

The ongoing challenges to combatting 'tanking' in sport

Non-gambling related match fixing - often known as 'tanking' - is probably as old as the hills. The recent 2016 European Football Championships brought together 24 national teams in six groups, and there was a last-16 round for the first time. A group system works in favour of non-gambling related match fixing. Teams can manipulate matches - either by deliberately losing or playing for a particular result - to make sure they come up against or avoid a particular opponent in the next round. The draw between France and Switzerland at the European Championships was 'suspect.' Michiel van Dijk, Partner at CMS, sheds light on the legal remedies available, and how different sports deal with this problem.

The disgrace of Gijón

The 'disgrace of Gijón' was a football match between West Germany and Austria in the 1982 World Cup. It was the last match - on 25 June 1982 - in Group B, which also included Chile and Algeria. A day earlier, Algeria had beaten Chile 3-2 and so West Germany and Austria knew that if Germany won by one or two goals, both teams would qualify for the next round. Any other result would mean that Algeria would go through at the expense of West Germany or Austria. West Germany went 1-0 up when Horst Hrubesch scored. The rest of the match was a drawn-out, blatant non-aggression pact around the centre circle. The supporters in the El Molinón stadium were furious. The Algerian fans brandished banknotes and the Spanish fans chanted "out, out" to express their

disapproval. West Germany and Austria's own supporters were also unhappy and the West German flag was burnt in the stands¹.

Algeria protested to FIFA without success. In the end, FIFA did decide that in future all final World Cup group matches would be played at the same time. This rule was still in place at the World Cup in 2014² and the recent European Championships³, and is also used in the group stages of the Champions League⁴.

Professional football only?

Proper rules are usually in place in professional football, and large numbers of spectators in stadiums and on TV see what happens. However, the situation in amateur football is different. Non-gambling related match fixing has been witnessed in such matches, even in junior competitions.

On 15 May 2016, a junior team, the B1 team of football club ST Avios-DBV from Alphen aan de Maas in the Netherlands, lost by 23-0 to the B1 team of Eendracht'30 from Mook. Due to this remarkable result, Eendracht won the league at the expense of another junior team, SJO DIOSA-Niftrik B1⁵. An investigation by the KNVB Disciplinary Committee for amateur football established that the game had been "deliberately" thrown and concluded that football had been brought into disrepute. A fine was imposed and the losing team was barred from the competition and all their results were declared null and void.

Remarkably, a 'fair play covenant' was in place in the region where the teams played. The aim of the covenant was to do everything possible to promote respectful sporting behaviour, and to put an end to any undesirable behaviour on or around the football field⁶. After the events described, the covenant was reappraised.

A survey of other sports

Non-gambling related match fixing is also seen in other sports. Deals have frequently been seen in the final kilometres of professional cycling races. The Tour de France has often seen cyclists working together on the lines of: 'You win the stage; I get the yellow jersey.' An example of race fixing was seen in the 2003 Amstel Gold Race, when Dutchman Michael Boogerd came in second and 'lost' to Lance Armstrong. This was allegedly the settlement of a score dating back to the 2002 Tour de France when Boogerd and Armstrong made a gentleman's agreement in which Boogerd was 'allowed' to win the mountain stage to La Plagne. In return, Boogerd was expected to help Armstrong control the Tour and eventually win the race. It has been suggested that Boogerd failed to keep his word and that Armstrong took his revenge by making sure he did not win the 2003 Amstel Gold Race⁷.

But non-gambling related fixing is not unique to cycling: at the Olympic Games in Turin in 2006, the Swedish ice hockey team 'deliberately' lost to Slovakia in order to avoid an encounter with strong teams from Canada and Russia in the next round. At the 2012 Olympic Games in London, four badminton pairings, including two reigning world champions, were suspected of tanking to ensure that they would not have to play strong opponents. During the same Olympic Games, a track cyclist was suspected for deliberately falling in order to force a restart⁸. More recently, there were allegations that the French water polo team deliberately lost 5-13 to Canada during the Olympic qualifying tournament, avoiding a clash with the strong Spanish team in the crucial quarter-final. This meant that both the Netherlands and Canada failed to qualify for the

2016 Olympic Games in Rio.

A definition

The Court of Arbitration for Sport ('CAS') has already found⁹ that match fixing¹⁰ strikes at the heart of principles such as loyalty, integrity and fair play. It has an unsporting effect on match results, where players are encouraged not to do their best, and rewarded for misconduct.

The main aim of non-gambling related match fixing is to gain a sporting advantage. It may be done at the initiative of both individual athletes and teams. Players may be given instructions by, for example, a coach, an administrator or the organisers of a sporting event. For example, a coach may tell an athlete to lose or not to start so that another athlete can progress in a tournament. A third possibility is that financial compensation may be offered. This situation may arise, for example, when one club can benefit from winning and there is nothing more at stake for the other club. A manager at one club may then get in touch with a manager from the other club to ask them to let 'his' team win and to offer, for example, to pay the winner's prize money to the players of the losing club¹¹. A recent example was seen in the Dutch football league when PSV player Davy Pröpper made a 'playful' offer to pay for a holiday for his brother Robin, who was playing for De Graafschap, if they managed to beat Ajax in the final match of the season. The KNVB has said that incentives of this kind are not allowed¹².

In summary, non-gambling related match fixing can be defined as follows: 'match fixing is the manipulation of the results of sports competitions by influencing the course or outcome of a competition or specific events during that competition or event



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(such as individual competitions or races, or events during matches) in improper ways with the aim of obtaining a benefit for the manipulator or others and to eliminate uncertainty relating to the outcome of the match, race or competition¹³.

Some kind of match fixing must be involved so that the outcome is guaranteed to a certain extent. This definition does not therefore include picking a team with less talented or reserve players¹⁴. It should also be pointed out that any sports related reasons for fixing a match do not in any way exclude monetary motives¹⁵.

Legal framework

The law of associations applies to sports, both nationally and internationally. Some national and/or international federations have rules that prohibit non-gambling related match fixing. In the international context, it is of interest to consider the relevant regulations of the International Olympic Committee ('IOC'). Article 2(8) of the Olympic Charter states: 'the mission of the IOC is to promote Olympism throughout the world and to lead the Olympic Movement. The IOC's role is: to protect clean athletes and the integrity of sport, by leading the fight against doping, and by taking action against all forms of manipulation of competitions and related corruption¹⁶'.

In addition, the IOC Code of Ethics applies¹⁷, which includes a range of provisions relating to fair play and the manipulation of competitions. For example, Article 1 states that respect for the universal fundamental ethical principles is the foundation of Olympism, this includes fair play. Furthermore, Article 10 states that participants in the Olympic Games must not, 'by any manner whatsoever, manipulate the course

or result of a competition, or any part thereof, in a manner contrary to sporting ethics, infringe the principle of fair play or show unsporting conduct.' Furthermore, the IOC rules also include a Code on the Prevention of the Manipulation of Competitions¹⁸ and provides for an Integrity and Compliance Hotline¹⁹.

Although the current IOC rules are more sophisticated, there were general rules in place back in 2012. Nevertheless, the four badminton pairings at the Olympic Games in London were not punished on the basis of the IOC rules but on the basis of the rules of the international federation²⁰.

This demonstrates that the approach to non-gambling related match fixing is 'fragile.' Despite the fact that many national and international federations have clear rules to prevent manipulation, the conclusion would seem to be that the approach to infringements of those rules is *ad hoc*. A factor that could play a role in team sports, and possibly some individual sports, is that the pool system would appear to encourage manipulation. What matters here is not winning every match but winning the tournament. This seems to imply a justification for 'tanking' in some situations. This could explain why global action based on sports law to tackle non-gambling related match fixing appears impossible and why few successful cases have been seen.

Furthermore, given the disciplinary arrangements in place, a federation bringing charges will always have to submit evidence. Experience has shown that athletes are reluctant to 'snitch' on colleagues, which does not help to establish a structural approach to such match fixing.

The fair play covenant: a step in the right direction?

Let us return to the amateur football match between the two Dutch junior teams. As mentioned, there was a fair play covenant in place, the aim being to encourage fair play in the region. With the aim of preventing and rooting out misconduct, there was a carrot and stick approach: on the one hand, there was a reward system to promote sporting behaviour involving, for example, the selection of a team and player of the month. On the other hand, there was a system in which penalty points were issued for misconduct, with sanctions being linked to those penalty points.

This system could, with the disclosure of sanctions and so with complete transparency, also be used on a wider stage. The idea behind rewarding sporting behaviour and the additional sanctions for misconduct would require further elaboration, particularly if this approach leads to formal procedures. However, the formulation of explicit agreements would raise awareness, which would further prevention and profiling of the issue.

In addition, a range of initiatives are being developed at national and international levels. The IOC announced the formation of a Rio 2016 Joint Integrity Intelligence Unit to protect the integrity of the Games in collaboration with the Brazilian authorities²¹. In 2014, the IOC signed a Memorandum of Understanding with Interpol to extend their collaboration with the aim of opening up opportunities to ensure the safety and protection of the integrity of competition at the Olympic Games and the Youth Olympic Games²². Furthermore, the IOC has an Integrity Betting Intelligence System ('IBIS'). The Dutch NOC*NSF was the first National Olympic Committee to join the IBIS. This gives the NOC*NSF and its sports

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associations access to a network of data, including suspicious betting activity and other signals that may indicate match fixing and illegal betting by athletes^{23,24}.

Non-gambling related match fixing will be less likely in knock-out competitions because tanking will lead to elimination. Nevertheless, when there is a pool system, manipulation can be limited to a certain extent. If decisive matches are all played at the same time, it becomes more difficult to manipulate results since manipulating one's own match is less desirable when the other results in the pool are not known.

Conclusion

The conclusion would seem to be that there is currently no worldwide approach to non-gambling related match fixing. Although the phenomenon has been with us for a long time, and it is seen throughout the sporting world, a structural approach is difficult, in part because non-gambling related match fixing seems to be entrenched in some sports cultures. A fair play covenant could be a step forward in terms of rewarding fair play and punishing misconduct. However, as the stakes in sport increase, those involved are also willing to go further. This has already been demonstrated by the use of doping, despite proven damage to health in the long term. However, doping is focused on enhancing performance and that is not the case with non-gambling related match fixing. Match fixing is cheating and it falsifies competition. Given the ever increasing financial stakes and other interests involved, it is debatable whether non-gambling related match fixing can be eradicated. It may actually have to be considered an inevitable side effect of elite sports.

Michiel van Dijk Partner
CMS, Utrecht
michi.vandijk@cms-dsb.com

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1. The final result was 1-0 to West Germany.
2. Article 42(8) Regulations 2014 FIFA World Cup Brazil.
3. Article 17.01 Regulations of the UEFA European Football Championship 2014-16.
4. Article 23.02 Regulations of the UEFA Champions League 2015-18 Cycle 2016/17 Season.
5. They had already celebrated winning the league after assuming that a 23-0 result would be impossible to beat.
6. Sportiviteitsconvenant Overleg Orgaan Maas en Waal, April 2008.
7. The winner of the 2003 Amstel Gold Race was Alexander Vinokourov, to whom Armstrong 'gave' the victory.
8. And therefore introduced the 'dive' to track cycling.
9. CAS 2009/A/1920 (FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. UEFA).
10. This case related to gambling-related match fixing.
11. See Matchfixing in Nederland, Professor T. Spapens et al., p. 36.
12. <http://nos.nl/artikel/2097505-knvp-propper-mag-broer-niet-belonen-met-vakantie.html>
13. See footnote 11, p. 34.
14. Ibid.
15. Ibid, p. 28.
16. Article 2(8) of the Olympic Charter, in force as from 2 August 2015.
17. IOC Code of Ethics, IOC Code of Ethics and other texts 2016.
18. Olympic Movement Code on the Prevention of the Manipulation of Competitions, IOC Code of Ethics and other texts 2016.
19. <https://secure.registration.olympic.org/en/issue-reporter/index>
20. See the different decisions made by the BWF Disciplinary Committee of 1 August 2012 and the BWF Appeals Committee of 1 August 2012, <http://bwfbadminton.org/page.aspx?id=14883>
21. <https://www.olympic.org/news/ioc-announces-rio-2016-joint-integrity-intelligence-unit-to-protect-integrity-of-the-games-at-workshop-in-brazil>
22. <https://www.olympic.org/news/ioc-steps-up-fight-for-clean-sport-with-interpol-mou-and-new-intelligence-system>
23. <http://pers.nocnsf.nl/nocnsf-in-ioc-netwerk-tegen-matchfixing-en-illegaal-wedden-door-sporters/>
24. These initiatives focus (mainly) on threats of a different kind from those described here.