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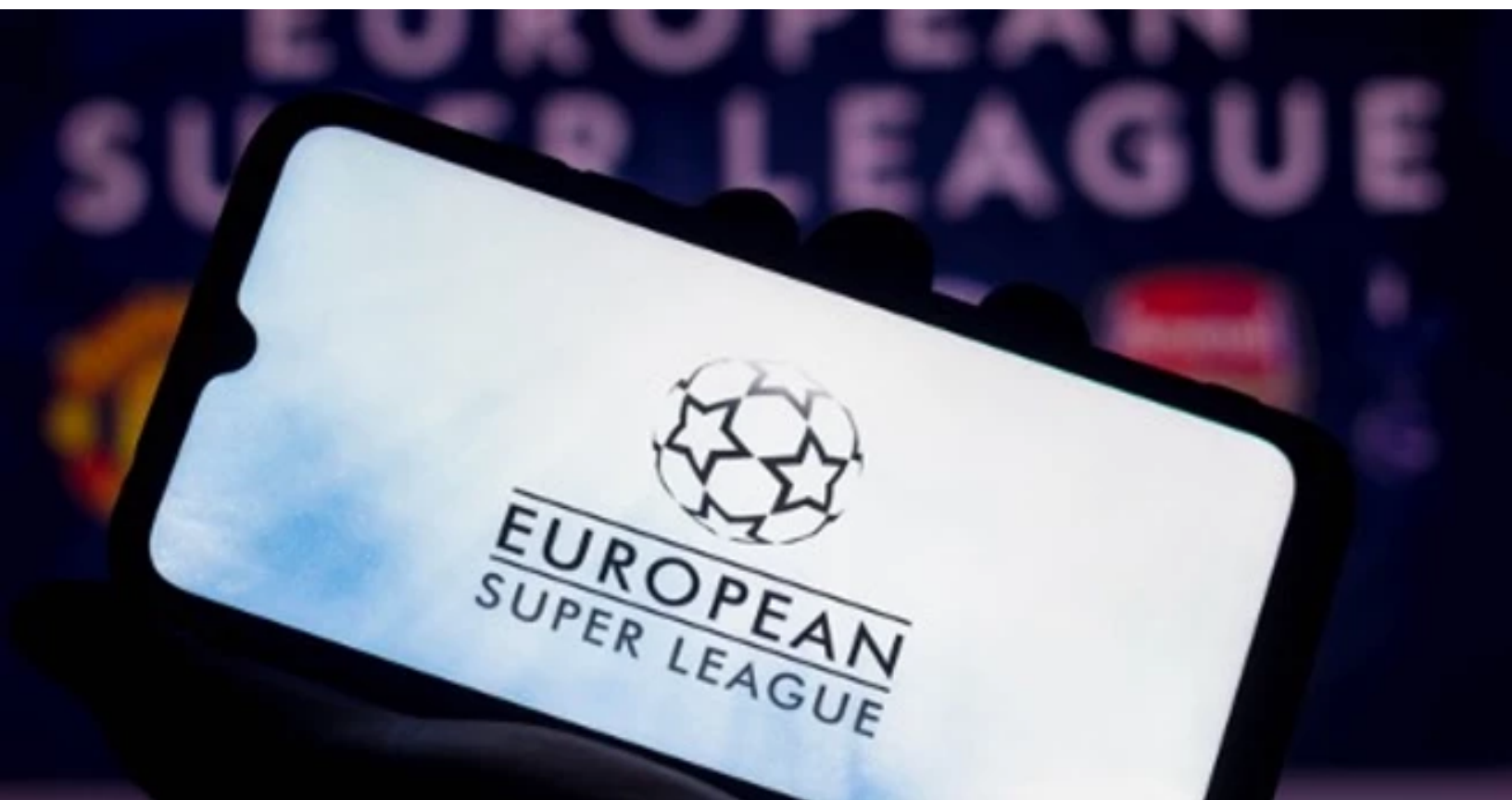
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# A Pro-Competitive European Super League

*By: Christopher Alexander*



In April 2021, twelve of Europe’s largest soccer clubs announced their intention to form the European Soccer League (ESL).[1] The league would feature the most prestigious teams from three European domestic leagues, including Real Madrid, AC Milan, and Manchester United.[2] Whereas domestic and the only current European-wide competitions relegate teams for poor sport performance, the ESL would allow its founding teams permanent access to the league and its revenues.[3]

Widespread backlash from fans led the clubs to temporarily suspend pursuit of the ESL.[4] However, it remains possible, if not likely, that the clubs will make additional attempts to form the ESL. This blog post considers the antitrust implications of the proposed ESL.

## 1. The Current Landscape of European Football

Before discussing the procompetitive benefits associated with the ESL, it is important to outline the current state of European competition. Currently, there are two European soccer competitions, and both are offered by a single firm, the United European Football Association (UEFA).[5] UEFA controls both the UEFA Champions League and Europa League competitions.[6] Both competitions follow a similar format: teams qualify based on their performance in domestic competitions from the previous season and may be relegated from the competition should they not perform well enough.[7] The Champions League consists of those teams which finish at the top of their domestic competition, and the Europa League features teams farther down in the standings.[8]

Today, the UEFA European competitions are not thought to replace domestic competitions, which make up a majority of a football club’s schedule. Instead, they supplement domestic competition with a unique one, where teams from different countries—which rarely otherwise have the opportunity to play against each other—face off. This competition also allows qualifying teams access to revenue streams unavailable to those teams which did not qualify.

## 2. The Antitrust Arguments Against the ESL

The primary argument against the ESL is that the structure of permanent membership “creat[es] a protected market that restricts others from entering and may limit competition.”[9] Opponents of the ESL argue that the league’s barriers to entry mirror those condemned by the European Commission in its penalization of Mastercard.[10] Mastercard required merchants to use banks within their home countries to process payments,[11] which prevented banks from “shopping for lower fees at banks in other European countries.”[12] The Commission determined that the requirement “artificially raised the costs of card payments, harming consumers and retailers in the E.U.”[13]

However, the ESL’s designation of permanent status to founder members is dissimilar to the circumstances in Mastercard in multiple ways. First, the ESL format provides the “shopping” which Mastercard prohibited; five additional clubs qualify for entry based on their performance.[14] Second, the ESL enters the market as the first competitor to UEFA’s natural monopoly on European soccer tournaments, and “[w]hen you start a new venture . . . that entry [into the market] is often allowed to have some exclusivity to protect its business.”[15] Third, the barriers to entry are necessary for the league to function effectively. The ESL aims to “provide higher-quality matches and additional financial resources for the overall football pyramid.”[16] To achieve this end, and unlike the restrictions imposed by Mastercard, the ESL benefits clubs and consumers.

### **3. The Procompetitive Benefits of the ESL**

The ESL benefits member clubs and those which did not qualify alike. According to the ESL, solidarity payments to member clubs are “expected to be in excess of €10 billion during the course of the initial commitment period of the Clubs.”[17] The increased revenue would percolate to “higher wages for top players, better top player performances and better competitors, and so arguably better and more compelling Super League games.”[18] Thus, the ESL format benefits member clubs and achieves “higher-quality matches”[19] for consumers.

The increased revenue for member clubs would inevitably benefit non-member clubs. In pursuit of top-talent, elite clubs seek transfers from other clubs. These transfers amount to hundreds of millions of euros per season, and these clubs “spend the most.”[20] The spending for these clubs “outpaces their revenues from transfer activities.”[21] While the current transfer system does little to benefit small clubs, “most benefits go to middle income clubs.”[22] In fact, “the main beneficiaries are clubs around the middle of the market.”[23] Recognizing that the transfer system does not solve the inequality between clubs at either end of the extreme, the transfer system pulls clubs in the middle further up. With that limitation in mind, small clubs remain net earners in the transfer process.[24] As the ESL format allows five additional clubs qualification, the format could increase the benefit to middle income clubs, by “provid[ing] unique exposure to the playing quality of their players, which may drive up their value in the transfer market.”[25]

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[1] Press Release, The Super League, European Super League, Leading European Football Clubs Announce New Super League Competition (Apr. 18, 2021), <https://thesuperleague.com/press.html>.

[2] *Id.*

[3] *Id.*

[4] Christina Unkel, *What is the Legal Status of the Failed European Super League and Could Europe’s Big Teams Break Away Again?*, Cbs Sports (Apr. 26, 2021, 10:56 AM), <https://www.cbssports.com/soccer/news/uefa-champions-league-power-rankings-liverpool-psg-on-the-up-as-chelsea-slide-down-after-loss-to-juventus/>.

[5] *European Qualification for UEFA Competitions Explained*, Premier League, <https://www.premierleague.com/european-qualification-explained> (last visited Nov. 9, 2021).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] See Jennifer P.M. Marsh, Niall J. Lavery, Dr. Annette Mutschler-Siebert, Miguel A. Caramello Alvarez, & Gabriela R. Da Costa, *European Super League Skating by Competition Law*, Nat’l L. Rev. (Apr. 23, 2021), [https://www.natlawreview.com/article/european-super-league-skating-competition-law#google\\_vignette](https://www.natlawreview.com/article/european-super-league-skating-competition-law#google_vignette); Alex Webb, *The Antitrust Case Against Europe’s Breakaway Soccer League*, Bloomberg (Apr. 19, 2021), <https://www.bloombergquint.com/gadfly/super-league-the-case-against-europe-s-breakaway-soccer-league>.

[10] Webb, *supra* note 9.

[11] Amie Tsang, *E.U. Fines Mastercard \$650 Million Over Fees Merchants Were Forced to Pay*, N.Y. Times (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/business/mastercard-fine-european-commission.html>.

[12] *Id.*

[13] *Id.*

[14] Press Release, *supra* note 1.

[15] Daily Mail, *European Super League: UEFA Does Not Have Strong Legal Case Says Sports Competition Lawyer*, Youtube (Apr. 20, 2021), <https://www.youtube.com/watch?v=4Rooidajh9k> (the video features commentary by Marc Orth, a Munich based sports-competition lawyer at Rechtsanwalt MEO.)

[16] Press Release, *supra* note 1.

[17] *Id.*

[18] Rupert Macey-Dare, *A League of Their Own - Logic of the Super League* (University of Oxford - Saint Cross College, Working Paper, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3830436](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3830436)).

[19] *Id.*

[20] Sam Hoey, Thomas Peeters, & Francesco Principe, *The Transfer System in European Football: A Pro-Competitive No-Poaching Agreement?*, 75 Int'l J. Indus. Org. 1, 6 (2021).

[21] *Id.*

[22] *Id.* at 1.

[23] *Id.*

[24] *Id.* at 7.

[25] *Id.* at 13.