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Competition and Professional Sports – Note by Argentina

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More documents related to this discussion can be found at
www.oecd.org/daf/competition/competition-and-professional-sports.htm.

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Argentina

1. Sports, football in particular, are a major component of Argentina's national identity. In addition to its cultural dimension, professional sports have a significant economic importance — and observers only expect this significance to increase.
2. Because it has a much larger economic impact than other professional sports, this contribution will be football-centred, and it delves into the strategy used by the National Commission for the Defence of Competition (CNDC, for its Spanish acronym) in various cases involving markets associated with football events. The unique features of the football sector have influenced the competition interventions implemented over time.
3. The first section of this contribution examines the current structure for Argentine football clubs' governance. The second section delves into how football leagues and tournaments are organised. The third part revises how the local federation, *Asociación de Fútbol Argentino* (AFA) (Argentine Football Association) deals with the joint sale or licensing of media and publicity rights, and it describes recent competitive issues concerning broadcasting rights for football events. In the fourth section, certain conclusions on the subject are outlined.

1. How is football managed in Argentina?

4. The organisation of a professional sports competition requires a governance framework that articulates the necessary cooperation between the different parties involved. Football is not different from other sports in that it requires a minimum number of participants to be organised, as one player cannot host a sporting event on its own. Clubs rely on one another to produce a viable and—hopefully—profitable product. For instance, updating the game's rules or setting up the tournament calendar requires coordination.
5. In the case of Argentina, these tasks are carried out mainly by AFA, but there is also significant influence on these matters from both, the regional organism, *Confederación Sudamericana de Fútbol* (CONMEBOL) (South American Football Confederation) and the international organism, *Fédération Internationale de Football Association* (FIFA), depending on the type of tournament and the competing teams.
6. From a legal perspective, the AFA is a non-profit organisation in which all professional football clubs are represented —existing clubs are not AFA's owners or shareholders. Being affiliated with AFA is an imperative requirement for clubs to compete in professional football leagues and tournaments. AFA is the only so-called sport's governing body that can grant access to those tournaments and requires its members to abstain from hosting professional matches or tournaments on their own —even arranging a friendly match involving a member needs express approval from AFA.
7. Another limitation arising from AFA statutes concerns the legal status clubs may adopt if they wish to become affiliated with the organisation. Indeed, only non-profit organisations («*asociaciones civiles*») can manage clubs and become AFA members. The so-called «*franchise model*» —quite common in the US— is not feasible in Argentina and clubs can't operate as private companies nor have a private owner.
8. Before media, sponsorship and broadcasting rights played a major role in football club's financing, monthly dues from supporters and members of the non-profit organisation

served as the main source of income. The transfers of players were another source of revenue.

9. It is relevant to mention that many professional football clubs serve as a venue for cultural and competitive activities—even at a professional level. Professional football clubs even manage educational facilities and administer their youth football academies as a way to ensure a steady supply of talent to their first-division teams.

10. Football clubs now rely heavily on broadcasting rights as a source of financing. The negotiation of broadcasting rights and the distribution of the resulting payments to their affiliated clubs is done through the different football associations. AFA is the licensee and the organisation in charge of negotiating with different media businesses, including television networks, streaming platforms, and other distribution channels, for the broadcasting rights to local competitions. The licensee for regional competitions (*Copa Libertadores* y *Copa Sudamericana*) is CONMEBOL, and only clubs who qualify for those championships receive financial rewards from the television rights.

2. Organisation of football leagues and tournaments in Argentina

11. As previously indicated, to establish a league or championship, rival clubs must work together. Having a sole club in the market would be unworkable since competitiveness demands the presence of other rivals. A market-internal governance structure is necessary for this connection to design, amend, and uphold the game's rules, resolve conflicts, and plan and coordinate sporting events.

12. Official football tournaments in Argentina are organised and regulated by AFA, the governing body in charge of the national teams and the umbrella organisation for all the local clubs, both first division and other categories.

13. Argentina has a hierarchical competition model with two national divisions (First Division and Primera Nacional [National B Division]). Teams are relegated and promoted between the two according to their performance. The Primera Nacional also has relegation and promotion arrangements with lower divisions, which differ on the basis of the latter's location and organisation. On the one hand, there is the Metropolitana division (comprising Primera B, Primera C and Primera D) and, on the other hand, the Torneo Federal division (Federal A and Federal B). Every year, both the Primera B Metropolitana and the Torneo Federal A receive the lowest performing teams from the Primera Nacional and promote their highest scoring teams to it. From highest to lowest, the hierarchy is: i) First Division, ii) Primera Nacional, iii) Primera B Metropolitana / Torneo Federal A, iv) Primera C / Torneo Federal B, and v) Primera D / regional tournaments.

14. Currently, the AFA organises two tournaments per year for teams that belong exclusively to the first division. One tournament has a league format in which all teams play each other, and the champion is the one with the most points. The other starts with two groups; the teams with the highest scores at the group stage qualify for a playoff stage, and the champion is decided in a final played between two teams. The AFA also organises the Copa Argentina, which is a playoff tournament in which all the Association's teams participate. It is similar to certain foreign tournaments such as the Copa del Rey in Spain.

3. Exclusive broadcasting rights for live football events

15. In Argentina, the most valuable broadcasting rights in terms of sporting events are mostly those for football matches.

16. As mentioned, football clubs assign broadcasting rights for the tournaments in which they play to the AFA for collective management. The association licenses the tournament broadcasting rights and distributes the television revenues to the clubs. The tournaments for each division are licensed as a group, i.e., first division tournaments are licensed separately from Primera Nacional tournaments. Although first division teams tend to dominate the final stages of the Copa Argentina, this tournament is licensed separately from the tournaments in which only first division teams participate.

17. The first division tournaments are the most valuable to broadcasters, since their matches draw the largest national audiences. The AFA last awarded broadcast rights for first division tournaments in 2017. The winner was a joint bid from TNT and Fox (the latter is now part of the Disney group), which broadcast the matches on pay-per-view signals.

18. The agreement gave each company 50% of the weekly events, with adjustments to account for the quality of the events – determined by the popularity of the teams playing. Specifically, the partners must share and alternate between them any events involving the two most popular teams in Argentina (Boca Juniors and River Plate). If one weekend TNT broadcasts the Boca Juniors fixture, Fox (now Disney) will broadcast the River Plate fixture, and they will alternate the following week. When the teams play each other, the event will be broadcast simultaneously on both networks.

19. The Copa Argentina tournament, which the AFA's various divisions play in, is broadcast by TyC Sports, a channel that is part of cable operators' basic programming offer, i.e., not marketed under the pay-per-view model.

20. The licensees are in charge of the technical and audiovisual production of the broadcasts: direction, filming, choice of journalists, etc.

21. The contract between the event generator (AFA) and the broadcast licensee is exclusive, meaning that each event is broadcast live and exclusively by one television signal. This is because licensing is most valuable when it is granted on an exclusive basis. This generates higher revenues for the AFA, resulting in a better economic situation for the clubs and, in turn, higher-quality competition among the teams through increased funding for players' and coaches' contracts.

22. However, the signal is then sold to signal distribution companies on a non-exclusive basis, and no commercial conditions can be imposed on this sale. The CNDC has pointed out on several occasions that the existence of contractual clauses that imposed minimum resale prices for the sale of signals to end consumers could constitute a violation of Act 27.442 on the protection of competition (LDC, for its acronym in Spanish).

23. Exclusive football event broadcasting rights may provide their licensors with significant leverage over their direct customers (e.g., satellite and cable operators). Two decisions adopted in merger control cases have shed some light on the risks associated with this content in the Argentine market.

24. The first such decision was adopted in the merger between Twenty-First Century Fox, Inc. ("Fox") by The Walt Disney Company ("Disney"). Even though this was a transaction that created overlaps in several communication and entertainment markets, the CNDC determined that the risks were particularly high in the market for paid television sports signals.

25. In the market for paid television sports signals, the CNDC ended up clearing the merger subject to compliance with a set of conditions that included both structural and behavioural measures.

26. In this market, the merger combined entities that held the exclusive licenses for live broadcasting of the country's most popular sporting events. Disney, through ESPN, held the television rights to broadcast the professional football league's first division matches—Argentina's most popular national tournament—while Fox, through FoxSports, controlled the television rights to broadcast the Copa Libertadores de América football matches—Argentina's most popular regional competition.

27. The CNDC saw the need to set up a new player capable of competing with Disney in the production and commercialisation of television channels. The authority thus ordered the divestment of the broadcasting rights to events that belonged to Fox's portfolio, chosen because they were the main international competitions within each sport, as measured by average ratings.

28. The broadcasting rights for Copa Libertadores de América matches, and the UEFA Champions League, one of the sporting events with the highest worldwide influence, were consequently included in the divestiture order.

29. The structural remedy was then supplemented with a set of behavioural conditions aimed, on the one hand, at mitigating the effects of the mergers until Disney could implement the divestment and, on the other hand, at mitigating the effects of increased Disney bargaining power vis-à-vis the cable operators, which are the companies that acquire the signals.

30. Specifically, Disney was ordered to "make available" for non-exclusive, free and open broadcasting, for all free-to-air and paid television signals that require them, the sporting events to be divested; and also to "make available" for broadcasting—under the same conditions—two first division matches of the professional football league, one of which would necessarily have to be a match where River Plate or Boca Juniors participates, since they are the clubs with the largest attendance and audience in local football.

31. On the other hand, in addition to the implementation of the structural remedy and for five years, the CNDC established requirements on the terms of commercialisation and packaging of signals that minimised portfolio effects and prohibited the imposition of contractual conditions that required cable operators to impose minimum resale prices, minimum subscriber quantities, penetration percentages, or subscriber numbers.

32. Shortly after that, Disney informed the CNDC that it had entered into a preliminary agreement with the Spanish group MediaPro for the sale of the rights and assets outlined in the divestiture order. The CNDC concluded that the structural remedy imposed had been successfully implemented.

33. It should also be noted that Disney chose to litigate against certain behavioural conditions outlined in the divestiture order. The court reviewing the divestiture order rejected in its entirety both the injunction by which it sought to obtain its suspension, as well as the request to permanently annul them.

34. The second case recently objected by the CNDC concerns the merger of Discovery Inc. ("Discovery") and WarnerMedia, LLC ("WarnerMedia"). The combined entity is called Warner Bros. Discovery, Inc. ("Warner/Discovery").

35. The CNDC determined in its preliminary research that the deal creates risks in the markets for the production and wholesale distribution of paid TV signals, particularly in children's channels, movies and series, and non-fiction entertainment.

36. Given the large number, diversity and preponderance of networks marketed by Warner/Discovery—both basic and premium—there are potential portfolio effects arising from the implementation of the transaction.

37. Warner/Discovery effectively sells paid TV channels of different themes—and not only kids, movies and series, and non-fiction entertainment channels—to cable operators.

38. Before the transaction's closing, Discovery marketed thirteen signals, of which six are non-fiction entertainment, where it has 43% of the market measured by ratings, according to 2021 data, three belong to the "Lifestyle" segment and the remaining four signals comprise children's, sports, variety and general interest, and movies and series.

39. WarnerMedia marketed sixteen basic channels comprising a wide variety of themes: movies and series, children's, non-fiction entertainment, lifestyle, music, and news. In terms of market share, it holds significant positions in the movies and series segment and in the children's category, where its market shares are around 33% and 29%, respectively.

40. Its portfolio is completed by eight premium networks in the movies and series category, as well as another premium channel in the sports genre (TNT Sports), which broadcasts live 50% of the national football competition's first division matches of considerable interest to the local audience.

41. As previously stated in Disney/Fox, this latter point is especially important considering the limited substitutability they hold. TNT Sports channels may be considered irreplaceable for any retail distributor of paid TV channels if he believes it is indispensable to offer such content to preserve or grow its competitiveness.

42. The CNDC concluded that all these factors provide Warner/Discovery a significant increase in its bargaining power and give it the ability to develop different types of portfolio or conglomerate strategies (e.g., bundled selling) that can potentially distort competition in the expanded paid TV channels market.

43. Another source of concern stemming from the merger is the incentive to limit content distribution on paid TV channels to steer people to Warner/Discovery's OTT platforms.

44. The analysis was carried out in an *Objection Report* and, as such, it is not definitive, but it shows the risks that live football broadcasting rights may pose to competition.¹ As of the publication of this contribution, the CNDC and Warner/Discovery are examining structural and behavioural measures to reduce the risks identified.

4. Conclusions

45. In Argentina, football is far more than a mere sport; it is ingrained in the nation's culture and forms a pivotal part of its identity. This cultural significance is intertwined with its substantial economic importance, and all signs point to this role growing in prominence in the future.

46. The governance of football in Argentina is marked by its complexity, characterised by a multifaceted web of structures, laws, and international influences. At its core, AFA wields considerable authority over the sport, from club regulations to the organisation of competitions.

¹ In an «*Objection Report*» the CNDC describes in depth the worries about potential competitive hazards to market structures linked to a particular merger. It is an official document that intends to formally outline the troublesome features of a given transaction, thus enabling the competition authority and the notifying parties to effectively negotiate alternative solutions to the identified risks.

47. The increasing significance of broadcasting rights highlights the evolution of football into a profitable industry. The management of these rights is essential to the financial health of clubs, as they are becoming more and more dependent on the money received from television deals.

48. Regulatory oversight plays an indispensable role in ensuring a level playing field within the media and entertainment industry. By scrutinising mergers and implementing conditions, CNDC seeks to safeguard competition and protect the interests of consumers.