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**Competition and Professional Sports – Note by Sweden**

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This document reproduces a written contribution from Sweden submitted for Item 4 of the 76th meeting of Working Party 2 on 4 December 2023.

More documents related to this discussion can be found at  
[www.oecd.org/daf/competition/competition-and-professional-sports.htm](http://www.oecd.org/daf/competition/competition-and-professional-sports.htm).

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## Sweden

1. This contribution focuses on the application of competition law to decisions taken by sports federations in Sweden, and especially on rules that restrict athletes from participating in competitions outside the traditional pyramid structure.

### 1. Organisation of sports in Sweden

2. Sports in Sweden are organised in a typical pyramid structure. In general, there is one governing body (Specialidrottsförbund, “SF”), for each specific sport. The SFs are members of their corresponding international governing bodies. SFs representing most sports are also members of the national umbrella organisation for sports, the Swedish Sports Confederation (Riksidrottsförbundet, “RF”).<sup>1</sup> RF represents the sports movement vis-à-vis public authorities and politicians, and provides service and support for the SFs. RF also distributes the government’s grants to sports. Sports clubs are members of both RF and one or several SFs depending on their activities.

3. RF and the SFs are non-profit organisations, and only non-profit sports clubs can be members of RF and the SFs. Some football and ice hockey teams are organised as limited companies, but according to RF’s statutes, they must be majority-owned by a not-for profit parent club to play in the league systems. This is often referred to as the “51-per cent rule”, and applicable to all sports under RF.<sup>2</sup>

4. The vast majority of competitions and other events are organised by member clubs, i.e. within this pyramid structure. Leagues are in general organised as open leagues, but there are examples also of closed leagues.<sup>3</sup>

5. A system of *ex ante* control over athletes’ participation in other events is prescribed by RF. According to RF’s statutes, if the organizer of a competition or an exhibition game is not affiliated with the SF that administers the sport in question, members<sup>4</sup> may only participate if the SF has approved the participation.<sup>5</sup>

### 2. Cases

6. The Swedish Competition Authority (SCA) has had several competition law cases concerning sports, two of which have been decided in court.

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<sup>1</sup> Not part of RF are sports with very few practitioners and some non-physical sports (e.g. chess).

<sup>2</sup> There is no possibility for exemption as was the case in the ownership rule investigated by the Bundeskartellamt in Germany (Background Note by the OECD Secretariat, DAF/COMP/WP2(2023)5, para. 35 and Box 4.3).

<sup>3</sup> The highest division of motorcycle speedway is a closed league since 2018. The highest division of men’s basketball operated as a closed league from 1992 to 2018.

<sup>4</sup> “Members” include both athletes and officials.

<sup>5</sup> Chapter 8, section 8 in RF’s statutes.

## 2.1. Short-Term Contracts in the Swedish Ice Hockey League<sup>6</sup>

7. The background to the case was a dispute between the National Hockey League (NHL) in North America and the players' union. When negotiations over a new collective bargaining agreement failed, the NHL declared a lockout of the union members beginning 15 September 2012. The players looked for opportunities to play in other leagues, including the premier league for ice hockey in Sweden.<sup>7</sup>

8. Svenska Hockeyligan AB (SHL AB) is a limited company jointly owned by the ice hockey clubs that are qualified to play in Sweden's highest division, and set up to protect the clubs' interests, including the joint selling of media rights.<sup>8</sup> In August, before the Swedish ice hockey season 2012-13 was to start on 13 September, SHL AB had decided that their owner clubs should not be allowed to sign short-term contracts with players from NHL during a possible lockout.

9. The SCA opened an investigation, and based on its initial results the SCA considered that the possibility to hire top players that usually play in the NHL would give the clubs opportunities to offer a more attractive and competitive product, with an increased interest from the public, sponsors and media companies. It would also give the clubs increased chances for sporting success. The SCA preliminarily found that SHL AB's decision restricted competition between its owner clubs as it restricted their possibilities to offer the best product – to the detriment of consumers, buyers of media rights and sponsors – and that it infringed the prohibition on anti-competitive agreements.

10. The SCA imposed interim measures on 20 September and decided that SHL AB should not, until the date of a final decision, apply its ban on short-term contracts and not impose penalties on clubs that signed contracts with NHL players. As a result of the SCA's interim decision, a small number of clubs defied SHL AB and signed short-term contracts with some high-profile NHL players.

11. SHL AB appealed the interim decision to the Market Court. The Market Court first concluded that the competition rules could be applied to SHL AB's decision as such, and that the decision did not fall under the exemption for agreements related to labour markets.<sup>9</sup> The Market Court then took the view that SHL AB's decision was part of a general ban on short-term contracts and not aimed specifically against locked out NHL players. Based on the preliminary findings in the case, the Market Court found that the ban appeared to be necessary and proportionate to achieve the legitimate purpose of safeguarding a fair and proper functioning league, and thus compatible with the Swedish Competition Act. The

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<sup>6</sup> Case number 501/2012.

<sup>7</sup> Then "Elitserien", now "Swedish Hockey League".

<sup>8</sup> The league itself is organized by the governing body, the Swedish Ice Hockey Association, but the decision under investigation was taken by SHL AB.

<sup>9</sup> The Swedish Competition Act does not apply to agreements between employers and employees relating to wages and other conditions of employment (Chapter 1, Section 2). Agreements concluded in the context of collective negotiations between management and labour seeking to improve conditions of work and employment are also regarded to fall outside the scope of Article 101(1) of the TFEU, see judgment of 21 September 1999 in case C-67/96 – *Albany International*, ECLI:EU:C:1999:430, p. 59–60.

SCA's interim decision was annulled.<sup>10</sup> The NHL lockout ended in January 2013 and the SCA decided to close its investigation without further action.<sup>11</sup>

## 2.2. Motorsports case

12. The motorsports case was initiated after a complaint concerning the Swedish Automobile Sports Federation (SBF), the governing body for auto racing in Sweden. At the time of the investigation, SBF had about 470 motor clubs as members, which in turn had more than 100,000 individual members. The vast majority of auto races in Sweden were organised by SBF's motor clubs.

13. SBF issues licenses for those who want to compete and work as officials. Such licenses are necessary to participate in competitions organised by SBF's member clubs. According to SBF's Common Regulations, licence holders were not allowed to compete, or act as officials, in competitions not authorised by SBF (the so-called loyalty clause). Breaches of the rules could result in suspension from taking part in SBF's events, including national championships. In practice, only competition organised by SBF's own members were authorised. According to SBF, individuals could apply for permission by SBF's board of directors to participate in events not authorised by SBF. However, no system was in place to administer such a process, no criteria had been established and no permission had been granted.

14. The SCA found that SBF's Common Regulations prevented license holders from participating in auto races organised outside SBF. Taking into account the penalties for a possible violation, the provisions in SBF's Regulations also had a deterrent effect. Since most drivers and officials were already connected to SBF, the rules made it very difficult for independent organisers to attract racers and hire personnel. There was a demand for both more races and new types of races that could not be met. The SCA concluded that SBF's rules was a decision by an association of undertakings in breach of the Swedish Competition Act and Article 101 TFEU, and ordered SBF to change its rules.<sup>12</sup>

15. SBF appealed the SCA's decision to the Market Court. Among the many arguments that were discussed during the court proceedings was the relevance of Article 165 TFEU to the assessment.<sup>13</sup> In its decision, the SCA had pointed out that Article 165 is a provision that gives the European Union competence to act within the area of sports, but that its introduction did not change the application of the competition rules since it already

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<sup>10</sup> The Swedish Market Court, protocol of 3 December 2012 in Case A 2/12. Available (in Swedish) here: [http://avgoranden.domstol.se/Files/MD\\_Public/SlutligaBeslut/A2-12%20Protokoll%20med%20beslut.pdf](http://avgoranden.domstol.se/Files/MD_Public/SlutligaBeslut/A2-12%20Protokoll%20med%20beslut.pdf)

<sup>11</sup> The SCA's decision in case number 501/2012, available (in Swedish) here: <https://www.konkurrensverket.se/globalassets/dokument/konkurrens/beslut/interimistiskt-beslut/12-0501-svenska-hockeyligan-ab.pdf>

<sup>12</sup> The SCA's decision in case number 709/2009, available (in Swedish) here: <https://www.konkurrensverket.se/globalassets/dokument/konkurrens/beslut/konkurrensskadeavgift/09-0709-svenska-bilsportforbundet.pdf>

<sup>13</sup> Article 165 TFEU came into force on 1 December 2009 and states that "The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function."

followed from earlier case law how the specific nature of sports should be taken into account.<sup>14</sup> The Market Court confirmed this view.

16. SBF had further argued that their loyalty clauses were necessary to reach four legitimate objectives: provide sports for all, support youth sports, ensure orderly and fair competitions, and ensure safety at competitions. The Market Court agreed that all four objectives were legitimate in themselves, but found that SBF's rules were either not necessary to achieve the objectives, or too far-reaching. Regarding the first two objectives, the Market Court noted that events that were organised outside SBF rather contributed to making the sport available to more people. Regarding the objective to ensure orderly and fair competition, the Market Court did not consider that the far-reaching clauses were necessary to avoid a "chaotic situation" with parallel governing bodies. Last, SBF's rules were also found to be too far-reaching to ensure safety at competitions. The Market Court concluded that SBF had infringed the competition rules and ordered SBF not to apply its loyalty rules.<sup>15</sup> The SCA has not seen any indications that the outcome of this case has jeopardised the model with one federation per sport.

### 2.3. Other sports related cases

17. After the motorsports case and the Market Court's confirmation of the SCA's analysis, the SCA received several complaints and questions about other governing bodies' rules and especially loyalty clauses that limit athletes' participation in events "outside the pyramid". Such rules, in different forms, appeared to be common and the tip-offs concerned a wide variety of sports, including bodybuilding, equestrian sports, canoeing, football, athletics, cycling, powerlifting, and dog shows. Some of these cases were closed after the governing body made clarifications or amendments to its rules. Other cases have been closed on priority grounds.

18. One example of a governing body changing its rules in the course of an investigation is Svenska Kroppskulturförbundet (SKKF), which was, in practice, the official bodybuilding and fitness sport association in Sweden.<sup>16</sup> SKKF enforced a provision preventing its members from participating in non-authorised competitions. Violations could result in fines or suspension. BMR, a provider of sports nutrition products that also organised bodybuilding and fitness competitions, complained to the SCA and argued that SKKF's rule prevented other organisers from effectively competing with SKKF and its member clubs. During the SCA's investigation, SKKF clarified that athletes, coaches, officials and judges no longer risked suspension or fines for participation in non-authorised competitions. However, the SKKF still required that they must take a doping test at a WADA-accredited doping laboratory, at their own expense, before they are again allowed to compete in SKKF events. SKKF also informed its members about the changes. With regard to the changes made by SKKF, the SCA decided to close the case.<sup>17</sup>

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<sup>14</sup> Case C-519/04 P – *Meca-Medina and Majcen v. Commission*, ECLI:EU:C:2006:492.

<sup>15</sup> The Swedish Market Court's ruling 2012:16 in case A 5/11 *Svenska Bilsportförbundet v. Konkurrensverket*, 20 December 2012. The ruling (in Swedish) can be found here: [http://avgoranden.domstol.se/Files/MD\\_Public/Avgoranden/Domar/Dom2012-16.pdf](http://avgoranden.domstol.se/Files/MD_Public/Avgoranden/Domar/Dom2012-16.pdf)

<sup>16</sup> SKKF is now part of Svenska Bodybuilding & Fitnessförbundet.

<sup>17</sup> See e.g. case number 590/2013 concerning bodybuilding. The SCA's decision (in Swedish) is available here: <https://www.konkurrensverket.se/globalassets/dokument/konkurrens/beslut/avskrivningsbeslut/13-0590-bmr-sports.pdf>

### 3. Some observations

19. In sports-related complaints and tip-offs to the SCA, loyalty clauses have been the most common concern. The different stakeholders' positions on this issue can often be widely differing. Put simply, some see the pyramid structure, with one governing body per sport controlling all activities, as the only viable way to an orderly organised sport. They point at the fragmented structure of boxing as a cautionary tale. According to this view, any competitions or events that are organised outside this structure should be exceptions. Others take the view that athletes should be free to decide which events to participate in, irrespective of any authorisation by a self-appointed regulator. Such opposing views can lead to heated discussions between interested parties, also in situations where not a lot of money is at stake.

20. The SCA and the Market Court have recognised that competition between organisers of sports events can have many benefits, both for spectators and for participants. As in other markets, competition promotes innovation and efficiency. Less competition can lead to reduced output and higher prices. For example, in the motor sports case summarised above, there was a demand for more competitions and other types of races than were organised by the federation and its member clubs. The prohibition on participating in such events meant that the organiser could not attract drivers and officials to their events, to the detriment of both drivers, spectators and sponsors.

21. As described above, RF's statutes foresee a system of *ex ante* permission for the *members* (i.e. individuals) who want to participate in unauthorised events.<sup>18</sup> If a pre-authorisation system is accepted, the potential conflict of interest needs to be addressed. The questions and complaints that the SCA has received indicate that it is difficult to design a pre-authorisation system with clear and transparent criteria, and which is accepted by all. In a follow-up to the motorsports case, the SCA noted that a pre-authorisation system that had been set up by SBF had created an administrative burden, and that it was sometimes ignored by those who wanted to compete in unauthorised events.<sup>19</sup>

22. Many of the cases mentioned in the background paper, as well as those investigated by the SCA, concern rules that have been decided at top of the pyramid, i.e. by the national or international federations. However, it is not evident that restrictions need to be imposed at that level to achieve legitimate objectives. For example, in motorsports case the Market Court accepted the securing of orderly and fair competitions and safety at competitions as legitimate objectives. Therefore, the court said, *a motor club* should be allowed to prohibit *its members* to work at other events, if working for others would prevent the member from working at the club's own competitions. The complete ban that was imposed by the national federation on all licence holders was not considered necessary (nor appropriate) to achieve those legitimate objectives.

23. Whether certain restrictions are necessary and proportionate to achieve legitimate objectives can differ between different sports and different types of events. For example, the safety of spectators is likely more of a concern in drag racing than in racing with radio-controlled cars. Therefore, even though the protection of safety as such is a legitimate objective, it would be more difficult to argue that restrictions are necessary to achieve this objective in some sports or disciplines compared to others.

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<sup>18</sup> Other systems of pre-authorisation, such as those currently under review in the *ISU* and *European Superleague* cases, could be based on pre-authorisation of *other events*.

<sup>19</sup> The SCA's case number 166/2013.

24. When applying the analytical framework that has been established by the Court of Justice of the EU, it is necessary to consider the different characteristics of the sport or event in question. The legitimate objectives that any restrictions seek to achieve must also be clearly defined to allow for an assessment of the necessity and proportionality of the rules.