RULING NO. 38/2023

In Madrid, 30 January, 2023.

On behalf of H.M. the King, the Twenty-eighth Section of the Madrid Court of Appeal, specialising in commercial matters, composed of the Judges Mr Gregorio Plaza González, Mr Enrique García García and Mr Rafael Fuentes Devesa, have heard the appeal, under case file number 1578/2022, Filed within the interim injunction motion of Proceedings no. 150/2021 from Commercial Court No. 17 in Madrid, in the field of competition law.

The parties to the appeal are, as appellant, EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC), and as a personal intervener, to 22 SPORTS MANAGEMENT SL. and as appellee, LA REAL FEDERACIÓN ESPAÑOLA DE FÚTBOL (RFEF), LA LIGA NACIONAL DE FÚTBOL PROFESIONAL (LALIGA) and LA UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA). The parties have been represented and defended in legal form.

Senior Judge Mr Enrique García García acted as rapporteur, expressing the decision of the court.

BACKGROUND FACTS

FIRST.- By the Commercial Court number 17 of Madrid, at the request of EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC), a ruling was issued, on 20 April 2021, whose operative part stated:

"*I grant the request of ex parte interim injunction submitted by the Court Agent Mr Manuel Sánchez Puelles Carvajal, acting for and on behalf of EUROPEAN SUPERLEAGUE COMPANY S.L. resolving to:*

1Order FIFA and UEFA, during the processing of the main proceedings, to refrain from adopting any measure or action; and from issuing any declaration or communication, which prevents or hinders, directly or indirectly, the preparation of the European Football Superleague.

2 To order FIFA and UEFA, during the processing of the main proceedings, to adopt, where necessary, any measure or action, and to issue, where necessary, any measure or action, and to issue, where necessary, any

statement or communication which, directly or indirectly, does not impede or hinder the preparation of the European Football Superleague.

3 To order FIFA and UEFA, during the processing of the main proceedings, to refrain from adopting any measure or action; and to issue any statement or communication which prevents or hinders, directly or indirectly, the implementation and development of the European Football Superleague and the participation of clubs and players in it.

4 To order FIFA and UEFA, during the processing of the main proceedings, to adopt, where necessary, any measure or action, and to issue, where necessary, any statements or communications, which, directly or indirectly, do not prevent or hinder the launch and development of the European Football Superleague.

5 Prohibit FIFA and UEFA from announcing, threatening, preparing, initiating and/or taking directly or indirectly (or, directly or indirectly, through its associate members, confederations, licensee clubs or national or domestic leagues) any disciplinary or punitive measures (or encourage or promote that such disciplinary or punitive measures are announced, threatened, prepared, initiated and/or adopted by third parties) during the processing of the main proceedings vis-á-vis clubs, officers and individuals of clubs and/or players participating in the preparation of the European Football Superleague.

6 Order FIFA and UEFA to refrain, directly or indirectly (through its associate members, confederations, licensees clubs or national or domestic leagues), To exclude clubs and/or players participating in the preparation of the European Football Superleague from any international or national club competitions in which they are participating regularly or meet the necessary requirements to do so.

7 To order FIFA and UEFA, during the processing of the main proceedings, through or through their own regulatory instruments, guides, decisions and guidelines, within the meaning of Article 52 of the UEFA Statutes-, and, as the case may be, the demand for compliance if not complied with or observed, instruct its associate members (including national federations), confederations, licensee clubs and national or domestic leagues to comply with the orders and prohibitions set out in the preceding paragraphs, and in particular, warn them that no breach the statutes or regulations of FIFA, UEFA, its associate members (including national federations), confederations, or national or domestic leagues, derived from the preparation, start-up or participation in the European Football Superleague may be invoked by associate members of FIFA or UEFA, confederations, licensee clubs or national or domestic leagues, as grounds for sanction, exclusion, claim, or any other similar measure, in front of the clubs, managers and staff of clubs or players in international or domestic competitions.

8 Order FIFA and UEFA, in the event that any of the conduct described in the preceding paragraphs has been carried out prior to the resolution of this application for interim injunctions, take the necessary action to remove and immediately render them ineffective .

The claimant is required to provide bond in the form of a bank guarantee of EUR 1,000,000."

SECOND.- The representatives of LA UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA) filed an opposition which, after its processing gave rise to a ruling, dated 20 April 2022, which ordered the following:

"*I UPHOLD UEFA's opposition to the interim injunctions adopted in the ruling of 20 April 2021 and ORDER the lifting of the measures agreed in that decision.*

NO IMPOSITION of costs."

THIRD.- The parties were notified of the above-mentioned decision, the representatives of EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC), lodged an appeal. Once admitted by the court and processed in legal form, the REAL FEDERACIÓN ESPAÑOLA DE FÚTBOL (RFEF), the LIGA NACIONAL DE FÚTBOL PROFESIONAL (LALIGA) and the UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA) filed an opposition. After that, the proceedings were referred to the Madrid Court of Appeal, where they were received on 22 June 2022.

FOURTH.- The case file was allocated to section 28 and the appeal file was created, in accordance with standard procedure. The deliberation and vote on the matter took place, following the corresponding order, conditioned by the enormous workload borne by this court, on 26 January 2023.

FIFTH.- All legal requirements have been observed in the processing of this appeal.

LEGAL ARGUMENTS

FIRST.- **Subject of the interim application.**

The context in which the dispute that has reached this second instance takes place is the one that we will describe below. EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC) is a private Spanish law company, which manages the project to organise an annual European football competition, outside UEFA, called SUPER LEAGUE. The shareholders of this company are prestigious European football clubs. Its management model is based on a semi-open participation system comprising, on the one hand, twelve to fifteen professional football clubs which have permanent membership status and, on the other hand, an undefined number of professional football clubs selected according to a given procedure and having the status of classified clubs. The project has established as a condition precedent to be able to start the sport competition at pan-European level that THE SUPER LEAGUE be recognised by FIFA or UEFA or, alternatively, that it obtain legal protection granted by the courts or administrative bodies that allows the founding clubs to participate in THE SUPER LEAGUE without ceasing to participate in their respective national leagues, competitions and tournaments.

After starting the corresponding preparations (to incorporate the corporate structure, to start negotiating the financing, etc.) and to announce publicly the creation of THE SUPERLEAGUE, the Fédération Internationale de Football Association (FIFA) and the UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA) issued a joint statement, on 21 January 2021, to express their refusal to recognise the new entity and to warn that any player or any club participating in this new competition would be expelled from competitions organized by FIFA and its confederations. By a subsequent communiqué dated 18 April 2021, that declaration was ratified by UEFA and other national federations, which stressed the possibility of disciplinary action against the participants in THE SUPERLEAGUE. These disciplinary measures would involve, in particular, the exclusion of clubs and players participating in it from certain major European and global competitions.

The Fédération Internationale de Football Association (FIFA) is a private Swiss law entity that operates as the organizer of international competitions in this sport worldwide. It is composed of national federations and recognises the existence of regional football confederations, including UEFA. Professional football clubs are indirect members of FIFA, to the extent that they may be subject to disciplinary measures taken by FIFA. Federations, confederations and clubs must comply with the regulations adopted by FIFA. Meanwhile, the UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA) is also a private Swiss law entity, which organises football at a European level. The national leagues and European clubs are indirect members of UEFA, which organises international competitions of these clubs and national teams. According to their respective statutes, FIFA and UEFA hold a monopoly for the authorisation and organisation of international professional football competitions in Europe.

EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC) filed a complaint against FIFA and UEFA, in

which it denounced the barriers to entry that they imposed on preventing the creation a new European football competition (SUPER LEAGUE) alternative to those organised by the defendants, that from their monopoly position and abusing it, they resisted the entry of competitors. In that writ, it applied for the adoption of a series of interim injunctions, the common denominator of which was that FIFA and UEFA refrain from behaviour such as those that gave rise to the claim. The Commercial Court ordered the measures without hearing from the opposing party and oversaw their enforcement. THE UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA) then filed an opposition, which, after following the corresponding proceedings, culminated in a new court ruling that reconsidered the decision and ordered the lifting of the injunctions. It is the appeal that EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC) filed against this last decision that has reached this court on appeal, in which we are asked to review it and reconfirm the interim injunctions initially ordered.

This court finds that both the appeal and the opposition ones contain the defect of trying to extrapolate the debate to something that does not belong to the interim stage. The debate should focus on the legally conditions required for the adoption of interim injunction in civil proceedings, which are those legally provided for in articles 726 (to be exclusively conducive to making the future judgment possible – instrumental and, in addition, appropriate nature of the measure for the protection of the right under dispute – and to providing the least onerous solution in the case in question – proportionality) and 728 of the LEC ("fumus boni iuris", "periculum in mora" and offer of a bond). The object of this appeal must be finding compliance with these requirements in the circumstances of the case before us, which have been the subject of disagreement in the two previous rulings of the court dealing with the case.

SECOND.- Procedural considerations.

We do not find the procedural defect of inconsistency, due to excess, in the appealed decision, which is timidly referred to in the appeal letter. The judge does not grant anything other than what had been proposed by the parties, so it is difficult it to find vitiation due to "ultra petitum" or "extra petitum". In our view, the judge did not exceed his task and merely expressed his opinion on matters which had been raised directly or indirectly by both parties, thereby respecting the requirement imposed by Article 218.1 LEC. On the other hand, it should be borne in mind that the court is only bound by the essence of what was requested and discussed, so there will be no "extra petitum" inconsistency when dealing with what was implicit or was an inevitable or necessary consequence of the stated petitions or of the main issue discussed in the proceedings (judgments of TC 9/1998, of 13 January, 15/1999, of 22 February, 134/1999, 15 July, 172/2001, 19 July, 130/2004, 19 July and 250/2004, 20 December).

We must also point out that this is not the appropriate procedural channel for reviewing the decisions taken by the first instance judge on jurisdiction and competence. For this purpose, the corresponding procedural declinatory motion (article 63 LEC), which has its own channels of review (article 6& LEC), was processed. It is sufficient here that we do not see such a major problem that could cloud the appearance of solid legal grounds and thereby impede the granting of the provisional protection, referring the debate, which the defendant seems to want to raise here, inappropriately, to its corresponding channel. To the extent that the main procedure remains and that the court has held, in the appropriate process, that it has jurisdiction and competence to hear it, we must here limit ourselves to resolving the appeal concerning the interim injunctions procedure.

On the other hand, we have already explained to the parties, in resolving the proposed evidence, that the important thing when analysing the correction of the adoption of the interim injunctions is to look at the situation existing at the time when they were brought before the court - existing risks should be assessed according to the then concurrent circumstances. Subsequent events could perhaps justify, under articles 730.4, 736.2 and 743 LEC, the submission of new interim applications to the court on the grounds of supervening events or the processing of pleas of amendment to those ordered, but they do not allow new rounds of debate to be reopened at second instance on the emergence of new situations. What is to be reviewed in the appeal is exclusively the admissibility or inadmissibility of the provisional protection on the basis of specific circumstances which should already go hand in hand with precisely the time at which the measures were requested. We are going to stick to that requirement, and are not going to refer to the parties' allegations of excess, which take up a significant part of their prolix writs, insofar as it is an attempt to circumvent the proper procedural delimitation of the interim debate.

THIRD.- The danger of delay.

The requirement of the danger of procedural delay requires, in order for a interim injunction to be ordered, that there is a risk, rationally foreseeable and objective, either that the defendant could take advantage of the state of pendency inherent in the duration of the process to render ineffective the judicial protection that the judgment resolving the dispute could grant or the advent in that meantime of situations that might prevent or hinder the effectiveness of what the other party might obtain in the main proceedings. This may come from both the defendant and third parties or be devoid of any subjective attribution, provided this requirement is set in objective terms, the mere probability that events that interfere with the effectiveness of the protection that in due course may be granted will occur during the processing of the proceedings is sufficient (Article 728 No 1 LEC).

We find the existence of “periculum in mora” in the case in question because there are quite clear indications

that, unless the measures are adopted, during the course of the litigation, ESLC will be prevented from carrying out the acts necessary to attempt to implement its project as a competitor on the market because of the obstructive conduct of the entities in question. There is a risk that the competitive initiative of the claimant may be undermined during the course of this lawsuit, so that the final phase of the lawsuit will be reached with a weakening that jeopardises the very viability of the SUPER LEAGUE project.

It is true that the Shareholders and Investment Agreement for the creation of the SUPERLEAGUE, which was signed by twelve major football clubs (the founders) on 17 April 2021, included a condition precedent clause (clause No. 8, "Compatibility Condition," with regard to Annex 8.2), which provided that the implementation of the project would require a double alternative, either FIFA and/or UEFA recognised it, or that judicial or administrative protection be obtained for the participation of the founding clubs in the SUPERLEAGUE in a manner compatible with remaining in national competitions. But that clause, which reveals the great caution shown by the signatories who were aware of the difficulties they were facing, is not enough to distort the appreciation of the danger in delay, as implied in the appealed decision, and the parties have vehemently defended the appeals, because that contract provision between the signatories of that agreement must be contextualised in accordance with the points made in the fourth subparagraph of document C of the framework agreement itself, which clearly explains that the condition was precisely in order to be able to start the sports competition at pan-European level. This is not incompatible with the realisation of all the acts necessary to seek the progressive introduction onto the market of the new competitor who was to be the organiser (creation of the structure, acquisition of financing, obtaining commitments with other clubs, advertising, sponsorships, etc.), which it needed to implement prior to the start of the sport competition, the latter being what was really completely conditioned by that clause. Although time may still pass until the ultimate goal of football matches begins, ESLC has tried to start its competitive activity by creating a social and legal structure, the negotiation of the financing with JP MORGAN in order to be able to get started and the public presentation of the project. However, its competitive initiative has already been interfered with by the obstructive conduct of the defendant. The risk that this may be repeated, discouraging third parties from engaging with the claimant, or that it may be brought even to more burdensome stages during the course of the litigation (because disciplinary proceedings may be applied with monetary sanctions, suspensions or expulsions), reveals the existence of danger by delay. This recommends the adoption of interim injunctions in order to prevent the creation of situations that are incompatible with the expectations of defence of the rights with which the parties came to court.

It cannot be maintained, as the appellees claim, that circumstances conducive to ruling out "periculum in mora" exist, in accordance with the provision of the second paragraph of Article 728(1) LEC, which allows the rejection of measures that tend to alter a de facto situation that the applicant has been consenting to for a long time. In order for this provision to apply, it must be established a sufficiently significant space of time has

passed during which the petitioner of the measures had been coming to a certain juncture and that this was also evidenced as the symptom of tacit acquiescence on its part with the situation above. This is not the case, because what has happened here is that a new competitive initiative has been tried and the impact of the counterparty's obstructive behaviour has been received and this has led to an immediate reaction of the interested party to seek the provisional protection for its entrepreneurial effort to seek the introduction of the new competition.

Therefore, the requirement of danger by delay is met. One of the essential requirements for the granting of the right to provisional protection is fulfilled, and we disagree with what was found in the appealed decision.

FOURTH.- The existence of a prima facie case.

The existence of the mandatory "fumus boni iuris" (article 728.2 LEC), without which the granting of the provisional protection would not proceed, requires analysing with the depth required, depending on the circumstances of the case, even if it is provisional and only with the information that is then available (which may be extended in the evidentiary phase of the process), the analysis of the merits of the right that the complainant should have, it is therefore essential to justify any kind of judicial protection being brought forward. In order to grant a precautionary measure, it must be verified, because it is required by law (articles 728.2 and 732.1 LEC), that the requesting party has sufficient justification that shows, even in a prima facie manner, that the right it is seeking to exercise in the main litigation is likely to merit a favourable decision (appearance of solid legal grounds). It is not a question of prejudging, but a question of finding that the plea of the requesting Party has the degree of strength necessary to justify the grant of the provisional protection.

Without prejudice to what may be seen in the main proceedings, where the opinion of the Court of Justice (EU) has been taken on this matter, which usually leaves, however, to the national body the right margin to appreciate the specific circumstances of the case, we have reached the conviction that the position of the claimant has the necessary appearance of solid legal grounds in order to merit provisional protection. Here too, we disagree with the point of view held in the appealed decision.

Because we have found signs of the commission by the defendants of actions to hinder the establishment of a competitor within the relevant market, which is the organisation of international professional football competitions on the European continent. The conduct is particularly serious because those from whom the obstruction comes are those entities that have apparently been holding a monopoly on that market until now and that use their dominant position to hamstring an initiative from a party intending to become their competitor. This is behaviour that violates the rule provided for in Article 102 TFEU, which considers incompatible with the internal market and prohibits, to the extent that it may affect trade between Member States, abusive exploitation by one or more companies, of a dominant position in the internal market or in a

substantial part thereof, adding to it a list of types of behaviour that do not constitute a closed list, but merely examples, allowing the mandate to be implemented even if the infringement had been committed by other types of behaviour that highlight it. The monopoly is being exercised by private entities who have assumed the decision-making power over who should be able to operate on the market of the organisation of international professional football competitions in Europe and who have shown, with acts like those that motivate this dispute, a determination not to have to share even a portion of it with anyone who aspires to be a competitor.

It is not decisive that the complainant should not submit an application for authorisation to the defendants. Because it is not essential that an act of exclusion from the market has been completed, but rather that there has been an act of hindrance to the establishment of the competitor on the market, as assumed by the public releases issued by FIFA and UEFA. It has not been necessary for the claimant to submit the application for authorisation to receive loud and clear the message that its initiative was to be rejected, and indeed fought by all means within the reach of the defendants. Irrespective of whether it should be properly clarified during the main dispute that there are objective rules which would indicate that the prior authorisation regime established by UEFA is subject to clearly defined, transparent authorisation criteria, non-discriminatory and controllable in the sense of the Court of Justice case law resulting from the CJEU judgments of 1 July 2008 (C-49/07, MOTOE) and 28 February 2013 (C-1/12, OTOC), the truth is that the infringing conduct goes beyond this and it is enough for us to find that it exists for the purposes of this interim procedure which seeks to impose obligations of abstention so that it is not repeated in this respect during the judicial proceedings. Because it has not even been necessary for the use of this sanctioning power to be consummated, it was sufficient for the message to be sent to the market that they were prepared to act as forcefully as possible against anyone who is willing to provide services to the competitor, thus dissuading them from such a possibility and placing a barrier to the market door for the latter.

It makes no sense to argue that the solution could come from ESLC members being able to create their own competition by completely abandoning alternative competitions, thus facing the adverse consequences that might result from this because, as the appellees insinuate, you cannot play both sides. Such thought is not in conflict with reality, and conflicts are not solved by mere theories. There is already an operational market and the claimant only wants to take part in him as a new intervener, offering its benefits. The announced purpose of ESLC, as further stated in the shareholder agreement document, is that the clubs involved could continue to take part in the national competitions and in the SUPERLEAGUE during the week, and not in the one organised, at a European level, by UEFA, which seems viable by waiving the country place for this, so there is no contradiction in this approach. The SUPER LEAGUE project would not be incompatible with the fact that interested clubs could continue to take part in national competitions, which from the point of view of competition law correspond to relevant markets other than international ones at European level. Also, the decision to leave a competition, when budgets are met to take part in it, should be free and not imposed according to the criteria of a manager who could commit arbitrariness from the position of a conflict of interest that arises for a monopolist who gives signs that it aspires to maintain its privileged status. The attach on free

competition comes from the moment the dominant position is trying to decisively influence, through the threat of sanctions against them, the subjects who provide the services to it in the relevant market (clubs and footballers) so they do not offer them to the competitor, which can strangle the competitive initiative of the competitor.

To assert that, outside the UEFA and FIFA ecosystem, an independent professional football competition could be freely created, which can compete with them, apart from interference from those, reveals great naivety. Because the defendants have market power of such potency that they are able to intimidate from their monopoly position, as they have done through public statements such as those that have motivated this dispute, any provider of services in this field who is represented to relate to the entrepreneur who intends to enter into competition with them. The problem is that there is a risk that the impact of the arbitrary use by FIFA and UEFA of their disciplinary power (which allows them to impose serious sanctions – Articles 53 and 54 of their Statutes) is not confined the competitions they run themselves, but it can also be used, as it is clear they have threatened to do, to discourage any intention by market operators who are tempted to engage with the competitor. The initiative of the entrepreneur who wants to enter into competition is thus attacked by the monopolist who does not want it and uses its power to obstruct it.

The possible justification for the conduct of FIFA and UEFA as an attempt to protect the European sport model is regarded, prima facie, as a flimsy excuse. Sociological or cultural criteria can help contextualize the understanding of human behaviours, but they should lead one to lose perspective when what is being judged is the intention of an entrepreneur to perform of an economic activity within a market that generates an enormous amount of resources, and it calls for it not to be opposed by the obstacles inherent in closed and anachronistic models that are not in line with the free competition and the principle of freedom of enterprise that applies in Europe. It is precisely this economic aspect of football that must be observed under the tenets of European Union law. Indeed, it does not seem that the claimant's initiative seeks to question whether or not federations can ensure uniform application of the rules governing sports disciplines as such (rules of play, rules of financial fair play, etc.), or that they are seeking, in a frontal and unequivocal manner, to undermine the European values of sport referred to in Article 165 TFEU. We must not lose sight of the fact that the market concerned is that of professional football at a European level, oriented toward mass entertainment and in which the weight of the business component is enormous. The activity we are dealing with here is not directly concerned with grassroots or amateur sport, nor are the ethical principles that should guide them at stake. The existence of a diversity of competitions at such a high level as that of the elite professional sport, which may present alternative ways of organising, does not necessarily have to compromise the survival of the sport in other lower strata. This can continue to be enhanced by the Member States and even the European Union. Nor should the emergence of a new competition between the existing competitions in the professional sphere be seen as a problem, which for reasons of efficiency must be able to generate for themselves the flow of resources that they may require for their sustainability. Otherwise, the principle of merit in benefits and obligations of competition law would be side-lined. The social impact of football and its educational dimension, which can

be promoted and defended by the public authorities, are not incompatible new competitions gaining access to the market in the professional field, boosting competition, extending the offer of events for the public and even boosting the quality of the same. There is no need to impose competitive restrictions such as those that motivate this dispute in order to be able to ensure the socio-educational function of the sport of football, which can be guaranteed regardless of the emergence of a new professional competition. Just as there are many ways to ensure there will be a flow of financial solidarity, without the concern that the emergence of a new market participant, which is surprising with an innovative project, can be used as a pretext for using anti-competitive manoeuvres against it. Although the creation of the new competition may affect the flow of resources generated by the organisation of professional football in Europe, which until now had only one manager, this should not be able to prevent another player in the market from competing with it, without this kind of situation being exempted from the laws of the market because the monopolist wants to preserve the old structure and resists facing the changes that social and economic progress brings, with which other new flows of wealth that affect society can come. Furthermore, we cannot assume in this interim procedure that the profit-sharing mechanism used by FIFA and UEFA, which is neither set nor controlled by an independent public regulator, is necessarily the best possible mechanism for the general interests of sport, not least that the unabated preservation of the maximization of income according to the interests of those may constitute the exception that allows justification for restrictive conduct aimed at hindering the entry into the market of alternatives other than the implemented business model by them. The defendant's project also allows for the allocation of a portion of the benefits for philanthropic, social or sport purposes, so FIFA and UEFA cannot justify their anti-competitive behaviour as if they were the sole depositaries of certain European values, especially if this is to serve as an excuse to sustain a monopoly from which to exclude or hinder the initiative from which it aspires to be its competitor, because this will dislocate its structure and business model. Innovative initiatives that pursue models of efficiency and quality of performance can boost the market and involve the generation of a new flow of resources (ticket revenue in games of maximum expectation, audiovisual rights, sponsorships, advertising, etc.), even if the defendants do not necessarily take part in them, unless an agreement were reached. The key to the virulence of the anticompetitive reaction of the defendants may have its origins in these prospects.

We do not find that the obstructive conduct of the defendants is due, self-evidently, to the aim of achieving certain legitimate objectives (judgments of the CJEU of 19 February of 2002 - Wouters et al., C-309/99 - and of 18 July of 2006 - Mecca-Medina and Majcen/Commission, C-519/04), to the extent that they can justify the use of the unlawful means that they have used, causing the anticompetitive effects that they have caused, which show, it would seem, the purpose of maintaining their monopoly position. Because we have not found, with the required clarity, that the values of European sport will be seriously jeopardised precisely by the emergence of a new professional competition for elite football, which will be developed outside the existing ones, that can continue with their usual dynamics. Moreover, those responsible for this new competition could always be required, before the authorities concerned, who do unequivocally safeguard the public interest, that they respect both the requirements of competition law and the European standard which, within the existing

regulation, is considered to be appropriate for the development of sports competitions. The problem is that in this case the defendants apparently made no allowance for this, because they decided to announce to the market that their priority was that the defendant's initiative would be doomed to failure, warning publicly that taking part in it would have serious consequences for anyone considering doing so. The reaction of the defendants was disproportionate from any point of view, regardless of the reasons behind it, although we have already pointed out that the anti-competitive motive also seems quite obvious.

At the interim injunctions stage, in view of the indications we have seen, it does not seem to us that the manner of conduct of the defendants can be justified as a protection of the general interests of European football, but rather a performance that brings together all the features of unjustifiable abuse by someone holding a dominant position. Then the interim protection must be restored.

FIFTH.- Additional requirements of measures.

The instrumentality of the interim injunctions adopted, which has been called into question by the appellees, implies, in the strict sense, that they must not constitute an end in themselves, but must consist of an ancillary tool of the main proceedings that the law provides to ensure the judicial protection sought in it will ultimately prove effective. In order for this to occur, it will also be necessary that the legal effects pursued by the measures be directly related to those of the judgment which should eventually resolve the main dispute in favour of the applicant for provisional protection, requiring the consideration of appropriate measures for the protection of the disputed law (thus the need for the measure to be appropriate because it must be connected with the foreseeable outcome of the dispute to be protected). It is clear from the claim's plea that the tenor of the interim injunction sought by the claimant shows its correspondence with the petitions raised therein.

It was also argued in the appealed decision, and the appealed party has so argued, that the appropriateness of the measure and even its proportionality would be disputed due to the extent the measures affected non-litigating third parties. This court does not share this view. The hindrance can be performed by indirect means, exerting pressure on those who provide the market services, so that they are pushed to desist in their purpose of maintain relations with the competitor. It then makes perfect sense that the abstention obligations imposed on the defendant party, in this interim route, include any anti-competitive behaviour with those who are service providers in the relevant market. The measures are neither exorbitant nor have they been adopted for the benefit of third parties, but of the party that requested them.

SIXTH.- Bond

In the opposition writs, the amount of the bond initially decreed by the judge is considered to be insufficient. Article 728.3 LEC provides as a mandatory provision for bond to respond promptly and effectively to the

damages that the measure may entail for the opposing party. It is the harmful consequences that could be suffered by the one who may be subjected to the measures and precisely as a consequence of having to endure them, if they were later revealed, by the decision on the main matter, as unduly suffered, which must constitute the reference for the quantification of the bond.

This court considers that, in view of the intensity of the "fumus boni iuris" discussed above and assessing the potential harmfulness of the precautionary measure adopted, the amount of EUR 1 million pointed out at the time by the commercial court judge was, in the absence of a better-founded alternative at the interim stage, a prudent and reasonable estimate, of what is necessary to deal with any damages that the defendant might suffer if the measure were later reputed to be undue. It does not make sense, on the other hand, that, in the face of mere acts of abstention of the nature and object of those imposed provisionally, an amount of astronomical bond should be indicated which, because of its disproportionate amount, could constitute an obstacle to access to the provisional protection.

SEVENTH.- As we are going to reverse the appealed decision and instead we are going to dismiss the plea of the opposition to interim injunction that was initially decreed, we must impose on the party that opposed the costs derived from the first instance of the opposition. Because this is provided for by the legal rule (Article 741, second paragraph 2 of the LEC) when it is decided to maintain the interim injunctions that were adopted ex parte.

EIGHTH.- The upholding of the appeal means that there are no grounds to impose the costs of the second instance on either party, in accordance with the provision contained in Article 398.2 LEC. This is because the legislator follows in this respect the criterion that a litigant who, by defending its own interests as an appealed party appealed at second instance, does so based not only on its mere personal conviction but also acts backed by an explicit act of public authority which, rightly or not, supported that stance at first instance, should not be penalised with an award of costs.

HAVING REGARD to the above legal precepts and the others of general and relevant application to the present case, this court pronounces the following

OPERATIVE PART

1.- We uphold the appeal filed by THE EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC) against the ruling issued on 20 April 2022 by the Commercial Court number 17 of Madrid in Proceedings No. 150/2021

2.- We revoke the aforementioned appealed decision, which we cancel.

3.- We reject the opposition filed by UNION DES ASSOCIATIONS EUROPÉENNES DE FOOTBALL (UEFA) against the interim injunctions ordered by a ruling dated 20 April 2021 at the request of THE EUROPEAN SUPER LEAGUE COMPANY, S.L. (ESLC), which we confirm.

4.- We order the party opposing the interim injunction initially adopted to pay costs derived from the first instance of the opposition.

5.- We do not make an express imposition of the costs corresponding to the second instance.

We note that no appeal can be brought against the ruling of this court.

Thus, the senior judges of this court indicated above agree, order and sign this ruling.