



Commission could set precedent with ISU antitrust case

The European Commission's ('EC') Statement of Objections sent to the International Skating Union ('ISU') on 27 September 2016 informing the sports governing body of its preliminary view that the ISU eligibility rules that impose severe penalties on athletes that participate in unauthorised speed skating events are in breach of EU antitrust rules, presents the EC with the opportunity to set an important precedent at a supranational level, relating to the legitimacy, necessity and proportionality of restrictions placed on athletes weighed against their economic impact, believe Clifford J. Hendel and Ainhoa Veiga of Aroz & Rueda.

The European Commission opened a formal investigation into the ISU's eligibility rules in October 2015 following a complaint by two Dutch speed skaters that had been threatened with a lifetime ban from ISU events if they participated in an event that had not been approved by the ISU.

"The European Commission is concerned that the rules that prohibit skaters from participating in non-ISU approved events may restrict competition, in particular by limiting the commercial freedom of athletes and preventing new organisers of events from entering the market," said Paul Stone, Partner at Charles Russell Speechlys.

The ISU has responded stating that it is surprised by the Commission's Statement of Objections and believes the allegations to be unfounded. The ISU stresses that independent organisers are able to

organise international tournaments on the ISU calendar and as such there is no basis for the claim that organisers are foreclosed from the market. "It appears then that the European Commission has failed to take adequate account of the importance of the legitimate objectives pursued by the ISU's eligibility rules. A neoliberal and deregulated approach to sport could destroy the Olympic values underpinning sport," reads the ISU's 27 September press release.

Especially given the possibility of lifetime bans, Hendel and Veiga of Aroz & Rueda believe that it could be very hard for the ISU to satisfy the proportionality test. "A few years ago, in the Mathuzalem case, the Swiss Federal Tribunal struck down the basis of substantive public policy - essentially, the right to work and earn a living - a FIFA rule which had the effect of prohibiting footballers with overdue debts from playing in FIFA competitions. This case seems to

raise similar concerns," explain Hendel and Veiga. "Competition law provides an easier path and a more measured instrument to curtail restrictions of such severity than does the blunter judicial instrument of substantive public policy."

There have been a number of competition law investigations in the field of sport at a national level recently, but this is the European Commission's first Statement of Objections sent to a sports governing body in over a decade. The ISU will now have the opportunity to put its case to the Commission and justify its eligibility rules. If the ISU is unable to address the Commission's concerns they may have to amend the rules and could face the risk of fines. "An adverse decision from the Commission would sound a warning to other sports bodies that have strict rules on the ability of their athletes to participate in other bodies' events," concludes Stone.