

Judgment of the General Court, of 26 February, 2019, in Cases T-679/16 Athletic Club/Commission and T-865/16 Fútbol Club Barcelona/Commission

ABSTRACT: The recent judgment of the General Court on State aid granted to Spanish football club has shed light on the application of the competition policy provision to the sports sector, in particular on the football one, and both on the rules governing the burden of proof in accordance with the relevant procedural law applicable at EU level. The comment will investigate the EU Commission's critical scrutiny of financial support granted from the Spanish government to some football clubs as for the criterion of selectivity of the tax treatment and the procedural approach of the General Court to this case.

It could be a good exercise (i) to verify the balance between the defense of the competition policy also in the sport sector and the procedural rules relating to the burden of proof and (ii) to see in the future how the European Commission will scrutinize the fiscal State aid, a very hot topic in today's State aid landscape.

Keywords: European Union competition law – State aid (notion) – State aid (advantage) – State aid (selectivity) – State aid (tax exemption) – Undertaking (notion) – Corporate tax treatment – Sports – Professional Football club.

**STATE AID AND TAXATION: THE APPROPRIATE BALANCE
BETWEEN THE LEAST COMPETITION'S DISTORTION IN THE
PROFESSIONAL FOOTBALL SECTOR AND COMPLYING WITH
THE RULES OF EVIDENCE**

by *Ilaria Sticchi**

Summary: 1. Background – 2. The measure investigated by the EU Commission – 3. The Decision – 3.1 Assessment of the aid – 3.1.1 The common tax system – 3.1.2 Comparability of the factual and legal situation of the four football clubs and the other professional sport companies – 3.1.3 Justification by the nature and logic of the tax system – 3.1.4 The existence of aid within the meaning of Article 107 (1) of the TFEU and compatibility assessment under Article 107(3) – 3.1.5 The selective economic advantage in the tax treatment – 4. The arguments of FCB and EU Commission – 4.1 FCB – 4.2 The European Commission – 5. The EU General Court's approach – 6. Procedural developments: focus on the principle of burden of proof of the selectivity condition of the tax treatment – 7. Conclusions

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