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No-Poach Agreements at the Intersection of Labour Markets and Sport: The Court of Justice's Judgment in *Tondela*

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1. *Introduction*

In its judgment in the *Tondela* case,[1] the Court of Justice was called upon to assess, for the first time expressly and with direct reference to a standalone agreement between competing employers, the treatment of no-poach agreements under Article 101 TFEU.[2]

The conduct at issue consisted of an agreement between professional football clubs not to recruit players who had unilaterally terminated their contracts with another club in connection with the COVID-19 pandemic or

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[1] Judgment of the Court of Justice of 30 April 2026, Case C-133/24, *CD Tondela and Others* (hereinafter, "*Tondela*").

[2] The point was not entirely new. Similar concerns had already emerged in *Royal Antwerp Football Club* (hereinafter, "*Royal Antwerp*"; Judgment of the Court of Justice of 21 December 2023, C-680/21), with regard to rules affecting the recruitment and fielding of players, and, more directly, in *FIFA* (4 October 2024, Case C-650/22), where the transfer rules at issue were treated as capable of producing effects comparable to no-poach arrangements, by restricting in a general, drastic and permanent manner the possibility for clubs to compete for the recruitment of players. The specificity of *Tondela*, however, lies in the fact that the Court was no longer dealing with regulatory rules adopted by an association of undertakings, but with an agreement between clubs themselves (as emphasised by the Court, paragraph 70), albeit endorsed by the national sporting association (paragraphs 72 and 95).

with the exceptional measures adopted in response to it. Such conduct was adopted in a highly specific setting: professional football, the suspension and subsequent extension of the Portuguese football season, and the alleged need to preserve the stability and integrity of the competition. Although that context plays a central role in the judgment, the relevance of the ruling is not confined to the facts of the dispute.

Tondela lies at the intersection of three developments which have recently become central to EU competition law.[3] The first is the growing attention paid to restrictions affecting labour markets.[4] No-poach agreements do not primarily concern prices, output or quality in downstream markets; they concern competition between undertakings as purchasers of labour by limiting the ability of workers to move between employers and the employers' ability to compete for their services. In *Tondela*, this issue arose in relation to professional football players, but the broader question is not inherently sports-specific: whether, and under what conditions, an agreement between competing employers not to hire certain workers may reveal a sufficient degree of harm to competition within the meaning of Article 101(1) TFEU.

The second development concerns the increasingly dense case law on the application of EU competition law to sport.[5] In recent years, the Court has

[3] On the clustering of enforcement around sectors, industries and practices, and its relationship with "market-shaping" intervention, see P. IBÁÑEZ COLOMO, *The New EU Competition Law*, Oxford, 2023, pp. 25-27, noting that, since the adoption of Regulation 1/2003, Commission enforcement has often been accompanied by a parallel phenomenon of clustering, whereby intervention is concentrated, at a given point in time, around specific industries and practices, with strings of decisions addressing the same or similar conduct in a particular sector.

[4] On the growing role of competition-law enforcement in labour markets, including in relation to professional sport and football players as highly skilled labour, see A. SCHETTINO and A. MASSOLO, *Concorrenza e democrazia: quale legame, quale interazione e quale contaminazione?*, in this *Review*, no. 3, 2025, pp. 801-850, especially pp. 815-820. More generally, this development forms part of a broader debate, which has intensified in recent years (for instance, in relation to sustainability objectives), on whether competition law should be understood as impermeable to non-purely economic considerations or whether it may, within its own limits, also reflect broader social and democratic values. In this sense, see P. Manzini in his foreword to P. MANZINI (ed.), *I confini dell'antitrust*, Turin, 2023, pp. XII-XIII, observing that, particularly in EU law, antitrust has never been confined exclusively to consumer welfare or economic efficiency, but has also protected values such as individual freedom of choice, the competitive structure of the market, fairness in transactions and market integration, while taking account of the social and economic context, the different bargaining power of the parties and the specific features of the sectors in which competition rules are applied.

[5] On EU law and sport, see generally S. LAMARCA, *Sport e diritto europeo. Analisi dell'evoluzione del diritto europeo dello sport attraverso le sentenze della Corte di giustizia*, Turin, 2025, *passim*, and especially pp. 79-135 on EU competition law; S. BASTIANON,

repeatedly been called upon to define the relationship between the autonomy of sports regulation and the application of EU law.[6] The judgments in *International Skating Union*, *Superleague*, *Royal Antwerp*, and *FIFA* confirm that sporting rules and practices are not immune from EU competition law merely because they pursue objectives connected with the organisation, integrity or fairness of sporting competitions.[7] At the same time, the Court

Manuale di diritto europeo dello sport, Turin, 2025, *passim*; G. GRECO, *L'autonomia sportiva nello spazio giuridico europeo: integrazione, proporzionalità e controllo giurisdizionale dopo le conclusioni dell'Avvocato generale nelle cause FIGC–CONI*, in this *Review*, no. 1, 2026, pp. 221-248.

[6] The continued centrality of sport in the Court's recent case-law is also confirmed by the judgments delivered after *Tondela*: Judgment of the Court of Justice of 9 July 2026, Case C-428/23, *ROGON and Others*, concerning rules adopted by a national football federation on players' agents and the conditions under which such rules may be assessed under Article 101(1) TFEU in light of legitimate public-interest objectives, necessity and proportionality; 16 July 2026, Case C-209/23, *RRC Sports*, concerning FIFA rules on football agents and raising issues under Articles 101 and 102 TFEU, the freedom to provide services and the GDPR; 16 July 2026, Joined Cases C-424/24 and C-425/24, *FIGC and CONI*, concerning disciplinary sanctions in sport and the requirements of judicial review consistent with EU law.

[7] Judgment of the Court of Justice of 21 December 2023, Case C-124/21 P, *International Skating Union/Commission* (hereinafter, "*ISU*"), concerning the compatibility with Article 101 TFEU of eligibility and prior authorisation rules adopted by an international sports federation; 21 December 2023, Case C-333/21, *European Superleague Company* (hereinafter, "*Superleague*"), concerning the application of EU competition law to rules governing the authorisation and organisation of interclub football competitions; 21 December 2023, Case C-680/21, *Royal Antwerp*, concerning rules on home-grown players and their compatibility with Article 101 TFEU; 4 October 2024, Case C-650/22, *FIFA*, concerning transfer rules, the regularity of sporting competitions and the limits of the Wouters/Meca-Medina justification. For a systematic account of the Court's December 2023 sports trilogy, see G. MONTI, *EU Competition Law after the Grand Chamber's December 2023 Sports Trilogy: European Super League, International Skating Union and Royal Antwerp FC*, *Revista de Derecho Comunitario Europeo*, 2024, no. 77, pp. 11-43, available here. See also S. LAMARCA, *Sport e diritto europeo. Analisi dell'evoluzione del diritto europeo dello sport attraverso le sentenze della Corte di giustizia*, cited above, pp. 105-137 and 162-166; S. BASTIANON, *Manuale di diritto europeo dello sport*, cited above, pp. 302-396; G. ÍÑIGUEZ, *European Super League Company and the (New) Law of European Football*, in *EP*, 2024, pp. 1-15, available here; H. VEDDER, *On Thin Ice: The Court's Judgment in Case C-124/21 P, International Skating Union v Commission*, in *EP*, 2024, available here; R. PARRISH, L. ŽIVIĆ, *Royal Antwerp and home-grown players: re-shaping sports governance and EU sports law and policy*, in *The International Sports Law Journal*, 23, 2023, pp. 453-459, available here. On *FIFA* and its implications for the football transfer system, see A. SCHETTINO, A. CONI, *The Football Transfer System Under EU Judicial Scrutiny: FIFA Called Offside Once Again in the Diarra Case*, in *EJ*, no. 2, 2025, pp. 237-257, available here; S. BASTIANON, M. COLUCCI, *The Evolution of FIFA Transfer Football Regulations: Challenges, Opportunities, and Innovative Approaches in the Wake of the Diarra Judgment*, in *Rivista di diritto ed economia dello sport*, 2024, pp. 19-67, available here; S. WEATHERILL, *Is this the end of football's transfer system? An immediate reaction to the Court's ruling in Diarra (C-650/22)*, in *EU Law Analysis*, 7 October 2024, available here; M. JAMES, *The Diarra case*, *The International Sports Law Journal*, 2024, vol. 24, pp. 205-207, available here.

continues to recognise that the specific characteristics of sport may be relevant in applying Articles 101 and 102 TFEU.

The third issue concerns the long-standing debate around the notion of restriction by object and its implications for the availability of justifications and exemptions under Article 101 TFEU.[8] The classification of an agreement as restrictive by object remains one of the most consequential threshold questions under Article 101(1) TFEU, as it determines the intensity of the analysis required from competition authorities and courts and affects the possible availability of justificatory routes. In particular, the Court's recent sports case law has clarified that the *Wouters/Meca-Medina* logic cannot be used to justify conduct already classified as restrictive by object; for such conduct, the only possible route is Article 101(3) TFEU.[9]

[8] For a general overview of the distinction between restrictions by object and by effect, and the relationship between Article 101(1) and Article 101(3) TFEU, see A. JONES, B. SUFRIN, N. DUNNE, *Jones & Sufrin's EU Competition Law: Text, Cases, and Materials*, 8th ed., Oxford, 2023, pp. 231-302; P. MANZINI, *Diritto antitrust dell'Unione europea*, Turin, 2023, pp. 54-78; G. TESAURO, *Manuale di diritto dell'Unione europea*, edited by P. DE PASQUALE and F. FERRARO, vol. II, Naples, 2023, pp. 237-257; see also R. WHISH, D. BAILEY, *Competition Law*, 11th ed., Oxford, 2024, pp. 122-135, as well as M. LIBERTINI, *Diritto della concorrenza dell'Unione europea*, Milan, 2014, pp. 126-162, both discussing the comparison with the "rule of reason" in US antitrust law.

[9] Judgment of the Court of Justice of 19 February 2002, Case C-309/99, *Wouters*, paragraphs 97-110, where the Court held that professional rules restricting the conduct of members of a bar association may fall outside Article 101(1) TFEU where the restrictions are inherent in the pursuit of a legitimate objective and proportionate to it; 18 July 2006, Case C-519/04 P, *Meca-Medina*, paragraphs 42-47, where the Court applied the same logic to sporting rules, holding that restrictions inherent in the organisation and proper conduct of sport may escape Article 101(1) where they are necessary and proportionate to a legitimate sporting objective. As mentioned earlier, the scope of that case-law was subsequently narrowed in the Court's sports judgments of 21 December 2023. In *ISU*, paragraph 111-114, the Court recalled *Meca-Medina* as an example of sporting rules capable of falling outside Article 101(1) where their restrictive effects are inherent in, and proportionate to, legitimate objectives connected with the proper conduct of sport, but held that that reasoning is unavailable where the conduct has an anticompetitive object; in such a case, the only possible route is Article 101(3) TFEU. In *Superleague*, paragraphs 183 and 185-187, the Court made the same point after first addressing the parallel issue of objective justification under Article 102 TFEU: while conduct that, by its very nature, infringes Article 102 cannot benefit from that form of justification, conduct which, under Article 101(1), has as its object the prevention, restriction or distortion of competition cannot fall within the *Wouters/Meca-Medina* case law and may only, where appropriate, be examined under Article 101(3). In *Royal Antwerp*, paragraphs 113-118, the Court applied that sequencing to home-grown player rules, making clear that only where such rules do not reveal an anticompetitive object is it necessary to examine whether they may fall within the *Wouters/Meca-Medina* logic; if they do fall within Article 101(1), any exemption must satisfy Article 101(3). On the relationship between legitimate aims, restrictions by object and the *Wouters/Meca-Medina* doctrine after the December 2023 sports cases, see P. IBÁÑEZ COLOMO, *Legitimate aims and restrictions by object (I): Sports, Wouters and Meca Medina*, in *Chillin' Competition*, 27 February 2024, available here.

Against that background, *Tondela* raises a methodological question of broader significance. On the one hand, a no-poach agreement between competing employers appears, in principle, to restrict an essential parameter of competition: the ability to compete for highly skilled workers. On the other hand, the agreement at issue was adopted in a «*very unique*» context[10] and was presented as pursuing an objective connected with the stability and integrity of the sporting competition. The judgment therefore required the Court to clarify how a no-poach agreement, first identified as a labour-market restraint, should be characterised under the by-object analysis once its objectives and the economic and legal context in which it was adopted are taken into account.

The judgment combines a rigorous approach to no-poach agreements with a context-sensitive application of Article 101(1) TFEU. It confirms that such agreements are highly suspect because they restrict competition for labour and may resemble an allocation of sources of supply. At the same time, it rejects any automatic equation between the no-poach label and the by-object category. The analysis remains anchored in the established threefold scrutiny of content, objectives, and economic and legal context.[11]

The following analysis will examine, first, the factual and procedural background of the dispute; secondly, the Court's treatment of no-poach agreements as potential restrictions by object; thirdly, the role played by the specificity of sport as a factor of contextualisation rather than exemption; and finally, the relationship between pro-competitive objectives, legitimate public-interest objectives and Article 101(3) TFEU.

2. *The Background: No-Poach Coordination, Professional Football and the Pandemic*

The dispute originated in the disruption caused by the COVID-19 pandemic to professional football competitions in Portugal. Following the suspension of the 2019/2020 season and the uncertainty surrounding its resumption and completion, the Portuguese Professional Football League and several clubs in the First and Second divisions concluded an agreement

[10] *Tondela*, paragraph 88.

[11] On the threefold analysis of content, objectives and economic and legal context in the identification of restrictions by object, see D. BAILEY, *Restrictions of Competition by Object under Article 101 TFEU*, in *CMLR*, vol. 49, no. 2, 2012, pp. 559-600, available here; P. IBÁÑEZ COLOMO, *Restrictions by Object under Article 101(1) TFEU: From Dark Art to Administrable Framework*, in *YEL*, 2024, pp. 224-260, available here; more generally on formalistic and substantive approaches, see P. IBÁÑEZ COLOMO, *Form and Substance in EU Competition Law*, in *World Competition*, 2023, vol. 46, no. 4, pp. 401-428, available here.

concerning the recruitment of professional football players, committing not to recruit players who had unilaterally terminated their employment contracts with another club for reasons connected with the pandemic or with the exceptional measures adopted in response to it. The agreement therefore concerned a specific category of players and was adopted in a context in which the ordinary temporal and contractual framework of the sporting season had been profoundly affected.

According to the clubs, the arrangement sought to address an exceptional situation and to prevent opportunistic conduct capable of undermining the stability of the competition, in particular by avoiding the immediate recruitment by rival clubs of players who had terminated their contracts during the disrupted season. From the perspective of the Portuguese competition authority, however, the agreement restricted the clubs' freedom to compete for the recruitment of players and limited the players' opportunities to offer their services on the market. The authority therefore found that the arrangement infringed both national competition law and Article 101 TFEU, and imposed fines on the undertakings concerned.

The addressees of the decision challenged that assessment before the Portuguese court for competition matters, which referred three connected questions to the Court of Justice. First, it asked whether Article 101(1) TFEU could be held not to apply to such an agreement in light of its alleged objective of preserving the regularity and integrity of the sporting competition. Secondly, it asked, in substance, whether the *Wouters/Meca-Medina* line of case law could apply to an agreement concluded between professional football clubs with the involvement or endorsement of the competent sporting association. Thirdly, it asked whether such an agreement could be classified as a restriction of competition by object within the meaning of Article 101(1).

The preliminary reference thus placed before the Court questions that were at once fact-specific and systemically significant. They were fact-specific because the agreement concerned football players, professional sport and an exceptional period of disruption. Yet, they were also broader in scope, since they required the Court to clarify how no-poach agreements should be approached under Article 101 TFEU, how the by-object analysis should take account of the relevant economic and legal context, and how that analysis interacts with possible legitimate objectives and with the *Wouters/Meca-Medina* framework.

3. *Labour-market Restraints and Restrictions by Object: No-Poach Agreements After* Tondela

The first substantive issue addressed by the Court concerns the legal characterisation of the agreement as a restriction of competition by object.

Having already identified the arrangement as a no-poach agreement between professional football clubs, the referring court essentially asked whether such coordination, adopted in the exceptional circumstances of the pandemic and with the involvement of the national sporting association, had to be categorised as restrictive by object within the meaning of Article 101(1) TFEU.[12] Significantly, while *FIFA* had already framed certain transfer rules as functionally equivalent to non-poaching arrangements, *Tondela* required the Court to examine a no-poach agreement as such: a horizontal agreement concluded between competing employers.

The judgment should be read against a broader enforcement background. In recent years, labour-market restrictions have attracted increasing attention from competition authorities, courts, and scholarship on both sides of the Atlantic.[13] In the European Union, the Commission had already expressed its view in a recent Competition Policy Brief, stating that wage-fixing and no-poach agreements would in most cases qualify as restrictions by object, are unlikely to qualify as ancillary restraints, and are also unlikely to satisfy Article 101(3) TFEU.[14] Shortly afterwards, the Commission adopted its first sanctioning decision involving a no-poach agreement in *Delivery Hero/Glovo*, although that case formed part of a wider cartel infringement.[15] At national level, several authorities have also pursued labour-market

[12] *Tondela*, cited above, paragraph 35.

[13] See, generally, D. J. POLDEN, *No-Poach Agreements: An Overview of US, EU, and National Case Law*, in *e-Competitions (Concurrences)*, Special Issue No-Poach Agreements, art. No 116824, 1st February 2024, available here; E.A. POSNER, C. VOLPIN, *No-Poach Agreements: An Overview of EU and National Case Law*, University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No 984, 2023, available here; M.M. POLAT, *Unraveling Labor Market Collusion: A Comprehensive Analysis under EU Competition Law*, in *Journal of European Competition Law & Practice*, 2024, pp. 153-167; C. BERGQVIST, *Antitrust Enforcers of the World, Unite! Time to Rethink Article 101 TFEU and Labor Market Restrictions*, 9 September 2025, available here.

[14] A. ARESU, D. ERHARTER, B. RENNER-LOQUENZ, *Antitrust in Labour Markets*, *Competition Policy Brief*, no. 2, May 2024, pp. 1-2 and 7, available here.

[15] European Commission, Decision of 2 June 2025, Case AT.40795, *Food Delivery Services*, C(2025) 3304 final.

restrictions, confirming that the issue has moved from policy debate to enforcement reality.[16]

In that respect, *Tondela* builds on *FIFA*, where the Court had already recognised that the recruitment of high-level players may constitute an essential parameter of competition in professional football. What *Tondela* adds is the direct application of that logic to an agreement between competing employers not to compete for those workers.

The Court accordingly recalls that Article 101(1) TFEU may cover collusion relating not only to the goods or services marketed by undertakings, but also to the resources needed to produce them, including the recruitment of highly skilled workers. Coordination may therefore relate to suppliers, purchase prices or the recruitment of highly skilled workers, such as professional football players.[17] Competition between undertakings is thus not confined to downstream markets, but may also occur upstream, including on markets for the recruitment of workers.

The same starting point appears in Advocate General Emiliou's Opinion. After recalling the recent clarification of the concept of restriction by object in *ISU*, *Superleague* and *Royal Antwerp*,[18] the AG observed that no-poach agreements have the characteristics to be considered *prima facie* restrictive by object, at least where two or more undertakings agree not to hire or solicit staff from each other and where the agreement is concluded between actual or potential competitors,[19] and may be understood, in economic terms, as a form of sharing of labour supply falling within the logic of Article 101(1)(c) TFEU. The Court substantially accepts this starting point, holding that no-poach agreements may be treated as equivalent to horizontal agreements for the sharing of sources of supply, since they tend to lead to the artificial partitioning

[16] For an account of national enforcement practice concerning no-poach agreements in the EU, see S. OLIVEIRA PAIS and B. SEQUEIRA, *No-Poach Agreements: From National Experience to the Awakening of EU Institutions*, in *GRUR International*, 2025, pp. 936-944, available here.
[17] *Tondela*, paragraph 42. See also *FIFA*, cited above, paragraphs 129 and 138.
[18] C. BERGQVIST, *Antitrust Enforcers of the World, Unite! Time to Rethink Article 101 TFEU and Labor Market Restrictions*, cited above, p. 16, observing that the case law has not provided a single uniform definition of restrictions by object, but has increasingly structured the analysis around the content of the agreement, its objectives and its economic and legal context; on the more structured taxonomy emerging from the recent sports case law, see also *Royal Antwerp*, cited above, paragraphs 104-110.
[19] Opinion of AG Emiliou of 15 May 2025, C-133/24, *CD Tondela and Others*, points 23-29 and 49.

of the "resources" represented by the players among the participating undertakings, thus partially "freezing" the competition.[20]

The Court's characterisation is therefore rigorous. The agreement concerned the upstream market for the recruitment of players already trained or in training. By entering into it, the clubs agreed to refrain from deciding independently whether to recruit a player who had unilaterally terminated his employment contract with another club for reasons connected with the pandemic. According to the Court, such an arrangement constitutes a manifest restriction of a competitive parameter playing an essential role in high-level sport, namely the possibility of recruiting players already employed by another club.[21] It also restricts the players' opportunities to offer their services to other undertakings and limits their negotiating power on the market, including vis-à-vis their existing employer. Although the agreement differs from direct wage-fixing, it may indirectly affect the "purchase price" of the clubs' human resources.[22] This reasoning reflects the economic theory of harm underpinning no-poach enforcement: by reducing rivalry between employers for workers, they may depress remuneration, weaken workers' bargaining power, increase search costs, reduce labour-market dynamism, and impair the efficient allocation of human capital.

The Court's reasoning, however, resists any straightforward transposition of the Commission's clear-cut policy stance into an automatic rule of legal characterisation. Although the agreement was linked to a form of coordination which, in principle, is capable of falling within the category of restrictions by object, the Court is careful to preserve the methodological discipline of Article 101(1) TFEU: the content of the agreement constitutes the starting point of the analysis but cannot exhaust the inquiry into whether the agreement reveals the requisite degree of harm to competition.[23] This caution is particularly

[20] *Tondela*, paragraphs 54 and 66.

[21] *Ivi*, paragraphs 53 and 66.

[22] *Ivi*, paragraph 53.

[23] *Ivi*, paragraph 56. See P. IBÁÑEZ COLOMO, *The New EU Competition Law*, Oxford, 2023, pp. 57-59, observing that, in the decade following *Post Danmark I*, the Court moved in a direction consistent with the vision underpinning the "more economics-based approach" and, in particular, increasingly favoured a contextual and case-specific interpretation of the divide between restrictions by object and by effect. In this respect, the case law contributed to clarifying that conduct cannot be characterised as restrictive by object where there is insufficient experience with the relevant type of practice, or where the agreement is plausibly explained as a means to improve the competitive process rather than to restrict competition, as reflected in the Judgment of the Court of Justice of 11 September 2014, Case C-67/13 P, *Groupement des cartes bancaires/Commission*, paragraphs 73-75; 30 January 2020, Case C-307/18, *Generics (UK) and Others*, paragraphs 89 and 103; 2 April 2020, Case C-228/18, *Budapest Bank*, paragraphs 76 and 82-83.

relevant in relation to no-poach agreements, a label that encompasses arrangements of different scope and intensity, and whose capacity to impair labour-market competition may depend on the structure and functioning of the market concerned.

The distinction between no-hire and non-solicit arrangements may illustrate the point. The Commission's Policy Brief distinguishes between no-hire agreements, by which employers agree not to hire actively or passively employees of other parties, and non-solicit agreements, by which employers merely agree not to actively approach another employer's employees, while considering that such distinctions do not affect their possible characterisation as restrictions by object.[24] As an enforcement warning, that position might be understandable. As a statement of legal characterisation, however, it requires caution. A wide no-hire agreement covering all or almost all employers active on a relevant labour market is likely to suppress worker mobility much more directly than a limited non-solicitation clause in a transparent market where employees remain able to approach alternative employers.[25] The distinction is therefore relevant not because one category is necessarily lawful and the other unlawful, but because it may affect the extent to which the agreement reveals, in its concrete setting, the degree of harm required to account for a restriction by object.[26]

A comparable difficulty arises in relation to market definition and market power in labour-market cases. The relevant inquiry cannot simply mirror the traditional demand-side analysis used in product markets, since the question is not which products consumers regard as substitutes, but which job opportunities workers regard as realistic alternatives. Workers' preferences may depend not only on remuneration, but also on reputation, career prospects, location, working conditions and other non-monetary elements. The geographic scope of the market may also vary significantly according to the category of workers concerned[27]. In *Tondela*, the remark that the agreement

[24] A. ARESU, D. ERHARTER, B. RENNER-LOQUENZ, *Antitrust in Labour Markets*, cited above, p. 2.
[25] F. PREETZ, *No-Poach Agreements and the 'by object' v 'by effect' Clásico – A Few Remarks on the Tondela Opinion*, *Kluwer Competition Law Blog*, 16 June 2025, available here, arguing that a distinction should be drawn between non-hire and non-solicitation arrangements, since their effects on worker mobility and bargaining power may differ depending on the transparency and structure of the labour market.
[26] F. PREETZ, *No-Poach Agreements*, cited above.
[27] F. PREETZ, *No-Poach Agreements*, cited above, emphasising that labour-market restrictions cannot be assessed in isolation from the market structure, the workers concerned and the availability of realistic alternatives; see also C. BERGQVIST, *Antitrust Enforcers of the World,*

concerned two high-level national competitions and a significant number of clubs[28] is not incidental, as it suggests that the coverage of the agreement and its practical significance on the relevant labour market form part of the by-object assessment.

The judgment should accordingly be read as placing no-poach agreements under a presumption of competitive harm, rather than as endorsing a formal equation between the no-poach label and the by-object category.[29] That reading is consistent with the Court's broader case-law, according to which the concept of restriction by object must be interpreted strictly and applies only to types of coordination revealing a sufficient degree of harm to competition.[30]

The assessment of that degree of harm is governed by the familiar tripartite inquiry into the content of the agreement, the economic and legal context of which it forms part, and the objectives it pursues.[31] In this regard, *Tondela* is precisely relevant in the way in which the Court applies that framework to a type of agreement whose content is, *prima facie*, particularly suspicious from a competition standpoint. The no-poach arrangement at issue restricted an essential parameter of competition in professional football, the ability of clubs to compete for the recruitment of trained players. It could therefore be assimilated to a horizontal agreement for the sharing of sources of supply, since the players constituted a key resource for the clubs' sporting and economic activity.[32] Yet, even in the presence of such a manifestly restrictive element, the Court does not allow the content of the agreement to exhaust the inquiry.[33]

Unite! Time to Rethink Article 101 TFEU and Labor Market Restrictions, cited above, p. 10, suggesting that such restrictions might be better assessed treating them as restrictions by-effect.

[28] *Tondela*, paragraphs 53 and 58.

[29] *Ivi*, paragraph 89. The Court specifically states that an agreement by which clubs participating in the professional football divisions of a Member State have undertaken, in collaboration with the national sporting association concerned, not to recruit their respective players who have unilaterally terminated their employment contracts citing difficulties caused by the COVID-19 pandemic or by any exceptional decision arising from it, and in particular by the extension of the sporting season, must be categorised as an agreement having as its object the restriction of competition, unless a specific examination of the content of that agreement, its objective aims from a competition standpoint and the specific economic and legal context of which it forms part makes clear the specific reasons why the competent authority or court considers that it must not be so categorised.

[30] *Ivi*, paragraphs 38-41; *Superleague*, paragraphs 161-164; *FIFA*, paragraphs 126-128.

[31] *Tondela*, paragraph 43; *Superleague*, paragraph 165; *Banco BPN/BIC Português*, paragraph 44.

[32] *Tondela*, paragraphs 53-55.

[33] *Ivi*, paragraph 56.

In this respect, the reasoning of the Court reflects the broader principle that context is never negligible in the by-object analysis. The AG had previously made this point with particular clarity: even where conduct appears to belong to a category normally associated with restrictions by object, the authority or court must still verify whether, in the light of its content, context and objectives, the agreement displays a manifest anticompetitive economic rationale.[34] The analysis of context may in fact operate in both directions: it may confirm that a certain form of coordination reveals the requisite degree of harm, but it may also show that, in the light of the circumstances in which the agreement was adopted and operated, the conduct does not possess the harmfulness normally associated with that category of agreement. The Court follows the same logic and recalls, in more operational terms, that the extent of the contextual inquiry may vary according to the type of conduct, but the inquiry itself remains in any case necessary.[35]

This methodological point is of particular significance in the field of labour-market agreements, given that such agreements may differ significantly in legal form, practical intensity and market impact. A broad no-hire agreement covering all, or almost all, employers active on a relevant labour market is not equivalent, in competitive terms, to a limited non-solicitation clause in a transparent market where workers remain free and realistically able to approach alternative employers. Nor is the assessment of labour-market restraints indifferent to the structure of the relevant labour market, the degree of worker mobility, the nature of the employees concerned, or the existence of realistic outside options. The competitive significance of the restraint therefore depends on the same market-sensitive assessment that the case-law requires for restrictions by object more generally. The point is not to weaken scrutiny of no-poach agreements, but to avoid transforming the category into an undifferentiated object box.[36]

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[34] Opinion of AG Emiliou, *Tondela*, points 23-29 and 42-43.

[35] *Tondela*, paragraphs 46-49; Judgment of the Court of Justice of 20 January 2016, Case C-373/14 P, *Toshiba/Commission*, paragraphs 28 and 29; 26 October 2023, Case C-331/21, *EDP*, paragraphs 100-102.

[36] On the risks of an "object box" approach and the need to preserve the analytical discipline of Article 101(1) TFEU, see P. IBÁÑEZ COLOMO, *Restrictions by Object under Article 101(1) TFEU: From Dark Art to Administrable Framework*, cited above, especially pp. 227-231 and 254-258; P. IBÁÑEZ COLOMO, *Form and Substance in EU Competition Law*, *World Competition*, vol. 46, no. 4, 2023, pp. 401-428, available here; F. PREETZ, *No-Poach Agreements and the 'by object' v 'by effect' Clásico – A Few Remarks on the Tondela Opinion*, cited above.

In *Tondela*, the contextual inquiry was particularly significant because of the competitive dynamics in the market at stake, shaped both by the structure of professional football and by the exceptional disruption caused by the COVID-19 pandemic. The Court first recalls that professional clubs compete as economic operators on several markets, including ticketing, sponsorship, media rights and the exploitation of rights relating to competitions and players; at the same time, their position on those markets depends on their participation in sporting competitions, which are based on sporting merit and require a certain equality of opportunity among participating clubs, given the interdependence that binds them together.[37] Against that background, the suspension of the season, the uncertainty as to its resumption and completion, and the possible expiry or unilateral termination of players' contracts created a risk that the composition of the teams would be significantly altered before the end of the competition.[38] The Court expressly links this risk to the integrity of the competition, especially where financially weaker clubs might have been unable to replace departing players.[39]

The analysis of the objectives pursued by the agreement further reinforces this point. On the one hand, the referring court considered that the agreement, in view of its clear and precise content, was aimed at, and inherently liable to restrict competition on the player recruitment market.[40] On the other hand, the agreement was also presented as pursuing the objective of maintaining the stability of player rosters during the indefinite suspension of the season, to permit the resumption of play in conditions preserving the integrity of the championship.[41] The Court regards that second objective as potentially relevant insofar as, in the framework of professional football, it was not merely a legitimate but competition-neutral consideration. In fact, interclub competitions based on sporting merit presuppose that the performances of the teams at different stages of the competition can be validly compared; this, in turn, may require a certain stability in the composition of the player rosters from which the teams are formed at the different stages of the tournament.[42]

The case is therefore peculiar as the same agreement may be viewed from two competition-law angles. From the perspective of the upstream market for the recruitment of players, it was inherently aimed at suppressing competition

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[37] *Tondela*, paragraphs 59 and 60.
[38] *Ivi*, paragraphs 68 and 73.
[39] *Ivi*, paragraph 73; Opinion of AG Emiliou, *Tondela*, points 57 and 58.
[40] *Tondela*, paragraphs 79-81.
[41] *Ivi*, paragraph 82.
[42] Judgment of the Court of Justice of 13 April 2000, Case C-176/96, *Lehtonen and Castors Braine*, paragraphs 53 and 54; *FIFA*, paragraphs 100 and 144.

between clubs. From the perspective of the sporting competition, however, it was capable of being presented as preserving the conditions under which competition "on the pitch" could remain meaningful. The Court expressly distinguishes that situation from cases in which conduct pursues an anticompetitive aim while also pursuing other objectives that may be legitimate, but neutral from a competition standpoint.[43] The alleged pro-competitive rationale is linked not to a public-interest consideration external to competition, but to the preservation of the very conditions under which sporting rivalry can function as a meaningful form of competition.

In this sense, *Tondela* offers a rare example of an agreement whose content manifestly restricts an essential competitive parameter, but whose context and objectives may nevertheless cast doubt on its characterisation as restrictive by object. The logic is reminiscent of *Cartes Bancaires*, where the Court criticised the Commission and the General Court for disregarding the plausible pro-competitive rationale of the system and the specific features of the two-sided market in which it operated.[44]

This does not make the agreement fall outside the scope of Article 101(1), nor does it allow sporting integrity to operate as a general justification for collective restraints on player mobility. Rather, the consequence is methodological: it affects the prior question of legal characterisation, based on whether the agreement, assessed in light of its content, objectives and context, reveals the degree of harm required for a restriction by object. Therefore, the competent authority or court must conduct a competition-based analysis capable of explaining, in light of all relevant elements of fact and law, why the agreement does or does not reveal the requisite degree of harm.[45] The Court's final answer to the third question (addressed as first) reflects such structure: an agreement of the kind at issue must be categorised as restrictive by object unless a specific examination of its content, its objective aims from a competition standpoint, and the specific economic and legal context of which it forms part makes clear the reasons why it should not be so categorised.[46]

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[43] *Tondela*, paragraph 87.

[44] *Groupement des cartes bancaires/Commission*, paragraphs 69-79; S. HUIJTS, *The Tondela ruling: VAR needed to decide object of Covid-19 no-poach*, in *The Thicket*, 5 May 2026, available here, drawing an analogy with *Cartes Bancaires*, where the Court faulted the Commission for disregarding the plausible pro-competitive rationale of the system and the two-sided nature of the market.

[45] *Tondela*, paragraphs 77 and 78.

[46] *Ivi*, paragraph 89.

The judgment thus confirms the gravity of no-poach coordination without turning such seriousness into a substitute for legal analysis. The anticompetitive potential of such agreements lies in their capacity to suppress rivalry for labour, to partition access to an essential input and to weaken workers' outside options; their classification as restrictions by object, however, must still be anchored in the established methodology of Article 101(1), assessing their anticompetitive scope by reference, *inter alia*, to the context in which the agreements are embedded and their objectives within that context.

4. *Contextualisation without Exceptionalism: The Specificity of Sport*

The sporting context is therefore internal to the Article 101 analysis, rather than a reason for displacing it. Professional football is marked by a structural coexistence of rivalry and interdependence: clubs compete as undertakings on markets such as ticketing, sponsorship, media rights and the commercial exploitation of competitions and players, yet the value of that rivalry depends on competitions whose credibility presupposes sporting merit, uncertainty of outcome, equality of opportunity and comparability of performance.[47] The issue is thus not whether sport calls for a separate legal regime, but how those sector-specific competitive dynamics inform the characterisation of the agreement under the ordinary framework of Article 101 TFEU.

In this respect, *Tondela* highlights the double relevance of the sporting context. First, the specific characteristics of professional football form part of the economic and legal context relevant to the classification of the agreement as a restriction by object. The no-poach arrangement cannot be assessed out of its contextual framework, as if it operated on an ordinary labour market detached from the organisation of a professional championship. Its potential restrictive object must instead be evaluated in light of the competitive structure of the sector in which it was adopted. Secondly, those same characteristics may assist in identifying a possible pro-competitive objective. The stability of player rosters may be relevant to ensuring that the performances delivered by teams at different stages of the competition remain validly comparable; if the composition of teams is substantially altered during the relevant period, the competitive process within the sporting competition itself may be distorted.[48]

This duality is central to the Court's reasoning, according to which the agreement may be viewed from two different competitive angles. From the

[47] *Tondela*, paragraphs 59-61.
[48] *Ivi*, paragraphs 82-85; Opinion of AG Emiliou, *Tondela*, points 78-83.

perspective of the upstream market for the recruitment of players, it restricts competition between clubs for an essential input. From the perspective of the sporting competition, however, the same agreement may be presented as seeking to preserve the conditions for fair and meaningful competition between teams. The Court therefore accepts, at least in principle, that a measure may restrict competition in one dimension while pursuing a pro-competitive objective in another. Roster stability is not treated as a merely legitimate but competition-neutral objective; it is rather linked to the functioning of the competitive process itself, because interclub competitions based on sporting merit presuppose that results achieved at different stages of the championship may be validly compared.[49]

This does not mean, however, that the invocation of sporting integrity can neutralise the restrictive nature of an agreement merely because it is framed in pro-competitive terms. The preservation of roster stability may explain why the agreement was adopted, but it does not automatically justify it, nor does it necessarily prevent its classification as restrictive by object. The alleged pro-competitive objective must be closely connected to the functioning of the competition and assessed in light of the scope, necessity, and actual context of the measure. The decisive question thus remains whether the content of the agreement, its objective aims from a competition standpoint and the specific economic and legal context in which it operated reveal a sufficient degree of harm to competition.[50]

The point is therefore one of legal characterisation, not exemption. The specificity of sport does not operate as a shield, but as a factor informing the application of competition law. It may contextualise the no-poach agreement and explain its possible pro-competitive rationale, without creating a safe harbour for collective restrictions on player mobility. Hence, the judgment preserves a demanding balance: professional football cannot be analysed as an ordinary market, because the interdependence between clubs and the structure of sporting competition shape the way rivalry operates; at the same time, that interdependence cannot justify labour-market coordination without rigorous scrutiny under Article 101 TFEU.

[49] See also *Lehtonen and Castors Braine*, paragraphs 53 and 54; *FIFA*, paragraphs 100 and 144.
[50] *Tondela*, paragraphs 86-89.

5. *Pro-competitive Aims, Legitimate Objectives and Article 101(3) TFEU: Mapping the Analytical Boundaries*

The preceding analysis has shown that the sporting context may be relevant to the characterisation of the agreement under Article 101(1) TFEU, both as part of the economic and legal context and as the source of a possible pro-competitive aim. The remaining question is how that aim relates to the distinct notions of legitimate objectives in the public interest and of exemption under Article 101(3) TFEU. *Tondela* restates the sequence of the analysis, while at the same time exposing the difficulty of allocating the same factual consideration to the different legal categories in a market where sporting and economic competition are structurally intertwined.

The first step of the analysis concerns the role of pro-competitive aims within Article 101(1). At that stage, the relevant objectives are not the parties' subjective intentions, nor general public-interest considerations detached from competition, but the objective aims of the agreement «from a competition standpoint».[51] In the present case, the content of the agreement pointed towards an anticompetitive aim, namely the restriction of competition on the player recruitment market.[52] At the same time, the agreement could also be understood as pursuing an aim objectively favourable to competition, insofar as it sought to allow the competition to resume in conditions safeguarding its integrity.[53] In the specific setting of professional football, sporting merit presupposes the comparability of performances at different stages of the competition, which may in turn require a certain continuity in the composition of the squads.[54] Therefore, that objective was not external to competition.

As the Court states, a pro-competitive aim may be relevant at the by-object stage because it can cast doubt on whether the agreement, considered in its legal and economic context, has a manifestly anticompetitive rationale. The question is not whether the restriction can be justified under Article 101(3) despite being anticompetitive, but whether, in light of all relevant elements, the agreement can properly be said to reveal the degree of harm required for a restriction by object.

In *Tondela*, this issue arises from the same structural feature of the case: the agreement can be viewed from two different competitive perspectives. It is in

[51] *Ivi*, paragraph 50.
[52] *Ivi*, paragraphs 80 and 81.
[53] *Ivi*, paragraphs 82-85.
[54] *Lehtonen and Castors Braine*, paragraphs 53 and 54; *FIFA*, paragraphs 100 and 144.

that sense that the Court distinguishes this situation from one in which conduct pursuing an objectively anticompetitive aim also pursues other objectives which may be legitimate, but neutral from a competition standpoint. The relevance of the roster-stability objective at the by-object stage depends precisely on its competition-related character: it is not invoked merely as a public-interest consideration external to the market, but as a factor bearing on the functioning of the competitive process within the championship. This is why roster stability is considered at the stage of Article 101(1): the agreement may restrict one dimension of competition, namely rivalry between clubs for players, while purporting to preserve another, namely the integrity and comparability of the sporting contest. The same agreement is therefore assessed against the background of two competitive relationships: clubs compete as undertakings on the labour market for players' services, but they also compete as sporting participants in a championship whose commercial and sporting value depends on the credibility of the contest.

The role of pro-competitive aims within the by-object analysis must be distinguished from the separate question whether the agreement could fall within the *Wouters/Meca-Medina* line of case law, grounded on the idea that a measure restricting the freedom of action of undertakings may nevertheless fall outside Article 101(1) TFEU where its restrictive effects are inherent in the pursuit of a legitimate public-interest objective and remain proportionate to that objective.[55] In *Tondela*, the Court restates that principle in general terms, accepting that certain agreements or decisions may escape Article 101(1) where they pursue one or more legitimate public-interest objectives, the means used are genuinely necessary, and the resulting restrictions do not go beyond what is necessary and, in particular, do not eliminate all competition.[56]

The Court is equally clear, however, as to the limit of that doctrine. The *Wouters/Meca-Medina* route is unavailable where the conduct reveals, by its very object, a sufficient degree of harm to competition. In such a case, the degree of harm is too great for the restriction to be regarded as justified and proportionate within Article 101(1), and the only possible route is Article 101(3), provided that its cumulative conditions are satisfied.[57]

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[55] *Wouters*, paragraphs 97 and 110; *Meca-Medina*, paragraphs 42-48. On the "*Wouters* doctrine" and its subsequent application to the sport sector in *Meca-Medina*, see R. WHISH and D. BAILEY, *Competition Law*, cited above, pp. 144-147.

[56] *Tondela*, paragraph 91; *Superleague*, paragraph 183; *FIFA*, paragraph 149.

[57] *Tondela*, paragraphs 92 and 93; *Superleague*, paragraphs 186 and 187; *FIFA*, paragraphs 150 and 151.

The distinction is therefore one between different legal functions. A pro-competitive aim may be relevant within Article 101(1) at the stage of characterising the agreement, insofar as it may cast doubt on whether the agreement reveals the degree of harm required for a restriction by object. A legitimate public-interest objective, within the meaning of *Wouters/Meca-Medina*, also operates within Article 101(1), but only where the agreement is not restrictive by object and the restriction is inherent in, and proportionate to, that objective. Article 101(3), by contrast, does not concern characterisation: it is the exemption mechanism for agreements which fall within Article 101(1), including restrictions by object, where the four cumulative conditions of efficiency gains, fair share for users, indispensability and non-elimination of competition altogether are satisfied.

In *Tondela*, however, the difficulty lies in the fact that the same factual consideration appears to perform more than one legal function. The stability of player rosters is first treated as a possible pro-competitive aim relevant to the characterisation of the agreement under Article 101(1), because it may preserve the comparability of performances and competition «on the pitch»;[58] it then reappears as a legitimate objective in the public interest, capable, in principle, of justifying rules intended to ensure the regularity of sporting competitions, provided that the agreement is not restrictive by object and that the means used are appropriate, necessary and proportionate.[59] The distinction is intelligible in theory: pro-competitive aims are relevant to the assessment of whether the agreement has an anticompetitive object; legitimate objectives in the public interest are relevant to the possible application of the *Wouters/Meca-Medina* logic only in the case of non-object restrictions, and provided that the restrictive effects are inherent in the pursuit of those objectives, genuinely necessary and proportionate. Yet, in the specific context of professional football, the boundary is difficult to draw, since the integrity and regularity of the competition are at once a sporting value, a public-interest objective and a condition for the proper functioning of the market.

That difficulty stems from the interdependence between the sporting and economic dimensions of professional football. In markets involving undertakings engaged in purely economic activities, a legitimate public-interest objective – the protection of health or safety, for instance – is usually analytically external to the competitive process, even if it may justify certain restrictions under a proportionality test. In professional sport, by contrast, the

[58] *Tondela*, paragraphs 82-86.
[59] *Ivi*, paragraphs 95-100.

integrity of the competition is not external to the market: it is part of the product and of the conditions under which competition between clubs takes place. This is why the same consideration may be framed, depending on the analytical stage, either as a pro-competitive aim relevant to the object assessment or as a legitimate objective capable of triggering the *Wouters/Meca-Medina* test. The difficulty is not merely terminological: rather, it reflects the coexistence, in the same market setting, of competition between clubs as economic undertakings and competition between clubs as sporting participants, two dimensions which are analytically distinct but commercially and functionally interdependent.

This overlap also explains why the comparison with *FIFA*, although instructive, is not straightforward. In that case, the preservation of the regularity and integrity of sporting competitions was treated primarily as a legitimate objective in the public interest, relevant to the possible justification of transfer rules.[60] In *Tondela*, roster stability may also be characterised as an objectively pro-competitive aim, because the agreement responded to an imminent and exceptional disruption of the competitive process caused by the pandemic and the extension of the season. The novelty therefore lies not in the abstract availability of Article 101(3) for restrictions by object, already confirmed in *FIFA*, but, more specifically, in the role that a competition-related pro-competitive aim may play at the anterior stage of characterisation under Article 101(1). The distinction may lie in the temporary and emergency character of the measure, as opposed to the general regulatory framework at issue in *FIFA*. The Court, however, does not expressly theorise that distinction, leaving open the question of when an objective connected with sporting integrity should be treated as pro-competitive, rather than merely legitimate but competition-neutral.[61]

This overlap also bears on the role of Article 101(3). If pro-competitive considerations may affect the characterisation of the agreement under Article 101(1), and legitimate public-interest objectives may exclude certain non-object restrictions from Article 101(1) under *Wouters/Meca-Medina*, the role

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[60] *FIFA*, paragraphs 100-102 and 149-151, where the Court had already held that rules operating as a general, drastic and permanent restriction on the unilateral recruitment of players could be characterised as restrictions by object of cross-border competition and, as such, could not benefit from the *Wouters/Meca-Medina* logic; the only possible route was Article 101(3).

[61] S. HUIJTS, *The Tondela ruling: VAR needed to decide object of Covid-19 no-poach*, cited above, observing that *Tondela* raises the practical difficulty of distinguishing pro-competitive objectives from legitimate but competition-neutral objectives, particularly in comparison with *FIFA*, where similar concerns relating to the integrity and regularity of football competitions were treated primarily as legitimate objectives.

of Article 101(3) must be kept conceptually distinct. Article 101(3) is not concerned with whether the agreement should be characterised as restrictive, nor with whether the restriction is inherent in a legitimate public-interest objective. It is an exemption mechanism for agreements that fall within Article 101(1), including restrictions by object, where the strict conditions provided for are met. The judgment does not collapse those categories, but it illustrates how, in sport markets, the same factual consideration may appear to pull in more than one direction. This is why the architecture is clear in law, but more difficult in application.[62]

The AG Opinion is useful in this respect, as it gives more concrete content to the proportionality analysis that would arise only if the agreement were not classified as restrictive by object. The AG considered that the preservation of fairness and openness in sporting competitions, expressly recognised by Article 165(2) TFEU, and the regularity of interclub football competitions could constitute legitimate objectives in the public interest.[63] He then approached necessity not as absolute indispensability, but in terms of reasonableness: whether the clubs and the association could reasonably consider that the agreement would make a meaningful contribution to the objective pursued and that less restrictive measures would not be equally effective.[64] In that assessment, factors such as the limited personal, geographical and temporal scope of the agreement, the urgency and uncertainty of the pandemic context, the European Competition Network's statement acknowledging the possible need for cooperation between businesses during the pandemic, and the fact

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[62] In this sense, see G. MONTI, *The Tondela Judgment: More Questions than Answers?*, in *Kluwer Competition Law Blog*, 7 May 2026, available here, noting that the judgment distinguishes between a pro-competitive aim, relevant to the assessment of the object of the agreement under Article 101(1) TFEU, and a legitimate objective in the public interest, relevant to the *Wouters/Meca-Medina* analysis in the case of non-object restrictions. Monti questions, however, whether the judgment makes a real difference between the two in the circumstances of the case, since the stability of player rosters appears both as the pro-competitive aim identified in the by-object analysis and as part of the legitimate objective of ensuring the regularity of sporting competitions. As noted above, that concern is particularly persuasive in *Tondela*, where the sector-specific features of professional football have a double relevance under Article 101(1), insofar as the clubs compete both as undertakings on the market for players' services and as sporting participants in a competition whose integrity and comparability are themselves conditions for meaningful rivalry. In such a setting, the pro-competitive aim and the legitimate objective may both concern competitive dynamics, albeit in different but interdependent senses. Monti further observes that, if pro-competitive considerations and public-interest objectives both operate within Article 101(1), the residual role of Article 101(3) TFEU becomes less straightforward and would benefit from further clarification by the Court.

[63] Opinion of AG Emiliou, *Tondela*, points 75-80.

[64] *Ivi*, points 81-85.

that the players concerned remained free to sign outside Portugal or with Portuguese clubs after the end of the season all appeared relevant.[65]

The Court, for its part, does not carry out that concrete proportionality assessment, which remains for the referring court. It does, however, make clear that the *Wouters/Meca-Medina* route is available not only in relation to formal rules adopted by a sporting association, but also for coordination between an association and its members, irrespective of the form that coordination takes.[66] At the same time, in pointing out that agreement at issue had been concluded by clubs and supported or endorsed by the national association, the judgment does not fully explain the legal significance of that endorsement: whether it matters for attribution, for the characterisation of the measure as part of the regulatory context, or for the possible application of the legitimate-objective test.[67]

Tondela therefore brings a useful degree of systematic clarity to the relationship between the different layers of Article 101 TFEU, while also explaining the doubts generated by the judgment among commentators and practitioners. In professional football, the integrity of the competition is not merely a regulatory or public-interest value external to the market, but also a condition for the meaningful operation of sporting and economic competition between clubs. The same factual consideration may therefore appear at once as a pro-competitive aim, as a legitimate public-interest objective and as a potential source of efficiencies. The judgment thus preserves the conceptual architecture of Article 101, while showing how difficult it may be to draw its boundaries where the market concerned is structured around the interdependence between economic and sporting competition.

6. *Concluding Remarks*

Tondela is likely to occupy an important place in the developing EU competition-law approach to labour-market restrictions, not merely because it is the first judgment in which the Court directly addresses a standalone no-poach agreement between competing employers, but because it does so within

[65] *Ivi*, points 86-93.
[66] *Tondela*, paragraphs 70-72 and 95.
[67] G. MONTI, *The Tondela Judgment: More Questions than Answers?*, cited above, noting that the judgment refers to the support or endorsement of the national sporting association without fully clarifying the legal significance of that factor, in particular whether it is relevant for attribution, for the assessment of the regulatory context, or for the possible application of the legitimate-objective analysis.

the ordinary analytical structure of Article 101 TFEU. The ruling confirms that competition between undertakings is not confined to downstream markets for goods and services, but may also unfold on input markets, including markets for the recruitment of workers. In that sense, the case contributes to the broader debate on labour-market restraints in EU antitrust law: no-poach agreements do not primarily affect prices, output or quality offered to consumers downstream, but rather the ability of workers to move between employers and the ability of employers to compete for their services. The underlying question is not inherently sports-specific, since it concerns the conditions under which an agreement between competing employers not to hire certain workers may reveal, by its very nature, a sufficient degree of harm to competition.

The judgment is equally significant because it forms part of the recent and increasingly dense line of case-law concerning sport and EU competition law. Following *ISU*, *Superleague*, *Royal Antwerp* and *FIFA*, *Tondela* confirms that sporting rules and practices are not immune from EU competition law merely because they pursue objectives connected with the organisation, integrity or fairness of sporting competitions. At the same time, the judgment also confirms that the specific characteristics of sport may be relevant in the application of Articles 101 and 102 TFEU. Article 165 TFEU does not exempt sport from the application of primary EU law, nor does it require sport to receive special treatment; rather, sport-specific features may inform the economic and legal context in which the conduct must be assessed. The sporting context therefore narrows the factual setting of the dispute, but it does not necessarily narrow the normative reach of the Court's reasoning.

That point is central to the judgment's treatment of restrictions by object. The classification of an agreement as restrictive by object remains one of the most consequential threshold questions under Article 101(1) TFEU, since it determines not only the intensity of the analysis required from competition authorities and courts, but also the availability of possible justificatory routes. In particular, the recent sports case-law has made clear that the *Wouters/Meca-Medina* logic cannot be relied upon to justify conduct already classified as restrictive by object; for such conduct, the only possible route is Article 101(3) TFEU, provided that its cumulative conditions are satisfied. In a case such as *Tondela*, where the no-poach agreement was presented as pursuing an objective connected with the stability and integrity of the sporting competition, the by-object classification was therefore especially decisive.

The Court's answer is neither formalistic nor permissive. On the one hand, it treats no-poach agreements between competing employers with severity, since they restrict competition for labour, may weaken workers' opportunities and bargaining power, and may be assimilated to horizontal arrangements allocating sources of supply. On the other hand, it does not transform the no-poach label into an automatic legal characterisation. The agreement's content, objectives and economic and legal context must still be examined in order to determine whether it reveals the degree of harm required for a restriction by object. In this sense, the judgment confirms the seriousness of labour-market coordination without allowing that seriousness to displace the disciplined assessment required under Article 101(1).

The specificity of sport is relevant in that assessment in two distinct but connected respects. First, it forms part of the context in which the restrictive nature of the agreement must be assessed: the no-poach arrangement cannot be analysed in the abstract, detached from the organisation of a professional football championship and from the market and regulatory environment in which it operated. Secondly, the same sporting specificity may help explain the possible pro-competitive rationale of the measure. In professional football, roster stability may be connected to the preservation of meaningful competition between teams, because if performances delivered at different stages of the season cease to be validly comparable, the competitive process within that specific market may itself be distorted.

The judgment thus acknowledges that the same agreement may restrict competition in one dimension while being presented as serving competition in another. From the perspective of the upstream market for the recruitment of players, the agreement restricted rivalry between clubs for an essential input; from the perspective of the sporting competition, however, it could be understood as seeking to preserve the conditions for fair and meaningful rivalry between teams. This duality does not create a safe harbour for collective restrictions on player mobility, since a legitimate or pro-competitive sporting rationale cannot, by itself, neutralise the restrictive character of the agreement. It does, however, explain why the assessment could not be reduced to the formal identification of a no-poach clause.

Read against Advocate General Emiliou's Opinion, the judgment does not depart from the contextual sensitivity already present in the Opinion, but channels it through a more structured Article 101 analysis. The Opinion had placed emphasis on the exceptional sporting and pandemic context and on the genuine rationale of the agreement; the Court, while maintaining the need for contextual assessment, gives that approach a more precise judicial formulation. No-poach agreements between competing employers are highly suspect and may be comparable to horizontal arrangements allocating sources of supply, but their content, objectives and economic and legal context must still be examined in order to determine whether they reveal the degree of harm required for a restriction by object.

The judgment also offers a useful, though not entirely unproblematic, clarification of the relationship between the different layers of Article 101 TFEU. A pro-competitive aim may be relevant at the stage of Article 101(1), insofar as it bears on whether the agreement reveals a sufficient degree of harm to be characterised as restrictive by object; a legitimate objective in the public interest may operate, still within Article 101(1), under the *Wouters/Meca-Medina* framework, but only where the agreement is not restrictive by object and the restriction is inherent in, and proportionate to, that objective; Article 101(3), by contrast, remains the exemption mechanism for agreements that fall within the prohibition, including restrictions by object. The architecture is coherent in principle, although *Tondela* shows that its application may be more complex where, as in professional football, the integrity of the competition is simultaneously a sporting value, a regulatory objective and a condition for meaningful market competition.

The broader significance of *Tondela* lies precisely in this methodological balance. It combines typological severity with contextual openness: no-poach agreements are strongly suspect because they restrict competition for labour and may resemble the allocation of sources of supply, yet their classification as restrictions by object remains dependent on the full Article 101(1) analysis. In that sense, *Tondela* is not only a judgment about football. It is a judgment about how EU competition law should approach labour-market restraints where hard-core coordination, sectoral specificities and possible pro-competitive rationales intersect.

ABSTRACT (ita)

La sentenza *Tondela* offre alla Corte di giustizia l'occasione per precisare il trattamento degli accordi di *no-poach* nel diritto della concorrenza dell'Unione, in un contesto in cui il mercato del lavoro, la specificità dello sport e la nozione di restrizione per oggetto vengono a sovrapporsi. Muovendo dall'accordo concluso tra club calcistici professionistici portoghesi durante la pandemia da Covid-19, il contributo colloca la pronuncia all'intersezione tra tre linee evolutive del diritto della concorrenza dell'Unione: la crescente attenzione verso le restrizioni nei mercati del lavoro, il consolidamento della giurisprudenza sull'applicazione delle regole antitrust allo sport e il dibattito sulla nozione di restrizione per oggetto e sui limiti delle possibili giustificazioni. Dall'analisi emerge che la Corte conferma la particolare gravità degli accordi di *no-poach*, in quanto idonei a limitare la concorrenza tra datori di lavoro per l'acquisizione di una risorsa essenziale, al contempo evitando una qualificazione automatica di tali accordi come restrizioni per oggetto. La sentenza richiede, invece, una verifica del contenuto dell'accordo, dei suoi obiettivi e del contesto economico e giuridico nel quale esso si inserisce. Particolare rilievo assume, in tale prospettiva, la specificità dello sport, che non opera come esenzione o zona franca rispetto all'art. 101 TFUE, bensì come elemento di contestualizzazione dell'analisi concorrenziale. Il contributo esamina infine il rapporto tra obiettivi pro-competitivi, obiettivi legittimi di interesse pubblico, dottrina *Wouters/Meca-Medina* e art. 101, par. 3, TFUE, mostrando come *Tondela* preservi l'architettura concettuale dell'art. 101, pur evidenziandone la complessità applicativa nei mercati in cui concorrenza economica e competizione sportiva risultano strutturalmente interdipendenti.

ABSTRACT (eng)

The judgment in the *Tondela* case gave the Court of Justice the opportunity to clarify the treatment of no-poach agreements in EU competition law, in a setting where labour-market restraints, the specificity of sport and the notion of restriction by object intersect. Taking as its starting point the agreement concluded between Portuguese professional football clubs during the Covid-19 pandemic, the paper situates the judgment at the intersection of three developments in EU competition law: the growing attention paid to restrictions affecting labour markets, the consolidation of the case law on the application of antitrust rules to sport, and the long-standing debate on restrictions by object and the limits of possible justifications. The analysis shows that the Court confirms the serious competitive concerns raised by no-poach agreements, insofar as they may restrict competition between employers for an essential input, while rejecting any automatic equation between the no-poach label and the category of restrictions by object. Instead, the judgment requires an assessment of the content of the agreement, its objectives and the economic and legal context of which it forms part. In that respect, the specificity of sport plays a central role, not as an exemption from Article 101 TFEU, but as a contextual factor informing the competition-law analysis. The paper further examines the relationship between pro-competitive aims, legitimate objectives in the public interest, the *Wouters/Meca-Medina* doctrine and Article 101(3) TFEU. It argues that *Tondela* preserves the conceptual architecture of Article 101, while revealing the difficulties that arise where economic competition and sporting competition are structurally interdependent.