



ELSA the Netherlands
Moot Court
Competition

CASE OF THE COMPETITION

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Grand Winners' Cup v Mega League

1. The European Football Federation's (EFF) Grand Winners League has been the main football competition in Europe since 1956. More recently, it has ventured into entertaining a virtual football league, for the purpose of which it has partnered with Sonsoft, a Swedish producer of gaming consoles, and Tsunami Sports, a US-based video game developer, to create a virtual football game called Grand Winners. Since its release in 2013, Grand Winners has attracted a considerable audience and has generated a worldwide turnover of €1,3 billion.
2. The marketing and management of Grand Winners has been entertained by Grand Winners N.V., a fully functional joint venture between EFF, Sonsoft, and Tsunami Sports. The trademark for Grand Winners, as well as the copyright for the game are held by Tsunami Sports. Furthermore, Sonsoft holds the patent for its characteristic gamepad which was used as a starting point for the design of the game. While competitors' gamepads can be used to play Grand Winners, the game was specifically designed based on Sonsoft's gamepad, and many professional players confirm that they have suffered disadvantages using other gamepads.
3. Since 2015, the Grand Winners N.V. also organises the annual Grand Winners' Cup, a month-long virtual competition during which teams from around the world compete against each other. For the e-sports community, this event is a huge deal: teams register a year ahead and train for months leading up to the competition. The rules of the online game were more or less identical to those of real-life football, save for a number of rules concerning the online environment that would ensure a safe and fair functioning of the game. For example, penalties were attached to (attempted) manipulation of the software or the use of AI technologies. Due to an overflow of teams, a decision was taken in 2017 to organise national pre-selection rounds. Since 2018, these rounds are run by independent organisations recognised by Grand Winners N.V., to whom the use of the game was licensed by Tsunami Sports.
4. Grand Winners applies several mechanisms to select best performing teams to participate in the Grand Winners' Cup. Firstly, national league rankings are created, in which leagues that perform best as a whole in the competition are offered more spots for their teams the following year. Secondly, by only allowing the best performing teams on a national level during the previous season, for instance the champions of the national league, to participate in the new edition of the competition.

5. In 2020, as the world was hit by the global COVID-19 pandemic, the world of physical football suffered as games were either cancelled or took place without an audience. At the same time, the International Soccer Association's (ISA) image was destroyed as major news outlets reported on the blatant disregard of workers' fundamental rights in the preparation for the International Soccer Cup. Against this background, Grand Winners gained additional popularity, its turnover increased significantly between the beginning of 2019 and the end of 2021, and the Grand Winners' Cup gathered more and more audience.
6. At that time, the Grand Winners' Cup had already developed into a fully professional competition: teams were sponsored by large multinational enterprises (Coca-Cola, Red Bull and Unilever are only a couple of examples), the games were broadcasted on twitch, with which Grand Winners N.V. had entered into an exclusive broadcasting agreement valid for 5 years, and the international rounds were carried out in a large Stadium specifically adapted for e-sporting events, for which tickets were sold at prices up to 200€.
7. However, the growth of the Grand Winners' Cup also came with adverse effects. First of all, amateur teams were no longer given the opportunity to compete in an international competition, as the Grand Winners' Cup participants were now only professionals or quasi-professionals. Moreover, advertising prices rose exponentially, causing grief among some of the established sponsors of the Grand Winners' Cup. Finally, some of the biggest and most professional teams were frustrated by the selection process. Real Madrid, for example, had been one of the big Spanish teams for many years, but had missed out on a number of international Grand Winner's Cups because it didn't qualify in the pre-selection rounds. With the inherent risk of failing to qualify, teams feared that investments in equipment and players could not be recovered and started searching for ways that would lead to a more guaranteed basis for success.
8. In May 2020, Real Madrid president Florentino Pérez restarted plans for the creation of a new virtual football competition which he named "Mega League". The project involved the creation of a partially closed league where 15 competitors would be permanent members, granting their participation in the league every year, and there would be five other "guest teams" that would change on a yearly basis.
9. The Mega League's competition format would have two stages. Firstly, there would be a split between the 20 teams, placing each of them in a 10-team group. Each team in the group would face all the other teams once and get awarded three points if they won, 1 point if they

drew, and 0 points if they lost. After all the games, the 3 best performing teams from each group would qualify for a knockout stage. The 4th and 5th placed teams from each group would play a play-off round where the two winning teams also qualified for the knockout stage. In the knockout stage, teams would be paired off and play two-legged rounds where the winning teams would proceed to the next round and the losing team would be eliminated. Finally, the last two remaining teams would play against each other in a single-legged final game where the winner would be crowned champion.

10. This new format would increase the number of matches, and thus profits for the teams, and would also grant economic stability to the permanent members as they would have a consistent source of profits that did not depend on their team's performances.
11. In November 2020, Carlos Márquez approached Ed North, the CEO of Tsunami Sports, asking for a licence to use Grand Winners as a basis for their new league. North, however, denied this request. Following this, Carlos Márquez approached Japanese game and electronic devices developer Itachi, a main competitor of Tsunami Sports and Sonsoft, which was in the process of developing a virtual football environment similar to that of Grand Winners. They agreed to cooperate.
12. On the 20th of February 2021, the Mega League project received a \$5 billion USD investment from an American bank called Goliath National Bank.
13. On the 18th of April 2021, Carlos Márquez announced the creation of the Mega League along with 9 of its permanent members: Italian clubs Bengals Milan, Piedmont Calcio, and Rome Bucks, Spanish clubs Madrid Rams, FC Cataluña, and Cuervos de Nuevo Toledo, and German clubs Munich Boys, Borussia FC, and GSSA. All of these teams had been founded as teams competing in the Grand Winners' Cup.
14. Article 13 sub-section 3 of the Contract on the Functioning of the Mega League states that: "All of the permanent members of the Mega League shall be granted a yearly monetary sum of 50 million euros for entering the first stage of the competition."
15. Under article 5, sub-paragraph 2 of the Terms and Conditions Agreement on the EFF's Grand Winners' Cup it states that: "All of the clubs that qualify for the group-stage of the Grand Winners League shall be granted a monetary sum of 15 million euros for entering the competition."
16. On the 20th of April 2021, EFF and Grand Winners N.V. released a joint statement declaring their intention to prevent the Mega League from proceeding. In the statement EFF claimed

that: "All the clubs involved in the Mega League will be banned from domestic, European, and worldwide football competitions; and all football players that are members of clubs involved in the Mega League will be banned from representing their national teams in international matches"

17. On the 21st of April, Rams Madrid filed a complaint against EFF to the Commercial Court of Madrid on for EFF's proposals to stop the Mega League from materialising.
18. On the 21st of April, German club Munich Boys released a statement that it no longer intended to take part in the Mega League. A few hours later, all other German clubs stated that they were withdrawing their participation in the Mega League. On the morning of the 22nd, all other involved teams other than FC Cataluña, Rams Madrid, and Piedmont Calcio consequently withdrew their membership from the Super League.
19. On the 23rd of April, EFF representative Dariusz Tavernelowski stated that the EFF was looking into legal assessments to choose what action to take against the Mega League regarding antitrust law and that a potential ban from domestic and European competitions.
20. At the same time, Ed North consulted his lawyers on launching a legal action against Itachi for infringement of the intellectual property rights held by Tsunami Sports in relation to Grand Winners. On the morning of the 25th of April, he filed his complaint with the District Court for the Central District of California.
21. On the 25th of April, the European Commission released a statement saying they did not plan to investigate the Mega League's alleged antitrust violations.
22. On the 26th of April, the Madrid Commercial Court published a *medida cautelarísima* with legal value and to be executed throughout the entire European Union on the basis of the 2007 Lugano Convention, ruling that the EFF cannot publish press notes and/or interviews against the Mega League project and its founding members, cannot block the launch of the Mega League, and cannot sanction any of its founding clubs, its managers personnel, and its footballers based on articles 45, 49, 56, and 63 of the Treaty on the Functioning of the European Union (TFEU), until the court has fully considered the case.
23. On the 13th of May, the Madrid Commercial court referred the following preliminary questions to the Court of Justice of the European Union.
 - a. *Does conduct, such as that of EFF, Tsunami Sports and Grand Winners N.V., whereby they prevent clubs from joining other football leagues and restrict the access to the game to competitors or potential competitors, constitute a restriction of competition and a violation of Article 102 TFEU?*

- b. Does conduct, such as the one presented by the teams of Bengals Milan, Piedmont Calcio, Rome Bucks, Madrid Rams, FC Cataluña, Cuervos de Nuevo Toledo, German clubs Munich Boys, Borussia FC, and GSSA, whereby they decide to form a new e-sports league, constitute an anticompetitive agreement or concerted practice and thereby a violation of Article 101 TFEU?*

You are assigned as legal counsel to the organisers of the Grand Winners' Cup and the Mega League respectively and charged to represent them in the proceedings before the CJEU.