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### Litigation of the Year – Non-Cartel Defence

## *Relevant Sports v US Soccer Federation*

*Relevant Sports v US Soccer Federation* won the award for Litigation of the Year – Non-cartel Defence. In July 2020, the US Soccer Federation (USSF) successfully warded off antitrust claims brought by sporting event organiser Relevant Sports. The latter had sued the US soccer body in September 2019 for allegedly entering into a vertical and horizontal conspiracy with football's international governing body, the Fédération Internationale de Football Association (FIFA), to stop teams from playing competitive international matches in the US. The USSF had sought to compel arbitration or dismiss the claims altogether.

Judge Valeria Caproni of the US District Court for the Southern District of New York found that FIFA lacked jurisdiction to arbitrate the claims, but she sided with the federation and dropped the case. The defence successfully argued that the USSF was simply complying with a FIFA directive, leading to the judge finding that there was insufficient evidence of an unlawful agreement. While the judge left room for Relevant Sports to amend its claim, she noted that USSF had obvious reasons for wanting to adhere to FIFA's rules – including avoiding the possibility that all US men's soccer players would be found ineligible to play in the World Cup. The court also said that FIFA would need to be a defendant in the case if Relevant was to receive its requested injunctive relief to host games, but that the Southern District of New York lacks jurisdiction to enjoin FIFA from any behaviour.

### Counsel to US Soccer Federation

Latham & Watkins

Partners Lawrence Buterman in New York and Christopher Yates in San Francisco, assisted by Aaron Chiu and Elizabeth Yandell



## Q&A

# Lawrence Buterman at Latham & Watkins, who was counsel to US Soccer Federation

### What were the key legal questions in this case and how were you able to successfully defend against the claims?

The underlying dispute has to do with a soccer promoter's desire to host foreign leagues' official season matches in the US. FIFA has long-standing rules and directives that prohibit any league's official season matches from being played on foreign soil. This particular case arose because US Soccer adhered to FIFA's rule and denied Relevant's request to host an official Spanish league season match in Miami. As a FIFA national association and the national governing body for soccer in the United States, US Soccer had no choice but to follow FIFA's rules and directives and deny Relevant the sanction necessary for the match to go forward. After US Soccer denied the sanction, Relevant brought antitrust and tortious interference claims against US Soccer only, on the theory that US Soccer's denial of the sanction resulted from a conspiracy between US Soccer, FIFA and various other FIFA confederations and national associations to boycott professional leagues, clubs and players that seek to participate in such foreign official league games.

One of our primary legal strategies was to convey that Relevant was trying incorrectly to cast US Soccer's compliance with a FIFA rule as some sort of anticompetitive agreement. We focused on explaining to the court why the plaintiff's problem was really not with US Soccer and thus could not be fully solved through a suit against US Soccer. This is because, even if US Soccer were ordered by the court to grant Relevant the requested sanction, FIFA itself and the other participating national associations and confederations would withhold their required approvals so long as FIFA's underlying rule prohibits the match. We argued that at a minimum, FIFA was a necessary and indispensable party to this litigation. We also noted that Relevant had not alleged or presented any evidence that FIFA and US Soccer had actually agreed to prohibit the matches in question, nor would it make any sense for them to do so.

The court accepted that Relevant's fundamental grievance stemmed from the FIFA rule, and so practically FIFA was an indispensable party that had not been joined and the only conduct being complained of was US Soccer's obligatory rules compliance, which is insufficient to allege any sort of anticompetitive agreement in restraint of trade.

### What are the hurdles in defending a private claim where the head of the DOJ's antitrust division weighs in by issuing what was called an "unusual" warning to FIFA about its rules?

Any time the DOJ weighs in on private litigation, the question becomes how much deference the trial court will give the DOJ's position. The challenge when the DOJ submits a statement in private litigation that is not supportive of your position is that you need to decide how aggressively to fight back. That requires a lot of strategic thinking and balancing between the goals of prevailing in civil litigation and avoiding potential ire from antitrust investigators. Here, what was so unusual was that the DOJ was not investigating US Soccer, nor did it actually inject itself directly into the private litigation. Rather, it sent a letter to US Soccer and FIFA regarding a proposed FIFA rule that never ended up being adopted – and it was the plaintiff in the case that obtained the letter and attempted to use it

to advance its litigation position. Because DOJ had not interjected itself directly into our matter, and because US Soccer had not taken any action regarding the issue in the DOJ's letter, we were able to avoid going down a rabbit hole on the issue. While the plaintiff tried to make a big deal of the DOJ's letter, we did not over-engage on the issue. We focused our briefs on the fact that the plaintiff had failed to please a cognisable and plausible antitrust theory, and simply clarified for the court that the DOJ letter actually concerned a proposed FIFA rule that was never adopted, and hence was not directly related to the core issues in our case.

### **Have courts struck the right balance in their interpretations of arbitration clauses as they pertain to antitrust violations?**

There are certainly complex policy issues when it comes to arbitration clauses and antitrust claims. Here, what is important to understand is that the court did not refuse to compel Relevent's arbitration claims simply because they were antitrust claims. Rather, the key issue was that the specific foreign arbitral body at issue, the Court of Arbitration of Sport, had previously declined to address US antitrust claims in a prior arbitration between virtually the same parties. Because of that precedent, the court felt that sending the matter to arbitration would only delay the resolution of the dispute, since that foreign tribunal was likely to follow its own precedent and decline to rule on US antitrust issues, sending the matter back to the court.