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UEFA'S FINANCIAL FAIR PLAY RULES – WHY IT BARKS BUT CANNOT BITE

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The Revolution

Club football spending has spiraled in the last few years. The Roman Abramovich revolution that saw the Russian Oil mogul acquire Chelsea Football Club and loosen the purse-strings by signing new players shook the footballing world. It all started with the £6 million capture of Glen Johnson in July 2003, and since then Roman Abramovic's Chelsea have gone on to sign a host of the world's finest talent[1].Since 2003, according to *The Sun* newspaper, Abramovich has spent a cool £2 billion at Chelsea, with transfer fees and player salaries forming a major part of that outlay. It is worthy to note however that this figure represents Chelsea's net spend as at the summer of 2013.

In hindsight, Roman Abramovich would look back at his decision and be proud of the club's achievement. With a trophy haul of 16 major titles comprising of 5 Premier league titles, 4 FA Cup titles, 3 league cups, 2 Community shields, 1 Champions league trophy and 1 Europa league, Roman Abramovic and Chelsea would have little if any regret of the humongous spending embarked upon by the club in recent times. Manchester City Football Club of England and Paris Saint Germain of France have closely followed Chelsea in getting new owners with deep pockets. For PSG, some Qatari Investors led by Nasser Bin Ghanim Al Khelaifi, acquired PSG for 131 Million Pounds in 2012 and the club has since embarked upon the journey of acquiring its 'galactico' with the latest being the prodigious Brazilian footballer, Neymar Jnr and French wonder kid, Kylian Mbape. Since August 4th 2008, Manchester City Football club has been owned by Sheikh Mansour, one of football's wealthiest owners with an estimated individual net worth of at least £17 billion with a family fortune of at least $1 trillion[2] Sheikh Mansour bought the club in 2008 for £210 million in a much publicized deal and has since accumulated annual losses of £535 million,[3]excluding approximately £200 million on facility upgrades. However the value of the club has soared nearly fivefold from £210 million in 2010 to £900 million in 2015 according to *Forbes* representing a realistic opportunity of profit on Mansour's investment if he was to sell the club to a willing buyer. The latest in the series of club acquisitions and excessive spending is Italian giants, A.C Milan who after an eight-month delay was sold by former Prime Minister, Silvio Berlusconi. Berlusconi's investment company Fininvest SPA concluded a 740 million-euro ($788 million) deal with Chinese investors, according to a statement. Billionaire Paul Singer's hedge fund manager Elliott Advisors UK Ltd agreed to provide 303 million euros of financing, according to people familiar with the matter. Berlusconi had owned AC Milan

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[1] Gary Hayes; Charting Chelsea's year by year transfer spend under Roman Abramovic

[2] *Armitstead, Louise (2 September 2008). "Sheikh Mansour bin Zayed Al Nahyan has a deep love of sport and deeper pockets". London: telegraph.co.uk. Retrieved 19 August 2010.*

[3] *"Manchester City - Roll With It". Swiss Ramble. 2 January 2015. Retrieved 2015-09-02.*

since 1986[4]. Following the Chinese acquisition of the Rossoneri, Milan spent over 210 Million Pounds in the 2017/2018 summer transfer window alone with more signings expected in the winter transfer window. Admittedly, allowing clubs to spend without recouping the expenditures would spell doom for the future of the clubs. How then, does a Football Club rebound from such excessive spending and ensure it balances its books afterwards? This is the major pre-occupation of this article.

UEFA'S intervention

Following the increasing and untrammeled spending by clubs, the world football governing body was in dire need of a uniform regulation to put football clubs in check and ensure their financial health is not affected as a result. Therefore, following wide consultations, UEFA has introduced certain rules to realize these goals. They include an obligation for clubs, over a period of time, to balance their books or break even. Under the concept, clubs cannot repeatedly spend more than their generated revenues, and clubs will be obliged to meet all their transfer and employee payment commitments at all times. Higher-risk clubs that fail certain indicators will also be required to provide budgets detailing their strategic plans.

The UEFA Financial fair play was approved in 2010 and the first assessments kicked off in 2011. Since then clubs that have qualified for UEFA competitions have to prove they do not have overdue payables towards other clubs, their players and social/tax authorities throughout the season. In other words, they have to prove they have paid their bills[5].

Since 2013, clubs have also been assessed against break-even requirements, which require clubs to balance their spending with their revenues and restricts clubs from accumulating debt. In assessing this, the independent Club Financial Control Body (CFCB) analyses each season three years' worth of club financial figures, for all clubs in UEFA competitions, The first sanctions and conditions for clubs not fulfilling the break-even requirement were set following this first assessment in May 2014. The conditions relating to non-compliance with break-even requirements were effective for the 2014/15 campaign[6].

From June 2015, UEFA updated its regulations (as it does from time to time for all regulations) to address some specific circumstances with the aim to encourage more sustainable investment while maintaining control on overspending. Situations addressed include clubs requiring business restructuring, clubs facing sudden economic shocks and clubs operating with severe market structural deficiencies in their operating region. For the

[4] Daniele Lepido & Tommasso Ebhart –" Berlusconi's strange and confusing AC Milan sale finally closes" Bloomberg Articles see https://www.bloomberg.com/news/articles/2017-04-13/berlusconi-s-ac-milan-era-ends-as-elliott-funds-chinese-purchase
[5] Article- "Financial Fair Play Rule – All you need to know"-culled from http://www.uefa.com/community/news/newsid=2064391.html
[6] ibid

first time the work of the CFCB is potentially expanded to include clubs not yet qualified for UEFA competitions but who anticipate and want to participate at some stage in the future[7].

Loopholes in the FFP

In spite of the advent of the FFP Rules, the European footballing elite appear not to be deterred by the provisions with the 2017/2018 football season witnessing an upsurge in transfer activities. A record-breaking transfer window was delivered in the summer. Deloitte have confirmed that Premier League clubs have smashed the £1 billion mark, with Manchester City, Chelsea and Manchester United all spending well over £100m[8].

Elsewhere, PSG secured Neymar for a world-record €222m (£203m), and also snapped Kylian Mbappe from Monaco on an initial loan deal, with an obligation to buy for around £165m[9].

The humongous amount of money spent by these clubs has raised eyebrows regarding the effectiveness of these Rules. Has UEFA been consistent in the application of its sanctions on clubs who flout the regulations? To what extent have clubs been deterred by the regulations? The sheer ease with which PSG was able to pull off the Neymar transfer and structure Kylian Mbappe's deal as a loan deal with the option of completing a permanent transfer next season has led many to question the potency of the FFP in keeping big-spending football clubs on a leash. Are there loopholes in the Financial Fair play Rules that European clubs can take advantage of to circumvent same? The Neymar and Mbappe deals seem to suggest so. Indeed, the in-built mechanisms in the Rules heighten the complexity of the enforcement procedures in the Rules.

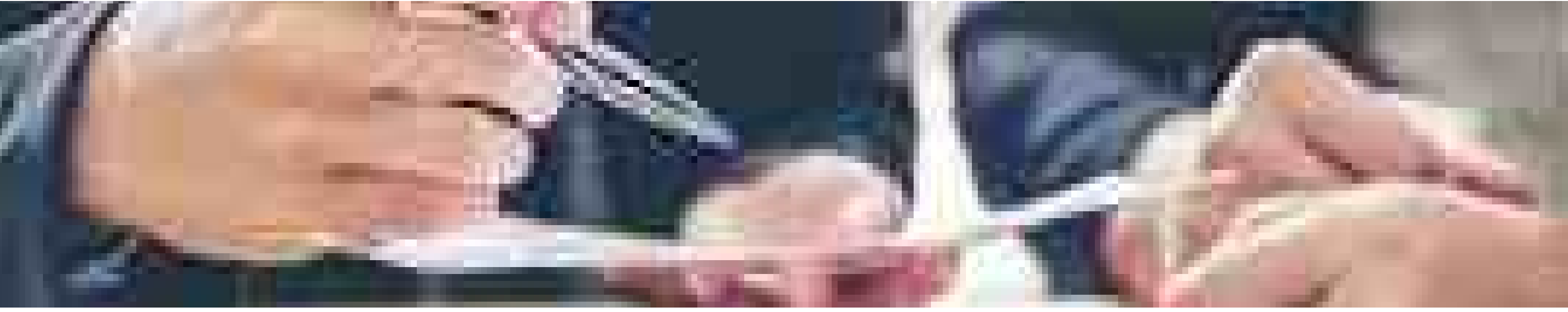
Complex & Inconsistent punitive regime

The FFP regime has a complex punitive process that is yet to be fully grasped by the stakeholders. The system of punishment for clubs is this: A) A warning B) A second warning C) A fine D) A deduction of points E) Withholding of funds generated by European competitions F) Ban on new players playing in European competitions G) A restriction on the number of players that clubs can register to participate in UEFA competitions, including a restriction on the number of registered players, H) Disqualification or future disqualification

I) Withdrawal of titles or prizes.

It is submitted that the system of punishment appears to over-indulge the footballing elite who may be inclined to flout the Rules on the basis that it would be able to balance its books before any concrete sanctions are handed down by the football governing body. The writer

[7] ibid
[8] http://www.goal.com/en-ng/news/man-city-2215m-milan-1784m-the-20-highest-spending-clubs/za2d0l2qvyp61nujjg35s2c0v
[9] ibid



knows of no instance where the football governing body has de-registered clubs from competitions or disqualified them from participating for breaching the Rules nor has any of the defaulting teams been ducked points or stripped of honours. The sanctions cascade ensures that even the perennial defaulters never receive serious punishment for breaching the Rules. Many have therefore seen the punishments as a slap on the wrist for defaulters. While it makes sense to issue the first and second warnings to a defaulting club before a fine is imposed on the club and ultimately impose a ban or player registration cap, one would have expected that the Rules would be more direct regarding the applicability of certain punishments to infractions of the Rules. One readily available instance where UEFA equivocated on the application of the penalty for breach of the Rules is in the case of FC Barcelona who were slammed with a 14 month transfer ban by UEFA for breaching the FFP following their unsuccessful appeal to the Court of Arbitration for sports in 2015. Barcelona curiously signed Luis Suarez during the pendency of the ban even though he was not registered and eligible to play till the end of the ban. A transfer ban should be exactly what it purports to be, a ban; no more, no less. Equivocating on whether a transfer ban should be interpreted as an embargo on registration of players is not good for the sport.

Negotiations with Treasury

It has been stated that UEFA does not want clubs to view the Rules as a punishment, but rather as an element that helps clubs in distress or in need of economic rehabilitation. UEFA, just as the tax agencies do in each country, will look to negotiate with clubs as part of 'stabilisation agreements'. These are based around both time and economic targets that need to be met, although UEFA prefers rehabilitation in short periods[10]. Negotiating with the defaulting party certainly strips the Rules of the much needed "bite" required to compel compliance. Indeed, what are Rules without definitive sanctions that forbid disobedience to them?

As a further proof that UEFA do not want to simply punish clubs, the body evolved a rehabilitation programme for clubs in breach of certain provisions of the Rules. Again, if a club reaches a requirement, it can be released from a restriction that limits the number of players that can be named in a competition squad. If a club breaks even during the course of a settlement, all penalties will cease to apply for the following season. In this way UEFA looks to promote the cycle of investment from competitive parity which goes into the economy of the club and vice versa[11].

To instantiate, in June this year, Portuguese stalwarts, FC Porto accepted a settlement agreement that includes a €700,000 fine and a restriction on the number of players in their Champions League squad from next season after failing to comply with Financial Fair Play regulations.

[10] Article- "*La Liga – Financial Fair Play Rules – A Definitive Guide*"- culled from http://www.marca.com/en/football/international-football/2017/08/14/59918817e2704eac5b8b45b8.html

[11] http://www.marca.com/en/football/international-football/2017/08/14/59918817e2704eac5b8b45b8.html

UEFA stated that Porto were the only club who failed to comply with the requirement to break even on their spending and trading.

As a result, Porto -- who reached the round of 16 of last season's Champions League before losing to eventual runners-up Juventus -- become the 12th club currently under a settlement agreement, which covers the next four campaigns through to 2020-2021, by which time they should undertake full break-even compliance.

There will be a cap of a maximum of 22 players on Porto's "A list" for the 2017-18 European campaign instead of the usual 25, which will be increased to 23 from the 2018-19 season before being lifted if the club meet guidelines[12]. With the number of clubs on settlement agreements with UEFA on FFP compliance, one wonders when football clubs would realize just how serious UEFA is with the FFP Regulations[13].

One thing that big-spending clubs like PSG need to know, in the event of UEFA looking into their financial dealings, is that all of their income sources are the same. The rules stipulate that if a club's owner invests money via a sponsorship with a company to which he/she is related, then UEFA will investigate. Under these regulations, any entity that is related to the owner or government and represents more than 30% of the club's revenues, will be considered an involved party. Much as UEFA has said it wants to avoid this development of a 'club-state, the likes of PSG and Manchester City have been funded by their Qatari and Arab owners to facilitate all their transfers. The sad implication is that with the influx of wealthy private club owners into mainstream Europe, drug cartels affiliated to private individuals can hide under this toga to take over clubs in this manner as a way of circumventing the Rules.

The Neymar transfer to PSG for a world record transfer fee of 222m euros (£200m) back in August has raised more questions than answers. With the Parisiens likely to sign Kylian Mbappe permanently in the summer, one would be curious to see how UEFA would conduct their investigation. Waiting till the next assessment period before sanctioning erring clubs simply means that the clubs are given a chance at redemption. This is notwithstanding the fact that the concerned club may have gone ahead to win titles and sign humongous sponsorship deals. Not to mention potential shirt sales accruing from such deals. Doesn't that amount to an unfair advantage over the rest of the teams who have been complying with the FFP? More is indeed desired if the Rules are to have any "teeth" whatsoever.

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[12] http://kwese.espn.com/football/uefa-champions-league/story/3141170/porto-are-only-club-punished-for-breaking-financial-fair-play-rules

[13] The only reported case of an outright ban on a club is that ofTurkish champions, Galatasaray who were handed a ban from European club competitions by UEFA following their breach of financial fair play regulations in 2016. Read more: http://www.dailymail.co.uk/sport/football/article-3472907/Galatasaray-slapped-two-season-ban-UEFA-competitions-breaking-Financial-Fair-Play-rules.html#ixzz512a69DBI
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