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INTRODUCTION

Sport and law have twisted into a single constantly developing construction which perfectly fits in the modern world. Both are complicated, multi-structured and capable of acting well as a 'single player' but, definitely, play better as 'a team.'

Sport itself has a dual nature by significant effects on social and cultural development as well as economic. Meanwhile, law is that tool to maintain the balance of interests between social and cultural effects and certainly economic issues which need to be regulated in the way not to hinder the development of each other.

Recently 'Sports Topics' which have always been popular and beloved have become even more lovable not only among fans and spectators but also among lawyers. One of the main reasons here is the quick advancement in the technologies which, on the one hand, make the access to the sports event easier for large audiences. On the other hand, such brand new technologies which create new relationships thus new legal issues to be settled down.

The lead 'playing field' of the current work is the European Union and the 'equipment' it employs to regulate competition issues dealing precisely with the collective selling of media rights. The experience of countries which not constitute the European Union is only slightly considered.

The methods of the research are mainly involved collecting, studying, comparing and analyzing the information. The aim of the work is to study and structure the information on the abovementioned question as the innumerable publications, and cases make it quite complicated for the novice in sports law make heads or tails of. And that is why, one of the main sources for the current paper have become working papers of the European Commission, decisions of the European Court of Justice, which shed light upon the functions of the law particularly when dealing with the 'sport specificity' and indeed competition issues.

1. SPORT AND LAW

1.1. Brief History and Understanding of Sport

It might here be interesting to begin the section by presenting results of a straw poll taken among random persons to find out how they would define the word sport.

It seems that the answer is immediately obvious; nevertheless, it took respondents some time to express their viewpoints. And it lately has become crystal clear that they made assumptions rather than expressed a solid opinion or an official definition taken from a dictionary. Below is given a quick summary of the answers.

Sport involves various physical activities doing for pleasure. Under activities, people meant jogging in a park, playing different games- football, basketball, etc., even fishing. Among purposes, the following were named: to keep fit, to challenge the limitations of the body, set a record, win a game, etc.

It seems that on the one hand, such speculations are broad, but on the other hand, they are very limited as they just partly cover such phenomenon¹ as sport. That is not an exaggeration, sport is considered to be a phenomenon² by many scientists from different spheres, and in the modern world, it exists to some extent in lives of almost everyone.

To make the definition more concrete, it is necessary to answer a couple of questions. In the start point a simple one, is sport always about competition or is it about pleasure as well?

Taking into consideration that the word sport was an originally English term for amusement and play; short form of '*disport*' which means enjoyment (*in old French desport, from Latin deportare means to enjoy oneself*)³ it is fair to suppose that it is more for joy and

¹ Commission, 'White paper on Sport' COM (2007) 391 final, intro, para 2

² Prof. Dragan Milanović, PhD, Prof. Zrinko Čustonja, PhD, Dario Škegro, PhD, 'Sport as a Social Phenomenon', (2015), 603-611

<http://www.efos.unios.hr/repec/osi/eecytt/PDF/EconomyofeasternCroatiaYesterdayTodayTomorrow04/eecytt0460> >

Accessed 25 August 2017

³ H. Haag and G. Haag (eds) Kiel, 'Sport, Physical Education, Sport Science', *Dictionary* (2003) 472

pleasure. According to the historical facts, which briefly will be shown below this assumption is partly true.

Now it is reasonable to check up several dictionaries for the definition and finally to clarify what is officially considered as sport. Still here comes up another question what definition and from which dictionary to choose?

Strange as it may seem, but there is no precise or official definition of the word sport at present. Different dictionaries of the various countries name several common features of sport, but each makes emphasize on one or another. To illustrate this fact, several definitions are given below:

1. According to certain rules in the competition for joy of movement and play, physical exercise exercised for physical exertion.⁴

2. Sport is a contest or other enjoyable pastime requiring certain skills and physical training.⁵

3. Sport 'is a cultural field of activity, in which human beings voluntarily establish a relationship with other people, consciously intending to develop their abilities and accomplishments - in particular in the area of skilled motion - in order to compare themselves with these other people, according to rules set by themselves or adopted, basing on the socially accepted ethical values.'⁶

4. Sports, physical contests pursued for the goals and challenges they entail. Sports are part of every culture past and present, but each culture has its own definition of sports.⁷

As it is stated in the last definition '... each culture has its own definition of sports'.⁸

The explanation of the different understanding and defining of sport by each nation must be laid in the history. That is why it is sensible here to take a quick look back.

⁴ 'Duden', *Online Dictionary* (Bibliographisches Institut GmbH, 2017), 1.a. <<http://www.duden.de/rechtschreibung/Sport>> Accessed 30 August 2017

⁵ Miroslav Adamchik, 'The Worldwide Encyclopaedical Dictionary', *Encyclopedia* (2007) 1640

⁶ Prof. Dr. Claus Tiedemann, 'Sport – a suggested definition' (edited 7 August 2017) <<http://www.sportwissenschaft.uni-hamburg.de/tiedemann/documents/sportdefinition.html>> Accessed 30 August 2017

⁷ David Charles Rowe, Joseph Anthony Maguire, Allen Guttmann, William N. Thompson, 'Sports', *Encyclopedia Britannica Online* (1998) 3 <<https://www.britannica.com/topic/sports>> Accessed 30 August 2017

⁸ Ibid.

At the outset, a few words must be said about the ancient times, around IV-III BCE, the time when according to historical records everything that, people currently understand under the term sport, took roots. It developed from such physical activities as hunting, fishing, fighting and others essential for survival in those times. Physical activities were salient points for sport.⁹

Next logical question here is supposed to be when and why did physical activities turn into sport as it is?

It seems that physical activities transformed into sports at the moment when such elements as regular exercises, competitiveness, and rules were involved in the process, or it is more sensible to say were highlighted as main elements of the process.^{10,11}

Obviously, exercises and activities varied and depended on the geographical area of inhabitants and traditions indeed included religion. Besides, normally they were part of military training aimed to estimate the level of physical strength and agility of recruits and to improve them. Vivid examples of first sports, which are often provided, by historians and anthropologists are archery, wrestling, running and playing with an object resembled a ball.¹²

Speaking about ancient times, it is here necessary to advert to Egypt and especially Greece where the understanding of sports went further ahead and extended from exercising and training as part of military services into more of the form of culture and spectacular events. In other words, it had become a contest with elements of entertainment and the most typical example here to be held the first Olympic Games recorded in 776 BCE in Olympia, where they were celebrated until 393 CE.¹³

And now it is pertinent to jump over several centuries straight ahead to the late 18th century.

⁹ Bamber Gascoigne, 'History of Sports and Games', HistoryWorld (from 2001, ongoing) 5 <<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ac02>> Accessed 30 August 2017

¹⁰ 'History of Sport', *Wikipedia the free encyclopedia* (edited on 15 July 2017) <https://en.wikipedia.org/wiki/History_of_sport> Accessed 30 August 2017

¹¹ V. A. Volodin, *Encyclopedia for Children* (Avanta +, 2001) vol 20 <<http://zdorovosport.ru/history.html>> Accessed 30 August 2017

¹² Ibid.

¹³ Bamber Gascoigne, 'History of Sports and Games', HistoryWorld (from 2001, ongoing) 5 <<http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ac02>> Accessed 30 August 2017

It does not mean that sport remained fossilized since ancient times and until the 18th century. It just means that for this work, events which took place from the late 18th century to the mid-20th century do matter and allow to come closer to the answer what sport is. At the same time with a clear view that to give one precise definition of sport might, in reality, lead to a sort of simplification and one-sided understanding of such a complex phenomenon.¹⁴

Well, back to the abovementioned period. Why is it so significant? The answer is obvious if keeping in mind the fact that the discussed period is known in history as the industrial revolution.

Briefly, the industrial revolution started off in Great Britain in late 18th century and was enthusiastically embraced by other European countries and America and ended up by mid-20th with the complete transition from primarily agrarian societies to industrial and urban. Which on the one hand, expanded productive capacity alongside the increased level of income, improved living standard for some, and on the other hand, caused overproduction of goods, cyclical economic crises, and job issues. All those complicated matters demanded new and reasonable approaches to be tackled. Some of them were solved successfully while others have remained actual until present. For apparent reasons that period is deemed to be a cornerstone of discoveries and achievements which have given a synergetic effect and provided the basis for further stable development in all spheres.¹⁵

And now it is time to see the influence which industrial revolution made on sport.

Prior to the industrial revolution, engaging in sport was described as the occupation of the noble and wealthy, who had no need to do manual labor themselves. The industrial revolution brought dramatic changes to this issue, of course not overnight. The most revolutionary changes are worth mentioning though they might be seemed implicit from the start, but the effect was hard to underestimate. Brand new technologies employed in factories

¹⁴ Prof. Dragan Milanović, PhD, Prof. Zrinko Čustonja, PhD, Dario Škegro, PhD, 'Sport as a Social Phenomenon', (2015), 603-611
<<http://www.efos.unios.hr/repec/osi/eecytt/PDF/EconomyofeasternCroatiaYesterdayTodayTomorrow04/eecytt0460>> Accessed 25 August 2017

¹⁵ The Editors of Encyclopædia Britannica, 'Industrial Revolution', *Encyclopedia Britannica Online* (1998) 1
<<https://www.britannica.com/event/Industrial-Revolution>> Accessed 30 August 2017

influenced the whole production chain starting with the organization of plants themselves and production processes at venues and ended up the labor aspects. The latter was the matter that has at all times remained so called a stumbling stone, the present is no exception. Owners of factories wanted longer working days. Meanwhile, workers fought for shorter ones and better working conditions. In those days that contradiction led to drafting labor law, which among others resolved the question of working hours limited them from 18 hours to 8 hours per day and made Saturday a half working day. So, working people who used to work all day round in order to scrape a living got so much free time. That was one among other reasons when sports appealed masses stop being only activity for privileged. Again, changes for the better did not occur over one night as a lot of sports yet remained unachievable for working class due to traditions or expensive costs. At the same time, it worth at this stage bearing in mind that exactly at that moment a huge step was taken towards the transformation of sport into the way people know it today. It was the time when first sports federations and associations emerged aimed to draft uniform rules applicable to existing games and sports. To illustrate the importance of it the following example can be given, in England of those times soccer was popular but rules differed immensely from one village to another. So that were the contests that due to the increased popularity had become that driving force which made to draft common rules. The same processes of unification of gambling rules took place. What is more, at that moment a schism of sport into amateur and professional occurred. Amateurism took roots in England where the idea of the amateur athlete, a person who did not compete for money or make a living instructing in a sport. This drew a line between an amateur who competed for the love of a sport and the professional who made money from athletic activity.^{16,17}

Professional sport has close relevance to commerce, and that is why plays the central role for this work as it is also the primary source of legal issues and that is where sports law begins.

¹⁶ Ibid.

¹⁷ Daniel McLean, Amy Hurd, 'Kraus' Recreation and Leisure in Modern Society' (Jones & Bartlett Publishers, Feb 9, 2011) ch 3 < http://www.jblearning.com/samples/0763749591/49591_ch03_mclean.pdf> Accessed 30 August 2017

It must be mentioned here that at present there is the pyramid structure of sports organizations in Europe. In each sport, the bottom of the pyramid consists of local clubs and athletes. Their actions are regulated by National Federations (only one national federation for each sport is allowed) which have the authority to organize sports competitions and select national teams. They are members of the Continental Federations (for example, UEFA), which are overseen by the International Federations (for example, FIFA). Remarkable in the model is that the same governing body regulates all sporting activities within a particular sport, from amateur and youth sports to the highest professional level. Thus, there is no strict division between amateur and professional sports in Europe.¹⁸

Now it is time to finish with the historical part and general understanding of sport by depicting its social importance for the modern society, which has been building up through centuries. And it is seemed here appropriate to show two opposite opinions which were spoken out by experts during the congress (Sport and International Understanding Proceedings of the Congress Held in Helsinki, Finland, July 7–10, 1982). Both viewpoints revolved around the important characteristic of sport - aggression. Though they were expressed in the 20th century, they are still acute and up to date and it is better to quote them in order not to miss the sense. The first one presented positive influence of sport on people's lives through which they release negative energy and aggression.

It is here worth quoting Paul Weiss, a sport philosopher, who argues that '*sport is not aggression controlled and harmless. It is constructive activity in which aggression plays a role together with dedication, co-operation, restraint, self-denial, and a respect for the rights and dignity 'of others'*' (Weiss 1969).¹⁹

'Sport due to its nature' is 'the best weapon in the struggle for peace on earth defining of sport as war-minus-shooting or war-without-weapons has also resulted in positive appraisals of the role of sport. These have viewed sport as an alternative to war. For

¹⁸ The Committee on the Internal Market and Consumer Protection of the European Parliament, 'Professional Sport in the Internal Market' (PROJECT NO IP/A/IMCO/ST/2005-004) <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2005/358378/IPOL-IMCO_ET\(2005\)358378_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2005/358378/IPOL-IMCO_ET(2005)358378_EN.pdf)> Accessed 30 August 2017

¹⁹ Maaret Ilmarinen, 'Sport and International Understanding' (Proceedings of the Congress Held in Helsinki, Finland, July 7–10, 1982) 390, p.234

example, Bertrand Russell argued in his Reith lectures in 1948 that sport might provide an outlet for the savage inside all of us (McIntosh 1963). His view was that there is some kind of a competitive instinct in human beings and that this instinct could be satisfied through sport, instead of war'.²⁰

While counterparties offered skeptical appraisals, where the key argument of poor influence on society as a whole was, that this war minus shooting which '*bound up with hatred, jealousy, boastfulness, disregard for all rules and sadistic pleasure in witnessing.*' (George Orwell, New York Times 1959). Other negative features were the following, '*being an instrument of chauvinism and nationalism. It is quite clear that sport has disfunctions, too – linked in particular to commercialism, professionalism, doping and nationalism.*'²¹

These opinions were also given to illustrate, in the first place, the universal rule: there are two sides to every coin - thus a lot depends on which one to highlight as the fundamental pillar. Secondly, to show that sport serves essential functions for and in society.

To sum up, the contemporary sport is unquestionably one of the most exciting and most wide-spread human activities which intervene into all aspects of life: social, educational, political and commercial. By the way, from the economic standpoint, every type of sport stimulates the general level of consumption, as well as the production, while top sporting events directly boost all areas of economy, from the construction of sport facilities and the production of sport equipment, food, and medications, to tourist and promotional activities. From the social standpoint, people engage in it at all ages, in numerous ways, and for different reasons. Sport is a powerful driving force behind individual actions and transformation and various social events and trends.²² Thus, it is very difficult to define it strictly any precise definition will limit it to a certain extent.

1.2. Sports Law

²⁰ Maaret Ilmarinen, 'Sport and International Understanding' (Proceedings of the Congress Held in Helsinki, Finland, July 7–10, 1982) 390, p.233

²¹ Maaret Ilmarinen, 'Sport and International Understanding' (Proceedings of the Congress Held in Helsinki, Finland, July 7–10, 1982) 390, p. 234

²² Prof. Dragan Milanović, PhD, Prof. Zrinko Čustonja, PhD, Dario Škegro, PhD, 'Sport as a Social Phenomenon', (2015), 603-611 <<https://ideas.repec.org/a/osi/eecyvt/v4y2015p603-611.html>>, <https://bib.irb.hr/datoteka/856960.sport_as_a_social_phenomenon.pdf> Accessed 5 September 2017

This section is devoted to the question whether such area as sports law exists and to be more precise whether it is an independent area of the law or just the general legislation, which is applied to sports?

The primary source for this paper has become the book ‘Introduction to International and European Sports Law’ written by Robert C.R. Siekmann. It turns out to be a well-structured work that is based on documents published by European Commission as well as EU legislation but what is more that encompasses enormous views of experts backed up with vivid examples of what currently sports law is, especially for those who are novices in this topic.

At present, for those who practice sports law, the immediate answer to the above put question is ‘yes’ what is more it is getting more and more demanding.

It is now difficult to imagine that only eight years ago the existence of sports law was a matter of major disputes. Though, Beloff, says that this is still a persistently recurring theme²³.

The author of the current thesis work shares the idea that from a practical point of view the answer here is of little value. It is based on the fact, that people will not stop resolving disputes, which arise from sports or around sports issues no matter whether from an academic point of view it is an independent area of the law or the general application of legislation.

At the same time, it is a universal truth that theoretical knowledge is extremely at hand when solving practical issues. There is no common opinion yet on the above put question among experts, the author of this paper holds views that it is an independent area. This view is based on Davis’ list of criteria which are brought by Robert C.R. Siekmann in his book as a suitable mean to consider when to decide such issues. There are eleven of them:

1. unique application by courts of law from other disciplines to a specific context;
2. factual peculiarities within a specific context that produce problems, requiring specialized analysis;

²³ R. C. R. Siekmann, *Sports Law Series Introduction to International and European Sports Law*, ASSER International (Capita Selecta 10.1007/978-90-6704-852-1 © T.M.C. ASSER PRESS, The Hague, The Netherlands, 2012) p. 23

3. issues involving the proposed discipline's subject matter must arise in multiple, existing, common law or statutory areas;
4. within the proposed discipline, the elements of its subject matter must connect, interact or interrelate;
5. decisions within the proposed discipline conflict with decisions in other areas of the law and decisions regarding a matter within the proposed discipline impact another matter within the discipline;
6. the proposed discipline must significantly affect the nation's (or the world's) business, economy, culture or other publications specifically devoted to publishing writings that fall within the parameters of the proposed field;
7. the development of interventionist legislation to regulate specific relationships;
8. publication of legal casebooks that focus on the proposed discipline;
9. development of law journals and other publications specifically devoted to publishing writings that fall within the parameters of the proposed field;
10. acceptance of the proposed field by law schools;
11. recognition by legal associations, such as bar associations, of the proposed field as a separately identifiable substantive area of the law.²⁴

The point is when you start to answer these criteria, bearing in mind sports issues, results are 'exist' or 'yes.' The detailed consideration of particular examples is brought in the book of Robert C.R. Siekmann.

It might be interesting here to mention that according to Russian legal theory classification of law areas, sports law can be called as a complex but an independent area as well.²⁵

In Russia, the legal category of an area of law is defined as an element of a legal system that consists of a group of legal institutions and norms regulating qualitatively similar social relations using stated principles and methods and, therefore, acquiring relative

²⁴ R. C. R. Siekmann, *Sports Law Series Introduction to International and European Sports Law*, ASSER International (Capita Selecta 10.1007/978-90-6704-852-1 © T.M.C. ASSER PRESS, The Hague, The Netherlands, 2012) p. 25-26

²⁵ Alexander Viktorovich Serdyukov, 'Sports Law as a Complex Legal Area' (National Research University Higher School of Economics 2010) p. 15

independence, sustainability, and autonomy of functioning. Consequently, the determination of an area of law is based on the following criteria: social relations (subject), method and principles.²⁶

Social relations (subject) are similar social relations distinct from other groups of social relations. Methods and principles are techniques and procedures to influence social relations.²⁷

The subject here can be determined as a complex of social relations arising out of sports issues but involving labor and social provisions, state aid, financing, civil, tort, contractual and criminal issues as well as health security and anti-doping policies; international and procedural law; dispute regulation mechanisms. None of these areas of laws can be just implemented ignoring such matter as the 'specificity of sport.' As for the methods, they are briefly can be described as those who are to maintain sports by both taking into consideration its specificity and abiding by the law.²⁸

It is necessary to draw the attention to the term 'specificity of sport'²⁹ which is unfortunately in Russian legal theory used without direct explanations but which is extremely important for understanding when practicing sports law. It is actually the innate trait of the sport that distinguishes it from other economic and social activities.

This term was systematically analyzed by European Commission in the 2007 White Paper on Sport.³⁰ Generally, the term 'sport specificity'³¹ was developed in the context of European law by the European Court of Justice that applied it to identify the degree of

²⁶ Alexander Viktorovich Serdyukov, *'Sports Law as a Complex Legal Area'* (National Research University Higher School of Economics 2010) p. 50- 164

²⁷ Ibid.

²⁸ Ibid.

²⁹ Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 september 2017

³⁰ Ibid.

³¹ Ibid.

exceptions to regular law deciding sports disputes. Ignorance of the rules of organized sport can become an obstacle in hosting a contest in a proper manner.³²

A most notable example here is the *Lehtonen case*,³³ the ECJ ruled on the application of EU competition rules to the transfer of professional basketball players from one Member State to another. The Court held that the rules preventing Belgian clubs from fielding basketball players from other Member States where they have been transferred after a specified date constitute an obstacle to the freedom of movement for workers. However, the Court went on to state that this may be justified on non-economic grounds - the setting of transfer deadlines may be intended to avoid distortion of competitions - if it does not go beyond what is necessary for achieving that aim. It is for the national court to ascertain whether that last condition is satisfied.³⁴ As such, this rule is contrary to the freedom of movement of workers in the European Union, but without this rule there would be a risk of falsification of competition because, for example, a club that is in danger of relegation could suddenly and at the last moment be bolstered by an injection of funds by external backers which are not available to their competitors at that time. This would compromise the existence of a fair and even competition for all participants. It is clear that the particular characteristics of sports organizations deserve special attention, which can lead to exceptions if these exceptions are unavoidable.³⁵

Another striking case here is an example of a cornerstone ECJ judgment, which eventually provides valuable guidance as regards the methodological approach towards assessing a sporting rule under Articles 81 and 82 EC (currently Articles 101 and 102 TFEU).

³² R. C. R. Siekmann, *Sports Law Series Introduction to International and European Sports Law*, ASSER International (Capita Selecta 10.1007/978-90-6704-852-1 © T.M.C. ASSER PRESS, The Hague, The Netherlands, 2012) p. 26

³³ Case C-176/96 *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)* [2001] Judgment of the Court (Sixth Chamber) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61996CJ0176>> Accessed 5 September 2017

³⁴ Case C-176/96 *Lehtonen* paras 50-60 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61996CJ0176>> Accessed 5 September 2017

³⁵ R. C. R. Siekmann, *Sports Law Series Introduction to International and European Sports Law*, ASSER International (Capita Selecta 10.1007/978-90-6704-852-1 © T.M.C. ASSER PRESS, The Hague, The Netherlands, 2012) p. 26

It is referred to the ECJ *Meca Medina*³⁶ judgment. In fact, the first judgment in which the Community Courts applied Articles 81 and 82 EC (currently Articles 101 and 102 TFEU) to a sporting rule adopted by a sports association relating to a sporting activity (swimming). The Commission had already applied Articles 81 and 82 EC (currently Articles 101 and 102 TFEU) in individual cases concerning sporting activities, and the ECJ's ruling broadly confirmed the Commission's approach adopted in these cases.³⁷

The case concerned a complaint by two professional long distance swimmers who challenged the compatibility with Articles 81 and 82 EC (currently Articles 101 and 102 TFEU) of the anti-doping rules adopted by the International Olympic Committee (IOC) and implemented by the swimming governing body Fédération Internationale de Natation Amateur (FINA). Both the CFI and the ECJ reiterated that sport is subject to Community law only insofar as sport constitutes an economic activity. Both Courts found no violation of Article 81 or 82 EC (currently Articles 101 and 102 TFEU), thus confirming the decision of the Commission.³⁸

Unlike the CFI, the ECJ explicitly held that the qualification of a rule as 'purely sporting' was not sufficient to remove the athlete or the sports association adopting the rule in question from the scope of Articles 81 and 82 EC (currently Articles 101 and 102 TFEU). Having rejected the relevance of the simple reference to 'purely sporting rules', the ECJ went on to describe the methodological approach that has to be applied to decide whether a given conduct falls within Articles 81 and/or 82 (currently Articles 101 and 102 TFEU).³⁹

It first found that the specific requirements of Articles 81 and 82 EC (currently Articles 101 and 102 TFEU) must be examined irrespective of the nature of the rule, in particular it must be determined 'whether the rules which govern that [sport] activity emanate from an

³⁶ Case C-519/04 P *David Meca-Medina and Igor Majcen v Commission of the European Communities* [2006] Judgment of the Court (Third Chamber) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1504606234574&uri=CELEX:62004CJ0519>> Accessed 5 September 2017

³⁷ Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, Annex I subsection 2.1.1. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 september 2017

³⁸ Ibid.

³⁹ Ibid.

undertaking, whether the latter restricts competition or abuses its dominant position, and whether that restriction or that abuse affects trade between Member States'.⁴⁰

The ECJ concluded, however, that the anti-doping rules in question did not infringe Article 81(1) EC (currently Article 101 (1) TFEU) in spite the fact that the penalties under the anti-doping rules were capable of producing restrictive effects on competition as they could lead to the exclusion of athletes from sport events. The ECJ reached this conclusion on the basis of the principles set up in the Wolters judgment. In this respect, the ECJ reiterated that account must be taken of (i) the overall context in which the rules were taken or produce their effects and of their objectives and (ii) whether the restrictive effects are inherent in the pursuit of the objectives and (iii) are proportionate to them. The ECJ found that the objective of the anti-doping rules was to ensure fair sport competitions with equal chances for all athletes as well as the protection of athletes' health, the integrity and objectivity of competitive sport and ethical values in sport. The limitations of action imposed on the athletes by the anti-doping rules were considered by the ECJ to be 'inherent in the organization and proper conduct of competitive sport'. The ECJ also examined whether the rules were limited to what is necessary as regards (I) the threshold for the banned substance in question and (ii) the severity of the penalties (in respect of which the ECJ also noted that the athletes had not argued that the penalties imposed were excessive). The ECJ found that the rules were proportionate in both cases. The appeal was therefore rejected.⁴¹

Continue the topic of the 'sport specificity' it is necessary to show here the example when conflicts are not always settled in favor of the sports rule. A good one is the 6 + 5 rule adopted by FIFA. The rule implies that only five foreign players may be selected per team in any match; the other players must be domestic players. This rule discriminates on the ground of nationality and can therefore not be applied within the European Union.

To sum up the term 'specificity of sport'⁴² indicates the extent to which the European Court of Justice, in particular, has recognized exceptions to regular law, because in some

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 september 2017

cases the rules of organized sport cannot be dispensed without this rendering it impossible to complete sports competitions in a correct and proper fashion.⁴³

The further question which of paramount importance here will be addressed sports law terminology and claim to clarify the aspects of using them through revealing reasons of coining them. Precisely, it refers to the following: *lex sportiva*, global sports law/ international sports law, transnational sports law, *lex ludica* and European sports law.

Lex sportiva as a term was thought up in 1990 referred to the arbitral decisions and opinions of the CAS. Many specialists from sports areas and academics as well as practitioners have been sharing the understanding of it as the ‘judge-made law’. However according to Erbans ‘*lex sportiva*’ recently has become a collective name that encompasses many different types of lawmaking and unites a diverse collection of variables under an oversimplified motto. The problem, which is getting around this term, is that increasing use of it for legal innovations affecting international sport causes great confusion.⁴⁴

Global sports law. The well-argued and compelling explanation of the term is presented by Foster who comes up with the suggestion to equate it to ‘*lex sportiva*.’ His position is based on the distinguishing between ‘international sports law’ and ‘global sports law’. According to Foster ‘International sports law’ can be described as the principles of international public law that apply to sport. ‘Global sports law’, by contrast, can be provisionally defined as a transnational autonomous legal order created by the global private institutions that govern international sport. It could, therefore, be described as a legal order ‘without a state’. It is *sui generis* set of principles that have developed from transnational legal norms based on the rules of international sports federations and the interpretation of those rules. This is a separate legal order that, from a global perspective, is autonomous. It implies that international sports federations cannot be regulated by national courts and governments. They can only be regulated by their own internal institutions or by external

⁴³ R. C. R. Siekmann, *Sports Law Series Introduction to International and European Sports Law*, ASSER International (Capita Selecta 10.1007/978-90-6704-852-1 © T.M.C. ASSER PRESS, The Hague, The Netherlands, 2012) p. 26

⁴⁴ R. C. R. Siekmann p. 29-31

institutions which they themselves have installed or mandated for that purpose... Global sports law is a private system of governance with its own global forum, the CAS'.⁴⁵

Transnational sports law, refer to Latty, is very close to 'global sports law'. At the same time, he equates it to the term 'lex sportiva' but restricts its freedom by the possibility to embody it in a decentralized international legal order and also substantially by European law.⁴⁶

Lex ludica reveals the rules of the game. Foster sees this concept as both the official rules of the game and the principle of fair play in sport.⁴⁷

European sports law. The crucial question is whether such a thing as European (EU) sports law exists?

Weatherill points out that such thing as European sports law appeared the same day the EU was created. That meant that the following practice from the very beginning had become common, in so far sport constituted an economic activity, it was compulsory to comply with the Community laws and later the rules of the EU. A vivid example here is the famous judgment in *Walrave and Koch* in 1974 where the European Court of Justice subjected sport to the requirements of what was then Community (EC) law. So, sporting practices were to be tested against the violation of the Treaty specifically against practices, which are contrary to, so called four freedoms, fair competition, which obstructs inter-State trade or which discriminate on the basis of nationality.⁴⁸

However, the date of December 1, 2009 when the Lisbon Treaty was introduced, considered as a notable milestone in the formal shaping of EU sports law. Though Weatherill's position here is that introduced Treaty provisions were in fact cautiously drafted and limited in their scope and they absolutely did not elevate the EU to the position of 'sports regulator' in Europe.⁴⁹

⁴⁵ R. C. R. Siekmann p. 31-32

⁴⁶ R. C. R. Siekmann p. 32

⁴⁷ R. C. R. Siekmann p. 33

⁴⁸ R. C. R. Siekmann p.35

⁴⁹ Ibid.

To sum up, it is evident from the above that the debate in the literature concerning the use of the terminology and in particular what ‘lex sportiva’ is, has so far taken place in a manner that is barely conducive to creating clarity.

2. THE COLLECTIVE SELLING OF MEDIA RIGHTS

2.1. Brief Historical Flashback

Nowadays sports products owners get the highest revenue from selling media rights to tv, radio and internet broadcasters. Sports media rights segment continues to grow and make a significant contribution to rights owners' budgets. According to the latest reviews, the tendency is going to further reinforcement.⁵⁰

Again, it might seem interesting here to get some brief historical flashback to the origins of the business, which is currently, considered to be one of the most profitable and not only in the sporting world.

The story began in distant 1920s; those years were remarkable for the first broadcast of sporting events via radio. Radio transmitters had already firmly become part of everyday life; loudspeakers were placed everywhere in houses and outside on streets that hit the management of sports clubs and federations upon the idea that they could stir up interest in their events and attract more 'fans' by broadcasting matches. Later, news programs started to report sports news covering diverse sporting topics such as interviews with athletes or highlighting most exciting moments of different competitions, etc.⁵¹

Shortly before the Second World War, a real breakthrough occurred in the electronic media market with the first broadcasting of the football match using television. By the end of the 1950s, people throughout the world had gotten hooked on television. Further scientific and technological development in the field of electronic media made the bond to tv even stronger. It goes without saying that it caused a real revolution in professional sports (since those times sport has firmly become not only a past time but business). By the 1980s, virtually every family in developed countries had a tv and radio set, and that was officially when the competition among broadcasters increased significantly. Many major and medium

⁵⁰ Shannon Bond, 'TV sports rights: Show them the money' (2017) The Financial Times Limited, 1. < <https://www.ft.com/content/91570e92-b369-11e4-9449-00144feab7de>> Accessed 09 May 2017.

⁵¹ V.V. Galkin, 'Sport business for managers. Sport product in the media market' (August, 2012),1.<<http://vadim-galkin.ru/sport-2/sportivnyj-biznes-dlya-menedzherov/sportivnyj-produkt-na-rynkax-veshhaniya/>> Accessed 10 May 2017.

broadcasting companies began to fight for the acquisition of media rights; as a result, prices for this product rocketed sharply.⁵²

Now some theoretic things, which explain reasons for such a dynamic developing and growing of the media rights market.

It will not be exaggerated to say that in the mid of the 20th-century people got access to the world without a necessity to leave their homes. The other side of the coin was that business people got a new and as it turned out an almost inexhaustible source of influence and income. By influence, here is meant that the mass media and particularly television have prompted and boosted the popularity of sports. This even growing popularity allows at present concluding expensive bargains on selling media rights to broadcasters who earn money by reselling time to advertisers.⁵³



Intense spectators interest in sporting events is completely obvious, especially, for example, naming the level of World Championship or Games of Major Soccer League, etc. All these highly rating sports and competitions gather an enormous number of viewers and listeners. These potential consumers make advertisers agree to spend billions of dollars per minute on commercials carried out during the periods of the Olympics or world championships. As business practice has proved, such huge expenses in the form of advertising investments pay off within two years.⁵⁴

Briefly, broadcasting deals can be described as following, giant broadcasters purchase exclusive media rights and later resell them to cable, satellite channels, etc. on their prices

⁵² V.V. Galkin, para. 4-6.

⁵³ V.V. Galkin, para. 7.

⁵⁴ V.V. Galkin, para. 8.

and terms raising ‘fat’ profit. A few words must be said about possible broadcasting deals according to conferring rights, and they are divided into:⁵⁵

- exclusive rights allow the owner solely to decide who and at what price to resell the sports product;
- package rights includes a set of several rights of broadcasts such as live, broadcast on the Internet but only sound or sound and image, selective broadcast (for example, 16 matches out of 32 championship games), etc.;
- individual rights include the ability to broadcast live, to broadcast the entire match for the next day, for 10-minute fragments of games; the right to broadcast with editing (including the insertion of own advertising).⁵⁶

Obviously, the cost of the above rights of broadcasts varies considerably. When buying certain rights broadcasters are guided by considerations of economic feasibility, interest of the audience, solvency of fans and advertisers.

2.2. The Collective Selling of Sports Media Rights in Europe

This section is primarily based on the 2007 Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport. The decision to keep citing the reviews and conclusions of the Commission was made due to the comprehensive and systematic analysis carried out by the Commission on the question of selling sports media rights in Europe, and what is more through the prism of competition rules. In the course of ten years, these data have remained absolutely up-to-date.

A few words must be added before moving ahead on to the above-posed questions, namely competition law, in line with Articles 101 and 102 TFEU, is concerned, above all, with the concerted practices of undertakings which may affect trade between the Member States and restrict or distort fair competition. In light of this, the matters as undertakings, markets, concerted practices will be defined further.⁵⁷

⁵⁵ V.V. Galkin, ‘Sport business for managers. Special aspects of selling tickets and media rights’ (August, 2011),1. <<http://vadim-galkin.ru/sport-2/sport/ticketing-and-broadcasting-rights-part-2/>> Accessed 10 May 2017.

⁵⁶ Ibid.

⁵⁷ Treaty of Functioning of European Union (2012) OJ C 326 47-390 Articles 101-102

For many media operators, sports media rights are crucial and constitute ‘vital input’. The European Commission found as early as in 1991 that *‘sport is ... particularly attractive to ... commercial operators whether as part of general entertainment channels or specialist channels. Audience ratings can be very high for certain events, and are also popular with commercial sponsors’*.⁵⁸ In later decisions the Commission affirmed, e.g., *that movies and sports are ‘key sales drivers’ for pay-tv operators*.⁵⁹ Taking into account great economic impact of broadcasting rights, the application of competition rules is of paramount importance in this sector. For example, the broadcasting rights for the 2006 World Cup were sold by FIFA for around €1 billion to TV operators worldwide. The UK broadcasting rights for the three seasons of English Premiership football as of season 2007/2008 were sold by the English Football Association for around €2.5 billion (totaling €4.1 billion for the broadcasting rights on a worldwide basis).⁶⁰

Other than, in the area of regulatory aspects of sport, the exercise of economic activity is commonly not an issue in question when dealing with sports media rights. All broadcasting organizations, including public television broadcasting organizations, are undertakings within the meaning of Articles 81 and 82 EC (now Articles 101 and 102 TFEU) (that will be demonstrated hereinafter). The activities of acquiring and sublicensing television rights and the sale of advertising slots all constitute examples of activities of an economic nature covered by Articles 81 and 82 EC. There are three striking characteristics of competition relating to the sale and purchase. Firstly, the rapid evolution of the media sector, including new technological development, necessitates already determined market definitions are being kept under constant supervision. Secondly, the supply and demand structure as regards sports media rights is distinguished by few dominant players at each level of the supply chain, which are competing for scarce and highly valuable sports rights. In other words, at the top level

⁵⁸ Commission, ‘Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport’ COM(2007) 391 final, Annex I section 3.1 subsection 3.1.1 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 September 2017

⁵⁹ Ibid.

⁶⁰ Commission, ‘Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport’ COM(2007) 391 final, Annex I section 3.1.1 footnotes [216] <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 September 2017

initial rights owners (usually sports associations or clubs) sell rights of sports events to sports rights intermediaries, such as sports rights agencies or the European Broadcasting Union (EBU) or directly to retail operators. The intermediaries, which often gain the initial media rights to a certain event in a product and geographical bundle, subsequently re-sell the rights to retail operators. The downstream transmission markets represent the closing level of the value chain, covering the provision of sports media services to consumers by retail operators (e.g., broadcasting companies, internet service providers, mobile operators). Thirdly, sports media rights, particularly live transmission, are most appealing, being a source of tension and interest due to unpredictability. Apparently, once the outcome of an event is announced the value of the right dramatically falls together with viewer curiosity. It is also earthnut that the ‘Television without frontiers’ Directive in Article 3a⁶¹ (at present not in force) and currently Audiovisual Media Services Directive⁶² have specified circumstances allowing events which are considered to be of major importance for society, including sport events, to be transmitted freely to the public. Each Member State may therefore make a list of events, which have to be broadcast in unencoded form, even if exclusive rights have been purchased by pay-tv channels.⁶³

Having perceived, in general the process of gaining sports media rights and named the key players, it is time to define the market of sports media rights.

Market definitions are particularly complex in the extremely fast-changing world of media rights. In the media sector, products and services are no longer clearly partible and are, also due to technological or economic ‘convergence’, often marketed in bundle. In previous Commission’s decisions, upstream product markets for the purchase of sports media

⁶¹ Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities Article 3a < <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31997L0036>> Accessed 5 September 2017

⁶² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance) Chapter V Article 14 < <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1509304722423&uri=CELEX:32010L0013>> Accessed 5 September 2017

⁶³ R. C. R. Siekmann, p. 124-125

rights have been recognized according to certain audiovisual content. Brand image, the ability to attract a particular audience, the configuration of that audience and advertising/sponsoring revenues were laid down into the classification. Actually, it was 1996 when the Commission for the first time identified separate markets regarding sports events, for the right to broadcast them. Afterwards the Commission has spelt narrower markets out, e.g., for **(I)** the broadcasting rights for certain major sport events which are held on a regular basis respecting their duration (the Commission considered that there was a strong likelihood that distinct markets existed for the acquisition of broadcasting rights for some major sporting events such as the Olympic Games; and it confirmed that regular major sports events, i.e., sports events that take place throughout the year or throughout a significant time period each year such as Formula One and Moto Grand Prix races are not in the same market as major irregular sport events (e.g., Olympic Games) which take place for a few weeks every 4 years), **(ii)** the broadcasting (and new media) rights for football matches played regularly during the whole year where national (non-representative/club) teams compete (national leagues and cups, the UEFA Champions league and the UEFA Cup (now: Europa League)), and **(iii)** the broadcasting rights for football events that do not take place regularly where national (representative) teams take place (e.g., the Football World Cup or the European Football Championship). As for the leading downstream product markets that have been defined in previous cases: pay-tv (regardless of a further possible distinction, within pay-tv, between video on demand (VoD), near video on demand (NVoD) and pay-per-view (PPV), free tv, and content services delivered via the Internet and mobile devices. Pointing out tv markets, accounting for fast technological development and almost absence of substitutability, the Commission has again held that distinguished markets exist for pay-tv and free tv. This conclusion has been based on the different trading relationships involved: the different conditions of competition, the price of the services, and the characteristics of the two types of television. With regard to new media, the factor as means of delivery of on-demand sports content services was laid down into the identification of separability of downstream markets. They are via wireless mobile devices or via the Internet. With regard to the geographic markets the Commission has held thus far that the downstream markets are of a national character or at least confined to linguistic regions. The geographical borders of the upstream

markets also tend to be national not only for national events (e.g., rights for national football leagues) but also for international sports events since such rights are normally also sold on a national basis. This is due to the national character of distribution as a result of national regulatory regimes, language barriers and cultural factors. Considering the technological development, market definitions may evolve in the future, warranting careful and continued market research on the accuracy of the market definition for each case situation.⁶⁴

Another crucial point to notice here is relevant markets in line with national and/or international sports associations. They are normally the bodies that accepted sporting rules, which sport clubs/teams and athletes need to abide by. Sporting rules approved by national or international sports associations may involve agreements or decisions taken by undertakings or associations of undertakings which fall within the meaning of Article 101(1) TFEU (ex Article 81(1) EC). Such sporting rules, likewise other decisions or agreements, are forbidden if they have as their object or effect the restriction or distortion of competition within the internal market and affect trade between Member States.⁶⁵

Article 102 TFEU (ex Article 82 EC) prohibits any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States. For the purposes of applying this provision, the relevant market must be determined. Generally, sports associations have practical monopolies in a given sport and may thus normally be considered dominant in the market of the organization of sport events under Article 102 TFEU (ex Article 82 EC). Even if they act through its members, indirectly, they are still regarded as those who possess dominance in the market. Sport clubs/teams (and athletes) may also hold a collective dominant position under Article 102 TFEU (ex Article 82 EC) to the extent that they present themselves as a ‘collective entity vis à vis their competitors, their trading partners and consumers’ as a result

⁶⁴ Commission, ‘Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport’ COM(2007) 391 final, Annex I section 3.1 subsection 3.1.2 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 september 2017

⁶⁵ Commission, ‘Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport’ COM(2007) 391 final, Annex I section 2.1 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 september 2017

of the implementation of rules adopted by a national or international sports association (national and international)⁶⁶.

Next matter here to take up is undertakings and associations of undertakings.

Article 101 TFEU (ex Article 81 EC) is relevant to ‘undertakings’ and associations of undertakings’, while Article 102 TFEU (ex Article 82 EC) applies to ‘undertakings’. The ECJ has defined the term ‘undertaking’ broadly to include ‘every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed’. Economic activity is any activity consisting of ‘offering goods or services on the market’. Economic activity may penetrate into various levels in the sport sector, including individual athletes, sport clubs and sports associations both national and international.⁶⁷

Before proceeding to the decision-making practice under Articles 101 and 102 TFEU (ex Articles 81 and 82 EC) in light of selling sports media rights a few words must be said about possible justification under Article 101 (3) TFEU (ex Article 81(3)).

Where a restriction under Article 101(1) TFEU (ex Article 81(1) EC) is found, such restriction may be justified under Article 101(1) TFEU (ex Article 81(3) EC). Article 101(1) TFEU (ex Article 81(3) EC) provides that the prohibition contained in Article 101(1) TFEU (ex Article 81(1) EC) may be declared inapplicable in case of agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives and do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products concerned. Such a justification is most likely to apply where a rule is not inherent in the organization or proper conduct of sport and also where the beneficial effects of a rule outweigh its restrictive effects.⁶⁸

Having regarded the matters of economic activities, markets, undertakings/ association of undertakings in line with Articles 101 and 102 TFEU (ex Articles 81 and 82 EC) it is the apparent time to move ahead to the judgments touching selling and gaining

⁶⁶ Ibid. subsection 2.1.3

⁶⁷ Ibid. subsection 2.1.3

⁶⁸ Ibid. subsection 2.1.6

sports media rights, indubitably, under Articles 101 and 102 TFEU (ex Articles 81 and 82 EC).

2.2.1. Selling Sports Media Rights (Behavior of Sellers)

In the very beginning of this section, it is essential to underline a couple of things:

Firstly, cases relating to the joint selling of exclusive rights under Article 81 EC (currently Article 101 TFEU) constitute the Commission's *decision-making practice*. That is no cases investigated the behavior of a single seller have been brought up for consideration.⁶⁹

Secondly, the thing is that all the remedies adopted in the decisions by the Commission are non-exhaustive for future cases. They just serve as options, worked out for certain cases, and possible to be applied for others when settling down the competition issues. Indeed, there is always a case-by-case approach.⁷⁰

Below are described a number of restriction practices which are justifiable in the competition area.

In the upstream market Article 81(1) EC (currently Article 101 (1) TFEU) is applicable to joint selling agreements causing competition restrictions, namely foreclosure and output limitation. An ordinary joint selling in the field of sports media rights is the situation of the pooling of media related club rights and marketing by a single entity, typically the league association.⁷¹ With relevance to the Competition law all actions in line with a joint selling arrangement limit fair competition in the market to a certain extent. The reason is that a joint selling itself is a horizontal agreement, meaning, when clubs delegate selling of their media rights as it has been illustrated above, they create the precedent as individual clubs with a comparatively small market share are excluded from the 'value chain'. Apparently, it constitutes restriction of competition. What is more, all rights are being sold in bundle and charged one price causing price-fixing. Besides, the number of rights available in the

⁶⁹ Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, Annex I section 3.1 subsection 3.1.3.1. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 september 2017

⁷⁰ Ibid.

⁷¹ Stefan Wilbert, 'Joint selling of Bundesliga media rights — first Commission decision pursuant to Article 9 of Regulation 1/2003, unit C-2' p. 44-46 <http://ec.europa.eu/competition/publications/cpn/2005_2_44.pdf> Accessed 5 september 2017

upstream acquisition markets is often reduced which may hinder entering to the downstream broadcasting markets and end up in the access foreclosure in these markets.⁷²

The above shown practices often create the image of adverse violation of the competition rules. There is something in the statement to the extent of the positive aftermath which will be illustrated below. So, the Commission has recognized that joint selling may create efficiencies and accepted joint selling arrangements under Article 81(3) EC (currently Article 101 (3) TFEU) principally due to the potential of improving the media product and its distribution to the advantage of football clubs, broadcasters and viewers. The Commission in its decisions has in particular identified three types of benefits:⁷³

- the creation of a single point of sale provides efficiencies by reducing transaction costs for football clubs and media operators;
- branding of the output creates efficiencies as it helps the media products getting a wider recognition and hence distribution;
- the creation of a league product: this is a product that is focused on the competition as a whole rather than the individual football clubs participating in the competition; this is attractive to many viewers.⁷⁴

All these benefits justify joint selling practices as they altogether create financial and others advantages for all interesting parties (rights holders of all levels and viewers-customers).

Nevertheless, to mitigate the most adverse negative effects from a joint selling the Commission worked out exemption provisions and obliged rights holders to make commitments in their agreements. The exemption provisions and obligatory commitments, in other words remedies, resulted from previous cases decided by the Commission. The accepted solution in each case was based on the facts thoroughly examined by the Commission, especially such matters as: the degree of market power and the restrictive practices. Further big issue to sort out was the assessment of the ownership of the rights. In

⁷² Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, Annex I section 3.1 subsection 3.1.3.1.1. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 september 2017

⁷³ Ibid.

⁷⁴ Ibid.

the UEFA Champions League decision, the Commission considered that the rights for the matches were not solely owned by UEFA, since the latter could at best be considered as a co-owner of those rights together with the football clubs for individual matches; the Commission also stated that the question of the ownership was to be determined by national law. The question of the ownership is important because in cases where the rights are solely owned, e.g., by the football association, may arise issues under Article 82 EC (currently Article 102 TFEU) rather than under Article 81 EC (currently Article 101 TFEU) as the sale of rights would be carried out by a single seller and not jointly.⁷⁵

To highlight what has just been described it is noteworthy to bring here three notable cases adopted by the Commission. In these cases, the collectively sold exclusive sports rights put at risk to restrict free output and access for operators in the downstream broadcasting markets. In order to tackle the ‘dilemma’ appeared as a result of collective selling in *UEFA CL*, *DFB* and *FAPL* the Commission elaborated a number of (non-exhaustive) redresses and set up the terms under which it considered that joint selling, exceptionally and with the case by case approach, would be permissible under Article 81 EC (currently Article 101 TFEU).⁷⁶

*UEFA CL*⁷⁷ was the first case when the Commission decided to accept joint selling of football media rights and formulate the principles for a pro-competitive rights structure. The initial provisions specified for the sale of UEFA Champions League free and pay-tv rights on the basis of exclusivity in bundle to a single broadcaster per territory for several years in a row. That obviously led to the situation when on the territory existed only one source of supply and a single large broadcaster which acquired all free and pay-tv rights, excluding others. As a result, a number of rights were left unexploited. Heeding the Commission arguments, UEFA amended its joint selling arrangements. The available rights were unbundled into several packages (in total 14). From that point, more than one

⁷⁵ Ibid subsection 3.1.3.1.2.

⁷⁶ Ibid.

⁷⁷ 2003/778/EC: Commission Decision, relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/C.2-37.398 — Joint selling of the commercial rights of the UEFA Champions League) (Text with EEA relevance.) (notified under document number C(2003) 2627) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1505910324779&uri=CELEX:32003D0778>> Accessed 08 September 2017

broadcaster could acquire rights to the UEFA Champions League. On top of that, tender procedure was implemented making the process of gaining rights more transparent, objective and non-discriminatory. Another important improvement included ability of individual clubs to sell certain live rights (package 4) relating to their matches, in case UEFA would fail to sell them itself. Indeed, certain restrictions remained such as the exclusive sale of live rights belonged to UEFA. Thus, individual clubs were kept away from competing in the sale of those rights and still a single price was imposed, broadcasters had only one point of supply in respect of most live rights and the exploitation of deferred rights was subject to limitations. But the above-mentioned situation with the sale of live rights in a bundle, was considered by the Commission from the positive angle and allowed the latter to conclude that the amended joint selling agreement met the demands for a justification under Article 81(3) EC (currently Article 101 (3) TFEU). The following effects were regarded as positive as far as they improve the distribution of rights to the UEFA Champions League through the building of a successful branded product, exploited exclusively by UEFA and independent of the interests of individual clubs. Meanwhile the single place of sale made possible the acquisition of coverage for the whole UEFA Champions League season, allowing programming to be scheduled ahead. Which is for the obvious reasons sensible and advantageous over acquiring the same rights but from many individual clubs. Besides, the situation of unpredictability when all risks entailed to the broadcasters, due to the knock-out nature of the UEFA Champions League, the latter could hardly know ahead which clubs would make it through to the end. From the economic stand point, such an exercise was overpriced especially it could turn into the trouble as the value of individual club rights would plunge if that club was dropped out. Distribution was further improved by ensuring that certain live rights could be sold by individual clubs where UEFA had been unable to sell the rights within one week after the draw for the first round for the UEFA Champions League. Thus, consumers benefited directly from the aforementioned single point of sale. In addition, the efficiencies created by the single point of sale allowed broadcasters to invest more in improving production and transmission. Access to deferred and archived content was also made more readily accessible. The Commission considered that the restrictions on competition were indispensable to the creation of a UEFA Champions League branded product sold via a single point of sale and

the related benefits. UEFA had a legitimate interest in creating a Champions League focused product separate from the interests of individual clubs, as it benefited UEFA, the clubs and the supporters/viewers of the Champions League. The exclusive joint selling of live rights, without parallel sales through individual clubs was also indispensable to ensuring the quality and attractiveness of the UEFA Champions League product to broadcasters. The joint selling arrangements were not likely to eliminate competition in respect of a substantial part of the football rights market because substitutable rights to other football events taking place regularly throughout the year were available (e.g., national football league rights). In addition, both UEFA and individual clubs sold a number of categories of UEFA Champions League rights in parallel ensuring multiple sources of supply for interested buyers.⁷⁸

*DFB*⁷⁹ and *FAPL*.⁸⁰ In the sales process of the German and English top national football leagues, the Bundesliga and the FAPL respectively, similar competition concerns arose as those found in UEFA CL. These were cases of principally national character that had been opened by the Commission prior to modernization.⁸¹

In the case of DFB, it is also noteworthy that the German Act against Restraints on Competition contained an exception for the joint selling of sports media rights between 1999 and 2005. Following modernization, it is less likely—but not excluded—that the Commission would intervene in this type of cases. In order to address these concerns, in both cases commitments were made to amend the original joint selling arrangements by the

⁷⁸ Commission, ‘Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport’ COM(2007) 391 final, Annex I section 3.1 subsection 3.1.3.1.2 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 5 September 2017

⁷⁹ Notice published pursuant to Article 19(3) of Council Regulation No 17 in Case COMP/C.2/37.214 — Joint selling of the media rights to the German Bundesliga (Text with EEA relevance) OJ C 261, 30.10.2003 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2003.261.01.0013.01.ENG&toc=OJ:C:2003:261:TOC> Accessed 11 September 2017

⁸⁰ Commission Decision, relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/C-2/38.173 - — Joint selling of the media rights to the FA Premier League) C(22.03.2006)868 final <http://ec.europa.eu/competition/antitrust/cases/dec_docs/38173/38173_134_9.pdf> Accessed 11 September 2017

⁸¹ Commission Decision, relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/C-2/38.173 - — Joint selling of the media rights to the FA Premier League) C(22.03.2006)868 final <http://ec.europa.eu/competition/antitrust/cases/dec_docs/38173/38173_134_9.pdf> Accessed 11 September

respective leagues on behalf of their individual club members. The commitments offered by both the Deutscher Liga-Fußballverband (the German League Association (GLA), the rights-holder for the Bundesliga matches) and the FAPL (the rights holder for the Premiership matches) were made legally binding under Article 9(1) of Regulation 1/2003. The commitments from both the GLA and the FAPL included the unbundling of rights into separate rights packages for TV broadcasting and mobile platforms, the possibility for individual clubs to exploit certain unsold rights and rights unused by the initial purchaser, as well as the exploitation of deferred rights and rights for the new internet broadcasting (the internet broadcasting rights were sold as a separate package in DFB but not in FAPL) and telephony broadcasting markets. Rights were to be disposed of using a public tender procedure and exclusive rights contracts were not to exceed three football seasons. In addition, as regards the FAPL, the open and competitive bidding process for the rights packages was made subject to scrutiny by an independent Monitoring Trustee. Furthermore, no single purchaser was allowed to acquire all the live rights packages, as first applied from the sale of rights to the 2007/2008 season (no single buyer rule). This commitment was negotiated by the Commission in order to end the monopoly of British Sky Broadcasting Group plc ('BSkyB') over the rights to the FAPL in the United Kingdom. Following the acquisition in May 2006 of two of the six FAPL live rights packages by Setanta, an Irish pay-tv sports channel, BSkyB ceased to be the exclusive holder of live Premier League matches.⁸²

To eliminate competition concerns aroused from the above mentioned cases a number of redresses were separately or in combination applied. They were all named in the cases but to highlight and stress the remedies allowed to maintain the balance of interest the list of them is giving below they are indeed non-exhausted and non-binding.⁸³

Division: rights were unbundled in each case.⁸⁴

⁸² Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, Annex I section 3.1 subsection 3.1.3.1.2 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 11 September 2017

⁸³ Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, Annex I subsection 3.1.3.1.2 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 11 September 2017

⁸⁴ Ibid.

Tendering: a competitive bidding process under non-discriminative and transparent terms for the purpose of minimizing risk of anti-competitive practices in the market. This approach gives all potential buyers an opportunity rival for the rights.⁸⁵

Trustee: in some cases, to strengthen the guaranty of fairness, reasonability and non-discriminatory fashion it can be required that this procedure is to be overseen by a trustee that respects back to the Commission.⁸⁶

Limitation of the duration of exclusive vertical contracts: in the all above considered cases in order to cope with the possible negative aftermath of the long-term exclusive agreements in the market. It is required the collective selling entity to limit the duration of the exclusive rights offered in vertical contracts to no more than three seasons ('sun setting'). The limitation of the duration can be determined in each case, but commonly three years, otherwise longer contract duration could lead to risk of establishing a dominant position on the market by a successful buyer. Limitation of the scope of exclusive vertical contracts in UEFA CL, DFB and FAPL the Commission sought to the scope of the exclusivity. More specifically the Commission required in the above-mentioned cases:⁸⁷

- A reasonable number of different packages: the creation of two or more independently valid live packages. The reason for this was that as live rights are often sold to one media operator, the creation of various packages would enable more than one media operator to acquire the rights.
- Meaningful packages: the large size of packages may create foreclosure concerns and the Commission has, e.g., in FAPL, requested the sale of several meaningful packages to enable also less powerful operators with less financial means to bid for the packages that suited their needs. At the same time, a package may not be 'meaningful' (independently valid) if it is much smaller than other packages. The objective is to allow the respective purchasers of the package(s) to compete effectively on the downstream market.
- Earmarked packages for special markets/platforms: due to the strong asymmetric

⁸⁵ Ibid subsection 3.1.3.2.1

⁸⁶ Ibid subsection 3.1.3.2.6

⁸⁷ Ibid subsection 3.1.3.2.2

value of rights for different distribution platforms, access to sports media rights may be foreclosed to downstream market operators in certain evolving markets or platforms (for example 3G networks or internet markets). By providing for specific packages for certain distribution platforms ('earmarking') in UEFA CL, DFB and FAPL mobile operators and internet service providers were enabled to acquire rights. Thus, as it was mentioned above, in the Bundesliga decision, three separate packages for live rights were earmarked for (i) tv (pay-tv and free-tv), (ii) internet and (iii) mobile phones. In the Premier League decision, only two separate packages for live rights were earmarked for (i) audio-visual rights on a 'technology neutral basis' (including pay-tv, free-tv and internet) and (ii) audio-visual mobile rights. This was due to the increasing convergence of the tv and internet platforms (e.g., as a result of IPTV). The question as to which type of markets or platforms should be earmarked (e.g., to protect or encourage their development) will depend in particular on the market conditions in the country/countries in question.

- No conditional bidding: in FAPL, an obligation was imposed on the seller to accept only stand-alone unconditional bids for each individual package. The rights would be sold to the highest standalone bidder. Such unconditional selling is aimed at preventing a powerful buyer interested in acquiring the most valuable package(s) from offering a bonus on condition that all the valuable rights are sold to it, thus inciting initial rights owners not to sell at least some packages to competitors in the same market or operators in neighboring markets.⁸⁸

Fall-back option, use obligation, parallel exploitation: The prohibition of unused rights would limit the risk of output restrictions. Rights that are not sold by the collective entity within a certain time period fell back to the individual clubs for parallel exploitation ('no hoarding'). In addition, the Commission ensured market availability of less valuable rights such as deferred highlights and new media rights by imposing the parallel exploitation of these rights by individual clubs and UEFA in UEFA CL.⁸⁹

⁸⁸ Ibid.

⁸⁹ Ibid subsection 3.1.3.2.4

No single buyer obligation: It is interesting to mention that this type of remedy was of relevance only in FAPL whereas due to the structure of the markets the issue did not arise in the UEFA CL and DFB cases. So, to prevent that all packages of valuable live rights were purchased by the dominant pay-tv operator in the United Kingdom, precisely BSKyB, the Commission decided it crucial to impose a no single buyer obligation on the collective selling entity. It was reasonable, taking into the account a previous experience when BSKyB had acquired all the valuable live-TV packages that were marketed by the joint seller. Besides, additional redress seemed inevitable to avoid downstream foreclosure and to provide free access also for other market players. Importantly, without having taken those urgent preventive steps, there was a risk that competition would remain eliminated well beyond the duration of any on-going contract as due to the long-term presence of the dominant buyer competition was ineffective. In UEFA CL and DFB cases there was no need to investigate the vertical effects, assessing the value of the different packages and the distribution of market players. However, it worth mentioning here that in the DFB decision the Commission reserved the possibility of launching an independent investigation at the downstream level on condition that several packages with exclusive exploitation rights would be acquired by a single purchaser ('vertical reserve'). Such an investigation would thus target the dominant buyer rather than the seller. However, it would not be excluded to act also against the joint seller as the emergence on the market of a dominant buyer would likely constitute a material new fact within the meaning of Article 9(2) of Regulation 1/2003 justifying the re-opening of the procedure.⁹⁰

The remedies described above are examples of a well-balanced approach by the Commission which managed to take into account a lot of factors and on the one hand to address possible competition orders, meanwhile maintaining positive effects from the already existed methods of running business.⁹¹

2.2.2. Acquiring Sports Media Rights (Behavior of Buyers)

Market is a two-way street both in good and bad, that is buyers as well as sellers may negatively affect competition. In the downstream markets joint buying arrangements may

⁹⁰ Ibid subsection 3.1.3.2.5

⁹¹ Ibid subsection 3.1.3

also be caught under Article 81(1) EC (currently Article 101 (1) TFEU), in particular when the exclusive acquisition of sports media rights leads to foreclosure and output circumscriptions resulted from vertical provisions contained in agreements between seller and buyer or by horizontal agreements between different buyers. In cases where ex ante (single or collective) dominance occurs at the acquisition market, under certain circumstances the acquisition and use of exclusive sports media rights could constitute an abuse of dominance by the buyer within the meaning of Article 82 EC (currently Article 102 TFEU).⁹²

Foreclosure issues often arise when dealing with exclusive rights which consist of ‘premium’ content. Under such circumstances (mostly concerning broadcasting rights for live football matches), competition may be severely distorted through the monopolization of the acquisition of this premium content, and currently it is crucial for effective competition in the downstream market.⁹³

In addition, because of insecurity about technological development, the existence of some substitution between different platforms and asymmetric value of rights, powerful operators on one retail market may seek to prevent players in neighboring markets from acquiring meaningful rights.⁹⁴ The acquisition of exclusive audiovisual rights for all platforms by a powerful retail operator in one downstream market (e.g. a pay-tv operator) may create additional anti-competitive foreclosure effects in neighboring markets (e.g., 3G mobile telephony), thereby hampering the development of new services.⁹⁵

Output restrictions may take place when exclusive rights, which are either acquired collectively by different operators or gained by a dominant firm for one or more downstream markets, are afterwards not exploited by the buyers.⁹⁶

To illustrate the above expressed a number of cases will be presented below.

⁹² Commission, ‘Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport’ COM(2007) 391 final, Annex I subsection 3.1.4. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 11 September 2017

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

The situations needed to be addressed were connected with the existence of a powerful retail operator (or a joint buying consortium of retail operators) on one platform that precluded access to exclusive content for operators in the same or neighboring markets.⁹⁷

Newscorp/ Telepiù.⁹⁸ The merger case that was about two Italian satellite pay-tv platforms, one of which (Telepiù) had already achieved dominance in the market. The new entity, SkyItalia, would have held almost a 100% share of the pay-tv market, with competition from other platforms being hardly due to cable penetration in Italy being only around 1%. The merged entity would have combined for a long period of time incomparable portfolio of exclusive rights related to premium content (also including key sport events), thereby foreclosing third parties from accessing premium content needed to establish competing pay-tv offers downstream.⁹⁹

With accordance to the Italian law football rights must be sold to at least two buyers, but in the event of merger when only one company operated in the market, it could be hardly to follow. Consequently, the Commission found that the merger would have created a near monopoly in the Italian pay-tv market by strengthening the already dominant position of Telepiù.¹⁰⁰ Moreover, it would have led to a quasi-monopoly situation in the various markets for the purchasing of content for pay-tv and would have preclude access to such content to potential competitors. Hold-back and black-out rights would have precluded the market and prevented new entry through the use of platforms other than satellite in the future.¹⁰¹ The merger was only cleared following the giving of substantial commitments by the new entity, ensuring access to its technical platform, limiting the exclusivity of its rights to its satellite

⁹⁷ Ibid subsection 3.1.4.1.

⁹⁸ 2004/311/EC: Commission Decision of 2 April 2003 declaring a concentration to be compatible with the common market and the EEA Agreement (Case COMP/M.2876 — Newscorp/Telepiù) (notified under document number C(2003) 1082) (Text with EEA relevance) OJ L 110, 16.4.2004, p. 73–125 < <http://eur-lex.europa.eu/eli/dec/2004/311/oj>> Accessed 11 September 2017

⁹⁹ Commission, ‘Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport’ COM(2007) 391 final, Annex I subsection 3.1.4. subsection 3.1.4.1. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 11 September 2017

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

platform and limiting the duration of its exclusive rights to attractive content (including football rights) to two years.¹⁰²

Eurovision/EBU.¹⁰³ The European Broadcasting Union (EBU) is an alliance of public service media operated worldwide with 56 members primary consist of broadcasters offering a service of national character and importance for all sections of the public. Members of EBU may take part in EBU's Eurovision system, which consists of a TV program exchange system, in compliance with which EBU members provide, inter alia, sports coverage to other EBU members on a reciprocal basis. As part of the system, EBU members participate in the joint purchasing and afterwards sharing of sports media rights, including the free exchange of transmission signal in respect of the relevant sport events.¹⁰⁴ The effects on competition of the joint acquisition of sports rights, through EBU's Eurovision system, have been considered twice by both the Commission and the CFI. In both cases, the Commission found restrictions under Article 81(1) EC (currently Article 101 (3) TFEU) and exempted the respective joint purchasing agreements under Article 81(3) EC (currently Article 101 (3) TFEU). The CFI in each case annulled the Commission's decisions. Following the CFI's judgment.¹⁰⁵

AVS.¹⁰⁶ The Commission's AVS investigation concerned an agreement between Telefónica and Sogecable, the two largest Spanish pay-tv platforms, whereby they committed to jointly acquire and exploit the rights to the Spanish First League for 11 seasons (until 2009) through their joint venture Audiovisual Sport (AVS). In November 2000, the Commission closed parts of its investigation concerning restrictions effects on the Spanish pay-tv markets after the parties granted access to the football rights to new cable and digital terrestrial television entrants in Spain and guaranteed competitors that they were free to set the prices

¹⁰² Ibid.

¹⁰³ Commission decision of 11 June 1993, Case 32150 EBU/Eurovision System OJ 1993 L 179/23 and Commission decision of 10 May 2000, Case 32150 Eurovision OJ 2000 L 151/18

¹⁰⁴ Ibid.

¹⁰⁵ Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, Annex I subsection 3.1.4. subsection 3.1.4.1. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 11 September 2017

¹⁰⁶ Press release IP/00/1352 of 23 November 2000 <http://europa.eu/rapid/press-release_IP-00-1352_en.htm?locale=en> Accessed 11 September.

of the pay-per-view football matches.¹⁰⁷ The Commission went on investigating as regards the long duration of the agreement, the rights of first refusal of the parties for a large number of Spanish football clubs and the potentially unfair and discriminatory terms and conditions of the parties' sublicensing rules.¹⁰⁸ The Commission closed its investigation in May 2003 following the merger of Sogecable and Via Digital of Telefónica. The merger was authorized in November 2002 by the Spanish authorities under certain conditions which **(i)** abolished the renewal options held by AVS on the football rights, **(ii)** guaranteed third parties' access to the rights under fair, reasonable and non-discriminatory conditions, **(iii)** established that the merged entity would not have exclusive use of the new media rights and **(iv)** stipulated that access to the football rights would be subject to an arbitration mechanism.¹⁰⁹

In the above-named cases, a number of remedies were adopted and it is noteworthy to stress again that they are not exhaustive or binding for future cases.¹¹⁰

As it will be explained below, remedies can either consist of behavioral solutions imposed upon downstream players, such as sublicensing of rights in the same market or neighboring markets, or of structural solutions requiring the divestiture of rights in the same or neighboring markets.¹¹¹ As in other areas structural solutions are generally more effective. Moreover, in the media sector experience shows that sublicensing is a difficult remedy to apply in practice as it must be ensured that prices and sublicensing conditions are transparent and acceptable.¹¹² Given that sublicensing is generally not in the sub-licensor's interest it may be necessary to involve a trustee to ensure a satisfactory degree of effectiveness. If remedies cannot solve the competition concerns, the (joint) acquisition of sports media rights may also be prohibited.¹¹³

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Commission, 'Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport' COM(2007) 391 final, Annex I subsection 3.1.4. subsection 3.1.4.1 <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0935>> Accessed 11 September 2017

¹¹⁰ Ibid subsection 3.1.4.2.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

Limitation of the scope of exclusivity with regard to neighboring markets: In Newscorp /Telepiù, it was done through surrendering its exclusivity and its protective rights on means of transmission other than the satellite platform on which it operated itself. Therefore, operators on other platforms got opportunities (e.g., internet, cable, UMTS) were to buy those contents (including for football and other sport events) directly from rights owners.¹¹⁴

A system of “wholesale offer” of premium content was also put in place, whereby Newscorp had to sublicense acquired “premium content” rights on a non-exclusive basis to third parties’ active on means of transmission other than satellite.¹¹⁵

Limitation of duration of exclusivity: Limiting the duration of the exclusivity assures that other market players will get chances to acquire rights at regular intervals.¹¹⁶ In Newscorp /Telepiù the company committed itself to limit the duration of its exclusive rights to two years.¹¹⁷

The remedies described above are again patterns of a thoroughly-thought decisions made by the Commission managed to maintain the balance both of entities and the letter and spirit of the law. All decisions must be taken by case to case approach assessing all negative and possible effects on the economy, where necessary on the market and sport and law.¹¹⁸

¹¹⁴ Ibid subsection 3.1.4.2.1.

¹¹⁵ Ibid.

¹¹⁶ Ibid subsection 3.1.4.2.2.

¹¹⁷ Ibid.

¹¹⁸ Ibid subsection 3.1.4.

3. REFLECTING THE GLOBAL REALITY

3.1. Breaking News

This chapter is to some extent defy the rules of writing a proper master theses paper as it is devoted to the latest news, immediately taken from the field of the business of sport, in particular sports media rights and broadcast. However, it seems inevitable and done out of necessity for lawyers and people who practice sports law or sports management giving access to the relevantly recent information which boosts the understanding of the current but what is more crucial upcoming situation in this area. Thus, the chapter is the reflection of the key changes that have already occurred, and those are coming in the fast-changing field of sports law, especially sports media rights, and the way it might influence its further development.

So, in the first place, 2016/17 has been definitely a busy year. The general theme which continued to make headlines was digital – whether it was social media exploitation (looking at the moves by established social media players such as Twitter and Facebook into mainstream sports broadcasting via giving access to live sports content on their platforms), M&A prospects for digital companies, piracy, ‘cord-cutting’ or access to content. The explosion of eSports and the arrival of drone racing has also added new excitement and opportunities into the rights market and the year has seen these being pushed to the forefront of broadcasters’ minds.¹¹⁹

This progress was absolutely not a surprise; however, it has caused a few challenges for traditional broadcasters. The matter of fact is that the everyday life has been fast moving towards a more digital-heavy offering and the way in which these new opportunities are exploited is where the focus has been, and is likely to be for some time to come.¹²⁰

Behind the headlines, however, a number of commercial and related legal issues continued to come to the fore in 2016, which have been affecting the packaging, sale and contracting for sports media rights through 2017, specifically:¹²¹

¹¹⁹ Alex Slade, ‘BT Sport’ (2017) LawInSport & BASL Sports Law Yearbook 2016/17 <<https://www.lawinsport.com/articles/item/a-current-view-of-the-sports-media-rights-market-from-head-of-legal-sport-at-bt>> Accessed 12 September 2017

¹²⁰ Ibid.

¹²¹ Ibid.

- Exclusivity v *'Reserved Rights'*;
- Rise of dedicated OTT sports services;
- Geo-blocking and EU Cross-Border Portability.¹²²

When one specially not very familiar with all the pitfalls of sports business reads literature or studies cases about broadcast and sports media rights all these twist and turns are not obvious right away. That means, when in the previous chapter the process of selling and buying sports media rights was deemed and underpinned by striking examples (UEFA CL, DFB and FAPL) nothing was mentioned about 'reserved rights' of the rights holders which on the one hand add sellers score at negotiations and curbing exclusivity that broadcasters expected. On the other hand, it brings the positive effect to the market by means of boosting competition, however not grabbing chances from giant broadcasters to keep exclusivity for which the latter have to pay out big money. The news is coming from the US where sports rights media packages are crushed really into pieces.¹²³

Namely, when negotiating the licensing of premium sports media rights, a key area of debate is always the question of 'reserved rights'. This means, in essence, what rights the rights holder will seek to hold back and exclude from the scope of 'exclusive' rights granted to its principal broadcast partner. It is a particularly important issue for pay-tv broadcasters to consider given their investment in premium sports rights is premised upon acquiring as great a level of rights exclusivity as possible.¹²⁴

Generally speaking, market practice over the past 10-15 years has seen rights holders retain a standard list of 'reserved rights', covering (among other things) DVD/'Download to Own' rights allowing the sale of delayed coverage of major matches following a lengthy holdback, together with limited digital clip rights for use on the rights holders' websites. However, in the past few years, the scope of these reserved rights has substantially grown as rights holders and their member clubs look to further 'slice and dice'

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

their media rights to derive additional value and also in order to develop their own consumer-focused propositions.¹²⁵

At the forefront are US rights holders such as the NFL, NBA, WWE and the PGA Tour which, in 2016, alongside their traditional broadcast agreements, have looked to push their own OTT ('over-the-top') digital subscription services in addition to free-to-view digital clips on websites and social media channels. These subscription services offer access to additional live matches, behind the scenes content and other features. In 2016 both the NFL and the PGA Tour also announced partnerships with Twitter to offer live streaming of certain matches.¹²⁶

In addition to OTT services, the sports media rights sector has also seen the development of a separate industry in the licensing of live betting streaming or so called 'bet & watch' rights. While the principal broadcast partner will be the only partner entitled to broadcast matches live via traditional television services (and related digital services), many rights holders now look to retain a right to separately license live streaming rights for distribution on betting websites operated by major bookmakers such as Bet 365, William Hill and Ladbrokes. Restrictions will be included on how these 'bet & watch' rights can be exploited by bookmakers (e.g. limited screen size, lower resolution than the HD/UHD offered by the broadcaster and controls on the ways in which the live rights can be marketed). However, 'bet & watch' rights do nonetheless represent an alternative way for live sports content to be accessed and, to an extent, undermine the scope of the 'exclusivity' enjoyed by the principal broadcast partner.¹²⁷

A further 'reserved right' that has come to the fore in 2016 and keep growing in 2017 is 'virtual reality' or VR rights. The technology in this area is its infancy but a number of rights holders – particularly in the US - are looking to retain a separate right to develop enhanced virtual reality coverage, potentially on a live basis and not to allow VR rights to automatically fall into the rights granted to the main broadcast partner. For example, the NBA announced that it had entered into a partnership with the company NEXT VR to stream one

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

game per week in VR and to offer these alongside live broadcasts by its main network partners such as ESPN.¹²⁸

It is presumably just the matter of short time to become a common practice in other countries. Apparently, sellers and buyers view the growth of these additional ‘reserved rights’ differently. As for consumers, they allegedly get a wider choice of platforms, quality and prices.

As noted by Simon Greenberg (global head of rights at News Corp), social media platforms and smart devices provide rights holders and broadcasters with a number of important opportunities, including, ‘the connectivity you get with the user, the speed you can get to the user, and the way you can target the [sports] fan’.¹²⁹

This has driven rights holders, particularly in the US (such as the NBA and the NFL), to increase the quality of the engagements and interactions with fans via social media by expanding existing relationships with various digital platforms including Twitter, Facebook, YouTube and Snapchat to make official in-game video clips and fan-generated content more widely available online.¹³⁰

In 2015 also saw the NBA launch a new service utilizing its presence on Twitter and Facebook to drive fans to their OTT ‘League Pass’ product by incorporating links at the bottom of its posts and tweets, directing fans to pages where they could buy access to the individual game that the post/tweet related to.¹³¹

Social media platforms themselves have been also viewing the provision of sports content as a key component of their service to drive users to their platforms, with Facebook seeking to take on Twitter in the sports arena with the recent launch (in the beginning of 2016) of a new platform called ‘Facebook Sports Stadium’, where Facebook users are able to access ‘real-time updates on games, popular posts from other fans, statistics and commentary from experts’.¹³²

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

By virtue of social media, which provide an affordable platform for ‘consumers react to live sports’, demonstrated by the increase in the use of so-called ‘second screens’ by sports fans (e.g. the use of computers, laptops, smartphones or tablets whilst watching sport on television). There is also the provision of interactive features by licensees (e.g. red button services) for additional sports content (e.g. text commentary, live scores, clips and/or live footage), in-match betting, engaging with teams, athletes and other fans about the content being broadcast and accessing match statistics.¹³³

This increased connectivity presents a range of opportunities for rights holders and licensees to provide added-value not only to their fans and consumers, but also to their commercial partners, for example through access to additional premium content, competitions, in-play fantasy games, targeted advertising, sponsor-led content and as a mechanism for extending the commercial reach of commercial partners.¹³⁴

Europe keeps up with the US thus 2016 saw the launch of a number of dedicated sports OTT internet services, with (among others) Perform Group launching its ‘DAZN’ service in Germany, Austria, Switzerland and Japan and SFR launching a similar OTT proposition in France. These direct to consumer sports offerings are seeking to follow services such as Netflix in the entertainment sector and to offer access to a range of live sport often at a lower price point than a full subscription to a traditional pay-tv sports service.¹³⁵

In the case of both Perform and SFR, these new OTT services launched off the back of substantial investments in acquiring Premier League rights for the 2016/17 – 2018/19 rights cycle.¹³⁶

Whilst the use of interactive services presents a fantastic opportunity for rights holders and licensees, it does need to be carefully managed within the relevant media rights agreement. In particular, rights holders need to ensure that the integrity of their product (e.g. sport, league, team etc.) and the rights granted to their commercial partners are not compromised by any additional content and/or services provided by their licensees. As such, rights holders look to impose strict conditions and/or ensure that they retain approval rights

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

over what can be broadcast as part of a licensee's interactive services. Furthermore, particularly where an interactive service relates to a category of rights already granted to an official sponsor (e.g. official data partner or betting partner), the media rights agreement will seek to prohibit the applicable licensee from exploiting the service during its coverage unless licensed through the relevant official partner (e.g. a licensee should be prevented from providing match statistics unless that data is licensed from the official data partner). In addition, where a rights holder is seeking to exploit rights itself (e.g. Manchester City's distribution of content via its mobile and smartwatch apps), it is critical that this exploitation is carved out of the media rights agreement (e.g. as part of the reserved rights).¹³⁷

Coming back to OTT it is important once again to stress the following issue, that is how these and other planned OTT services by the likes of Discovery for Eurosport develop in the marketplace and whether they are complementary to or a direct challenge to established broadcast sports channels.¹³⁸

Undoubtedly, it is noteworthy to attract the attention to the 'geo-block' problem. Keep looking at the scope of restrictions on contractual requirements to 'geo-block' content to particular EU member states, the EU Commission published its proposed Cross-Border Portability Regulation in December 2015. After more than 12 months of negotiation between the European Council and the Parliament, the final version of the Regulation was agreed in February 2016. The Regulation will require service providers to allow their digital services to be used by subscribers on a temporary basis outside of the territory of residence and in the wider European Economic Area (EEA). Once the Regulation is formally adopted service providers will have 9 months to implement and start offering cross-border portability to subscribers. It is going to be a demanding work for lawyers who are definitely will draft contractual provisions that (within scope of law) ensure the greatest protection for major broadcast partners if lawful portability turns into unlawful cross-border access which undermines high value exclusive media rights.¹³⁹

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

As for the audio-visual services the European Commission had excluded them including broadcasts of sport events from the scope of its proposal, therefore generally allowing geo-blocking as a means to protect territoriality of sport broadcasts.¹⁴⁰ Eventually, it is an effective tool against piracy, nonetheless it absolutely restricts consumers from access to affordable quality and price audio-visual content from other than host member states of the EU.

Finally, it is important to keep an eye on the Brexit and its effect on cross-border portability: will UK service providers be required to cease offering portability or will the UK continue to abide by EU rules in relation to copyright?¹⁴¹

3.2. Keep Growing

Sports and entertainment have become an unparalleled business combination resistant to tough environment of political and economic unpredictability in numbers of followers and thus revenue. Prognoses of many leading analytical agencies about growth of the sport market have been proved and even beyond their expectations.¹⁴²

Since 2010 for anyone who has been wondering whether the value of sports broadcasting or media rights across the globe has already peaked, financial end of each year ever since has served to provide a very big reminder that bubble is not likely to burst anytime soon – certainly not for the premium properties which are seen by broadcasters as more crucial than ever.¹⁴³

The continuing growth in the value of sports rights during the last seven years is primarily down to two major factors. Firstly, the way viewers use up information has been changing dramatically. They prefer to watch more programming than ever before on an on-

¹⁴⁰ 'EP: IMCO committee votes on Geo-blocking' (2017) EUOffice <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0289>> Accessed 12 September 2017

¹⁴¹ Alex Slade, 'BT Sport' (2017) LawInSport & BASL Sports Law Yearbook 2016/17 <<https://www.lawinsport.com/articles/item/a-current-view-of-the-sports-media-rights-market-from-head-of-legal-sport-at-bt>> Accessed 12 September 2017

¹⁴² Adam W. Jones, 'At the gate and beyond Outlook for the sports market in North America through 2019' (2015) PwC Sports Outlook 1,8 <<http://www.pwc.com/us/en/industry/entertainment-media/publications/assets/pwc-sports-outlook-north-america-2015.pdf>> Accessed 12 September 2017

¹⁴³ Andrew Ryan, 'The Evolution Of Sports Media Rights' (2016) LawInSport & BASL Sports Law Yearbook 2015/16 289

demand basis and using different devices. This has not fundamentally disrupted the manner in which broadcasters monetize content through advertising (described above) as it might have seemed from the very start. When it all began, viewers were able to skip advertisements on a recording simply because the traditional prime time premium advertising slots did not come up to the idea how to insert commercials into the stream. Finally, they found a solution and now if you want to skip an advertisement (not possible everywhere) you have to pay for watching on the device without ads.¹⁴⁴

Secondly, particularly evident in the United Kingdom, is service providers packaging television/ broadband/ communications propositions and competing with each other to an extent on the strength of their television content. The availability of live sports content is one of the primary battlegrounds. Nowhere did this play out more publicly than in the fight for football rights.¹⁴⁵

Not to make mere statements the following examples with certain figures are given further. In Premier League obsessed Britain, there was only one figure that mattered in the world of sports media rights in 2015 – £5.1 billion. That was the aggregate amount that the world's richest football league sold its domestic live broadcast rights for. Sky acquired five of the seven packages on offer, while BT snapped up the other two.¹⁴⁶

The three-year deal started with the 2016/17 season. Perhaps the most staggering element of the process was not the total rights fee itself (the fee is still dwarfed by the NFL's domestic rights deal, for instance), but the fact that the final bids represented a 71% increase on what was achieved for the previous three-year period.¹⁴⁷

With reference to the Guardian the upcoming bidding is going to be even more fierce and expensive: 'Sky could be forced to pay an extra £600m annually to retain the lion's share

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ 'Premier League in record £5.14bn TV rights deal' BBC.COM by BBCNews (2015)
<<http://www.bbc.com/news/business-31379128>> Accessed 12 September 2017

¹⁴⁷ Andrew Ryan, 'The Evolution Of Sports Media Rights' (2016) *LawInSport & BASL Sports Law Yearbook* 2015/16 289

of Premier League matches when the next rights auction launches this year, with Amazon emerging as a potential competitor for the biggest prize in UK sport broadcasting.¹⁴⁸

Google, Apple, Facebook and Netflix are other possible rivals for Britain's most valuable sports rights, which are split between Sky and BT under the current three-year deal. The prospect of a heated auction involving deep-pocketed tech firms has led analysts to estimate that Sky might have to pay a premium of up to 45% on the near £4.2bn it paid last time. That means a further £1.8bn, or £600m annually, to keep Silicon Valley off the ball'.¹⁴⁹

Another fierce battle again broke out between two British heavyweights in 2015/2016 season marked the first year of BT's exclusive live coverage of the UEFA Champions League for which they paid £897 million back in 2013. BT's exclusive rights to the Europa League supplement this.¹⁵⁰

August 2015 also marked BT's first foray into major cricket rights, securing exclusive rights to the 2017/18 Ashes series where England sought revenge for the 2013/14 series whitewash.¹⁵¹

The fact of the matter is that the growth in sports rights fees over the last seven years has been exceptionally strong. The situation is unlikely to change not until well-funded organizations keep considering that certain sports content is absolutely essential to maintaining or winning ground in their fight for supremacy, such a competitive environment is mere to lead to stagnation in growth anytime soon.¹⁵²

To sum up, the sale of media rights is of fundamental importance to the commercial programs of most (if not all) rights holders, and generally represents the single most important source of revenue.

¹⁴⁸ Mark Sweney, 'Sky faces paying extra £1.8bn for Premier League broadcast rights' TheGuardian.Com (2017) <<https://www.theguardian.com/media/2017/aug/11/premier-league-broadcast-battle-hots-up-as-sky-face-doling-out-extra-600m>> Accessed 12 September 2017

¹⁴⁹ Ibid.

¹⁵⁰ Andrew Ryan, 'The Evolution Of Sports Media Rights' (2016) LawInSport & BASL Sports Law Yearbook 2015/16 289

¹⁵¹ Sam Dean, 'BT Sport sees off Sky with £1.2bn deal for Champions League football rights' The Telegraph (2017) <<http://www.telegraph.co.uk/business/2017/03/06/bt-sees-sky-12bn-deal-champions-league-football-rights/>> Accessed 12 September 2017

¹⁵² Andrew Ryan, 'The Evolution Of Sports Media Rights' (2016) LawInSport & BASL Sports Law Yearbook 2015/16 289

The emergence of new technology provides rights holders with an opportunity to exploit new packages of rights, and encourages new entrants to enter what has traditionally been a closed marketplace, thereby enhancing the revenue that a rights holder can generate from its packages. Also, the increase in new platforms for viewing content provides a vast increase in the opportunities for the distribution of sports programming by enabling content to be accessed in more territories around the world and facilitating increased exposure for less mainstream sports and/or content for which broadcasters do not provide linear television coverage.¹⁵³

The potential for the creation of new packages of rights means (now, more than ever) that lawyers need to pay careful attention when defining the scope of rights in the relevant media rights agreement so that the exclusivity afforded by each package does not overlap or conflict with the exclusivity afforded by any other package. For example, convergence has meant that the lines between 'television', 'internet' and mobile' are quickly disappearing, making it very difficult for rights (in particular the exclusivity of these rights) to be granted by reference to technology. As such, media rights sales are now generally made on a technology neutral basis (which allows rights to be exploited on all platforms and via all devices), with exclusivity granted on the basis of the following:¹⁵⁴

- type of programming (e.g. live, as-live, highlights, clips etc.);
- territory;
- language;
- payment mechanism (e.g. free, pay-per-view and pay); and
- transmission type (e.g. linear or on-demand).¹⁵⁵

It is also important, particularly when dealing with long term agreements, that potential rights are not locked away, for example it is important to ensure that where (at the time of the deal) certain rights are not able to be exploited, these are reserved for potential exploitation in the future. As such, when drafting media rights agreements, it is vital to consider the long term commercial plans of the rights holder and to ensure that the grant of rights does not restrict the potential opportunities afforded by new technology.¹⁵⁶

¹⁵³ Tom Burrows, 'The Social Media Revolution?' (2016) *LawInSport & BASL Sports Law Yearbook 2015/16* 297

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

CONCLUSION

It seems impossible to finish the topic due to the fact that European news of various deals for media rights packages and new contracts which are being signed with different platforms to broadcast sports events is coming non-stop. Thus, raising new issues for discussions, studying and settling. The point is when one starts working on a particular topic there are so many other things that matter and need to be studied in order to get extended understanding of the chosen topic.

In the process of writing this paper the issues of historical matter of sports, the establishment and development of sports law as an independent area, the dynamic of changing in the attitude and understanding of the topic by experts were highlighted and illustrated by various examples.

Indeed, the aim of the current work was fulfilled and the understanding of the process of selling and buying media rights and its compliance with the European competition rules, and possible problems which emerged and ways to address them, were covered. Variety of sources were used and studied during the writing but the principle one which was laid down into the work was the 2007 Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport. It turned out to be a precious source of well-thought and structured as well as clearly expressed decisions and opinions accounting a lot of facts and issues of different types and certainly from the legal standpoint this material allowed not only to get the knowledge but also to understand reasons of the decisions and taken policy in the Europe. More over, it became that pillar to structure this work and to reveal the questions which were put in the beginning especially for those who have little understanding in the topic. And as it has been stressed before in the course of ten years, these data have remained absolutely up-to-date.

To conclude, these theses were regarded as the starting point for deepening into the sports law area which opens a broad field for either theoretical or practical application of sports-, legal- and technology- oriented knowledge and interests.

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Abstract

Deutsch

Sport und Recht haben sich zu einer sich ständig entwickelnden Konstruktion entwickelt, die perfekt in die moderne Welt passt. Beide sind kompliziert, vielschichtig und in der Lage, als Einzelspieler gut zu agieren, spielen aber auf jeden Fall besser als "Team".

Der Sport selbst hat eine doppelte Natur durch erhebliche Auswirkungen auf soziale und kulturelle Entwicklung sowie wirtschaftliche. In der Zwischenzeit ist das Gesetz das Mittel, um das Interessengleichgewicht zwischen sozialen und kulturellen Auswirkungen und sicherlich wirtschaftlichen Fragen zu erhalten, die so geregelt werden müssen, dass sie die gegenseitige Entwicklung nicht behindern.

In jüngster Zeit sind "Sports Topics" durch den schnellen Fortschritt der Technologien, die einerseits den Zugang zu den Sportveranstaltungen für ein großes Publikum erleichtern, noch aktueller geworden. Auf der anderen Seite schaffen solche brandneuen Technologien neue Beziehungen, so dass neue rechtliche Fragen geregelt werden müssen.

Das führende "Spielfeld" der aktuellen Arbeit ist die Europäische Union und die "Ausrüstung", die sie zur Regulierung von Wettbewerbsfragen einsetzt, die sich genau mit dem kollektiven Verkauf von Medienrechten befassen.

Das erste Kapitel widmet sich der Geschichte des Sports und seinem allgemeinen Verständnis, das sich im Laufe der Jahrhunderte verändert und aufgebaut hat. Es wird auch die Frage geprüft, ob ein solcher Bereich wie das Sportrecht existiert und ob es ein unabhängiger Bereich des Gesetzes oder nur die allgemeine Gesetzgebung ist, die auf Sport angewendet wird. In der Tat wird das Thema "Sportspezifität" hervorgehoben.

Das zweite Kapitel widmet sich der Entwicklung des Sportmedienrechtsgeschäfts, das derzeit als eines der profitabelsten und nicht nur in der Sportwelt gilt. Es untersucht Themen wie den Verkauf und den Kauf von Sportmedienrechten unter Berücksichtigung der Wettbewerbsregeln in der EU. Es basiert in erster Linie auf dem Arbeitspapier der Kommissionsdienststellen - EU und Sport: Hintergrund und Kontext - Begleitdokument zum Weißbuch Sport und mehreren strittigen Fällen und Urteilen.

Das dritte Kapitel behandelt die neuesten Nachrichten aus dem Bereich Sport, insbesondere Sportmedienrechte und Rundfunk. Es ist die Reflexion der wichtigsten Veränderungen, die bereits stattgefunden haben und die sich in dem sich schnell verändernden Bereich des Sportrechts, insbesondere der Rechte von Sportmedien, ergeben und wie es seine weitere Entwicklung beeinflussen könnte, insbesondere im Hinblick auf die intensive Integration von Fortgeschrittenen Technologie in der Umgebung.

Diese Arbeit ist der Ausgangspunkt für die Vertiefung in den Bereich des Sportrechts, der ein weites Feld für die theoretische oder praktische Anwendung von sport-, legal- und technologieorientierten Kenntnissen und Interessen eröffnet.

English

Sport and law have twisted into a single constantly developing construction which perfectly fits in the modern world. Both are complicated, multi-structured and capable of acting well as a 'single player' but, definitely, play better as 'a team.'

Sport itself has a dual nature by significant effects on social and cultural development as well as economic. Meanwhile, law is that tool to maintain the balance of interests between social and cultural effects and certainly economic issues which need to be regulated in the way not to hinder the development of each other.

Recently 'Sports Topics' have become even more actual due to the quick advancement in the technologies which, on the one hand, make the access to the sports event easier for large audiences. On the other hand, such brand new technologies create new relationships thus new legal issues to be settled down.

The lead 'playing field' of the current work is the European Union and the 'equipment' it employs to regulate competition issues dealing precisely with the collective selling of media rights.

The first chapter is devoted to the history of sport and general understanding of it, which has been changing and building up through centuries. It is also considered the question whether such area as sports law exists and whether it is an independent area of the law or just the general legislation, which is applied to sports. Indeed, the issue of 'sport specificity' is highlighted.

The second chapter is devoted to the development of the sports media rights business, which is currently, considered to be one of the most profitable and not only in the sporting world. It examines such issues as the process of selling and buying sports media rights through the prism of competition rules adopted in the EU. It is primarily based on the 2007 Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport and several striking cases and judgements are given.

The third chapter covers the latest news taken from the field of the business of sport, in particular sports media rights and broadcast. It is the reflection of the key changes that have already occurred, and those are coming in the fast-changing field of sports law, especially sports media rights, and the way it might influence its further development especially in line with the intense interference of advanced technologies in the area.

This work is the starting point for deepening into the sports law area which opens a broad field for either theoretical or practical application of sports-, legal- and technology-oriented knowledge and interests.