

Competition law in Sport

Where are we now, and where are we going?

21 May 2025

01

Where are we now?

The increasingly important role of competition law in sport

James Segan KC and
Ava Mayer



Where we were

Sport not exempt, but does benefit from the *Meca-Medina* justification



Wouters and Others, C-309/99, [2002] E.C.R. I-1577, [2002] 4 C.M.L.R. 27, ¶¶97

Meca-Medina and Majcen v Commission, C-519/04 P, [2006] ECR I-6991, [2006] 5 CMLR 1023, ¶¶42

Where we were

Key cases

- *London Welsh v RFU* (June 2012, James Dingemans QC, Ian Mill QC, Tim Ward QC) at ¶¶39, 41, 47
- *Bruce Baker v British Boxing Board of Control* [2014] EWHC 2074 (QB) at ¶¶15-21
- *Galatasaray v UEFA* (October 2016, CAS 2016/A/4492) at ¶¶63-71, 74-76, 77-79
- *QPR v EFL* (October 2017, Lord Collins, James Flynn QC, Thomas de la Mare QC)
- *PRL v Saracens* (November 2019, Lord Dyson, Aidan Robertson QC, Jeremy Summers) at ¶¶32-42, 43-46
- *Poulter v PGAET* (April 2023, HHJ Sycamore CBE, Charles Flint KC, James Flynn KC) at ¶¶149-161, 169-176
- *CAA Base Ltd v The FA and FIFA* (30 November 2023, Lord Collins, Christopher Vajda KC, Lord Dyson) at ¶¶179-182

Where we were

Meca-Medina applied relatively expansively, raising a higher hurdle for establishing infringement of competition law



- Margin of appreciation afforded to regulators
- Narrow approach to object infringements
- *Meca-Medina* justification available for both object and effect

The CJEU hat-trick



Super League

- Impact on economic activity -> TFEU applies
- Need for substantive & procedural access criteria that are transparent, objective, precise, non-discriminatory and proportionate
- Art 101(1), 102 and 56 engaged
- Relevance of market dominance?



ISU



- Lifetime ban for participating in non-ISU events
- Clear restriction by object
- Court reiterated the need for transparent, objective, precise, non-discriminatory and proportionate rules
- *Meca-Medina* does not apply to restrictions by object

Royal Antwerp

- Home grown player rules restricted the movement of workers
- Expansive view of restriction 'by object' under Article 101(1)
- Potential infringement of Article 45



After the hat trick

Post-Superleague, ISU and Royal Antwerp

- Sport is not exempt from EU law, despite its social and educational importance (Article 165 TFEU)
- More intrusive standard of review
- More expansive approach to 'by object' restrictions
- Fewer escape routes: *Meca Medina* not available for 'by object' restrictions



Manchester City v Premier League

(25 September 2024, Sir Nigel Teare, Christopher Vajda KC, Lord Dyson)

at ¶163

“It follows, in our view, that restrictions:

(i) that are justified by the pursuit of legitimate objectives in the public interest,

(ii) where the specific means used to pursue those objectives are genuinely necessary for that purpose, and

(iii) any inherent effect of, at the very least potentially, restricting or distorting competition, does not go beyond what is necessary, in particular by eliminating all competition

are not restrictions by object.

According to ESL such restrictions are, however, able to benefit from the Meca-Medina principle. If that were not so, that principle would become a dead letter.”

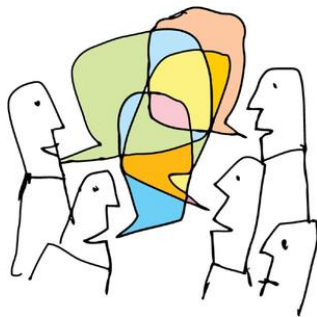
Where we are

AG Opinions in *RRC*, *Rogon* and *Tondela* (15 May 2025)

- *Meca-Medina* justification not available for a ‘by object’ restriction
- Restriction ‘by object’ is to be narrowly construed
- Sports regulators ought to be afforded a wide margin of appreciation in pursuing legitimate objectives in the public interest; but who counts as a regulator?
- *Meca-Medina* as ‘regulatory ancillarity’

Where does that leave us?

The "normalisation"
of sport law within
the framework of
competition law?



The failure to
recognise the
distinct character of
sport as an
economic
enterprise?

02

Where are we going?

Justifying sporting policies and rules in the new legal landscape

Ravi Mehta



Key Lessons:

1. Object infringements: alive and kicking!
2. Effect infringements and evidence: are these necessary and/or possible?
3. Justification ever possible: what role for Meca-Medina?

But first.....for something completely different?



Take back control?

- The only pre-Brexit decision is International Skating Union (GC) (16 December 2020)
- Poulter v PGAET at [127]-[130] - binding in UK law, subject to certain limited exceptions: s.60A(2), (7) CA 1998
- Will we go it alone? (s.6(1)-(2) EUWA 2018); cf. CAA base v. ROGON/RRC. Manchester City v PL - reliance on post-Brexit CJEU authorities (at [153] and [155]).



Topic 1:

Object infringements: alive
and kicking?



What is an “Object” infringement?

“The concept of restriction of competition ‘by object’ can be applied only to certain types of coordination between undertakings which reveal **a sufficient degree of harm to competition** that it may be found that there is **no need to examine their effects**, [...].

Case C-67/13 P *Cartes Bancaires v Commission*, (ECLI:EU:C:2014:2204), at [58].

(A)Live & Kicking

| Object | ≠ Object |
|--|---|
| <u>ISU, Superleague</u> (Rival competitions) | <u>Poulter v PGAET</u> (Rules on Conflicting Tournaments) |
| <u>Manchester City v Premier League</u> (APT Rules) | <u>RRC Sports</u> (at [64]) (Fee Cap) |
| <u>Royal Antwerp</u> (Rules on 'home-grown players') | <u>CD Tondela</u> (No poach regime) at [50]-[59] |
| <u>CAA Base</u> (FIFA rules on agents' fees) at [282] | <u>Saracens</u> (Salary Cap) |
| <u>FIFA v BZ</u> (Player transfer rules) – see [141]-[148] | <u>ROGON</u> (Agents' rules) |



Topic 2:

Effect infringements and
evidence

- Often pleaded in the alternative (see e.g. SuperLeague, ISU, Manchester City)
- Requires proof of effect on competition (expert evidence)
- What is needed? SuperLeague at [196]: “genuine, quantifiable efficiency gains” in pursuit of legitimate objectives such as observance of the rules of the game, meritocratic competition, or solidarity redistribution.
- Early take up: Hendry v World Professional Billiards and Snooker Association [2002] E.C.C. 8 at [112] per Lloyd J;
- More limited recent success: e.g. Poulter v PGAET at [180]

Topic 3:

Justification & what role for Meca-Medina?

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Justification?

For *object* and *effect* restrictions:

(1) Article 101(3) TFEU: Disapplies Article 101(1) for agreements, decisions, or practices

“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 benefit, and which does not:

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

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

AG Emiliou in RRC at [75]-[95]

(2) In the sporting context: the Meca-Medina rule (Case C-519/04 P, (ECLI:EU:C:2006:492) at [45]-[55]). See AG Emiliou in RRC at [49]:

“agreements which restrict the freedom of action of the undertakings involved **do not fall within the prohibition** laid down in Article 101(1) TFEU if: (i) they are **justified by the pursuit of one or more legitimate objectives in the public interest** which are not per se anticompetitive; (ii) the **specific means** used to pursue those objectives are **genuinely necessary** for that purpose; and (iii) even if those means prove to have an inherent effect of, at the very least potentially, restricting or distorting competition, that inherent effect **does not go beyond what is necessary**, in particular by eliminating all competition”

But:

- Does it apply to object infringements?
 - The CJEU says “no” (ISU at [111]-[114]; SuperLeague at [185]-[186]); FIFA v BZ at [149]-[152]).
 - Domestic Arbitral Panels say “yes” (CAA Base Ltd v FA and FIFA at [180]-[182]; Manchester City v PL at [162]-[163] per C. Vajda KC).
- What does it give a litigant? AG Emiliou in ROGON at [32]-[54]



Thank you for listening!

Ravi Mehta

Blackstone Chambers

03

Where to commence proceedings?

Fora for litigation

Tom Coates



Where can I bring my claim?

Do I have to arbitrate?

- Competition issue may fall outside the scope of an arbitration clause absent express reference: *Ryanair Ltd v Esso Italiana Ltd* [2013] EWCA Civ 1450; cf. Case C-352/13 *CDC Hydrogen Peroxide*.
- But maybe not where target of the claim is the agreement containing the arbitration clause? Cf. Case C-595/17 *Apple Sales*.
- Arbitration agreements arguably unlawful insofar as they impede full and effective judicial scrutiny of breaches of competition law: Case C-124/21 P *ISU*.

Where can I bring my claim?

Jurisdiction issues

- CAT has jurisdiction over private law claims for breaches of the Chapter I / Chapter II prohibition: s. 47A Competition Act 1998.
- Mixed claims must proceed in the High Court.



Where do I want to bring my claim?

What relief do I want?

- Competition Appeal Tribunal is ordinary venue for damages actions.
- But it can now grant declaratory relief as the sole remedy: s. 47A(3A) and s. 47DA(5) Competition Act 1998.



Where do I want to bring my claim?

CAT procedures: collective proceedings

- Claims raising similar issues of law / fact: s. 47B CA98.
- Opt-in or opt-out possible.
- Aggregate damages: no individualised assessment.
- Preliminary certification stage.
- Close case management by Tribunal and approval of settlement in opt-out claims.



Where do I want to bring my claim?

CAT procedures: the fast-track procedure

- Rule 58 CAT Rules; designed for individuals / SMEs.
- Where a case is designated, there must be (i) a final hearing within six months and (ii) costs capping (but still expensive).
- Factors include length, complexity, need for disclosure etc.
- Limited use so far; ask for case management in the alternative.

Where do I want to bring my claim?

Strategic factors

- Open justice remains fundamental in CAT and High Court.
- Cf. *St James Holdings Ltd v FA* (Case 1402/5/7/21).



04

Alternatives?

Restraint of trade

Tom Mountford



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Restraint of Trade

Nature of the Jurisdiction

- 300 year-old doctrine
- “[t]he basis for the doctrine of restraint of trade is that as a matter of public policy a person should not be restricted in his or her ability to earn a living by an obligation that goes beyond what is necessary to achieve some legitimate and desirable aim.” (Lewis and Taylor)
- Cf competition law, focus on the individual, not the market



Restraint of Trade: the test

Proactive Sports Management v Rooney [2012] FSR 16

- First, is the covenant in restraint of trade?
For the party alleging a restraint to prove it.
- Second, if restraint established, burden shifts to party seeking to enforce it to show reasonable between the parties
(goes no further than reasonably necessary to protect legitimate interests)
- Third, if so, burden shifts back to the party challenging the restraint to show not reasonable in the public interest.



Restraint of Trade (unrestrained)

European law no longer supreme

- *Days Medical* [2004] EWHC 44 (Comm) line of cases held European law supreme; must apply same principles as EU/UK competition law to restraint of trade challenges.
- Post-Brexit, each body of law to be applied in accordance with its own terms.
- *CAA Base*– Lords Collins & Dyson - restraint of trade **not** impliedly excluded by CA 1998.
- What if competition authorities seised?



Back to the future?

Older Restraint of Trade cases in sports law

Examples of Unlawful Restraints of Trade

- *Eastham v Newcastle United* [1964]. Retention of a player's registration until a transfer fee paid by new club
- *Greig v Insole* [1978]. Rules excluding cricketers who had signed with Kerry Packer from test and county cricket
- *Hendry v WPBSA* [2002]. Rules preventing snooker players participating in unsanctioned tournaments



Running restraint of trade challenge alone

Are you being served by combining with a competition claim?

- Strict pleading requirements in competition law challenges, which amount to "serious allegation of breach of a quasi-public law", "notoriously burdensome allegations".
- Issues of market definition/need for economist input.
- Evidential requirements.
- Cost of competition proceedings.



Running restraint of trade challenge alone

Potentially helpful features of restraint of trade doctrine

- Justification limited to stated legitimate aims? (*Office Angels* [1991])
- Relevant point of time for assessment of reasonableness – when contract/rules entered into? (*Quantum Actuarial LLP* [2022]).
- Revive debates on restraint of trade test in sport and standard of review? (see Carnwath J in *Stevenage Borough Football v Football League* (1996)).
- Fancy sounding statements of high principle (i.e. Lord Shaw, 1916)

“a man's aptitudes, his skill, his dexterity, his manual or mental ability...There is no public interest which compels the rendering of those things dormant or sterile or unavailing; on the contrary, the right to use and to expand his powers is advantageous to every citizen, and may be highly so for the country at large.”



Questions?

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