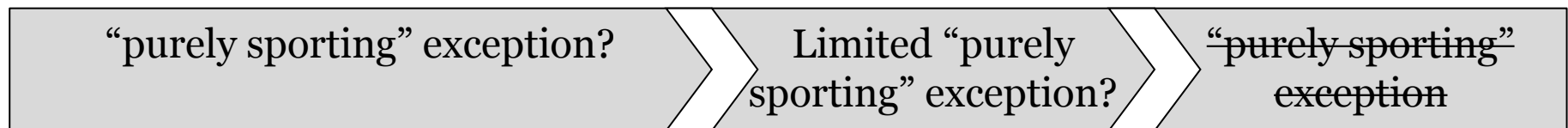


EU antitrust law and the private regulation of sport: current developments

Ben Van Rompuy | 86th GCLC Lunch Talk, Brussels, 24 November 2016



Universiteit
Leiden
The Netherlands



1. European decisional practice

-
- Formal decisions / investigation closed after negotiated amendments

- **Commercial (4)**

Sports goods	IV/32.290 – Newitt/Dunlop Slazenger (1992) IV/34.590 – Tertorn and Others (1994)
Ticket sales	IV/33.384 and IV/33.378 – Package tours during the 1990 FIFA World Cup (1992)
Media rights	IV/32.150 – EBU/Eurovision system (1993)

- **Regulatory (0)**

- Speeches DG COMP officials (0)

- Formal decisions / investigation closed after negotiated amendments

- **Commercial (9)**

Sports goods	COMP/33.055 and 35.759 – Danish Tennis Federation (1998)
Ticket sales	COMP/36.888 – 1998 FIFA World Cup (1998) COMP/37.424 – UEFA EURO 2000 (2000) COMP/38.703 – Athens Olympic Games (2004) COMP/39.177 – 2006 FIFA World Cup (2005)
Media rights	COMP/37.576 – UEFA Broadcasting Regulation (2001) COMP/37.398 – UEFA Champions League (2003) COMP/37.214 – German Bundesliga (2005) COMP/38.173 – FA Premier League (2006)

- **Regulatory (3)**

COMP/35.163, 36.638, 36.776 – FIA/Formula One (2001)
COMP/36.583 and 36.726 – International transfer of football players (2002)
COMP/37.124 – FIFA Rules on players' agents (2002)

- Rejection of complaints

Commercial	COMP/35.266 – FIFA Technical specifications of footballs (2000) COMP/38.316 – FIA supply of tires for karting (2004) ...
Regulatory	COMP/36.851 - 'Home and away from home' rule (UEFA) (1999) COMP/38.158 – Meca-Medina + Majcen (2002) COMP/37.632 – ENIC (multiple ownership of football clubs) (2002) ...

- Speeches DG COMP officials (19)

- Formal decisions / investigation closed after negotiated amendments

- **Commercial (o)**

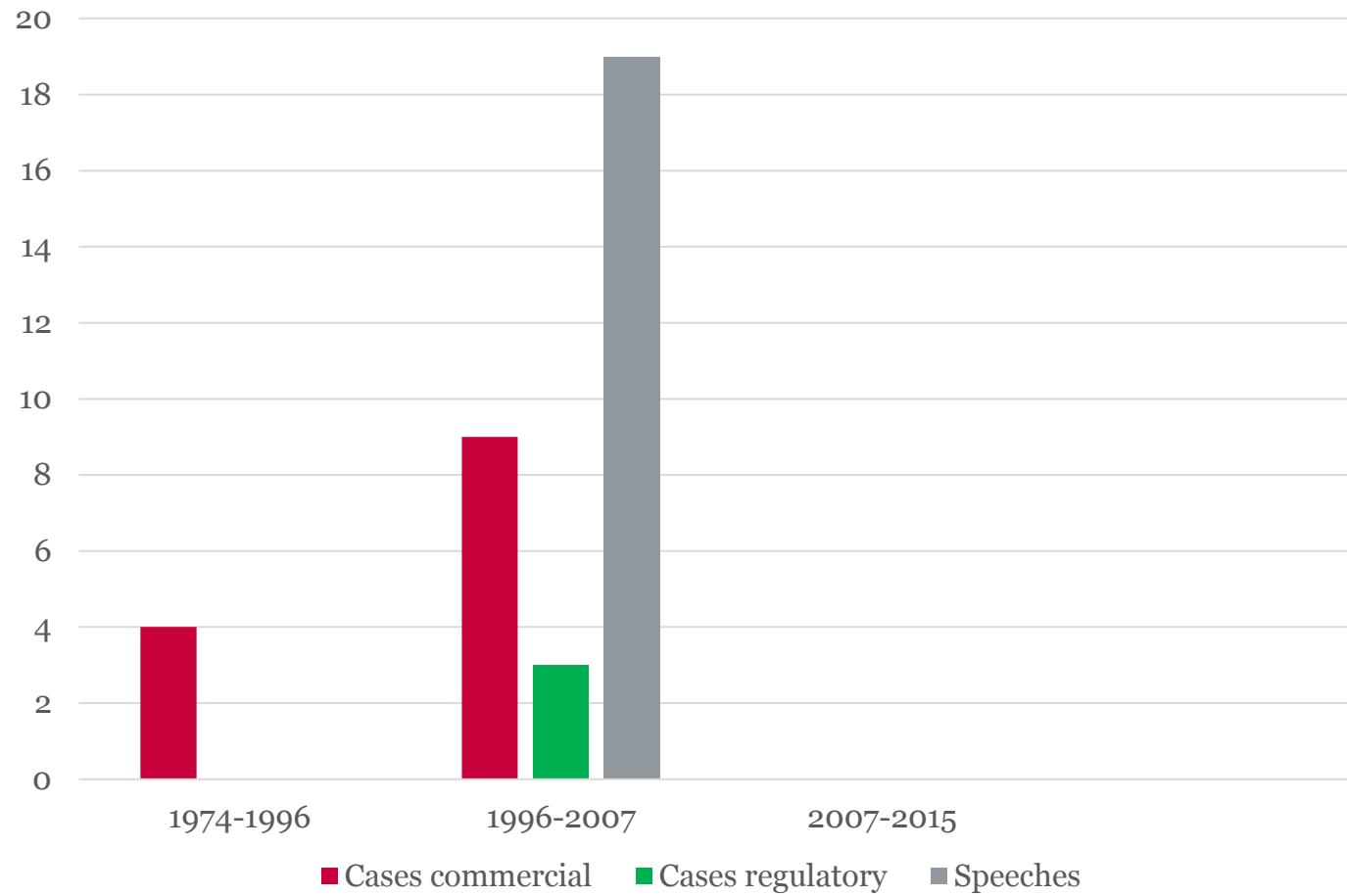
- **Regulatory (o)**

- Rejection of complaints

Meca-Medina: CJEU has chosen "to potentially open the floodgates for legal claims in relation to sports rules"
- Gianni Infantino, 2006

Commercial	AT/39.899 - Licensing of intellectual property rights for football collectibles (2014) ...
Regulatory	COMP/39.471 – Cañas (2009) COMP/39.732 – FIA, Formula One engine regulations (2011) AT/40.105 – Striani / UEFA Financial Fair Play Rules (2014) ...

- Speeches DG COMP officials (o)



- Pending before European Commission (new unit):
 - International Skating Union Eligibility Rules
 - Mark Tuitert and Niels Kerstholt: June 2014-
 - FIFA TPO ban
 - Liga de Fútbol Profesional (LFP) and Liga Portuguesa de Futebol Profissional (LPFP): February 2015-
 - FIFA Transfer system
 - FIFPro: September 2015-
 - FIA (Formula One): redistribution revenues/governance
 - Sauber and Force India teams: September 2015-
 - FIBA (Basketball) reform of continental club competitions
 - Euroleague Commercial Assets: February 2016-
 - FIBA: March 2016-

2. Key issues to be addressed

**I.
Rules foreclosing access to the markets for the organisation
and commercialisation of sports events**

- Exclusive right to approve and/or organise competitive events
- “Loyalty clauses” prohibiting participation of (indirect) members in events other than those organised and promoted by the federation

Key question: are such restrictions genuinely designed to achieve legitimate objectives in the interest of sport and proportional to those objectives?

- Lessons from existing decisional practice so far:
 - ✓ Organisational principle of one governing body per sport not questioned
 - ✓ Minimum standards for safety + compliance with doping regulations



Van Rompuy B. (2015), [The role of EU competition law in tackling abuse of regulatory power by sports associations](#), Maastricht Journal of European and Comparative Law 22(2): 174-204 (available on SSRN)

- Swedish NCA: Bodybuilding and Fitness Competitions [commitments 2014]
- Swedish NCA: Swedish Automobile Sports Federation [prohibition 2011]
 - Upheld by the Swedish Market Court (Case A 5/11, 2012)

- Irish NCA: Show Jumping Ireland [commitments 2011]
- Irish NCA: Irish Kennel Club [enforcement decision 2003]

- Italian NCA: Motorsport (Gargano Corse/ACI) [commitments 2009]
- Italian NCA: Italian Equestrian Federation [commitments 2008]

- **European Commission: ISU Eligibility Rules [SO issued September 2016]**

 - Adoption of rules for ISU-approved Open International Competitions (October 2015)

 - Amendments to Eligibility Rules (June 2016)

 - International competitions: must be approved by ISU ~~and/or Members~~
 - National competitions and non-competitive events: exclusively governed by Members, may not “unduly restrict their skaters to participate in non-competitive events”
 - Introduction of scale of sanctions (but still lifetime ban if “jurisdiction of the ISU” is “endangered”)

- **Belgian NCA: Fédération Equestre Internationale [provisional measures 2015]**

- **European Commission: FIBA vs. Euroleague**

 - German courts: Landgericht München [temporary injunction, June 2016; cancelled, July 2016]. Proceedings withdrawn.

II. Forced arbitration

- Claudio Pechstein vs. International Skating Union

- ECHR
- German courts: Landgericht München (2014), Oberlandesgericht München (2015), BGH (2016) + BVerfG

Key question: independence of the Court of Arbitration for Sport (CAS)

- Exploitative abuse of a dominant position (102(a) TFEU)
- Unfair, but a competition law problem?



Duval, A, and Van Rompuy B. (2015), [The Compatibility of Forced CAS Arbitration with EU Competition Law: Pechstein Reloaded](#) (available on SSRN)

**III.
Licensing conditions (financial stability)**

-
- KBVB financial stability condition for professional football
 - Belgian NCA: White Star Woluwe Football CLUB / KBVB [provisional measures rejected 2016]

Key question: should the interpretation/enforcement of rules be considered when assessing their anti-competitiveness (or can rules be assessed in the abstract)?

- Open-ended rules + forced arbitration = way to evade the application of EU competition law?
- Arbitral award enforcing rule = attributable to the rule-making association = “decision”?

- **UEFA Financial Fair Play Regulations**

- Belgium, Tribunal de premiere instance Bruxelles: Striani and fans/UEFA [lack of jurisdiction, 2015]
- France, Tribunal de Grande Instance Paris: PSG fans/UEFA [lack of jurisdiction, 2016]



Van Rompuy B. (2015), [The Brussels Court judgment on Financial Fair Play: a futile attempt to pull off a Bosman](#) (available on Asser International Sports Law Blog)

- **Spanish basketball club association (ACB): financial conditions for promotion to Liga ACB**
 - Spanish NCA: Club Baloncesto Tizona/ACB [SO issued April 2016]

Dr. Ben Van Rompuy

Assistant professor Competition Law | Leiden University

Visiting professor | Vrije Universiteit Brussel (VUB)

b.van.rompuy@law.leidenuniv.nl

[@BenVanRompuy](#)



**Universiteit
Leiden**
The Netherlands