MONOPOLY: An Inherent Feature of the Sports Market or the Result of Sports Autonomy?

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MONOPOLY: An Inherent Feature of the Sports Market or the Result of Sports Autonomy?

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The notion of monopoly in the sports sector is a very common one. In fact it is no secret that with very few exceptions all athletic championships are organized monopolistically in the sense that there is only one international federation worldwide, only one national federation in every country and only one championship for each sport. Over the years the athletic system has created a unique product, the sports show, then a special market, the sports market and in this market it has attracted the consumers with the highest purchase capacity. In this environment and under the protection of the monopoly, the sports sector has evolved from a social activity to an economic one and then to a multi-billion dollar business.

Today there are voices challenging this monopoly. This paper examines the connection of the monopolistic organization of sports to the specificity of sport and to the autonomy of sport in order to discover whether this monopoly was established in order to “corner the market” or in fact whether it is an inherent feature of the sports sector perpetuated by its autonomy but in the same time also supporting sports autonomy.
I. The Formation of National Federations

Team sports, professional or amateur, in all Member States of the European Union are organized in sport clubs which in turn set up one national association per sport, called national federation. These federations organize national championships, divided into leagues depending on the capacity of the sports clubs involved. The national federations are members of the international federation of the sport, which in turn organizes the sport worldwide. In some cases (as in football), the international federation is divided into continental confederations. In this case the national federation’s regulations are subject to the confederation’s approval. The international federations have their headquarters in one country (commonly Switzerland) and obtain the legal form required by this country’s law. The legal form however is of no importance to the sporting world, since all the rights and obligations of the international federation derive not from the State law but from the "sports system" as the national federations are bound contractually to comply with the statute, regulations and decisions imposed by the international federation. The legal form is only important in its dealings with third parties, not national federations of the sport.¹

Usually all competitions held under the auspices of a national federation must be played between two club members of that federation or members of secondary or subsidiary associations integrated in the national federation. The team each club deploys consists of players whose ability to participate in this club is awarded by the national federation. Professional players must be registered in that capacity to their national association and reported as employed, or formerly employed in a particular club.

II. The Need for a Monopolistic Organization in Sports

A single league ensures a higher level in the product as it guarantees that the best performing players in each country compete in a single tournament and so there is an undisputed champion in each country or region and finally an undisputed world champion. If there were many championships in each sport, there would be one champion for each league and many world champions. So in football there would be a world champion for FIFA, and one more football champion for every other football international federation that would exist. If this were the case the champion would be

deprived of all its prestige because it would never be certain which of all champions is
ultimately the best and thus the spectators-sports fans would lose interest in the sports
spectacle and the market value of the sports product (the sport show) would be
severely damaged. It is known that fans often compare current champion with older
retired legends of the sport and wonder who would win a match between them. If
there were many different international federations and not a monopoly of federations,
fans would be kept wondering what would the outcome of a match be even among
active athletes who would never face each other just because they happened to
compete in different leagues.\(^2\)

It is true however that even in sports where there is no monopoly, such as
championship boxing, or the mixed martial arts (MMA) championship, efforts are
made to satisfy the viewers and players from different leagues meet in the ring.
Usually, however, most attempts result in failure due to third parties such as players
agents claims or ambitions, personal grievance, grudge etc.\(^3\)

III. The Meaning of Monopoly in Practice

Sports worldwide are traditionally organized in a monopoly and we don’t take
often the time to think whether this situation is right. Even when one poses this
question, the prospect of abolishing a corner stone institution such as the monopoly in
sport, is demonized. We are used to think of monopoly as an inherent feature to the
organization of sport. Therefore, we should devote a few lines to explain what this
means in legal terms.

Competition law provisions are the legal instrument that tackles the risk of
creating monopolies, oligopolies and market dominance.\(^4\) Usually lawyers handle
sports clubs participating in a tournament as if they were common businesses
competing in a common market. If this were the case then it is true that competition
law provisions could be invoked. However this view is short-sighted. Sports clubs in a
league are not truly competing businesses as much as the sports league with all the

\(^2\) See article “America Loves A Sports Monopoly: The Case with the UFC”

\(^3\) See article “MMA Monopoly”
http://recreation-and-sports.myblogzone.info/2011/03/mma-monopoly/

\(^4\) See article “Monopoly Controls in Organized Sport”
sports clubs playing each other is not really a competitive market (in competition law terms). The teams are co-operating as co-producers of the sports spectacle in the same way that the actors of a theatrical spectacle work together. But while the actors in a theater compete with other theatres in the theatrical market, there is only one championship for every sport and therefore only one sports spectacle provider in every market. Thus the viewer has no choice but to attend the one spectacle provided from every international federation and therefore all broadcasting right’s profits for every sport are collected by this international federation which is exclusively organizing the championship. The federation in turn distributes the profits to the sports clubs producing the spectacle.\textsuperscript{5} It is obvious that apart from a strong competitive mood between players and fans, sports clubs interests are common, as are profits.\textsuperscript{6}

This particularity creates many problems for Courts attempting to resolve disputes in sports and within the framework of competition law. Even the European Court of Justice (ECJ) in cases brought before it, ruled that teams are competing companies in the sports entertainment market. This has obviously caused many problems to the athletic establishment. A solution to the problem came by recognising that sports clubs are businesses but of a special nature, and for the sake of their specificity certain exceptions should be recognised to the applicable legal provisions.\textsuperscript{7}

IV. Specificity of the Sports Monopoly

If sports clubs are considered as undertakings competing in a sports market, then the so called paradox of the sports market arises distinguishing this market from any other market. The features of the paradox sports market are the following:\textsuperscript{8}

1. The sports market is the only market where the fate of the competitors are so interdependent that the existence of each enterprise depends on the existence of others but also to a large extent the financial health of each company depends on the financial health of the other.

2. There are some rules of the game, introduced not by the State but by the sports authorities and regard the way the game is played, the rules of competition in the sports field. These rules are an inherent part of the product. We must therefore raise the question whether there is room for additional rules of competition law.

3. Competition therefore among sports clubs is not an aspect of the market as in every other market but an innate part of the product produced. In other words, competition does not appear in the sports market system by the force of supply and demand, but it is produced artificially by the participating sports clubs in such a way that the competition itself eventually becomes the product. In that sense when the lawmaker imposes rules of competition law to such a market the lawmaker dictates the features of the product. This would mean that legislation instead of market regulator, is transformed either into a tool in the production line or a part of the product!

Therefore it is only sports federations that should be regarded as sports enterprises that produce the spectacle, which ultimately is the product sold to consumers. These companies are active in the entertainment market which includes all shows and all recreation providers. If there were no monopoly but many different federations and leagues in the same sport, each federation would be competing hard with all the other federations in the same sport, but also competing less hard with all federations in different sports and also to some extent also competing all show producing businesses (i.e. theatres) or even every business operating in the field of entertainment (shops, bars, etc.). But in a monopoly the sports show business is so rewarding that every sports federation can prosper inside the boundaries of its own personal market without worrying about prospective intruders nor needing to attract viewers from other similar markets such as entertainment market in general.

When the rules of competition law are applied to federations usually this also affects the clubs, the championship and also competition among them. In cases such as the Bosman case, as specified in Graf case, cases Deliege, Lehtonen, Piau, Deutscher Handballbund, Wouters, Meca-Medina, brought before the European Court of Justice, sports federations appear as parties but eventually teams and players are affected and ultimately the product, the championship. What should be done in these cases? In the end who is producing the product (the show) and who is selling it? Is it the federation, or the sports clubs?
V. The Specificity of Sports Agents (owners, players, fans)

All markets operate based on certain rules. So in principle the participants in each market are profit-driven and therefore in any market activity, the rule of supply and demand is applied. In sport, however, the agents involved have a different mindset than that of agents active in all other markets.

In this sense team’s owner (especially team sports) are investing huge sums of money to support these groups without expecting relevant profits. They sometimes remain for many years at the helm of these companies and appear as satisfied investors even in cases where there are minimal profits or even damages. Many are successful entrepreneurs, managers, practitioners in other business areas and would otherwise never invest in a company without the possibility of regaining at least the capital invested and before buying the company would perform extensive risk analysis tests. Yet they are willing to ignore all warnings of economic advisers for viable investment and appear as reckless, eager to spend investors when it comes to investing in the sports club they support and very unwilling to buy a profit making team they do not support.

Also the players who are involved as employees in a sports club, although they are professionals, doing this job for a living, sometimes make decisions when deciding to sign in a club, without considering the amount offered or the prospects for their career as would any prudent professional. Often players refuse best deals, tattoo on their body the trademark of the employer, or refuse stubbornly and contrary to common sense an offer by a specific employer. Sometimes athletes even avoid playing matches against their previous employer. Quite often we see the press raising questions whether a certain athlete will be able to perform in a match against the former team-employer. All this sounds reasonable in sport but incomprehensible when talking about other businesses.

Even consumers in sports, called fans, do not decide to buy the best product, like all other consumers. A team can offer the worst show in a season’s championship and yet this does not mean that consumers-fans will turn them their back next year or buy tickets to other sports club’s matches. Instead sometimes it seems of little importance whether the team offers a good product. The consumer in sport will buy season tickets and shirts of his own team or will not buy at all. Even in cases when the supported team commits a doping offense or there is corruption of any kind to win a
match and thus the show offered to consumer-fans is undoubtedly a spoiled good, they will not look for another provider or boycott this one, as normal consumers would do but in most cases will continue supporting their team.

It is therefore evident that in the sport business all market agents, i.e. employers, employees, consumers do not operate with the criterion of market logic, do not act on interest as in other markets. Instead they appear as sentimental, persistent consumers, who often are born consumers of whatever product is sold by a particular business (sport club) and cannot be otherwise convinced by advertising campaigns or logical arguments. They remain fanatically consumers or employees or employers of a certain business (sport club) with a religious reverence. Their relationship with the sport club is similar to the relationship that is created due to an ideology.

VII. Conclusion

Nowadays, there is no doubt that sport seen even as an economic activity, is a very special activity with its own unique characteristics. It is a unique market, selling a unique product and all agents operating in this market have also a very special behavior one that is very different from all other market agents. In that sense the monopoly in the sports market could be explained as just another special feature of the sports market and so one could say that the monopoly is an inherent feature of the sports market. However the specificity of sport may allow some exceptions to the general rules but it should not give sport a licence to conveniently violate any rule. The question therefore is not if it is beneficiary for the sport business to operate in a monopolistic environment because there is no doubt that it is. In fact it is every businessman’s dream to have a monopoly. The question is DOES SPORT NEED A MONOPOLY TO EXIST?

If the sport monopoly ceased to exist it is certain that as far as profits are concerned they would be more widely distributed to more agents that would be active in the sports market. There is no serious indication that the show, the main product of the sport business would be harmed. In fact there are many reasons to believe that it could also be benefited.

Perhaps it is the so called autonomy of sport, a feature very often used instead of the term self governance, that allowed the sport market to escape the ever so powerful rules of competition law. Sport self governance allows some limited self regulation
power in order to set the rules of the game. The sport market has some specific characteristics but still it is a market where the State has interest and competence to act and intervene in order to regulate it according to the State’s economic policy. The sports market cannot be the only grey area of the economic sector where money tycoons such as broadcasting monopolies are allowed to set the rules.