

FINA changes its stance after World Champion swimmers' antitrust claims throw it into the deep end

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On 15 January 2019, the Fédération Internationale de Natation (“FINA”), the gatekeeper for access to the Olympic Games and World Championships, [announced](#) that swimmers are now free to participate in race meetings that are organised by independent organisers (which includes those that are neither related to FINA or members of FINA) and will not be banned from competing in major championships as a result of doing so.

This statement comes after three international champion swimmers, Thomas A. Shields (USA), Michael C. Andrew (USA) and Katinka Hosszu (Hungary) filed lawsuits in the Northern District of California on Friday 7 December 2018 against FINA following allegations that FINA [boycotted a potential competition](#) by the International Swimming League (“ISL”) which was planned to take place in Turin during December 2018. FINA had warned athletes that they may be banned from competing in the Olympics if they competed in the ISL competition. The swimmers sought compensation against FINA and an injunction for [“clear antitrust violations arising from FINA’s complete control, by unlawful means, over the promotion and organization of international swimming competitions and its efforts to ensure that FINA, and only FINA, can determine what swimming athletes will be paid for their efforts.”](#) The ISL also brought a separate suit, alleging that FINA behaviors were anticompetitive.

The claims focused on two key areas: (i) the low prize payments given by FINA to the athletes and (ii) the fact that FINA has used its position to boycott the efforts of a new professional league.

Prize Payments

According to World Champion Swimmer Michael Andrew, [“very few select swimmers make a living swimming, while FINA is making a killing.”](#) It is alleged that only [12.5% of FINA’s gross revenues](#) from aquatics events in 2016 and 2017 went to athletes in prize money. Athletes received a combined total of only USD \$15 million out of the USD \$118 million that FINA earned.

The swimmers alleged that [“the mere threat of ISL’s market entry has already increased pay for swimmers in the market in which FINA has been unlawfully suppressing competition, which demonstrates one element of anti-competitive harm — depressed swimmer compensation — that FINA’s illegal stranglehold has imposed on the market.”](#)

On 5 December 2018, FINA announced that it may consider introducing new events that, the lawsuit claims, are similar to the events proposed by ISL. FINA also announced an increase in prize money for the FINA World Swimming Championships. However, the swimmers claimed that these were only in [reaction to the swimmers’ responses](#) to FINA’s blocking of ISL’s event.

Blocking Access

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The complainants argued that FINA had used its [dominant position](#) in the market to retain huge revenues from some of the best swimmers in the world. It was also noted that USA Swimming (the US swimming governing body) had initially supported ISL and worked with ISL to arrange an event in December 2018, but then withdrew from these negotiations due to [mounting pressure from FINA](#).

These claims stood against the backdrop of the European Commission investigation into the International Skating Union (“**ISU**”) which began with the European Commission’s announcement on [27 September 2016](#). ISU had stated that any speed skaters choosing to compete in Dubai’s Ice Derby would face a permanent ban from competing at international events such as the Olympics. In December 2017, the Commission decided that ISU rules giving penalties to athletes for engaging in unauthorised speed skating events [breached competition law](#). ISU now has the obligation to amend these rules.

As a result, FINA’s announcement that swimmers will not be banned as a result of participating in unaffiliated competitions is welcomed and may signal a significant change in the governance of sport. However, FINA has also stated that independent organisers are required to “*cooperate with or seek the approval of FINA or any relevant member federation*” should they intend [“to have the results and records of any competitions or events duly registered with and acknowledged by FINA”](#). The tensions between commercial entities, professional leagues and associations with control over access to key sporting events, such as the Olympics, are still at a high.

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