

## Do Not Pass Go: The Plight of New Soccer Competitions in Europe

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The 2022 FIFA World Cup wasn't the only showdown being watched by soccer fans last year. Indeed, sports fans and antitrust watchers alike are awaiting a final [decision](#) from the European Court of Justice (ECJ) regarding the European Super League (Super League). An initial December 2022 decision ruled against the Super League and found that the international soccer governing body was not anticompetitive, and the ECJ will have a final say on the matter in early 2023.

In 2021, a group of 12 renowned soccer clubs challenged FIFA's economic position as the arbiter of world soccer with the [announcement](#) of the new Super League. In its [original form](#), the Super League was designed as a closed competition, consisting only of its founding members and their designated competitors. Simply put, it was a competition reserved for the best teams and intended to compete with UEFA's [Champion's League](#).

Putting the Super League into a broader context, European soccer is [governed](#) primarily by two institutions, FIFA and the Union of European Football Associations (UEFA). As participating members of a national association regulated by the Fédération Internationale de Football Association (FIFA) and the Union of European Football Associations (UEFA), clubs, like the 12 challenging teams, must comply with the rules promulgated by each institution. In order for the Super League to become a reality and compete with UEFA's Champion's League, FIFA and UEFA would have to agree to its creation.

UEFA, alongside several of its national associations, stated that any club or athlete choosing to participate in the Super League would be banned from future FIFA/UEFA competitions, including the World Cup. As a result, athletes would not be able to represent their national teams and the clubs would no longer be able to participate in their [domestic leagues](#). The company responsible for the Super League's creation, the

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European Super League Company SL, responded by filing a complaint with the Madrid Commercial Court, asserting that FIFA's and UEFA's actions constitute "anticompetitive" behavior that runs contrary to EU competition law." The Madrid Commercial Court sided with the Super League by granting an injunction, and subsequently referred the case to the ECJ, seeking a preliminary ruling.

Eventually, the ECJ published an opinion weighing strongly in favor of FIFA and UEFA. Among other things, this opinion addressed the Super League's allegations that FIFA and UEFA are anticompetitive by imposing a prior approval requirement on all new competitions and threatening sanctions against those in noncompliance. The ECJ held that the FIFA and UEFA framework "pursues legitimate objectives," and even though they hold a dominant position in the market, they are not violating their "special responsibility" to ensure that their actions do not "prevent the development of genuine undistorted competition." Therefore, according to the ECJ, FIFA's and UEFA's rules do not violate European Union (EU) competition law.

As the ECJ's initial decision makes clear, soccer in the EU appears to enjoy an exemption from otherwise strict antitrust and anti-monopoly laws, echoing baseball's privileged status in the United States, which benefits from a judicially created exemption from antitrust law dating back to 1922. This exemption for soccer might seem odd since the EU is generally regarded as a jurisdiction that enforces antitrust laws more vigorously than the United States. Despite these historical differences, both the EU and U.S. are evolving their antitrust strategies. If the final ECJ judgment confirms the initial decision, observers will watch closely to see if it cements a European exemption to antitrust laws for soccer, or if the ECJ grounds its decision on another legal basis. An exemption could be out of step with both Europe's generally strict approach to antitrust enforcement and the United States' recent trend of strengthening antitrust enforcement for sports and non-sports alike.

If the final decision from the ECJ creates an exemption for soccer from antitrust laws, it could represent a departure from Europe's historically strict approach to antitrust enforcement, as well as the United States' recent shift to a stricter approach. If the ECJ finds that FIFA and UEFA acted anticompetitively, it could demonstrate that the EU is joining the U.S. in looking skeptically at claims that sports should enjoy greater protection from competition laws. The final decision is expected in the first half of 2023.

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