

Ski Instructors Union on a Slippery Slope With French Competition Authority Fine of €3.4 Million

Skadden

April 22, 2026

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Bill Batchelor

Partner / Brussels
32.2.639.0312
bill.batchelor@skadden.com

Karen M. Lent

Partner / New York
212.735.3276
karen.lent@skadden.com

Vikram J. Pandit

Associate / Brussels
32.2.639.2140
vikram.pandit@skadden.com

Knowledge Management intern

Rayhane Ricci contributed to this article.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

Avenue Louise 480
1050 Brussels
32.2.639.0300

Executive Summary

- **What's new:** The French Competition Authority fined France's ski instructors' union €3.4 million for imposing an exclusivity obligation on member instructors that prevented them from working independently or with ski schools other than its affiliate, ESF.¹
- **Why it matters:** The decision reflects Europe's enhanced antitrust scrutiny in labor markets (including strict treatment of broad noncompete clauses) and applies antitrust prohibitions on anticompetitive horizontal agreements to self-employed workers, professional unions and sporting entities in France.
- **What to do next:** Professional unions, sports associations and teams should be aware of how European antitrust scrutiny extends to membership requirements and recruitment practices, which may involve independent (rather than employed) players, coaches or staff. Exclusivity requirements must not apply systematically to inhibit counterparties' abilities to seek alternative membership or employment for an unreasonably long period of time in the context of the activity, e.g., including periods outside the active season.

Case Background

Syndicat national des moniteurs du ski français (SNMSF) is the largest union for ski instructors in France. Approximately 16,000 of France's 20,000 ski instructors are members and 216 of 250 ski resorts host an affiliated École du ski français (ESF) ski school.

SNMSF requires instructors to sign a standard operation agreement. In 2006, the union adopted a clause prohibiting member instructors "from teaching in a competing individual or group structure."² The clause was reinforced with sanctions in 2013, including (i) automatic exclusion from SNMSF and ESF for noncompliance, (ii) a ban on membership of alternative unions for existing SNMSF members and (iii) suspension for any instructor who fails to forward all instruction fees received to the ESF. The exclusivity obligation applied identically to all member instructors and local ESF branches could not amend it, irrespective of: the type of skiing taught (skiing, snowboarding, etc.); lesson format (individual or group); the level of teaching or activity (beginner or advanced); and time of year (*i.e.*, the obligation applied for the annual membership period not limited to the ski season).³ SNMSF's president stated that the purpose of the obligation was to reinforce the "principle of loyalty"⁴ to the union and the objective of the sanctions was to "defend 'the wolf-pack,' the group that constitutes the ski school."⁵

¹ French Competition Authority, [Decision 26-D-03](#) of 17 March 2026.

² Paragraph 73, "*les moniteurs s'interdisent d'enseigner dans une structure concurrente individuelle ou collective. Les moniteurs pourront exercer au sein d'une autre ESF sous réserve d'un accord du directeur de l'ESF d'origine.*"

³ Paragraphs 203-205.

⁴ Paragraphs 101-102.

⁵ Paragraph 64, "*La vocation du Syndicat national est certes de défendre le moniteur, mais il doit avant tout défendre 'la meute', le groupement que constitue l'école de ski.*"

Ski Instructors Union on a Slippery Slope With French Competition Authority Fine of €3.4 Million

Decision

The French Competition Authority (FCA) recognized the broad application of the obligation and these SNMSF statements as clear evidence of SNMSF's objective to limit instructors' choice of work and competing ski schools' abilities to recruit.⁶ This generalized restriction was considered highly likely to result in foreclosure of the national French market for ski instruction given SNMSF's strong position.⁷ Therefore, the FCA determined that the exclusivity obligation constituted a *by object* restriction of competition — the most severe infringement of European competition law — within the meaning of Art. 101(1) of the Treaty on the Functioning of the European Union (TFEU) and Art. L. 420-1 of the French Commercial Code.

A Horizontal or Vertical Relationship?

The FCA classified the agreement as horizontal in nature, between member instructors through the SNMSF.⁸ SNMSF claimed that a vertical franchise relationship existed between SNMSF, as the owner of the ESF brand, and licensee ski instructors teaching under that brand.⁹ On this basis, SNMSF argued it could benefit from the EU's Vertical Block Exemption Regulation (VBER) because exclusivity was imposed to protect the ESF brand and limited to one membership year in duration and because penalties were not incurred upon cancellation of membership. The FCA determined the relationship was horizontal, however, because the member instructors together constitute SNMSF. The two are not economically distinct like franchisors and franchisees.¹⁰

Naturally Anticompetitive System

SNMSF also claimed the obligation was necessary to ensure the stability of lesson-planning and coverage.¹¹ SNMSF highlighted competing ski schools' comparable provisions and suggested any competing ski schools' alleged shortage of instructors would materialize only in peak periods, when the increased level of

business would facilitate recruitment of additional instructors,¹² suggesting these fluctuations emphasized the seasonal nature of the activity and justified the clause. The FCA rejected all SNMSF's arguments, based on the following grounds:

- Competing ski schools' exclusivity provisions were more flexible, applying to instructors selectively and permitting instructors to negotiate the duration of their exclusivity — for a number of weeks rather than the whole membership year including outside of the ski season, the latter of which the FCA found “excessive.”^{13 14}
- Sanctions introduced by SNMSF in 2013 have reinforced a naturally anticompetitive system with their dissuasive and disciplinary effects, highlighted by these three facts:
 - The average duration of recurrent SNMSF membership is 19 years with only approximately 5% of members not renewing each year, compared with other schools, where average membership is the agreed term of instruction period.
 - Nearly all SNMSF member instructors work for (and agree to the exclusivity of) their local ESF school.
 - The two exclusions from SNMSF imposed since 2006 demonstrate member instructors' unconditional compliance with the obligations.¹⁵

Dismissed Efficiency Claims

The FCA also dismissed SNMSF's claims that efficiency gains justified the exclusivity obligation under Art. 101(3) TFEU. SNMSF contended that the obligation improves the provision and technical improvements of ski instruction and contributed to ski resorts' economic growth, schedule management and cost reductions. SNMSF also argued that exclusivity was essential to protect ESF schools from free-riding and poaching of its clients.¹⁶ The FCA determined there was no evidence to support these claims.¹⁷

- Smaller, competing ski schools managed schedules and costs with less stringent exclusivity requirements.

⁶ Competing ski schools reported difficulties in recruiting instructors due to SNMSF's exclusivity obligations, paragraph 212.

⁷ Paragraph 198. Although the FCA indicated SNMSF had a particularly strong position in the national market for ski instruction, the FCA did not assess the agreement under the EU abuse of dominance framework in Art. 102 TFEU because of the role played by member instructors in establishing and agreeing to the obligation; paragraphs 229, 238.

⁸ Paragraphs 168-178.

⁹ Paragraph 161.

¹⁰ Paragraphs 169, 175.

¹¹ Paragraphs 194-196.

¹² Paragraph 193.

¹³ Art. 101 TFEU prohibits noncompete clauses with duration exceeding five years or left undetermined. Although SNMSF's exclusivity obligation applied for only one membership year at a time, its application throughout periods where ski instruction did not occur contributed to the finding that it had an object of restricting competition.

¹⁴ Paragraphs 205, 212-213.

¹⁵ Paragraphs 206-217.

¹⁶ Paragraphs 256-259.

¹⁷ Paragraphs 260-268.

Ski Instructors Union on a Slippery Slope With French Competition Authority Fine of €3.4 Million

- There was no tangible risk of free-riding or poaching harming SNMSF if instructors were engaged by multiple schools at once because qualified instructors receive the same training and could adapt to different schools' methods, avoiding damage to ESF's brand.
- The SNMSF agreement allows member instructors to move between different ESF schools, so instructors using the same flexibility to work independently or with other ski schools concurrently would not harm individual ESF schools.

Penalties and Remedies

The FCA requires that SNMSF:

- Pay the imposed fine.
- Remove the problematic clause by June 2026, or modify it to match other ski schools' provisions by reducing its systematic and inflexible application and the term over which it applies, e.g., limiting the time frame to just the ski season, instead of the full calendar year.
- Publish a summary of the decision on its website and in two national newspapers.
- Communicate the fine to each of its members by email.

Reinforced Antitrust Scrutiny of Agreements Affecting Hiring Practices

Recent European judgments and enforcement have made clear that sports are not outside the remit of antitrust law. Skiing itself is being scrutinized elsewhere as the European Commission investigates three Austrian equipment manufacturers for alleged price-fixing agreements.¹⁸ However, the SNMSF ski union decision is the first French sanction of an agreement on hiring practices in the sports sector.¹⁹

The case reinforces the broader European view of labor and employment-related agreements. Elsewhere, the European Commission's director for cartel enforcement recently highlighted a focus on "collusion over market characteristics other than price";²⁰ the U.K. Competition and Markets Authority

(CMA) released guidance in late 2025 emphasizing an objective to ensure competitiveness in labor markets and prevent anti-competitive agreements limiting recruitment;²¹ and several other European regulators investigated or sanctioned similar agreements,²² with recent sanctions focusing on no-poach agreements between employers to not solicit each others' employees.²³ Now the SNMSF decision extends strict antitrust scrutiny of hiring practices to (i) self-employed, independent workers (i.e., the member ski instructors contracting with SNMSF)²⁴ and (ii) professional associations with exclusive membership terms.

Implications

This extension could have significant implications for the broader sports sector. Many sports involve self-employed athletes and staff in Europe, and several players' and coaches associations operate in Europe. The scrutiny of a noncompete agreement between self-employed ski instructors suggests that exclusivity requirements imposed on athletes or staff in other sports could face equivalent antitrust scrutiny. Teams and associations should avoid inhibiting players' or staff's abilities to seek alternative association membership or employment in a systematic manner and for sustained periods of time, particularly outside the active season.

Coming Up

SNMSF has acknowledged publicly its right to appeal but has not yet expressed an intention to do so.

Additional antitrust judgments related to sports are expected from the European Court of Justice (ECJ) in the coming months.

- At the end of April 2026, the ECJ will decide whether no-poach agreements can be permissible in exceptional circumstances. The Portuguese Professional Football League and 31 Portuguese football teams in the top two national

²¹ CMA, *Competing for Talent* (Sept. 9, 2025).

²² See, for example, the Portuguese Competition Authority's April 2022 €11.3 million fine of 31 soccer teams and the league for allegedly entering into a competitively restrictive agreement preventing the teams from recruiting players who unilaterally terminated their employment contract, due to issues caused by the COVID-19 pandemic (Case PRC/2020/1, *CD Tondela and Others*).

²³ See, for example, EC Case AT.40795 – *Food Delivery Services* (June 2, 2025). Two European food delivery companies were fined €329 million for agreeing to not solicit each other's employees and for sharing sensitive information on prices and other commercial activities.

²⁴ In March 2025, the UK CMA imposed fines totaling £4 million against five sports broadcasters for sharing sensitive information about fees for freelance workers to align on rates. The CMA found the broadcasters' conduct to be a by-object infringement of UK competition law (CMA Case 51156).

¹⁸ EC press release "[Commission Carries Out Unannounced Antitrust Inspections in the Ski Equipment Sector](#)" (Oct. 2025).

¹⁹ The FCA sanctioned a no-poach agreement in the engineering, technology consulting and IT services sectors in June 2025 (*Décision n° 25-D-03 du 11 juin 2025 relative à des pratiques mises en œuvre dans les secteurs de l'ingénierie et du conseil en technologies, ainsi que des services informatiques*).

²⁰ Maria Jaspers, Director of Cartel Enforcement, DG COMP (Jan. 22, 2026).

Ski Instructors Union on a Slippery Slope With French Competition Authority Fine of €3.4 Million

divisions agreed to not recruit other teams' players to maintain financial stability during COVID-19. The preliminary opinion suggests that agreements concluded in such situations with a specific objective and limited scope should be justifiable.²⁵

- In two further judgments anticipated in July 2026, football agents are seeking to question the lawfulness of FIFA and German soccer association rules that allegedly restrict sports agents' remuneration and conduct. ECJ Attorney General

Emilio's preliminary opinions in these cases recommend (i) applying antitrust law to sports associations' regulations targeting purely economic activities adjacent to the sport and (ii) giving the associations broader scope to regulate economic activities that relate directly to the fairness of the sport.

²⁵ECJ, C-133/24 – *CD Tondela and Others*, Opinion of AG Rantos (May 2025).