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The Real Madrid case: A State aid case (un)like any other?

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On 18 December 2013, the European Commission announced the launch of an official investigation into alleged illegal State aid on advantageous property transfers granted by the Council of Madrid to Real Madrid after it received numerous complaints by citizens. The *Real Madrid* case is one of the four State aid cases related to sport under formal investigation by the Commission. Interestingly enough, no Member State has ever been sanctioned for aiding a sporting entity and the European Courts were never called upon to judge on the matter. However, while public authorities have problems getting popular support for investing public money in sports infrastructures, the number of complaints by citizens regarding aid in the sports sector has gone up. It is therefore no surprise that the Commission's final decisions on these four cases, including the *Real Madrid* case, are eagerly awaited. This paper will (1) discuss the Commission's past and current position regarding State aid in the sport sector; (2) give an in-depth analysis of the *Real Madrid* case under EU competition law and; (3) discuss the possible consequences of a negative Commission decision for Real Madrid and determine the other conclusions derived from this State aid case.

1. INTRODUCTION

Football is not only a game between sportsmen competing for the honour of a medal. The world's most popular sport is also big business, involving billions of Euros. The enormity of this business has its consequences. The stakes are raised and the necessity to win at all costs is increased. Winning involves having better players than your opponents, and getting better players usually involves buying them for large amounts of money from opponents. This process forces many football clubs to spend more money than is generated. The deficit of clubs with a UEFA License has increased from €0.6 billion in 2007 to €1.1 billion in 2012¹ and it is essential for many clubs to have external capital injections in order to survive.

Sporting entities, especially football clubs, also have an important social function and can influence the image of their respective municipality, region or even State. As Artur Mas, president of the government of the Spanish autonomous region Catalonia, made clear: "F.C. Barcelona, is an important ambassador for Catalonia, and its sovereignty".² The social relevance of sport is underlined by the European Union in Article 165 TFEU since sport fulfils educational, social, cultural and recreational functions. Clearly, having a solvent and winning football club could be very beneficial for a particular region or Member State. However, problems may arise if the public authorities deem it necessary to help the club become solvent, successful or both.

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¹ UEFA Club Licensing Benchmarking Report Financial Year 2012.

² Cañizares, 'Artur Mas confia en que el Barça sea embajador de su proyecto soberanista', *ABC*, 6 June 2013.

As is stipulated in Article 107(1) TFEU, “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings shall, in so far as it affects trade between Member States, be incompatible with the internal market”. Provided that professional football clubs are considered undertakings engaged in an economic activity, the necessity for professional football clubs to win ‘at all costs’ could, or indeed should be hampered by EU State aid rules. The State aid rules constitute one of the four policy areas forming EU competition law.³ The European Court of Justice (CJ) established long ago that EU competition law was also applicable to sporting entities,⁴ but very little has ever been done or said about State aid in sport, let alone football. In fact, one could easily get the impression that the Commission deliberately avoided to get its hands dirty with such problems. A known example concerns a terrain qualification change in Madrid in the late 90’s that proved hugely advantageous for Spanish football club Real Madrid. In this case, the Commission, even though agreeing that an advantage was conferred to the club, simply stated that the new qualification of the terrain in question does not appear to involve any transfer of resources by the State and could therefore not be regarded as State aid within the meaning of article 107 TFEU.⁵

The last few years have seen a change regarding State aid to sporting entities. The Commission has dealt with 13 different sport related State aid cases. Of these 13, four are currently under formal investigation. The first investigation involves alleged municipal aid to the professional Dutch football clubs Vitesse, NEC, Willem II, MVV, PSV and FC Den Bosch;⁶ the second case concerns State aid to the Spanish football clubs Real Madrid, Athletic Club Bilbao, Club Atlético Osasuna and FC Barcelona due to a preferential corporate tax treatment;⁷ the third involves alleged aid regarding a possible State guarantee in favour of the Spanish football clubs Valencia CF, Hércules CF and Elche CF;⁸ and, the fourth case, which is the focal point of this paper, concerns alleged illegal State aid on advantageous property transfers granted by the Council of Madrid to Real Madrid.⁹

Before assessing the *Real Madrid* case under EU law, this article will analyse why EU’s State aid rules were barely applied to football in the past. In continuation, the article shall discuss what might have caused the Commission to open not one, but several formal investigations at the same time. The third part will consist of the actual assessment of the *Real Madrid* case under Art 107(1) TFEU, whether the alleged aid can be justified under Art 107(3) and what the consequences of a negative Commission

³ The others being the rules on cartels, abuse of dominance and mergers

⁴ Case 36/74, *Walrave and Koch v Union Cycliste Internationale*, ECR 1405

⁵ Parliamentary Questions P-2491/02, ‘Planning agreement involving Real Madrid football club and the free competitive market’

⁶ SA.33584 (2013/C) (ex 2011/NN) – *The Netherlands Alleged municipal aid to the professional Dutch football clubs Vitesse, NEC, Willem II, MVV, PSV and FC Den Bosch in 2008-2011*

⁷ SA.29769 (2013/C) (ex 2013/NN) – *Spain State aid to certain Spanish professional sport clubs*

⁸ SA.3687 (2013/C) (ex 2013/NN) – *Spain Alleged aid in favour of three Valencia football clubs*

⁹ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*

decision would have on Real Madrid. The article will be concluded with an analysis of what makes the Real Madrid case special or, perhaps, not so special at all.

2. THE (DELAYED) APPLICATION OF STATE AID IN THE FOOTBALL SECTOR

The EU rules on State aid were barely applied to the football sector or in the sport sector in general prior to 2013. Rare exceptions were the abovementioned doubts regarding a terrain qualification change in Madrid in the late 90s, and an agreement signed in 2001 by the municipality of Alkmaar and the Dutch football club AZ regarding a new location for the stadium that was beneficial for the club.¹⁰ In both cases the Commission did not hand out sanctions to the relevant Member States. The competence for the EU to intervene in sports-related matters is feeble; Article 165 TFEU merely provides a supporting competence.¹¹ However, the EU has been influential in matters related to sport ever since the mid-seventies. In the *Walrave and Koch* case, the CJ stated that sport is subject to EU law ‘in so far as it constitutes an economic activity’.¹² The CJ’s decision to challenge football’s transfer system in the *Bosman* case¹³ proved to be of great significance for players who wish to play in foreign leagues and the *Meca-Medina* case settled that EU competition rules were equally applicable to sport.¹⁴ Given that football clubs are involved in economic activities and the importance football clubs can have for a particular municipality, region or State, football surely must be scrutinized under EU State aid law. This leads to the following two questions: what prevented the Commission from intervening in State aid cases related to sport and football in particular in the past, and what has changed in the last few years that made it change its attitude? In my view, the reasons for the Commission not to intervene in State aid cases related to sport are both procedural and political. In sport, notification of aid has been clearly lacking in the past,¹⁵ even when it was widely known that public money was used to finance major sporting events such as the 2006 FIFA World Cup.¹⁶ Consequently, as long as no complaints are launched or no Member State decides to notify the aid, there will be less chance of the Commission becoming aware of any possible unlawful aid schemes. Furthermore, the political dimension of football itself prevented the Commission from ‘getting its hands dirty’ in State aid cases related to football. With regard to the second question, it is important to bear in mind that the European economic crisis has changed public opinion regarding State spending in general across the EU. Spain, which is known for ‘politicizing’ football in extreme ways, was not only one of the Member States worst hit by the

¹⁰ C49/2003 – *Aid to AZ and AZ Vastgoed BV*

¹¹ Weatherill, ‘Is There Such a Thing as EU Sports Law?’, *International Sports Law Journal*, 2011 (1-2), pages 38-41

¹² Case 36/74, *Walrave and Koch v Union Cycliste Internationale*, ECR 1405

¹³ C-415/93, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman*, ECR I-4921

¹⁴ Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission*, ECR 2006 I-6991

¹⁵ Craven, ‘State aid and sports stadiums: EU sports policy or deference to professional football’, *European Competition Law Review*, 2014, 35(9), page 454

¹⁶ Gerlinger, ‘Stadiums for FIFA World Cup in Germany 2006 and European law on State aid: a case of infrastructure measures?’, *International Sports Law Journal*, 2003 (1), pages 11-12

economic crisis, but also one of the Member States where public discontent was and still is most widely heard. Indeed, when analysing all the State aid cases in sport currently under investigation by the Commission, two important tendencies can be deciphered. Firstly, none of the cases were notified to the Commission. Secondly, nearly all of the complaints were launched not by direct competitors of the football clubs but by the citizens themselves, including in the *Real Madrid* case. Therefore, an analysis of the political dimension in Spain and the effects of the economic crisis, help explain how the changes regarding State aid control in sports, or football, took place.

2.1. The effects of not notifying aid schemes and the fact that no complaints were launched by competitors

The task of assessing whether State aid is compatible with the common market is reserved for the Commission.¹⁷ It alone decides whether a certain measure constitutes unjustifiable aid in the meaning of Article 107 and 108 TFEU. The procedural rules for the application of Article 108 TFEU are found in Council Regulation 659/99 and Council Regulation 734/2013. The Regulations provide for, amongst others, the procedures of notified aid and unlawful aid. Pursuant to Article 108(3) TFEU and Article 2(1) of the Regulation 659/99, all new aid must be notified to the Commission, and may not be put into effect before being authorized.¹⁸ Member States who do not notify aid schemes could face a Commission sanction including a recovery decision. Therefore, the question to notify is basically a matter of risk: where a Member State has doubts as to whether a measure constitutes State aid and should therefore be notified, it can notify it in order to obtain legal certainty through a Commission decision, or take the risk not to do so.¹⁹ Notwithstanding this notification obligation, in State aid cases related to sport, it is clear that Member States have preferred to take the risk and not notify measures that constitute or might constitute State aid. It is very probable that the reason not to notify was simply because there are no precedents of the Commission sanctioning State aid measures to sporting entities. If similar aid schemes were implemented without problems in the past, why would the next time be different? Therefore, if the Commission is not notified, no investigation would be started.

However, without prejudice to Article 20 of Regulation 659/99, the Commission may on its own initiative examine information regarding alleged unlawful aid from whatever source.²⁰ While the normal procedure begins with a notification, the procedure regarding unlawful aid can be triggered by a complaint, or by information that reached the Commission *ex officio*.²¹ It is understandable that where aid is granted to a specific undertaking, thereby distorting competition, a competing undertaking would deem it necessary to launch a complaint. A quick analysis of other sectors, such as the broadcasting

¹⁷ See for example: Sinnaeve, 'State Aid Procedures: Developments since the entry into force of the Procedural Regulation,' *Common Market Law Review*, Volume 4 (2007); Bartosch, 'The procedural Regulation in State Aid Matters', *European State Aid Law Quarterly*, 3/2007

¹⁸ Sinnaeve, page 967

¹⁹ Sinnaeve, page 968

²⁰ Council Regulation No 734/2013 of 22 July 2013, amendments to Article 10(1) Regulation 659/99

²¹ Case C-39/94 *SFEI v La Poste* [1996] E.C.R. I-3547, para.36-37

sector, shows that many State aid cases have their origins in complaints launched by disadvantaged competitors. For example, in 1992 the Commission received the first complaint on the financing of public broadcasters lodged by the Spanish private channels Telecinco and Antena 3. Similar complaints were subsequently lodged by the private broadcasters of France (1993), Italy (1996), Portugal (1993 and 1997) and Greece (1997).²² This list of complaints forced the Commission to undertake action resulting, not only in several Commission Decisions,²³ but also in two Commission Communications on the application of State aid rules to public service broadcasting.²⁴

A second example concerns State aid in the film and other audiovisual works sector. In 1998 Belgian film technicians launched a complaint against an existing aid scheme in France. The aid measure in question consisted of French film producers receiving a certain amount of public funding based on the success of the previous produced film under the condition that that French film facilities are used. The Belgian film technicians were of the opinion that this aid scheme distorted competition since French film producers would be less likely to use Belgian film facilities.²⁵ This first Commission Decision in the film sector led to more Decisions relating to France,²⁶ UK²⁷ and Germany,²⁸ but it also paved the way for the Commission to publish a Communication on certain legal aspects relating to cinematographic and other audiovisual works in 2001.²⁹

If one would apply the same logic to the football sector, in a situation where one club finds itself at an advantage due to aid provided by the public authorities, another football club could see this as a distortion of competition and would decide to launch a complaint. A club like Atlético Madrid, who, as the second biggest club in Madrid, competes with Real Madrid at both national as international level, would be entirely within its rights to complain should Real Madrid be aided where they are not. However, football clubs, or other sporting entities for that matter, have never launched any complaint regarding alleged State aid to another football club. Perhaps in the football sector there exists a sort of ‘gentlemen’s agreement’ not to tell on other clubs, or

²² IP/99/79, Commission press release, 3 February 1999

²³ See for example; Commission Decision (2004/339/EC) of October 15, 2003 on the measures implemented by Italy for RAI SpA [2003] O.J. L119/47; Commission Decision of October 15, 2003 on ad hoc measures implemented by Portugal for RTP [2005] O.J. L142/1 (RTP); and Commission decision of May 19, 2004 on State Aid C 2/2003 (ex NN 22/02) – Denmark, *State funding of TV2/Danmark* [2005] O.J. C69/42 (TV2/Danmark(I))

²⁴ The 2009 ‘PSB’ Communication supersedes the 2001 ‘PSB’ Communication

²⁵ Commission Decision of 24 June 1998 on State Aid N3/98 (France), *Soutien à la production cinématographique* [1998] OJ/C 279/04

²⁶ Commission Decision of 22 March 2006 on State Aid NN84/04 (France), *Régimes d'aide au cinéma et à l'audiovisuel* [2005] OJ C159/24

²⁷ Commission Decision of 22 November 2006 on State Aid N461/05 (United Kingdom), *UK Film tax Incentive* [2007] OJ C9/1

²⁸ Commission Decision of 20 December 2006 on State Aid N695/06 (Germany), *German Film Fund* [2007] OJ C14/1

²⁹ Communication (2002/C 43/04) from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works

perhaps it was simply because other clubs were unaware of the existence of EU State aid rules. Either way, the fact that football clubs themselves never launched a complaint explains further why it has taken such a long time for the football sector to be scrutinized under EU State aid law.

It has to be borne in mind that Article 10(1) of Regulation 659/99, obliges the Commission to examine a complaint from *whatever source*. True to the wording of this provision, the Commission was informed about possible State aid to the Spanish football clubs due to a preferential corporate tax treatment, by means of complaints launched by a number of investors and current shareholders of certain European football clubs.³⁰ In the other three cases, including the *Real Madrid* case, local citizens launched the complaints.³¹

Even without analysing the substance of the State aid cases related to sport and to football in particular, it is already possible to conclude that the ‘sports sector’ differs from other sectors in that the State aid complaints have been launched not by competing undertakings but by dissatisfied citizens. In the *Real Madrid* case, the ecological movement ‘Ecologistas en Acción’ considered the agreements that would allow the requalification of the public land next to the Real Madrid stadium ‘Santiago Bernabéu’ to be a breach of EU State aid rules.³² Even though ‘Ecologistas en Acción’ is highly experienced in defending its principles in front of the courts, with reference to the *Real Madrid* case the movement had to take into account a different aspect in the proceedings, namely the political dimension of football in Spain.

2.2. Political dimension of football in Spain and the effects of the economic crisis

A link between football and politics can be seen in many countries. Spain is no different in that regard. Since the early beginnings of Spanish football, football clubs have symbolized different political ideas. Public authorities have been aware of this fact and use this knowledge to their advantage. The Spanish dictator, Franco, was known for using Spanish football triumphs as a focus for Spanish nationalism. This was especially the case with Real Madrid, the most successful European club of the 1950s and 60s, and the club with which he identified himself most.³³ Nowadays, with Spain’s central government confronted with strong regional nationalism, especially from Catalonia and The Basque country, Spanish football clubs have the important task of representing the region in which the club is located. FC Barcelona has always been the most important club in the autonomous region of Catalonia. By contrast, Real Madrid, known for having tight links with the central government since the time of Franco, has the task of representing a unified Spain. The football successes of the last decade, including successes at the World Cup, the European Cup and the Champions League, allowed Spain to promote itself to the outside world with its football known as ‘Marca España’,

³⁰ Case: 2521/2011/(MF)JF - European ombudsman – State Aid and European football clubs? Summary of recommendation by the European Ombudsman following a complaint against the EU Commission

³¹ SA.33584, para.3; SA.3687, para.3; and SA.33754, para.1

³² Graves irregularidades en la ampliación del estadio Santiago Bernabeu, *Ecologistas en Acción*, January 2012

³³ Shaw, ‘The Politics of Fútbol’, *History Today*, Volume 35, Issue 8, 1985

or ‘Spanish football brand’.³⁴ Indeed, the State’s eagerness to defend the ‘Spanish football brand’ became clear when Spain’s foreign Minister, José Manuel García Margallo, stated that ‘the Government will battle until the end in defence of the Spanish (football) clubs, who also form part of the Spanish (football) brand’ as a reaction to the announcement that the Commission was launching formal investigations into alleged State aid provided to certain Spanish football clubs.³⁵

However, Spain’s constant football success by both the Spanish national team and several of its football clubs has somewhat ironically gone hand in hand with the worst financial crisis since Spain joined the EU in 1985. The unemployment rate today is close to 25%³⁶ and widespread dissatisfaction with the public authorities is very high, especially amongst young people. The series of protests that took place across Spain in 2011, also known as ‘El Movimiento 15-M’, exemplified the extent to which the public was dissatisfied with the State, its political system and the way in which public money was spent.³⁷ The public discontent was also directed at how the State intended to invest in sport, as can be seen by the large campaigns launched against Madrid hosting the 2020 Olympic Games³⁸ and by the citizens complaining about public authorities aiding Spanish football clubs by, amongst other measures, providing them advantageous land transfers.³⁹ Using the people’s love for the game as a justification for the aid is becoming something of the past.

Across the EU football fans and EU law scholars eagerly await the Commission’s final decision on the contested measures and whether to impose sanctions on Spain. Undoubtedly the most interesting investigation concerns the advantageous property transfers granted by the municipality of Madrid to the current Champions League winner and the richest club in the world, Real Madrid.

3. THE AGREEMENT SIGNED BY THE COUNCIL OF MADRID AND REAL MADRID ON 29 JULY 2011 AND OPERATION ‘BERNABÉU-OPAÑEL’

Over the last two decades, the Council of Madrid and the football club Real Madrid have reached numerous agreements on land transfers.⁴⁰ The fact that most, if not all, of these land transfer agreements are directly or indirectly connected adds to the complexity of the case. The possible illegal State aid that the Commission is investigating does not derive from one single land transfer but involves several agreements dating from 1991 to 2011. It is the sum of the set of agreements that raises

³⁴ Iríbar and Altozano, ‘La Marca España, en fuera de juego’, *El País*, 18 December 2013

³⁵ Doncel, ‘Bruselas pone en jaque a la Liga’, *El País*, 16 December 2013

³⁶ <http://www.tradingeconomics.com/spain/indicators>

³⁷ ‘Tahrir Square in Madrid: Spain’s Lost Generation Finds Its Voice’, *Der Spiegel*, 7 July 2011

³⁸ See for example: ‘<https://oiga.me/campaigns/no-queremos-los-joo-de-2020-en-madrid>’ and ‘http://www.eldiario.es/sociedad/favor-Madrid-organice-Juegos-Olimpicos_3_171162883.html’

³⁹ SA.33754 (2013/C) (ex 2013/NN) – Spain Real Madrid CF, para.1; ‘Graves irregularidades en la ampliación del estadio Santiago Bernabéu’, ecologistasenaccion.org, January 2012

⁴⁰ Indeed, as can be seen from Parliamentary Questions to the European Commission P-2491/02 and E-2975/02, doubts regarding the legality of land transfers between the municipality of Madrid and Real Madrid under EU law have existed for a long time

serious doubts on the legality under EU State aid law. Therefore, all the land transfer agreements that are taken into account by the Commission in its investigation will be described below.

3.1. The agreement signed by the Council of Madrid and Real Madrid on 29 July 2011

On 29 July 2011, the Council of Madrid and the football club Real Madrid reached an official agreement which they call ‘Convenio suscrito con fecha 29 de Julio de 2011 entre el ayuntamiento de Madrid y el Real Madrid CF, de regularización de los compromisos derivados de los convenios suscritos entre el ayuntamiento de Madrid y el Real Madrid CF de fecha 29 de Mayo de 1998 y 20 de diciembre de 1991’ (hereafter: Agreement of 29 July 2011).

This agreement regularizes two earlier agreements between the Council and the football club dating from 1991 and 1998. The relevant parties did not follow the commitments deriving from those agreements.

The first agreement, dating from 20 December 1991, obliged Real Madrid to build a subterranean parking area and a pedestrian lane next to the Bernabéu stadium. In return, the municipality was obliged to partly finance the construction works.⁴¹ However, Real Madrid never fulfilled its part of the agreement (the parking area was never built), permitting the municipality not to fulfil its obligation regarding the agreement. Due to the contract breaches on behalf of Real Madrid, the club owed the Council an amount of €2,812,735.03.⁴²

On 29 November 1996, Real Madrid concluded another agreement with the Council. The club would transfer 30,000 m² of land of the ‘Ciudad Deportiva’ (Real Madrid’s old training grounds in the city centre on which later four skyscrapers were built) and in exchange, the Council would provide Real Madrid with some pieces of public land which were to be determined at a later stage.⁴³

The third agreement dated from 29 May 1998. Real Madrid was to transmit an undivided half of the ‘Ciudad Deportiva’ parcel (Real Madrid’s old training grounds) to the municipality. Apart from a large sum of money, the club was to receive a number of terrains spread out over the municipality, including a terrain located in the area called ‘Las Tablas’ valued at €595,194 in 1998.⁴⁴ This parcel has a surface of 70,815 m² and was formally qualified for sporting usage.⁴⁵ However, due to its qualification for sporting usage, the Council concluded that the parcel could not be transferred to the

⁴¹ Agreement of 29 July 2011, page 2

⁴² Agreement of 29 July 2011, page 3 - 4

⁴³ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.5

⁴⁴ Tribunal Superior de Justicia de Madrid - Sección nº01 de lo Contencioso-Administrativo - Pieza de Medidas Cautelares- 357/2013 – 01, 31 July 2014, page 4

⁴⁵ Agreement of 29 July 2011, page 5-8

club due to the fact that Madrid's urbanity laws only permit a transfer of urban or urbanizable terrains.⁴⁶

The latest agreement dating from 29 July 2011 served as a compensation for Real Madrid for the impossibility of offering them the parcel in 'Las Tablas'. Despite the fact that the parcel was valued at €595,194 in 1998, the Council concluded that Real Madrid had to be compensated for a total of €22,693,054.44 based on new values calculated in July 2011.

Real Madrid was not compensated in the form of a sum, but rather it was presented with a packet of terrains with a total value of €19,972,348.96.⁴⁷ This packet included four terrains of a total area of 12,435 m² and a buildable surface of 5,577 m² in the street 'Mercedes Arteaga' in the Carabanchel district of Madrid.⁴⁸ Furthermore, the above-mentioned fine of €2,812,735.03 was subtracted from the compensation sum of €22,693,054.44, giving a final sum of €19,972,357.00. The difference between the two final sums is €8.04 in favour of the municipality of Madrid.⁴⁹

3.2. The operation 'Bernabéu-Opañel'

The year 2011 also saw a second agreement between the Council of Madrid and the football club, this time concerning construction works on the Real Madrid stadium Santiago Bernabéu. This agreement, dating from November 2011, was given the name 'Modificación del plan general en el ámbito Bernabéu-Opañel' (hereafter: operation 'Bernabéu-Opañel'). It constitutes the following plans: Real Madrid firstly agreed to transfer the shopping centre 'Esquina del Bernabéu' which is situated at the South-East-side of the stadium with a buildable surface of 6,858 m² to the Council. Secondly, the club is to transfer back to the Council part of the four terrains located in the street 'Mercedes Arteaga' it received after the agreement of 29 July 2011.⁵⁰ In addition to the transfers of the old shopping centre and the terrains located in the street 'Mercedes Arteaga', Real Madrid is also to transfer €6.6 million to the Council.⁵¹

The Council, for its part, will firstly demolish the shopping centre 'Esquina del Bernabéu' and convert this into a public park.⁵² As regards, the returned terrains located in the street 'Mercedes Arteaga', the Council will turn these into a green zone with an area of 4,330.50 m², whereas Real Madrid will keep the parts that are considered urban or urbanizable terrains with a total buildable surface of 3,636.50 m².⁵³ Last but not least, the the Council is to transfer to the club a terrain constituting of

⁴⁶ Articles 3.5.9 and 3.5.10 Normas Urbanísticas del Plan General de Ordenación Urbana de Madrid

⁴⁷ Agreement of 29 July 2011 page 19

⁴⁸ Modificación del plan general en el ámbito Bernabéu-Opañel, Área de Gobierno de Urbanismo y Vivienda, page 8

⁴⁹ Agreement of 29 July 2011, page 19

⁵⁰ Modificación del plan general, page 8

⁵¹ SA.33754 (2013/C) (ex 2013/NN) – Spain Real Madrid CF, para.18

⁵² Modificación del plan general, page 6

⁵³ BOCM-20130314-67, *Boletín Oficial de la Comunidad de Madrid*, 14 March 2013, page 228

12,250 m² buildable surface which borders the west-side of the Bernabéu stadium.⁵⁴ This acquirement permits Real Madrid to cover the stands of the stadium, to build a shopping centre and a hotel on the façade situated on the ‘Paseo de la Castellana’ (one of Madrid’s most important streets).⁵⁵

According to the Council, the operation will not only improve sporting and leisure facilities in the city, it will also create up to 9,546 m² of ‘green zones’. Moreover, the investment for the construction works, which amounts to €200 million, will lie solely on the shoulders of Real Madrid and it is believed that the construction works will give employment to more than 2,000 people and 600 people will be employed in the completed stadium.⁵⁶ However, the Council encountered an obstacle in its own urban laws. The ‘Plan General de Ordenación Urbana de Madrid de 1997’ (PGOU) did not permit private parties, like Real Madrid, to construct on public terrains owned by the Council. Therefore, on 16 November 2012, the Government of the autonomous region of Madrid announced that the PGOU is to be modified ad hoc for the ‘Bernabéu-Opañel’ plan.⁵⁷

3.3. The scope of the Commission’s investigation

On 18 December 2013 the Commission informed Spain that, following press reports and detailed information sent by citizens, it had decided to initiate the formal investigation procedure as laid down in Article 108(2) TFEU.⁵⁸ The decision to start a formal investigation is based on the following doubts expressed by the Commission:

- 1) The Commission doubts whether it was impossible for the Council of Madrid to transfer the ‘Las Tablas’ property to Real Madrid;
- 2) The Commission doubts that a market value of the ‘Las Tablas’ plot of land has been determined;
- 3) The Commission has doubts with regard to the market conformity of the value of the properties which were transferred to Real Madrid by the 2011 Agreement and at the occasion of the subsequent further exchange of land around the Bernabéu Stadium, and;
- 4) The Commission doubts that there is an objective of common interest which could justify selective support to a very strong actor in a highly competitive economic sector.⁵⁹

The Commission’s doubts with regard to the market conformity of the further exchange of land around the Bernabéu Stadium clearly implies the operation ‘Bernabéu-Opañel’. However, while the details regarding the agreement of 29 July are

⁵⁴ Modificación del plan general, page 7

⁵⁵ BOCM-20130314-67, *Boletín Oficial de la Comunidad de Madrid*, 14 March 2013, page 225

⁵⁶ Modificación del plan general, page 11

⁵⁷ BOCM-20130108-13, *Boletín Oficial de la Comunidad de Madrid*, 8 January 2013

⁵⁸ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.1

⁵⁹ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.40-43

clearly and structurally provided in the Commission Decision, the operation ‘Bernabéu-Opañel’ is only briefly mentioned⁶⁰ without further information on how this agreement could entail unlawful State aid. The fact that the Commission decided to concentrate nearly all of its efforts on the first agreement is an interesting one, to say the least. It has to be borne in mind that the complaint launched by ‘Ecologistas en Acción’ was primarily aimed at preventing the construction of a hotel and a shopping centre on public land that was qualified as an ‘urbanized green zone’. The ecological movement provided the Commission information on the agreement of 29 July 2011 since this agreement ascertains the total advantage provided to Real Madrid at the expense of the municipality and is therefore highly relevant for their case against the operation ‘Bernabéu-Opañel’.⁶¹ In fact, on 31 July 2014, the Tribunal Superior de Justicia de Madrid (the High Court of the autonomous region of Madrid) honoured the movement’s appeal to enforce the direct effect of Article 108(3) TFEU.⁶² Article 108(3), or the so-called ‘standstill’ provision stipulates that ‘the Member State concerned shall not put its proposed measure enforcement into effect until this procedure has resulted in a final Decision’. The Madrid High Court argued that it was not its task to:

“determine at this procedural moment whether the land swap constitutes illegal State aid but the inclusion of the terrains (located in the street ‘Mercedes Arteaga’) in the (operation ‘Bernabéu-Opañel’) under the given terms are sufficiently circumstantial for determining a direct connection between the formal investigation by the Commission and the object of the present appeal”.⁶³

Therefore, the contested aid measure, which, according to the Madrid High Court, also entails the construction works stemming from the operation ‘Bernabéu-Opañel’, is to be suspended until the Commission has reached a final decision.

As stated in the previous part, however, the Commission alone decides whether a certain measure constitutes unjustifiable aid in the meaning of Article 107 and 108 TFEU. Furthermore, Article 108(2) TFEU first indent provides that the Commission *shall* decide that the State concerned shall abolish or alter the aid within a period of time to be determined by the Commission. Moreover, Article 14(1) of Regulation 659/1999 provides that the Commission *shall* decide that the Member State concerned shall take all necessary measures to recover the aid. Read differently, these provisions give the Commission the discretionary power to determine if a sanction is to be handed out to a Member State and what this sanction entails.

With this in mind the uncertainty regarding what the Commission is actually investigating in the *Real Madrid* case, and how a possible sanction could affect the football club remains. If a Commission sanction is limited to the Agreement of 29 July

⁶⁰ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, paras. 18, 22, 35 and 43

⁶¹ Graves irregularidades en la ampliación del estadio Santiago Bernabeu, *Ecologistas en Acción*, January 2012

⁶² Tribunal Superior de Justicia de Madrid - Sección nº01 de lo Contencioso-Administrativo - Pieza de Medidas Cautelares- 357/2013 – 01, 31 July 2014

⁶³ *Ibid*, page 5

2011 will it have consequences for the construction works stemming from the operation ‘Bernabéu-Opañel’ as the complainants hope?

4. CASE ASSESSMENT UNDER ARTICLE 107(1) TFEU

The Commission expressed its views that the Agreement of 29 July 2011 could constitute State aid within the meaning of Article 107(1) TFEU. Therefore, the main question to be answered in this part is whether the Commission is right to believe that this agreement constitutes State aid. However, this assessment of the *Real Madrid* case will be more extensive than the one undertaken by the Commission for two reasons: First, operation ‘Bernabéu-Opañel’ will be scrutinized equally under Article 107(1); and second, since the Commission’s Decision from December 2013, more relevant information and facts emerged.

Real Madrid is an undertaking that carries out economic activities.⁶⁴ It has been settled that economic activities in the context of sport⁶⁵ fall within the scope of EU law, including EU’s competition rules.⁶⁶ Therefore, the agreements between the Madrid Council and the undertaking, Real Madrid, fall within the scope of EU State aid rules. Furthermore, State aid granted to professional football clubs does not call for a need to recognize any ‘specificity of sport’.⁶⁷ Article 107(1) provides a number of criteria that have to be fulfilled in order for the measure to constitute State aid. Firstly, an advantage must be conferred on a recipient in a selective manner. This means that a measure will not constitute State aid if all undertakings within a Member State benefit from the same aid measure. The principle that the measure must confer an advantage to the recipient is to be interpreted broadly. Advantages can include grants, subsidies, favourable tax arrangements, but also the selling of public property at a lower than market value price.⁶⁸ Furthermore, this advantage should be granted by a Member State or through State resources, distorting or threatening to distort competition.

4.1. Advantage to the recipient over its competitors

As the Commission pointed out in paragraph 21 of its Decision: “Real Madrid appears to enjoy an economic advantage from the fact that a plot of land, which at the time of its acquisition was valued at €595,194, appears 13 years later, in an operation to offset mutual debts, with a value of more than €22 million”. Furthermore, there are also doubts regarding the market conformity of the lands transferred in the operation ‘Bernabéu-Opañel’. In order to determine whether an aid measure confers an advantage to the recipient over its competitors, the Commission applies the ‘market economy

⁶⁴ According to Deloitte Football Money League, January 2014, Real Madrid had revenues of €480 million in 2011, €513 million in 2012 and €519 million in 2013

⁶⁵ Weatherill, ‘Anti-doping revisited – the demise of the rule of “purely sporting interest”’, *European Competition Law Review*, (2006), page 646

⁶⁶ *David Meca-Medina and Igor Majcen v. Commission* ECR 2006 I-6991, para.22

⁶⁷ Craven, ‘State aid and sports stadiums: EU sports policy or deference to professional football’, *European Competition Law Review*, 2014, 35(9), page 456; Richard Parrish, ‘Lex Sportiva and EU Sports Law’, *European Law Review*, (2012), 37 – page 716

⁶⁸ See for example: Case C-239/09 *Seydaland Vereinigte Agrarbetriebe* [2010] ECR I-13083

investor principle'. The essence of this principle is that when a public authority invests in an enterprise on terms and in conditions that would be acceptable to a private investor operating under normal market economy conditions, the investment is not State aid.⁶⁹ In situations where the public authorities wish to sell public property to private investors, it should make sure that the revenue obtained from the sale is comparable to the market level. In this instance the criterion that is used by the Commission to determine the existence of aid is that of the 'market economy vendor principle'.⁷⁰ According to settled case-law, the sale by public authorities of land to an undertaking involved in an economic activity may constitute State aid within the meaning of Article 107(1) where it is not sold at the price which a private investor, operating under normal competitive conditions, would be likely to have fixed.⁷¹

For the assessment of land sale transactions according to EU competition rules, the Land Sale Communication⁷² provides a set of guidelines for Member States to ensure that the sale of land by public authorities is free of State aid.⁷³ The Commission holds in the Land Sale Communication that, should the public authorities wish to avoid any advantage to the recipient over its competitors during a land sale transaction, it should apply one of the two of the following two procedures: (1) the unconditional bidding procedure; or (2) a procedure where the land is valued by one or more independent asset valuers prior to the sale negotiations. A sale of land following a sufficiently well-publicized, open and unconditional bidding procedure accepting the best or only bid is *by definition* at market value and consequently does not constitute State aid.⁷⁴ As regards the second procedure, the independent asset valuer establishes the market value, or the price at which land could be sold under a private contract between a willing seller and an arm's length buyer on the date of valuation, on the basis of generally accepted market indicators and valuation standards.⁷⁵ However, in the *Seydaland* case, the CJ confirmed that the best bid or an expert report are likely to provide prices corresponding to actual market values, but also held that it cannot be ruled out that other methods may achieve the same result. In order to comply with EU State aid rules, the national provisions establishing rules for calculating the market value of land must lead in all cases to a price as close as possible to the market value.⁷⁶ It should also be

⁶⁹ Slocock, 'The Market Economy Investor Principle', *Competition Policy Newsletter*, number 2 – June 2002

⁷⁰ Nicolaides, 'The Market Economy Vendor Principle: Sale of Public Land by the Dutch Municipality of Leidschendam-Voorburg [Commission Decision SA.24123]', *Lexxion state aid blog*, 04 March, 2013

⁷¹ Case C-239/09 *Seydaland Vereinigte Agrarbetriebe* [2010] ECR I-13083, para.34; Case C-290/07 P *Commission v Scott* [2010] ECR I-7763, para.68; and Case T-244/08 *Konsum Nord ekonomisk förening v Commission* [2011] ECR II-0000, para.61

⁷² Commission Communication (97/C 209/03) on state aid elements in sales of land and buildings by public authorities

⁷³ Commission Decision C(2012) 9457 final of 19 December 2012 on state aid No SA.33167 – Germany – Proposed alternative method for the valuation of agriculture and forestry land in Germany sold by the public agency BVVG, para.26

⁷⁴ Commission Communication (97/C 209/03) on state aid elements in sales of land and buildings by public authorities, para.1

⁷⁵ Commission Communication (97/C 209/03) on state aid elements in sales of land and buildings by public authorities, para.2 (a)

⁷⁶ Case C-239/09 *Seydaland Vereinigte Agrarbetriebe* [2010] ECR I-13083, para.33-35

noted, as Advocate General Cruz Villalón pointed out, that no method is infallible in assessing, *ex ante*, actual market value and that not all possible methods are equally suitable, especially in the event land prices change rapidly.⁷⁷ The public authorities in *Seydaland* relied on a national provision that dictates that the value of the land is the average price derived from seven sales of land through an unconditional bidding procedure and relating to land of comparable characteristics within an area around 20 km of the land to be sold to Seydaland.⁷⁸ Furthermore, the General Court concluded in the case *Konsum Nord v Commission* that, in order to determine whether a sale of public land confers an advantage upon the recipient, the Commission must take into account not only the economic context of the sale but also other special obligations for the buyer attached to the sale.⁷⁹ The great significance of *Konsum Nord* is that urban planning requirements do play a role when determining whether or not the land was sold at market value and that land transfer deals many times consist of more than just one land transaction.⁸⁰ As long as a clear economic link can be determined between the different land transactions, all the land transactions have to be scrutinized in their entirety.⁸¹ It follows from all the foregoing that, even though Member States enjoy a wide discretion regarding national rules for the calculation of the market value of public land, the possible aid deriving from multiple land transactions has to be assessed as one, and it is necessary to determine whether the used valuation method is in line with the ‘market economic vendor principle’.⁸²

The aim of Agreement of 29 July 2011 was to compensate Real Madrid due to the legal impossibility for the City of Madrid to fulfil its obligation from the 1998 Agreement (i.e. to transfer the plot of land ‘Las Tablas’ to Real Madrid).⁸³

In 1998, the valuation for the terrain in ‘Ciudad Deportiva’ (€595,194) was done by the administration of Madrid, on the basis of legislation, which offers a technique to determine the value of urban real property.⁸⁴ The calculated value for the same terrain in Las Tablas in 2011 amounted to €22,693,054.44. According to a valuation report released by the Municipal Valuation Department (‘Expediente para el informe

⁷⁷ AG Cruz Villalón in Case C-239/09, *Seydaland Vereinigt Agrarbetriebe GmbH & Co .KG v BVVG Bodenverwertungs- und -verwaltungs GmbH*, para.37-40

⁷⁸ Heinrich, ‘Legal Requirements for the Sale of Land by Public Authorities free of State Aid’, *European State Aid Law Quarterly*, 3/2011, page 487

⁷⁹ Pereira Filgueiras, ‘Summary: *Konsum Nord v Commission*’, *European State Aid Law Quarterly*, 1/2011, page 108

⁸⁰ Janssen, ‘Urban Planning Recognized as a Relevant Factor in Land Transactions – Annotation on the Judgment of the General Court of 13 December 2011 in Case T-244/08, *Konsum Nord v Commission*’, *European State Aid Law Quarterly*, 1/2011, page 109

⁸¹ Case T-244/08 *Konsum Nord ekonomisk förening v Commission* [2011] ECR II-0000, para.54; and SA.26212 and SA.26217 – Bulgaria – Alleged aid in the form of swap of ownership of privately owned forest estates for the governmental ones, para.44

⁸² Janssen, page 114

⁸³ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.22

⁸⁴ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.7

urbanístico y de valoración de las parcelas del Patrimonio Municipal del Suelo’),⁸⁵ the value was calculated in accordance with the same application rules. Yet it has to be borne in mind that the Municipal Valuation Department forms part of the Área de Gobierno de Urbanismo y Vivienda del Ayuntamiento de Madrid. Not only is the Área de Gobierno de Urbanismo y Vivienda the main public authority regarding urban planning in Madrid, it is together with Real Madrid the main party in the 2011 Agreement itself.⁸⁶

As has been stated above, Real Madrid was not compensated in the form of a payment, but was presented with another packet of terrains valued at €19,972,348.96. In the valuation report released by the Municipal Valuation Department, a list is included with average terrain values per district calculated by the independent appraiser ‘Tasamadrid’. In continuation, the Municipal Valuation Department applied a formula based on its own legislation to determine the final value of the terrains. This packet of terrains included land in the street ‘Mercedes Arteaga’, valued at €4,360,862 which were transferred back to the municipality in the operation ‘Bernabéu-Opañel’.⁸⁷ The last part of the Agreement concerns a fine of €2,812,735.03 dating from 1991 which was subtracted from this compensation sum of €22,693,054.44, giving a final sum of €19,972,357.00. Incredibly, especially after taking into account that it concerns compensation estimations of about €20 million, this amount is only a negligible €8.04 higher than the estimated value of the packet of terrains presented to Real Madrid by the Council.

Clearly, the Agreement raises serious questions as to whether the Council behaved in accordance with the ‘market vendor principle’ that can also be found in the Commission Decision of 18 December 2013.⁸⁸ Firstly, was it indeed not possible to transfer the terrain in ‘Las Tablas’ to Real Madrid? The Commission doubts the impossibility of transferring the terrain in question, considering that the responsible public bodies have the capacity to revise the urban planning classification. Indeed, the same public bodies were responsible for the ad hoc modification of the ‘PGOU’ for the ‘Bernabéu-Opañel’ plan. Secondly, and more importantly, has a correct value of ‘Las Tablas’ and the other plots of land been established?⁸⁹ Providing more than €22 million to Real Madrid for a land that was worth less than €600,000 in 1998 does appear to be a measure that confers an advantage to Real Madrid.

As regards the valuation method, the Commission expressed its preliminary view that since the sale was done without an unconditional bidding procedure, an independent expert evaluation of the land value could have been used.⁹⁰ This statement by the

⁸⁵ Expediente para el informe urbanístico y de valoración de las parcelas del Patrimonio Municipal del Suelo, número de Expediente 711/2011/18138, 27 July 2011

⁸⁶ Agreement of 29 July 2011, page 1

⁸⁷ Expediente para el informe urbanístico y de valoración de las parcelas del Patrimonio Municipal del Suelo, número de Expediente 711/2011/18138, 27 July 2011

⁸⁸ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.23

⁸⁹ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.24-5

⁹⁰ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.30-1

Commission is correct, but strangely enough the Commission Decision did not mention the valuation report released by the Municipal Valuation Department on 27 July 2011 and could therefore not assess whether the method applied in this report is justifiable in accordance with EU case law and the ‘market economy vendor principle’. Moreover, as stipulated by the General Court’s judgment in *Konsum Nord*, the Commission should take all the elements of all the land transactions into account to determine whether an advantage was conferred upon the recipient in order to reach a final decision. In the *Real Madrid* case, this means that the Commission should determine whether there is a direct link with the operation ‘Bernabéu-Opañel’ and whether the possible advantage derived from the operation ‘Bernabéu-Opañel’ should be seen in the same context.

As stated in the previous part, the Council’s aim in the operation ‘Bernabéu-Opañel’ is to improve sporting and leisure facilities in the city, create up to 9,546 m² of ‘green zones’ and create employment.⁹¹ The football club’s aim is to build a hotel and a shopping center on the land between the stadium and the ‘Paseo de la Castellana’ which has a buildable surface of 12,250 m² and was qualified as a public ‘urbanized green zone’. To achieve this aim, the Council ‘requalified’ this terrain by ad hoc modifying the local urban laws (PGOU) and transfer the terrain to Real Madrid. Real Madrid, for its part, agreed to transfer the terrains in the street ‘Mercedes Arteaga’ it obtained from the Council in the Agreement of 29 July 2011 back to the Council. A new valuation report dating from 16 October 2011 shows that the Madrid valuation department valued this land at €4,360,862.10⁹², i.e. equal to the value of July 2011. Moreover, the football agreed to transfer to the Council the old shopping centre ‘Esquina del Bernabéu’ and a payment of €6.6 million. As regards the value of the ‘Esquina del Bernabéu’ shopping centre or what methods they use, the Spanish public authorities have remained woefully silent.

On the other hand, the valuation report of 16 October 2011 does provide the value of the land situated between the stadium and the ‘Paseo de la Castellana’. The final value mentioned in the report is the value after the re-qualification of the land. The valuation department divided this plot of land in two sectors: the first plot of land ‘touches’ the stadium and was requalified as ‘private sporting usage’ by the Council. This first plot of land will be used for the expansion of the stadium, which includes building a roof that will cover the whole complex. The Madrid valuation department concluded that the final value of this terrain amounts to €1,208 per square meter.⁹³ The second plot of land is requalified as ‘commercial usage’. This is the plot of land where the club is planning to build a hotel and shopping centre. According to the report, the value of this sector of land is €3,861 per square meter.⁹⁴

⁹¹ Modificación del plan general, page 11

⁹² Informe relativo a la modificación PGOUM-97 en el ámbito Santiago Bernabeu, Mercedes Arteaga y Jacinto Verdaguer, 26 October 2011

⁹³ Informe relativo a la modificación PGOUM-97 en el ámbito Santiago Bernabeu, Mercedes Arteaga y Jacinto Verdaguer, 26 October 2011, page 4

⁹⁴ *Ibid*

Interestingly, the valuation report also includes an extensive list of all the values per square meter per district in Madrid calculated by the independent valuer ‘Tasamadrid’. The values determined by ‘Tasamadrid’ are used by the Madrid valuation department to calculate the value of the plots of land in question. For the first plot of land the market value was determined at €4,653 per square meter and for the second plot of land the market value was established at €8,700 per square meter. In continuation, the Madrid valuation department applied its own formula to reach values of €1,208 per square meter and €3,861 per square meter respectively. A proper clarification of the method used is clearly lacking.

The Council held that no advantage is conferred to Real Madrid because the costs will be borne by the football club. It is however, well-established case-law that land sold below market value may constitute State aid even if the recipient has agreed to undertake certain investments in connection with the land in question.⁹⁵ The Council further argued that the construction works will give employment to more than 2000 people and 600 people will be employed in the stadium after its completion.⁹⁶ Nonetheless, if one is to apply the ‘market economy vendor principle’ to the case, it seems very unlikely that a private vendor would have transferred land well below its value for the sole reason of job creation. Furthermore, one of Spain’s main newspapers, *El País*, quoted a Council employee in their article released on 3 March 2013 in the following way: “The plan is a commitment to Real Madrid, and positive outcomes for this (Real Madrid) brand is beneficial for the whole municipality”.⁹⁷ Success to Real Madrid might be beneficial for the city in that it attracts tourists and sponsors, but the advantages granted to the city are not equal compared to the advantages granted to the football club. Consequently, a private vendor would not have acted in the same way as the Council when it knows that its own change for profitability in the sale is so vague.

More importantly however, the operation ‘Bernabéu-Opañel’ should not be seen independently from the Agreement of 29 July 2011. The fact that both agreements are directly linked has great consequences for the overall advantage conferred to Real Madrid. One could even get the impression that the actual aim of the Agreement of 29 July 2011 was to pave the way for the operation ‘Bernabéu-Opañel’, as some media suggested.⁹⁸ Unlike the *Konsum Nord* case, where the General Court held that the presence of a link between different transactions could mean that the measure in question is free of State aid,⁹⁹ the link between the agreements in the *Real Madrid* case only increase suspicions regarding unlawful State aid. Furthermore, the fact that the Council of Madrid decided not to provide the value of all the terrains and the fact that questions remain regarding the valuation methods used, are difficult to reconcile with the assertion that the transactions were made without providing a financial advantage to Real Madrid.

⁹⁵ Case T-155/96R, *City of Mainz v Commission* [1996] E.C.R. II-1655.

⁹⁶ Modificación del plan general, page 11

⁹⁷ García Gallo and Doncel, ‘El “pelotazo” del Bernabéu, bajo la lupa’, *El País*, 3 April 2013

⁹⁸ Sevillano and Garía Gallo, ‘Así gana el Madrid’, *El País*, 6 November 2011

⁹⁹ Case T-244/08 *Konsum Nord ekonomisk förening v Commission* [2011] ECR II-0000, para.58

4.2. The aid is granted by the State or through State resources

In its decision to launch a formal investigation, the Commission concluded that Real Madrid “enjoyed an advantage which derives from State resources”.¹⁰⁰ To the extent the land transaction results in a transfer of publicly-owned land of superior value to the privately-owned land relinquished, it gives rise to a transfer of State resources insofar as the State forgoes certain revenues it would have been able to attain if it had operated in accordance with market conditions when carrying out that transaction.¹⁰¹ In other words, the land that is sold above market value by the public authorities is to be considered a State resource in accordance with the first precondition for the applicability of Article 107(1) TFEU. The agreements to (1) compensate Real Madrid for the terrain in ‘Las Tablas’ by providing the club other terrains and (2) to provide Real Madrid the land between the stadium and the ‘Paseo de la Castellana’ are both imputable to the Council of Madrid and imply a loss of State resources.

4.3. Selectivity

In its decision regarding *Real Madrid*, the Commission held that “the State measure is selective as it is for the benefit of a single undertaking”.¹⁰² Further analysis of the selectivity criterion was deemed unnecessary. The Commission’s scarce analysis regarding the selectivity criterion is very much comparable to the Commission’s position in other State aid cases related to football. As long as the stadium owners receive aid for the construction or renovation of the stadium where other stadium owners do not,¹⁰³ or as long as a decision by the State to place a guarantee on a bank loan benefits only a single undertaking in one sector,¹⁰⁴ the aid measure will be selective. However, a closer look at the details demonstrates that the measure constitutes a selective advantage.

With regard to whether the agreements selectively favoured Real Madrid over its competitors, the Council could argue that both agreements could only be made with Real Madrid and not with any other football club. The first agreement involved a compensation for the impossibility to transfer a land from the Council to Real Madrid and the second agreement concerned further land transactions between Real Madrid and the Council that, due to the location of several of the terrains in question, could not be offered to another football club.

Nonetheless, both measures at hand can most definitely be considered selective, thereby favouring Real Madrid over its competitors. The agreement of 29 July 2011 is selective because it is only directed to Real Madrid. Not only does the compensation include an economic advantage for the club, Real Madrid will also have the acquired

¹⁰⁰ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.36

¹⁰¹ Commission Decision SA.26212 (2011/C) and SA.26217 (2011/C) – *Implemented by the Republic of Bulgaria in the context of swaps of forest land*, para.140

¹⁰² SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.36

¹⁰³ See for example: Commission Decision SA.37109 – *Belgium Football stadiums in Flanders*, para.24 and; SA.37342 – *United Kingdom Regional Stadia Development in Northern Ireland*, para.82

¹⁰⁴ SA.3687 – *Spain Alleged aid in favour of three Valencia football clubs*, para.36

terrains fully at its disposal, allowing them to sell, rent, swap or construct in any way it pleases.

Even though the municipality argued that Real Madrid had to bear all the costs for the construction of the hotel, the parking space and the shopping centre, it is also true that all the benefits of the exploitation will directly go to the football club and not to any of its competitors.¹⁰⁵ The competitors, in this sense, should be interpreted wider than just other football clubs. The Council has not given any reason why a hotel and shopping centre in one of the main streets of Madrid has to be exploited by the undertaking Real Madrid. The ‘Bernabéu-Opañel’ plan is therefore also selective in that it favours Real Madrid over competitors that exploit hotels and shopping centres.

4.4. The aid has an effect on inter-State trade and distorts competition

In order for the measures to fall within the prohibition of Article 107(1), it is necessary that measure effects competition and inter-State trade. However, with an internal market in place, the assumption that an aid measure could create a selective advantage for an undertaking over others is sufficient for the Commission to see this criterion fulfilled.¹⁰⁶ In other words, to the extent that Real Madrid is an undertaking that offers goods and services in a particular market, any financial benefit resulting from the land transactions strengthens its position as compared to other undertakings competing in intra-Union trade for the same goods and services.¹⁰⁷ For this condition to be fulfilled, it is sufficient that the Commission can establish a link between the measures in question and the potential effect on competition and trade.¹⁰⁸ The recipient, Real Madrid, is one of the biggest and best known undertakings within the football sector that operates, not only on a national level, but also on a European and even global level. The measures at hand enable the football club to generate profits for the exploitation of a hotel and a shopping centre. This extra income could enable the club to strengthen its team by buying new players, whereas rivals would be disadvantaged due to the club spending more on player transfers.¹⁰⁹ Similarly, a competing hotel could receive fewer guests and generate less profit because of the aid measure that permits Real Madrid to build its own hotel. Therefore, competition in the hotel sector would be distorted.

5. CAN THE AID BE JUSTIFIED?

The moment an aid measure fulfils all the criteria of Article 107(1), it will be seen as constituting State aid. However, the measure could still be deemed justified under certain conditions in accordance with EU Law. There are neither EU Regulations nor

¹⁰⁵ García Gallo and Doncel, ‘El “pelotazo” del Bernabéu, bajo la lupa’, *El País*, 3 April 2013

¹⁰⁶ Traupel, ‘Football and State Aid: Really the Greatest Pastime in the World?’, *European State Aid Law Quarterly*, 3/2014, page 423

¹⁰⁷ Case T-288/97 *Friuli-Venezia Giulia* [2001] ECR II-1619, para.41; SA.26212 (2011/C) and SA.26217 (2011/C) – Implemented by the Republic of Bulgaria in the context of swaps of forest land, para.142

¹⁰⁸ Joined Cases C-346/03 and C-529/03 *Atzeni* [2006], para.79-82

¹⁰⁹ Craven, ‘State aid and sports stadiums: EU sports policy or deference to professional football’, *European Competition Law Review*, 2014, 35(9), page 453

Commission guidelines on the application of State aid rules to commercial sport activities. Therefore, the question whether the aid can be justified needs to be based on the conditions set in Article 107(3)(c) TFEU.¹¹⁰ Article 107(3)(c) provides that aid may be compatible if it facilitates the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Commission understands that the specific nature of sport needs to be taken into account when dealing with State aid cases, as sport fulfils educational, public health, social and recreational functions. Over the last few years, the Commission has declared numerous State aid measures to sporting undertakings compatible with the internal market based on Article 107(3)(c).¹¹¹ The main arguments justifying State aid are as follows: investment in sport infrastructure, including football stadiums lies in the common interest as defined in Article 165 TFEU, at least as long as the promoted facilities are multifunctional, offer access to the general public and are motivated by the high risks of profitability, thus discouraging private investors.¹¹² Furthermore, it is established Commission practice that a measure may be declared compatible if it is necessary and proportionate and if the positive effects for the common objective outweigh the negative effects on competition and trade.¹¹³ In a Hungarian State aid case dating from 2011, the Commission approved an aid measure for the Hungarian sport sector, since the general objective of the measure (“increase the participation of the general public in youth activities”) took into account Hungary’s commitments that the benefits would be distributed to the widest possible beneficiaries, and is therefore in line with the common market.¹¹⁴ Regarding the *Real Madrid* case on the other hand, there does not appear to be an objective of common interest that could justify an economic advantage to one of the biggest and most successful operators in a highly competitive economic sector.¹¹⁵ The land transactions will not be beneficial to other football clubs operating in the football sector, nor will it be beneficial to the football sector in general. Moreover, the State aid granted by the Council was not motivated by the high risks of profitability and the lack of private investors. Not only did the aid measure permit the football club to renovate the stadium and construct a hotel on the land adjacent to the stadium, it has attracted several private investors, including Abu Dhabi’s International Petroleum Investment Co (IPIC). For an amount of €400 million, IPIC is willing to

¹¹⁰ Article 107(2) and Articles 107(3)a, b) and d) are also justifications, but are not relevant to the case at hand

¹¹¹ See for example: Commission Decision SA.37109 – *Belgium Football stadiums in Flanders*; SA.37342 – *United Kingdom Regional Stadia Development in Northern Ireland*; SA.35440 – *Germany Multifunktionsarena der Stadt Jena*; SA.33618 on State aid which Sweden is planning to implement for Uppsala arena; SA.33728 which Denmark is planning to implement for the financing of a new multiarena in Copenhagen; SA.36105 – *Deutschland Fußballstadion Chemnitz*; SA.35135 – *Germany Multifunktionsarena der Stadt Erfurt* and; SA.35501 – *France Financement de la construction et de la renovation des stades por l’EURO 2016*

¹¹² Traupel, ‘Football and State Aid: Really the Greatest Pastime in the World?’, *European State Aid Law Quarterly*, 3/2014, page 418

¹¹³ Community framework for State aid for research and development and innovation, OJ C 323, 30.12.2006, p. 1, point 1.3.

¹¹⁴ SA.31722 Supporting the Hungarian sport sector via tax benefit scheme, para.85-90

¹¹⁵ SA.33754 (2013/C) (ex 2013/NN) – *Spain Real Madrid CF*, para.38-40

fund the construction and renovation of the stadium. In return, both parties are considering renaming the stadium the ‘Abu Dhabi Bernabéu Stadium’.¹¹⁶

A measure which constitutes State aid in the meaning of Article 107(1) TFEU and which is declared incompatible with the internal market, is to be deemed unlawful. Therefore, in the case that the Commission finds that the agreements between the Council of Madrid and Real Madrid constitute unlawful aid, it will ask Spain to recover the aid that was provided to Real Madrid. However, given the factual complexity of the case and difficulties in determining the actual advantage conferred to Real Madrid, deciding what amount needs to be recovered and how this could affect Real Madrid would prove very difficult indeed.

6. THE RECOVERY OF THE AID AND POSSIBLE CONSEQUENCES OF A NEGATIVE DECISION

6.1. The Recovery of the aid

The purpose of recovery is to re-establish the situation existing before aid was unlawfully granted.¹¹⁷ The unlawful aid must be recovered from the undertaking that actually benefited from it, in order that it forfeits the advantage, which it had enjoyed over its competitors on the market.¹¹⁸ The procedural rules on the recovery of unlawful aid are laid down in Council Regulation 659/1999. Article 14(1) of the Regulation provides that “the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary”. Not only is the Commission exclusively competent to decide whether or not a measure constitutes unlawful State aid, it is also exclusively competent to request from a Member State to recover the unlawful State aid. Importantly, however, the recovery itself shall be effected in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission’s decision.¹¹⁹ As regards the quantification of the aid, there is no provision of Union law that requires the Commission to quantify the exact amount of aid to be recovered.¹²⁰ Nonetheless, the Commission may include in its recovery decision information enabling the addressee of the decision to work out that amount itself without overmuch difficulty.¹²¹

To establish the amount of aid to be recovered, the Commission needs to determine: (i) the difference between the real market prices of the privately owned plots of land and

¹¹⁶ Marco Ruiz, ‘El Madrid ya tiene jeque: se llama IPIC y es de Abu Dhabi’, *AS*, 29 October 2014

¹¹⁷ Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Recital 10

¹¹⁸ Case C-277/00 *Germany v Commission* [2002] ECR I-11695, para. 74-76

¹¹⁹ Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Article 14(3)

¹²⁰ Case C-480/98 *Spain v Commission* [2000] ECR I-8717, para.25 and Joint Cases C-67/85, C-68/85 and C-70/85 *Kvekerij van der Kooy BV and others v Commission* [1988] ECR 219.

¹²¹ Commission Decision SA.24123 Alleged sale of land below market price by the Municipality of Leidschendam-Voorburg, para.107

the administrative prices for those plots; and (ii) the difference between the real market prices of the publicly owned plots of land and the administrative prices for those plots. The amount of State aid received as a result of the land transactions is equal to the value of (ii) less the value of (i).¹²²

At this stage in time it is difficult to determine what the Commission could consider as possible advantage since it is unknown whether it takes all land transactions into account nor is it clear what the exact value per land is due to the complexity of the case and the incompleteness of all the relevant information. However, once a total advantage is established, and with that the total amount of aid to be recovered, the amount would also include interest at an appropriate rate fixed by the Commission.¹²³ Interest would be payable from the date the unlawful aid was put at the disposal of Real Madrid until the date effective recovery takes place.

6.2. The consequences of a negative decision

The direct consequence of a negative decision for Real Madrid is that the situation existing before the aid was unlawfully granted would have to be re-established. Whether this situation concerns the time before the agreement of 1998, the Agreement of 29 July 2011 or before the operation 'Bernabéu-Opañel' was conducted will depend on the Commission's decision. An analysis of other Commission decisions involving land transactions in which the Commission ordered recovery of the aid demonstrates that the Commission does not simply undo the land transaction itself. The Commission decision that led to the *Konsum Nord* case included the order directed to the Swedish authorities to recover an amount equal to the difference between the amount offered for a land by the supermarket 'Lidl' and the amount paid by the supermarket 'Konsum'.¹²⁴ With regard to a Dutch case on an alleged sale of land below market price, the Commission established that the amount to be recovered consisted of the difference of the price paid by the undertaking 'SJB' and the price initially agreed between the 'SJB' and the local authorities.¹²⁵

Keeping the Commission practice in mind, in case of a negative Commission decision, the most likely scenario to be envisaged is that the Commission will oblige Spain to recover the advantage Real Madrid obtained from the transactions, but that the transactions themselves will not be undone. Therefore, the obvious direct consequences for the football club will constitute in paying a lump sum to the Spanish authorities equal to the difference of the value of the lands established by the Commission and by the Council of Madrid.

¹²² Commission Decision SA.26212 (2011/C) and SA.26217 (2011/C) – Implemented by the Republic of Bulgaria in the context of swaps of forest land, para.173

¹²³ Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Article 14(2)

¹²⁴ Commission Decision No C 35/2006 – implemented by Sweden for *Konsum Jämtland Ekonomisk Förening*, para.74-77

¹²⁵ Commission Decision SA.24123 Alleged sale of land below market price by the Municipality of Leidschendam-Voorburg

Further reaching consequences, such as a suspension of carrying out the operation ‘Bernabéu-Opañel’, are more difficult to predict. Not only shall the recovery be effected under the national law of Spain,¹²⁶ but further recovery sanctions also depend on Spanish national law. The ad hoc modification of the ‘Plan General de Ordenación Urbana de Madrid de 1997’ (POUG) that created the possibility of constructing on the terrain between the stadium and the ‘Paseo de la Castellana’ is to be challenged under national law.¹²⁷

If the consequences of a negative decision are only limited to paying a lump sum and, given the fact that Real Madrid is possibly financially the most powerful football club in the world, one could legitimately ask the question what the fuss is all about. Indeed, why would Real Madrid worry about paying a lump sum of, say, €20 million when its turnover exceeds €600 million per year¹²⁸ and when it has paid transfer for sums of about €100 million for individual players on several occasions? In my opinion, the aspects that make the *Real Madrid* case unlike any other State aid case are not to be found in the amount that constitutes the total financial advantage for the club nor, consequentially, the amount that would have to be recovered. The essential elements that make this case special concern the renewed position of citizens in State aid procedures and the position Real Madrid has in the very competitive football sector.

7. THE REAL MADRID CASE: A STATE AID CASE UNLIKE ANY OTHER

The *Real Madrid* case is one of the thirteen state aid cases related to sport that the Commission has dealt with since 2012 and one of the four formally investigated. This case, therefore, could to a certain extent be seen as a result of a general shift in the Commission’s policy toward State aid in sport, rather than a unique case in itself. However, a closer look shows that the *Real Madrid* case contain a couple of elements that make it special.

7.1. Citizen Complaints and *Locus Standi* in State Aid Cases

As has been stated above, one can conclude that State aid in the ‘football sector’ differs from other sectors in that the complaints were launched not by competing undertakings but by dissatisfied citizens. Under the Procedural Regulation 659/1999 and Commission Regulation 372/2014, citizens are entitled to submit complaints to the Commission as long as they can demonstrate that they are interested parties. In the *Real Madrid* case, the fact that the Commission launched a formal investigation in accordance with Article 108(2) TFEU proves that the Commission accepted the Spanish ecologist movement, ‘Ecologistas en Acción’, as an interested party capable of successfully lodging a complaint. Nonetheless, within the ‘football sector’ one should also conclude that the *Real Madrid* case is very much like the other State aid cases. In

¹²⁶ Council Regulation (EC) No 659/1999, Article 14(3)

¹²⁷ Citizens can have recourse to the Public Action provisions or *Acción Pública* in accordance with Article 4.f and 48.1 of the *Real Decreto Legislativo 2/2008, de 20 de junio, por el que se aprueba el texto refundido de la Ley de suelo* (BOE No. 154, de 26/06/2008); See also: Tribunal Supremo - Sección nº5 de lo Contencioso – Recurso de Casación- 4335/2010 – 09 July 2013

¹²⁸ Deloitte Football Money League, January 2014

the case regarding alleged municipal aid to five Dutch football clubs it were citizens that launched the complaint.¹²⁹ The same can be said about the Commission investigations involving three clubs from Valencia¹³⁰ and the investigations concerning State aid to the Spanish football clubs Real Madrid, Athletic Club Bilbao, Club Atlético Osasuna and FC Barcelona due to a preferential corporate tax treatment.¹³¹

However, unlike in the other ‘State aid in football’ cases, the citizens in the *Real Madrid* case went one step further and asked for the so-called ‘standstill obligation’ to be applied. Notwithstanding the fact that the Commission is exclusively competent to declare measures unlawful under the provisions of Article 107 TFEU, the ‘standstill obligation’, found in Article 108(3) TFEU has direct effect and can therefore be called upon in front of national courts. Article 108(3) reads as follows: “The Member State concerned shall not put its proposed measure into effect until this procedure has resulted in a final decision (by the Commission)”. In other words, from the moment the Commission starts its preliminary investigation of the alleged State aid measure, the national court has an obligation to protect competitors and other third parties against (potential) unlawful aid since the Commission’s own powers to do so are limited.¹³² Where unlawful aid is about to be disbursed, the national court is therefore obliged to prevent this payment from taking place.¹³³ According to settled EU case law, since there is no EU legislation on the subject, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the detailed procedural rules governing actions at law intended to safeguard the rights which individuals derive from EU law. However, the national rules cannot be less favourable than those governing rights, which originate in domestic law (principle of equivalence) and, secondly, the rules cannot render impossible or excessively difficult in practice the exercise of rights conferred by the EU legal order (principle of effectiveness).¹³⁴ This information leads therefore to the question whether ‘Ecologistas en Acción’, a movement that cannot be regarded as a direct competitor of Real Madrid and whose interests might not have been directly affected by the alleged aid measure, has the right to invoke the direct effect of Article 108(3) under Spanish law. On 31 July 2014, the Tribunal Superior de Justicia de Madrid (the high court of the autonomous region of Madrid) gave ‘Ecologistas en Acción’ standing and consequently applied the standstill clause. As a result, all the construction works on the Bernabéu stadium are paralyzed at least until the Commission has reached a final decision in the Real Madrid State aid case.¹³⁵ The national court argued that it is firstly necessary to safeguard the interests of

¹²⁹ SA.33584 (2013/C) (ex 2011/NN) – The Netherlands Alleged municipal aid to the professional Dutch football clubs Vitesse, NEC, Willem II, MVV, PSV and FC Den Bosch in 2008-2011, para. 3

¹³⁰ SA.3687 (2013/C) (ex 2013/NN) – Spain Alleged aid in favour of three Valencia football clubs, para. 3

¹³¹ SA.29769 (2013/C) (ex 2013/NN) – Spain State aid to certain Spanish professional sport clubs, para. 3

¹³² Commission notice on the enforcement of State aid law by national courts (2009/c 85/01), para.25

¹³³ *Ibid*, para.28

¹³⁴ Case C-368/04 Transalpine Ölleitung in Österreich GmbH v Finanzlandesdirektion für Tirol, [2006] I-9983, para.45

¹³⁵ The suspension of the construction works can also be ‘overruled’ by the Spanish cassation court (*El Tribunal Supremo*), should Real Madrid and/or the Council decide to appeal the judgment of 31 July 2014

the justiciable and, protect the parties affected by the distortion of competition provoked by the concession of potential unlawful aid.¹³⁶

By ruling in line with the principle of effectiveness and granting ‘Ecologistas en Acción’ standing, the national court provided citizens the possibility to challenge State aid measures through the direct effect of Article 108(3), in addition to the complaint. This approach by the high court of Madrid is could set a precedent with regard to the other State aid cases in the football sector, since in those cases citizens also filed the complaints.

7.2. Real Madrid – the biggest fish in the water

A possible negative decision regarding Real Madrid, one of the biggest and most powerful football clubs in the world, will have a worldwide impact on EU law and sport as we know it. The Commission would demonstrate that every football club is equal before the law, irrespective of the size and dominion of the club in question. Furthermore, all other European football clubs will instantly be aware that the Commission takes State aid in the football sector very seriously, and that advantageous deals with the (local) authorities should become a thing of the past.

Moreover, Real Madrid’s historical function of promoting the image of Spain to the outside world will suffer a severe blow. This will not only have negative consequences to the club itself, but also to Spain’s central government. The government, whose goal is promoting a unified Spain, will have to explain to the outside world why the capital’s main football club has been granted certain advantages that other Spanish clubs will probably never have. Furthermore, given the social importance of football, sanctions to football clubs will have a far greater impact than sanctions to ‘normal’ undertakings. The sanctions will create upheaval amongst the great number of people who feel passion for the sport, a fact of which the Commission is undoubtedly aware. A negative decision would confirm the Commission’s new position regarding State aid in the football sector and will prevent the public authorities of being tempted to grant State resources in times of financial crisis. Taking into account the principle of fair competition, a sanction might be helpful for creating an equal playing field.

7. CONCLUSION

The assessment of the agreement signed by the Council of Madrid and Real Madrid on 29 July 2011 and the operation ‘Bernabéu-Opañel’ under EU State aid rules shows the following:

Firstly, in accordance with the General Court’s judgment in the *Konsum Nord* case, if there is an intrinsic link between the different land transactions then both agreements have to be scrutinized as one under Article 107 TFEU. The fact that the terrains in the street ‘Mercedes Arteaga’, were included in the Agreement of 29 July 2011 and, only a

¹³⁶ Tribunal Superior de Justicia de Madrid - Sección nº01 de lo Contencioso-Administrativo - Pieza de Medidas Cautelares- 357/2013 – 01, 31 July 2014, page 5

few months later, in the operation ‘Bernabéu-Opañel’ is sufficiently circumstantial for determining a direct connection.

Secondly, by ‘overvaluing’ land owned by Real Madrid and subsequently presenting the club with plots of publicly owned land, the city Council did not act in accordance with the ‘market economy vendor principle’. Details regarding the methods used for valuing the land have been far from complete, thereby creating the presumption that the transactions included a financial advantage to Real Madrid. Furthermore, granting State resources in the form of public land with the aims of creating jobs and promoting the brand name ‘Real Madrid’ while not attaining certain revenues had the Council operated in accordance with market conditions add to the selective advantage provided to Real Madrid.

Thirdly, the aid measure is not compatible with EU law because there is no objective of common interest that could justify a selective economic advantage to a football club that is already one of the richest and most successful within its sector. Moreover, the measure does not fulfil any educational, public health, social or recreational functions that could serve as a justification under Article 165 TFEU. The two agreements between the Council of Madrid and Real Madrid will therefore have to be classified as unlawful State aid thereby forcing the Commission to order a recovery of the total advantage granted to Real Madrid.

It is unlikely that a recovery order will have large financial consequences for Real Madrid. A club, whose turnover exceeds €600 million and who pays astronomical transfer fees for players on a yearly basis will not have problems returning the advantage it obtained by means of the agreements with the Council of Madrid. Nonetheless, it is not the extent of the aid to be recovered that could make this State aid case ‘unlike any other’, but rather what the case could entail for future State aid cases. Real Madrid is one of the most well-known and successful clubs in the world. By sanctioning such a powerful player in a particular sector, other public authorities will immediately understand that aiding football clubs is not without risk.

Equal to the other cases in the ‘football sector’, it was citizens, not competitors, that drew the Commission’s attention to potential unlawful State aid granted to Real Madrid by means of a complaint. However, the *Real Madrid* case is further creating a debate at a national level whether these same citizens should be granted standing in national procedures as regards the direct effect derived from Article 108(3) TFEU. By allowing third parties to stand and, consequently, by applying the ‘standstill obligation’, the Spanish courts are setting the precedent that potential unlawful State aid in football is not only a matter between the European Commission and the respective Member State. It affects society as a whole.