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A PRACTICAL GUIDE TO  
THE PROSECUTION OF  
CASES OF COMPETITION  
MANIPULATION

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UNITED NATIONS OFFICE ON DRUGS AND CRIME

INTERNATIONAL OLYMPIC COMMITTEE

# A Practical Guide to the Prosecution of Cases of Competition Manipulation



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# INTRODUCTION



## 1.1 AIM OF THE GUIDE

As the scale, sources and sophistication of competition manipulation become increasingly apparent, there is a growing recognition that more needs to be done to tackle this activity, which is a direct threat to the ethos at the heart of sport. Increasing the capacity and capability of prosecutors involved in cases of competition manipulation is an integral part of the process. This guide is aimed at helping to achieve this goal.

The guide examines the challenges relating to prosecuting cases of competition manipulation and sets out a recommended framework for doing so (using the manipulated performance, reward and communication (MPRC) approach), including a description of its components and details on how it should be used.

The guide is primarily directed to the prosecution before criminal courts of those involved in competition and match manipulation. However, the principles and methods outlined in the guide are considered to be both useful and relevant to all those who are engaged in the detection and fight against corruption of sport in general and the manipulation of sports competitions in particular. It is also hoped that the Guide will provide a useful resource for international and national federations as well as sports' governing bodies bringing their own private law disciplinary proceedings.

The guide refers to criminal courts as 'tribunals', adopting a neutral approach across jurisdictions.

The guide provides specific guidance regarding the use of expert witnesses and expert evidence and the prosecution of cases before a tribunal, including in relation to a tribunal's understanding of competition manipulation, the presentation of evidence and what to expect in terms of strategy from defence teams. The role of experience and the sharing of information and best practices, and how to improve and expand such activity, is also examined.

For prosecutors, this guide either complements or can be read in conjunction with the following publications:

- United Nations Office on Drugs and Crime (UNODC), *Investigation of Cases of Competition Manipulation: A Practical Guide*
- UNODC, *Global Report on Corruption in Sport*
- UNODC and International Olympic Committee (IOC), *Legal Approaches to Tackling the Manipulation of Sports Competitions*
- UNODC and IOC, *Reporting Mechanisms in Sport: A Practical Guide for Development and Implementation*
- International Criminal Police Organization and IOC, *Handbook on Protecting Sport from Competition Manipulation*
- UNODC, *Resource Guide on Good Practices in the Investigation of Match-Fixing*
- A series of toolboxes<sup>1</sup> developed by the Council of Europe, under the auspices of the Council of Europe Convention on the Manipulation of Sports Competitions.

These publications provide a thorough review of the context, scale and practice of competition manipulation. They also provide officials from relevant criminal justice authorities with the necessary practical tools and approaches to help combat the problem of competition manipulation.

## 1.2 WHAT IS COMPETITION MANIPULATION?

Competition manipulation is defined in the Council of Europe Convention on the Manipulation of Sport Competitions as “an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of the aforementioned sports competition in order to remove all or part of the unpredictable nature of the sports competition with a view to obtaining an undue benefit for oneself or for others.”

<sup>1</sup> <https://www.coe.int/en/web/sport/macolin-tools>

It can also include actions by athletes and other sport competition stakeholders, such as betting on their own sport, sharing insider information and failing to report other breaches of the Olympic Movement Code on the Prevention of the Manipulation of Competitions.

The following articles of the United Nations Convention against Corruption can establish the subjective elements of competition manipulation given the intentionality of the offence in question:

- » Article 15: Bribery of national public officials;
- » Article 16: Bribery of foreign public official and officials of public international organizations;
- » Article 17: Embezzlement, misappropriation or other diversion of property by a public official;
- » Article 18: Trading in influence;
- » Article 19: Abuse of functions;
- » Article 20: Illicit enrichment;
- » Article 21: Bribery in the private sector;
- » Article 22: Embezzlement of property in the private sector;
- » Article 23: Laundering proceeds of crime.
- » Article 28: Knowledge, intent and purpose as elements of an offence

Various actors with a range of motivations can be involved in an act of competition manipulation. Generally, it cannot occur without the cooperation of those who are active on or around the field of play. They may be athletes, referees, managers, coaches, technical staff and club or members of the sport association's management. They may also include side-line actors, such as family members and friends, who may be just as eager to participate in an act of competition manipulation or may be coerced into doing so. Opportunistic individuals may be involved too: those who use their connections and knowledge in sport (e.g., former athletes) to approach athletes to manipulate a competition. These actors are often not the source of the manipulation but are merely conduits in the process who can be replaced when their usefulness or influence is exhausted.

A growing concern is that would-be corruptors are increasingly approaching athletes directly through social-media platforms to influence them to engage in competition manipulation and betting-related activities on manipulated competitions.<sup>2</sup> The use of social-media in such circumstances may necessitate applications for disclosure of social-media content stored within other jurisdictions and is an issue which further highlights the international dimension of competition manipulation.

Another form of manipulation is when athletes deliberately underperform to avoid specific opponents during qualifying stages of a tournament to improve their chances of advancement. In addition, in some investigated cases, former athletes were identified as the main organizers of competition manipulation, showing remarkable capabilities in recruiting other athletes as well as in engaging in betting-related activities on manipulated competitions.

Organized crime syndicates are increasingly involved in competition manipulation, both directly and indirectly. This may include such means as acquiring sports organizations for the purpose of using them to control the performance of players and athletes through coercion and intimidation and in the sale of information that a sport competition has been manipulated.

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<sup>2</sup> Sportradar, "Match fixing on the rise as global sports betting turnover surpasses €1.45 trillion for the first time", 3 March 2022.





CHALLENGES RELATING  
TO THE PROSECUTION  
OF COMPETITION  
MANIPULATION AND  
THE **MPRC** APPROACH

This section addresses the challenges faced by prosecutors in showing that competition manipulation took place, rather than just unexpected performance, and how these challenges can be met by building a case around the three connected elements of manipulated performance, reward and communication involving the person or persons accused of competition manipulation (the MPRC approach).

## 2.1. DIFFICULTIES INVOLVED IN PROSECUTING COMPETITION MANIPULATION CASES

The fundamental challenge involved in prosecuting competition manipulation is that the outcome of a given sporting competition is inherently uncertain. In distinction to many other forms of crime, but in common with fraud or corruption cases, the manipulation of an outcome in sport is never a novel creation of something that could not otherwise have happened. Rather, it is ensuring that a possible outcome happens or making it more likely that it does happen. The uncertainty of sport makes it the product it is. It is the fact that all outcomes are possible that makes sport the focus of fervent athletic endeavour and the subject of widespread betting.

Hence, the first and central difficulty in a case of actual competition manipulation is to prove that manipulation took place and that the result did not happen because of the inherent uncertainty of sport.

A quick analysis of three popular sports underlines the difficulty involved in proving competition manipulation:

- In tennis, elite players miss easy winners and have days when they are simply not performing at their best. Even the greatest players have bad games.<sup>3</sup>
- In football, referees miss fouls, misjudge yellow and red cards and make mistakes about the offside rule. Errors of interpretation, analysis and judgment are facets of human nature.<sup>4</sup>
- In athletics, the performance of athletes is not constant; the best athletes improve with training and time. This improvement does not mean that there has been any manipulation.<sup>5</sup>

The difficulty is compounded because prosecutors must establish before a tribunal that competition manipulation, rather than just unexpected performance, has occurred to the criminal standard and within the criminal rules of evidence in that prosecutor's jurisdiction.

Of course, cases will occur where, by means of a confession, a wiretap or information received from a reporting person or a reporting mechanism, there is direct first-hand evidence of manipulation. Further, there may be cases where there is evidence in communications or otherwise that reveals the attempt or conspiracy to manipulate a given sport competition.

However, in many cases (and even in those where there is direct evidence) supportive or corroborative evidence is needed, and prosecutors must look to a method of establishing that competition manipulation has taken place.

When a case is built on circumstantial evidence, which is one where there is limited or no direct evidence, it is an inherently difficult case to prosecute. This is exemplified by the case decided by a jury in Scotland of the football player Kane Hester. Mr Hester agreed to manipulate his being booked in a football match, told his friends he would do so, those friends bet that he would, but a jury found the case not proven having heard his evidence that he forgot of the competition manipulation in the excitement of the game.<sup>6</sup>

<sup>3</sup> Marca, "The strange illness affecting Djokovic", 25 April 2022.

<sup>4</sup> Callum Boyle, "Qatar saved by questionable VAR call in opening minutes of World Cup opener", Sports Joe, 20 November 2022.

<sup>5</sup> John D. Barrow, "How Usain Bolt Can Run Faster – Effortlessly", Significance, vol. 9, No.2 (April 2012).

<sup>6</sup> <https://www.bbc.co.uk/news/uk-scotland-tayside-central-64892078> - in jurisdictions where a conspiracy charge allows this might be a safer charge.



## 2.2. PROVING COMPETITION MANIPULATION USING THE MPRC APPROACH

A recommended approach<sup>7</sup> to proving competition manipulation before a tribunal is to build a case using the following three connected elements:

- Manipulated performance (showing that the performance of an athlete, a player, a referee or an official was manipulated)
- Reward (showing that benefit was derived from an act of manipulation or the intended manipulation)
- Communication (showing that there was communication between the person or persons accused of competition manipulation and those generating benefit)

Prosecutors can present cases in which the three elements support each other. The following uses a hypothetical example of a water polo team agreeing to lose a qualifying match to explain how this approach can be used.

### *Manipulated performance*

Competition manipulation can be established by analysing athletic performance. An expert can provide evidence based on a comparison of the expected or past performance of the water polo team in similar circumstances with the performance of the same the water polo team in the match in which competition manipulation is suspected.

Expert analysis can be used to show how the water polo team performed differently to how they would be expected to perform. This evidence may or may not be conclusive; it will depend on its weight. A slower than usual swim pace, a higher than typical pass failure, a higher than usual foul rate and a higher-than-normal missed shot rate may all support a case that the water polo team or players within the team were deliberately performing poorly. The force and effect of any statistical analysis will depend on the data set that allows its creation and the degree of variance from the established expected or normal performance.

### *Reward*

Proving that the outcome of the water polo match was manipulated can be supported by evidence showing that betting on the match was exceptional or highly unusual. If bettors display betting behaviour that indicates extreme confidence in a particular outcome, this is supportive of the fact of the match was manipulated and that there was an agreement for it to be manipulated.

Examples of this behaviour include:

- The placing of bets by people who normally have no interest in betting on water polo
- People betting more than their usual stake
- People betting on the same outcome of a sports competitions in multiple betting markets
- Betting on the result of a sport competition or betting on the events occurring the course of a sport competition days before the market for that betting usually forms, or betting in-play against what would be the expected outcome of a given sport competition.

### *Communication*

Exceptional betting does not establish that the accused acted to manipulate the sport competition – a person may bet on a player to lose on the basis of inside information that the player is playing while injured or sick. In the absence of any innocent explanation for the manipulated performance the act of competition manipulation must be linked to the bettors – this establishes that the accused acted to secure the betting outcome.

<sup>7</sup> The Guide recommends an approach, it does not mandate that approach; cases are too varied in fact and circumstance to have a universal policy. Cricket cases, for example, rarely establish betting as a reward because many of the bets are assumed to be place with illegal bookmakers and cannot be evidenced.

In some cases, it is possible to infer a link between exceptional performance and exceptional betting. However, a better case can be made if a communication chain between the accused and the bettors can be proved or established. The fact of the communication between the parties and the fact of the betting outcome support the argument that the competition was manipulated.

Linking bettors to the players involved in the alleged act of manipulation, by communication or association, supports the fact that manipulation took place.

Following the use of the MPRC approach, as a part of their case narrative, prosecutors should seek to establish the purpose of the manipulation to present a motive for the case and because the achievement of the purpose may help in establishing the occurrence of competition manipulation. When motive and purpose are combined, they provide the narrative explanation to the tribunal of why the manipulation took place. However, they are not typically elements of the charge that are required to be proved.

## 2.3. CHALLENGES RELATED TO THE MPRC APPROACH

This section examines the challenges that arise in proving in practice the three elements of the MPRC approach.

### *Manipulated performance*

#### **How should performance in sport be presented and considered in the prosecution of competition manipulation?**

Performance in sport is open to subjective and objective judgement and analysis. This is why it is necessary to establish that there is an intentional element to competition manipulation and that typically will be an element that must be proved as a part of the charge.<sup>8</sup>

With regard to the subjective component, in the case of a match, a race or a game in which manipulation is suspected, an expert can say of a particular athlete, player or referee that, when compared to evidence of past performances, they:

- Performed in a way that was not typical of other athletes, players or referees that took part in the same sports competition
- Performed in a way that was not typical when taking into consideration their past performances

With regard to the objective element, an expert can use performance data metrics to say of a particular athlete, player or referee that they performed in a way that was not typical. For example, in racket sports, data on unforced errors, time in play and speed of return can all be assessed.

Notably, in recent years, there have been developments in in-game statistical analysis of sporting events, regarding “expected performance” in relation to certain aspects of sports competition (such as the number of yellow or red cards, the number of goals scored, expected goals, expected tackles, expected shots on target, touches in opposition box, supremacy metrics, match flow, tactical analysis and detailed passing analysis),<sup>9</sup> which have the potential to help detect corrupt activity.

Significant discrepancies between expected and actual outcomes may be an indicator of wrongdoing. However, this is very much a developing area, given that discrepancies can be caused by many sports-related factors, and information is only likely to be considered of significance when placed alongside other supporting evidence.

Both objective and subjective appraisals can result in findings that establish or provide evidence that competition manipulation occurred.

Where possible, objective and subjective evidence should be used in conjunction to mutually support a conclusion of manipulated performance. Critically, the use of one form of expert evidence should not be seen as a bar to the use of the other, particularly in cases involving elite athletes, where the number of experts is limited. The findings of one expert based on a subjective assessment of events can be supported by the objective analysis of data, and vice versa.

<sup>8</sup> Regarding subjective elements of a competition manipulation offence, articles 15 to 23 of the United Nations Convention against Corruption refer to the need to establish criminal offences when committed intentionally. In addition, as stated in article 28 of the Convention: knowledge, intent or purpose, required as an element of an offence established in accordance with the Convention, may be inferred from objective factual circumstances.

<sup>9</sup> Sean Ingle, “Revealed: expected goals being used in football’s war against match-fixing,” *The Guardian*, 13 February 2021.

## Reward

The role of reward in a case involving a breach of sport rules or regulations can be both clear and hidden. The reward and the process involved in obtaining it can take several forms, which can be sporting related (i.e., the taking of performance-enhancing drugs to win competitions and prize money and achieve international fame,<sup>10</sup> and the avoidance of relegation in a league system,<sup>11</sup> which often involves bribery) or betting related (competition manipulation for the purposes of generating financial gain from betting markets).<sup>12</sup>

Proving evidence of reward in cases of competition manipulation can be difficult and can depend on complicated analysis. This is particularly true with regard to reward relating to betting – for example, in cases where betting activity does not take place in the jurisdiction where the event subject to manipulation occurs and where the focus on the act of manipulation is not the ultimate outcome of a sports competition but elements within them.

However, systems designed to detect wrongdoing related to the use of performance-enhancing drugs and the manipulation of betting markets are becoming more sophisticated and wider in scope, offering prosecutors greater capacity to discover and use evidence of competition manipulation.

Regarding betting markets, the monitoring of global betting markets by data companies has become one of the most important ways of indicating incidences of potential competition manipulation (or other rule breaches) within sporting events, by providing from that betting market alerts of unusual or suspicious betting patterns.

Betting markets are monitored by combining both technological and human elements to identify discrepancies between actual and expected odds that can indicate potentially irregular and suspicious betting. If suspicious betting activity is reported to a sports organization prior to a sports competition taking place, it provides an opportunity for the intended manipulation to be stopped. Alternatively, reporting of suspicious betting activity can be the catalyst for an investigation into the circumstances surrounding the activity, which can lead to the detection of related acts of corruption. Companies exist which offer services to help detect competition manipulation.

It is important to note that while numerous cases of “suspicious betting activity” have been an indicator of competition manipulation in the past, convictions against individuals for such acts have only been possible alongside other supporting evidence, and that evidence pointing in the opposite direction must be taken into consideration. This point has been made by the Court of Arbitration for Sports, which has stated that: “In order to come to the conclusion that a match is fixed, the analytical information needs to be supported by other, different and external elements pointing in the same direction”.<sup>13</sup>

The communication and distribution of betting information and intelligence between interested parties has been facilitated by the IOC’s *Integrity Betting Intelligence Service* (IBIS). That service provides a good example of how information is communicated and shared from the betting markets to those charged with the protection of sport from competition manipulation.<sup>14</sup>

The need for IBIS emphasises that raw betting data cannot of itself establish a case of competition manipulation. It is the appraisal of that betting data, understanding its context and the extent to which reliance can be placed against it, in combination with analysis of performance and communication evidence that is key to the prosecutor.

Prosecutors should also build relations with the betting companies themselves within their jurisdiction. The betting companies, in accordance with their licensing obligations, are typically able to provide information as to the bettor and the circumstances of the bet placed.

As established, betting is a clear means of generating financial return and, therefore, in a cases of competition manipulation, knowledge and understanding of legal and illegal betting markets and how evidence of betting-related

10 James Montague, “Hero or villain? Ben Johnson and the dirtiest race in the history”, CNN, 23 July 2012 and Kelly Cohen, Timeline of Lance Armstrong’s career successes, doping allegations and final collapse”, ESPN, 22 May 2020.

11 Deutsche Welle, “Spain: First ever prison sentences for football match-fixing”, 4 April 2020.

12 Another example of sporting-related competition manipulation is provided by the sport of biathlon, where in 2021 accusations were made of a cover up of doping violations involving the governing body, with those responsible for ensuring a clean sport accused of taking bribes to allow some athletes to avoid being tested. See: Michael Pavitt, “IBU external review uncovers evidence of “systematic corruption and unethical conduct” under former leadership”, *Inside the Games*, 28 January 2021.

13 For more information on monitoring global betting markets, see chapter four on detecting and reporting corruption in sport of the UNODC publication *Global Report on Corruption in Sport*.

14 [https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Factsheets/Integrity-Betting-Intelligence-System.pdf?\\_ga=2.11408003.547370027.1694443884-53567152.1694443884](https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Factsheets/Integrity-Betting-Intelligence-System.pdf?_ga=2.11408003.547370027.1694443884-53567152.1694443884)

manipulation can be identified and used is essential for prosecutors in relation to their ability to explore and explain how and why betting has occurred in the prosecution of competition manipulation cases.

It is important to be aware that betting on sport differs according to the sport, depending on if it is a team game or a game between two individual players, or a race or a game of skill. The betting industry provides bet types for all sports, involving people (e.g., football and tennis), animals (e.g., horse racing) and vehicles (e.g., motorsport). The availability of a range of types of bets is a common feature across both legal and illegal betting markets, although there tend to be more in illegal markets because there are no regulatory restrictions on operators. Each of these separate markets has different odds and liquidities. The following are examples of bet types in major sports:

	FOOTBALL	TENNIS	HORSE RACING
<b>BET TYPE</b>	<ul style="list-style-type: none"> <li>» Team A wins</li> <li>» Team B wins</li> <li>» Draw (tie)</li> <li>» Half-time score</li> <li>» Full-time score</li> <li>» Both teams score</li> <li>» First, last and any time goal scorers</li> <li>» Number of yellow and red cards, corners, etc</li> </ul>	<ul style="list-style-type: none"> <li>» Match winner</li> <li>» Tournament winner</li> <li>» Set winner</li> <li>» Set correct score</li> <li>» Total tie breaks</li> <li>» Most aces served</li> <li>» Total double faults</li> </ul>	<ul style="list-style-type: none"> <li>» Win</li> <li>» Place (1st, 2nd or 3rd)</li> <li>» Quinella (1st and 2nd, any order)</li> <li>» Trio (1st, 2nd, and 3rd, any order)</li> </ul>

A further key consideration is the fact that the legal status of betting on sport varies between jurisdictions, as does the type and scope of legislation used to regulate sports betting. Notably, modern technology is often used to enable betting on sport in jurisdictions where such activity is illegal or heavily regulated. For example, people in jurisdictions where betting is illegal can use betting websites to place bets on sports competitions in jurisdictions where betting is legal, although national authorities are doing more to regulate such activity and stop it where it is illegal.

It is also important to be aware of how bettors with knowledge of an intended act of competition manipulation can behave. For example, a bettor who knows a tennis player has agreed to lose a tennis match in two sets can use this knowledge in multiple ways. They can:

- Bet on the other player to win
- Bet on the player involved in the manipulation to lose
- Bet on the match being completed in less than three sets
- Bet on the total points played in the game being less than 75

Notably, for prosecutors, a bettor who places bets in each of these markets and who does so for the first time and/or who bets early (i.e. before a market has usually formed), and/or who bets to the maximum amount that the betting operator allows in the market or on the account, and/or who bets at unusual odds and/or in larger sums than they would normally bet, and/or who places bets after a message from the tennis player may be shown to be betting based on knowledge of competition manipulation if a link between that betting and the manipulator can be established.

Furthermore, the opening of multiple accounts to bet on a particular outcome of a particular sports competition, the timing of bets on the same outcome on different betting platforms and use of multiple platforms to place the same form of bet can also be used as evidence of wrongdoing in cases of competition manipulation.

It is also critical that prosecutors are aware of the existence and scale of illegal betting markets. A major issue relating to illegal betting platforms and markets is that people can bet anonymously with no record of bets existing. As such, a prosecution team is unlikely to be able to find direct evidence of the bet taking place and the amount involved.

However, some routes of examination are open to prosecutors in relation to illegal betting. For example, movements in odds in regulated markets can be assessed, which may reflect betting in illegal markets, and the movement of money across jurisdictions, through money transfer or across banking systems, to betting markets can be followed. Even in cases where the betting cannot be shown, the receipt of profits from betting is strong evidence that it has occurred, and thorough financial investigation can be used to fill the gap.

Finally, whilst betting is recognised to be the shortest route to financial reward, financial reward itself may not be the reward sought. As the *Olympic Movement Code on the Prevention of the Manipulation of Competitions* makes clear<sup>15</sup> competition manipulation does not depend on betting. Individual and national glory are powerful incentives to manipulate outcomes in sport, particularly those with modest or underdeveloped betting markets.

### Communication

There is nothing unique or unusual about the methods used to establish communication between actors involved in competition manipulation. The same frameworks and techniques can be used as would be employed in cases involving the transportation or dealing of drugs – the obtaining of phone records and billing data and covert or open observation. Further details can be found in the UNODC, IOC and INTERPOL joint publication, *A Guide to the Effective Investigation of Competition Manipulation*.

It should also be taken into consideration that many athletes and players are public figures and that their movements and whereabouts are matters of public record. As such, their social media accounts and their presence on social media may allow for significant open-source intelligence gathering.

<sup>15</sup> <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Fight-against-competition-manipulation/Code-Mouvement-Olympique-2022-EN.pdf>





KEY CONSIDERATIONS  
WHEN USING EXPERTS  
AND EXPERT EVIDENCE

This section is focused on key considerations for prosecutors when using experts and expert evidence, including guidance on how prosecutors can build a roster of experts that they can call on in cases of competition manipulation.

The prosecution of cases of competition manipulation typically depends on the presentation of expert evidence or informed analysis in relation to the three elements of manipulated performance, reward and communication, and the development within the prosecutorial team of expertise in the presentation and understanding of this material.

In relation to manipulated performance, obtaining relevant expert knowledge requires prosecutors to establish a cooperative and engaged relationship with bodies that have this expertise in relation to the sport in question. Usually, this resource can be found in international federations, national governing bodies or sports governing bodies, with a designated route available for the reporting of relevant material to prosecutors.

Establishing such relationships is unlikely to be achieved based solely on case-by-case contact and interaction. Rather, it is necessary to create a standing relationship between the prosecutorial office and the sports community on a national basis, with the aim of not only establishing mutual confidence but also establishing cooperation and the sharing of information, experience and expertise. The need for such relationships is reflected in the calls for enhancing cooperation and coordination and the exchange of information in relation to competition manipulation.

The interpretation of sporting activity by an expert can produce both objective and subjective opinions, as described above, and understanding in a particular case which is best relied on (or that both should be used) or which might be relied on by the defence (or that both may be used) may be a judgment for the prosecutor. This building of this knowledge and experience is critical to future cases.

Of course, it is necessary to use an expert with expertise in the issue that the tribunal is considering. Differences of expertise may be slight and subtle – context is critical. For example, in the case of the prosecution of a jockey and other actors for race fixing in England, an expert on the style of horse racing in Australia was not able to give evidence before a court of the standard expected in relation to horse racing in the United Kingdom.<sup>16</sup> Furthermore, in football, styles of play differ from country to country and as such, there is a need to use experts that specialize in the football of the relevant country – i.e. an expert on Spanish football is unlikely to have a similar level of understanding of the game in Germany or the United Kingdom.

More problematic is finding an expert appropriate to athletic performance. For example, a professional golfer who has competed at the national level may not have the expertise to comment on the performance of a golfer who plays in leading global competitions, while a national gymnast champion may not have the experience to express an opinion on the performance of an Olympic gymnast. Integral to overcoming this challenge is to look for experience in assessment – there are likely to be more judges who have this expertise than there are athletes – or to look to coaches of elite athletes for the same reason. Caution must be taken to avoid conflicts of interest arising in relation to either past interaction or current competition.

Notably, the collation and use of expert evidence should not be limited to that relating to performance – expertise in relation to betting analysis and communication analysis is also needed to establish competition manipulation.

Factual evidence of what bets have been placed in betting markets is likely to be obtained from betting companies or under agreement with betting monitoring organizations. It is likely to be called as evidence of fact.

The analysis of betting markets is an area in which expert evidence may be both admissible and relevant to establishing the relative probabilities of movements in betting markets without some knowledge of the sporting outcome.

For example, in the case of *Joseph Odartei Lamptey v. FIFA*, Case No. CAS 2017/A/5173, a FIFA disciplinary tribunal found a referee guilty of competition manipulation in a case where the prosecution used expert betting evidence that movements in the betting markets and the timing of bets could not be explained other than by evidence of competition manipulation (in this case, the referee awarding a penalty). The evidence included opinion that the market response (the shortening of odds and therefore the view that the outcome was more likely) to an outcome becoming objectively less likely (time to score three goals in the match was running out) was demonstrative of irregular betting.<sup>17</sup> The use of such evidence relating to the interpretation of the probability of bets being placed may be admissible in many criminal jurisdictions.

<sup>16</sup> Sean Ingle, "Fallon race-fixing case collapses", *The Guardian*, 7 December 2007.

<sup>17</sup> See the decision at paragraphs 83 and 84.



In the case involving Mr. Lamptey, the tribunal concluded that there was a clear link between these intentionally wrong decisions and a deviation from an expected betting pattern: “In light of the foregoing, the Panel has reached a personal conviction, in accordance with Article 97(3) of the FDC, that a link exists between (i) the deviation in the betting patterns and (ii) the Field Decisions, as each of them, inexplicable if taken alone, appears to find an ‘explanation’ only in the other”.

Another important consideration about evidence related to communications is the possible need for linguistic expertise.

Communications involving athletes, players, referees or officials and bettors or other participants in a manipulation scheme may be in languages other than the native language of the tribunal. In such instances, it is necessary to employ the services of a native speaker who understands and can translate the language used in conversations, including in relation to sense of meaning, and has the knowledge to recognize any coded communication that may have taken place in these conversations.<sup>18</sup>

A further source of expertise can be found in the legal sector. Experience of and exposure to prosecutions of competition manipulation can be built and used. However, competition manipulation does not necessarily need to be the subject of a sport-based charge, notwithstanding that the purpose of the prosecution is to address the manipulation of a sporting competition. Cases that address manipulation of sports competitions can be framed, for example, by violation of medical labelling obligations

In summary, presented with the challenge of having to prove that competition manipulation took place, prosecutors should use the following to establish this element of an offence:

- Competent experts on sporting performance (providing objective and subjective opinions, or both)
- Support from expert analysis related to the intended purpose of the manipulation or in relation to the use of performance-enhancing drugs or betting analysis
- The possibility that other forms of charge, such as mislabelling in relation to the use of performance-enhancing drugs, may achieve the same result

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<sup>18</sup> See the prosecution of Jason Servis <https://www.justice.gov/usao-sdny/pr/thoroughbred-racehorse-trainer-jason-servis-sentenced-four-years-prison>



# KEY CONSIDERATIONS WHEN PROSECUTING CASES OF COMPETITION MANIPULATION



A competent investigation<sup>19</sup> should involve the production of a case file<sup>20</sup> that is fit for presentation to a criminal tribunal. There are significant variations in domestic systems as to the extent a prosecutor may or may not select or amend cases to be prosecuted and the factors which properly inform the decision to prosecute.

For example, some jurisdictions allow for a “public interest” test where, even if the case has a reasonable prospect of success on an evidential test, the likely outcome of the case does not justify prosecution (because the accused is terminally ill, the prosecution will cost too much for a non-custodial sanction, etc.).

Further, a case that is prosecuted may be capable of compromise in some jurisdictions by plea bargain.

Assuming that a charge will be prosecuted to trial before a tribunal after this process, this section looks at how to present the case and the potential responses that could be used by a defence team. It sets out four key considerations for prosecutors, namely:

- Identifying the tribunal’s understanding of the case subject matter
- What prosecutors can do to improve the understanding of a tribunal
- How evidence should be presented to a tribunal

#### 4.1 IDENTIFYING THE TRIBUNAL’S UNDERSTANDING OF THE CASE SUBJECT MATTER

It is important that prosecutors are aware of the level of understanding a tribunal has of the subject of the case. Sport is a wide-ranging field, with individual sports having notable peculiarities, and a tribunal may not be familiar with these characteristics or may consider itself to be more of an expert than it is. For example, winter sports have a strong national following but a limited international following, while sports such as football and tennis have an extensive global fanbase.

It might be expected that a tribunal would have some familiarity with the rules of more popular sports, such as football and tennis, but not with the rules of less popular ones, such as speedskating or bobsleigh. As such, a tribunal may consider itself to have greater expertise in a sport with which it is familiar than one with which it is not.

#### 4.2 WHAT PROSECUTORS CAN DO TO IMPROVE THE UNDERSTANDING OF A TRIBUNAL

It is important that a prosecution is pitched at the level of expertise that the tribunal has. A practical means of achieving this is by presenting evidence that is uncontroversial in relation to the rules of and obligations and performance in a sport, which can be admitted on paper or orally without expected challenge (depending on the jurisdiction).

Laying the groundwork in this way establishes a common position, in not assuming the expertise of tribunal, from which controversial evidence relating to competition manipulation can be introduced and explained.

Typically, prosecuting a case of competition manipulation will depend on establishing the sporting rules that have not been complied with because the rules of sport identify an obligation on a competitor not to manipulate the sports competition.<sup>21</sup> If possible, the obligations of an athlete, a player, a referee or an official should be established to set a background. It is usually helpful that this “scene setting” evidence is presented in an agreed form and that contentious parts of any case are presented by different witnesses and/or experts against an established scene and/or chronology.

For example, regarding uncontroversial evidence, in a case involving a player failing to abide by the obligation in cricket to not deliberately underperform in an international cricket match<sup>22</sup> or a case involving a participant in an Olympic sport performing an intentional act aimed at the alteration of the result,<sup>23</sup> the obligations relating to the rules can be established by “witness A”, who should be a recognized expert in the relevant sport, and are unlikely to be contentious.

<sup>19</sup> For details of what constitutes a competent investigation, see UNODC-IOC-INTERPOL joint publication *Investigation of Cases of Competition Manipulation: A Practical Guide* (Vienna, 2023).

<sup>20</sup> Here “case file” is the product of the investigation phase that reaches the prosecutor.

<sup>21</sup> See for example Art 29 of the FIFA Code of Ethics or the Badminton World Federation Code on the Prevention of the Manipulation of Competitions Article 3.3.

<sup>22</sup> See article 2.1.1 of the ICC Anti-Corruption Code.

<sup>23</sup> See article 2.2 of the IOC Olympic Movement Code on the Prevention of the Manipulation of Competitions.

Regarding controversial evidence, following the above, “witness B”, also a recognized expert in their field, can then be called upon by the prosecutor to establish how the performance or actions of the athlete, player, referee or officials represents wrongdoing and a failure to abide by the rules of the sport in question.

### 4.3. HOW EVIDENCE SHOULD BE PRESENTED TO A TRIBUNAL

A case should be presented according to a logical order, against a background that has clearly established the standard of conduct expected from those involved. Therefore, the issue for the tribunal to rule on is set out as a question of whether the performance identified was in breach of the rules that the athlete, player, referee or official was obliged to conform to.

Such an approach should not be limited to the presentation of evidence related to sporting performance. It must be considered that evidence of betting market functionality and activity requires the explanation of complicated concepts in a form that a tribunal will follow and accept. This functionality and activity includes such issues as market liquidity and pricing, how dynamically markets might react to bets placed on them, the proximity of a sport competition and in-play and ante-post markets.

In such cases, it is important to establish uncontroversial matters, i.e., matters which are not likely to be contested, before seeking to establish controversial ones.

Where domestic procedural rules allow, the prosecution should seek to assist the tribunal through the use of aids and equipment which facilitate understanding.

For example, in relation to competition manipulation cases that involve the questioning of performance and the presentation of video evidence for this purpose, if possible, the tribunal should be provided with high quality images that can be frozen and played at super slow motion as the need arises. In cases involving horse racing in Ireland and the United Kingdom, many cases are determined by tribunals that benefit from having the ability to view videos from multiple angles and in slow motion.

Where a series of camera angles of the same event is available, the ability to synchronize the playback of the separate angles on more than one screen at the same time is frequently invaluable. Superimposing graphics to identify participants is another considerable aid and witnesses should be able to provide commentary to the video during playback.

How evidence relating to communication involving those accused of competition manipulation is presented is also important. Notably, prosecutors should be aware that those accused of manipulation may try to conceal their agreements in any correspondence that has been obtained during the course of an investigation (such as through the use of code words or informal language).

As such, it is important that prosecutors provide evidence as to what any such terms mean in the context of the conversations – for example, the use of “fight” to mean contesting a sports competition vigorously. That context should also explain terms which are peculiar to a sport, and which may not be familiar to the tribunal.

Furthermore, as previously discussed, there will be instances when languages foreign to the tribunal are used in communication. It is vital that a clear translation of the communication into the language of the tribunal is provided, including sense of meaning, by a native speaker of the language in question.

The tribunal is typically entitled to a transcript of any communication and a translation where appropriate. In addition, where the jurisdiction allows, with regard to any translation, the tribunal should be provided with an interpretation of the translation, in the form of the “real” meaning of the words and phrases used by those involved.

The timing of communications, games, matches or races and any betting activity may be critical to demonstrating the link between an athlete, a player, a referee or an official and suspicious betting. It is imperative that the chronology of any case is presented in a clear and coherent manner – for example, using timelines that graphically represent the order of events and when they happened, their duration and the connections made from them. The time zone relating to any activity should be checked and considered and timelines should be prepared using common time data.

Using these practical measures in the presentation of a case, prosecutors should seek to set out a clear case narrative that focuses on the three elements (manipulated performance, reward and communication) needed to commit an act of competition manipulation.

By doing so, prosecutors can present a coherent description of how and why the offence took place and establish that an act of competition manipulation was committed to the criminal standard.

#### 4.4 ANTICIPATING THE RESPONSE OF THE DEFENCE TEAM AND WHY IT IS IMPORTANT

Anticipating the position taken by a defence team in a case serves two purposes. First, it tests the prosecution's case for any weakness that may be exploited and it helps identify any errors in the case. Second, it can highlight if any further evidence is likely to be required.

In cases where the performance of an athlete, a player, a referee or an official is under scrutiny, it is likely that the following issues may be raised by the defence team:

- The performance was normal or if it was abnormal, it had an innocent cause
- The analysis of the performance is incorrect based on the expertise that underpins it
- The athlete, player, referee or official was suffering from some innocent impediment to their performance
- The analysis of the performance is unduly harsh as a result of the use of slow motion or frame capture of a fast-moving incident, which should be analysed only in real time
- There is an omission in the evidence relating to what happened in the sporting contest (for example, a missed camera angle or an aspect of the camera's field of view that has omitted some element)

In cases involving suspicious betting, the following issues may be raised by the defence team:

- Correlation does not imply causation. A bettor may argue that the betting (even if extraordinary) was not caused by knowledge of an act of manipulation, rather it was motivated by an interposed or additional cause. For example, a bettor will allege that they received a tip from a third party that led to the decision to bet or will point to other bettors who also bet without connection to the athlete, player, referee or official involved.
- The framework for the analysis of extraordinary betting is inadequate because it fails to take account of data over a longer period or on different markets or to take account of other betting in the same markets. A betting operator can only ever produce evidence of their own betting market, other betting operators will have offered similar betting markets and a betting market monitoring company may be needed to show patterns relating to an event across betting operators. Similarly, if only a short period of a bettor's betting history is available, the argument that the period of betting is not representative should be expected.

In cases involving communication-based evidence, the following issues may be raised by the defence team:

- The content of the communication may not be known. Therefore, the fact of person A speaking to person B is not evidence of what person A said to person B, or vice versa.
- The content of the communication is being incorrectly assumed to have a meaning that it does not bear.
- The content of the communication relates to a different illicit activity that explains the use of code or secret forms of communication.

A case-sensitive response to each of these issues should be considered and employed. The force and persuasiveness of any responses are essentially case specific, but a cross-check of expert evidence, where possible, to address potential defence case strategy should be carried out.





IMPORTANCE OF  
EXPERIENCE AND  
KNOWLEDGE-SHARING  
TO THE PROSECUTION  
OF COMPETITION  
MANIPULATION CASES



With regard to the prosecution of competition manipulation cases, it is important that prosecutors learn from cases that they have previously prosecuted. To make this information available, and to be able to call on it when required, prosecution teams must carry out an assessment after each case. Strengths and weaknesses should be identified as well as what went well and what did not. This process helps to avoid the repetition of errors and to build on strengths.

However, this approach may be too narrow. In interviewing prosecutors in the preparation of this guide, a series of common points was raised by respondents involved in the prosecution of competition manipulation.

The three main points were:

- All of the specialist prosecutors interviewed as part of the development of this guide indicated that they depended on the expertise of other prosecutors in their local or regional offices and that discussions with colleagues working on cases involving organized crime, racketeering and drugs offences were very helpful with regard to the prosecution of cases of competition manipulation.
- All of the prosecutors interviewed indicated a desire to learn from the experience of others working in the area of competition manipulation, not only to develop common best practices but also because of the international nature of sport.
- Respondents indicated that a comparative approach to sanctions in the context of competition manipulation would be useful in order to persuade tribunals with regard to the level of sanction appropriate to a particular case or a specific act of wrongdoing.

Based on the common points raised by the prosecutors, it is recommended that prosecutors involved in cases of competition manipulation look to share information and best practice and to collaborate, where possible, at the local, national and international levels with others working to address the same issues.







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