

***SUPERLEAGUE AND INTERNATIONAL SKATING UNION:
LESSONS FOR INDIAN COMPETITION LAW***

*Debayan Bhattacharya**

*The interface between competition law and sports has been gathering increasing prominence in recent years, propelled by commercialisation and rising viewer interest. This interface often arises in the form of unrecognised private competitions and the regulator’s attempts to flex its power by threatening to sanction players who participate in such tournaments. Two recent major cases in the European Union (‘EU’), *European Superleague Company v. Fédération internationale de football association* (‘Superleague’) and *Union of European Football Associations, and International Skating Union v. European Commission* (‘ISU’) have transformed this interface and have laid down a pathway for the future. While these cases have been transformative for EU competition law, there are also lessons that Indian competition law can draw from them. These pertain to the legitimate objectives that regulators must protect, the lifetime of players, and the commercial viability of the sport. Each of these has significant areas of competition analysis that remain underutilised in India at present, leading to a missed opportunity. Therefore, it is argued that the incorporation of the EU’s analysis in the Superleague and ISU cases stands to enrich Indian competition law analysis.*

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I. INTRODUCTION

The Court of Justice of the European Union’s (‘CJEU’) recent decisions in *European Superleague Company v. Fédération internationale de football association*

* The author is a 4th year law student at National Law University, Delhi. The author is grateful to the Editors of the NUJS Law Review for their insightful comments and thorough feedback on the various drafts of the paper. Any error, however, is solely attributable to the author. He may be reached at debayan.bhattacharya20@nludelhi.ac.in for any comments or feedback.

(‘Superleague’),¹ and *International Skating Union v. European Commission* (‘ISU’),² have represented a breakthrough in competition law. These decisions have already been heralded as marking a major shift in European competition jurisprudence and bringing clarity to the complex interface of competition law and sports.³ Both Superleague and ISU deal with the thorny question of how national and international sports regulators, which have dominance in the market for their respective sports, can be regulated to ensure that competition is preserved.

Regulators, both national and international, are the governing authority for their respective sports, creating a common set of rules, punishing players for violating these rules and organising competitions. They need to ensure that the sanctity of the sport is preserved and therefore some restrictions are legitimate. However, regulators themselves are often involved in the promotion of leagues and competitions and may have an economic incentive to foreclose competition from organisers of similar tournaments and leagues.⁴ The aim of competition law is to ensure that a sensitive balance can be drawn between regulation and competition that ultimately results in the promotion of the sport.⁵

This issue does not only exist in the European Union (‘EU’); these debates have also been occurring in Indian competition law for years. In *Surinder Barmi v. BCCI* (‘Surinder Barmi’),⁶ the Informant filed a complaint with the CCI over the fact that the BCCI, cricket’s national regulator, had entered an agreement with the Indian Premier League that the BCCI would not recognise any other domestic cricket competition for ten years.⁷ The CCI ultimately held that this agreement was violative of competition law.⁸ From this, it is clear that the competition issues arising from the dominance of sports regulators are not restricted to specific jurisdictions but are common everywhere. This enables jurisdictions to learn from each other in order to sharpen their analysis.

This paper aims to analyse some of these common issues and address how their analysis in India can be enriched by considering insights from the CJEU’s recent decisions. Part II begins this process by analysing both Superleague and ISU in detail. Part III is divided into two sub-parts. Part III.A summarises the CCI’s decisions in the sports-competition interface and provides a basic framework for analysis. Part III.B highlights specific issues in Indian competition law that can be remedied by reference to the CJEU. Part IV offers concluding remarks.

¹ *European Superleague Company v. Fédération internationale de football association (FIFA) and Union of European Football Associations (UEFA)*, Case C-333/21, December 21, 2023 (Ct. J. E.U.) (‘Superleague’).

² *International Skating Union v. Commission*, Case C-124/21 P, December 21, 2023 (Ct. J. E.U.) (‘ISU (Decision of the CJEU)’).

³ Pablo Ibáñez Colomo, *Will Article 106 TFEU Case Law Transform EU Competition Law?*, Vol. 13(6) *JOURNAL OF EUROPEAN COMPETITION LAW & PRACTICE* 385 (2022); Stijn Huijts, *Super League – From “legislative bomb” to judicial bombshell*, *THE THICKET*, December 22, 2023, available at <https://thethicket.blog/2023/12/22/super-league-from-legislative-bomb-to-judicial-bombshell/> (Last visited on January 4, 2024); Pablo Ibáñez Colomo, *On Superleague and ISU: the expectation was justified (and EU competition law may be changing before our eyes)*, *CHILLING COMPETITION*, December 21, 2023, available at <https://chillingcompetition.com/2023/12/21/on-superleague-and-isu-the-expectation-was-justified-and-eu-competition-law-may-be-changing-before-our-eyes/> (Last visited on January 4, 2024).

⁴ See *infra* Part III on “Lessons for Indian Jurisprudence”.

⁵ *Id.*

⁶ *Surinder Barmi v. The Board for Control of Cricket in India*, Case No. 61/2010 (‘Surinder Barmi’).

⁷ *Id.*, ¶44.

⁸ *Id.*, ¶¶45-47.

II. SURVEYING THE CJEU'S DECISIONS IN SUPERLEAGUE AND ISU

This Part discusses the CJEU's decisions in Superleague and ISU. While there have been previous cases on the intersection of sports and competition law in the EU, these two decisions represent an evolution in the European case law. The importance of these decisions in EU competition law has been discussed elsewhere and it is beyond the scope of this paper,⁹ but these two judgments are the focus of this paper due to their findings on legitimate regulatory objectives, the proportionality of bans, and the commercial viability of sports. These are discussed in detail in Part III.

A. EUROPEAN SUPERLEAGUE COMPANY

In 2021, twelve major European football clubs announced that they would be forming a breakaway Super League ('the League') and opt out of the existing Champions League structure.¹⁰ The reaction was immediate and fierce.¹¹ Fans took to the streets against the announcement. Players, coaches, and commentators blasted the proposal in public statements, and lawmakers threatened to outlaw the competition. The acrimony was so fierce that most clubs that were part of the original proposal backed out within days.¹² Faced with unprecedented public criticism and the exit of over half its members, the proposal was shelved days later.¹³

FIFA, the global football regulator, and UEFA, Europe's regulator that hosts both the prestigious Champions League and Europa League, spearheaded the backlash to the proposal. While FIFA's role in the ordeal was more complex,¹⁴ its President Gianni Infantino publicly proclaimed, "Either you are in, or you are out."¹⁵ Thus, FIFA drew a clear out-group of errant clubs that had shown that they were against FIFA's structure, which meant they would be deprived of participation in FIFA competitions. UEFA responded with similar aggression.¹⁶

⁹ Jan Zglinski, *Can EU competition law save sports governance?*, INT. SPORTS LAW J (2024), available at <https://doi.org/10.1007/s40318-024-00258-9> (Last visited on January 4, 2024).

¹⁰ Tariq Panja, *Top European Soccer Teams Form Breakaway League*, April 18, 2021, available at <https://www.nytimes.com/2021/04/18/sports/soccer/super-league-united-liverpool-juventus-madrid.html> (Last visited on January 4, 2024).

¹¹ Peter Hall, *Soccer-Reaction to major European clubs announcing breakaway Super League*, REUTERS, April 19, 2021, available at <https://www.reuters.com/world/uk/soccer-reaction-major-european-clubs-announcing-breakaway-super-league-2021-04-19/> (Last visited on January 4, 2024).

¹² Simon Evans, *Super League breakaway in tatters after English clubs quit*, REUTERS, April 21, 2021, available at <https://www.reuters.com/lifestyle/sports/soccer-fifa-call-super-league-clarity-perez-says-proposal-is-saving-football-2021-04-20/> (Last visited on January 4, 2024); Simon Evans, *Super League shelved as more clubs withdraw*, REUTERS, April 22, 2021, available at <https://www.reuters.com/world/uk/soccer-super-league-under-strain-agnelli-says-blood-pact-presses-2021-04-21/> (Last visited on January 4, 2024); Simon Evans, *UEFA lead backlash against Super League, UK government vows to step in*, REUTERS, April 19, 2021, available at <https://www.reuters.com/world/uk/soccer-uefa-holds-crisis-meeting-after-breakaway-super-league-launched-2021-04-19/> (Last visited on January 4, 2024).

¹³ See Tariq Panja and Rory Smith, *How the Super League Fell Apart*, THE NEW YORK TIMES, April 22, 2021, available at <https://www.nytimes.com/2021/04/22/sports/soccer/super-league-soccer.html> (Last visited on January 4, 2024).

¹⁴ Tariq Panja, *The Super League Thought It Had a Silent Partner: FIFA*, THE NEW YORK TIMES, May 22, 2021, available at <https://www.nytimes.com/2021/05/20/sports/soccer/super-league-fifa-infantino.html> (Last visited on January 4, 2024).

¹⁵ Panja, *supra* note 13.

¹⁶ *Statement by UEFA, the English Football Association, the Premier League, the Royal Spanish Football Federation (RFEF), LaLiga, the Italian Football Federation (FIGC) and Lega Serie A*, UEFA, April 18, 2021, available at <https://www.uefa.com/insideuefa/news/0268-12121411400e-7897186e699a-1000--statement-by-uefa-the-english-football-association-the-premi/> (Last visited on January 4, 2024).

The European Superleague had anticipated this and had filed a case for protective measures against potential action by UEFA and FIFA.¹⁷

It is important to note that the CJEU does not behave like an appellate court, but it instead answers questions of EU law that are referred to it by the national court. The national court then has to decide the dispute based on the principles laid down by the CJEU.¹⁸ Superleague arose from questions under such a reference to the CJEU. The European Superleague's action was brought after their public statements opposing the League,¹⁹ but the primary issue was whether FIFA's and UEFA's rules themselves violated EU law.²⁰ These rules, in the FIFA and UEFA statutes, require that any new competitions require their approval.²¹

The main question was whether FIFA and UEFA had violated Articles 101 and 102 of the Treaty on the Functioning of the European Union ('TFEU'). Article 101 states that agreements by undertakings, decisions by associations of undertakings and concerted practices that prevent or restrict competition in the internal market of the EU are prohibited. Article 102 states that an abuse of dominant position by dominant firms is prohibited.²² The CJEU ultimately concluded that it had.²³ It primarily based its conclusion on the content of the rules.

The CJEU recognised that there were legitimate interests that animated the concern of sports regulators and that such rules could be laid down in certain circumstances. In the present case, these were 'equal opportunities', 'merit', and "compliance with ... common rules."²⁴ This is possibly due to the unique facts of the case, where the European Superleague was primarily criticised because it would permanently entrench twelve clubs in the highest tier of football and on the ground that this was violative of football merit. However, while the objectives were legitimate, these rules must be certain and should not be open to being implemented in a discretionary manner.²⁵ There must be "substantive criteria and detailed procedural rules" that are "transparent, objective, precise, non-discriminatory and proportionate."²⁶ They should be verifiable "in a transparent and objective manner."²⁷

In the present case, FIFA and UEFA's rules were opaque and did not lay down any clear criteria for the organisation of third-party competitions.²⁸ For example, Article 71 of the FIFA Statute merely stated that "No such match or competition shall take place without the prior permission of FIFA" without any substantive norms, procedural limitations, or any restrictions on FIFA's unmitigated discretion.²⁹ Similarly, Article 51 of the UEFA Statute also says "No combinations or alliances between UEFA Member Associations or between leagues or clubs affiliated [...] may be formed without the permission of UEFA."³⁰ There is no clear substantive or procedural criterion that limits UEFA's discretion either. This is a *sine qua non*

¹⁷ Superleague, *supra* note 1, ¶28.

¹⁸ Micheal Bobek, *The Court of Justice of the European Union* (Department of European Legal Studies, Research Paper in Law No. 02 of 2014).

¹⁹ *Id.*, ¶¶29-30.

²⁰ *Id.*, ¶72.

²¹ *Id.*, ¶¶5-12, ¶¶21-22.

²² Lars Lundgren, A COMPETITIVE ENVIRONMENT? ARTICLES 101 AND 102 TFEU AND THE EUROPEAN GREEN DEAL (Masters, Uppsala Universitet School of Law, 2021).

²³ Superleague, *supra* note 1, ¶187.

²⁴ *Id.*, ¶¶143-144.

²⁵ *Id.*, ¶148.

²⁶ *Id.*, ¶¶148, 151.

²⁷ *Id.*

²⁸ *Id.*, ¶¶151, 174.

²⁹ *Id.*, ¶10.

³⁰ *Id.*, ¶22.

considering that UEFA, FIFA, and other similar regulators have an entrenched position of dominance and the power of ‘prior approval’ and the power to impose sanctions.³¹

This does not mean that the League is approved and that no regulation of such competitions is possible. While this conduct was violative of Article 101(1) TFEU, it is possible to justify it on the exemption under Article 101(3) TFEU. This exemption allows the potentially anti-competitive act to be justified on the basis that there are significant efficiency gains that accrue to users and that this is indispensable.³² The CJEU said that the regulators’ actions could be justified if they were able to show efficiency gains for “national football associations, professional or amateur clubs, professional or amateur players, young players and, more broadly, consumers, be they spectators or television viewers.”³³ However, that assessment was for the referring court to undertake. The CJEU nonetheless concluded that FIFA’s and UEFA’s current rules were violative of competition law.

B. *INTERNATIONAL SKATING UNION*

The CJEU’s decision in ISU was an appeal from the decision of the General Court that ruled against the International Skating Union (‘the Union’) on most questions. The General Court has jurisdiction in several matters, including challenges to the actions of EU institutions, actions against Member States for not fulfilling their obligations, and a reference from national courts on questions of law.³⁴ The present case concerned a reference from Spain on a question of EU competition law. On the points of this discussion, the CJEU upheld the General Court’s decision in its entirety.³⁵ As such, the CJEU made extensive reference to the General Court’s decision, which this summary will also refer to wherever appropriate.

The Union is the only recognised international regulator for figure skating and speed ice skating.³⁶ Any competitions need to be approved by their “comprehensive pre-authorisation system” and any athletes who participated in tournaments that were not approved by the Union would be permanently banned.³⁷ These were justified by the need for protecting the Union’s economic interests.³⁸ However, these rules were quite strict and the eligibility rules were amended in 2016. The reference to “economic interests” was dropped and penalties were to be determined based on the severity of the violation.³⁹ The first would be a warning, followed by a five-year ban, and a lifetime ban would only be imposed in serious cases that threatened the integrity of the sport itself.⁴⁰

The second controversial part of the rules was the approval of competitions. Proposals to regulators for the approval of competition by private organisations had to be submitted six months in advance for non-members and three months in advance for members.⁴¹ Moreover, they must also contain “technical and sporting information, such as information relating to the venue and the value of the prizes to be awarded, as well as general and financial

³¹ *Id.*, ¶176.

³² Treaty on the Functioning of the European Union, 12012E/TXT (adopted on March 25, 1957, entered into force on January 1, 1958) Art. 101(3).

³³ Superleague, *supra* note 1, ¶¶195-196.

³⁴ EUROPEAN PARLIAMENT, *Competences of the Court of Justice of the European Union*, available at https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.10.pdf (Last visited on May 15, 2024).

³⁵ International Skating Union v. European Commission, Case T-93/18 (‘ISU (Decision of the GC)’).

³⁶ ISU (Decision of the CJEU), *supra* note 2, ¶4.

³⁷ *Id.*, ¶15.

³⁸ *Id.*, ¶14.

³⁹ *Id.*, ¶17.

⁴⁰ *Id.*, ¶¶16-18.

⁴¹ *Id.*, ¶10.

information, such as, in particular, business plans, the budget and planned television coverage for the event.”⁴² They were also required to discuss how they planned to fight betting during the event.⁴³ Both the sanctions for players and the approval system were challenged.

The General Court acknowledged that it is permissible for a regulator to implement such a “pre-authorisation system” for the benefit of the sport.⁴⁴ However, both the General Court and the CJEU held that this system would require restrictions.⁴⁵ The CJEU stated that the regulator’s power must be “circumscribed by substantive criteria which are transparent, clear and precise.”⁴⁶ While the ISU may have rules that promote “competitions based on equality of opportunity and merit,”⁴⁷ these must be subject to “restrictions, obligations and review.”⁴⁸

The Union’s rules did not fulfil these criteria. For example, the Union required organisations proposing a tournament to divulge excessive financial and business information that has no connection to maintaining either the integrity of sports or the safety of sportspersons.⁴⁹ It also inexplicably discriminates between members and non-members in the timeframe that needs to be followed.⁵⁰ Most importantly, there is no prescribed time limit within which the ISU has to address these applications.⁵¹

The absence of any safeguards meant that Union’s rules were squarely anti-competitive. The Union justified its restrictions by arguing they were needed to protect the integrity of the sport from “risks associated with betting”.⁵² It argued that these restrictions were focused on the niche and underfunded sport of figure skating that does not see much public interest or revenue, thereby explaining why interest in hosting speed skating tournaments was rare and the Union was not called on to authorise them until recently.⁵³ Moreover, the two tournaments that it did block were due to the suspicion that they intended to allow betting in the competition.⁵⁴

To examine this claim, the CJEU held that it would need to examine “that conduct, and more particularly of its content, the aims it seeks to achieve and the economic and legal context of which it forms a part, must be carried out in the light of the case-law established.”⁵⁵ The CJEU, like the General Court, did not contest that the prevention of betting was a legitimate objective, but ultimately held that substantive rules for its prevention cannot be discretionary and discriminatory.⁵⁶ The CJEU also upheld the General Court’s conclusion on this issue. The General Court had held that while protecting the sport from betting risks was a permissible objective, it did not justify the breadth of restrictions. It noted that a skater’s

⁴² ISU (Decision of the GC), *supra* note 35, ¶15.

⁴³ *Id.*

⁴⁴ *Id.*, ¶62.

⁴⁵ *Id.*, ¶70.

⁴⁶ ISU (Decision of the CJEU), *supra* note 2, ¶131.

⁴⁷ *Id.*, ¶132.

⁴⁸ *Id.*, ¶¶126-127.

⁴⁹ ISU (Decision of the GC), *supra* note 35, ¶110.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*, ¶¶80, 100.

⁵³ ISU (Decision of the CJEU), *supra* note 2, ¶60.

⁵⁴ *Id.*

⁵⁵ *Id.*, ¶130.

⁵⁶ *Id.*, ¶¶175-177.

active career is eight years, and so even a five- to ten-year ban would be devastating.⁵⁷ The CJEU thus concluded that the restrictions by the Union were not justified and anti-competitive.

III. LESSONS FOR INDIAN JURISPRUDENCE

Sports regulators perform similar functions all across the world. Sports regulators operate on the ‘Pyramid’ Model in both the EU and India.⁵⁸ At the top of the hierarchy are international organisations, like FIFA and the International Olympic Committee. The second level consists of national sports regulators that aim to govern the sport at a national level. Examples include the All India Football Federation in India and the Deutsche Fußball Liga in Germany. Further down in the pyramid are regional and local-level competitions. This model is commonly adopted around the world due to the need to ensure uniformity. Therefore, regulators carry out largely similar functions across jurisdictions and can be meaningfully compared.

Section 4 of the Competition Act, 2002 states that a dominant enterprise cannot abuse its dominant position. Due to their unique position as the regulator of an entire sport, regulators are always in a dominant position. The focus is then to ensure that their rulemaking and actions are impartial and non-discriminatory. It is in this context that this Part’s analysis becomes salient since it provides suggestions about the legitimate objectives that can justify regulatory action and the manner in which appropriate punishment is determined.

Part III.A provides an outline of competition law cases in India pertaining to the actions of sports regulators. Part III.B discusses the specific issues of competition analysis that EU case law can provide guidance on.

A. UNDERSTANDING THE INDIAN CONTEXT

Both the Superleague and ISU cases are concerned with questions of the limits of a sports regulator’s power. The resolution of these cases revolved around determining whether the rules and restrictions introduced by these regulators actually achieved valid objectives or whether they were a pretext to limit competition for their benefit. The CCI has dealt with a catena of cases dealing with similar issues. In these cases, a sports regulator formed their own league or competition, often in partnership with a private company, and declared that they would not recognise any similar, competing league for a period of 10 years.

In *Surinder Barmi*, the BCCI had entered into this kind of agreement and recognised the IPL as the exclusive league for domestic cricket.⁵⁹ These are often enforced by sanctions that would prohibit players from participating in non-regulator-backed leagues and international competitions representing the nation, severely hampering their careers. In *Dhanraj Pillay v. Hockey India*,⁶⁰ (‘Dhanraj Pillay’) India’s hockey regulator Hockey India sent a letter stating that players participating in a rival league would not be permitted to play for the national team for the period of one year.⁶¹

In *Hemant Sharma v. All India Chess Federation*,⁶² (‘All India Chess Federation’) the All India Chess Federation (‘AICF’), the national chess regulator, required all

⁵⁷ ISU (Decision of the GC), *supra* note 35, ¶93.

⁵⁸ *Surinder Barmi*, *supra* note 6, ¶¶35, 38.

⁵⁹ *Surinder Barmi*, *supra* note 6.

⁶⁰ *Sh. Dhanraj Pillay and Others v. Hockey India*, Case No. 73 of 2011 (‘Dhanraj Pillay’).

⁶¹ *Id.*, ¶7.4.2.3.

⁶² *Hemant Sharma v. All India Chess Federation*, Case No. 79 of 2011 (‘AICF’).

new players to provide a declaration that they would not be participating in unrecognised competitions, banned them for one year if they did, confiscated fifty percent of their prize money from such competitions, and demanded an unconditional apology that they would not be participating in such competitions ever again.⁶³ They also revoked the ELO ratings of several players for violations.⁶⁴ They could also be barred from participating in AICF-recognised competitions, which include international competitions, in the future.⁶⁵ In most of these cases, the CCI has held that there has been a flagrant violation of competition law and has held the regulator liable for abusing their dominant position.

However, there are circumstances where the CCI has held that the conduct is justified. In *Shravan Yadav v. Volleyball Federation of India* ('Shravan Yadav'),⁶⁶ the CCI held that there was no violation of competition law. The Federation entered into a partnership with a private company known as Baseline for hosting a league, and the agreement stated that players would not be allowed to participate in conflicting leagues or competitions during the duration of the regulator-backed league.⁶⁷ When this was challenged, the CCI held that this was justified since it was not logical for players to participate in two leagues at the same time.⁶⁸ The claims against the Volleyball Federation were dismissed.

Another instance where the regulator prevailed was Dhanraj Pillay. The case revolved around alleged restrictions for players who participated in the World Series Hockey ('WSH') held by a private company.⁶⁹ It was alleged that Hockey India, India's hockey regulator, denied market access to competitors by issuing a ban on players participating in unsanctioned competitions to promote its own league.⁷⁰ This also harmed players, since none of the forty-eight players who participated in the WSH were included in the national team for tours that year.⁷¹

The CCI rejected these contentions. It noted that the provision for player bans was prospective and could be justified by the need to maintain the calendar year, prevent free-riding, ensure the sport's integrity, etc.⁷² Moreover, the forty-eight players were not excluded out of malice but because they had not participated in the national qualifiers which had been announced a year in advance and were clashing with the WSH.⁷³ Therefore, the CCI held that Hockey India's conduct was not anti-competitive.

A deeper analysis of the case law demonstrates that there is detailed reasoning and consideration within the CCI's decisions. While there has earlier been criticism that the CCI did not adequately deal with the pro-competitive benefits of regulator-backed leagues,⁷⁴ there has been a change since *Shravan Yadav*, which considered the expertise and capital influx from private industry in a positive manner.⁷⁵ However, this is not the route of analysis that this paper seeks to analyse. In subsequent pages, this paper will aim to discuss specific areas of

⁶³ *Id.*, ¶4.

⁶⁴ *Id.*, ¶5.

⁶⁵ *Id.*, ¶55.

⁶⁶ *Shravan Yadav v. Volleyball Federation of India*, Case No. 01 of 2019 ('Shravan Yadav').

⁶⁷ *Id.*, ¶¶8.4, 10.

⁶⁸ *Id.*

⁶⁹ Dhanraj Pillay, *supra* note 60, ¶2.

⁷⁰ *Id.*, ¶¶4.2-4.3.

⁷¹ *Id.*, ¶10.12.6.

⁷² *Id.*, ¶¶10.12.6, 10.12.1.

⁷³ *Id.*, ¶10.12.6.

⁷⁴ Debayan Bhattacharya, *Exclusive Private Domestic Leagues and National Sports Regulators: Challenging the CCI's Approach*, Vol. 6(2), ICLJ, 30 (2021).

⁷⁵ *Shravan Yadav*, *supra* note 66, ¶¶37, 39.

analysis that have been utilised by the CJEU in its two recent decisions which can be incorporated within Indian competition law in order to enrich its own analysis and decision-making. The sub-sections will discuss specific lines of reasoning and demonstrate how they can be incorporated within Indian competition law.

B. SPECIFIC QUESTIONS OF COMPETITION ANALYSIS

This sub-part discusses the specific question on which Indian competition law can be improved. *First*, there is a need to examine whether regulators outline legitimate goals to justify their conduct and to provide an indication of the types of goals and objectives that are justifiable. *Second*, there should be due regard to the lifetime of players in a given sports in order to determine whether a definite or indefinite ban is justifiable, as opposed to the current approach of condemning all bans. *Third*, there should also be serious consideration of a sport's commercial viability in order to determine whether regulator-backed leagues provide benefits that can justify the anti-competitive impact of such leagues.

1. LEGITIMATE GOALS OF SPORTS REGULATORS

Looking at Superleague and ISU, it is clear that restrictions are justified if they are used to meet a legitimate aim that a sports regulator should aim to protect. In Superleague, the CJEU recognises 'equal opportunities', 'merit', and "compliance with ... common rules" as legitimate goals.⁷⁶ This is due to the case's unique facts, where the European Superleague would create a new top tier of football with a largely unchanging roster of clubs. The CJEU in ISU also noted that 'equal opportunity' and 'merit' were laudable objectives for a regulator.⁷⁷ The CJEU also held that addressing "risks associated with betting" was a legitimate goal for the ISU to base its restrictions and rules around. Competition regulators need to identify whether the goals proposed by the sport's regulator are legitimate and sufficient to justify the restriction. This is detailed in the next sub-part.

In India, Section 4(2) of the Competition Act states that a dominant entity cannot limit the provision of goods and services or deny market access. However, the CCI has repeatedly held in cases involving sports regulators that restrictions are valid if there is a legitimate objective. This could be understood as akin to the 'objective justification' defence that the CCI has adopted in several cases.⁷⁸ However, what constitutes a legitimate goal is not as clear-cut in Indian jurisprudence. The primary issue in Indian jurisprudence is that while regulators assert several goals in different cases, there is rarely any systemic engagement with whether these goals are legitimate or not.

Formally, the decisions and conclusions are always based on other considerations and the asserted aims themselves are never analysed. In *TT Friendly Super League Association v. The Suburban Table Tennis Association* ('TT Friendly Super League'),⁷⁹ the regulator justified a notice/circular banning players if they participated in unrecognised competitions by saying it was to "bring discipline in sports and to avoid destructive competition

⁷⁶ Superleague, *supra* note 1, ¶¶143-144.

⁷⁷ ISU (Decision of the CJEU), *supra* note 2, ¶132.

⁷⁸ Aditya Bhattacharjya, *Abuse of Dominance Under the Competition Act: The Need for a Competitive Effects Test*, Vol. 7(2) ICLJ, 36 (2022); Basu Chandola, *Objective Justification in Abuse of Dominance Cases in India*, INDIACORPLAW, April 25, 2019, available at <https://indiacorplaw.in/2019/04/objective-justification-abuse-dominance-cases-india.html> (Last visited 17 May, 2024).

⁷⁹ *TT Friendly Super League Association v. The Suburban Table Tennis Association*, Case No. 19 of 2021 ('TT Friendly Super League').

amongst players”.⁸⁰ While the CCI’s decision in this case was merely an Order investigating the Director-General to investigate the matter further,⁸¹ it is unfortunate that there was no observation by the CCI on how specious and unwarranted the asserted objective was. “Destructive competition” is a term with absolutely no meaning and does not connote any real-life phenomenon associated with sports.⁸² It is unclear how players participating in more competitions can be “destructive”. “Discipline in sports” is also extremely vague; how does forcing players to only participate in regulator-recognised competitions introduce any kind of ‘discipline’? Neither of these can be considered valid objectives for a sports regulator in good faith, and the CCI should be explicitly analysing the objectives posited by regulators to see whether their claims hold any merit.

Another example is the All India Chess Federation, where the AICF justified a one-year ban on players, revoking ELO ratings, and seizing 50% of the prize money as required to “instil discipline”.⁸³ While the CCI correctly held that the AICF’s actions were uncompetitive, it did not specifically look at the inherent merit of this objective.⁸⁴ There are no arguments as to why restrictions are necessary to “instil discipline”, what instilling discipline even means, and why there are no alternative methods available to do so.

In Surinder Barmi, the CCI dryly noted that the commercial interests of a media company by greater advertising from an exclusive IPL did not meet the “interest of cricket”.⁸⁵ None of this is idle rhetoric without practical value.

There are very real implications to the fact that the CCI does not consider the inherent value of goals in its analysis. As noted earlier, competition analysis is a sensitive balance between promoting legitimate objectives and anti-competitive harm. If the regulator in question is not even able to substantiate a legitimate aim for them to defend, then the balance tilts dramatically and it is a clear indication that the rule in issue is unjustifiably anti-competitive. Practically, this means investigations can be concluded quicker as opposed to requiring substantive analysis. For example, in TT Friendly Super League, further investigation could have been ordered solely based on the fact that the quoted objectives were not rational. Therefore, there is a need for the CCI to explicitly assess these issues and deepen its analysis.

2. EXAMINING LEGITIMATE GOALS CLOSELY

Relatedly, it will also be beneficial if the CCI lays down objectives that are valid for regulators to rely on. This can help bring greater certainty to the regulation of sports. Some objectives are undoubtedly acceptable at face value as important.⁸⁶ *Firstly*, protecting the integrity of the sport.⁸⁷ This can include action to protect against corruption, and doping, and

⁸⁰ *Id.*, ¶13.

⁸¹ *Id.*, ¶35.

⁸² ‘Destructive Competition’ is a term employed often in competition law to describe a situation when competition reduces prices to the extent that no one can be profitable anymore. However, the economic justification for this theory is lacking. See William W. Sharkey, *THE THEORY OF NATURAL MONOPOLY*, Chapter 6 (Cambridge University Press 2009).

⁸³ AICF, *supra* note 62, ¶56.

⁸⁴ *Id.*, ¶58.

⁸⁵ Surinder Barmi, *supra* note 6, ¶48.

⁸⁶ This does not mean that all methods to achieve these goals are justified. They must also be proportional. For an investigation of proportionality in the sports-competition context, see Robby Houben, Jan Blockx, and Steve Nuyts, *UEFA and the Super League: who is calling who a cartel?*, Vol. 22, *INT. SPORTS LAW J.*, 205, 212-14 (2022).

⁸⁷ Dhanraj Pillay, *supra* note 60, ¶8.2.4.

addressing other concerns that may impinge on the sport's integrity.⁸⁸ *Secondly*, ensuring that the sporting calendar is adhered to and participation in international competitions is not curtailed.⁸⁹ While this is mainly associated with preventing private competitions that conflict with the official calendar,⁹⁰ it can also be an issue facing regulator-backed leagues themselves.

While it was ultimately resolved because the regulator vowed not to clash with international competitions, a key allegation in Shraavan Yadav was that the league contractually required players to provide precedence to the regulator's league over other competitions, including prestigious international ones.⁹¹ In this context, any argument is incomplete without looking at the CCI's observations in Surinder Barmi that have been echoed in other cases.⁹² It stated that "factors such as ensuring primacy of national representative competition, deter free riding on the investments by national associations, maintaining the calendar of activities in a cohesive manner not cutting across the interests of participating members, preserving the integrity of the sport [...]" were important.

If looked at closely, not all of these are equally valid objectives. It has already been discussed that preserving the sport's integrity and maintaining the calendar is important. However, the other two are a little more dubious. *First*, as to "ensuring the primary of national representative competitions." There is a lack of reasoning for why national representative competitions should be provided a place of primacy. Save for their role as selections for national teams, there is no reason for them to be prioritised over private competitions that can provide equally good or better expertise, exposure, and financing.⁹³

Second, what does it mean to "deter free riding on investments" of a national regulator? Presumably, a national regulator has invested in the well-being and talent of their sportspersons: is it free riding for private competitions to have these players participate? Is it free-riding for a private tournament to be held on dates close to the national regulator's tournament? The term is fairly dubious and devoid of meaning; it should be rejected in favour of arguments that are better fleshed out.

After all, there are several objectives used in the Superleague and the ISU cases that should be considered by the CCI. *Firstly*, reduction in the risk of betting, as discussed in ISU,⁹⁴ is an important consideration for regulators. Cricket in India has long been plagued by betting, match-fixing, and corruption.⁹⁵ Illustrious cricketer and double world champion S Sreesanth's career ended after a notorious match-fixing scandal in the IPL.⁹⁶ These concerns

⁸⁸ *Id.*, ¶8.5.3.

⁸⁹ *Id.*, ¶8.2.4.

⁹⁰ *Id.*, ¶8.5.3.

⁹¹ Shraavan Yadav, *supra* note 66, ¶38.

⁹² Dhanraj Pillay, *supra* note 60, ¶10.12.1; *Id.*, ¶36.

⁹³ A possible argument can be based on the Pyramid Model of sports, which depicts regulators at the top of the sport. However, it does not really define the outer bounds of 'primacy' or make a persuasive case for preferential treatment. For a related discussion in the EU context, where the 'European Model of Sports' has been defined, see *European Superleague Company v. Unión de Federaciones Europeas de Fútbol (UEFA) and Fédération internationale de football association (FIFA)*, C-333/21 (Opinion of Advocate General Rantos).

⁹⁴ ISU (Decision of the GC), *supra* note 35, ¶¶80, 100.

⁹⁵ Sharda Ugra, *The dark side of cricket*, THE HINDU, March 2, 2023, available at <https://frontline.thehindu.com/books/book-review-a-cop-in-cricket-inside-the-world-of-bcci-anti-corruption-unit-by-neeraj-kumar-delves-into-the-dark-side-of-cricket/article66539865.ece> (Last visited on January 4, 2024); Amrit B.L.S., *In a Tell-All on Corruption in Cricket, Ex-IPS Officer Neeraj Kumar Hurls a Few Bouncers at Vinod Rai*, THE WIRE, February 19, 2023, available at <https://thewire.in/sport/neeraj-kumar-cricket-bcci-corruption> (Last visited on January 4, 2024).

⁹⁶ Sports Desk, *S Sreesanth: A two-time World Cup winner who courted trouble with slap-gate, then IPL spot fixing and now an on-field spat with Gautam Gambhir*, INDIAN EXPRESS, December 8, 2023, available at

exist for all sports at some level, though they are more salient in some than others. While this has not been considered a legitimate objective explicitly in India yet, it is time for regulators to introduce rules giving effect to this and for the CCI to recognise this as a legitimate objective. *Secondly*, equal opportunities and merit, as highlighted in Superleague,⁹⁷ are also important considerations. While their relevance is restricted to Superleague's unique factual scenario, it is also the basis on which doping and the use of drugs have been outlawed.⁹⁸ This is also a permissible objective that should be recognised by the CCI and used by regulators.

Thus, there is a need for the CCI's analysis to explicitly spell out which objectives are definitely acceptable, expand its current palate, and introduce more certainty within the regulation of sports. The other aspect of this discussion is the fact that the CCI has rarely called for objectivity and transparency from a regulator's rules. The CJEU is the frontrunner in this regard. In Superleague, the Court said that "criteria and those detailed rules should have been laid down in an accessible form" and that these criteria must be "transparent, objective, precise and non-discriminatory."⁹⁹ In ISU as well, the General Court noted that "objective, transparent, non-discriminatory and verifiable authorisation criteria" were required for a regulator's rules.¹⁰⁰ Other EU cases have also discussed the same.¹⁰¹ Indian case law does not show comparable analysis. The farthest that any Indian decision goes is the decision in Dhanraj Pillay:

"The Commission is of the view that the appropriate approach would be to examine the regulations and the manner of application of regulations, for anticompetitive effects on economic competition on the lines of inherence proportionality principle laid down in the Meca Medina judgment of Grand Chamber of ECJ."¹⁰²

There is no further elaboration on what it means to "examine ... the manner of application of regulations." This is where the CJEU's jurisprudence comes in. We can examine the application of rules by determining whether the rules have been laid down fairly and transparently, whether these criteria are applied equally to all or if there is an element of discretion, and whether they are sufficiently detailed and accessible. Scrutinising these regulations allows competition law to filter out anti-competitive rules from ones that are pro-competitive more accurately. This will be a major improvement from the *status quo*, where the analysis does not look into the content of the rules but only at the quantum of sanction. Analysing the mechanism through which the sanction is implemented and whether it is implemented fairly and equally is an important consideration that the CCI must incorporate in future cases. In summary, it will be helpful if the CCI clearly indicates regulatory objectives and goals that are acceptable for competition law and whether a regulator enforces their rules

<https://indianexpress.com/article/sports/cricket/s-sreesanth-career-world-cup-winner-slapgate-harbhajan-singh-ipl-spot-fixing-scandal-gautam-gambhir-argument-9059559/> (Last visited on January 4, 2024); Indian TV Sports Desk, *S Sreesanth Retirement: From spot fixing to Harbhajan Singh's slap, Top 5 controversies involving Sreesanth*, March 9, 2022, available at <https://www.indiatvnews.com/sports/cricket/s-sreesanth-retirement-from-spot-fixing-to-harbhajan-singh-s-slap-top-5-controversies-involving-sreesanth-2022-03-09-763565> (Last visited on January 4, 2024).

⁹⁷ Superleague, *supra* note 1, ¶¶143-144.

⁹⁸ David Meca-Medina and Igor Majcen v. Commission of the European Communities, Case C-519/04, July 18, 2006 (Ct. J. E.U.).

⁹⁹ Superleague, *supra* note 1, ¶151.

¹⁰⁰ ISU (Decision of the GC), *supra* note 35, ¶118.

¹⁰¹ Motosykletistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio, Case C-49/07, July 1, 2008 (Ct. J. E.U.); Julian Nowag and Fleur Westenend, *State of play in sports and competition law: AG Rantos' pass to the court in ISU and ESL and the challenges to scoring right*, Vol. 44(11), EUR. COMPET. LAW REV., 478, 479 (2023).

¹⁰² Dhanraj Pillay, *supra* note 60, ¶10.6.4.

in a fair and transparent manner, an enquiry which has been absent in Indian competition law thus far.

3. LIFETIME OF PLAYERS AND PROPORTIONALITY OF BANS

One of the most striking aspects of the General Court's decision in ISU is that it strikes down the five-year ban period after determining that the average period for which a skater is eight years.¹⁰³ This is a novel and interesting approach to resolving the complex balance between the objectives of the sport and the freedom of the player to compete. The other approach can be termed the normative approach: Since banning players is bad in principle, we should not allow any kind of ban or restriction in the first place. The empirical approach of the General Court adds nuance and promises deeper analysis: The reasonableness of the ban is not assessed on purely normative grounds but will depend on the period for which the ban is enforced. If it is a significant period, like the majority of a player's predicted career, then it is impermissible. However, shorter bans may be permissible based on sufficient empirical demonstration.

The position of Indian competition law on this issue is complex and ambiguous. In *Dhanraj Pillay*, the CCI stated that a twelve-month ban was acceptable because it was applied prospectively and was not out of malice.¹⁰⁴ However, it failed to analyse the general justifiability of bans and what the maximum legal length of a ban would look like. Generally, the CCI has adopted a normative approach and has looked down on bans, irrespective of their length. In *All India Chess Federation*, the ban on players was only for twelve months,¹⁰⁵ alongside other penalties. While the CCI held that the AICF's conduct violated competition law, it did not address the aspect of bans in any way. It did not discuss how major of a role the twelve-month ban had played in its conclusion, and whether a ban for any amount of time could be considered reasonable. In fact, the complaint in *Shravan Yadav* failed precisely because there was no penalty or sanction on players save the minimal restriction that a player should not be simultaneously participating in two leagues. There is no doubt that bans are the most severe punishment that can be meted out to players.¹⁰⁶

The CCI often comes across cases where there are essentially lifetime bans and has correctly castigated them as violations of competition law. In *TT Friendly Super League*, the Association sent letters indicating that players participating in unrecognised competitions "would not be allowed to participate in any of the tournaments that the District body or State body organizes" and will be banned from TT tournaments hosted by the Federation.¹⁰⁷ The CCI held that these were *prima facie* an abuse of dominant position. In *Confederation of Professional Baseball Softball Clubs v. Amateur Baseball Federation of India*, the ABFI sent a letter to state baseball associations demanding that they not allow their players to attend Club Nationals 2021, an unrecognised baseball competition hosted by the Informants.¹⁰⁸ In fact, the regulator soon announced that the Senior National Baseball Championship 2021 would be held on almost the same dates as the private competition and that the squad for international

¹⁰³ ISU (Decision of the GC), *supra* note 35, ¶93.

¹⁰⁴ *Dhanraj Pillay*, *supra* note 60, ¶10.12.

¹⁰⁵ AICF, *supra* note 62, ¶4.

¹⁰⁶ Dwayne Bach, *The Super League and its related issues under EU Competition Law*, April 22, 2021, available at <https://competitionlawblog.kluwercompetitionlaw.com/2021/04/22/the-super-league-and-its-related-issues-under-eu-competition-law/> (Last visited on January 4, 2024).

¹⁰⁷ *TT Friendly Super League*, *supra* note 79, ¶6.

¹⁰⁸ *Id.*, ¶7.

competitions would be chosen from participants from the Senior National Championships.¹⁰⁹ Predictably, the Informant's competition collapsed and they were forced to suffer financial harm.

A survey of CCI's case law, therefore, shows that it tends to adopt a completely normative approach to the issue of player bans. The current state of the analysis leaves much to be desired. It is advisable to include an analysis that specifically scrutinises whether the period of the ban is disproportional to the violation. The current normative idea that bans are never justified is unsustainable owing to the fact that there are legitimate objectives that sports regulators should seek to protect. Notably, the CJEU itself, in the ISU and Superleague cases, repeatedly emphasises that regulation is permissible; it is the lack of objective criteria and substantive, certain standards that is problematic.¹¹⁰ The outer boundaries of the circumstances of when a ban is permissible will depend on a case-to-case basis, but certain principles can guide future research and competition assessment of the question.

Firstly, a ban is an extremely severe penalty that should only be reserved for grave violations. While it can be tricky to establish what this means in practice, lifetime bans are not uncommon: Players caught doping, match-fixing, or betting have historically been banned for long periods, or even for their lifetime.¹¹¹

In our discussion, a hypothetical may serve as useful context. A, a famous Indian basketball player, is instrumental in the setting up of a private competition. This private, club-based competition is only a few weeks away from the Asian championships but is able to attract players because of lucrative salaries and offers. A is instrumental in the effort, using their personal standing and reputation to encourage teammates and friends to join the competition. A few weeks before the competition is supposed to begin, the sports regulator receives information that the clubs operating have inadequate medical equipment and safety protocols and there are reports of corruption and kickbacks received by A.

While this fact scenario is unlikely to ever happen in practice, it helps in illustrating the claim. In this situation, the regulator is completely justified in banning the competition, stating that players who participate will be excluded from Asian championships, and banning A from participation. The reason for this is to protect the integrity of the sport and the health of athletes.

The quantum of suspension/ban that is justifiable requires deeper normative and empirical research that is outside the scope of this paper. However, it is clear that bans are not always unjustified and can be utilised in certain scenarios; what those scenarios are remains open to further research.

¹⁰⁹ *Id.*

¹¹⁰ *Supra* Part II on "Surveying the CJEU's Decisions on Superleague and ISU".

¹¹¹ Special Correspondent, *Jitender Singh banned for life*, THE HINDU, May 4, 2011, available at <https://www.thehindu.com/sport/other-sports/jitender-singh-banned-for-life/article1989071.ece> (Last visited on January 4, 2024); Sabi Hussain, *Dutee Chand, India's fastest woman athlete, gets four-year dope ban*, THE TIMES OF INDIA, August 17, 2023, available at <https://timesofindia.indiatimes.com/sports/more-sports/athletics/dutee-chand-indias-fastest-woman-athlete-gets-four-year-dope-ban/articleshow/102811737.cms> (Last visited on January 4, 2024); The Feed, *Sandro Tonali of Newcastle faces 3-year-ban. Know about player who was banned for 30 years*, THE ECONOMIC TIMES, October 21, 2023 available at <https://economictimes.indiatimes.com/news/international/uk/sandro-tonali-of-newcastle-faces-3-year-ban-know-about-player-who-was-banned-for-30-years/articleshow/104614844.cms?from=mdr> (Last visited on January 4, 2024); Andy Wilson, *Lou Vincent banned from cricket for life after admitting match-fixing*, THE GUARDIAN, July 1, 2014, available at <https://www.theguardian.com/sport/2014/jul/01/lou-vincent-banned-cricket-life-match-fixing> (Last visited on January 4, 2024).

Secondly, bans should be implemented following a tiered system. The ISU's model is an example in this respect. First violations are met with a warning, the second with a five-year ban, and later on with lifetime bans.¹¹² While the quantum of the ISU's bans is debatable, the model itself is something acceptable that should be adopted by sports regulators since it is more proportional than the model being followed currently, which is a blanket ban for a specified period without regard to different dimensions.

Thirdly, the justifiable length of the ban will depend heavily on the sport, its characteristics, the amount of funding and recognition, and obviously the lifetime of a sports person. It may be difficult to quantify the expected time of activity for a sports person, but it is not impossible. The General Court came to a conclusion in ISU, and some studies currently exist for many sports. Cricketers, for example, play for around ten to fifteen years, but this may be increasing.¹¹³ Footballers play for around eight years.¹¹⁴ Studies can be conducted for sports where it does not exist. This will go a long way in demonstrating the justifiability of a ban. A six-month ban for a sport where players are active for more than ten years is not severe and will need to meet a lower threshold, as compared to the rules in ISU, where the ban was five years out of an active period of eight years. Whatever the ultimate conclusion, it is clear that there is a gap in Indian competition jurisprudence as to the lifetime of players that needs to be addressed.

4. COMMERCIAL VIABILITY OF THE SPORT

One of the major undercurrents of ISU is the commercial viability of the sport. In its analysis, the General Court noted that "speed skating provides very limited income opportunities for the great majority of professional skaters."¹¹⁵ This was used to emphasise the Union's dominance in the sport: if the Union-sponsored tournaments were excluded, then speed skaters would be unable to make a livelihood. Similarly, the Union contended at the CJEU that there is very little outside interest in speed skating.¹¹⁶ While the argument was made in a different context, regulatory restrictions on the hosting of private competitions in smaller sports may be devastating since official tournaments are insufficient.

The CCI has also noted the importance of external interest in sports that are not very commercially viable. In *Shravan Yadav*, it noted that "professional agencies [...] ensure availability of requisite capital, sponsorships, event management as well as business expertise for conducting games and reaping financial rewards out of it, which is stated to be ploughed back for promotion of the concerned sport. Such formats also simultaneously allow the players to compete, showcase their individual and collective skills, allow their performances to be judged for national selection and above all the recognition and financial incentives that follow."¹¹⁷ These benefits are more intense for a sport like volleyball that does not receive adequate funding or facilities from the state than for cricket, which already has a prospering ecosystem flushed with funds.

¹¹² ISU (Decision of the CJEU), *supra* note 2, ¶¶16-18.

¹¹³ Tim de Lisle, *How long is a career?*, ESPN CRIC INFO, December 12, 2006, available at <https://www.espnricinfo.com/story/how-long-is-a-career-272194> (Last visited on January 4, 2024).

¹¹⁴ Michael Barth, Torsten Schlesinger, and Werner Pitsch, *Is Professional Soccer a Risk for Their "Lives Afterwards"? A Social-Sciences-Based Examination of Retired Professional Soccer Players from a Long-Term Perspective*, Vol. 15(12), J. RISK FINANCE. MANAG., 609 (2022).

¹¹⁵ ISU (Decision of the GC), *supra* note 35, ¶74.

¹¹⁶ ISU (Decision of the CJEU), *supra* note 2, ¶60.

¹¹⁷ *Shravan Yadav*, *supra* note 66, ¶37.

However, there have been a number of cases where the CCI has not used the commercial viability of sport even though it would have been appropriate to. Surinder Barni provides an example of the same. While the IPL is a splendid commercial success and a cultural phenomenon today, this was not a surefire outcome and its success was in doubt in 2011, when Surinder Barni was decided.¹¹⁸ The CCI then simply did not assess the idea of cricket's commercial viability and whether backing by the regulator would lead to any additional benefit. In all likelihood, the CCI would have reached the same conclusion as it eventually did, owing to cricket's prominence even in 2011.¹¹⁹ However, the absence of additional reasoning that could nuance the decision and bolster the outcome is lamentable. However, this does beg a deeper question. How are we to analyse the commercial viability of any sport?

There are various ways to answer this question. On one hand, it may be argued that multiple private competitions are beneficial since it would lead to more competition for the best tournament. Companies will be willing to involve themselves due to the potential of an untapped market, hoping for the next IPL. On the other hand, one may also argue that regulator-backed leagues are preferable since they ensure that private companies will opt into markets that are uncertain and untested and can promote investment.¹²⁰

The resolution of this debate is beyond the scope of the paper, but its implications are immediately obvious. The knowledge of a sport's commercial viability may be difficult to determine, but it is instrumental when it comes to determining whether an action is anti-competitive or not. For example, if there is growing interest in chess from the Indian private sector due to its recent successes on the international stage¹²¹ and the AICF bars private competitions that are not approved by it, then the lack of guidance and objective standards for bans is a severe harm. On the other hand, if a small sport like baseball has no commercial interest, then an exclusive-regulator league may be excusable owing to benefits that could accrue. This assessment will be highly empirical and there may be conflict over thresholds and standards, but the CCI has the capacity and skill to do so, and will ultimately enrich competition analysis.

IV. CONCLUSION

The interface between competition law and sports is only slated to grow in recent years. While there are differences in the constitutional architecture and the structure of sports around the world, many common issues with respect to the acceptable conduct of sports regulators and when regulatory conduct oversteps boundaries and becomes inimical to competition law.

Due to this commonality of issues, there is ample scope for cross-fertilization and for jurisdictions to learn from each other. This paper looks at the CJEU's recent decisions in Superleague and ISU in order to suggest improvements for Indian competition cases in three

¹¹⁸ At the time of its iteration, the IPL was involved in fierce competition with the International Cricket League, a mega league sponsored by Zee Entertainment. For a detailed study of the history of commercialization of Indian cricket, see Shweta, *COMMERCIALIZATION OF CRICKET IN INDIA: A STUDY IN THE SOCIOLOGY OF SPORT* (MPhil, Jawaharlal Nehru University, 2006).

¹¹⁹ India's win at the 2011 World Cup is a clear indication of the nation's interest in cricket. See Vinayakk Mohanarangan, *Sachin's runs, Yuvraj's consistency, Zaheer's wickets, Gambhir's grit: India's 2011 WC in numbers*, SCROLL, April 2, 2020, available at <https://scroll.in/field/958016/sachins-runs-yuvrajs-consistency-zaheers-wickets-gambhirs-grit-indias-2011-wc-in-numbers> (Last visited on January 4, 2024).

¹²⁰ Bhattacharya, *supra* note 74, at 37-39.

¹²¹ Rakesh Rao, *Praggnanandhaa: The boy who gets cricket-loving India chess-thumping*, THE HINDU, September 4, 2023, available at <https://sportstar.thehindu.com/chess/praggnanandhaa-interview-chess-world-cup-candidates-tournament-elo-rating/article67268989.ece> (Last visited on January 4, 2024).

key respects. *Firstly*, it argued for a more rigorous approach in assessing whether the objective cited by the regulator actually has merit or is simply an attempt at obfuscation. This must also be made clearer by the CCI's decisions, which should illustrate precisely what objectives are permissible and which are not. *Secondly*, it has also been argued that bans are justifiable in some instances and there needs to be a concrete analysis of these circumstances, as opposed to a normative dismissal which is the CCI's current approach. *Thirdly*, a sport's commercial viability must be considered when determining whether regulatory restrictions are justifiable or not.

The CCI's case law on the interface of sports and competition is robust and is usually well-reasoned. However, there is always scope for deeper analysis and reasoning that leads to greater certainty, especially from other jurisdictions that have previously dealt with similar issues. Certainty and consistency are crucial in light of the increasing public interest in smaller sports and the recent burgeoning influx of private capital into less popular sports.