

“Role of Competition Law in Sports”

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Organized sports in India and across the world have had a remarkably unique evolution. On one hand, traditionally mainstream sports like cricket and football have not only survived the test of time but have in fact grown in terms of money involved and their contribution to society. On the other hand, competitive sports have been taking forms previously unheard of. Esports, for instance, is a burgeoning industry that has shot to fame only recently but is already enjoying large scale commercial success. For example, the Fortnite World Cup 2019, a competitive gaming contest involved a \$3 million prize money, won by a 16-year old from the United States. To put that into perspective, golfer Tiger Woods made \$2.07 million for winning the 2019 Masters, playing a sport that originated in the 15th century. With the realm of sports constantly evolving and diversifying, it is imperative that the law regulating it develops accordingly. Competition law has regulated the world of sports for decades, and the interface of the two fields has changed significantly with time. The interaction between sports and competition law and its evolution will be discussed in this paper.

Keywords: competition law, sports, interface, the United States, the European Union, India

1. INTRODUCTION

The contribution of sports to the economic development of a country cannot be undermined. A 2018 European Commission report revealed that share of sports to GDP within the European Union is € 79.7 bn or 2.12%. Moreover, the sports industry employs close to 5,666,195 people, contributing to 2.72% of total employment.¹ In India, the Indian Premier League (IPL) made a contribution of \$182 million to India's GDP in 2019.² The economic and social significance of sports is rapidly increasing. Therefore, various issues are now at the forefront of sports regulation, including concerns of labour law, contract law and even intellectual property rights. In recent times, courts in various jurisdictions have also begun to take cognizance of competition law matters related to sports.

The development has primarily coincided with the increasing relevance of sports bodies in the national and international sphere. Competition law mainly deals with issues of anti-competitive behaviour that can take the form of anti-competitive agreements or abuse of dominant position. With an all-encompassing control of sports bodies on sponsorships, participation in competitive events, doping tests etc., issues of competition law are bound to

¹ *New Study on the Economic impact of Sport released by the European Commission (2018)*, EU OFFICE (25 September 2019, 5:00 PM), <http://www.euoffice.eurolympic.org/blog/new-study-economic-impact-sport-released-european-commission>.

² Manas Tiwari, *IPL economy: What the cash-rich league adds to India's GDP*, FINANCIAL EXPRESS (25 September 2019, 5:00 PM), <https://www.financialexpress.com/sports/ipl/ipl-economy-what-the-cash-rich-league-adds-to-indias-gdp/1025063/>.

arise. Moreover, lack of a formal sports law regime in most countries has led to sports governing bodies exercise indiscriminate control over the fate of various stakeholders.

The intersection of competition law in sports has been witnessed not only in India but in more mature competition law jurisdictions as well, including the European Union and the United States of America. While in the USA, instances of antitrust investigation in sports go back to early 20th century, in India, the Competition Commission of India has decided various landmark cases in the short span of its functioning. With the reign of sports governing bodies becoming increasingly comprehensive, the number of competition law cases are expected to rise in the coming few years.

The paper aims to look at some of these issues, as they exist in various jurisdictions across the world. The paper will primarily look at case laws originating from India, United States of America and the European Union that deal with the intersection of sports and competition law. Further, the paper will also pick out unique instances in these countries where the discipline of competition law has contributed to the regulation of sports.

2. Overview of Legislative Framework of Competition Law in the United States, the European Union and India

In order to understand how competition law treats professional sports, it is imperative to analyse its statutory provisions, as they exist in the United States, European Union and India. It will bring out dissimilarities in the way competition law principles work in these jurisdictions and the impact they can possibly have on different fields including organized sports. It will also help us recognize various drawbacks and challenges that need to be addressed for better regulation of the sports industry through competition law.

2.1. Statutory Framework in the United States of America

Competition law, known as antitrust law in the United States, has always had a special place in American jurisprudence. Legislators and courts understood its significance as early as towards the end of the 20th century. The evolution of antitrust law has not only kept in mind considerations of market competitors, but of consumers as well. Al Franken, an American senator and media personality, summed up its importance for the common man, stating that “most Americans don’t think about antitrust law when they look at their cable bill, flip channels on TV, or worry about what their favourite website knows about them, but they should.”³ Indeed, the impact on antitrust law on the everyday American and its relevance in almost every industry, including sports, has been recognized in the United States, as we will find out in the next chapter.

Antitrust law in the country is regulated by the Sherman Act of 1890⁴, the Clayton Act of 1914⁵ and the Federal Trade Commission Act of 1914⁶. The Federal Trade of Commerce and

³Al Franken, Antitrust Quotes, BRAINY QUOTE (28 September 2019, 6:00 PM), https://www.brainyquote.com/quotes/al_franken_583147?src=t_antitrust

⁴The Sherman Act, 15 U.S.C. §§ 1-38 (1890).

⁵ The Clayton Antitrust Act, 15 U.S.C. §§ 12-27, 29 U.S.C. §§ 52-53 (1914).

the Department of Justice are the two bodies that deal with competition laws in the country. The Sherman Act prohibits various anti-competitive activities, including "combinations and agreements that trade or commerce among the several States, or with foreign nations."⁷ The section further provides for a "fine of maximum \$100,000,000 for corporations and \$1,000,000 for any other person or/and imprisonment not exceeding 10 years."⁸ Section 2 of the Act prohibits monopolization of trade, penalizing "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations."⁹ These two sections form the primary basis for antitrust scrutiny in the field of sports, as we will find out. In addition to this, the Clayton Act prohibits various anti-competitive activities, including tying agreements, exclusive dealing arrangements and "mergers and acquisitions where the effect may be substantially to lessen competition or to tend to create a monopoly"¹⁰ The antitrust regime in the country has been strictly enforced in the country, time and again, keeping in line corporations that engage in anti-competitive practices.

2.2. Competition Law in the European Union

The fundamental idea behind the inception of the EEC or the European Community was to promote free trade in the region, for which an effective competition law regime is imperative. It was recognized early on that a fair market situation will not only aid competitors but improve the overall pace of development in the country. Further, it aimed at achieving harmonization of markets existing within the European Union. Articles 81 and 82 of the treaty primarily regulated anti-competitive activities and were subsequently replaced by Articles 101 and 102 of the TFEU. Article 101 makes a list of "agreements, decisions and undertakings illegal, like tying agreements, price-fixing agreements, application of dissimilar conditions to equivalent transactions, control on production etc. if they affect trade between member states or within the countries."¹¹

Article 102 talks about abuse of dominant position. It prohibits the practice in the form of

*"unfair purchasing prices or trading conditions, imposing limits on production, not imposing similar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts."*¹²

⁶The Federal Trade Commission Act, 15 U.S.C. §§ 41-58 (1913).

⁷The Sherman Act, 15 U.S.C. §§ 1-38 (1890), s.1.

⁸*ibid.*

⁹*ibid.*

¹⁰The Clayton Antitrust Act, 15 U.S.C. §§ 12–27, 29 U.S.C. §§ 52–53 (1914), s.7

¹¹Consolidated Version of the Treaty on the Functioning of the European Union art. 106, May 9, 2008, 2008 O.J. (C 115) 46 (hereinafter TFEU), art. 101

¹²TFEU art. 102

Sports governance bodies and other entities within the EU have often been alleged to have engaged in abuse of dominant position or entering into anti-competitive agreements, as we will further see in the project.

2.3. Competition Law framework in India

The Indian competition law regime is relatively new as compared to the United States of America and the European Union. The earlier Monopolies and Restrictive Trade Practices Act¹³, which came into force in 1969 was replaced by the Competition Act, 2002, due to the former's singular focus on preventing anti-competitive practices, especially formation of monopolies, rather than promoting competition. The 2002 Act takes care of multiple objectives by seeking to "prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect interests of consumers and to ensure freedom of trade."¹⁴ The Competition Commission of India is responsible for enforcement of competition law within the country. Competition law scrutiny within India is primarily done through Section 3 and 4 of the 2002 Act. Section 3 prohibits anti-competitive agreements "in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.:"¹⁵ The latter prohibits "abuse of dominant position in the country, through unfair purchase conditions, discriminatory pricing, conduct amounting to denial of market access, tying agreements etc."¹⁶

While the competition regime in the country is comparatively recent, CCI has nonetheless decided some significant cases in the field of professional sports. Sports in India, like in a lot of other countries, is regulated by various sports governing bodies which possess an enormous amount of power. The Commission has repeatedly attempted to control indiscriminate abuse of the said power and ensure that the sports industry develops in a fair manner.

While it can be observed that India, USA and EU are not at the same stage of development of competition law, as we will see further, courts in these countries have often adopted similar approaches to regulating professional sports. However, each jurisdiction presents unique challenges which require appropriate interpretation of the above-mentioned statutory provisions. The manner in which courts have responded to these challenges will be analysed in subsequent chapters.

¹³The Monopolies and Restrictive Trade Practices Act, 1969

¹⁴The Competition Act, 2002 [hereinafter Competition Act]

¹⁵Competition Act, s.3

¹⁶Competition Act, s.4

3. INTERFACE OF ANTITRUST AND SPORTS IN THE UNITED STATES: FROM BASEBALL TO ONLINE BETTING

Professional sports in the United States have evolved from merely serving a cultural purpose to catering to commercial needs of the economy. The history of professional sports in the country goes all the way back to 1876 when the National League of Baseball was organized. Back then, the commercial impact the sport would have over the next century could not have been anticipated. Fast forward to 2018, and the average Major League Baseball team is worth \$1.645 billion.¹⁷ These mind-boggling figures are present in other popular sports too, with the average National Basketball League team being valued at \$1.65 billion¹⁸ and the National Football League, the most economically valuable league in the world, consists of teams with an average value of \$2.57 billion.¹⁹ The exponential surge in the rising value of leagues and teams can be attributed to broadcasting rights, merchandise rights, sponsorships and other revenue streams.

However, the story of professional sports in the United States is not merely one of colossal amounts of money, but also of individual stakeholders. Short-term actions and long-term policies of leagues like the NBA, MLB and NFL impact the fans who are the primary consumers of sports, as well as the athletes who create enormous brand value for them. It isn't surprising then, that the leagues' actions are subject to antitrust scrutiny, keeping in mind the far-reaching economic consequences it can have for players, fans, sponsors, teams and other participants. The chapter will examine the historical treatment of major sports leagues within the antitrust regime, delineating the exemptions they have been granted and the restrictions that have been imposed on them. The chapter will subsequently look at recent cases outside the purview of the NFL, NBA and MLB, as well as possible future disputes that may arise, in order to highlight diversified concerns within the interface of sports and competition law.

As discussed in the previous chapter, the major legislations in the United States dealing with antitrust are the Sherman Antitrust Act and the Clayton Act, and the Federal Trade of Commerce and Department of Justice are primarily responsible for antitrust enforcement in the country. However, regulation of sports leagues through antitrust laws has not been straightforward, as witnessed by the exemption provided to baseball in 1922.

3.1. Antitrust Exemption to Major League Baseball

The oldest major professional sports league in the USA, Major League Baseball or MLB comprises of 30 teams. The popularity of MLB in the country has exponentially increased since its inception 116 years ago. According to statistics, close to 68.5 million fans attended

¹⁷ Mike Ozanian, *Baseball team values 2018*, FORBES (29 September 2019, 11:00 AM), <https://www.forbes.com/sites/mikeozanian/2018/04/11/baseball-team-values-2018/#405e85313fc0>.

¹⁸ Kurt Badenhausen, *NBA Team Values 2018: Every Club Now Worth At Least \$1 Billion*, FORBES (29 September 2019, 11:00 AM), <https://www.forbes.com/sites/kurtbadenhausen/2018/02/07/nba-team-values-2018-every-club-now-worth-at-least-1-billion/#3ad2eaf87155>.

¹⁹ *Forbes Releases 21st Annual NFL Team Valuations (2018)*, FORBES (29 September 2019, 4:00 PM), [forbes.com/sites/forbespr/2018/09/20/forbes-releases-21st-annual-nfl-team-valuations/](https://www.forbes.com/sites/forbespr/2018/09/20/forbes-releases-21st-annual-nfl-team-valuations/).

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league games in 2018²⁰ and close to 170 million Americans consider themselves MLB fans.²¹ However, the league's rise to fame and large-scale admiration has not been without its share of hiccups. MLB faced antitrust scrutiny as early as in 1922 in the case of *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*²². The case is famous for two reasons: this was the first time professional sports were subjected to antitrust laws in the United States and a professional sports league was granted exemption from antitrust laws. The American League and National League had recently entered into a settlement with Federal League leading to its dissolution. The complaint accused the leagues of violating the Sherman Act by trying to monopolize professional baseball through the unfair inducement of certain club owners. The leagues offered the provision of a certain "reserve clause", which granted clubs everlasting rights to a player, even after the expiration of his contract.²³ The actions of the two leagues were aimed at ensuring the effective demise of the Federal League.

While the plaintiff won the case under antitrust laws at trial, the decision was reversed by Court of Appeals. The Supreme Court, reaffirming the Appellate Court's decision ruled that "MLB's business activities are wholly intrastate because each game is played within a single state even if between clubs located in different states; therefore, MLB's business is not interstate trade or commerce subject to regulation by federal antitrust law."²⁴

In the next few decades, lawsuits against the League continued to pour in, including *Toolson v. New York Yankees* in 1953,²⁵ *State v. Milwaukee Braves*²⁶ in 1966 and *Flood v. Kuhn*²⁷ in 1972. These issues brought to the forefront various concerns related to the geographical location of teams as well as the interests of the players involved. In the *Toolson* and the *Milwaukee Braves* case, the allegation was against the National League which permitted Milwaukee Braves to relocate to Atlanta, and not providing a new team in its place in Milwaukee. While the Wisconsin state court issued an injunction against the relocation, the decision was reversed by the Supreme Court. The Court ruled that even if it is assumed that there was a violation of antitrust laws, the League could not be required to increase the number of teams. Such an action, the Court stated, would be in violation of the Constitution's Supremacy Clause, which states that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land"²⁸ and the Commerce Clause which gives Congress the "exclusive authority to regulate Commerce with foreign Nations, and among the several

²⁰ Ed Moran, *Another Year Of Declining Attendance: How Worried Should MLB Be?*, FRNT OFFICE SPORT (30 September 2019, 6:00 PM), <https://www.frntofficesport.com/mlb-attendance-2019-2/>.

²¹ David Adler, *MLB sees fan growth across the board in 2019*, MLB (30 September 2019, 5:00 PM), <https://www.mlb.com/news/mlb-increased-viewership-attendance-in-2019>.

²² *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922) [hereinafter *Federal Baseball v. NLPBC*].

²³ *Reserve Clause*, BASEBALL REFERENCE (30 September 2019, 9:00 PM), https://www.baseball-reference.com/bullpen/Reserve_clause.

²⁴ *Federal Baseball v. NLPBC*, *supra* note 22.

²⁵ *Toolson v. New York Yankees*, 346 U.S. 356 (1953).

²⁶ *State v. Milwaukee Braves*, 1966 Trade Cas. (CCH) 1 71, 738 (Wis. Cir. Ct.) (1966).

²⁷ *Flood v. Kuhn*, 407 U.S. 258, 258 (1972) [hereinafter *Flood v. Kuhn*].

²⁸ The Constitution of the United States of America, art. VI, cl. 2.

States, and with the Indian Tribes." ²⁹ Since MLB was exempt from antitrust laws, the location and number of teams in the league could not be altered without violating the Supremacy Clauses. Therefore, the apex court of the country continued to uphold the validity of the League's actions, despite large scale opposition from fans, teams and players.

The issue of the Reserve Clause, first discussed in the 1922 case, came to the fore again in the *Flood* case. Curt Flood is widely considered a heroin American baseball folklore, winning seven consecutive Gold Glove Awards from 1963 to 1969.³⁰ However, he was widely acclaimed for his open criticism of MLB's restrictive and unfair policies. In a letter to the League Commissioner, he famously wrote, "After twelve years in the major leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes."³¹ His words resonated with most baseball players of the time, who had borne the brunt of the reserve clause. In the Supreme Court, Flood lost the suit. The Supreme Court refused to remove the exemption given to baseball, stating that it rests on a "recognition and acceptance of baseball's unique characteristics and needs"³² and to avoid the confusion and the retroactivity problems that would be caused if the exemption was removed. The exemption has therefore remained since 1922, with neither the Courts nor Congress moving to remove the fallacy that was created in *Federal Baseball*.

However, the exemption was subsequently narrowed in the next few decades. In *Piazza v. Major League Baseball*,³³ a district court held that the exemption is only limited to the player reserve system, and an antitrust challenge court is entertained if it involved restraint on purchase, sale, relocation and transfer of teams on competition in these respects. The decision was further reaffirmed in various cases and in 1998, Congress took certain concrete steps. The Curt Flood act amended the Sherman Act and narrowed the League's exemption.³⁴ Granting the same rights as given to players of other sports leagues, the act permits challenges by players with respect to those actions or agreements which either directly relate or affect "employment of major league baseball players to play baseball at the major league level."³⁵ However, the issue of stadium relocation and other concerns were not addressed by the Act. The exemption's application on franchise location matters was reaffirmed as recently as in 2015 in the case of *Portland Baseball Club*.

The researcher submits that the courts and the legislature have not paid due attention to the far-reaching impact a league's monopoly can have. While it cannot be denied that the characteristics of a sports league distinguish it from other commercial entities, it is essential that a uniform mode of regulation is applied, bringing them on a level playing field with other business entities. MBL has long enjoyed an exemption that has not been afforded to other

²⁹ *ibid.*

³⁰ *Curt Flood*, BASEBALL REFERENCE (1 October 2019, 5:00 PM), <https://www.baseball-reference.com/players/f/floodcu01.shtml>.

³¹ Howard Burns, *Curt Flood's Sacrifice: Sports' Most Meaningful Trade*, BLEACHER REPORT (1 October 2019, 6:00 PM), <https://bleacherreport.com/articles/766021-curt-floods-sacrifice-sports-most-meaningful-trade>.

³² *Flood v. Kuhn*, *supra* note 27.

³³ *Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

³⁴ The Curt Flood Act, 1998.

³⁵ *ibid.*

sports leagues which largely enjoy a similar structure, governing powers and monopoly. The exemption, therefore, establishes different standards of regulation a sport is subject to.

3.2. Antitrust treatment of other sports: Football and Combat sports

While MLB is the only league that has been provided an antitrust exemption, specifically with regards to Section 1 of the Sherman Act, competition law issues arise in other sports as well. The National Football League is an important example. The case of *American Needle, Inc. v. National Football League*³⁶ came up as recently as in 2010, relating to licensing of trademarks. Taking a different stance than the one in MLB cases, the Supreme Court said that NFL's joint exclusive licensing of clubs' trademarks, that are individually owned by them, could be subject to an antitrust challenge under Section 1 of the Sherman Act. The court justified it saying that NFL was "controlled by a group of competitors and served, in essence, as a vehicle for ongoing concerted activity. On the other hand, the exemption is inapplicable if they control a single aggregation of economic power and have a complete unity of economic interest."³⁷ However, the court refused to apply the traditional *per se* rule of illegality and instead sought to apply the Rule of Reason.

The Court in the case stated that since the clubs are economic competitors in the relevant market, their collective product distribution restraints fall under the definition of 'agreements' within Section 1. The conduct of clubs and the league, therefore, could be subject to antitrust scrutiny. With the application of the flexible rule of reason, the courts have ensured that conduct of the league is judged on the basis of the action complained of, keeping in mind the interests of clubs as well as other stakeholders.

Proponents of limited antitrust scrutiny of sports leagues have long argued that decisions with regards to relocation, labour rights, broadcasting rights etc. should be taken care of by collective decisions of clubs and league rules. Experience in the above-mentioned cases suggests that certain players in professional sports, especially the governing bodies enjoy an unfair monopoly. This presents various problems including lack of accountability as well as insufficient representation of other parties including clubs and players. On the other hand, lack of appropriate appellate recourses within the league systems can lead to unjust regulation. While self-regulation to a certain extent is necessary, ensuring that professional leagues can be held responsible for their actions will ensure inclusive development of professional sports.

At the same time, it will be useful to see the role of antitrust law on sports outside the traditional league structure, as observed in NFL and MLB. For that purpose, professional boxing and MMA provide insightful literature. The structures of these sports are different than team sports observed above. The sports are governed by particular states that ensure the safety of fighters and grant licenses. The state athletic commissions issue relevant rules and

³⁶American Needle, Inc. v. National Football League, 560 U.S. 183 (2010).

³⁷*ibid.*

impose penalties.³⁸ There are also various sanctioning bodies including the World Boxing Council and World Boxing Organization that coordinate with promoters to organize fights and events. State Commissions usually look after drug testing, except in the case of UFC which has its own anti-doping policy.³⁹

Antitrust cases in combat sports have revolved around Section 1 and Section 2 of the Sherman Act and issues of tying arrangements as we will see below. The lawsuit filed by Golden Boy Promotions will further shed light on the issue. Golden Boy Boxing, a major boxing promoter, filed an antitrust suit against Al Haymon and related entities of illegal, accusing them of entering into tying relationships. Haymon was accused of tying the services sold in the market for the management of championship calibre boxers with the promotion of these boxers.⁴⁰ Further allegations related to restraint of trade by entering into agreements to lock up boxers and not allowing them to enter into trade with other promoters. An accusation was also made that Haymon “paid broadcast companies for exclusive rights to television air time on most U.S. networks to block other promotions from airing on the same networks.”⁴¹

The court dismissed the complaint, as finding no genuine issues of fact. The court found no evidence of tying arrangements in actions of Haymon. The court observed that “while illegal tying arrangements need not be expressed, and consent clauses may practically function as unlawful tying arrangements, the Court did not find this to be the case. Further, no boxer submitted testimony claiming a tie arrangement and that they were pressured or coerced into working with a particular promoter (i.e. “sham” promoter).”⁴² The case provides further evidence that antitrust litigation in the United States goes beyond the natural perils of a league system. In addition to governing bodies, other players with a commercial interest in the sport could misuse their power in the market. Considerations of player safety, sponsorship and broadcasting rights, access to alternate leagues need to be kept in mind while deciding antitrust matters in professional sport.

The nature of rights that are involved in antitrust cases will also have a unique bearing on the future of sports regulation. The disputes referred to in the above cases were varied, merchandise and logo rights in *American Needle*, player stadium location rights in litigation related to baseball and management and promotion rights in combat sports. The evolution of technology will bring out novel methods of economic exploitation of sports, which will inevitably bring out new competition law questions.

³⁸ Brendan Maher, *Understanding and Regulating the Sport of Mixed Martial Arts*, 32, UCONN Library, 209 (2010).

³⁹ Bengt Kayser, Alexandre Mauron, and Andy Miah, *Current anti-doping policy: a critical appraisal*, 8 PMC, (2007).

⁴⁰ Golden Boy Promotions, LLC and Bernard Hopkins v. Alan Haymon, et al 2:15-cv-03378-JFW-MRW (2015). [hereinafter Golden Boy v. Alan Haymon]

⁴¹Golden Boy v. Alan Haymon., *supra* note 40.

⁴²Golden Boy v. Alan Haymon., *supra* note 40.

3.3. The future of antitrust litigation in American sports

Issues of centralisation of various rights with governing bodies have presented various problems, as seen above. The next series of antitrust challenges is now expected to come up in relation to sports data and is likely to have a huge impact on the sports gambling market. Americans gamble more than \$150 billion illegally on sports in a year, according to estimates from the American Gaming Association. About another \$5 billion comes in legally.⁴³ Sports data is valuable for gambling companies, who buy it from their owners in order to facilitate their functions.

The MLB and NBA have recently centralized ownership of game data with the league, instead of letting individual teams exercise control. Moreover, the leagues have tried to ensure their business partners buy data collected by them only, rather than other third parties.⁴⁴ This is bound to bring out concerns of violation of Section 1 and 2 of the Sherman Act. For instance, a gambling company will have to buy league data from the league itself for all games, even if it wanted to offer gambling services for say, only LA Lakers games. Moreover, the league can use its monopoly on organizing league games to prohibit third parties from collecting data, selling that data directly to the buyers. The leagues' actions are therefore bound to bring up questions of antitrust violations.

The narrowing of antitrust exemption to baseball and its non-applicability to other sports has ensured monopoly abuse by leagues can be challenged by competitors. The trend of immediate centralisation of rights to new revenue streams by leagues will, therefore, attract increasing attention of courts. However, governing bodies need to look inward at its policies and rules to share revenue more equitably and divest more control on rights to teams. Labour rights of athletes involved including their contractual terms and remuneration policies have to be upheld by leagues at first instance, reducing the need to resort to the court system. Most importantly, the legislature needs to update existing antitrust laws, keeping in mind the impact of actions of sports bodies on local markets, fans and inter-state trade.

4. ROLE OF COMPETITION LAW IN SPORTS WITHIN THE EUROPEAN UNION

The financial impact of sports can also be witnessed in the European market. The metamorphosis of professional sport into a profitable business has largely been down to selling of broadcasting rights. The ownership of these rights, along with other concerns has formed the basis for various competition law issues within the region. Article 101 and 102 of the TFEU, discussed in the first chapter, are primarily utilized by the commission during antitrust scrutiny. While Article 101 primarily discusses cartels and anti-competitive agreements, Article 102 contains provisions on abuse of dominant position.

⁴³Alex Sherman, *Legal gambling from your phone could be a \$150 billion market, but making it happen will be tough*, CNBC (2 October 2019, 5:00 PM), <https://www.cnbc.com/2019/04/27/fanduel-draftkings-race-to-win-150-billion-sports-betting-market.html>.

⁴⁴Ethan Sanders, Aalok Sharma, Who's On First? – The Fight Over Official Sports Data After Murphy, JDSPURA (2 October 2019, 4:00 PM), <https://www.jdsupra.com/legalnews/who-s-on-first-the-fight-over-official-81726/>.

The chapter will discuss various competition law issues within EU law under 3 sub-heads: sale of media rights, ticket sale arrangements, and issues falling within the realm of regulatory/organizational concerns.

4.1. Sale of sports media rights

Sale of sports media rights to broadcasters is a major source of revenue for teams, especially football clubs. However, the clubs cannot individually sell media rights but have to do the same collectively through a league association.⁴⁵ Broadcasting rights have been extremely important for their balance sheets, considering the amount of money it brings in. While in 2003/04 season, UEFA made \$451 million selling broadcasting rights, it made close to \$1.7 billion in the 2016/17 season.⁴⁶ Domestic leagues are not that far behind either, with the Premier League making close to \$2 billion in broadcast and commercial revenues in 2018/19. The top 2 clubs, Manchester City and Liverpool raked in a share of close to \$150 million each from total revenue kitty.⁴⁷

In 2003, the Commission assessed the practice of UEFA Champions League to jointly sell television rights.⁴⁸ It must be highlighted that unlike domestic leagues, which are an association of football clubs, UEFA is an association of national football associations. The Commission allowed the practice under Article 81(3) of TFEU, which makes the paragraph on anti-competitive agreement inapplicable if the agreement “contributes 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.”⁴⁹ However, the Commission imposed conditions on the exemption including that the right tendering process has to be fair and transparent, the rights should be bundled into individual packages and sold for a maximum period of 3 years. Moreover, it is imperative that “clubs must not be prevented from selling their live TV rights to free-TV broadcasters where there is no reasonable offer from any pay-TV broadcaster.”⁵⁰

The Commission followed its own analysis from the *UEFA Champions League* decision while assessing the German league association’s request for individual exemption under Article 101(3).⁵¹ The Commission allowed collective selling of rights by the association, finding it to be within the realm of the exemption provision. It is interesting to note that while collective selling made sense in the earlier decision since Champions League fixtures involve multiple nations, an individual model could have been adopted at the domestic level. However, subjecting the exemption to similar conditions as imposed in the earlier case, the

⁴⁵Sonia Falconieri, Frédéric Palomino and József Sákovics, *Collective versus Individual Sale of Television Rights in League Sports*, JEAC 2, pp. 833-862 (2004).

⁴⁶ Alex Richter, *the Champions League's Global Appeal Pays off*, STATISTA (3 October 2019, 6:00 PM), <https://www.statista.com/chart/15498/champions-league-broadcasting-rights-revenue/>

⁴⁷ *Premier League value of central payments to clubs 2018/19*, PREMIER LEAGUE (3 October 2019, 7:00 PM) <https://www.premierleague.com/news/1225126>.

⁴⁸ *Commission clears UEFA's new policy regarding the sale of the media rights to the Champions League*, EUROPA (4 October 2019 8:00 PM), https://europa.eu/rapid/press-release_IP-03-1105_en.htm?locale=en.

⁴⁹ TFEU art. 81(3).

⁵⁰Joint selling of the commercial rights of the UEFA Champions League, COMP/C.2-37.398

⁵¹Joint selling of the media rights to the German Bundesliga, COMP/C-2/37.214

Commission upheld the value of various efficiencies that collective selling brings. The decision has certainly ensured that leagues get substantial value for their rights, as we have seen by the figures mentioned above. Moreover, the Commission has ensured that even downstream markets are promoted, as seen in the *Bundesliga* case, for instance, where it directed selling of rights over the internet, in addition to the traditional means of broadcasting.

4.2. Ticket Sales Arrangements

Arrangements for selling tickets for sporting events have also come under the scanner of the Commission. Two main decisions in this regard primarily relate to credit card exclusivity. In 2004 Athens Olympic Games, tickets booked online could only be paid for through VISA cards. However, the exclusivity arrangement, according to the Commission, did not violate Articles 81 or 82 since there were alternative sale channels available for customers to purchase the tickets. These channels had the provision to pay for tickets through payment methods other than VISA cards. In circumstances where access to tickets was observed to be difficult for consumers, the organizing committee agreed to increase information on available sales channels. The case was subsequently closed.⁵²

A similar case came up in 2006 in relation to the FIFA World Cup when the Commission had to assess exclusivity of MasterCard for sale of tickets. While the scale of demand was much higher than in the Athens games, the Commission still followed the same rule as it had in the 2004 decision. In this circumstance, tickets could be bought through three mechanisms: MasterCard credit card, a German bank account or international bank transfer, with the last mechanism specifically involving considerable costs for non-EU customers. FIFA, DFB and MasterCard introduced more payment methods, including domestic bank transfers in local currency for non-EU members.

The Commission, therefore, in both cases kept “reasonable access to entry tickets” as the main guiding principle for these cases.⁵³ There have been arguments that the action of Commission amounted to over-regulation. However, the author believes that regulation of payment methods for selling tickets deals primarily with the economic aspect of a sporting event and not the way the sport is played or individual games are organized. Further, considering the fact that ticket package deals involve accommodation and travel offerings, ticket arrangements can have an impact on other markets as well.

4.3. Regulatory or organizational issues in European Sport

Cases of organizational issues in European competition law primarily revolves around whether rules adopted by sports bodies infringe Articles 101 and 102 of TFEU. European Courts have dealt with two major cases in this regard, the *Meca – Medina* case and the

⁵² *Commission clears ticketing arrangements for the Athens Olympic Games*, EUROPA (5 October 2019, 4:00 PM), https://ec.europa.eu/rapid/press-release_IP-03-738_en.htm.

⁵³ *ibid.*

MOTOE case. In the case of *Meca-Medina and Macjenv. Commission*⁵⁴, two professional swimmers tested positive for a banned performance-enhancing drug by International Swimming Association and International Olympic Committee and were thereby banned. The ECJ held that since athletes receive remuneration for their services, their employers and governing bodies should be subject to competition rules. It said that rather than all sporting activities being given a blanket exemption, actions of governing bodies should be assessed on a case-by-case basis.

The Court held that “the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down”⁵⁵. The Court applied the renowned *Wouters*⁵⁶ test, which is similar to the rule of reason established in American antitrust law. It therefore was guided by the proportionality principle, asking whether “the adoption of anti-doping rules legitimate and inherently necessary to the proper development of the sport?”⁵⁷. With the application of this rule to the sports sector, the Court basically ensured that the sports industry cannot be exempt from European competition rules solely because it has certain unique organizational and regulatory features.

The question of whether sports governing bodies are “undertakings” within the meaning of various articles of EU Competition law was decided in the *MOTOE*⁵⁸ case. The guiding principle for the same was whether the body was involved in ‘economic activity’. The Court ruled that ELPA, the body responsible for the organization of motorcycling events fell within the definition since it entered into “sponsorship, advertising and insurance contracts designed to exploit those events commercially”.⁵⁹

The main discussion we have undertaken in this chapter is whether or not actions of sports governing bodies fall within the scope of European competition rules. In most of these cases, the courts have not allowed blanket exemptions to sports bodies and their actions, pointing towards the fact that unique characteristics of professional sports get diluted as their economic aspects come to the forefront. We have also observed that the courts have indeed struggled to establish a uniform criterion regarding the extent to which professional sports can be brought under the umbrella of European competition law, resorting to a case-by-case approach instead. This has certain benefits insofar as it ensures that rights of various stakeholders including ticket purchasers, athletes and sponsors are not assessed through the same guiding principles. However, it undermines the authority of governing bodies on athletes on certain crucial aspects including doping, since anything and everything can be brought under the scope of antitrust scrutiny under the law. While the rule of reason and economic impact are prudent tests, it is necessary that the courts further elaborate on these

⁵⁴ *Meca-Medina and Majcen v. Commission*, Case C-519/04, 2006 E.C.R. I-6991

⁵⁵ *ibid.*

⁵⁶ *Wouterse.o. v Algemene Raad van de Nederlandse Orde van Advocaten*, Case C-309/99 [2002] ECR I-1577 [hereinafter *Wouter v. Algemene*]

⁵⁷ *Wouter v. Algemene*, *upra* note 56.

⁵⁸ *Motosyklistiki Omospoundia Ellados NPID (MOTOE) v. Elliniko Dimosio* [2008] ECR I-04863.

⁵⁹ *ibid.*

criteria and establish clearer rules keeping in mind the unique challenges posed by professional sports.

5. Competition law in Indian sports: A confluence of fields old and new

Sports is recognized worldwide as an important contributor to the economy of a country, and the same holds true for India. The country has witnessed significant improvement in the development of professional sports. This could be attributed to various reasons, including improvement in sports infrastructure. Currently, the country has 100 sports facilities that comply with international standards, 11 Centres of Excellence and 56 SAI training centres. A growth rate of 22.1% is expected to be reached by 2023 for franchise-based leagues.⁶⁰ Another reason for development is various policies and schemes including National Sports Policy, 2014,⁶¹ Revised Khelo India - National Programme for Development of Sports Scheme, 2016⁶² and Panchayati Yuvi Kridaaur Khel Abhiyan⁶³.

However, the growth of professional sports in the country has also been accompanied by an increase in relevance and control of professional sports bodies. These sports organizations impose various restraints, economic and otherwise, that expectedly come under antitrust scrutiny. The Competition Act, 2002, as discussed earlier in the paper, seeks to regulate these restraints and ensure that no entity engages in anti-competitive behaviour.

Development of competition jurisprudence in India is comparatively recent as compared to the EU and USA, and the intersection of sports with the field is still in its native stage. However, the Competition Commission of India in the last few years has given certain important decisions that allow us to assess various challenges posed by this interface. The chapter will discuss 3 major decisions by CCI before diving into various that form part and will form part of the sports-competition law interface in the future.

5.1. Athletics Federation of India Case

In 2015, the Athletics Federation of India (AFI) decided to act against its members, including athletes and officials who promote marathons organized without the authority of the AFI.⁶⁴ This action of AFI was complained to be anti-competitive as provided under Section 4 of the Competition Act, 2002. The Commission defined the relevant market as ‘provision of services relating to organisation of athletics/ athletic activities in India’ as well

⁶⁰*Sports infrastructure: Transforming the Indian sports*, PWC (5 October 2019, 5:00 PM), ecosystemhttps://www.pwc.in/assets/pdfs/industries/entertainment-and-media/sports-infrastructure.pdf.

⁶¹Sports/Youth Policy, PRESS INFORMATION BUREAU (5 October 2019, 6:00 PM), https://pib.gov.in/newsite/PrintRelease.aspx?relid=116699.

⁶² *Khelo India-National Programme for Development of Sports*, MINISTRY OF YOUTH AFFAIRS AND SPORTS (5 October 2019, 5:00 PM), https://www.yas.nic.in/sports/khelo-india-national-programme-development-sports-0

⁶³ *Objectives of Panchayat Yuva Krida Khel Abhiyan*, PRESS INFORMATION BUREAU (5 October 2019, 5:45 PM), https://pib.gov.in/newsite/mbErel.aspx?relid=113566.

⁶⁴Re Department of Sports, MYAS v. Athletics Federation of India, Reference Case No. 01 of 2015, 2016

as “market for services of athletes in India”⁶⁵, but since the allegations related to the former market, it limited the scope of its investigation to it. The Commission held AFI to be dominant in the relevant market, noting that it is the “apex body in the pyramid structure of administration of athletics/ athletic activities in India”⁶⁶ and has affiliations with various international governing bodies. The Commission, however, held that AFI did not abuse its dominant power and gave the following reasons:

- Minutes of the AGM meeting did not consist of anything that violates the provisions of the Act, and were, in fact, advisory in nature.
- Decisions taken in the AGM were not implemented.
- Approval of AFI is not essential is not required to organize a marathon/road race and the same can be organized without any prohibitions by AFI or otherwise. More than 96% of marathons/road races are organized without the involvement of the governing body.

An interesting observation is that in addition to holding that AFI did not abuse its dominant power, it also took note of possible policy decisions. The body had submitted a draft policy framework on marathons and road races⁶⁷ to the Ministry of Sports, and CCI hoped that it would address current uncertainties. The policy, however, is yet to be implemented. The Commission has rightly held AFI not guilty of Section 4 of the Act, since its actions did not prohibit athletes, sponsors, organizers and other stakeholders to participate in non-AFI approved events. The country does, in fact, have numerous private organizations organizing marathons, including Run India⁶⁸, Procam International⁶⁹, India Running⁷⁰. While there are no official estimates, some statistics place the growth rate in participation in marathons in India at 154.78% from 2009 to 2014, with a growth of 7.8% in case of men and 26.90% in case of women.⁷¹ While there could be numerous reasons behind this growth rate, the sprouting of privately organized marathon events is surely a primary catalyst. Therefore, in a market characterised by healthy and vibrant competition, the dominance of AFI has not caused any adverse impact.

5.2. Indian Cricket League Case

CCI investigated into another instance of abuse of dominant power, finding the Opposite Party in contravention of the Act in this instance. Indian Cricket League alleged that BCCI had abused its dominant power through various means, including:

⁶⁵*ibid.*

⁶⁶*ibid.*

⁶⁷ *Draft Policy Framework On Marathons And Road Races*, MINISTRY OF YOUTH AFFAIRS & SPORTS (6 October 2019, 6: 20 PM), <https://yas.nic.in/sites/default/files/Draft%20Policy.pdf>

⁶⁸ *Welcome to Runindia*, RUNINDIA (5 October 2019, 8:05 PM), runindia.com.

⁶⁹ *Procam Home*, PROCAM (10 October 2019, 1:45 PM), procam.in.

⁷⁰ *Welcome to India Running*, INDIA RUNNING (10 October 2019, 4: 35 PM), indiarunning.com.

⁷¹ *India's running Events Industry Report*, TOWNSCRIPT (10 October 2019, 2:06 PM), <https://blog.townscript.com/india-running-events-industry-report/>.

- Use of Indian Premier League (IPL) as a belated move adopting the same format as ICL to hurt ICL and its prospects
- Restricting various stakeholders including cricket players, office bearers, affiliations and stadiums from taking part in any tournament or match that has not been authorised by BCCI
- Taking away of benefits and imposing a virtual ban on players participating in ICL
- Putting pressure on corporates and Public Sector Undertakings to cease employment to players participating in ICL.⁷²

The relevant market was identified by BCCI as “organization of private professional domestic cricket events in India”⁷³ CCI found BCCI dominant in the market considering its monopoly in cricketing event organization, significant function in the regulation of the sport which allows it to make entry barriers for leagues and grant of supplementary rights. Further, the fact that it is vested by ICC with certain rights and has “significant authority in the pyramid structure of sports governance.”⁷⁴

The Commission held BCCI *prima facie* guilty of Section 4, holding that it “systematically excluded the Informant from participating in the relevant market” through non-recognition to ICL and engaged in exclusionary action. It also foreclosed ICL and its group companies in the downstream market of media rights. An investigation by DG was ordered by the Commission. CCI is yet to take a final decision on the case on the basis of the DG report. However, the body could face significant penalties if found contravening the Act. In an earlier instance as well, a penalty of INR 52.25 crore was imposed on BCCI for abuse of dominant power.⁷⁵

The case is the perfect example of how actions of regulatory bodies can have a humongous impact on the fate of private businesses. The Indian Cricket League, when first introduced in 2007, was a promising venture, with support from professional cricketers, state governments⁷⁶ and a substantial amount of funding by Zee entertainment. However, its eventual demise came out due to lack of support by BCCI and its anti-competitive practices as discussed in the case above. BCCI even gave “amnesty” to Indian players who participated in ICL, on the condition that they end all ties with the League.⁷⁷ This goes on to prove that sports bodies if they wish, can use systematic and unfair targeting of an entity with the sole purpose of causing its demise. On the other hand, unlimited support to IPL by BCCI has

⁷² Pan India Infra projects Private Limited v. Board of Control for Cricket in India (BCCI), Case No. 91 of 2013

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ Re Surinder Singh Barmi v. Board of Control of Cricket in India, Case No. 61/2010.

⁷⁶ State Minister allows ICL use of Eden Gardens, ESPN CRIC INFO (11 October 2019, 9: 46 PM), <http://www.espnccrinfo.com/icl/content/story/308020.html>.

⁷⁷ BCCI offers amnesty for ICL players, ESPN CRIC INFO (11 October 2019, 1:09 PM), <http://www.espnccrinfo.com/icl2008/content/story/402028.html>.

made it one of the richest leagues in the world, with its brand value rising to \$6.8 billion in 2019.⁷⁸

5.3. All India Chess Federation Case

In 2011, the Delhi High Court asked the Competition Commission of India to look into whether All India Chess Federation (AICF) had engaged in anti-competitive behaviour. The Court had received a petition asking it to direct AICF and the Ministry of Youth Affairs and Sports to not put a ban or threaten to ban chess players involved with Chess Association of India (CAI), a rival of AICF. All India Chess Federation of India had banned several players for participating in tournaments organized by CAI and had even sought removal of ELO ratings of few players through Fédération Internationale des Échecs (FIDE). Information received by CCI also contained the following allegations:

- Registration forms contained declarations prohibiting them from taking part in events unauthorised by AICF, failing which they cannot be in contention to participate in national or international events.
- Further, the organization followed the practice of imposing a year-long ban, relinquishment of half the prize money to AICF from any event not authorised by it, submission of an apology and undertaking that the player will, going forward, participate in unauthorized events.

The Commission held that AICF is an ‘enterprise’ under S.2(h) of the Act as it engages “in organisation of professional chess events/tournaments as well as in incidental revenue-generating activities.”⁷⁹ To come to this conclusion, the Commission made a reference to its decisions in various other cases including *Dhanraj Pillay and others v. Hockey India*⁸⁰ and *Surinder Singh Barmi v. Board for Control of Cricket in India*.

The relevant market was defined as “The market for organization of professional chess tournaments/ events in India”⁸¹ and the “market for services of chess players in India”⁸² and AICF was concluded to be in dominant position in both markets. The organization was held in contravention of Section 4 of the Competition Act. According to the Commission, the penalties imposed on players and those mentioned in AICF Code of Conduct were extremely harsh, including life bans and lack of any opportunity of hearing. Moreover, there was no definition of ‘unauthorised tournament’ nor any criteria provided for their authorisation in AICF’s bylaws. Thus, it was held that the restrictions by the body to participate “in non-approved tournaments had the object as well as the effect of restricting the free movement of

⁷⁸ *IPL brand value rises 7% to \$6.8 billion in 2019*, THE HINDU BUSINESS LINE (12 October 2019, 5:09 PM), <https://www.thehindubusinessline.com/news/sports/ipl-brand-value-rises-7-to-68-billion-in-2019/article29458678.ece>.

⁷⁹ *Hemant Sharma v. All India Chess Federation*, Case No. 79 of 2011 [hereinafter Hemant Sharma v. AICF].

⁸⁰ *Dhanraj Pillay and others v. Hockey India*, Case No. 73 of 2011

⁸¹ Hemant Sharma v. AICF, *supra* note 79.

⁸² *ibid.*

chess players and thereby, foreclosing the entry of potential organisers. These practices consequently led to denial of market access”⁸³

The researcher believes that similar to countries, India, too, is moving towards increased regulation of the sports industry through competition law. It can be observed that Indian sports bodies often have unrestricted power when it comes to regulation of sporting events, including the participation of players, authorisation of events, and granting of broadcasting rights. This not only has a huge economic impact, as we saw in the *Indian Cricket League* case but far-reaching consequences for players, as witnessed in the *AICF* case. Therefore, the fact that the Competition Commission of India, within only a few years of its inception, has begun to bring accountability to the world of professional sports that has unique challenges.

For instance, in the *AICF* case, CCI noted that “competition cases relating to sports associations/federations usually arise due to conflict between their regulatory functions and economic activities undertaken by them.”⁸⁴ Indeed, it is necessary that government policy works to ensure that the said conflicts are resolved, but in the meantime, forums like the Competition Commission will have to work to ensure that sports governance bodies’ regulatory functions do not have detrimental economic consequences for other parties.

Various problems are also posed by the pyramidal structure of sports governing bodies, which the Commission acknowledged in the above cases. However, instead of deeming the very structure or a class of activities as *per se* anti-competitive, the Commission has done well to adopt a *case-by-case* approach. On one hand, sports governing bodies do not have any blanket exemption from competition law as given to baseball in the United States, but on the other hand, the Commission has not held those activities as anti-competitive which have fair and legitimate sporting objectives.

6. Conclusion

Interaction of competition law with sports is part of a larger trend of increasing involvement of law in the field. For instance, contractual participation of professional athletes brought labour law issues to the forefront and commercialisation of various rights gave rise to questions of intellectual property law, especially trademark and copyright. Moreover, the applicability of contract law and tort law can also be witnessed in many cases. Therefore, as discussed in preceding chapters, more competition law cases related to sports are coming up than ever before, especially with sports governance bodies increasingly engaging in commercial activities. It is imperative, therefore, that focused research on this interface is undertaken in order to ensure organized sports in different jurisdictions develop according to fair market principles.

While most papers discuss issues of competition law in sports only with in relation to specific jurisdictions, the researcher has attempted to present a more comprehensive analysis, compiling the experiences of United States, European Union and India for a more holistic

⁸³*ibid.*

⁸⁴*ibid.*

understanding of the subject. USA and EU have two of the most mature and strictly enforced competition regimes in the world, and it is hoped that India can learn some lessons as it attempts to build on its relatively new competition law jurisprudence. The researcher will conclude by presenting some core themes discussed in the paper, before making a few suggestions with regards to how professional sports should be treated under competition law:

6.1. A wide subject matter of decisions

As observed in our research, competition law authorities have subjected a wide variety of subject matter to scrutiny. While relocation of teams and rights of professional athletes were discussed in the United States, ticket sales arrangements and sale of media rights were some major concerns before the European Commission. In India, we came across questions of organization of unauthorized events and professional leagues, along with the participation of athletes in these events. It is evident, therefore, that every action that infringes on the rights of various stakeholders including participants and competitors can be subject to competition law scrutiny.

6.2. Interests of fans and other stakeholders

On the face of it, the discussion on the role of competition law in sports seems to be a story of athletes, organizers and governance bodies. However, interests of fans are significant as well, considering their emotional and financial investment in sports like cricket in India, football in Europe and baseball in the United States of America. Actions of governance bodies affect access to various products and services including event tickets, as seen in the Athens Olympic Games case, as well as match broadcasts. For instance, in 2018, the right to broadcast Spanish League football matches in India was given to Facebook.⁸⁵ Due to the lack of access to internet facilities and underwhelming streaming speeds in the country, the step caused a furore among football fans in the country. It is, therefore, necessary that competition scrutiny of sports takes into consideration interests of fans as well, following the example of European Commission, when it directed selling of media rights through the internet in the *Bundesliga* case, in order to ensure easy access to consumers.

6.3. Role of governance bodies and anti-competitive tendencies

A common feature of the interaction between competition law and sports in the European Union, India and the United States is the dominant position of governance bodies. Bodies like BCCI, MLB, NBA, UEFA enjoy all-encompassing control on various aspects of the sport, including granting of rights, the participation of athletes and organization of events. While in some cases, they are given blanket exemptions, in most cases, they are investigated for possible violations. Recognition of these bodies by their global counterparts, government support and multiple sponsorships further strengthens their market dominance. Gaining access to market for players in horizontal markets, like smaller leagues and competitors in

⁸⁵ *Facebook buys rights to show La Liga games in India*, THE GUARDIAN (5 October 2019, 10:10 PM), <https://www.theguardian.com/technology/2018/aug/14/facebook-buys-rights-la-liga-spanish-football-games-india-barcelona-lionel-messi>.

downstream markets thereby becomes an uphill battle. It is necessary, therefore, that competition law not only performs the negative role of preventing anti-competitive practices but also the positive function of promotion of competition in the market.

6.4. What the future holds: Evolving subject matter and impact of technology

With rapid technological innovation, the interaction of sports and competition law is likely to become more complicated. For instance, with the evolution of high-speed internet, online streaming has become an economically viable option for sale of broadcasting rights of sporting events, especially in developed economies like the United States and Europe. The English Premier League is the perfect example of this evolution. For years, the right to broadcast Premier League matches has been the monopoly of Sky Sports and BT Sports. However, from the 2019-20 season onwards, Amazon Prime started broadcasting 20 matches, and the rest will be offered by BT Sports.⁸⁶ The step represents a drastic change from the practice followed by governance bodies for decades till now. Further, as we have seen, the inception of new industries like e-sports, sale of data collected during live games has been made possible through technological innovation. As new revenue streams and markets develop, the work of competition authorities is likely to become more complicated. It will be interesting to see how the EC, FTC and CCI respond to these challenges.

6.5. Concluding Remarks: How competition law can help the development of sports

Competition law authorities have, to a significant extent, been successful in ensuring fair market conditions in the field of sports. However, the researcher submits a few suggestions to further aid in the achievement of healthy market conditions in this unique field:

- A delineation between economic activities and strictly regulatory/organizational functions of governing bodies should be done. Governance bodies make significant amounts of money, as we have seen, through various commercial activities. A lot of times, these activities are inextricably intertwined with their regulatory and organizational functions. Delineation of these activities will aid authorities to take appropriate action and ensure that these bodies can enjoy varying standards of autonomy depending on the nature of functions performed by them.
- A balance between accountability and independence of governance bodies needs to be achieved. Over-regulation by government and competition law authorities hinders effective functioning of sports governance bodies, however, considering the extent of their dominance, they cannot be left unchecked either. Therefore, a harmonious balance between the two needs to be achieved.
- In developing countries like India, government support and investment in sports is minimal, especially at the grassroots level. Penalties should, therefore, be judiciously imposed, and directions to take steps that help the development of sports at every level should be given by concerned authorities. In the long run, an influx of

⁸⁶ Mark Sweeney, *Amazon breaks Premier League hold of Sky and BT with Prime streaming deal*, THE GUARDIAN (31 October 2019, 11: 07 PM), <https://www.theguardian.com/media/2018/jun/07/amazon-breaks-premier-league-hold-of-sky-and-bt-with-streaming-deal>.

investment by the government will help ensure that governance bodies do not have to heavily rely on revenues from private players.

- Policies and regulatory mechanisms for sports have to be developed and modified. In India, the sports regulatory mechanism is not particularly strong, especially as far as the involvement of government is concerned. Policies focused on different sports and their development at various levels need to be drafted and implemented. The government, therefore, has an important role to play in this respect.
- Transparency within sports governance bodies will go a long way in ensuring fair market principles are upheld. The manner in which media rights are granted, reasons for banning of certain players, criteria for recognition of unauthorised events, if made clear, predictable, fair and transparent, will create healthy competition in the market and reduce the need for constant interference by competition authorities.

The researcher, therefore, concludes that the interface of competition law and sports, if understood and acted upon carefully by governance bodies, courts, and legislators, while keeping in mind the interests of various stakeholders including athletes, fans and competitors, can create an environment conducive for the growth of organized sports.