

THE MESSAGE GIVEN BY THE EU COMMISSION IN THE ISU DECISION: “ICEBERG RIGHT AHEAD!”

by *Mario Vigna**

ABSTRACT: The EU Commission Decision in the ISU case shows that the application of competition rules to the sports sector is a topical issue. In the past years, the interventions of the EU Commission targeted issues such as media rights or ticket sales arrangements. This time the European Commission has targeted the very internal eligibility/authorization rules of an International Federation, declaring their incompatibility with the EU competition rules. In particular, ISU rules lay down severe bans for athletes attending unauthorized sports events. These clauses were considered as an unjustified restriction of the skaters’ freedom to engage in their professional activities, and as a restriction of competition between organizers of sports events that falls within the scope of Article 101 TFEU. This decision has called for substantial, worldwide interest among sports institutions, because it signals openness to approach similar future cases in the same way.

The intertwining of sporting and commercial aspects makes the EU competition rules applicable to the activities of sports event organizers. Thus, the International and National Federations’ exercise of their regulatory powers should review the nature and scope of their eligibility rules on third-party events. Indeed, such regulations must be based on objective, transparent and non-discriminatory criteria that do not seek to impede or render less advantageous the activities of other organizers in the market or able to prevent athletes from fully exploiting new careers opportunities. In this respect, it is worth to note that the competition law cases related to sport are increasing both at EU and national level.

Keywords: Sport - Antitrust – Eligibility rules - Non-discriminatory criteria – Freedom to compete and organize

SUMMARY: 1. Facts of the case – 2. Legal analysis – 2.1 The CAS arbitration and the restriction of competition – 2.2 The nature of the ISU – 2.3 The market of reference and the position of the ISU – 2.4 The eligibility rules constitute a restriction of competition “by object” and “by effect” under Article 101(1) TFEU – 2.5 The eligibility rules and the conditions under Article 101(3) TFEU – 3. Conclusions

* Mario Vigna is Senior Associate of Coccia De Angelis Vecchio & Associati Law Firm and Deputy Chief Prosecutor of NADO Italia. E-mail: m.vigna@cdaa.it.