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Formula 1 Cartel Constructors' Championship: FIA Regulations and Their Aid to Anti-Competitiveness

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ABSTRACT

Formula One has been contested for close to 80 years and has held its audiences from the outset. The championship commands a following that extends beyond other categories of motorsport and, arguably, beyond most other sports. Part of that standing comes from the identity of the competitors: well-known manufacturers such as Ferrari, Mercedes-Benz, Red Bull and McLaren race against one another outside the market for accessible and road-legally engineered vehicles, while luxury houses such as Rolex and Louis Vuitton appear as sponsors and official brand partners of the sport. The result is a conspicuously flashy and attractive presentation that draws not only the typical petrol-head but a crowd of the elite as well. Although competition between sports cars generally exists across a broad field of brands and car manufacturers, the relevant market of Formula One consists only of a narrow set of such manufacturers, and it includes an energy-drink company that has competed for and won world championships. On paper, 10 to 12 teams contest the Constructors' Championship each season; on closer inspection, the sport turns on about four principal team players, the remaining entrants operating as mere extensions or sister companies of the same. This paper strives to understand how the regulations of a sport that presents itself as competitive turn their back on competition and antitrust law and on the core value of fair play those laws exist to protect.

Keywords: *cartelisation, competition law, FIA, Formula One, intellectual property, refusal to deal, technical regulations, tie-in agreements*

I. INTRODUCTION

Formula One, or F1, is one part of a bigger set that is motorsport. The sport is appealing in a way that goes beyond the mere play of it: there is much more beneath the surface of fast cars driving around in circles, namely the commerce behind it and, on a legal reading, the legal stains behind it as well. It is a flashy sport, oozing with money and with the riches of each team, each athlete and even its audience. A viewer who starts watching it tends to assume that some teams simply perform better than others, being credited with better engineering and with better team

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members working behind the scenes from the pit lane and, as commonly as it gets, that the couple of teams that keep winning merely have talented race drivers who possess a gift. The distribution of Formula One's revenue supplies a different explanation.[1] That model pays one common column of revenue to each team equally; beyond it, however, the commercial rights holder has concluded agreements with well-performing teams under which further columns of revenue are paid to them on the basis of their winning abilities, and even on the basis of a team's loyalty in staying in the sport for as long as it can. The effect is to place perhaps three of the ten teams at a financial advantage over the other seven, several of which can barely allocate their resources to retain even manpower. On that view, the championship is less a test of an athlete's talent than a contest that puts well-abled men in unequal machinery, all of it resting on a concentration of wealth within the sport. Beyond the shiny screen of F1, the legality of the way the sport functions is open to doubt, and in particular the complicated distribution and structure of power in this motorsport suggests a clear centralisation and an inconsistency with competition law. Formula One has a wide variety and scope of functions: it is a competitive sport, yet it is also a major player in the entertainment industry, a huge business, and a multi-million-dollar trade and logistics operation supporting its migrating nature. Most importantly, the sport is packed with science, engineering and technology, and with those comes intellectual property, intertwined with the antitrust laws that are supposed to keep the sport ethical and to ensure fair play.

This article aims to point out the sheer lack of fair play in the sport, and to show how Formula One Management allows for regulations and actions that facilitate the existence of an anticompetitive environment, and how its own operations approach those of a cartel.

II. Formula One and Its Anti-Competitiveness

A. The Settlement Agreement of 2001

Oliver Budzinski has identified two major antitrust concerns in the sport.[2] The first is structural. The settlement reached with the European Commission in 2001 was designed to keep the FIA's regulatory function apart from the commercial exploitation of the championship, and the argument is that the two have since been recombined. The second is distributive. The smaller teams take no part in the procedures by which the sport's rules are settled, and the revenue the championship generates is divided between the teams on a markedly unequal basis. Both

[1] *F1's Flawed Financial Model Explained*, AUTOSPORT (YouTube video), https://www.youtube.com/watch?v=NOEwTyHHvZo.

[2] Oliver Budzinski, *Competition in Motor Racing: A New Formula One Antitrust Case?*, WIRTSCHAFTLICHE FREIHEIT (Dec. 24, 2014), https://wirtschaftlichefreiheit.de/wordpress/?p=15961.

concerns were pressed on the European Commission in correspondence from Anneliese Dodds questioning the competition-law premises on which the championship operates.[3]

Anneliese Dodds, then a Member of the European Parliament, sent several letters to the European Commission between 2014 and 2017 on the issues set out above. The Commission had earlier found that the FIA was not merely acting as a regulatory authority but was using that authority to hold business interests in the commercial rights of motorsport, in which capacity it prevented other motor racing events from rivalling its star performer, Formula One, and so abused its dominant position, conduct of the kind now governed by Article 102 of the Treaty on the Functioning of the European Union.[4] The Commission closed its investigation on 30 October 2001, after the FIA agreed to modifications limiting its role to that of a sports regulator with no commercial conflicts of interest, undertook that its rules would not be used to prevent or impede new competitions unless justified on grounds related to the safe, fair or orderly conduct of motorsport, and sold all its rights in the FIA Formula One World Championship to SLEC and Formula One Administration, the companies in charge of the commercial exploitation of the sport, for a period of 100 years, at the end of which the rights revert to the FIA.[5] Those commercial rights later passed through Delta Topco, the holding company acquired by Liberty Media in 2017. In her letters Dodds questioned the conflict of interest arising under the 2001 agreement once the FIA obtained a 1.06% shareholding in Delta Topco, which came to light in 2014,[6] a holding that defeats the Commission's achievement in separating regulatory from commercial power. By that purchase the regulator obtained a direct financial interest in the revenues of the championship it governs, eroding the agenda of separation of powers of the 2001 agreement.

The concern, as it still remains, is the abuse of this commercial power by Liberty Media, which is basically a private profit-making company. Budzinski adds to these concerns by discussing the excessive and increasing fees that circuit owners, and in some cases countries, pay to secure a slot on Formula One's season tour.

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[3] Lawrence Barretto, *MEP Wants More Detail from FIA on Financial Ties to F1 Sale*, AUTOSPORT (Feb. 22, 2017), https://www.autosport.com/f1/news/mep-wants-more-detail-from-fia-on-financial-ties-to-f1-sale-5021546/5021546/.

[4] Consolidated Version of the Treaty on the Functioning of the European Union art. 102 (ex art. 82 TEC), 2016 O.J. (C 202) 47, 89.

[5] Press Release, EUROPEAN COMMISSION, IP/01/1523, *Commission Closes Its Investigation into Formula One and Other Four-Wheel Motor Sports* (Oct. 30, 2001), https://ec.europa.eu/commission/presscorner/detail/en/ip_01_1523.

[6] Christian Sylt, *European Commission Investigating F1 Anti-Competition Allegations*, FORBES (Nov. 26, 2014), https://www.forbes.com/sites/csylt/2014/11/26/european-commission-investigating-f1-anti-competition-allegations/. The FIA has denied any conflict of interest: Press Release, FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE, *FIA Clarifies Position on Sale of One Per Cent Shareholding in Delta Topco* (Feb. 16, 2017), https://www.fia.com/news/fia-clarifies-position-sale-one-cent-shareholding-delta-topco.

This arrangement, under which a single company holds the commercial rights over a widely enjoyed sport for a century, has proved a barrier for many aspiring teams seeking entry into the motorsport's market. The rejection of an American entry bid by Formula One Management drew in United States legislators, whose concern was that such a refusal to deal as a group, by the management together with the already participating teams, could violate United States antitrust law.[7] The bid, by Andretti Global, had been approved by the FIA in October 2023; Formula One Management refused it on 31 January 2024, reasoning that an 11th team would not on its own bring sufficient value to the championship from a commercial point of view, and that it had been unable to identify "any material expected positive effect" on the commercial rights holder's financial results.[8] In August 2024 Liberty Media disclosed that the Antitrust Division of the United States Department of Justice had opened an investigation into Formula One's conduct in relation to that application; no outcome has been announced publicly.[9]

B. Intellectual Property, Technology and Tie-In Arrangements

In furtherance of this, antitrust controversy in Formula One extends even to the appointment of suppliers and manufacturers of car parts to the teams. In 2009 it was reported in the British press that the FIA had broken competition law by forcing teams involved in Formula One to use engines made by a British automotive company, Cosworth. To understand the engineering side of the sport's business, it is necessary to establish how its regulations are framed around intellectual property rights. Formula One opts for trade secret law over patenting its engineering inventions and its research and development: given the fast-paced nature of the sport, no invention or trend on a Formula One car ever stays around for as long as the waiting period that comes with obtaining international patents.[10] That choice carries a consequence which the sport's own rulebook does not control: trade secret law leaves a competitor free to reverse engineer or independently duplicate what a rival has kept secret, provided the information is not acquired by improper means. The permission is a feature of the law of trade secrets, not of any FIA regulation.[11]

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[7] *F1 Dispute with Andretti Global Draws in U.S. Lawmakers*, CNBC (May 24, 2024), https://www.cnbc.com/2024/05/24/f1-dispute-with-andretti-global-draws-in-us-lawmakers.html.

[8] Laurence Edmondson, *Why F1 Rejected Andretti Bid to Join the Grid for 2025, 2026*, ESPN (Jan. 31, 2024), https://www.espn.com/racing/story/_/id/39430557/why-f1-rejected-andretti-bid-join-grid-2025-2026.

[9] Bruce Martin, *Liberty Media Investigated by Justice Department for Andretti F1 Snub*, FORBES (Aug. 9, 2024), https://www.forbes.com/sites/brucemartin/2024/08/09/liberty-media-investigated-by-justice-department-for-andretti-f1-snub/.

[10] Chandler C. Gerard-Reimer, *Race Cartels: How Constructor Collaboration Is Curbing Innovation in Formula 1*, 23 VAND. J. ENT. & TECH. L. 855 (2021).

[11] *Id.* The FIA addresses the copying of a rival's design as a question of trade secret misappropriation; the liberty to reverse engineer is conferred by trade secret law itself and not by the FIA's regulations.

Infamously, Formula One did have its espionage scandal, best known as "Spygate". On 13 September 2007 the FIA World Motor Sport Council fined the team concerned USD 100 million, by far the largest fine then imposed in motor racing, stripped it of all its constructors' points for the 2007 season and excluded it from that year's Constructors' Championship; its drivers, however, retained their points.[12]

Under the regulations of the FIA, intellectual property and innovation are not as secure as they should be. For most of the sport's history there was no express prohibition on copying a rival's car at all, and the restraint on doing so was no more than an "unspoken rule".[13] That position changed for the 2021 season. Concerned that the championship was becoming a copying contest, the FIA defined reverse engineering in its Technical Regulations and forbade a competitor to design its listed team components by those means, which include converting photographs or images into CAD geometry, stereophotogrammetry and three-dimensional cameras, contact and non-contact surface scanning, and any technique that projects points or curves onto a surface in order to assist the process.[14] The prohibition is nonetheless enforced *ex post*: where the components of one team closely resemble those of another, it falls to the FIA to decide after the event whether the resemblance is the result of reverse engineering or of legitimate independent work, and the ban leaves untouched the collaboration between teams out of which such resemblances are liable to arise in the first place.[15] This system has most definitely paved the way for the system of "A-B teams" and their partnership. The account of that arrangement which follows draws on Gerard-Reimer's analysis, which distinguishes works or factory teams from customer teams, describes them as A-teams and B-teams, and locates their collaboration in the regime of transferable and listed components and in the sharing of testing facilities and personnel.[16] As in any other league of sport, one assumes that all teams operate independently and compete against one another. In Formula One, however, the regulations allow a few well-to-do teams that are capable of taking up the financial burden of manufacturing

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[12] Steve Cooper & Jonathan Noble, *McLaren Lose 2007 Points, Fined $100m*, AUTOSPORT (Sept. 13, 2007), https://www.autosport.com/f1/news/mclaren-lose-2007-points-fined-100m-4413963/4413963/.

[13] Gerard-Reimer, *supra* note 10, pt. I.D (describing the copying of rival cars in Formula One as a practice governed by unspoken rules).

[14] FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE, *2021 Formula 1 Technical Regulations* art. 22.3.3, Issue 8 (Feb. 19, 2021), https://www.fia.com/sites/default/files/2021_formula_1_technical_regulations_-_iss_8_-_2021-02-19.pdf (defining "reverse engineering" and prohibiting a competitor from designing its Listed Team Components on that basis).

[15] *Id.* (leaving it to the FIA to determine whether a close resemblance between competitors' components "is the result of reverse engineering or of legitimate independent work"); Gerard-Reimer, *supra* note 10 (arguing that the new measures will not cure the sport's copying problem because they do not limit the coordinated conduct between teams).

[16] Gerard-Reimer, *supra* note 10 (distinguishing works or factory teams from customer teams, analysing the resulting "A-B team" phenomenon, and treating the transferable and listed components regime and the sharing of testing facilities and personnel as the mechanisms of that collaboration).

Formula One engines and a few other "transferable components" of a Formula One car;[17] these teams are called the Works Teams and, in this article, the "A-teams". The teams that are unable to bear the costs of manufacturing their own car parts, apart from the mandatory intellectual property each team has to design by itself, are called the Customer Teams, or the "B-teams". This partnership allows the A-teams and B-teams to share transferable components, testing facilities and even employees, leaving the trade secrets of the Customer Teams out in the open and vulnerable in the hands of the Works Teams, and putting these financially stronger players at a much bigger strategic advantage, essentially forming a horizontal agreement within this relevant market of Formula One teams. This arrangement of A-B teams has split the sporting event into a race of three sectors: a race between Works Teams, which hold a concentrated amount of wealth and access to trade secrets; a race between midfield teams, consisting of independent constructors and other customer teams; and a race between the customer teams that always finish at the bottom of the standings, all happening on the same track at the same time. This is a clear depiction of the anticompetitive effects that tie-in and horizontal agreements cause in a relevant market where competition is the core value of any sport.

C. Cartelisation of the Sport

The second issue arising from Dodds' letters is the unfair treatment of the smaller B-teams and the uneven distribution of the sport's revenue. She pointed out and criticised the existence of a Formula One "strategy group" consisting only of the well-performing A-teams, the FIA and the Formula One management, that is, Liberty Media. This strategy group was responsible for proposing, discussing and determining all the rules and regulations of the motorsport. The teams excluded from the strategy group once again accused Formula One of operating a cartel. The very apparent flaw in the revenue distribution of the sport is its "performance oriented" character: the major chunk of the prize fund is allocated to the top performers, who have access to the intellectual property and to the distribution of transferable car parts of the smaller teams, and who are therefore at a clear advantage in designing a car significantly faster than those of the B-teams. On figures reported for the 2013 arrangements, the champion received about 19% of the performance-related column and the tenth-placed team about 4%.[18] Empirical work on the allocation scheme has concluded that it differs considerably from the schemes used in other professional championships, in a manner consistent with an anticompetitive reading, and that

[17] FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE, *2021 Formula 1 Technical Regulations, supra* note 14, art. 22.5.1 (defining "Transferable Components"), *as cited in* Gerard-Reimer, *supra* note 10, n.52.

[18] Dieter Rencken & Christian Nimmervoll, *"Bernie-Money": So wird das Formel-1-Geld verteilt*, FORMEL1.DE (Apr. 6, 2013), https://www.formel1.de/news/news/2013-04-06/bernie-money-so-wird-das-formel-1-geld-verteilt.

an in-depth antitrust investigation of the sport would have merit.[19] This system also excluded new entrants to the motorsport from receiving even the common equal column of the revenue for their first couple of years,[20] and excludes teams that fail to finish above the top 10 in the leaderboard. Agreements were then made with teams that threatened to leave Formula One to form another motorsport in rivalry with it, providing them with bonuses and extra columns of Formula One's revenue in order to suppress the rise of competition to the championship. Although the FIA has turned down these allegations, its regulations have clearly promulgated and facilitated the acquisition by the much more dominant Works Teams of a concentration of market power, and this arrangement of A-B team tie-in agreements is essentially nothing less than a clear cartelisation amongst participants to limit or restrict competition.

III. CONCLUSION

Despite all these letters, accusations and investigations, Formula One and the FIA have denied all such allegations of operating a cartel, of acting as a monopoly, and of indulging in any other anticompetitive practice. Formula One Management has, however, cooperated with all the investigations and has asserted its transparency and its procedural legitimacy and rationality. The 2001 agreement did nonetheless have its fair share of flaws in shifting market power away from the FIA and towards a private equity company, and those flaws have resulted in the barriers to the market that exist today. From the standpoint of a remote audience of the motorsport, it has long been doubtful whether any of its functions, either on or off the racetrack, are fair to the concept of competition. This article was written as an attempt to understand, from an educational and legal point of view, a sport followed closely from a very young age, and it concludes, unfortunately, that Formula One does not promote fair competition either within the sport or across other motorsports.

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[19] Oliver Budzinski & Anika Müller-Kock, *Is the Revenue Allocation Scheme of Formula One Motor Racing a Case for European Competition Policy?*, 36 CONTEMP. ECON. POL'Y 215 (2018).

[20] Christian Sylt, *Haas Team Will Get None of F1's $900 Million Prize Money This Year Says Ecclestone*, FORBES (Mar. 19, 2016), https://www.forbes.com/sites/csylt/2016/03/19/haas-team-will-get-none-of-f1s-900-million-prize-money-this-year-says-ecclestone/.