



EU, COMPETITION AND REGULATED MARKETS

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# The International Skating Union found to have Infringed EU Competition Rules

by **Marco Hickey**

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The European Commission has decided that the eligibility rules of the International Skating Union (ISU) are illegal under EU competition law.

The ISU is the world governing body for ice skating, both speed skating and figure skating. Its members are national ice skating associations. Together, the ISU and its members organise international ice skating competitions such as the Winter Olympics, the European Championships and the World Championships. The ISU's eligibility rules set out who can compete in those events. The Commission found that through the application of those rules the ISU can prevent independent organisers from setting up other international speed skating competitions, and dissuade skaters from taking part in those competitions.

The ISU's rules allow it to penalise skaters when they take part in competitions that the ISU has not authorised. Skaters can be suspended for several years, or even banned for life from all major international competitions, including the Olympics and the European and World Championships.

## European Commission's Investigation

The Commission began its investigation after receiving a complaint from two Dutch professional speed skaters, Mark Tuitert and Niels Kerstholt, who had won gold medals at the Olympics and the World Championships, but wanted to participate in other speed skating events that were not authorised by the ISU.

In its press release in December 2017, the Commission noted that "A speed skater's professional career doesn't last all that long. So athletes like Mark Tuitert and Niels Kerstholt should have the chance to make the most of the years while they're at the top of their game. And besides, those new competitions can give fans another chance to see them in action." In relation to the ISU's rules, the Commission further noted that the rules, in effect, "prevent skaters from taking part in competitions that aren't authorised by the ISU and its members... That can be costly for athletes, who lose the chance to compete – and an opportunity to better earn their living."

The ISU's power to penalise skaters for participating in non-authorised competitions also means that such non-authorised competitions can rarely take place since organisers cannot put together an event if top athletes are put off by the threat of a ban.

## Commission Decision

The Commission did not impose a fine on the ISU, but the ISU is required to end the infringement. The Commission suggests several means to end the infringement: through the abolition of the ISU's eligibility rules, or by amending them so that they are "based on a clear list of legitimate sporting objectives, such as protecting athletes' health or preventing doping." The Commission affirmed that the rules should not be about the ISU's own commercial interests.

In the event that the ISU does not comply with the Commission decision, the Commission stated that it can fine ISU up to 5% of its daily worldwide turnover for each day that it is in breach of the Commission decision.

The Commission also noted that in relation to other professional sporting federations generally, “the penalties these federations impose should be necessary and proportionate to achieve those goals. They certainly shouldn't be used to unfairly favour the federation's own commercial interests, at the expense of athletes and other organisers.” It underscored its aim of “making it clear to sporting federations that the business of sport also has to comply with competition rules.”

The ISU, while disagreeing with the Commission's decision, has stated its readiness to resolve the case "in an amicable manner" and that it reserves the right to file an appeal before the European Courts.

***Marco Hickey is Partner and Head of the EU, Competition and Regulated Markets team at LK Shields Solicitors. Marco is the author of [Merger Control in Ireland](#) published by Thomson Reuters, which is the first book exclusively devoted to merger control in Ireland.***

## About the Author



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Recognised as the Irish winner of the Client Choice Award in 2015, Marco is a very experienced lawyer practicing in the areas of corporate and commercial law, EU and Irish competition law and regulatory law.

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