

8. On the Economic and Legal Stakes of Independent Sport Leagues: The Case of Football

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8.1. Introduction

‘The Champions’ League has already evolved into a sort of super league by including more round-robin matches and fewer knock-out games and, especially, by allowing more than one team per country to qualify. The only question is whether we’re moving toward a super league within a framework set by UEFA, or whether the clubs will decide to set up their own structure. This is an economic and political issue. That being said, a move toward a more concentrated continental competition is inevitable, where big clubs will play more European games and less domestic matches.’ No, this statement by Stephan Szymanski, the well-known sport’s economist, is not from April 2021, when 12 football clubs¹ announced the creation of a European Super League (ESL). In fact, it comes from an interview he gave to *Le Monde* 15 years earlier² and shows that the spectre of a super league has haunted European football for many years. This spectre appeared to be looming once again at the time of writing.³

The idea of creating a super league first arose in 1998, when a Milan-based company, Media Partners, attempted to launch a competition comprising 16 permanent teams and 16 invited teams.⁴ A few months later, UEFA overhauled the formats of its European competitions, most notably by expanding the UEFA Champions League (UCL) to include third and fourth place clubs from Europe’s leading championships and introducing two round-robin stages. These reforms put an end to Media Partners’ project ... but other plans for super leagues would soon emerge.⁵

Europe’s biggest clubs are well-aware of the pressure they can put on UEFA by threatening to create an independent league and on several occasions such threats have been followed by

¹ Six English clubs (Arsenal FC, Chelsea FC, Tottenham Hotspur FC, Liverpool FC, Manchester City FC, Manchester United FC), three Spanish clubs (Real Madrid FC, FC Barcelona, Atletico Madrid), and three Italian clubs (Juventus FC, Internazionale Milan, AC Milan).

² d’Armagnac (2006).

³ Cooper (2022).

⁴ Hoehn & Szymanski (1999).

⁵ Donzé (1999).

reforms to the UCL. As Macedo et al.'s (2022, p. 7) bibliometric analysis shows, the recurring spectre of a European football super league, in response to 'institutional and environmental factors,' has been accompanied by peaks in the number of publications on this issue. The first peak occurred in 2000, just after Media Partner's proposal. The second peak was in 2007, the year that UEFA increased the number of qualifying teams for the UCL to include the third-placed teams in Europe's top three domestic championships (according to UEFA rankings). The third peak occurred in 2012, just before significant changes to the draw for the UCL's round-robin stage⁶ and to the UCL revenue distribution system.⁷ Macedo *et al.* also predicted 'an increase in the number of the publications about the ESL in the near future,'⁸ following the reemergence of the idea of creating a super league in April 2021.

However, this new proposal for a super league involving 15 permanent clubs (including the 12 'founding members') and 5 clubs that would qualify on the basis of their domestic performances) differed from previous proposals and was launched despite UEFA's most recent reforms to the UCL.⁹ So, why did the 12 breakaway clubs come forward after these reforms? Why did Europe's top clubs follow through with their threat of creating a super league? Why are they so keen to overturn the status quo? The answers to these questions are undoubtedly related to recent evolutions in football's financial and legal landscape.

8.2. Financial Opportunities

According to Brannagan *et al.*,¹⁰ four factors underlie the decision by 12 of Europe's top clubs to launch the ESL. The first factor was cultural and in line with the Americanization of European football,¹¹ as the ESL's strongest proponents include several American investors, who are culturally attuned to the idea of a closed league (which the ESL was due to be). The second factor is the reduced uncertainty of domestic¹² and European¹³ competitions: A European super league would put an end to the sub-optimal competition of the domestic

⁶ Dagaev & Rudyak (2019).

⁷ Feuillet et al. (2018).

⁸ Macedo et al. (2022), p.7.

⁹ The main changes involved increasing the number of qualifying teams from 32 to 36, increasing the number of matches from 96 to 180, and changing the qualification criteria for clubs.

¹⁰ Brannagan et al. (2022).

¹¹ Hoehn & Szymanski (1999).

¹² Scelles et al. (2020).

¹³ CIES (2019).

championships, whose competitive balance has been tilted by a highly unequal distribution of national broadcasting revenues aimed at increasing elite clubs' European competitiveness.¹⁴ The desire to make elite football more attractive also underlies Brannagan et al.'s third factor, that is, financial gain, as the breakaway clubs' objective was to increase their revenues by increasing the sporting uncertainty of competitions. The fourth factor was guaranteeing the clubs' income, as, despite the reforms introduced by UEFA, qualification for the UCL, on which many clubs rely for a large proportion of their income, remains uncertain even for the biggest clubs.¹⁵

Although this analysis is interesting, it only brushes the surface of the ESL's two main goals: increasing its clubs' profitability and ensuring their place on the chessboard of European football by protecting them from the rise of England's Premier League.

8.3. Turnover, Sporting Success, or Profit?

An analysis of European clubs' revenues in 2006 led Soldberg and Gratton to conclude that joining a super league would be advantageous only for major clubs outside the dominant European championships.¹⁶ In contrast, there was no financial incentive for clubs in the Big Five leagues¹⁷ to join this type of competition. Nevertheless, all the breakaway clubs in 2021 were members of UEFA's three top-ranked championships (England, Spain, Italy). There are three possible reasons for this apparent paradox. First, the consequences of the 2020-2021 COVID-19 pandemic, both direct (e.g., playing matches behind closed doors) and indirect (economic crisis affecting clubs' consumers and partners), had a severe negative impact on European football clubs' finances.¹⁸ Second, the financialisation of football¹⁹ has brought in new stakeholders who are prepared to invest massively in football (e.g., the bank JP Morgan was ready to invest several million US dollars in the ESL). According to Brannagan and colleagues,²⁰ this would have resulted in the ESL's founders receiving €310 million for joining the competition and allowed them to earn up to €213 million per season, which is more than

¹⁴ Rocaboy (2017); Terrien et al. (2016).

¹⁵ Brannagan et al. (2022).

¹⁶ Soldberg & Gratton (2006).

¹⁷ The Big Five is the name given to Europe's five leading championships: England, France, Germany, Italy, and Spain.

¹⁸ Drewes et al. (2021).

¹⁹ Bastien (2021).

²⁰ Brannagan et al. (2022).

AC Milan earned before the COVID-19 pandemic (Deloitte, 2020). Third, increasing/securing their revenues was not the clubs' only objective for launching the ESL.

Hence, in contrast to Soldberg & Gratton's²¹ and Brannagan *et al.*'s²² analyses, the decisive factor underlying the launch of the ESL does not appear to be increasing the clubs' turnover. It has long been established that professional football is, overall, a loss-making business (Sloane, 1971), because clubs' top priority is not to make a profit but to win matches (Terrien *et al.*, 2017). This focus on sporting success has resulted in an 'arms race' to recruit the most talented players and, as long as this arms race continues, 'enormous revenues (will not be) enough'²³ to guarantee clubs' profitability. Consequently, the primary reason for creating the ESL cannot be to maximize revenues.

In fact, its main objective is to introduce regulatory mechanisms that will change its member clubs' behaviours in such a way as to allow them to maximize their profits and, eventually, make them non-loss-making. This requires the clubs to move from a competition-based system (Nash equilibrium) to a collaborative system aimed at maximizing its members joint profits, in other words, to form a cartel (Walrasian equilibrium²⁴). In addition to guaranteeing members a place in the competition, the ESL's members are actively discussing several other measures to modify clubs' behaviours, including introducing a draft, revenue sharing, a salary cap, and a luxury tax. However, there is no guarantee these measures will be successful.²⁵

Nevertheless, the ESL must lead clubs to change their behaviour if it is to improve their profitability. Indeed, the competition's success depends on its ability to achieve a monopsonistic position²⁶ on the talent market by preventing the emergence of a rival league. To this end, the ESL must ensure it does not exclude too many major clubs,²⁷ and the only way to do this without increasing the cartel's size (which would reduce its stability due to unilateral incentives to deviate from the cooperative balance²⁸) is to restrict itself to a specific geographical area. Consequently, the ESL's success appears to depend on two contradictory

²¹ Soldberg & Gratton (2006).

²² Brannagan *et al.* (2022).

²³ Soldberg & Haugen (2010).

²⁴ Szymanski & Késenne (2004).

²⁵ On financial fair-play, see Ahtiainen & Jarva (2020).

²⁶ A monopsonistic market is a market with just one buyer and several sellers.

²⁷ Quirk & Fort (1997).

²⁸ Stigler (1968).

factors: restricting the number of members in order to ensure the cartel's stability and increasing its membership in order to avoid rivalry from another league.

8.4. Reduced Dominance of the European Elite

For Brannagan *et al.*, one of the most important considerations motivating clubs to join the ESL was to guarantee their income,²⁹ as even top clubs cannot be certain of qualifying for every season's UCL, the competition on which they rely for a large proportion of their income. In fact, it is almost impossible for all six English clubs involved in the ESL to qualify for the same edition of the UCL, as only the top four clubs in the Premier League qualify directly for the competition. For all six clubs to qualify, the two clubs that finished outside the top four would have had to have won the previous season's UCL and Europa League—a highly unlikely combination of events.

Although ensuring income was undoubtedly a major motivating factor, it does not explain why Real Madrid FC, FC Barcelona, and Juventus FC are the only three clubs to continue backing the ESL, as none of these clubs are English and none of them have failed to qualify for the UCL in recent years. The last time Juventus failed to qualify was in 2010/11, and Barcelona and Real Madrid have qualified for every edition of the UCL since 2003/04 and 1993/94, respectively. So why is the ESL so important to these clubs?

One reason may be the fact that they are no longer as dominant within Europe as they once were. A comparison of mean UEFA ranking coefficients³⁰ for the 12 breakaway clubs and the 12 most highly ranked clubs not involved in the ESL shows that the gap between these two groups has decreased greatly over recent seasons, from 4.82 points (21.63 vs. 16.81) for the 2017/18 and 2018/19 seasons to 0.67 points (19.92 vs. 19.25) for the 2019/20 and 2020/21 seasons. And it is the three clubs that continue to back the ESL that have seen the largest drop in their UEFA coefficients, which fell by 6 points in just six seasons, from 27.67 for 2015/16 and 2016/17 to 21.67 for 2019/20 and 2020/21. This reduced domination is also reflected in the slightly more even spread of talent³¹ across Europe's elite clubs, as the percentage of playing

²⁹ Brannagan et al. (2021).

³⁰ Data available at: <https://www.uefa.com/nationalassociations/uefarankings/club/#/yr/2022>

³¹ As a measure of talent, we used the market values of players as listed on <https://www.transfermarkt.com>. This is a commonly used proxy in sport economics (e.g., Terrien & Andreff, 2020).

talent in the Big Five leagues (which contain a total of 98 clubs) held by the 12 breakaway clubs fell from 37.33% in 2017/18 to ‘just’ 32.17% in 2020/21.

This reduced domination is the result of another marked trend in European football: the rise of the English Premier League. Given that the English championship accounted for 32% of the talent in the Big Five leagues in 2020/21, compared with between 14% and 19% in the other four Big Five leagues, one might ask whether one can still talk about a Big Five. Moreover, the huge sums in broadcasting rights that the English clubs receive every year (€3.5 billion³²) have few equivalents in the world of sport. Given the Premier League’s earning power and attractiveness, especially internationally, it is rapidly becoming football’s biggest club competition. For example, the Premier League earned €1.6 billion in international broadcasting rights for the 2019/2020 season, whereas as UEFA received just €2 billion in television rights³³ for the UCL.

This bonanza, which is distributed relatively equally between the Premier League’s clubs, has helped 11 English clubs³⁴ enter the ranks of the 30 richest clubs in Europe.³⁵ This explains why the six English clubs—which were worried about stiffer competition in their domestic championship³⁶—and the other six European clubs—which were concerned about new competitors on the talent market—wanted to join the ESL. From here to considering the English Premier League a super league is but a small step; a step that has been facilitated by its parachute payment system, under which teams that are relegated to the second division continue receiving a substantial proportion of Premier League broadcasting rights for three years. These payments double a relegated club’s chances of winning promotion back to the Premier League,³⁷ thereby making it an almost closed ‘English super league.’

³² <https://theathletic.com/news/premier-league-to-roll-over-domestic-tv-rights-deal-after-government-approval/JdSHelFXULbW/> + <https://media.sportbusiness.com/news/premier-league-rights-value-up-8-to-9-2bn-on-overseas-income>.

³³ https://editorial.uefa.com/resources/0268-1215a6daaf78-a6ca16cd1df1-1000/04_uefa_financial_report_2019-20_en.pdf.

³⁴ The six breakaway clubs plus West Ham United, Everton, Leicester City, Wolverhampton Wanderers, and Crystal Palace. All the clubs involved in the ESL were in this top 30. This is not (yet) the case for Newcastle United FC, which is starting to benefit from the financial backing of its new owners, a Saudi sovereign wealth fund.

³⁵ Deloitte (2020).

³⁶ Brannagan et al. (2022).

³⁷ Wilson et al. (2018).

8.5. Legal Issues

In addition to these financial considerations, the recently proposed ESL raised three important questions³⁸ concerning competition law and UEFA's right to sanction the clubs involved, which it threatened to exclude from the UCL. UEFA also said it would ban these clubs' players from UEFA and FIFA competitions, notably the Euro and Football World Cup.

The first question is whether the ESL would be considered a cartel and therefore contravene European competition law. In 2020 the General Court of the European Union ruled that the International Skating Union (ISU) had broken this law when it imposed lifetime bans from Olympic competitions on speedskaters who took part in non-ISU approved competitions, most notably those planned by the company Ice Derby.³⁹ The court not only found this punishment to be excessive, it also highlighted the ISU's conflict of interest as both the regulator of (speed) skating and a commercial organization that sold broadcasting and marketing rights to its own competitions. In 2001, a European Union (EU) investigation into a similar conflict of interest at the International Motorsport Federation (FIA) resulted in the FIA withdrawing from organizing motor racing competitions (including the F1 circuit) in order to focus on its regulatory role (rules, calendar, sanctions, etc.).

The ISU, which does not have at all the same financial dimension as the FIA, has appealed against the General Court's decision on the grounds that it did not take account of 'the specific nature of sport,' as set out in article 165 of the 2009 Treaty on the Functioning of the European Union. This article, which was not in force when the decision concerning the FIA was taken, may allow sport federations to keep their double role, as long as they follow the principles of good governance, integrity, and proportionality, and ensure their sporting rules are 'reasonably justifiable.' At the time of writing (mid-2022), the European Court of Justice had not yet handed down its ruling.

In the case of the ESL, Real Madrid FC—one of the three clubs remaining within the project—took its case against the sanctions imposed by UEFA to a Spanish court, which has asked the European Court of Justice to make a preliminary ruling so it can ensure that its final ruling is in line with European jurisprudence. At the time of writing, the Spanish court had still not received an answer to its request. If the General Court of the European Union rules that UEFA's

³⁸ Darcis & Omnes (2021).

³⁹ General Court of the European Union (2020) Judgment T-92-18, International Skating Union vs. Commission, Press Release 159/20, December 16.

sanctions do not infringe EU competition law, there is little chance of the ESL, or any similar project, coming about. Conversely, if the court finds in favour of Real Madrid, this jurisprudence could lead to a separation between regulatory and commercial functions throughout European and, undoubtedly, world football (and, potentially, across all sports).

The second legal question is whether a national federation with the power to license clubs can punish its clubs for joining the ESL by withdrawing their license to compete in their domestic championship. The answer to this question probably varies from country to country, according to national legislation governing sport federations.

The third legal issue concerns the two Spanish clubs still involved in the ESL—FC Barcelona and Real Madrid FC. In contrast to most of Spain’s professional clubs,⁴⁰ which are limited companies, FC Barcelona and Real Madrid FC are not-for-profit associations under Spanish law and must therefore comply with the statutes of the Royal Spanish Football Federation. Because the federation recognizes only UEFA’s and FIFA’s international competitions, FC Barcelona and Real Madrid FC cannot legally take part in other competitions, such as the ESL.

8.6. Conclusion

The creation of a European Super League, as proposed by 12 of Europe’s biggest football clubs in 2021, would have far-reaching financial implications for the clubs involved and for European football in general. Although it was unprecedented pressure from fans and the subsequent withdrawal of the six English clubs involved that led to the project quickly being suspended, the ESL also faced a number of legal challenges at both the national and European levels. Nevertheless, the project raises interesting questions about the governance of football and of sport in Europe and throughout the world. As has already been noted, the financial benefits to the ESL’s member clubs will depend on ensuring the league is governed in such a way as to maintain the cartel’s stability.

The ESL also raises questions about the compatibility between the soft law formed by sporting regulations (e.g., UEFA’s and FIFA’s rules) and domestic and European hard law. This issue has plagued European and world sport since the 1970s (*Walrave*⁴¹ and *Dona*⁴² rulings) and

⁴⁰ The exceptions are Athletic Bilbao and Atletico Osasuna.

⁴¹ ...

⁴² ...

especially since the 1995 Bosman ruling in football,⁴³ which led sport organizations to lobby the EU to recognize the ‘specific nature of sport’ (which it did in 2009 in the TFEU) and to defend a ‘European model of sport.’ Notwithstanding the huge financial interests associated with football and other sports in Europe, is there such a thing as a European model of sport that would justify relaxing—as long as sport organizations meet certain conditions—European competition law and enable sport federations to conserve their dual regulatory and commercial roles? In fact, it is surprising that that this duality has not been challenged more vigorously in Europe’s courts. Nevertheless, the dual role played by many sport federations has not prevented private enterprises creating commercial (and potentially competing) leagues in sports such as swimming (International Swimming League, created in 2019), basketball (Euroleague), and show jumping (Global Champions Tour).

Significantly, the launch of the ESL coincided with the adoption of three documents supporting a European model of sport, drawn up by the European Parliament (of the EU), the European Council (of the EU), and the Council of Europe (which has almost twice as many member countries as the EU). These documents not only reiterated the primacy of sporting performance (and therefore of promotion/relegation systems) over the search to maximize financial returns, they highlighted the need for sport organizations to involve fans in their decisions. Indeed, it was a ‘revolt’ by fans that led the six English clubs to withdraw from the ESL. UEFA ‘welcomed’ the Council of Europe’s resolution on European football, even though fans are not represented on any of UEFA’s committees, in contrast to clubs (represented by the ECA), players (represented by FIFPRO) and the leagues (represented by EPFL).⁴⁴ The European Court of Justice will undoubtedly refer to these documents when drawing up future rulings.

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⁴³ Chappelet (2018).

⁴⁴ UEFA Press Release (2022), *UEFA welcomes Council of Europe backing for European football model*, January 26, <https://www.uefa.com/insideuefa/mediaservices/mediareleases/news/0271-144b7e36cfdb-8acc197231c6-1000--council-of-europe-backing-for-european-football-model>.

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