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ARTICLE

Can EU competition law save sports governance?

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Abstract
The three December rulings of the Court of Justice of the European Union—*European Superleague*, *International Skating Union*, and *Royal Antwerp*—are important milestones in the development of EU sports law and policy. This article focuses on what is perhaps their most striking feature: the prominent place accorded to competition law. The judgments make several important changes and clarifications to how EU competition rules apply in the sporting context. This paper argues that the new legal framework paves the way for a more active use of competition law in sports cases. Although this is likely to have some positive effects on the quality of sports governance, it also carries the risk of exposing the field to an ill-fitting set of rules which follow a predominantly economic and de-regulatory rationale. Ultimately, even enhanced competition law will not be able to solve the manifold problems marring the world of sports—and is a poor substitute for sports regulation through legislative means.

Keywords EU · Sports regulation · Competition law · Good governance · *European Superleague*

Through a trio of Grand Chamber judgments—*European Superleague*, *International Skating Union*, and *Royal Antwerp*[1]—the Court of Justice of the European Union (CJEU) has redefined the parameters of EU sports law and policy. The rulings are rich in content and complexity, but arguably their most striking feature is the prominent role played by competition law. Striking not because it is the first time that competition rules are applied in the sporting context. Sports governing bodies (SGBs) have, since the 1990s, been periodically the subject of European (as well as national) antitrust proceedings and the Court of Justice affirmed the application of Articles 101 and 102 TFEU to their actions in previous decisions, establishing some important guiding principles along the way.[2] Yet, never did the Court have or, perhaps more accurately, take the opportunity to explain the relationship between EU competition norms and sporting activities in such detail.

The December rulings come at a critical moment. Sports governing bodies are economically, politically, and socially more powerful than ever. At the same time, and to an extent as a result of that, their powers are being challenged more fiercely than ever. This is, partly, for commercial reasons. With revenue in many professional sports rapidly growing, there is a strong incentive for setting up sporting events outside of existing formats which are typically controlled by federations, and for athletes, clubs, agents, and other actors to claim a bigger piece of the pie. But the pushback is, partly, also based on principled grounds. There is a widespread feeling that sports governance, with its antiquated decision-making structures, human rights abuses, persistent gender inequalities, growing financial imbalances, and many other ailments, needs reforming.[3] A number of countries, including France, Spain, and the United Kingdom, have responded to these problems by increasing regulatory oversight of the sector.[4]

[1] Case C-333/21 *European Superleague Company* [2023] ECLI:EU:C:2023:1011; Case C-124/21 P *International Skating Union* [2023] ECLI:EU:C:2023:1012; Case C-680/21 *Royal Antwerp FC* [2023] ECLI:EU:C:2023:1010.

[2] Kornbeck 2023.

[3] Geeraert and van Eekeren 2022; Zglinski forthcoming.

[4] Loi du 2 mars 2022 visant à démocratiser le sport en France; Ley 39/2022, de 30 de diciembre, del Deporte; UK Department for Culture, Media and Sport, 'A Sustainable Future—Reforming Club Football Governance' (2023).

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This contribution seeks to connect both developments and explore what EU competition law, as re-interpreted by the Court, can do for sports governance. Once hailed as a globally influential sports regulator,[5] EU institutions have more recently been criticised for their undue deference towards SGBs.[6] Do the December rulings change this state of affairs? How do they affect EU sports regulation? And what impact will the new competition law framework have on sports governance? I will start the essay by explaining what has legally changed as a result of the three judgments, before reflecting on what these changes could mean for the future of EU sports regulation. In a nutshell, I will argue that the rulings pave the way for a more active use of competition law in the sporting context. This is likely to have some positive effects on the quality of sports governance. However, it also carries the risk of exposing the field to an ill-fitting set of rules which follow a predominantly economic and deregulatory rationale. Ultimately, even enhanced competition law will not be able to solve the manifold problems marring the world of sports—and is a poor substitute only for sports regulation through legislative means.

1 What is new and what isn't

Before examining the consequences of the Court's judgments for sports regulation and governance, it is worthwhile to sketch out the legal contribution which they make. Bear in mind that we are dealing here with three long and complex Grand Chamber rulings which impact not only on EU sports law but several core concepts of general competition law,[7] so omissions and simplifications are unavoidable. With that caveat, the decisions provide some continuity, while also making meaningful change to the sports law landscape.

Let me start with the former. The judgments confirm and neatly summarise all foundational premises of EU sports law. The Court reminds us that sport falls into the scope of the Treaties insofar it constitutes an economic activity. It can, as such, trigger the application of free movement rights, competition rules, as well as general principles of EU law, such as non-discrimination and proportionality. Somewhat unexpectedly, the Court revives the purely sporting exemption, which had been introduced in its early jurisprudence[8] but many had thought (and hoped) dead after *Meca-Medina*.[9] Rules which relate to 'questions of interest solely to sport' are considered to be extraneous to economic activity and, thus, not subject to EU scrutiny. Those who have criticised the exemption as failing to reflect the present-day commercial realities of sport may take comfort in the fact that it will, in all likelihood, continue to have a limited effect in practice, even if sports governing will surely pursue this line of reasoning to shield their actions from judicial review.

So far, so familiar. After reiterating these basic principles of EU sports law, the Court makes several intriguing clarifications and changes. The first concerns Article 165 TFEU. The provision had featured prominently in both the oral proceedings and the opinions of the Advocates General. The Court goes to pains to underline the limited character of the norm, which only gives the EU a supporting competence and, remarkably, does not allow to pursue a sports 'policy', just an 'action'.[10] It is, unlike the objectives listed under Title II of the TFEU, not a cross-cutting provision having general application, nor does it call for an exemption of sport from or an exceptional treatment under EU primary law. Sport, in other words, is not special—it is subjected to the full discipline of internal market law. The Court acknowledges that sporting activities have specific characteristics which need to be considered when applying EU free movement and competition rules, but stresses that this can only happen in compliance with the conditions set out in those rules. These passages seem to serve as a firm rebuke of the position articulated by AG Rantos, who had suggested that Article 165 TFEU altered the way in which internal market law applied,[11] and aim to prevent that sporting objectives weaken the protections of provisions like Article 101 TFEU. By the same token, they seek to avoid conceding too much power to SGBs which had, it is worth remembering, lobbied for inserting the article into the Treaties precisely as a safeguard against perceived interferences into their autonomy.[12]

All other main developments concern substantive competition law. Here, perhaps the most notable innovation is the transposition of the principles developed under Article 106 TFEU to Articles 101 and 102 TFEU. If a Member State grants an undertaking exclusive or special rights, it must ensure that equality of opportunity between all economic operators is guaranteed, particularly where those rights entail the power to decide whether other companies can enter the market. *MOTOE* had already applied these principles to the situation where a sport federation was delegated the power to co-authorise events organised by third-party competitors.[13] The Court held that, in order to avoid conflicts of interest, such competences must be subject to

[5] Geeraert 2016.

[6] Meier et al. 2023.

[7] Monti 2024.

[8] Case 36/74 *Walrave and Koch* [1974] ECLI:EU:C:1974:140.

[9] Rincón 2007.

[10] *European Superleague*, para 99; *Royal Antwerp*, para 67.

[11] Case C-333/21 *European Superleague Company* [2022] ECLI:EU:C:2022:993, Opinion of AG Rantos, para 35.

[12] García and Weatherill 2012.

[13] Case C-49/07 *MOTOE* [2008] ECLI:EU:C:2008:376.

restrictions, obligations, and review. The December rulings go further: they stipulate that the same is required—in fact, it is 'all the more necessary'[14]—where an undertaking may deny competitors market access as a result of a dominant position acquired through its own conduct. SGBs cannot simply prevent third parties from organising sporting competitions and athletes from participating in them. A framework of substantive and procedural rules must be put in place which establishes transparent, clear, precise, and non-discriminatory criteria governing the authorisation of new events and formats. This imposes a special obligation, or 'stricter tier of competition law',[15] on SGBs and limits their ability to defend their monopoly on organising and commercially exploiting sports competitions.

Another important change concerns the interpretation of Article 101 TFEU. Here, the Court puts significant effort into clarifying the notion of restrictions by object. After repeating some well-established fundamentals—that the concept is meant to be interpreted strictly, that it requires a sufficient degree of harm to competition, and that the content, context, and objectives of an agreement matter in this regard—it adds an extensive list of conduct violating the provision. Monti suggests that the purpose of these observations may be to provide more detailed guidance to national competition authorities, which have tended to define restrictions by object too widely.[16] Against this backdrop, the Court's conclusions in the three cases appear noteworthy. Even if the final decision is, at least in the two football rulings, deferred to the national courts, the CJEU suggests in rather unambiguous terms that both FIFA/UEFA and ISU's authorisation regulations fail the test, given that the discretion relating to the prior approval of third-party competitions (and the resulting conflict of interest) is not constrained by appropriate substantive and procedural criteria. Even the less openly anti-competitive home-grown players rule from *Royal Antwerp* may, due to its market partitioning effect, suffer the same fate. The conclusion is in line with the approach adopted by the Commission and General Court in *ISU*, while, once again, sharply departing from the proposals of AG Rantos.

This interpretive choice has a knock-on effect on the ancillary restraints doctrine. The doctrine holds that agreements restricting freedom of action may exceptionally fall outside the scope of Article 101(1) TFEU if an analysis of the context and objectives of the agreement reveals that its anti-competitive effects are inherent in those objectives and proportionate to them. Introduced in *Wouters*, it had been transposed to the sports sector in *Meca-Medina* and was expected, ahead of the judgments, to become a central battlefield in the proceedings.[17] It turned out differently. The Court announced that the doctrine cannot be invoked in situations involving conduct which 'by its very nature infringes Article 102 TFEU' or has 'as its very "object" the prevention, restriction, or distortion of competition'.[18] The rulings suggest that this had 'implicitly' ever been clear since *MOTOE*, a half-hearted attempt at masking a significant jurisprudential shift. The finding has come as a surprise to many commentators, but perhaps it should not have. The Court has been reluctant to grant the ancillary restraints exemption as it disturbs the ordinary structure of competition law, while legitimising behaviour that would normally be considered anti-competitive,[19] a trend that now seems to have arrived in its sports case law. This does not mean that *Meca-Medina* is overruled, but it will have a narrower scope of application. SGBs will need to rely, to a greater extent, on Article 101(3) or, in the case of Article 102 TFEU, the objective necessity and efficiency defences to justify their actions. These, however, impose stricter requirements than the more flexible ancillary restraints test.[20]

All in all, while not fundamentally altering its structure,[21] the December rulings make significant changes to several aspects of EU sports law, notably in relation to the way in which the competition rules are applied. Actions of SGBs are more likely to be found to constitute anti-competitive behaviour, with narrower opportunities for justification. The sum of these developments paves the way for a more active use of EU competition law in the sporting context.

2 The promise

What are the implications of this updated legal framework for sports regulation and governance? The good news first: we may see some improvements in how SGBs operate. The Court of Justice's judgments lead to an increase in (external) regulatory oversight which may contribute to a betterment of (internal) governance practices. Although this reflexive dynamic between EU law and sport—as well as, more

[14] *European Superleague*, para 137.

[15] Ibáñez Colomo 2023.

[16] Monti 2024.

[17] Case C-309/99 *Wouters* [2002] ECLI:EU:C:2002:98; Case C-519/04 P *Meca-Medina and Majcen* [2006] ECLI:EU:C:2006:492.

[18] *European Superleague*, para 185–186.

[19] Case C-382/12 P *MasterCard* [2014] ECLI:EU:C:2014:2201.

[20] Art 101(3) TFEU has four cumulative conditions: (1) the agreement or decision in question achieves efficiency gains; (2) a fair share of the profit resulting from those efficiency gains is passed on the users; (3) the restrictions imposed are indispensable for achieving the efficiency gains; (4) the agreement does not eliminate all effective competition. The objective necessity and efficiency defences from Art 102 TFEU are interpreted in a similar way, but do not require a fair sharing of the profits.

[21] Weatherill 2024a.

specifically, EU competition law and sport[22]—predates the December rulings, it has been tangibly deepened by them. Let me explain.

The Court's re-interpretation of the competition rules means that a broader range of sporting regulations can potentially be reviewed and may face a more searching form of scrutiny than before. Much of the initial responses to the judgments focused on the duty of SGBs to adopt objective, transparent, and non-discriminatory criteria for the authorisation of third-party competitions. However, in the long term, it might be the finding that sporting rules can constitute restrictions by object and the simultaneous closing of the ancillary restraints route for this class of conduct which may prove the more lasting challenge. Instead of the *Meca-Medina* test, which largely resembled the open-ended justification and proportionality review from free movement law, now the more stringent conditions of Article 101(3) TFEU (or the Article 102 TFEU equivalent) will need to be met. This is not to say that all sporting regulations will be deemed to constitute restrictions by object—we can expect intense arguments over the scope and application of this concept in future disputes—but that spectre will hang over the federations. Two rulings rendered after and explicitly referring to the December trio suggest that the Court is serious in its intention to exercise stricter control over private regulators.[23] As a result, SGBs will have to demonstrate more clearly whether, how, and to what extent their actions benefit the world of sports. Their authority in and contribution to sports governance will no longer simply be taken for granted. They will, to a greater extent, be subjected to a 'culture of justification'.[24]

The three judgments illustrate what this may look like in practice. You want to restrict third-party competitions to protect sporting merit and financial solidarity in the football pyramid? That is fine, as long you can prove that the authorisation rules translate into 'genuine, quantifiable efficiency gains' (as well as fulfill the other requirements of Article 101(3) TFEU) and adduce 'convincing arguments and evidence' to that effect.[25] You want to engage in a centralised sale of broadcasting rights to promote competitive balance and economic redistribution? That is fine, as long as you can show that the profit for each affected constituency—professional and amateur clubs, fans and TV viewers, as well as other stakeholders—is 'real and concrete' and there is no less restrictive alternative.[26] You want to oblige clubs to have a minimum of locally trained players to incentivise the training of young athletes? That is fine, as long as you can produce 'specific arguments and evidence' on the 'reality of that incentive' and the extent of the positive impact it has.[27]

The leitmotif of these passages is: prove it! The Court of Justice recognises that federations can occupy a legitimate regulatory purpose and may even pursue commercial goals, but it requires them to demonstrate the precise benefit they bring to the sports community. The worth of their actions cannot simply be assumed, it must be established by means of reliable evidence. While seeking to promote the 'principles, values, and rules' underpinning sports, such as sporting merit and financial solidarity, is legitimate, it must still—this is, at least, what key parts of the judgments suggest[28]—result in material efficiency gains. Commenting on the rise of the regulatory state two decades ago, Moran noted that 'we audit, and we regulate, when we cease to trust'.[29] The Court appears to be guided by a similar rationale here. We should not simply trust that SGBs will act to the advantage of sports and society. We need to create structures allowing us to verify that they do. More supervision, less autonomy.

This increased external control may, indirectly, contribute to improving the quality of internal self-regulation. SGBs will try to avoid having their rules and decisions quashed in antitrust proceedings. The most effective way to do so will be to comply with the stated or anticipated requirements of EU law. This is the power of the much-evoked 'shadow of hierarchy'.[30] The threat of legal intervention can act as a motivation for private and public actors to behave in a certain way or deal with a regulatory issue in a productive manner. And we know from both general research on European integration and work on EU sports regulation specifically that the more credible the threat, the stronger the motivation.[31] The years after *Bosman* show that the desire to avoid legal proceedings can act as a robust incentive for reform for federations. Likewise, they serve as a warning tale of the many ways in which public control can be mitigated and co-opted.

The Court gives sports authorities a clear assignment: they have to reflect on the impact of their actions and ensure

[22] Duval 2015; Van Rompuy 2015.

[23] Case C-128/21 *Lietuvos notarų rūmai* [2024] ECLI:EU:C:2024:49; Case C-438/22 *Em akaunt* [2024] ECLI:EU:C:2024:71. For a critique, see Weatherill 2024b.

[24] Mureinik 1994.

[25] *European Superleague*, paras 196 and 205.

[26] Ibid., 236.

[27] *Royal Antwerp*, paras 129 and 135. Similarly, as part of the free movement examination, the Court requires that the rules 'create real and significant incentives' (para 145).

[28] See notably *European Superleague*, para 196. Another possible reading of the judgments is that the Court accepts that certain foundational values, such as sporting merit, form part of the very nature of sports. As such, SGBs would not have to justify their pursuit under the Art 101(3) and 102 TFEU framework; see Weatherill 2024a.

[29] Moran 2000, p. 10.

[30] Héritier and Lehmkuhl 2008.

[31] Geeraert 2016.

that both the resulting benefits and costs are duly taken into account. As part of that assessment, they will need to consider the concerns of all stakeholders who are affected by their decisions. This, as the judgments stress at several points, includes not only elite athletes, professional clubs, and broadcasters, but also amateur teams, grassroots organisations, and supporters—in other words, the constituencies that are habitually neglected by federations. More explicitly and to a greater extent than before, the authority of SGBs, or 'private government',[32] will be subjected to a 'counter-democratic check'.[33] Presuming an adequate level of public or private enforcement, EU competition law may, thus, contribute to bringing about better governance standards and more inclusive decision-making in sports.

3 The peril

This is the potential of the December rulings—but there are also perils. The prospects of a more frequent and fervent application of EU competition rules creates a set of problems which may turn out to be counterproductive for sports regulation.

To begin with, there are legitimate doubts about whether competition law provides a suitable normative framework for regulating sports. It is a field which revolves around concepts such as efficiency gains, output levels, consumer choice, and pro- and anti-competitive effects. It is not immediately obvious that this conceptual apparatus and its inherent objectives are a good fit for the world of sports. Of course, many professional sports have been aggressively commercialised over the past decades, football being the paradigmatic example. Against this backdrop, applying a set of rules focusing on products and markets may appear only logical—sport has, to an important degree, become a product and market out of its own volition. Despite that, sport remains, especially in its European variant, about more than just commercial interests. It pursues a myriad of social, educational, redistributive, and health-related functions, and it is not clear to what extent competition rules can adequately accommodate these. Scholars have long highlighted the difficulties connected with promoting public policy objectives through EU competition law.[34] The move towards a more economic approach since in the mid-2000s has made things even harder.[35] Despite recent academic[36] and regulatory[37] attempts to render competition law more responsive to broader societal needs, the situation remains complicated. Although there are various ways to incorporate non-economic considerations in competition proceedings, notably as part of the Article 101(3) TFEU assessment,[38] these must typically be translated into quantifiable economic gains. This, however, is rarely a straightforward exercise. Public policy often pursues ambitions which are not as easy to measure as price, output, or product quality and can raise commensurability issues.[39]

US jurisprudence hints at the difficulties that may lie on the horizon. Applying American antitrust rules to sports has been likened to 'fitting a square peg into a round hole.'[40] The Supreme Court's *Alston* judgment is an illustrative example.[41] The decision concerned the principle of amateurism which applies to college athletes and means that they cannot receive a salary for their participation in sporting events. Forget for a second about the evident injustice of the rule: colleges and broadcasters make vast amounts of money off the backs of athletes, many of whom come from disadvantaged communities. What matters for our purposes is how the issue was framed. Antitrust law meant that the NCAA, the governing body for college sports, could not defend the principle based on educational, social, or cultural considerations, that is, the very type of policy interests you would expect to matter in a case like this. Amateurism could only become relevant as a feature of product differentiation, meaning as a tool to create an entertainment format which is distinct from professional sports (where athletes get paid) and, as such, attracts consumers. The North American and European Sports Models famously differ, as do US and EU antitrust, but the December rulings contain some early signs that similar tendencies might make its way into European sports law. Policy goals that have a substantial economic dimension and are open to quantification, such as the levels of solidarity payments, can be accommodated within the structure of EU competition law with relative ease. Less obviously economic and quantifiable objectives, such as ensuring that football teams field local players as part of their social function, need to be reframed as a means of guaranteeing consumer interest or sources of other pro-competitive gains.[42]

[32] Anderson 2017.

[33] Duval and Vam Rompuy 2016.

[34] Monti 2002.

[35] Blockx 2019.

[36] Gerbrandy 2017; Kingston 2019; Makris 2021.

[37] The Commission's revised horizontal guidelines from 2023, which include a chapter on sustainability agreements, break new ground in this respect by accepting the pursuit of objectives of an environmental and social nature.

[38] Brook 2022; Dunne 2020.

[39] Allensworth 2016.

[40] Edelman 2015 (although ultimately defending the use of antitrust law in the sports context). For a detailed critique, see Ross and Mitten 2014.

[41] US Supreme Court, *NCAA v. Alston*, 594 U.S. 2147 (2021).

[42] See, for instance, the discussion of the home-grown players rule in *Royal Antwerp*, para 130: '… it cannot be excluded a priori that the

The second danger connected with an enhanced use of competition law is de-regulation. The legal framework established in the three judgments creates new opportunities for litigation and enforcement. This, too, is a direct consequence of the broadening and intensifying of competition scrutiny. As the prospects of overturning sporting rules increase, so will the appetite for challenging them.[43] Even if the Commission does not take the Court's bait, private actors and national competition authorities may. It is not difficult to imagine the types of cases that could be brought going forward. We already have preliminary references pending before the CJEU on the legality of the FIFA Football Agent Regulations and aspects of the game's transfer regime.[44] The rules on financial fairplay (now sustainability), club ownership, and the territorial division of leagues across national boundaries might follow.[45] While the outcomes of these and similar disputes will depend on how exactly European and national courts apply the competition rules *in casu*, the general direction of the process appears clear: it is likely to lead to a removal of existing sporting regulations. Competition law, after all, is primarily a tool of negative integration.[46] The danger with this is not just that sports will potentially be exposed to a 'death by a thousand cuts' as more and more rules get quashed in legal proceedings.[47] The true problem is that we do not need less regulation in sports—we need more of it.

Despite broadening the potential for litigation and enforcement, the new framework will, perhaps paradoxically, not be able to tackle many of the most pressing issues in sports governance. Competition law can only apply where a series of threshold criteria are met. For Article 101 TFEU we need an agreement between undertakings or a decision by associations of undertakings which restricts competition by object or effect and affects intra-EU trade, for Article 102 TFEU a dominant undertaking abusing its position. It appears unlikely, to name but a few examples, that the human rights violations committed by SGBs could fall into the scope of these provisions, or the blatant gender inequalities in decision-making bodies, or the lack of protections accorded to fans in clubs and federations. These types of governance failures may be lamentable, yet they do not raise competition issues. (To make matters worse, competition law could potentially stand in the way of improving standards here.[48]) This goes back to the point about the limited ability of competition law to promote public policy. As disappointing as it might sound at first, there may, in fact, be nothing wrong with that. Dunne puts it sharply: competition law is capable of 'promoting beneficial social outcomes through the use of open and effective competition to control private power', but it is 'not a panacea for all contemporary ills'.[49]

4 The way forward: towards a political solution?

Which brings me to my concluding remarks. The December rulings make an important contribution to EU sports law. They clarify and expand the way in which competition law can be employed in sports cases. Although there is, as I tried to argue, some potential in this from a perspective of sports regulation, there are equally risks. Yet, no matter how frequent or rare, interventionist or deferential the enforcement of EU competition rules will end up being, it will forever remain an incomplete and inadequate regulatory instrument. Guided by specific, primarily economic objectives, marked by a de-regulatory drive, and operating on a case-by-case basis, competition law will need to be followed up by, or combined with, legislation. We have seen similar dynamics unfold in other sectors, most recently in digital services. A European sports act, laying down governance requirements and substantive rules for SGBs, would help regulate sports in a systematic, coherent manner.[50] The judgments may appear to have made legislative action in this area more challenging due to their harsh *dicta* on Article 165 TFEU, but alternative routes, notably via Article 114 TFEU, remain available, as long as the necessary political will can be summoned. Moreover, the decisions may shift the constellation of interests at stake here by increasing the pressure on SGBs, who will face more in-depth scrutiny through competition law—as well as the free movement rules—and, consequently, may be more interested in a stable regulatory framework. As so often in the history of European integration, judges have stepped in where law-makers lagged behind. It remains

interest that some of [the fans and TV viewers] have in interclub competitions depends, among other factors, on the place of establishment of the clubs participating in those competitions and the presence in the teams fielded by those clubs of home-grown players.'

[43] For European market integration in general, see Stone Sweet 2004.

[44] Cases C-650/22, C-209/23, and C- 428/23.

[45] The latter rule has recently been challenged by FC Swift Hesperange before a Court in Luxembourg, with the intention of obtaining a preliminary reference ruling from the CJEU.

[46] I say 'primarily' because the Commission has, more than in free movement cases, the ability to influence behaviour more pro-actively and creatively, e.g. by negotiating commitments.

[47] Grow 2015, p. 592.

[48] Imagine, for instance, an SGB refusing to accept third-party organisers hosting sporting events in countries with a poor human rights record and adopting regulations to that effect. Such behaviour would, in all likelihood, count as anti-competitive and, thus, require justification—not an altogether banal hurdle given the aforementioned doctrinal constraints. I thank Giorgio Monti for bringing this point to my attention.

[49] Dunne 2020, p. 281.

[50] Weatherill 2022; Maduro 2024; Zglinski forthcoming.

to be seen whether the Court's rulings can act as a much-needed catalyst for the political process.

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