Chapter 3
Club Ownership

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3.1 CAS 98/200 AEK Athens and Slavia Prague v. UEFA

Ivan Cherpillod

In the AEK Athens and Slavia Prague v. UEFA Award, the CAS had to rule on the consequences of the qualification of two or more teams—under common control—for the same UEFA tournament. Following the participation of three clubs under one owner in the 1997/1998 UEFA CUP season, UEFA introduced the “Integrity of the UEFA Club Competitions—Independence of Clubs” rule for the 1998/1999 UEFA Cup season. Under its provisions, the owner of several clubs was (and still is) only allowed to play one club out of several in the tournament. UEFA ruled this way when AEK Athens and Slavia Prague, both owned by ENIC plc, qualified for the UEFA Cup 1998/1999. The CAS confirmed the validity of the UEFA rule and established a jurisprudence that can be regarded as fundamental to the integrity of the game. The author’s analysis deals in detail with European Law, especially European Community competition law, Swiss civil and competition law and the general principles of law.

3.1.1 Background

ENIC plc is an English company which had invested in several European football clubs. In 1997, it acquired controlling interests in AEK, Slavia and Vicenza. In the 1997/98 European football season, these three clubs took part in the UEFA Cup Winners’ Cup and all qualified for the quarter final. Thus, three out of eight clubs left in the same competition belonged to a single owner.

ENIC and UEFA met together to discuss the issue of multi-club ownership in football. ENIC proposed a “code of ethics” but this was not considered as a viable solution by UEFA. After internal consultation, UEFA preferred a rule which had the effect to prevent clubs under common control to play in the same competition.

A few days after having sent the UEFA Cup regulations for the season 1998/1999 to its member associations (regulations which at that time did not contain any limitation regarding multi-ownership), UEFA adopted the Contested Rule. It provides that “in the case of two or more clubs which are under common control,

only one may participate in the same UEFA club competition".[1] Further, to determine which of two—or more—commonly owned clubs should be admitted, UEFA decided that the club with the highest "club coefficient" (i.e. a coefficient based on the club's results of the previous 5 years) would be admitted (and if the club coefficients were the same, the club with the highest national association coefficient based on the previous results of all the teams of the national association would be admitted; and in case of equal national association coefficients, lots would be drawn).

In application of the Contested Rule and these additional criteria, UEFA informed AEK Athens that it was not admitted to the UEFA Cup (Slavia Prague had the highest club coefficient). Thus, AEK had to be replaced by the club which had ranked immediately below AEK in the Hellenic championship.

AEK and Slavia Prague proposed to submit the case to CAS, and UEFA agreed.

3.1.2 CAS Decisions

The Claimants AEK and Slavia first sought an interim order petitioning their admission to the 1998/1999 UEFA Cup. This interim order has been granted by the President of the CAS Ordinary Division, who considered that the Contested Rule had been enacted too late, i.e. shortly before the start of the 1998/99 season and

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[1] More precisely, the rule establishes that:

(1) no club participating in a UEFA club competition may, either directly or indirectly:

  (a) hold or deal in the securities or shares of any other club, or
  (b) be a member of any other club, or
  (c) be involved in any capacity whatsoever in the management, administration and/or sporting performance of any other club, or
  (d) have any power whatsoever in the management, administration and/or sporting performance of any other club.

(2) No person may at the same time, either directly or indirectly, be involved in any capacity whatsoever in the management, administration and/or sporting performance of more than one club participating in the same UEFA competition.

(3) In the case of two or more clubs which are under common control, only one may participate in the same UEFA club competition. In this connection, an individual or legal entity has control of a club where he/she/it:

  (a) holds a majority of the shareholders' voting rights, or
  (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body, or
  (c) is a shareholder and alone controls a majority of the shareholders' voting rights pursuant to an agreement entered into with other shareholders of the club in question.

(4) The Committee of the UEFA Club Competitions will take a final decision with regard to the admission of clubs to these competitions. It furthermore reserves the right to act vis-à-vis clubs which cease to meet the above criteria in the course of an ungoing competition.

after the Cup Regulations had been sent—*nota bene*—without any restriction regarding multi-ownership. Therefore, CAS admitted that the Claimants could legitimately expect that no restriction was going to be adopted for that season. In CAS' view, the late adoption of the Contested Rule amounted to a violation of the rules of good faith and procedural fairness. However, this decision was only made for the duration of the 1998/1999 season, without prejudice as to the validity of the Contested Rule.

In its final award of August 20, 1999, CAS confirmed the validity of the Contested Rule but decided that it could not be implemented until the end of the 1999/2000 football season—on the ground that commonly controlled clubs and their owners should have some time to determine their course of action.

3.1.3 Applicable Law

As per Article R45 of the CAS Code, the dispute had to be decided "according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law".

The Claimants argued that the Contested Rule violated Swiss civil law: violation of the UEFA Statutes because it allegedly created different categories of members; breach of the principle of equal treatment (alleged discrimination between clubs which were under common control and other clubs); disregard of the Claimants' right to be heard; unjustified violation of the Claimants' personality; violation of EC competition law and Swiss competition law (restriction of competition; abuse of a dominant position), violation of EC provisions on freedom of establishment and free movement of capital, and general principles of law.

The parties agreed that Swiss law applied and that CAS should apply EC competition law and Swiss competition law if the dispute fell within the scope of these laws.

The Panel went a little further and considered that EC competition law had to be taken into account even if the parties had not agreed on its applicability. It held that Article 19 of the Swiss Act on Private International Law applied here. According to that provision, a foreign mandatory rule must be also "taken into consideration", even if the law applicable to the merits is different, provided that three conditions are met: (a) the foreign mandatory rule is a so-called *loi d'application immédiate* (rules which have to be applied irrespective of the law applicable to the merits of the case); (b) there is a close connection between the subject matter of the dispute and the territory where the mandatory rule is in force; (c) it is necessary to take that rule into account to protect overriding interests (which must be legitimate from a Swiss law point of view).

CAS considered that these conditions were met: the rules of law of competition are typical examples of mandatory rules; most of the strongest football clubs taking part in UEFA competitions are located in the EC (and this was true for AEK, but not for Slavia Prague at that time); and the underlying values of the

Swiss Federal Act on Cartels and of European law of competition are the same, which means that the rules of EC law on competition are compatible with the values supported by the Swiss legal system.

However, it is far from being certain that EC law on competition could have been applied by CAS in the absence of agreement between the parties on this point. First, if the conditions set forth by Article 19 of the Swiss Act on Private International Law are met, this does not lead to direct application of the foreign mandatory rules: the court is only invited to “take into account” these rules, which is different; in particular, it is conceivable that they may be applied only in part.[2] Second, as suggested by the German text of this provision, it may be the case that the legitimate and overriding interests which may trigger the application of the foreign mandatory rules are only those of *a party*[3] (e.g. if one of the parties cannot fulfill its obligations without incurring the risk of being severely sanctioned for having breached such foreign mandatory rules[4]).

Be it as it may, it is certain that the rules of European law of competition were applicable to UEFA insofar as the Contested Rule would have been restrictive of competition on the European market: in particular, these rules could be applied to UEFA by the European authorities—and as a matter of fact the European Commission has rendered a decision on the compatibility of the Contested Rule with EC law on competition in furtherance of a complaint which had been lodged by ENIC plc.[5]

Further, it must be reminded that an arbitral tribunal with seat in Switzerland cannot decline its jurisdiction to apply the rules of foreign (especially EC) competition law if either party pleads the nullity of its (e.g. contractual) obligation on the ground that it contravenes such rules.[6] However, whether they are applicable or not is a different question.

3.1.4 Merits

3.1.4.1 Protection of the “Integrity of the Game”

Both parties agreed that it was necessary to protect the integrity of the game.

However, the Claimants argued that match-fixing was rather unlikely, especially if the common owner is a corporation listed on the stock exchange. They

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[2] See Dutoit 2005, Article 19 N 5.

[3] Several authors in the Swiss legal literature consider however, in accordance with the French text of Article 19, that it is also possible to justify the application of foreign mandatory rules by general interests: see e.g. Dutoit 2005, Article 19 N 1. This point has been left open in the Swiss Federal Supreme Court decision ATF 130 III 620.

[4] Cf. Vischer 2004, Article 19 N 23.

[5] See Sect. 3.1.5.

[6] Swiss Federal Supreme Court decision 118 II 193.

suggested that a code of ethics or some rules governing the transfer of players would be sufficient to preserve the integrity of the game.

The Panel did not follow this view and pointed out that "integrity, in football, is crucially related to the *authenticity of results*, and has a critical core which is that, *in the public's perception,* both single matches and entire championships must be a true test of the best possible athletic, technical, coaching and management skills of the opposing sides".[7] 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.

The Panel answered positively to this question. In its Award, it held that *"*even assuming that multi-club owners, directors or executives always act in compliance with the law and do not try to directly fix any match, there are situations when the economic interests of the multi-club owner or parent company are at odds with sporting needs in terms of public perception of the authenticity of results*"*.[8] In particular, fans might doubt whether transfers of players between commonly owned clubs would occur in the sole interest of their club rather than in the interest of the other club. Further, club executives are in a position to make choices which may either positively or negatively influence performance of players.[9] In addition, if unrelated third clubs end up in a qualification group together with two commonly owned clubs, it may be the case that the teams need a draw to the detriment of the third club; in such a case, the situation of the conflict of interest is quite obvious.

Against this background, the Panel held that a problem of conflict of interest exists in multi-club ownership situations. As it had been stated before the European Parliament by Mr. Karel Van Miert, who was EC Commissioner for competition policy at that time, "clearly, if clubs with the same owner can take part in the same competitions, whether national or international, doubts may arise as to whether the outcome is really undecided in advance".[10]

However, this conclusion was not sufficient to admit the validity of the Contested Rule: it just meant that "ownership of multiple clubs competing in the same competition represents a justified concern for a sports regulator and organizer".[11]

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[7] CAS Award, at para 25.

[8] CAS Award, at para 45.

[9] On this point, see CAS Award, at para 39 and following.

[10] Answers given by Mr. Van Miert on behalf of the Commission to parliamentary questions nos. E-3980/97, 0538/98, P-2361/98.

[11] CAS Award, at para 48.

3.1.4.2 Swiss Civil Law

Compliance with UEFA Statutes

The Claimants first argued that the Contested Rule created different categories of UEFA members. They considered that they should be treated as "indirect members" of UEFA, because they are members of their respective national association which, in turn, is a UEFA member. In furtherance of this argument, they claimed that UEFA breached its own Statutes because the creation of different categories of members would have required a modification of the UEFA Statutes, which was in the power of the UEFA Congress—not of the Executive Committee, which had adopted the Contested Rule.

The Panel left open the question to know if the clubs could be considered "indirect members" of UEFA. It held that the Contested Rule did not create different categories of member clubs but merely established conditions of participation in UEFA competitions, something which was in the power of the Executive Committee.[12]

Right to Submit Arguments Before Adoption of the Contested Rule?

The Claimants also argued that they should have been granted the possibility to present their arguments to UEFA before adoption of the Contested Rule. This argument was again based on the assumption that the clubs were "indirect members" of UEFA.

The Panel considered that a right to a legal hearing existed only "in the event of administrative measures or penalties adopted by a sports-governing body with regard to a limited and identified number of designees".[13] Further, if the Claimants' argument had to be followed, this would have meant that UEFA should consult with tens (or even hundreds) of thousands of clubs before passing a resolution which could affect such "indirect" members. The Panel concluded therefore that it could be advisable for a regulator or legislator to hear the views of those who would be potentially affected by a new regulation, but it could not be a legal requirement.

Rules of Procedural Fairness (as Regards the Entry into Force of the Contested Rule)

The Panel agreed with the opinion expressed by the President of CAS Ordinary Division in its interim order that UEFA violated the principle of procedural

[12] Award, at para 52 and following.

[13] CAS Award, at para 58.

fairness by adopting the Contested Rule too late and after the Cup Regulations for the 1998/1999 season had been issued without any restriction regarding multiple ownership (thus creating a legitimate expectation that no such restriction would be enacted for that season). Therefore, the Panel ratified the CAS Procedural Order which had temporarily stayed the application of the Contested Rule for that season.

However, as pointed out by the Panel, this violation of the principle of procedural fairness was of a transitory nature and, as a result, could not render the Contested Rule unlawful on its merits with respect to all future football seasons.[14]

Principle of Equal Treatment

The Claimants also argued that the Contested Rule violated the principle of equal treatment by creating different categories of members. This argument, which was also based on the assumption that clubs were indirect members of UEFA, had already been discussed.[15]

Personality of the Clubs

The Claimants further invoked Article 28 of the Civil Code, which provides for protection of personality in broad terms: any breach of the rules protecting personality "is unlawful unless it is justified by law, by the consent of the victim, or by an overriding public or private interest".[16]

The Panel expressed doubts as to the applicability of this provision in the present case. These doubts might have been unjustified: in the field of high-level sports, it has been decided that this protection includes a right to sports activity and, for professional sports, a right to develop an economic activity.[17] However, the Panel considered that in any event, the public's perception of a conflict of interest potentially affecting the authenticity of results would constitute an "overriding interest" in the meaning of Article 28 CC which justified the Contested Rule.

3.1.4.3 European Community Competition Law

The Claimants complained that the Contested Rule violated Articles 81 and 82 of the EC Treaty: in their opinion, this Rule was a decision by an association of undertakings, or an agreement between undertakings, which affected competition

[14] Award, at para 60 and following.

[15] See section "Compliance with UEFA Statutes".

[16] Translation by the author.

[17] Federal Supreme Court decision ATF 134 III 193.

in the football market, and in various ancillary football services markets, "by preventing or restricting investments by multi-club owners in European clubs, by changing the nature, intensity and patterns of competition between commonly controlled clubs and the others, and by enhancing the economic imbalance between football clubs".[18] As regards the application of Article 82, the Claimants argued that UEFA (being the only body empowered to organize European competitions) dominates the European professional football market and the ancillary football services markets and abused of its dominant position by restricting competition in an unnecessary, disproportionate, and discriminating manner.

Sporting Exception?

UEFA first responded that the Contested Rule was not caught by competition law because it was a rule of a merely sporting character (to protect the integrity of the game). This view could be supported by the jurisprudence of the European Court of Justice, which stated in the *Walrave* and *Donà* cases that "the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty".[19]

The Panel agreed that a sporting exception exists, "in the sense that some sporting rules or practices are somewhat capable of, as the Court puts it, «restricting the scope» of EC provisions".[20] In his view and in the light of the Court's jurisprudence, a sporting rule would not be caught by EC law if (*a*) it concerns a question of sporting interest having nothing to do with economic activity, (*b*) it is justified on non-economic grounds, (*c*) it is related to the particular nature or context of certain competitions, and (*d*) it remains limited to its proper objective.[21]

CAS however considered that the Contested Rule, by dealing with the question of ownership of clubs taking part in UEFA competitions, addressed the economic status of clubs which are involved in economic activities. Therefore, the Contested Rule could not be viewed as having nothing to do with economic activities, and it could not be covered by this "sporting exception".[22]

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[18] CAS Award, at para 77.

[19] Case 36/74, *Walrave*, in *E.C.R.* 1974, 1405, para 4; case 13/76, *Donà*, in *E.C.R.* 1976, 1333, para 12. See also case C-415/93, *Bosman*, in *E.C.R.* 1995, I-4921, para 76: "the provisions of Community law concerning freedom of movement of persons and of provision of services do not preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain matches. It stressed, however, that such a restriction on the scope of the provisions in question must remain limited to its proper objective. It cannot, therefore, be relied upon to exclude the whole of the sporting activity from the scope of the Treaty".

[20] CAS Award, at para 82.

[21] CAS Award, ibid.

[22] Further, the Panel expressed doubts as to the possibility to operate a distinction between sporting questions and economic issues: see the examples discussed in para 84 of the Award.

Is UEFA an "Undertaking"?

Then the Award addressed the question whether UEFA could be viewed as an undertaking or as an association of undertakings in the meaning of Articles 81 and 82. The Panel agreed that "a good part of UEFA's activities is of a purely sporting nature, particularly when it adopts measures as a mere regulator of sporting matters".[23] However, UEFA is also involved in economic activities (e.g. contracts relating to television rights). As regards these activities, UEFA is an undertaking in the meaning of competition law, and the same applies as regards its members (national federations). Therefore, the Panel concluded "that UEFA, with respect to the economic activities in which it is engaged and in which national federations are engaged, is at the same time an undertaking and an association of undertakings".[24]

The Award also examined whether UEFA could be viewed as an "association of associations of undertakings" (or if it could be considered merely as a regulator above the clubs rather than some kind of trade association of clubs engaged in economic activities). In the Bosman case, Advocate General Lenz considered that UEFA was an association of associations of undertakings, acting as an instrument of professional clubs' cooperation, notwithstanding the fact that many amateur clubs are also members of the national federations.[25] But the Panel emphasized the difference between a league of professional clubs and a national football federation: the latter represents all their member clubs, including many amateur clubs, while the former should be viewed as a proper trade association (it being reminded that national leagues are not direct members of UEFA and that the most important of them had constituted their own independent association). As said by the Panel, "within UEFA, representatives of national federations should be regarded less as delegates of the clubs engaged in economic activities than as delegates of amateur or grassroots clubs".[26] However, in the absence of concrete evidence in this respect and despite the doubts it had expressed, the Panel decided—for the purpose of the competition law analysis but without excluding the possibility that UEFA might not be an association of "club undertakings" through which clubs coordinate their economic behavior—that UEFA should be considered as "an association of 'club undertakings' whose decisions and rules concerning club competitions constitute a medium of horizontal cooperation between the competing clubs"[27] thus clearly falling under the scope of Article 81 para 1.

[23] CAS Award, at para 87.

[24] CAS Award, ibid.

[25] Opinion delivered on 20 September 1995, case C-415/93, *Bosman*, in *E.C.R.* 1995, I-4921, para 256.

[26] CAS Award, at para 92.

[27] CAS Award, at para 94.

Market Definition

As regards the market definition, the Claimants suggested the existence of a "European football market" which would comprise the supply of all football matches played in Europe and a variety of related "ancillary football services markets" (market for capital investment in football clubs, players market, media rights market, sponsorship, advertising, and merchandising market). The Panel rejected this definition: "the notion of a general European football market is too ample, and the other related markets are too heterogeneous to be included therein. Given that the definition of a market should be determined primarily by interchangeability (or substitutability) from the consumers' viewpoint, it is implausible to regard all European football matches as interchangeable. (…) Furthermore, if the products of the European football market are the European matches, most of the various other markets mentioned by the Claimants are certainly related in some way or another to the supply of such football matches, but they cannot be 'comprised' within that market".[28]

Rather, the Panel considered that there are several "football markets" in which professional football clubs operate, which are clearly segmented in both their product and geographic dimensions. As regards the market more directly related to, and potentially affected by, the Contested Rule, it has been defined by CAS as the "market for ownership interests in football clubs capable of taking part in UEFA competitions".[29] In the opinion of the Panel, the Contested Rule was "only indirectly related, if at all, to the various other markets suggested by the Claimants, such as the market for players, the sponsorship market, the merchandising market, the media rights market and the market for gate revenues".[30] The effects on these markets had therefore to be considered only on a subsidiary basis to the said principal relevant market, concerning ownership interests in European professional football clubs.

As to *geographic market* definition, the Panel concluded quite logically that the relevant geographic market extended to whole Europe (more precisely to the territories of the European federations affiliated to UEFA).

Compatibility with Article 81

In the absence of evidence that the true object of the Contested Rule was an anti-competitive one, the Panel examined if its *effect* could appreciably restrict competition by preventing or restricting investment by multiple owners in European

[28] CAS Award, at para 98.

[29] CAS Award, at para 101, with reference to some US antitrust cases: *NASL v. NFL*, 505 F.Supp. 659 (S.D.N.Y. 1980), *reversed* 670 F.2d 1249 (2d Cir. 1982); *Sullivan v. NFL*, 34 F.3d 91 (1st Cir. 1994); *Piazza v. MLB*, 831 F.Supp. 420 (1993).

[30] CAS Award, ibid.

clubs. In accordance with the EC case-law,[31] CAS tried to define how the market for ownership interests would have evolved in the absence of the Contested Rule.

Assuming that multi-club control could be expected to expand, in particular if single club owners would feel a necessity to improve their position by acquiring additional clubs, the Panel found that such an expansion would lead to a decrease in the number of club owners, and thus in the number of undertakings on the market; club ownership could concentrate into fewer hands, it being reminded that new entrants on the market would have been hindered by a sporting barrier (in the European sporting system, any new club has to go through the pyramidal structure of national championships for several years before attaining a top professional level, so that entry into the market could be achieved only by acquiring already existing clubs). In a scenario which CAS qualified as being too extreme, this process of concentration could lead to an oligopoly with undesirable effects on competition (e.g. price increase for tickets or pay television subscriptions). However, this showed that in the absence of the Contested Rule, "the number of undertakings on the market would sooner or later decline while the effects on prices, although scarcely noticeable in the short term, would in due course tend to show an increase".[32] In conclusion, the Panel held that, "in the absence of the Contested Rule, competition on the relevant market and on other football markets would initially probably remain unaffected and, when affected, it would be restricted. In the light of this *a contrario* test, the Panel finds that the actual effect of the Contested Rule is to place some limitation on mergers between European high-level football clubs, and thus to increase the number of undertakings on the relevant market and on other football markets; accordingly, the Contested Rule preserves or even enhances economic competition between club owners and economic and sporting competition between clubs".[33]

As a consequence, CAS held that either the Contested Rule had no effects on the relevant market or, if it had, it would "exert a beneficial influence upon competition, insofar as it tends to prevent a potential increase in prices for ownership interests in professional football clubs (and to prevent potential price increases in other football markets as well)".[34] The Award states that "the Contested Rule, by discouraging merger and acquisition transactions between existing owners of clubs aspiring to participate in UEFA competitions, and conversely by encouraging investments in such football clubs by the many potential newcomers, appears to have the effect of preserving competition between club owners and between football clubs rather than appreciably restricting competition on the relevant market or on other football markets".[35] The Panel referred to the situation in

[31] Cf. e.g. case 42/84, *Remia*, in E.C.R. 1985, 2545, para 18.

[32] CAS Award, at para 117.

[33] CAS Award, at para 118.

[34] CAS Award, at para 119.

[35] CAS Award, ibid.

England, where—despite the fact that the Premier League had enacted a rule which was even stricter[36]—clubs could successfully attract capital investment.

The Claimants also argued that the Contested Rule favoured the rich and strong clubs over the weak and poor ones, and thus impaired the pattern of economic competition. However, on the basis of its previous findings, the Panel considered that polarization of market power between bigger and smaller clubs would continue or even increase in the absence of the Contested Rule. The provision of "incentives for actual or potential club owners to invest their resources in only one high-level club, as the Contested Rule tends to do, is conducive to an economic and sporting balance, rather than an imbalance, between football clubs".[37] Hence, the Contested Rule has pro-competitive effects.

Further, the Contested Rule could not be viewed as being capable of affecting the quality of the sporting product offered to consumers: the quality of the entertainment provided to European football fans could not be significantly impaired by the Contested Rule, which provides that the excluded club has to be replaced by the club which, in the same national championship, ranked immediately below the excluded club.[38]

Proportionality (Less Restrictive Alternatives?)

Even if the Panel was convinced that the Contested Rule did not appreciably restrict competition, it examined if it could be viewed as being disproportionate. The Claimants contended that the objective of protecting the integrity of European football competitions could be attained by less restrictive means, such as a code of ethics and criminal penalties to prevent match-fixing. However, as it had been pointed out before,[39] the "integrity question" raises the issue whether consumers could perceive a possible conflict of interests, capable of affecting the authenticity of results, when commonly controlled clubs participate in the same competition. In this respect, "rules bound to protect public confidence in the authenticity of results appear to be of the utmost importance",[40] CAS said.

With regard to any possible "less restrictive alternative", the Panel observed that the Contested Rule proscribes only the participation in the same UEFA competition of commonly controlled clubs: commonly controlled clubs may participate in different UEFA competitions. Further, the Contested Rule does not

[36] It does not allow any person or corporate entity, except with the prior written consent of the Board (which had never been granted so far), to "directly or indirectly hold or acquire any interest in more than 10 per cent of the issued share capital of a Club while he or any associate is a director of, or directly or indirectly holds any interest in the share capital of, any other Club": Award, at para 120.

[37] CAS Award, at para 122.

[38] CAS Award, at para 123.

[39] See Sect. 3.1.4.1.

[40] CAS Award, at para 129.

prevent the acquisition of shares—up to 49% of the voting rights—in a large number of clubs participating in the same competition. Moreover, the Panel held that the Contested Rule could not be substituted by a posteriori sanctions such as disciplinary or criminal sanctions applying to match-fixing: such sanctions could not alter the public's perception of a conflict of interests in case of two commonly owned clubs participating in the same UEFA competition.

The Claimants had also proposed, as an alternative, that UEFA should conduct a "fit and proper test" to determine if a person or legal entity could become the owner of a club. However, this could not represent a viable alternative (difficulty to find out objective requirements, administrative and legal costs—risk of being sued for economic and moral damages after publicly declaring someone as being not a fit and proper person). Further, a rule requiring intrusive ethical examination of clubs' owners, directors, and executives could hardly be characterized as a "less restrictive" alternative.[41]

The Claimants also pointed out that some other rules preventing the participation of commonly owned clubs in the same competition allowed for the possibility to obtain derogation from the respective sports-governing body. However, the Panel noted that no such approval had ever been granted in practice; further, denial of derogation would lead to expensive litigation, while an authorization could always lead to suspicion from the part of the public, for the reasons already described.

Other possible solutions proposed by the Claimants have been considered as being inappropriate. In particular, a requirement that multi-club owners divest their ownership interests in all but one of the owned clubs solely for the period of the UEFA competition, through the establishment of an independent trust to which control of commonly owned clubs could be transferred for the duration of UEFA competitions or through the appointment of an independent nominee who would exercise the owner's voting rights in its sole discretion, has been seen as being "not only complex to administer but also quite intrusive upon the clubs' structure and management; in any event, the true problem would be that the interim suspension of control or voting rights does not modify the substantial ownership of a club, and thus does not exclude the underlying continuance of a conflict of interest".[42] Lastly, regulations restricting bonuses and transfers of players would have addressed only some aspects of the conflict of interest but the problems related to the allocation of resources by the multi-club owner among its clubs would still exist (as seen before, club executives are in a position to make choices which may either positively or negatively influence performance of players) and such regulations would not have taken into account the interest of third clubs (unrelated third clubs ending up in a qualification group together with two commonly owned clubs).[43]

[41] CAS Award, at para 133.

[42] CAS Award, at para 135.

[43] CAS Award, at para 33 and following, 43 and 135.

In conclusion, the Panel held that the Contested Rule did not violate Article 81 of the EC Treaty: it "is an essential feature for the organization of a professional football competition and is not more extensive than necessary to serve the fundamental goal of preventing conflicts of interest which would be publicly perceived as affecting the authenticity, and thus the uncertainty, of results in UEFA competitions".[44]

Abuse of a Dominant Position?

The Panel admitted that UEFA could exert a dominant market power in the market for the organization of pan-European football matches and competitions. However, the Claimants were not actually or potentially competing with UEFA on that market. In the present case, the relevant product market was the market for ownership interests in football clubs capable of taking part in UEFA competitions. With respect to that market, UEFA is a mere regulator, and national federations are not present on that market either. Thus, there is no dominant position of UEFA on the relevant market.

As to a possible abuse on a neighboring market, the Panel analyzed the EC case-law as requiring that the dominant undertakings had to be active on both the market of dominance and the neighboring non-dominated market—which was not the case here.[45]

Anyway, with respect to Article 82 of the EC Treaty, the Claimants relied on essentially the same arguments as for Article 81, and the Panel had already rejected them (no restriction of competition, proportionality, absence of discrimination). CAS thus denied the existence of any abuse of a dominant position.

3.1.4.4 Swiss Competition Law

The Claimants also relied on the provisions of Swiss law of competition (Articles 5 and 7 of the Federal Act on Cartels). However, the arguments were the same as those discussed in application of European law of competition, and thus were rejected under Swiss law as well.[46]

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[44] CAS Award, at para 136.

[45] CAS Award, at para 143.

[46] The existence of a sporting exception had not been discussed under Swiss law of competition: the only exemption from the law on cartels which had been admitted under Swiss law related to the "rules of the game" (mainly those applying on the pitch), which are not subject to the law on cartels. The Contested Rule could not be assimilated to a "rule of the game", and the parties concurred in this respect. Whether a (much broader) "sporting exception" existed under Swiss law remained undecided: the Panel had already decided that the existence of any "sporting exception" could not have the effect that the Contested Rule would be exempted from the application of the law of competition (Award, at para 84).

The Panel however noted that "the envisaged oligopoly scenario is much more likely within a small market such as Switzerland, where there are not many teams aspiring to participate in UEFA competitions; indeed, there are only twelve clubs in the Swiss first division. Therefore, the described pro-competitive effect of the Contested Rule is even amplified within the Swiss market".[47] Against this background, CAS concluded that the Contested Rule could not be viewed as being restrictive of competition on the Swiss market.

3.1.4.5 European Community Law on the Right of Establishment and on Free Movement of Capital

In case the Contested Rule could be seen as restricting the freedom of establishment or the free movement of capital, the Panel observed that it did not institute any discrimination based on a person's (or corporation's) nationality. Thus, the Contested Rule could be admissible insofar as it pursued legitimate interests with proportionate means—issues which had already been addressed by the Panel.

3.1.4.6 General Principles of Law

The Claimants also relied on the "general principles of law" and argued again that the Contested Rule was the expression of some abusive behavior. As CAS had already considered that the Contested Rule was justified to protect the authenticity of the game, this argument has been rejected. The Award however contains some interesting developments which must be reminded here:

> The Panel is of the opinion that all sporting institutions, and in particular all international federations, must abide by general principles of law. Due to the transnational nature of sporting competitions, the effects of the conduct and deeds of international federations are felt in a sporting community throughout various countries. Therefore, the substantive and procedural rules to be respected by international federations cannot be reduced only to its own statutes and regulations and to the laws of the country where the federation is incorporated or of the country where its headquarters are. Sports law has developed and consolidated along the years, particularly through the arbitral settlement of disputes, a set of unwritten legal principles—a sort of lex mercatoria for sports or, so to speak, a lex ludica—to which national and international sports federations must conform, regardless of the presence of such principles within their own statutes and regulations or within any applicable national law, provided that they do not conflict with any national "public policy" ("ordre public") provision applicable to a given case. Certainly, general principles of law drawn from a comparative or common denominator reading of various domestic legal systems and, in particular, the prohibition of arbitrary or unreasonable rules and measures can be deemed to be part of such lex ludica.[48]

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[47] CAS Award, at para 149.

[48] CAS Award, at para 156.

3.1.5 Epilogue: Decision Rendered by the European Commission

In February 2000, ENIC plc filed a complaint against UEFA with the European Commission and reiterated the arguments based on EC law of competition which AEK and Slavia Prague had brought before CAS. The European Commission rejected this complaint in a decision which may be summarized as follows.[49]

First, the Commission declared that professional football clubs were undertakings in the meaning of Article 81 para 1 of the Treaty. Thus, national federations can be viewed as associations of undertakings, and the Commission considered UEFA as an association of associations of undertakings, notwithstanding the fact that a large number of amateur clubs are also members of the national federations.[50] In addition, UEFA is also an undertaking for certain activities such as the organization of European club competitions, said the Commission.

The Commission confirmed that the object of the Contested Rule was not to distort competition: its main purpose is to "ensure the uncertainty of the outcome and to guarantee that the consumer has the perception that the games played represent honest sporting competition between the participants, as consumers may suspect that teams with a common owner will not genuinely compete".[51]

As to the effect of the rule, the Commission held that "without the UEFA rule, the proper functioning of the market where the clubs develop their economic activities would be under threat, since the public's perception that the underlying sporting competition is fair and honest is an essential precondition to keep its interest and marketability. (…) For instance, should two clubs under joint control or ownership meet at a certain stage of the competition, the public's perception of the authenticity of the result would be jeopardised".[52] Like CAS, the Commission also noted that the Contested Rule could not be viewed as preventing investment in football clubs insofar as it is limited to prohibiting more than one club with the same ownership from participating in the same UEFA competition. Further, the Contested Rule does not prevent investors from acquiring an interest in clubs: below the level of majority control, clubs remain free to play in the same UEFA competition. The Commission also mentioned that even stricter rules had been adopted in some Member States, so that the Contested Rule seemed to "constitute a prolongation of the national rules and their natural corollary".[53] The Commission also agreed like CAS that a code of conduct could not constitute a workable alternative. As to a system "which would allow the football regulator to analyze a specific common-owned club's participation on a case by case basis only, [it] would not enable clubs (or spectators) to know in advance whether or not they

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[49] Case COMP/37 806 ENIC/UEFA.

[50] It is reminded that CAS expressed some doubts on this point: see section Is UEFA an "Undertaking".

[51] Decision, at para 28.

[52] Decision, at para 32.

[53] Decision, at para 35.

would be likely or able to participate in a UEFA competition and would not be a workable alternative to the UEFA rule either".[54]

The Commission therefore concluded that the Contested Rule was "inherent to the very existence of credible UEFA competitions" and did not go "beyond what is necessary to ensure its legitimate aim of protecting the uncertainty of the results and giving the public the right perception as to the integrity of the UEFA competitions with a view to ensure their proper functioning".[55] Therefore, it could not be viewed as a restriction of competition.

As to a possible application of Article 82 of the Treaty, the Commission also concluded that the Contested Rule was neither discriminatory nor disproportionate, in the absence of any less restrictive alternative.

3.1.6 Conclusions

By its in-depth analysis of the market issues, this CAS Award is undoubtedly one of the landmark cases in this field. CAS' views as regards law of competition have been largely followed by the European Commission—which is quite illustrative of the quality of this Award.

As always, some questions remain open. In particular, it must be noted that "control" is defined by the Contested Rule as the acquisition of a majority of the voting rights—while it is quite clear that *de facto* "control" may be achieved with much less voting rights, at least in certain instances. In this respect, it is reminded that some national rules are much stricter. Therefore, it may be the case that a stricter rule should be needed. However, as long as the public does not perceive the acquisition of a lower interest in (two or more) clubs as a situation which would lead to conflicts of interests as those described by CAS in the present case, there is perhaps no need for a stricter rule. Further, the threshold applied by the Contested Rule allows for investment in several football clubs up to 49% of the voting rights and may hence be viewed as permitting some flexibility so as not to discourage investment in football clubs.

3.2 CAS 2007/0/1361 Real Federación Española de Fútbol v. Liga Nacional de Fútbol Profesional

Juan de Dios Crespo Pérez

Is it "illegal" or "contrary to sporting principles" to buy a club and change its name and domicile? The author investigates this issue from the perspective of Spanish Law. Its basis

[54] Decision, at para 36.

[55] Decision, at para 47.

is the Real Federación Española de Fútbol (RFEF) v/Liga Nacional de Fútbol Profesional Award. He considers legal aspects and fears inherent in RFEF and FIFA that two teams might compete against each other in the same league, but using the same resources and shareholders. He ultimately concurs with the CAS, that the purchase and then changing the name and domicile were acceptable.

3.2.1 Preamble

This case was clearly about power and money and not only about the specificity of sport. The Spanish FA ("RFEF") did not accept that a club of the Second Division (Ciudad de Murcia SAD) changed his name (Granada 74 SAD) and his domicile even though its shares were bought by a company (CD Granada 92 SDU) which had the right to do so, according to Spanish Companies Law.

The problem seemed to be that the buying company was owned by the same person who was also the President (not the owner has it was not a company) of a fourth division club (CD Granada 74).

We have just to remind that the Second Division is a professional one, depending of the Spanish League (Liga de Fútbol Profesional or "LFP") and the Fourth Division was not professional and depend of the RFEF.

The question was that RFEF did not accept such a legal buying and the use of the Spanish Law to then change the name and domicile of the club as being "illegal" and "contrary to sport" as it was a "hidden promotion" of a club from a category to another. Let us say that the fourth division club remained in its category and was not in any way "promoted" to second division and that the new club named Granada 74 SAD had other players and coaches. The only link was that a President of an amateur club was also the owner of a professional one with similar names: Granada 74 SAD and Club Deportivo Granada 74.

What was strange is that RFEF and LFP had agreed to sign a "Regulation for Franchises" which permit the buying of a place in First or Second Division by another club. Thus, RFEF admits that a club can "buy" a place which was not the case here. The issue of this case could be that if there is a selling and buying of a place through the so-called "Regulation for Franchises", the RFEF is entitled to a certain amount of money and with the mere acquisition of shares of a Sporting Company (SAD) there is no chance that the RFEF receives a single penny. We are not assuming that this is what happened but the fact is that those Regulations exist.

3.2.2 Facts

On the 1st of August 2007 the Liga Nacional de Fútbol Profesional (LFP) sent a circular letter around containing all the prospective clubs to be registered for the 2007/2008 season. One of the clubs included in the list was Granada 74 SAD with the mention that the club had previously been known as Ciudad de Murcia SAD.

The LFP had granted provisional membership and league status to Granada 74 SAD for a position in the Spanish second football division. However problems arose when the RFEF had to also approve this provisional membership.

The RFEF inquired about the validity of the transfer of Ciudad de Murcia SAD in location and name to Granada with their superiors; FIFA. FIFA were uncomfortable with this move and subsequent league position because it looked like the owners of another club Club Polideportivo Granada 74 (CP Granada 74) were attempting to buy their other team a place in a higher division, or effectively "purchase promotion".

FIFA informed the RFEF that they should not sanction the league membership of Granada 74 SAD. When the RFEF told the LFP this they said that if the LFP did not comply with this league admission denial the RFEF would not sanction any referees to take charge of any of the club's matches, and they would not accept any of the club of player licenses.

The owners of Granada 74 SAD had to act, and they had to act quickly. The Spanish league matches were due to start in a matter of weeks. Therefore despite their superior position under Spanish Law they took a case straight to the Court of Arbitration for Sport with the LFP as their representatives against the Spanish Football Association (FA). The case between the Spanish League and Association addressed many interesting topics, especially the "specific nature of sport".

However before we discuss the trial and the case developments, it is probably best that we get some more background information about the Granada 74 case.

3.2.3 Background

In the first weeks of August 2007 the Owners of Ciudad de Murcia SAD decided to sell shares of the company—Sociedad Anónima Deportiva (SAD[56]). A number of prospective bidders arose, including the owners a company named Ciudad Deportiva Granada 92 SLU. The owner of this company, Mr. Carlos Marsá, already was the President of a non-league football club in the Spanish fourth division called Club Polideportivo Granada 74.

According to the legislation regarding the development of Sociedades Anónimas a company is entitled to sell its shares to other parties, rename the company, and change the address of domicile of the company. The legislation regarding SAD's extended this right to football clubs. As a result, the group Ciudad Deportiva Granada 92 had the right, and had the desire to move Ciudad de Murcia SAD to the city Granada in Spain, and change the name of the club to Granada 74 SAD. A name very similar to the one of the club which they already owned, Club Polideportivo Granada 74, but with no legal links.

[56] This was a way of changing a club into a sporting company and was granted/required by reason of Spanish Law 1084/1991.

Therefore, it appeared to the RFEF and FIFA that Club Polideportivo Granada 74 were purchasing a club, and consequently a league position, in a division two tiers higher than the division they were currently in. However, eventually the CAS found that although because of their similar names and same location the two, in fact, remained separate clubs and no violation of any rules had occurred.

3.2.4 Significant Participation

One of the few restrictions on moves of this nature is a mechanism known under Spanish law as "significant participation" or "*participaciones significativas*".

The significant participation prohibition is one when company owns more than 5% of the shares in two separate sporting enterprises which share the same competitive market territory.

The RFEF and FIFA believed that this purchase could amount to significant participation because of the potential for these two football clubs to exist in the same league.[57] The two football organization bodies were concerned that the purity of the Spanish competition could be attacked by the prospective of same division multi-ownership.

3.2.5 The "August Heat"

The RFEF tried to solve the case by insisting on the illegality of the selling of shares and the change of name and domicile and asked FIFA to help it. The LFP and the club Granada 74 SAD were decided to go to any ordinary Court in order to protect their rights.

The RFEF made a request for a CAS ordinary proceeding in a matter of urgency with a short deadline for the claim and the answer, as well as for a hearing. This was submitted to the LFP on the 21st of August and was done in order to have the potential league membership of Granada 74 SAD reviewed for the 2007/2008 season. After an intense day of brainstorming about the need or not to go to CAS to deal with this case, the LFP accepted the decision to go to the CAS in the interest of time, with the league set to start only days after the request to have the case heard. This sacrificed their strong stance if strictly adhering to Spanish law and trying the case in Spanish Courts. A couple of days were needed for the statements to be made by both parties and then let the room to the hearing.

[57] In fact, had these clubs not signed a "sponsorship agreement", a contract which will be discussed later in the article, it would have been popular for the two clubs, with the same ownership, to have existed in the same division within 1 year that is, if Granada 74 SAD was relegated, and CP Granada 74 promoted to the Spanish third division in 2007/2008 season.

The hearing took place on the 24th of August and with the League having to start quite immediately, and thus giving the Panel very little time to make their monumental decision. The RFEF was of course present but FIFA sent a couple of heavyweights to supplement its theory.[58]

3.2.6 Main Arguments and Sole Arbitrator Response

The main arguments of the claimants was the damage caused to the integrity of the league and promotion system, the attack on the fundamental principles of sport and fair play, and the potential for gross distortion of competition. The RFEF and FIFA were essentially saying two things about the purchase of the shares of Ciudad de Murcia SAD by the owners of Granada 74 SAD.

This said purchase effectively amounted to a team purchasing promotion and jumping up two leagues as a result of financial clout, and a small name change.

The potential for abuse of the competition was too great, and that the existence of two clubs under the same ownership in the same league was dangerous, and unfair to the other participants.

3.2.7 Preservation of Competitive Practice

UEFA and FIFA sought to preserve this idea of competitive practice and enshrined these morally sound ideas in legislation in Articles 2.1e and 2.1 of their respective statutes.

UEFA Statutes 2.1e

> … shall be to prevent all methods or practices which might jeopardize the regularity of matches or competitions or give rise to the abuse of football.

FIFA Statutes 2.1

> to prevent all methods or practices which might jeopardize the integrity of matches or competitions or give rise to the abuse of football.

The RFEF and FIFA had to heavily rely on their arguments regarding the "prevention of practices which could jeopardize the integrity of football", because there was no mention in the regulations of UEFA or FIFA about what would happen in the case of a change of name, address, or owners of a club, and how the situation should be handled so as not to adversely affect the competition.

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[58] Mr Jerôme Champagne and Mr. Marco Villiger, Heads of International Affairs and Legal of FIFA, respectively.

The first argument was not about the buying of the shares by another corporation but the affect of these owners buying the shares on the competition.[59]

Rui Botica Santos, the sole arbitrator for this dispute, could not see how this purchase of shares equaled a promotion because the "former club" or CP Granada 74 continued to exist.[60] He also could not see how the acquiring of said shares could lead to any competitive distortion due to the two division gap between the club′s and the improbability of them having to play each other.[61]

The arbitrator also took note of the slightly hypocritical nature of the submissions of the RFEF about how buying shares in another club, effectively buying their position in the league, might adversely affect the competition. He took note of the fact that the RFEF and LFP *already* had an agreement in place which would allow one club to sell its right to compete in the first division to another club or a sporting corporation already based in Spain.[62]

The sole arbitrator failed to see the difference, with regard to "purchasing promotion" between the owners of CP Granada 74 purchasing a new club in a different division, and CP Granada 74 purchasing the position of Ciudad de Murcia SAD in the second division.[63]

3.2.8 Change of Ownership, Name, and Domicile

Another task the RFEF tried to accomplish was to draw a line between the Granada 74 SAD/Ciudad de Murcia SAD case and the Wimbledon/MK Dons case. By using FIFA as an expert witness they attempted to show how the case facts were

[59] This being the leading submission seems strange, it would be normal practice to allege first that the shares were acquired illegitimately and then state that even if they were acquired legitimately that holding said shares could amount to competitive abuse. However the counsel for the claimants entered their submissions in reverse order. It likely made little impact on the outcome of the case, and is more a stylistic note.

[60] Found at para 57 of the Decision.

[61] In fact, it was proven later that due to the existence of a "sponsorship agreement" it was impossible for these clubs to play each other in official competitive matches.

[62] However as part of this agreement the RFEF would receive 1% of the amount of any money spent in order to purchase said position in the league. Due to the nature of the purchase, a company buying Ciudad de Murcia SAD shares rather than CP Granada 74 buying Ciudad de Murciás spot in the second division, the Spanish FA were set to lose out on some money. These underlying tones were never discussed at the court, but they were certainly something to think about.

[63] It should be noted that this agreement has since been dispensed of. Which is probably excellent news for the¨preservation of the integrity footballˮ especially with the increasing presence of extremely wealth private ownership coupled with financial difficulty in the world, as well as the world of football. The ability to "buy your place in the league" would no longer be a euphemism for overspending, but a literal reality.

different and that no precedent regarding change of ownership, name, and domicile could carry from the English case to the Spanish one.

However, the arbitrator saw little or no legal distinction between the two situations. While the owners of Granada 74 SAD already owned another club with the same domicile and a similar name, it did not change the fact that the core issues remained the same. It was a case of change of ownership, name, and domicile.

His decision was made easier because of the ability of Granada 74 SAD to demonstrate that, by in large, the internal structure existing at the club would remain the same. Most of the players, staff, and administration continued to work with the club, and even the former owner stayed on to work as Sporting director.

3.2.9 The Relationship Between the Clubs in Granada

It was true that Granada 74 SAD and CP Granada 74 had a special relationship and even a contract called a "Sponsorship Agreement". The Sponsorship Agreement expressly stated that the two clubs would be affiliated, a point which was raised by council of the RFEF.

However, this actually favored the case of Granada 74 SAD because these types of agreements are common within Spain, and there has been no problem with the existence of these Sponsorship Agreements in the past.[64]

In fact, these contractual relationships make it *impossible* for these affiliated clubs to play each other in competitive matches. For example, only one of the two teams can enter the Copa del Rey[65] and if they are destined to play in the same division the "lower" of the two clubs shall be demoted, or in rare cases they will be denied promotion to the same league as their counterpart.[66]

3.2.10 Jeopardizing Match Integrity

In light of the existence of this agreement, the final argument of the RFEF, which was based on Article 18.2 of the FIFA Statutes,[67] was completely quashed

[64] Sevilla CF SAD and Sevilla Atlético, Villarreal CF SAD and Villarreal B, and Real Madrid and Madrid B are three perfect examples of already existing "Sponsorship Agreements".

[65] The National Cup of the Spanish FA.

[66] They also have the opportunity to renounce their Sponsorship Agreement, but this is an option which has not been explored yet as most teams who have Sponsorship Agreements do so for training purposes and want to continue the affiliation rather than dispose of it. However, as this option and its legal consequences have not yet been discussed, we will leave the issue to rest for the moment.

[67] Article 18.2 of the FIFA Statutes – "in any case, the member shall ensure that neither a natural, nor a legal person (including holding companies and subsidiaries) exercises control over more than one club whenever the integrity of any match or competition could be jeopardized".

because, as previously stated, it was impossible for these clubs to meet each other in the competition.

Furthermore, at the time of the decision, CP Granada 74 was not part of the league and therefore not obliged to follow the obligations set out according to Article 18.2 of the FIFA Statutes.

3.2.11 Conclusion

When looking at this decision from a National perspective, in other words, if dealt with properly applying Spanish law in front of a Spanish court, there would be little or no doubt of the outcome of the case.[68]

Any uncertainty as to the outcome of this case only reveals itself when looked in the light of the specificity of sport.[69]

The main problem that the RFEF and FIFA had with this scenario was the prospect of two teams competing against each other perhaps in the same league, but using the same resources and shareholders. They were afraid[70] of the potential competitive strain this multi-ownership could place on the league.

This issue was completely resolved when the existence and the objective of the "Sponsorship Agreement" became known to the sole arbitrator, and the nature of the takeover was verified.

The Clubs were not merging and they were both keeping a huge amount percentage of their former staff as employees at both clubs. They were not "pooling their resources", nor were they promoted players and staff from CP Granada 74 to Granada 74 SAD.

This decision is highly sport specific in this respect as one of the main aspects of this case which allows this change of ownership deal to pass is an agreement between two organizations, which is essentially detrimental for one of the parties. One of the parties promises to stay in the league below the other at all times, sacrificing money and sporting success as a result, in order to not adversely affect the other organizations who are participating in the same marketplace.

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[68] The RFEF had attempted to prove that Granada 74 SAD had not properly inscribed or registered their company and therefore had no right to legal personality, or to exist. However it was proved that it was not the inscription of Granada 74 SAD that should be examined by the inscription of Ciudad de Murcia SAD. The purchase of the shares, the change of name, and the transfer of domicile did not affect the inscription of the company (paras 108–111 of the Decision).

Furthermore, Article 15 of the Real Decreto 1564/1999 Ley de Sociedades Anónimas dealt with situations of this nature. It stated that the lack of inscription of a company would not negate the validity of the undertakinǵs actions but just transfer liability from the entity to the founders and directors of the company (including a period of up to 3 months after inscription as well).

[69] In the sense that sporting bodies understood it.

[70] With good reason due to the amount of extreme in football these days.

This is an aspect of sport like very few other businesses in the world. The necessity for the existence of competition in order for a club/company to success. Without the other participants the level of interest in the competition will decrease and the company will suffer.[71]

Finally, we must also say that LFP raised the point, at the hearing, that FIFA seemed to be afraid of that Spanish situation but failed to say anything when the English club Wimbledon FC, a long (1889) established Londoner football association which moved at the end of season 2003/2004 to the town of Milton Keynes and renamed itself as Milton Keynes Dons, after having been bought by investors. Wimbledon FC simply disappeared and FIFA answer at the hearing was that Milton Keynes is kind of a London suburb.

But, not only English regulations allow those moves, and Australian, Chilean, Mexican, or USA rules also permit a club to change his name and domicile, a matter that has happened quite a few times and, again, nobody has said nothing.

The actions of the Ciudad Deportiva Granada 92, CP Granada 74, and Granada 74 SAD did not distort the competitive marketplace, and did not amount to one buying their position in the league,[72] for rather reason the CAS, and its sole arbitrator, Rui Botica Santos, make a difficult, but ultimately correct decision.

References

Dutoit B (2005) Droit international privé suisse, 4th edn. Schulthess, Basel
Vischer F (2004) Zürcher Kommentar zum IPRG, 2nd edn. Schulthess, Zurich

[71] In order to explain by means of example, it is impossible to imagine a situation where Adidas and Reebok agreeing to operate on two different levels of performance so as not to distort the marketplace for Nike and Puma.

[72] Even though this practice was acceptable at the time of the decision.