

Case No eA-8-502/2025 of the Supreme Administrative Court of Lithuania

Lithuanian Basketball League (the League) and its basketball clubs (the applicants) versus the Competition Council of the Republic of Lithuania (the defendant, the CC). The case concerns the decision of the CC imposing fines on the League and its 10-member basketball clubs for the breach of Article 5(1) of the Law of the Republic of Lithuania on Competition and Article 101(1)(a) of the Treaty on the Functioning of the European Union (TFEU).

Facts of the case

The League is an association established under national private law and is the premier professional men's basketball league in Lithuania, organizing an annual basketball championship in which clubs affiliated with the League compete. At the time relevant to the case, the League organized the 2019–2020 Betsafe-LKL basketball championship, in which the basketball clubs participated.

On 13 March 2020, in light of the emerging COVID-19 pandemic and the related restrictions imposed by national authorities, the members of the League's Board, comprising representatives of the League and the basketball clubs, convened an extraordinary board meeting. During this meeting, the participants discussed the evolving situation and, invoking the force majeure circumstances caused by the COVID-19 pandemic, decided to terminate the 2019–2020 "Betsafe-LKL" Championship.

Following an investigation into the decisions adopted during the 13 March 2020 meeting, the CC, in its decision of 16 November 2021, found that the League and the basketball clubs had also entered into an agreement restricting competition by object, concerning the setting of prices for the purchase of basketball players' services. This conduct was held to be in breach of Article 5(1)(1) of the Law on Competition and Article 101(1)(a) TFEU. The CC decided that, at the 13 March 2020 meeting, the participants had agreed not only to terminate the basketball championship but also, as of the date of termination, not to pay basketball players any salaries or other financial compensation for the remainder of the season. In the CC's assessment, decisions regarding the payment of salaries to basketball players should have been made individually by each club. However, in this case, the clubs did not act independently but instead reached a joint agreement during the 13 March 2020 meeting concerning payment settlements with the players, thereby restricting mutual competition with respect to the price of basketball player services. The CC concluded that the prohibited agreement was entered into between a sports association (the League) and its members (the basketball clubs) for the purpose of fixing the price of services provided by players employed by the clubs. According to CC, this agreement qualifies as a prohibited horizontal agreement restricting competition by object.

The applicants filed a claim with the administrative court seeking the annulment of the decision. By its judgment of 7 June 2022, the Vilnius Regional Administrative Court annulled the decision of the CC. The court held that there was insufficient evidence in the case to support the conclusion that the intentions of the League and the basketball clubs were aligned and that their discussions during the 13 March 2020 meeting amounted to an agreement. Referring to the clarifications provided by the Court of Justice of the European Union (the Court of Justice) in its judgments of 18 July 2006 in *Meca-Medina* and *Majcen* case C-519/04, the court also noted that the CC had failed to assess the effects of the alleged agreement on competition, its necessity in light of the COVID-19 pandemic and the resulting quarantine measures, or its proportionality in relation to the objectives pursued.

Proceedings before the Supreme Administrative Court of Lithuania (SAC) and preliminary reference to the Court of Justice

The CC (the defendant) lodged an appeal with the SAC. The CC argues that the court of first instance incorrectly assessed the factual circumstances of the case and misapplied the law in its legal classification of the agreement concluded during the 13 March 2020 meeting between the League and the

basketball clubs. The CC submits that a prohibited agreement was concluded between the sports association (the League) and its members (the basketball clubs) as undertakings, and concerned the setting of prices for the purchase of basketball players' services, which must be regarded as a restriction of competition by object.

The applicants argue before the SAC that they did not enter into a prohibited agreement restricting competition and maintain that the disputed situation must be assessed in the economic and legal context of the agreement, in light of the outbreak of the COVID-19 pandemic during the relevant period and the economic activity restrictions imposed by public authorities in response.

The SAC referred the following preliminary questions to the the Court of Justice:

1) Under Article 101(1)(a) TFEU, can an agreement between basketball clubs and the association uniting them that organises the basketball clubs' championship not to make payments under existing contracts to professional basketball players employed by the clubs be considered an anti-competitive agreement on the setting of prices for the purchase of players' services?

2) If the answer to the first question is in the affirmative, can such an agreement, as in the main proceedings, be regarded as a restriction of competition by object under Article 101(1)(a) TFEU?

3) Under Article 101(1)(a) TFEU, in conjunction with Article 165 TFEU, is the economic and legal context of the agreement, including the outbreak of the COVID-19 pandemic and the related restrictions on economic and sporting activity adopted by public authorities, relevant for the assessment of an agreement such as that at issue in the main proceedings? Furthermore, should these circumstances be taken into account when assessing the existence of the agreement and / or the liability of the basketball clubs and their association?

In the view of the SAC, the League and the basketball clubs may be considered as undertakings within the meaning of Article 101 TFEU, and their activities in the context of the dispute may be subject to the requirements of Article 101 TFEU. Although, in this case, the League and the basketball clubs operated in the field of sports (professional club basketball), taking into account the case law of the the Court of Justice, it can be argued that the applicants' activities related to the organisation of sports competitions (the 2019–2020 Betsafe-LKL basketball championship) and the purchase of basketball players' services, i.e., entering into and performing contracts with players, can be considered as economic activity. The basketball clubs had entered into contracts with hired players in order, inter alia, to generate economic benefits for the respective club from the individual skills of a particular player, improve the club's performance, and achieve victories in competitions. Issues related to contracts involving the provision of paid services are of an economic nature and, therefore, considered to be linked to economic activity. The SAC assessed that, in this regard, the basketball clubs, as economic operators, were indeed acting in the market for the purchase of basketball players' services, with which they were competing on prices. The SAC found that payments to basketball players under sports contracts could be regarded as wages paid to players by the basketball clubs.

Taking into account the case law of the Court of Justice, which confirms that, in assessing the services provided by professional athletes, the provisions on the free movement of workers are significant, and that the relationships between players and their clubs in the sports sector may be considered in the context of employment relationships (e.g., *Bosman*, C-415/93; *European Superleague Company*, C-333/21; *FIFA*, C-650/22), as well as the guidelines for the application of competition law in labour markets, which have been endorsed by the European Commission, and considering a preliminary ruling at the Court of Justice from a Portuguese court regarding the assessment of so-called 'no-poach agreements' in the context of Article 101 TFEU (*CD Tondela and others*, C-133/24), the SAC ruled that the question arises as to whether, in light of the specific circumstances of this case and the established relationships between the undertakings and their employed basketball players, it is possible to conclude that, by agreeing not to pay part of the players' salaries under valid contracts for the remaining season, the League and the basketball clubs, acting as employers *vis-à-vis* the employed basketball players, entered into an agreement to set the paid salary, i.e., not to pay these employees any salary at all.

The SAC noted, that in essence, such an agreement by its nature could be regarded as a 'wage-fixing agreement'. Given the characteristics of such legal relationships, a ruling from the Court of Justice is necessary to clarify whether such an agreement between the undertakings regarding the non-payment of

remuneration can be considered as an agreement ‘on the setting of prices for the purchase of services’. The SAC noted that, considering the specific nature of the activities carried out by the League and the basketball clubs as undertakings, as well as the nature of the agreement in its economic and legal context, the question arises whether, in light of these circumstances, and the fact that the agreement was concluded in the face of the COVID-19 pandemic, i.e., in conditions of economic and legal uncertainty for the undertakings, and for the first time encountering such circumstances, it can be concluded that the agreement poses such a danger that it could be equated with the horizontal agreements on price-fixing already examined by the Court of Justice. This, in turn, implies that the agreement could be classified as one that restricts competition by object. The SAC considered it significant to ascertain what role the specific nature of the agreement in question could play in determining the relevance of this agreement under Article 101 TFEU and the responsibility of the League and the basketball clubs, taking into account the economic and legal context discussed in this ruling.

Comment

The answers from the Court of Justice to the aforementioned questions would establish standards on how to assess employers' agreements regarding the non-payment of salaries to athletes, i.e., whether such agreements are anticompetitive, the criteria and / or characteristics based on which the effect of such agreements on competition should be assessed, and, if such agreements restrict competition, whether they should be regarded as agreements that restrict competition by object, for which the dangerous nature of the agreement does not need to be proven. It would also be useful to clarify whether, in this case, a comprehensive context analysis is required, particularly considering the COVID-19 pandemic, i.e., whether an agreement of the type under examination in this case, concluded during the COVID-19 pandemic, can be considered as restricting competition by object, or whether, solely due to the existence of such an agreement, its dangerous nature can be inferred, and whether the economic and legal context of the agreement, linked to the onset of the COVID-19 pandemic, might affect the evaluation of the agreement or the applicant's responsibility in this case.

In preparing this report, the Opinion of Advocate General Emiliou in case *CD Tondela* and others, C-133/24 was published, confirming that the answers to the SAC's questions would indeed be significant not only in the case currently under examination but also in other cases being considered. According to the information of SAC, a similar case is being examined in Poland.

It should be noted that at the time of preparing this presentation, no preliminary ruling had been adopted (case C-324/25), and the case is still pending before the SAC (case No eA-8-502/2025). The translation of the submitted preliminary questions is unofficial, as no official publication of this preliminary reference has yet been made on the Court of Justice's website.

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