 24. I have the supporting documentation on file and happy to share my finding (email: g.gabison@qmul.ac.uk).

	partly owned by Redbird Capital Partners*	
Luton Town	Luton Town 2020 Ltd Paul Ballantyne	
Manchester City	City Football Group	New York City FC (US), Melbourne City FC (Australia), Yokohama F. Marinos (Japan)*, Montevideo City Torque (Uruguay), Girona FC (Spain)*, Sichuan Jiunia (China)*, Mumbai City FC (India), Lommel SK (Belgian), Espérance Sportive Troyes Aube Champagne (France), Palermo (Italy), Bahia (Brazil)
Manchester United	Publicly traded MANU (NYSE) Voting rights with Malcolm Glazer	INEOS : OGC Nice (France), FC Lausanne-Sport (Switzerland)
Newcastle United	Public Investment Fund	Al Ahli (Saudi Arabia), Al Ittihad (Saudi Arabia), Al Hilal (Saudi Arabia), and Al Nassr (Saudi Arabia)
Nottingham Forest	Evangelos Marinakis	Olympiacos F.C. (Greece)
Sheffield United	United World Group (Abdullah bin Musa'ed)	K Beerschot V (Belgian), Al-Hilal United FC (United Arab Emirates), LB Châteauroux (France), Kerala United FC (India)
Tottenham Hotspur	ENIC Group (Joe Lewis 70 % & Daniel Levy 30%)	
West Ham United	David Sullivan: 38.8% 1890s holdings (Daniel Křetínský): 27% Gold Family Trust WHU LLC (Albert Smith): 8% Other investors 1.1%	AC Sparta Prague (Czech Republic)
Wolverhampton Wanderers	Guo Guangchang Fosun Group	
* minority owner		

As this table shows, multi-club ownership is a common practice in the Premier League. The Premier League has a rule to deal with “dual interests.”³² The rule has two parts: (1) prohibition of dual influence on

32. HANDBOOK: SEASON 2022/23, *supra* note 23, § I.4-6.

club management³³ and (2) prohibition of dual “significant interest.”³⁴

However, the rule deals only with dual interests in the Premier League. The rule does not address dual interest in other leagues (e.g., Germany) or other divisions (e.g., the Championship, the English second division). In theory, an entity could have interest in two English clubs as long as they do not both operate in the Premier League.

The other question is what amounts to “significant.” Some clubs raised this question in June 2023 following a number of transfers between Chelsea FC and four clubs owned by the same entity.³⁵ The Saudi Arabia’s Public Investment Fund (PIF) owns a majority share in Newcastle United and also owns four football clubs in Saudi Arabia.³⁶ PIF made many investments over the years, and PIF may have invested in Clearlake, another investment fund.³⁷ However, Clearwater holds a “significant interest” in Chelsea FC.³⁸ So, PIF could indirectly have an interest in two clubs. The Premier League may have sought clarification about the ownership structure and may have been satisfied that no conflict of interest transpired.³⁹

This transaction shows that the Premier League multi-club ownership regulations leave a lot of room for these entities to operate. Some other leagues have used a different approach in limiting club ownership altogether. The next section focuses on Germany’s attempt in dealing with club ownership and how this impacts multi-club ownership.

33. *Id.* § I.4 (“No Person may either directly or indirectly be involved in or have any power to determine or influence the management or administration of more than one Club.”).

34. *Id.* § I.5 (“No Person may either directly or indirectly hold or acquire any Significant Interest in a Club while such Person either directly or indirectly holds any Holding in another Club.”); *Id.* § I.6 (“A Club shall not either directly or indirectly issue Shares of any description or grant any Holding to any Person that either directly or indirectly already holds a Significant Interest in another Club.”).

35. Tom Morgan, *European Rivals of Chelsea and Wolves Call for Inquiry into Saudi Spending Spree*, TELEGRAPH (June 19, 2023, 10:03 PM), <https://www.telegraph.co.uk/football/2023/06/19/chelsea-wolves-call-inquiry-saudi-arabia-transfer-news/> [https://perma.cc/Z5J6-LXHE].

36. Matt Slater, *Is Saudi Arabia Funding Chelsea?*, ATHLETIC (June 21, 2023), <https://theathletic.com/4624201/2023/06/21/saudi-arabia-chelsea-funding/> [https://perma.cc/32EM-87G6].

37. Tom Morgan, *Premier League Demanded Extra Assurances Chelsea Were Not Owned by Saudi Arabia*, TELEGRAPH (June 22, 2023, 3:56 PM), <https://www.telegraph.co.uk/football/2023/06/22/premier-league-chelsea-transfers-pif-clearlake-saudi-arabia/> [https://perma.cc/B9ZR-T6QR].

38. *Club Personnel*, CHELSEA FOOTBALL CLUB, <https://www.chelseafc.com/en/club-personnel> [https://perma.cc/3YY6-AGSB].

39. *Id.*; *Premier League ‘Entirely Satisfied’ There’s No Conflict of Interest in Chelsea Dealings with Saudi Clubs*, TRIBUNA (June 22, 2023, 11:35 PM), <https://tribuna.com/en/news/chelsea-2023-06-22-premier-league-entirely-satisfied-theres-no-conflict-of-interest-in-chelsea-dealings-with/> [https://perma.cc/7XNB-A9SJ].

B. Germany

The German league, Bundesliga, has a “50+1 ownership” rule.⁴⁰ The rule requires that football entities join the league if the association of members (fans) “has over 50% of the votes plus at least another share of votes in the assembly of the shareholders.”⁴¹ The rule implies that a private entity cannot purchase the majority control of a club. According to the Bundesliga, the rule prevents private or commercial investors from “taking over clubs and potentially push[ing] through measures that prioritise profit over the wishes of supporters. The ruling simultaneously protects against reckless owners and safeguards the democratic customs of German clubs.”⁴² Indirectly, this rule makes multi-club ownership impossible.

However, this rule has three exceptions. The first two exceptions are Bayer Leverkusen and VfL Wolfsburg. Those two clubs are the offspring of factory worker associations. Bayer Leverkusen was created by paint factory workers at the “Paint factories formerly known as Friedrich Bayer & Co.” who wanted to have a gymnasium for exercising.⁴³ Similarly, VfL Wolfsburg was created by car factory workers⁴⁴—many of them affiliated with Volkswagen.⁴⁵ So, for historical reasons, those two clubs were exempt and grandfathered.⁴⁶

The last exception has similar roots and is mostly linked to sporting success. Dietmar Hopp owned controlling shares of TSG Hoffenheim for nearly identical reasons. Dietmar Hopp acquired shares of the club in the 1980’s: he was a fan and player for the team.⁴⁷ Over the next two decades, Hopp would invest in the club, and his investment would drive the club’s sporting success from the ninth tier amateur to the first tier of German

40. See generally *Statutes DFL Deutsche Fußball Liga e.V.*, DFL § 8.3 (Aug. 21, 2019), <https://media.dfl.de/sites/2/2020/03/Statutes-of-DFL-Deutsche-Fußball-Liga-e.V.-effective-as-of-21-August-2019.pdf> [https://perma.cc/M3UY-YVTP].

41. *Id.*

42. *Explaining the Bundesliga’s 50+1 Rule*, BUNDESLIGA, <https://www.bundesliga.com/en/faq/what-are-the-rules-and-regulations-of-soccer/50-1-fifty-plus-one-german-football-soccer-rule-explained-ownership-22832> [https://perma.cc/KB32-N2KL].

43. *History: Early Years*, BAYER, <https://www.bayer04.de/en-us/page/history/founding-years-to-the-new-millennium/early-years> [https://perma.cc/3YCE-K8Z2].

44. *1945 Bis 1959*, VfL WOLFSBURG, <https://www.vfl-wolfsburg.de/der-vfl/geschichte/chronik/1945-bis-1959> [https://perma.cc/Q9HZ-8TQZ]; *Wolfsburg Fanzone: Getting to Know the Auto City Wolves*, BUNDESLIGA (May 31, 2019), <https://www.bundesliga.com/en/bundesliga/news/wolfsburg-tourism-shop-tickets-stadium-jersey-watch-buy-5477> [https://perma.cc/WY25-7YWF].

45. *Explaining the Bundesliga’s 50+1 Rule*, *supra* note 42.

46. *Id.*

47. Jason Humphreys, *The Rise of TSG Hoffenheim: From Ninth-Tier Amateurs to the Bundesliga*, THE GUARDIAN (Feb. 26, 2016, 5:30 PM), <https://www.theguardian.com/football/englische-woche/2016/feb/26/hoffenheim-bundesliga-germany-julian-nagelsmann> [https://perma.cc/GYF5-WJN3].

football.⁴⁸ The rule applied only to the top two tiers of German football. So, when Hopp became involved, his investment was not restricted, and when it finally was, his efforts were recognized. However, in 2023, Hopp indicated that he would relinquish this status and return the control of the club to its members.⁴⁹

The 50+1 rule flirts with the legal competition rules. It raises the question of whether the rule is necessary to create the league/product. Accordingly, the German Football Federation has requested that “Germany’s Federal Competition Regulator (Bundeskartellamt) review the 50+1 rule to determine its legality.”⁵⁰ In its preliminary assessment, the competition authorities did not find this rule problematic because it promotes sporting competition.⁵¹ Sporting competitive balance may create a better product. However, the competition authority worries about the discriminatory application of the rule⁵² and about these three exceptions.

Scholars disagree on the legality of the 50+1 rule. On one hand, Pablo Ibáñez Colomo argues that the Bundeskartellamt decision aligns with precedents:⁵³ members can decide the conditions under which others can join and thus helps preserve the “‘club’ character of a league.”⁵⁴ On the other hand, Frederik Wiemer writes that “the clubs [can be] impaired in their competitive freedom of action by the 50+1 rule and access to the market for participation in football clubs [can be] restricted.”⁵⁵ He supports his conclusion by stating that “the regulation was issued by a dominant federation . . . and may lead to an exclusionary abuse.”⁵⁶

If the rule was to be challenged in a court of law, it would be difficult to predict what a court would do—both sides have strong arguments. Many leagues across Europe do not have this rule, and yet they may seem more competitive than the German league (hence these may be a more

48. *Id.*

49. *History: From Our Foundation to the Present Day*, TSG HOFFENHEIM, <https://www.tsg-hoffenheim.de/en/news/overview/2023/03/dietmar-hopp-to-relinquish-special-status/> [https://perma.cc/A3K6-WH8E].

50. Matt Ford, *Bundesliga: Hoffenheim, Dietmar Hopp and the 50+1 rule*, DW (Mar. 3, 2023), <https://www.dw.com/en/bundesliga-hoffenheim-dietmar-hopp-and-the-501-rule/a-64868028> [https://perma.cc/LJ9L-WVCX].

51. *Bundeskartellamt Provides Preliminary Assessment of DFL’s 50+1 Ownership Rule*, BUNDESKARTELLAMT (May 31, 2021), https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/31_05_2021_50plus1.html [https://perma.cc/87JE-PE76].

52. *Id.*

53. Pablo Ibáñez Colomo, *Competition Law and Sports Governance: Disentangling a Complex Relationship*, 45 *WORLD COMPETITION* 323, 349 (2022).

54. *Id.*

55. Frederik Wiemer, *Sports and Antitrust Law*, in *MANAGING SPORTS TEAMS* 60 (Stefan Walzel & Verena Römisch eds., 2021).

56. *Id.*

attractive product).⁵⁷ However, correlation does not mean causation: how can we be sure that the rule impacts the product attractiveness? Similarly, tickets in Germany to attend matches are cheaper than in the United Kingdom.⁵⁸ The Bundesliga attributed this price discrepancy to the rule (because it decreases the profit making incentive);⁵⁹ but the prices can be due to other factors (e.g., supply and demand). Thus, further analysis would be required to understand the impact of this rule—both from a competitive standpoint and from the standpoint of what is necessary for a well-functioning league.

Even if the rule was found to have anticompetitive effects, a court may also consider the socio-economic benefits that football clubs bestow on society. As discussed with the creation of Bayer Leverkusen and VfL Wolfsburg, many clubs were created by communities to serve a social function. In modern terms, these clubs help create a sense of community.⁶⁰ These clubs and their fans often advance social causes that traditional private companies do not. For example, in Germany, Bayern Munich fans raised and donated one million euros to help refugees.⁶¹

The competition authority should also worry about the ease with which the rule can be broken. One example of a team that has successfully

57. *50+1 Ownership Rule Should be Considered with English Clubs – FSA*, THE ATHLETIC (Apr. 21, 2021), <https://theathletic.com/4216636/2021/04/21/501-ownership-rule-should-be-considered-with-english-clubs-fsa/> [<https://perma.cc/BD5U-3VBJ>] (It would also depend on how a court would measure competitiveness: is the number of different teams who win a title? Is the how close the title races are? Is it how close each match is?).

58. The average season ticket in Germany of standing terrace is at €196.80. Those are the cheapest tickets. See Matt Ford, *Bundesliga Price Check 2023-24: The Cost of German Football*, DW (Aug. 18, 2023), <https://www.dw.com/en/bundesliga-price-check-2023-24-the-cost-of-german-football/a-66547548> [<https://perma.cc/7Q6W-H9VX>]. In comparison, the cheapest season ticket in the Premier League is at West Ham United for at £310 (which is around €360). But cf. Matt Woosnam, *Premier League Season Ticket Survey: 17 Clubs Raise Prices for 2023-24*, THE ATHLETIC (June 22, 2023), <https://theathletic.com/4625027/2023/06/22/premier-league-season-tickets-price-increase-2023-24/> [<https://perma.cc/MQ9K-2Y45>]. The same information shows that every club in Germany has a cheaper season ticket offering than every single UK club.

59. *Explaining the Bundesliga's 50+1 Rule*, *supra* note 39 (explaining that outside influences or investors would not have the “ultimate say” in the operations of a club when it is run by the clubs, which in reality, is run by the fans).

60. Adam Brown, Tim Crabbe & Gavin Mellor, *English Professional Football and Its Communities*, 32 INT'L REV. OF MODERN SOC. 159, 159–60 (2006).

61. *Bayern Munich to Donate €1m to Help City's Refugees*, THE GUARDIAN (Sept. 3, 2015, 10:54 AM), <https://www.theguardian.com/football/2015/sep/03/bayern-munich-donate-migrants> [<https://perma.cc/CD47-CWTS>] (This sense of community around football is not unique to Germany. For example, in the UK, fans have created food banks across the country to help with the cost of living crisis.); see also Jack Sugden & Christopher Faulkner, *Football Fans Fighting Food Poverty: How a 'Lifesaving' Mobile Pantry Scheme Spread Across the Country*, CONVERSATION (Nov. 8, 2023), <https://theconversation.com/football-fans-fighting-food-poverty-how-a-lifesaving-mobile-pantry-scheme-spread-across-the-country-216124> [<https://perma.cc/QB9E-JH9B>].

worked around the rule is RB Leipzig. The loophole created a structure with voting members, but only seventeen members have voting rights and “most [were] directly linked to Red Bull,”⁶² as the members of the football club were also the executives of Red Bull.⁶³

The rule does not prevent a minority shareholder from having influence in club decisions. If a minority shareholder had 49% of the share and the club members had 51%, it would require the members to work as a unit to prevent the minority shareholder from prevailing. For example, David Blitzer, who owned 40% of Crystal Palace in the United Kingdom, owned “45% of the company that own[ed] a majority shareholding in Augsburg.”⁶⁴ In this case, the club members retained the voting majority to comply with the rule but not the equity.⁶⁵ It is too soon to see how Blitzer may influence the club, but most owners tend to try to influence club decisions.

With Red Bull⁶⁶ and David Blitzer,⁶⁷ now 11% of clubs in the Bundesliga (two out of eighteen) have multi-club owners. In other words, the 50+1 rule failed to eradicate multi-club ownership in Germany. The next section discusses Spain, where the ownership rules are a blend of the British and the German approaches.

62. Alex Bysouth, *RB Leipzig: How did Red Bull Build a Champions League Side From Scratch?*, BBC (Aug. 12, 2020), <https://www.bbc.co.uk/sport/football/51475532> [<https://perma.cc/3VTU-3CDU>].

63. Murad Ahmed, *Implementing a Radical Strategy at Red Bull's Football Teams*, FIN. TIMES (Sept. 20, 2020), <https://www.ft.com/content/51719760-b6a0-4f3f-81ba-970b299f8e53> [<https://perma.cc/EZA3-N4N3>].

64. Ed Aarons, *One is Not Enough: The Growth in Football's Multi-Club Ownership Model*, THE GUARDIAN (June 18, 2022, 7:30 PM), <https://www.theguardian.com/football/2022/jun/18/growth-in-football-multi-club-ownership-model> [<https://perma.cc/6QRK-PCZS>].

65. *Id.*

66. Mark Odgen, *The Issues With Multi-Club Ownership, From City Football Group to Red Bull and More*, ESPN (July 14, 2023, 8:02 PM), https://www.espn.co.uk/football/story/_/id/38008353/the-issues-multi-club-ownership-city-football-group-red-bull [<https://perma.cc/66ZR-VTVY>]. Red Bull owns 5 teams across the world. However, Red Bull has an unclear relationship with RB Salzburg. In 2017, both teams qualified for the Champions league, it created a potential violation of the rules against multi-club ownership. So, the UEFA Club Financial Control Body investigated and found that Red Bull had changed its relationship with RB Salzburg from a more controlling relationship to a more sponsorship based relationship to comply with the rule. However, some connections remain between the two clubs. *See also* Case AC-01/2017, *RasenBallSport Leipzig GmbH and FC Red Bull Salzburg GmbH* (2017).

67. Besides FC Augsburg, David Blitzer has interests in Real Salt Lake (US), AD Alcorcon (Spain), Brøndby IF (Denemark), ADO Den Haag (Netherlands), GD Estoril Praia (Portugal), SK Beveren (Belgian), Crystal Palace (England). *See e.g.*, Sam Stejskal, *What Real Salt Lake Should Expect from David Blitzer, a New Owner*, THE ATHLETIC (Jan. 12, 2022), <https://theathletic.com/3067143/2022/01/12/what-to-expect-from-david-blitzer-as-real-salt-lakes-new-owner/> [<https://perma.cc/CUP4-HHH9>]; *Danish Soccer Club Brøndby Receives Offer from Global Football Holdings*, REUTERS (Oct. 28, 2022, 8:54 AM), <https://www.reuters.com/lifestyle/sports/danish-soccer-club-brondby-receives-offer-global-football-holdings-2022-10-28/> [<https://perma.cc/E544-8Q7V>].

C. Spain

In many respects, the Spanish league, la Liga, sits in between the two other leagues. Like in the United Kingdom, the regulation allows for private investors to own clubs. Without fail, this tolerance led to many clubs having a multi-club owner. Although fewer clubs in Spain have a multi-club owner than in the United Kingdom: about one-third of Spain's clubs have a multi-club owner.

Like in Germany, some Spanish clubs are member-owned clubs. The Spanish government regulated who could own a football club through legislation. Until 1984, all the clubs were non-profit institutions ran by their members ("socio" in Spanish).⁶⁸ But, the clubs soon transitioned to professional ownership, and with professionalism came debt. So, in 1990, the government changed the law. The consequence of the new law was that "football clubs with losses [would] become sports stock companies."⁶⁹ Four clubs remained non-profits: Athletic de Bilbao, Barcelona, Osasuna, and Real Madrid.⁷⁰ The chairperson had to guarantee a percentage of the budget—thus limiting club governance to wealthy individuals. Some of those non-profit clubs remain some of the most successful clubs.

Even if the other clubs are traded and emit shares, more clubs are member-owned in Spain than in England. A 2020 study of fan involvement in football ownership found that member association involvement in Spain is greater than in England, but less than in Germany.⁷¹ Some clubs have implemented their own ownership regulations to prevent a private takeover from happening. For example, Real Sociedad has passed bylaws that prevent any individual owner from owning more than 2% of the total capital.⁷²

The club ownership information is summarized in Table 2. The information has been compiled using publicly available information. The Spanish league does not have a requirement like the English league to disclose interest in a club. Ownership information is more difficult to

68. Jaume García & Plácido Rodríguez, *From Sports Clubs to Stock Companies: The Financial Structure of Football in Spain, 1992–2001*, 3 EUR. SPORT MGMT. Q. 253, 253 (2003).

69. *Id.* at 254.

70. This issue of legal form took on a new life because these four clubs received some tax benefits. In 2021, the ECJ found that the Spanish Government has provided anticompetitive State Aid to Fútbol Club Barcelona (FCB), Club Atlético Osasuna (Pamplona), Athletic Club (Bilbao) and the Real Madrid Club de Fútbol (Madrid). The four clubs that remained non-profit clubs enjoyed a lower tax rate. The European Commission found that this tax rate amounted to State Aid. The General Court of the European Union annulled the decision. The ECJ reversed. *See generally* Case C-362/19 P, *Commission v. Fútbol Club Barcelona* (2021).

71. Luis Carlos et al., *Fans in the Ownership of Big Five Leagues: Lessons for Better Football Governance*, 22 SOCCER & SOCIETY 355, Fig. 1 (2021).

72. *Id.* at 363.

assess. A table of the sources used to create this table is available upon request.

Table 2: Ownership of La Liga Clubs (December 2023)

Club	Owners	Other Football Clubs owned by the same owner
Deportivo Alavés	KIROLETAKO BAZKIDEAK, S.L.	
Unión Deportiva Almería	Turki bin Abdul Mohsen bin Abdul Latif Al Al-Sheikh	
Athletic Club Bilbao	Registered association non-profit	
Club Atlético de Madrid	Atlético HoldCo. (majority shareholder – private company) Quantum (Idan Ofer) (minority) Club members (<1%).	Ofer: Futebol Clube de Famalicão (Portugal)
Futbol Club Barcelona	Registered association non-profit	
Cádiz Club de Fútbol	LOCOS POR EL BALON SOCIEDAD LIMITADA.	
Real Club Celta de Vigo	Grupo Energético del Sureste (Carlos Mouriño): 68% Grupo Miñor Galicia S.L.: 5% Fans: 27%	
Getafe Club de Fútbol	Angel Torres: 99%	
Girona Futbol Club	City Football Group: 47% Marcelo Claire: 35% Girona Football Group: 16%	City Football Group: New York City FC (US), Melbourne City FC (Australia), Yokohama F. Marinos (Japan)*, Montevideo City Torque (Uruguay), Manchester City (England), Sichuan Jiunia (China)*, Mumbai City FC (India), Lommel SK (Belgium), Espérance Sportive Troyes Aube Champagne (France), Palermo (Italy), Bahia (Brazil) Marcelo Claire: Marcelo Claire (Bolivia)
Granada Club de Fútbol	DAXIAN 2009 SL (Jiang Lizhang): 98%	Clube Desportivo de Tondela (Portugal)
Club Unión Deportiva Las Palmas	SPORT TRADE CAPITAL, SOCIEDAD LIMITADA.	
Real Club Deportivo Mallorca	Andy Kohlberg (majority) Steve Nash (minority) Steve Kerr (minority)	Nash: Vancouver Whitecaps Football Club (Canada)
Club Atlético Osasuna	Registered association non-profit	
Rayo Vallecano de	Raúl Martín Presa	

Madrid		
Real Betis Balompíe	55% club members (<1% each) Ángel Haro 9.5% José Miguel López Catalán 9.5% Hugo Galera 7% Manuel Castaño 7% Joaquín Caro Ledesma 3.5% Joaquín Sánchez 2% Juan Salas Tirado 2% Manuel Romero Álvarez 1%	
Real Madrid Club de Fútbol	Registered association non-profit	
Real Sociedad de Fútbol	Member owned	
Sevilla Fútbol Club	Sevillistas de Nervión S.A. (private company – owned by executives of the clubs): 38% Rafael Carrión Moreno: 38% Accionistas Unidos (Supporters' Trust)	777 partners: Genoa C.F.C (Italy), Standard de Liège (Belgium), Red Star FC (France), Club de Regatas Vasco da Gama (Brazil), Melbourne Victory Football Club (Australia), Herta Berlin (Germany)?
Valencia Club de Fútbol	Meriton Holdings (Peter Lim)	Salford FC (England)*
Villarreal Club de Fútbol	Fernando Roig	

Although the Spanish league does not have a multi-club rule, it does have a unique approach to club debt. The league regulators put in place rules dealing with how much the clubs can spend. The regulations specifically limit how much clubs can spend on salaries, including how much of the capital increase can be spent on salaries.⁷³ These regulations prevent cash injections from private investors. Hence, this approach makes the Spanish clubs less attractive to private owners or investment funds because they cannot grow the club rapidly and flip it for profits.

This rule has come into place after multiple instances of mismanagement following private investor takeovers. For example, Abdullah bin Nasser Al Thani acquired the Malaga Club de Fútbol in 2010.⁷⁴ Following the takeover, the new owner injected funds into the club.⁷⁵ The club met success on the field: it moved up the league table

73. *How LaLiga's Economic Control and Squad Cost Limit Works*, LA LIGA (Sept. 27, 2021), <https://newsletter.laliga.es/global-futbol/how-laligas-economic-control-and-squad-cost-limit-works> [<https://perma.cc/R844-EMX6>].

74. Alex Kirkland & Rodrigo Faez, *Malaga Could Sack Half of First-Team Squad to Ease Financial Issues*, ESPN (Aug. 24, 2020, 12:14 PM), https://www.espn.com/soccer/story/_/id/37586349/malaga-sack-half-first-team-squad-ease-financial-issues [<https://perma.cc/2ZFY-QR7F>].

75. Andy West, *Malaga: From Champions League to Inescapable Nightmare in 10 Years*, BBC (Mar. 28, 2023), <https://www.bbc.co.uk/sport/football/65042578> [<https://perma.cc/U245-QZZR>].

and even qualified for continental tournaments.⁷⁶ However, Al Thani eventually became unable to meet his commitment to the club—leaving the club straddled with a large wage bill and debt.⁷⁷ The club eventually went into administration and now further dropped into the third tier of Spanish football.⁷⁸ This fall from grace has come as a stark warning against private investors trying to profit quickly.

Of course, this proportional or “soft” salary cap could again violate the competition laws. Competition laws do not prohibit salary caps, as teams disagreeing on player salaries is not the same as price fixing, which would be anticompetitive.⁷⁹ But their effect remains the same: it depresses player remuneration.⁸⁰ The effect is that financially strong teams are likely to remain sportingly competitive and dominant—thus the rule creates a barrier to entry. Once again, if this rule was to be challenged in court, a court’s decision would be unpredictable because the rules aim to ensure the continued existence of those cultural institutions while also having some economic anticompetitive effects that, in turn, affect the quality of the product. The next section discusses the reasons behind multi-club ownership.

D. Motivations

For many years, most owners were fans, whose return on investment was not profit focused.⁸¹ Then, wealthy fans took an interest in football too and boycotted the clubs they supported.⁸² But, multi-club ownership presents a new paradigm: these owners are not (necessarily) fans. Instead, these owners have different reasons for multi-club ownership.

First, some owners state that multi-club ownership is the best way to learn about the business of football. Some owners can use the clubs to try out new things with lower financial risks. Matthew Benham, the owner of Brentford Football Club (United Kingdom), owned a majority stake in FC Midtjylland (Denmark).⁸³ Some observers speculated that Benham

76. *Id.*

77. *Id.*

78. *Id.*

79. Ibáñez Colomo, *supra* note 50, at 348.

80. Tom Serby, *The State of EU Sports Law: Lessons From UEFA’s ‘Financial Fair Play’ Regulations*, 16 INT’L SPORTS L.J. 37, 44 (2016).

81. Christopher Huth, *Who Invests in Financial Instruments of Sport Clubs? An Empirical Analysis of Actual and Potential Individual Investors of Professional European Football Clubs*, 20 EUR. SPORT MGMT. Q. 500, 502 (2020).

82. *See, e.g.*, STEPHEN MORROW, IN THE PEOPLE’S GAME? FOOTBALL, FINANCE AND SOCIETY 74–90 (Palgrave Macmillan UK, 2003) (discussing the different ownership structure and finding that most football clubs had a concentrated ownership in the hands of an owner or family—some acting as benefactors).

83. Jay Harris, *Brentford Owner Matthew Benham Sells Majority Stake in FC Midtjylland*,

used FC Midtjylland as a testing ground for his innovative ideas.⁸⁴ Once he figured out what worked and what did not, he sold his stakes in the Danish club to concentrate his focus on the English club, which had a higher revenue potential. Fortunately, Benham was able to make both clubs successes.

However, this approach can be risky and does not always end well. For example, Raúl Martín Presa has been the owner of Rayo Vallecano in Spain since 2011.⁸⁵ His approach to football did not always please the fans, and the fans have reasons to worry. In 2015, Martín Presa established Rayo Oklahoma City (United States) in the North American Soccer League.⁸⁶ The acquisition created a great deal of noise, leading some to speculate that Martín Presa bought the United States club to find a new audience for Rayo Vallecano.⁸⁷ But, he also wanted to shake things up at the United States club.⁸⁸ The shakeup led to upheaval within the club.⁸⁹ Not all acquisitions go smoothly, and this one led to the disappearance of the acquired club. The club eventually folded, and the minority shareholders sued Martín Presa for mismanagement.⁹⁰

Second, many multi-club owners use one club as a training club for their promising prospects. “Some investors have looked to implement a joined-up game philosophy so that players and young coaches can easily move from one club to another within the group as they develop.”⁹¹ Those prospects would cut their teeth in the league by representing the lower financial risks. Once they prove their worth, they would move to the more lucrative leagues.

THE ATHLETIC (Aug. 15, 2023), <https://theathletic.com/4778115/2023/08/15/brentford-matthew-benham-midtjylland/> [<https://perma.cc/JSY3-ZLQD>].

84. *Id.*

85. Sam Leveridge, *Rayo Vallecano: The Thorn in the Side of LaLiga's Fan Experience*, FORBES (Aug. 12, 2023, 9:00 AM), <https://www.forbes.com/sites/samleveridge/2023/08/12/rayo-vallecano-the-thorn-in-the-side-of-laligas-fan-experience/> [<https://perma.cc/K7WQ-DYCL>].

86. *Rayo Thrilled About the Forming of Rayo Oklahoma City*, LA LIGA (Nov. 15, 2015), <https://www.laliga.com/en-GB/news/rayo-thrilled-about-the-founding-of-rayo-oklahoma-city> [<https://perma.cc/DMY7-99K7>].

87. Jack Williams, *With Rayo OKC, La Liga Club Throws Hat in American Soccer Ring*, THE GUARDIAN (Feb. 18, 2016, 4:30 AM), <https://www.theguardian.com/football/2016/feb/18/with-rayo-okc-la-liga-club-throws-hat-in-american-soccer-ring> [<https://perma.cc/RT3T-QE8C>].

88. James Bridget Gordon, *The Sudden Upheaval at NASL Club Rayo OKC, Explained*, PASTE MAG. (Aug. 5, 2016, 3:22 PM), <https://www.pastemagazine.com/soccer/the-sudden-upheaval-at-nasl-club-rayo-okc-explaine> [<https://perma.cc/M6XQ-WP4Y>].

89. *Id.*

90. *La Audiencia Provincial de Madrid Admite el Recurso de Apelación y Reabre el Caso Contra Martín Presa*, UNIÓN RAYO (Dec. 17, 2018), <https://www.unionrayo.es/la-audiencia-provincial-de-madrid-admite-el-recurso-de-apelacion-y-reabre-el-caso-contra-martin-presa/> [<https://perma.cc/XG83-HTVJ>].

91. Samuel Agini and Josh Noble, *Football's Multi-Club Owners Start to Feel Growing Pains*, FIN. TIMES (Jan. 28, 2023), <https://www.ft.com/content/c988ede0-1aef-45da-8879-59f861a3811f> [<https://perma.cc/ZRD6-LFHJ>].

A UEFA report found that player loans often occur “within the same multi-club ownership or interest structure.”⁹² This example also shows that multi-club ownership can create economies of scope or synergies because they can benefit from housing multiple clubs under the same umbrella—allowing them to distort sporting competition. The practice became so common that the Premier League tried to ban it, albeit unsuccessfully.⁹³ Given that most of the clubs in the Premier League can benefit from these loans, the outcome seemed almost predetermined.

Third, club ownership generally is a good way for some owners—often countries—to improve their reputation, an approach known as “sportswashing.”⁹⁴ Jules Boykoff defines sportswashing as “a phenomenon whereby political leaders use sports to appear important or legitimate on the world stage while stoking nationalism and deflecting attention from chronic social problems and human-rights woes on the home front.”⁹⁵ The term is relatively new, but the practice is old.

Political leaders can use sports to capture the imagination of an audience. For sportswashing to have a global impact, political leaders may need to either capture an international audience using a mega event (e.g., the Olympic Games) or capture various domestic audiences through small investments (i.e., multi-club ownership).⁹⁶

Finally, club ownership is generally a good investment—or so it seems. Bloomberg reports that equity funds and investment firms own 17% of the clubs in Europe’s five biggest leagues.⁹⁷ These investment funds seek profits, and they obtain those profits from selling football clubs at a higher price than they purchase a company for. Entities that buy football clubs value those clubs like any other company—based on financial metrics.⁹⁸

92. *The European Club Footballing Landscape*, UEFA 37 (2022), https://editorial.uefa.com/resources/027e-174740f39cc6-d205dd2e86bf-1000/ecfl_bm_report_2022_high_resolution_.pdf [<https://perma.cc/XDR6-9QGY>]. The report found that “83 pairs of clubs with more than three loans between them at a given point in time.”

93. Paul MacInnes, *Ban on Loans Between Associated Clubs Rejected After Failing to Reach Majority*, THE GUARDIAN (Nov. 21, 2023, 4:09 PM), <https://www.theguardian.com/football/2023/nov/21/ban-on-loans-between-associated-clubs-rejected-after-failing-to-reach-majority> [<https://perma.cc/DC8W-XQEY>].

94. Barney Ronay, *Sportswashing and the Tangled Web of Europe’s Biggest Clubs*, THE GUARDIAN (Feb. 15, 2019, 8:52 AM), <https://www.theguardian.com/football/2019/feb/15/sportswashing-europes-biggest-clubs-champions-league-owners-sponsors-uefa> [<https://perma.cc/8GCH-TUW9>].

95. Jules Boykoff, *Toward a Theory of Sportswashing: Mega-Events, Soft Power, and Political Conflict*, 39 SOCIOLOGY SPORT J. 342, 342 (2022).

96. *Id.* at 344–46.

97. Turner et al., *supra* note 25.

98. Luis Carlos Sanchez et al., *Are Football Clubs as Pieces of Art or as Regular Corporations? An Empirical Evidence of Market Valuation of Football Clubs in the Big 5 Leagues*, 27 MANAGING SPORT & LEISURE 1 (2022).

These clubs are just like any other investment. This leads investment firms to invest when they see an opportunity to profit due to club mismanagement, such as underperformance or incorrect market pricing. Once a private equity firm enters an industry, it would gain experience through learning by doing. This experience would grant the firm a comparative advantage in investing in the football industry. So, multi-club ownership would be logical for investment firms.

Because football (and many of its owners) maximize profits, competition regulation becomes a necessity. In sporting and legal competition terms, multi-club ownership has many upsides and downsides. The next Part discusses how multi-club ownership can affect three of the main issues linked with professional sports leagues.

II. SPORTING COMPETITION & MARKET FAILURES

In February 2023, UEFA, the European football governing body, wrote: “[t]he rise of multi-club investment has the potential to pose a material threat to the integrity of European club competitions, with a growing risk of seeing two clubs with the same owner or investor facing each other on the pitch.”⁹⁹

However, the same multi-club model could alleviate some market failures that impair sports and sports leagues. This Part focuses on three main market failures and how they are affected by multi-club ownership—both for better and for worse.

A. *Positive & Negative Externalities*

Professional sports leagues generate both positive and negative externalities. On one hand, sports leagues generate positive production externalities when they generate benefits on third parties, who are not involved in league decisions. For example, bars and restaurants around the stadium benefit from the influx of stadium goers. The press and television broadcasters benefit for covering the sporting events in their news section.

Sports leagues can also generate wider positive externalities. Many observers have argued that professional sports incentivize mass sport participation.¹⁰⁰ Thus, sports participation and broader physical activity

99. *The European Club Footballing Landscape*, UEFA 208 (2023), https://editorial.uefa.com/resources/027e-174740f39cc6-d205dd2e86bf-1000/ecfl_bm_report_2022_high_resolution_.pdf [<https://perma.cc/A9DG-MY4X>].

100. See, e.g., Felix Mutter & Tim Pawlowski, *Role Models in Sports—Can Success in Professional Sports Increase the Demand for Amateur Sport Participation?*, 17 *SPORT MGMT. REV.* 324 (2014) (finding that, in Germany, the success of the national soccer teams has a positive impact on amateur participation); Rasmus K. Storm & Marthe Liss Holum, *Does Local Sporting Success Affect Sport Participation? An Examination of Danish Professional Soccer’s Effect on*

benefit the health of a nation. So, governments who want to encourage participation in sports may wish to ensure that their countries have a well-functioning top league.

However, sports leagues often struggle to capture some of these positive externalities. When it comes to bars and restaurants, many clubs offer their own catering within the stadium, open their doors early, etc.¹⁰¹ Yet, even then, clubs cannot capture all of the stadium goers. The biggest struggle clubs face is capturing some of the positive externalities bestowed on the media. Most leagues now sell their broadcasting rights to achieve this goal, but protecting those rights can be a tricky endeavor.

In two joined cases,¹⁰² the European Court of Justice (ECJ) had to consider whether a bar owner could use a Greek subscription, which was cheaper than the English subscription, to broadcast English soccer games in the United Kingdom. First, the league argued that such a broadcast violated copyright laws. The ECJ disagreed and affirmed that the performance of the footballers was not copyrightable because “sporting events cannot be regarded as intellectual creations classifiable as works within the meaning of the Copyright Directive [because these events] are subject to rules of the game, leaving no room for creative freedom for the purposes of copyright.”¹⁰³

Second, the soccer matches were not available via United Kingdom subscription because the Football Association (FA), the English soccer governing body, has been enforcing a blackout of all broadcastings from 2:45 pm through 5:15 pm on Saturdays since the 1960’s to encourage stadium attendance and mass participation in sports.¹⁰⁴ The FA stopped short of arguing that it would harm society at large because it would harm the clubs. The Court did not elaborate on the second argument, but the Advocate General was skeptical of this argument, asserting that evidence was required to show that attendance and grass root soccer were in direct competition.¹⁰⁵

This type of ban has a long history, and the competition law usually does not see them in a good light because these broadcasting blackouts decrease the amount of sports on television and increase the cost of

Club Membership, 21 EUR. SPORT MGMT. Q. 237 (2021) (finding that, in Denmark, failure of the local professional team has a negative impact on mass sports participation).

101. See, e.g., Thorsten Merkle & Robert A. Lewis, *RB Leipzig—A Novel Approach to Sport Stadium Hospitality*, 5 J. HOSPITALITY & TOURISM 24 (2016).

102. Joined Cases, Case C-403/08, *Football Ass’n Premier League Ltd. v. QC Leisure*, (2011); Case C-429/08, *Murphy v. Media Prod. Servs. Ltd.*, (2011), para. 165.

103. *Id.* para. 98.

104. *Explained: How the 3pm Blackout Works – and Why the Football League Wants to Scrap It*, THE ATHLETIC (Oct. 12, 2022), <https://theathletic.com/3683126/2022/10/12/3pm-blackout-premier-league-efl/> [<https://perma.cc/5SLC-L24R>].

105. Joined Cases, Case C-403/08, *Football Ass’n Premier League Ltd. v. QC Leisure*, (2011); Case C-429/08, *Murphy v. Media Prod. Servs. Ltd.* (2011), para. 46.

broadcasting rights. For example, in 1981, a member of the National Collegiate Athletic Association (NCAA), an American organization that governs collegiate football, sued the NCAA because the NCAA enforced a blackout on three out of ten Saturdays during the football season, and a team could only be on television twice a season.¹⁰⁶ The NCAA also argued that the blackouts were necessary to encourage attendance,¹⁰⁷ and the federal district court agreed.¹⁰⁸ The Tenth Circuit Court of Appeals affirmed,¹⁰⁹ and the NCAA appealed.

The U.S. Supreme Court held that “the NCAA television plan on its face constitutes a restraint upon the operation of a free market, and the findings of the District Court establish that it has operated to raise prices and reduce output.”¹¹⁰ Accordingly, the Supreme Court rejected the NCAA’s attendance argument that it attempted to protect a product from competition.¹¹¹ The NCAA also argued that the restrictions were necessary to maintain sporting balance and to enhance the product’s attraction.¹¹² The Court rejected this argument as misplaced because the broadcasting restriction did not prevent one member from investing more into a better product.¹¹³ Rather, it only limited one source of revenue.¹¹⁴ In other words, those anticompetitive restrictions were not necessary for the good of the game and sports in general.

Most broadcasting is negotiated through group licensing instead of a club-by-club basis. As shown above, United States courts are dubious of the positive externality argument presented by organizations to justify their horizontal coordination of broadcasting rights. That is why in Europe, when organizations negotiated those rights as a league, they sought the approval of the European Commission, the competition authority in Europe. For example, the European soccer federation (Union of European Football Associations), which is an association of associations,¹¹⁵ the German soccer leagues (the two Bundesliga divisions),¹¹⁶ and the English soccer association (representing multiple

106. NCAA v. Bd. of Regents, 468 U.S. 85, 90 (1984).

107. *Id.* at 91.

108. *Id.* at 96.

109. *Id.* at 97.

110. *Id.* at 113.

111. *Id.* at 116–17.

112. *Id.* at 117–20.

113. *Id.* at 116–19.

114. *Id.*

115. Eur. Comm’n Press Release IP/03/1105, Commission Clears UEFA’s New Policy Regarding the Sale of the Media Rights to the Champions League (July 24, 2003).

116. Eur. Comm’n Press Release IP/05/62, Competition: German Football League Commitments to Liberalise Joint Selling of Bundesliga Media Rights Made Legally Binding by Commission Decision (Jan. 19, 2005).

divisions)¹¹⁷ have all sought reviews of their media right sale agreements. The European Commission did not object to these group broadcasting sales. But some leagues, like the Bundesliga, had to commit to offering unbundled packages of broadcasting rights to avoid competition scrutiny;¹¹⁸ others had to offer different packages (which included the reselling of non-broadcasted matches) to avoid such scrutiny.¹¹⁹ However, these approvals have all expired. So, the European Commission could reinvestigate these issues.

Multi-club ownership may offer a way around competition scrutiny.¹²⁰ In a world where multi-club ownership becomes common, these larger consortia may use their weight to obtain better broadcasting rights. These entities would not have to use the excuse of positive externalities and societal benefits to obtain an exemption because they would benefit from the single entity doctrine, which states that multiple organizations are part of the same entity when they are operated or controlled by the same entity.¹²¹ So, they cannot conspire to monopolize. However, the European Court of Justice has expressed skepticism on bundled broadcasting rights.¹²²

On the other hand, sports leagues also generate negative production externalities. First, sports leagues and tournaments have a large carbon footprint,¹²³ as large amounts of carbon emissions are produced when groups like teams, fans, and the media travel to play or watch football.¹²⁴ When faced with these issues, some sports teams have adopted environmental measures.¹²⁵ In theory, clubs could collectively agree to address the carbon footprint of companies. However, this approach could

117. Eur. Comm'n Press Release IP/06/356, Competition: Commission Makes Commitments From FA Premier League Legally Binding (Mar. 22, 2006).

118. Eur. Comm'n Press Release IP/05/62, *supra* note 116.

119. Eur. Comm'n Press Release IP/03/1105, *supra* note 115.

120. It may however not provide useful against public interest principles that force some matches to be offered free to air. *See* Case T-385/07, FIFA v. Comm'n (2011); Case T-55/08, UEFA v. Comm'n (2011); Case T-68/08, FIFA v. Comm'n (2011).

121. Case T-11/89, Shell v. Comm'n, 1992 E.C.R. II-757, paras. 311–21.

122. Case C-333/21, Eur. Superleague v. UEFA (2023), paras. 217–41.

123. For an in-depth discussion of the environmental impact of national football leagues, see Tiberio Daddi et al., *Environmental Management of Sport Events: a Focus on European Professional Football*, 12 *SPORT, BUS. & MGMT.* 208 (2022).

124. *Qatar 2022: World Cup Expected to Produce 3.6m Tons of CO₂*, BBC (June 11, 2021), <https://www.bbc.co.uk/sport/football/57443375> [<https://perma.cc/84ZX-7RJK>].

125. *See, e.g.,* David Lockwood, *Climate: How Green are Premier League Clubs in 2023?*, BBC (May 11, 2023), <https://www.bbc.co.uk/sport/football/65544714> [<https://perma.cc/PUZ6-6HHS>]; *How Green Are Premier League Clubs & What Are They Doing to Help?*, BBC (Feb. 2, 2022), <https://www.bbc.co.uk/sport/football/60196764> [<https://perma.cc/NR3H-C3EA>]; Jack Skelton & David Lockwood, *How Green Are Premier League Clubs?*, BBC (Nov. 13, 2019), <https://www.bbc.co.uk/sport/football/50317760> [<https://perma.cc/CCY5-B7TU>].

countervail the competition law because their environmental consciousness can be a source of differentiation.

In 2021, the European Commission fined car manufacturers almost one billion euros for agreeing on emission cleaning for new diesel passenger cars.¹²⁶ In other words, the European Commission found that these car manufacturers formed a cartel by agreeing on technical developments. The European Commission also found that such agreement decreased competition because environmental measures are a source of competition. This same situation occurs in football clubs. For example, Forest Green Rovers has been crowned the “greenest football club in the world.”¹²⁷ Their efforts are intended to do good for the environment¹²⁸ and attract environmentally conscious fans. Thus, a multi-club entity could circumvent the issue of cartelization by addressing environmental impacts at a broader scale than a single club could.

Second, sports teams indirectly generate problems for the broader community. Sports can help fans feel part of a community,¹²⁹ and sports teams can monetize this sense of community to increase their profits.¹³⁰ But sometimes, sports can lose control of this sense of community. For example, the fan group of Marseille caused problems for club operations because those fan groups yield a lot of power and are able to organize when they want the club to act (e.g., remove the manager).¹³¹ To yield that power, these fans resort to protesting and blocking streets.

Sports can also lead to tribalism and violence when the fans of different teams clash in the stands or in the street. Fan violence destroys

126. *Antitrust: Commission Fines Car Manufacturers €875 Million for Restricting Competition in Emission Cleaning for New Diesel Passenger Cars*, EUROPEAN COMM’N (July 8, 2021), https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_21_3581/IP_21_3581_EN.pdf [<https://perma.cc/38EK-DZUU>].

127. *Forest Green Rovers Named ‘Greenest Football Club in World’*, BBC (Sept. 28, 2018), <https://www.bbc.co.uk/news/uk-england-gloucestershire-45677536> [<https://perma.cc/647F-U6GQ>].

128. *Another Way*, FOREST GREEN ROVER, <https://www.fgr.co.uk/another-way> [<https://perma.cc/WS88-MSWL>].

129. See, e.g., Brett A. Boyle & Peter Magnusson, *Social Identity and Brand Equity Formation: A Comparative Study of Collegiate Sports Fans*, 21 J. SPORT MGMT. 497, 502 (2007).

130. See, e.g., Sercan Kural & Oğuz Özbek, *Sports Consumption Behaviors of Football Fans: The Relationship Between Social Identity, Team Loyalty and Behavioral Intention Toward Consumption*, 13 SPORT, BUS. & MGMT. 685, 698 (2023).

131. Philippe Auclair, *Only in Marseille: Where Ultras Rule and Temptation is Never Far Away*, THE GUARDIAN (Jan. 6, 2015, 5:19 AM), <https://www.theguardian.com/football/blog/2015/jan/06/marseille-ultras-rule-temptation-never-far-away> [<https://perma.cc/N8VY-GLRX>]; *Marseille Coach Marcelino Departs With Club in Crisis*, BEIN SPORTS (Sept. 20, 2023), <https://www.beinsports.com/en-mena/football/ligue-1/articles/marseille-coach-marcelino-departs-with-club-in-crisis-2023-09-20> [<https://perma.cc/NF45-WDTB>].

lives¹³² and property.¹³³ Preventing this destruction is costly as well: taxpayers often pay for the police security at a stadium.¹³⁴ In some instances, the government had to intervene and ban fans from traveling.¹³⁵ The hooligan phenomenon seemed to die down but has unfortunately reared its ugly head again.¹³⁶

A multi-club entity could decrease tribalism if it succeeds in convincing fans of different clubs that its different clubs are part of the same tribe. However, moments of solidarity between fans of different clubs are rare.¹³⁷ So, it is unclear how a multi-club entity could address those negative externalities on a community.

Those externalities are not the only market failures associated with sport leagues. The next section discusses how multi-club ownership may deplete the most important resource in competitive sports: sporting competition.

B. Free Rider Problem

The second market failure that most leagues suffer from is the free rider problem. This problem arises when some teams invest little in their team but benefit from belonging to a league where other teams invest substantially.

132. See, e.g., Oscar Lopez, *Mexico Soccer Riot Leaves 26 Injured, Officials Say*, N.Y. TIMES (Mar. 5, 2022), <https://www.nytimes.com/2022/03/05/world/americas/mexico-soccer-riot.html> [https://perma.cc/A79X-78X5].

133. See, e.g., Ed Horner & Jacob Kilbride, *'No Excuse' as Some York City Fans Storm Pitch and Damage Stadium*, YORK PRESS (May 13, 2022), <https://www.yorkpress.co.uk/news/20135349.no-excuse-york-city-fans-storm-pitch-damage-stadium/> [https://perma.cc/BLN8-DDNP].

134. See, e.g., Freedom Of Information Request Ref. SM163/12, <https://www.whatdotheyknow.com/request/127152/response/314450/attach/2/ResponseTableSM163.12.doc> [https://perma.cc/23TP-CARP] (“For the 2011/12 season, costs for policing were as follows Everton Football Club – £607,427.28 Liverpool Football Club – £613,806.60.”); see also Oliver Jervis, *Cost of Policing Everton and Liverpool Games Soar as New Figures Revealed*, LIVERPOOL ECHO (Oct. 20, 2023, 5:56 PM), <https://www.liverpoolecho.co.uk/sport/football/football-news/everton-liverpool-merseyside-police-figures-27953694> [https://perma.cc/V6CH-N4W2] (confirming Liverpool policing costs and also that football clubs are not always requested to repay the policing costs).

135. See, e.g., *Prohibition on the Movement of Fans*, REPUBLIQUE FRANÇAISE (July 28, 2023), <https://www.service-public.fr/particuliers/vosdroits/F35116?lang=en> [https://perma.cc/FW3Z-ARJU] (banning traveling fans in 2023).

136. Mantej Mann, *Football Arrests 'Highest in Years'*, BBC (Jan. 21, 2022), <https://www.bbc.co.uk/sport/60056492> [https://perma.cc/LQ56-3CJR]. Violent behaviors amongst sports fans are not always related to the outcome but also to the performance and the perceived fairness of the arbitrage. Leander Van Der Meij et al., *Football Fan Aggression: The Importance of Low Basal Cortisol and a Fair Referee*, 10 PLOS ONE e0219609 (2015).

137. See c.f., Louis Taylor, *Chelsea Fans Protest Against Super League as Supporters Unite in Anger*, THE GUARDIAN (Apr. 20, 2021, 1:25 PM), <https://www.theguardian.com/football/2021/apr/20/chelsea-fans-protest-against-super-league-as-supporters-unite-in-anger> [https://perma.cc/3EN6-H47C] (discussing how the fans united against the Super League).

As discussed above, professional sports teams have two audiences: the stadium goers and the television watchers. First, the stadium going audience is made up of local residents and sports tourists. When a stadium attending fan buys a season ticket, she gains access only to the team's stadium. She does not get tickets to the rest of the league's stadiums. So, stadium audiences tend to buy the product of watching their local team instead of watching the league. These local teams benefit from whoever is the visiting team on that day because the spectacle requires both the local and visiting teams to play their part. Many teams have leveraged the differences between visiting teams and have put in place a price discrimination system where they charge different prices based on who the opposition is.¹³⁸

A club may justify these different prices through a simple supply and demand argument: when better opposition comes to play, the demand for tickets increases.¹³⁹ The quantity demanded for tickets increases because the visiting team is a more attractive product. The local teams can free ride on the investment made by the visiting teams into their brand, history, players, etc. that made the local team more attractive to the fans.¹⁴⁰ In other words, even when the product is the team, local teams can free ride on the work of visiting teams i.e., the rest of the league.

The local teams also have to price the stadium tickets while being conscious of whether the event will be televised. The local audiences consider whether to attend the match or watch it on television.¹⁴¹ So, in many instances, the sports teams put out two products (live versus televised products) that compete against each other. These products are imperfect substitutes, but substitutes nonetheless.

However, the importance of local audiences generating revenues for clubs has diminished. According to the Deloitte Annual Review of Football Finance, the reliance on matchday going fans has decreased: average matchday revenues dropped from 18% of revenues in 2014–2015

138. See, e.g., *Pricing Information: 2023/24 Season Ticket Renewals*, BRENTFORD FC (2023), <https://www.brentfordfc.com/en/season-ticket-2023-24-payment-pricing-information> [<https://perma.cc/AP56-UKXQ>] (showing that Brentford FC, an English Premier League football club, has different prices based on where the seat is located); see also *Your Guide To Buying Tickets To See The Bees 23/24*, BRENTFORD FC (2023), <https://www.brentfordfc.com/en/ticketing-guide> [<https://perma.cc/P9VJ-VEMM>] (showing that different prices are also based on who the opposition is).

139. The supply for tickets cannot change as a stadium capacity is fixed. See Gerd Nufer & Jan Fishcer, *Ticket Pricing in European Football – Analysis and Implications*, 1(2) SPORT AND ART 49, 52 (2013), <https://www.hrpub.org/download/201309/saj.2013.010205.pdf> [<https://perma.cc/TM53-2HP2>].

140. Tommy Kweku Quansah et al., *Determining the Price of Football: An Analysis of Matchday Ticket Prices in the English Premier League*, 23 EUROPEAN SPORT MGMT. Q. 1, 2 (2023) (finding that the opposition is one of the main factors affecting ticket prices).

141. Babatunde Buraimo, *Stadium Attendance and Television Audience Demand in English League Football*, 29 MANAGERIAL & DECISION ECON. 513, 513 (2008).

to 14% in 2023 in England, from 22% to 9% in Germany, and 21% to 12% in Spain.¹⁴² In comparison, during the same period, the average broadcasting rights revenues increased from 53% to 54% in England, from 31% to 44% in Germany, and from 48% to 59% in Spain.¹⁴³

Some audiences do not have a choice and can only follow their favorite teams on television. In most countries, the television rights are bundled and sold for the whole league. In other words, the broadcasting product is sold for the entire league, while its consumption may be only for specific teams—raising questions of abusive bundling. When television rights are negotiated as a league, the league has monopolistic power over the television rights, and, therefore, the teams do not compete for broadcasting revenue. So, the price for those rights would increase, and poor performing teams can free ride on the attraction of popular teams.

But this was not always the case. For example, in Europe, Real Madrid FC and FC Barcelona were negotiating their television broadcasting rights individually until recently.¹⁴⁴ These two teams earned almost one-third of their league's combined television rights revenues.¹⁴⁵ These teams viewed themselves as the product. Although many teams in the league did not agree, little was done about it.¹⁴⁶ However, in 2015, the Spanish government intervened because it hoped to sell the rights at a higher price by negotiating on equal footing with other leagues (i.e., the Premier League) and to uplift the smaller clubs who might have been struggling financially.¹⁴⁷ The Spanish government forced a bundling of the teams' television rights as one league product. This policy accomplished the opposite of what the Court did in the *University of Oklahoma* case and created a cross-subsidy system between high and low demand products.

142. Timothy Bridge et al., *Annual Review of Football Finance 2023*, DELOITTE (Sept. 5, 2023), <https://www.deloitte.com/global/en/Industries/tmt/research/gx-annual-review-of-football-finance.html> [https://perma.cc/KC9J-E3DS]; Sam Boor et al., *Reboot: Annual Review of Football Finance 2016*, DELOITTE (June 2016), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/consumer-industrial-products/gx-deloitte-uk-annual-review-of-football-finance-2016.pdf> [https://perma.cc/Q4CG-CTDN].

143. *Id.*

144. *Barcelona and Real Madrid Dealt a Blow in New Spanish TV Rights Deal*, THE GUARDIAN (Apr. 30, 2015, 5:45 PM), <https://www.theguardian.com/football/2015/apr/30/barcelona-real-madrid-la-liga-new-tv-rights-deal-spain> [https://perma.cc/ETY2-CQBK].

145. Guillem Balague, *How La Liga's Changing Television Deal Will Level the Playing Field in Spain*, BLEACHER REP. (May 1, 2015), <https://bleacherreport.com/articles/2450163-how-la-ligas-new-television-rights-will-help-level-the-playing-field-in-spain> [https://perma.cc/8VMH-BK62].

146. *Id.*

147. *Objetivo: 1.500 Millones Para el Fútbol*, EL MUNDO (Apr. 30, 2015, 8:20 PM), <https://www.elmundo.es/deportes/2015/04/30/554262b3ca4741a87a8b4572.html> [https://perma.cc/DCU2-SVGZ].

This example demonstrates that the “team against league” debate is not obvious and is often a reaction to what teams in competing leagues are doing. Without governmental authorization, this blanket license could violate the competition laws. However, the government may perceive that violating the competition laws and allowing some free riding may be necessary if governments want to garner the positive externalities associated with a professional football league. Or, they may consider that the competitive balance through revenue sharing is necessary to have a successful league which would generate those positive externalities. Regardless of the reason, bundling enables free riding.¹⁴⁸

To avoid free riding, multi-club entities can form their own league comprised of clubs from different countries. One government has pushed this approach through a state-owned multi-club entity. In the case of the Saudi Pro League, one entity owns four clubs operating in the same league.¹⁴⁹ It is too early to assess whether the Saudi Pro League has been successful, but this system decreases the free rider problem because when one PIF-owned team is successful, the other teams in the league also benefit from that success.

Multi-club owners may see this as an example to follow in the future: they could take their club out of their national leagues and create their own league. At that point, it would be too late for the competition authorities to intervene because the competition authorities never opposed the acquisition of those clubs in the past. They would not be able to block the formation of such a league because such a league would benefit from the single entity principle.

C. *Tragedy of the Commons*

Finally, sports suffer from a tragedy of the commons problem. The tragedy of the commons occurs when a common resource is overexploited because the users of that resource obtain the benefits of its use without carrying its full cost.¹⁵⁰ This problem arises in sports when an entity or athlete affects the competitive integrity of the sport. For example, doping in a high-performance sport creates a tragedy of the commons problem:¹⁵¹ athletes have an incentive to dope to win, get higher prizes, endorsements, etc. However, if all athletes dope, then no

148. Andrew S. Zimbalist, *Competitive Balance in Sports Leagues: An Introduction*, 3 J. SPORTS ECON. 111, 120 (2002) (discussing whether competitive balance is necessary to achieve success and profit and finding that different studies have come to different conclusions).

149. Noble, *supra* note 20.

150. Garrett Hardin, *The Tragedy of the Commons: The Population Problem Has No Technical Solution; It Requires a Fundamental Extension in Morality*, 162 SCIENCE 1243, 1244 (1968).

151. Edward J. Bird & Gert G. Wagner, *Sport as a Common Property Resource: A Solution to the Dilemmas of Doping*, 41 J. CONFLICT RESOLUTION 749, 751 (1997).

one gains an advantage, and the reputation of the sport (and the athletes' health) suffers. But, fans value sporting integrity. If fans perceive that the sporting integrity is not upheld, demand decreases for the clubs that were caught cheating and for the whole sporting league.¹⁵²

Multi-club ownership can both support and challenge the sporting integrity of a league. On the one hand, multi-club owners suffer the impact of any breach in integrity more than other owners because these breaches impact all their clubs. So, they have a stronger incentive to ensure that their clubs uphold the integrity of the sport. On the other hand, multi-club owners could manipulate the results for commercial reasons (e.g., favoring the more popular team) and impacting the sporting integrity of the league.

The tragedy of the commons has two common solutions: (1) privatizing the common resource¹⁵³ and (2) regulating the users.¹⁵⁴ First, in this context, the privatization of the common resource amounts to the league ensuring that its members have the correct incentives to uphold the fans' trust in the league. A league could "privatize trust" if all the members were owned by the same entity. However, if the league did not start as a single entity, then the multiple mergers required for the league to become a single entity could go against the competition rules.

Second, in this context, the regulation of access to the common resource amounts to regulating how trust in the sport is depleted. The regulation of users already occurs in many leagues often through anti-doping campaigns: athletes are constantly tested for doping. In *Meca-Medina & Majcen v. Commission of the European Communities*,¹⁵⁵ two athletes tested positive for doping after finishing first and second in a long distance swim race.¹⁵⁶ Because of the positive tests, they were banned from further participation.¹⁵⁷ The two athletes challenged the ruling based on competition law and freedom of movement.¹⁵⁸ The European Court of Justice held that the ban did not violate the competition rules because bans are necessary to ensure "athletes' health, the integrity and objectivity of competitive sport and ethical values in sport."¹⁵⁹ Those restrictions "are justified by a legitimate objective."¹⁶⁰

152. Jeffrey Cisyk & Pascal Courty, *Do Fans Care About Compliance to Doping Regulations in Sports? The Impact of PED Suspension in Baseball*, 18 J. SPORTS ECON. 323, 323 (2017).

153. Hardin, *supra* note 150, at 1245.

154. Kristin N. Johnson, *Things Fall Apart: Regulating the Credit Default Swaps Commons*, 82 U. COLO. L. REV. 101 (2011) (comparing the trust in financial markets to commons and discussing the need for regulation to address this problem).

155. Case C-519/04 P, *Meca-Medina & Majcen v. Comm'n* (2006).

156. *Id.* para. 7.

157. *Id.* para. 9.

158. *Id.* para. 3.

159. *Id.* para. 43.

160. *Id.* para. 45.

However, some other league regulations have violated the competition rules. For example, in *Union Royale Belge des Sociétés de Football Association ASBL v. Bosman*,¹⁶¹ a soccer player complained that the league's rules that were incorporated into players' contracts were against the freedom of movement and were anticompetitive: upon expiration of the contract, the new club of the player would have to pay "to the former [club] a transfer, training or development fee."¹⁶² The player argued that the rule meant that "the clubs restrict competition between themselves for players."¹⁶³ The European Court of Justice found that the league rules restricted the movement of football players in an unjustifiable way, so the court did not rule on the anticompetitiveness of the rules.¹⁶⁴ However, scholars have argued that if the court had addressed the issue, it would have found the rule to be anticompetitive because it also decreased competition for the services of players.¹⁶⁵

A similar question was brought forward in *SA Royal Antwerp Football Club v. Union royale belge des sociétés de football association & UEFA*.¹⁶⁶ In this case, UL, a football player, and the Royal Antwerp Football Club sued the Belgium football governing body, the Union royale belge des sociétés de football association and the UEFA alleging that the "homegrown player rule" was anticompetitive and restricted the free movement of players.¹⁶⁷ The "homegrown player rule" required that a minimum of eight players out of a twenty-five player football squad must have spent three years in the same football association.¹⁶⁸ Indirectly, this regulation aimed to grow the sport locally to incentivize local youths to begin playing football (i.e., the positive externality discussed above) and to ensure the competitive spirit to create a level playing field (i.e., cannot buy all the best players to prevent other clubs from competing).¹⁶⁹

With regard to the competition law question, the ECJ ruled that the homegrown player rule can be anticompetitive.¹⁷⁰ On the one hand, the

161. Case C-415/93, *Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman* (1995).

162. *Id.* para. 68.

163. *Id.* para. 46.

164. *Id.* para. 85.

165. *Id.* para. 270 (Advocate General Lenz advised in his Opinion to the Court before the judgment that the transfer rules violated the competition laws. He stated that "the possibility cannot therefore be dismissed that certain restrictions may be necessary to ensure the proper functioning of the sector. However, it has not been shown in the present proceedings that precisely the rules on foreign players and rules on transfers concerned here are necessary and indispensable for that purpose."). See also Stratis Camatsos, *European Sports, the Transfer System and Competition Law: Will They Ever Find a Competitive Balance*, 12 *SPORTS L.J.* 155 (2005).

166. Case C-680/21, *Royal Antwerp Football Club v. Royal Belgian Football Ass'n* (2023).

167. *Id.* para. 14.

168. *Id.* para. 6.

169. *Id.*

170. *Id.*

ECJ left the question of whether the rule had an anticompetitive object to the referring court.¹⁷¹ The referring court would need to collect more information. On the other hand, the ECJ seemed willing to accept that the rule had an anticompetitive effect based on intervening opinions.¹⁷² When discussing justifications for the necessity of the rule, the ECJ explained that the rule restricted competition but could fall under the Article 101(3) exemptions.¹⁷³ The ECJ highlighted that all four elements must be present: (1) the agreement improves efficiency; (2) users benefit from these gains; (3) the restrictions were necessary to obtain those gains; and (4) the agreement does not eliminate competition for a substantial part of services.¹⁷⁴ However, the court did not make a ruling and sent it back to the referring court to apply it.¹⁷⁵

In dicta, the ECJ opined that: (1) the rule can incentivize more recruitment and training of young players;¹⁷⁶ (2) the users include the players, football clubs, and viewers—hence all should receive some benefits;¹⁷⁷ (3) the association should consider alternative measures, such as direct compensation, that would comply with EU competition law;¹⁷⁸ and (4) competition still seems to exist for players, and the homegrown player rule does not seem disproportionate.¹⁷⁹ Given the upside, the rule may benefit from an Article 101(3) exemption. The lower court will have the difficult task to assess what proportion of players is too liberal or is too over-reaching.

These cases reaffirm that league rules can violate competition laws, and illustrate that properly-crafted regulations can combat the tragedy of

171. *Id.* paras. 108–12.

172. *Id.* para. 107; para. 117 (Although the ECJ refers it back to the referring court to investigate the effect of the rule.).

173. *Id.* paras. 119–27. If a court finds an agreement anticompetitive under Article 101(1), the defendant has an opportunity to provide evidence to benefit from an exemption. Such exemption are called Article 101(3) exemptions because this Section of Article 101 provides the conditions for an exemption to be granted i.e., an agreement that “contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.”

Courts have interpreted Art. 101(3) to require 4 elements as described by the ECJ.

174. *Id.* para. 119.

175. *Id.* paras. 108–12.

176. *Id.* para. 129.

177. *Id.* para. 130.

178. *Id.* para. 131.

179. *Id.* para. 132 (leaning in on the amicus brief from the European Commission).

the commons without violating competition laws (e.g., doping rule). However, over-reaching is a problem that cannot be ignored.

On the other hand, multi-club ownership can decrease the faith that audiences have in the competitive integrity of a league. Many leagues have financial fair play rules. These rules prevent clubs from spending above their means.¹⁸⁰ These rules also prevent what is sometimes referred to as “financial doping,” because teams gain a competitive advantage when they receive funds that they did not earn, which can distort sporting competition.¹⁸¹ These rules could violate the competition laws because they prevent clubs from competing for the services of players and offering them higher salaries to attract them.¹⁸² In other words, the clubs agreed to depress the price of their inputs using their monopsony power.¹⁸³

But multi-club ownership can provide a work-around for the financial fair play rules. For example, a club that does not face financial fair play rules in its league could buy a player and then transfer that player to another club belonging to the same entity for a nominal fee. This strategy eerily resembles money laundering. UEFA, faced with this hypothetical issue, has prohibited the transfer of players between club-owned or partially-owned by the same entities at least until September of 2024.¹⁸⁴ But, UEFA is losing its power struggle with the clubs. The next Part discusses the *European Superleague* case and how it could change the future of European football.

180. For example, the Premier League has a “Profitability and Sustainability” rule codified as E.47 to E.52 in the Premier League Handbook. The rule allow for a loss of £15m. Anything above requires the club to provide evidence of sustainability. Anything above £105m loss is construed as a breach. *Handbook Season 2023/24*, PREMIER LEAGUE (July 2023), https://resources.premierleague.com/premierleague/document/2023/08/31/132475d9-6ce7-48f3-b168-0d9f234c995a/PL_Handbook_2023-24_DIGITAL_29.08.23.pdf [https://perma.cc/J7XF-CLHM]. In 2023–24, Everton and Nottingham Forest were punished through a sporting punishment (point deduction) for breaking these rules. Andy Huter, *Everton Could Face Further Punishment After Being Hit With Two-Point Deduction*, THE GUARDIAN (Apr. 8, 2024, 11:35 AM), <https://www.theguardian.com/football/2024/apr/08/everton-hit-with-two-point-deduction-over-second-breach-of-financial-rules> [https://perma.cc/TV2Q-UCFY].

181. See Mathias Schubert & Thomas Könecke, ‘Classical’ Doping, *Financial Doping and Beyond: UEFA’s Financial Fair Play as a Policy of Anti-Doping*, 7 INT’L. J. SPORT POLICY & POL. 63, 70 (2015).

182. Clinton R. Long, *Promoting Competition or Preventing It: A Competition Law Analysis of UEFA’s Financial Fair Play Rules*, 23 MARQ. SPORTS L. REV. 75, 78 (2012).

183. John Twomey & James Monks, *Monopsony and Salary Suppression: The Case of Major League Soccer in the United States*, 56 THE AMERICAN ECONOMIST 20, 20 (2011) (finding that the single entity structure in Major League Soccer has eliminated competition for players across teams and suppress player salaries).

184. *The CFCB Renders Decisions on Multi-Club Ownership Cases for the 2023/24 UEFA Club Competitions*, *supra* note 14.

III. LEGAL COMPETITION: ANCILLARY VS ESSENTIAL COOPERATION

This section discusses how the recent decision by the ECJ on the creation of breakaway leagues may open the door to the creation of leagues that includes only clubs owned by the same entities.

A. Superleague v. FIFA & UEFA

In 2021, a group of professional football clubs decided to create a breakaway league to compete with (or replace) the UEFA Champion's League and named it the Superleague.¹⁸⁵ The UEFA, along with the international football governing body, FIFA, retaliated and promised to punish the clubs and the players at those clubs,¹⁸⁶ threatening that “the clubs concerned will be banned from playing in any other competition at domestic, European or world level, and their players could be denied the opportunity to represent their national teams.”¹⁸⁷ The Superleague brought an action against UEFA and FIFA claiming that they breached the European Competition in two respects: (1) they cartelized because they are an association of association;¹⁸⁸ and (2) they abused their dominant position.¹⁸⁹ The Superleague also alleged that the sanctions would restrain the free movement of its workers.¹⁹⁰

The ECJ sided with the Superleague on every point and gave UEFA and FIFA a resounding defeat.¹⁹¹ First, the ECJ found that UEFA and FIFA had dual functions.¹⁹² One function is that these organizations created the rules of football—much like a regulatory body—that clubs and players would follow when competing.¹⁹³ The other function is that these governing bodies negotiate broadcasting rights on their behalf and on the behalf of their members. Thus, they would be in direct competition with this new league.¹⁹⁴

The ECJ first investigated whether UEFA had a position dominant and found that it did.¹⁹⁵ In fact, it went further and stated that UEFA had a monopoly.¹⁹⁶ The ECJ then found that the governing bodies exercised

185. Tariq Panja & Rory Smith, *Europe's New Super League, Explained*, N.Y. TIMES, <https://www.nytimes.com/2021/04/19/sports/soccer/super-league-explainer.html> [https://perma.cc/FA5G-B74B] (May 20, 2021).

186. Case C-333/21, *Eur. Superleague Co. v. FIFA* (2023), paras. 29–32.

187. *Id.* para. 31.

188. *Id.* paras. 41–43.

189. *Id.* paras. 37–40.

190. *Id.* para. 43.

191. *Id.* paras. 108–257.

192. *Id.* para. 47.

193. *Id.* para. 176.

194. *Id.* paras. 92–93.

195. *Id.* para. 117.

196. *Id.* para. 139.

their dominant positions when they imposed sanctions.¹⁹⁷ In other words, UEFA, acting as a single entity, imposed unfair obligations. The ECJ did not specify whether FIFA and UEFA tied club competitions with international team competitions, even though they are not related products. But, the ECJ warned that their tying behavior would warrant further investigation from the lower court because these organizations were leveraging their remaining monopoly (national team competition) into another product (club team competition) where it was losing its monopoly because of the introduction of the Superleague.¹⁹⁸

Interestingly, the ECJ stated that they failed to articulate a “framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position.”¹⁹⁹ Thus, the ECJ left the door open for these football governing bodies to regulate the creation of competing leagues, as the court objected to the manner, not the outcome.

Next, the ECJ focused on coordinated behaviors because UEFA and FIFA are associations of associations: every club in Europe belongs to a federation, and every federation belongs to UEFA and FIFA.²⁰⁰ The ECJ investigated whether the agreements—that competition leagues must seek an approval from UEFA and FIFA for—had the objective or effect of reducing competition.²⁰¹ The ECJ found that, on its face, the agreement created barriers to entry.²⁰²

The ECJ then considered any mitigating factors. After citing the criteria, it discussed the need for sports to be meritocratic and have solidarity.²⁰³ But, the ECJ refused to pronounce itself. Instead, it instructed the referring court to investigate the issue in context.²⁰⁴ The ECJ warned the lower court that the defendant must demonstrate that alternative measures must be considered so as to minimize the impact of the conduct.²⁰⁵ The ECJ recited the same four elements discussed under *Royal Antwerp* above. However, here, the ECJ talked about genuine efforts.²⁰⁶ The ECJ seemed almost skeptical of what had been put forward by UEFA and FIFA.

The focus of the decision has been on the ability of clubs to create new leagues that compete with existing leagues without fearing the threat of

197. *Id.* paras. 144–46.

198. *Id.* paras. 177–81 (finding no need to consider this question separately).

199. *Id.* para. 152.

200. *Id.* para. 158.

201. *Id.* paras. 155–70.

202. *Id.* paras. 177–79.

203. *Id.* para. 196.

204. *Id.* para. 200.

205. *Id.* para. 197.

206. *Id.*

sanctions. However, UEFA should really be concerned about its audio-visual rights. The ECJ has expressed skepticism about the necessity to sell league rights as a league instead of each team being able to negotiate their broadcasting rights.²⁰⁷ It stated that such measures were not necessary to ensure the success of a league, and pointed out that until 2015, the Spanish league did not use this model.²⁰⁸ The ECJ stated that the negotiation of such bundled rights can lead to higher prices.²⁰⁹ The ECJ stopped short and did not state whether it was the case here; but, it did not stop there.

Next, the ECJ addressed some of the justifications about the necessity to have broadcasting rights negotiated as a league.²¹⁰ The football governing bodies argued that the rights are negotiated as a league because they needed to take some revenues for the benefit of the sport at large: they would distribute profits to non-participating clubs and support the sports from the grassroots level.²¹¹ Again, the ECJ expressed skepticism, stating that the solidarity must be “genuine.”²¹²

This discussion was not necessary to resolve the case. The ECJ had already found enough problems with what UEFA and FIFA had done to find a “hypothetical” violation of the competition laws. However, what it did is once again open the age old debate, the league is the product, but the selling points are the clubs.

The decision surprised some observers. For instance, the Advocate General Rantos offered an opinion in favor of UEFA and FIFA because he found legitimate sporting objectives in their behavior.²¹³ The opinion, however, focused on “context:” the Advocate General focused on the proposed league format to justify the behavior of UEFA and FIFA, instead of focusing on their behavior, their objective, and their effect.²¹⁴

This decision was so important that every European government and the European Commission intervened in the case.²¹⁵ It is hard to tell whether the motivations were sporting or political, but it highlights that Europe took interest in this case. At this point, the impacts of this decision remain uncertain.

The meaning of the case is easier to establish. First, clubs can organize and create competing leagues. The Superleague has been revived, and a

207. *Id.* paras. 217–30.

208. *Id.* para. 222.

209. *Id.* para. 229.

210. *Id.* paras. 231–41.

211. *Id.* para. 234.

212. *Id.* para. 235.

213. *Id.* paras. 85–123.

214. *Id.* paras. 25–49.

215. *See generally* Judgment in Case C-333/21, *Eur. Superleague Co. v. UEFA* (2023).

new format has been presented.²¹⁶ However, the project has already lost some steam: six of the original member clubs have decided to pull out and not rejoin.²¹⁷ It is hard to tell whether these clubs have been scared by the sanctions or by the fans' reactions, but they decided to fall in line.²¹⁸ UEFA was defiantly arguing that the "ruling does not signify an endorsement or validation of the so-called 'super league': it rather underscores a pre-existing shortfall within UEFA's pre-authorisation framework."²¹⁹

Second, a Spanish court must still rule on the matters, as the ECJ only advised based on preliminary motion. It did not rule, as the fact-finding had yet to occur.²²⁰ UEFA will have an opportunity to present the upsides that their approaches present, and the Spanish court will have to decide whether those upsides are genuine and convincing. As seen with the Advocate General's opinion and the ECJ's judgment, opinions diverge. The football governing bodies are not likely to give up that easily.

The UEFA president even stated that he was "amused" by the competing project.²²¹ The defiance could be due to the fact that the European governments have opposed the Superleague project.²²² So, they

216. Tariq Panja, *Court Ruling May Revive Plan for Soccer Super League in Europe*, N.Y. TIMES (Dec. 21, 2023), <https://www.nytimes.com/2023/12/21/sports/soccer-super-league-ruling-uefa.html> [https://perma.cc/FG9K-YCD4].

217. *Club Statement*, ARSENAL (Dec. 22, 2023), <https://www.arsenal.com/news/club-statement-2>; *Club Statement*, CHELSEA FC (Dec. 21, 2023), <https://www.chelseafc.com/en/news/article/club-statement-super-league> [https://perma.cc/LBD4-N4ZE]; *Liverpool FC Statement*, LIVERPOOL FC (Dec. 22, 2023), <https://www.liverpoolfc.com/news/liverpool-fc-statement-7> [https://perma.cc/PN5C-NFXP]; *Club Statement*, MANCHESTER CITY (Dec. 21, 2023), <https://www.mancity.com/news/mens/manchester-city-statement-esl-63838777> [https://perma.cc/R64K-PRA2]; *Club Statement On European Super League*, MANCHESTER UNITED (Dec. 21, 2023), <https://www.manutd.com/en/news/detail/club-statement-reacting-to-european-court-of-justice-ruling-on-european-super-league> [https://perma.cc/PJ5A-M4R6]; *Club Statement*, TOTTENHAM HOTSPUR (Dec. 21, 2023), <https://www.tottenhamhotspur.com/news/2023/december/club-statement/> [https://perma.cc/5CY5-P2FX].

218. Tariq Panja & Rory Smith, *How the Super League Fell Apart*, N.Y. TIMES (Oct. 22, 2021), <https://www.nytimes.com/2021/04/22/sports/soccer/super-league-soccer.html> [https://perma.cc/M62F-PQDH].

219. *UEFA Statement on the European Super League Case*, UEFA (Dec. 21, 2023), <https://www.uefa.com/returntoplay/news/0288-19bf06a5cd26-1e0545be457d-1000--uefa-statement-on-the-european-super-league-case/> [https://perma.cc/DHN5-KUZC].

220. Case C-333/21, Eur. Superleague Co. v. UEFA (2023), para. 187.

221. Paul MacInnes, *English Clubs Throw Weight Behind UEFA After European Super League Ruling*, THE GUARDIAN (Dec. 21, 2023, 1:58 PM), <https://www.theguardian.com/football/2023/dec/21/european-super-league-boost-court-of-justice-ruling-uefa-fifa-eu-law> [https://perma.cc/YM65-N5RH].

222. See, e.g., Peter Walker, *Boris Johnson Says Government Will Try to Stop European Super League*, THE GUARDIAN (Apr. 19, 2021, 6:46 AM), <https://www.theguardian.com/football/2021/apr/19/ministers-urged-to-take-action-over-european-super-league-plan> [https://perma.cc/PUX7-FNWU]; Nicolas Camut & Ali Walker, *France Shoots to Kill the Football Super League*,

may intervene if such a project was tabled again. But, UEFA's president's optimism could be misplaced. First, the decision showed that UEFA had a few problems with its governance: it lacks transparent, objective, non-discriminatory, and proportional governance. The ECJ was not swayed by the political influence. Second, football governance has been under scrutiny for a while.²²³ Both sides in the *Superleague* case try to paint themselves as the saviors of football.²²⁴ However, their motivations seem less noble. Third, the English government has even proposed a government-run regulator, but such regulator would have no power over FIFA or UEFA.²²⁵ Its jurisdiction would focus on national borders. The *Superleague* project opened Pandora's box about new leagues living outside the existing regulatory framework.

Finally, the clubs have more power following the decision.²²⁶ If the governing bodies misbehave, they could create their own new organization. The best entities to do so would be those held by multi-club ownership: they already have multiple clubs that have similar interests. The next section discusses how the multi-club ownership model could leverage the *Superleague* decision to their advantage.

Once and For All, POLITICO (Feb. 7, 2024, 6:53 PM), <https://www.politico.eu/article/france-kill-football-super-league-european-union-uefa-champions-league/> [<https://perma.cc/928P-ZDW4>].

223. For example, both FIFA and UEFA have been investigated for corruption. *See, e.g., FIFA Corruption Crisis: Key Questions Answered*, BBC (Dec. 21, 2015), <https://www.bbc.co.uk/news/world-europe-32897066> [<https://perma.cc/PZH8-L7AH>]; *Ex-FIFA President Blatter and Ex-UEFA Boss Platini Charged With Fraud*, BBC (Nov. 2, 2021), <https://www.bbc.co.uk/news/world-europe-59133079> [<https://perma.cc/5BSH-8CWP>]. Some defendants avoided criminal sanctions. *See, e.g., Sepp Blatter and Michel Platini Found Not Guilty Following Fraud Trial*, BBC (July 8, 2022), <https://www.bbc.co.uk/sport/football/62081675> [<https://perma.cc/Z7HN-VNKN>]. But all the problems have not been solved. *See, e.g., David Conn, 'I Had to Leave': Concerns Raised Over State of UEFA Amid Cronyism Claims*, THE GUARDIAN (Sept. 22, 2022, 8:02 AM), <https://www.theguardian.com/football/2022/sep/22/i-had-to-leave-concerns-raised-over-state-of-uefa-amid-cronyism-claims> [<https://perma.cc/GJF5-QCP6>].

224. *See, e.g., Sid Lowe, Real Madrid's Florentino Pérez Claims Super League is Here to 'Save Football'*, THE GUARDIAN (Apr. 20, 2021, 6:01 AM), <https://www.theguardian.com/football/2021/apr/20/real-madrid-florentino-perez-claims-super-league-is-here-to-save-football> [<https://perma.cc/VPV3-QUTF>]; *European Super League: Fans and Clubs Can be Convinced to Back New Plans, Says Organizer*, BBC (Dec. 22, 2023), <https://www.bbc.co.uk/sport/football/67791936> [<https://perma.cc/CX8W-F268>].

225. Janathan Jurejo, *Football Regulator: UK Government Confirms New Independent Body*, BBC (Feb. 23, 2023), <https://www.bbc.co.uk/sport/football/64536218> [<https://perma.cc/YS4G-YUB3>]. Self-regulation is prone to regulatory capture, which is a problem even when the regulator is government led. At this point in time, it remains difficult to know whether such regulator will fare better than UEFA.

226. Nick Ames, *UEFA Confident It Holds Sway Over Competitions After Ruling But Clubs Now Have More Power*, THE GUARDIAN (Dec. 24, 2023, 3:00 PM), <https://www.theguardian.com/football/blog/2023/dec/24/uefa-confident-it-holds-sway-over-competitions-after-ruling-but-clubs-now-have-more-power> [<https://perma.cc/6TRF-LHKQ>].

B. Multi-Club Ownership & Competition Law

In the *Superleague* decision, UEFA ran into two competition law problems. First, it is an organization of horizontal competitors.²²⁷ So, when the case returns to the Spanish court, it must show that its approach created substantial upsides to consumers to justify the downsides linked to its coordinated behavior to avoid falling foul of the competition laws.²²⁸ Second, it competes with its horizontal members (leagues) for broadcasting revenues.²²⁹ It must show that the conduct was necessary or creates efficiencies that benefit consumers.²³⁰ Neither are easy to do.

Instead, to avoid competition law scrutiny, UEFA may need to consider a change in structure. One solution is for all the clubs to be housed under one umbrella. The Major League Soccer (MLS), an American men's professional soccer league, has used this model: it is organized as a single entity—instead of a league or association—so, the team owners are not owners at all but operators (or franchisees).²³¹ In other words, the league itself is a multi-club owning entity!

MLS was designed that way. However, it does not have to be the case. An investment fund could acquire multiple clubs across Europe and then create its own cross-continental competition. Because of the *Superleague* decision, these investment funds know that they can compete with UEFA to create transcontinental competitions.

National governments can intervene using merger control because the purchase of those clubs amount to an acquisition through foreign direct investment.²³² To challenge such acquisitions, these governments would need to first define the geographical and product market. But defining the market is difficult: does a club in France compete with a club in Italy for fans?

Presented with this question, the French competition authority ignored stadium-going audiences and television viewers as consumers of football club services. Instead, it focused on two different markets.²³³ In 2019, INEOS acquired Olympique Gymnaste Club de Nice (OGC Nice).²³⁴ It already owned a number of sports clubs across Europe, including one football club, FC Lausanne–Sport, in Switzerland.²³⁵ When assessing

227. Case C-333/21, Eur. *Superleague Co. v. UEFA* (2023), para. 227.

228. *Id.* paras. 237–38.

229. *Id.* paras. 224–30.

230. *Id.*

231. Paul D. Abbott, *Antitrust and Sports – Why Major League Soccer Succeeds Where Other Sports Leagues Have Failed*, 8 *SPORTS L.J.* 1, 3–4 (2001).

232. Stephan W. Schill, *The European Union's Foreign Direct Investment Screening Paradox: Tightening Inward Investment Control to Further External Investment Liberalization*, 48 *LEGAL ISSUES ECON. INTEGRATION* 105, 107 (2019).

233. *See* Decision 19-DCC-160, French Competition Authority (2019).

234. *Id.* para. 3.

235. *Id.* para. 1.

whether to block the merger, the French competition authority investigated two markets: the upstream and downstream market.²³⁶

In the upstream market, clubs employ players. Those players often change clubs, but not that many clubs exist that operate at the same level. So, the market for players could be affected by multi-club ownership, which might gain some monopsony power. In that respect, the competition authority found that the geographical market was the whole of Europe because that was where most players were transferred.²³⁷ It found that because INEOS would gain little market power (even after the merger, it employed less than 1% of all players), it would not prove problematic.²³⁸

In the downstream market, it considered the market for sponsors and found, in that case, that the geographical market was national—even though it was becoming less so.²³⁹ Under a national or international analysis, the French competition authority found that INEOS would also have virtually no market power post-merger in the sponsorship/marketing market.²⁴⁰

At no point did the French competition authority consider the football going or viewing audience. Given the importance of broadcasting rights to club revenues, this omission seems odd. Instead, the competition authority could be under the impression that because rights have always been sold as a league, the acquired company has no control over its pricing. Thus, the competition authority need not worry about it in its analysis, because the leagues already prohibit multi-club ownership within a league. The European Commission could review these acquisitions, but it has yet to weigh in on what the appropriate market(s) to analyze should be.²⁴¹

The *Superleague* decision has made it clear that broadcasting rights need further competition scrutiny because they play an important role in the ecosystem of these clubs. The ECJ suggested that broadcasting rights could be sold by individual clubs instead of as a league. So, when assessing whether to challenge an acquisition, the competition authorities may need to consider broadcasting rights. Even if a multi-club entity was not to create its own league, it could decide to sell its broadcasting rights independently and bundle the rights of all its clubs together. Thus, any

236. *Id.* para. 4.

237. *Id.* paras. 9–11.

238. *Id.* para. 17.

239. *Id.* paras. 14–16.

240. *Id.* para. 18.

241. See Anand Patel & Oliver Marshall, *Football's Multi-Club Ownership Model: Are Competition Authorities Curious?*, LINKLATERS (June 15, 2023), <https://www.linklaters.com/en/insights/blogs/sportinglinks/2023/june/footballs-multi-club-ownership-model> [https://perma.cc/YJ7F-RTQT].

acquisition would give that multi-club entity more power to increase broadcasting prices.

CONCLUSION

The competition laws are a poor regulator for most industries. At best, its merger regulation conserves the status-quo while its business model regulation can only prohibit non-competitive behavior. Neither regulatory arm can incentivize competition: it punishes bad behavior but does not reward good behavior. Competition law relies on existing competition. This proved to be the case again in the football context as well. The competition laws have failed the football fans. For too long, the competition authorities have turned a blind eye to the behavior of football-governing bodies. Many of their rules have questionable competition impacts, and no court has stopped and assessed them.

The *Superleague* decision is a step in the right direction. The *Superleague* decision came down on the same day as two other cases dealing with competition law in sports: (1) *Royal Antwerp* discussed above, which dealt with the homegrown rule; and (2) *International Skating Union v. European Commission*,²⁴² which dealt with the punishment of athletes who participated in non-sanctioned competitions. With these three decisions, the ECJ is leading the way and showing the competition authorities that sports and competition law do not mix well.

The *Superleague* case will impact how governing bodies function and how they sell broadcasting rights. The motivations of the Superleague organizer are clear. But, if we are to treat football like any other business, competition is necessary both on-and-off the field. The competition authority must turn their attention to multi-club entities, as they threaten to affect both sporting and legal competition. Teams organized under a multi-club owned structure are likely to expand following the *Superleague* decision because this decision makes club ownership more attractive.

242. Case C-124/21 P, *Int'l Skating Union v. Eur. Comm'n* (2023), paras. 4–7. This case focuses on the rules of the International Skating Union (ISU), which penalize athletes who compete in non-ISU unauthorized competitions. The ECJ found that these rules violated the competition because they are not transparent, objective, non-discriminatory and proportionate. The rule gave the ISU a competitive advantage and increased prices.