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Suggestions on making the European system of football work better

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Having attended the Player Contracts conference in October, organised by *World Sports Advocate*, US attorney, Spyros M. Arsenis, Of Counsel at Gerard Fox Law PC, was inspired to contribute a provocative article on the current state of the European system of football with the aim of stimulating debate amongst the legal community. In this article, Spyros presents his suggestions on possible solutions to the problems inherent in the European professional sports system, which stem from his experiences of the American system. The focus of Spyros' suggestions centre on wealth distribution and ways to better redistribute revenues. Spyros invites responses to this article, which will be considered for publication in a future issue of *World Sports Advocate*.

There I was - sitting at Newark Airport on a balmy early October afternoon awaiting my departure for Europe. My first stop along the way was a visit to Hamburg and the law firm of Heuking Kuhn Luer Wojtek. I asked myself - what was I to expect? How do they conduct business in Europe and are their business customs different?

This, of course, led me to ask myself arguably the most important and, perhaps, seminal question: How different is their legal system from what I was accustomed to? How different is it from what I have learned over the years in law school and during my 15 years as an American attorney working in New York? Well, I was about to find out one way or the other.

Upon arrival in Hamburg, I began working with some of the best legal minds in Germany. In particular, I was asked to assist on a couple of transactional matters involving German Bundesliga football clubs

- and yes, that football - as in the sport that is actually played abroad with the foot in blunt contrast to the version we play in the United States, known as soccer. I started asking about this sport of football, which seems to be exalted as a secular religion if such a paradoxical concept can exist. As I delved deeper into the topic, I became acutely interested in how this phenomenon is dealt with as a business and how this business of football conflates with the ever-evolving fabric of European fandom.

After a week and a half in Hamburg, I ventured to London for the two-day Player Contracts conference at Wembley Stadium, organised by *World Sports Advocate*. Surely, my curiosity would be quenched there. After all, the sport was conceived in England, albeit (as myth would have it) from a rather macabre primeval game¹. Anyone who's anyone in the football world would be found ambling hither and thither. I proceeded to intently listen to each

presentation and discussion. During the coffee breaks, I would hasten out to the lobby looking for someone to indulge this dumbfounded American attorney's quest for a tutorial on this seemingly privileged and confounding world of football.

Having processed all of the information I was able to glean during the first day of the conference, I sat back to enjoy my dinner with a pint of the local microbrewer's finest. All of a sudden, a dim flickering light bulb went off in my head and I realised that this lauded and aggrandising world of football is by no means a panacea. As everyone is aware, the issue of corruption within FIFA, football's governing body, has been well, if not exhaustively, documented. Nonetheless, something deeper seemed to be troubling these people. What was it that triggered the despondent melancholy of many with whom I spoke? The answer was something surprisingly simple and

1. According to pre-medieval legend, an entire village would kick a skull along a path to a nearby village square. The opposing village would in turn attempt to kick the skull to the first village's square.
2. The acronyms: (i) NBA, standing for National Basketball Association; (ii) NFL, standing for National Football League (American Football, that is); (iii) MLB, standing for Major League Baseball; (iv) NHL, standing for National Hockey League; (v) MLS, standing for Major League Soccer.
3. See <http://www.investordictionary.com/definition/salary-cap>, 'In sports, a salary cap is a limit on the amount of money a team can spend on player salaries, either as a per-player limit or a total limit for the team's roster (or both). Several sports leagues have made salary caps mandatory, both as a method of keeping overall costs down, and in order to balance the league so a wealthy team cannot become dominant simply by buying all the top players. Salary caps are often the major issue in negotiations between management and players' unions.'
4. The commentary set forth in the following section does not apply to: (i) UEFA Champions League competitions; (ii) UEFA Europa League competitions; or (iii) the UEFA Super Cup. On a general level, UEFA does a fairly good job (perhaps, with some minor quibbles) distributing its revenue to its participating clubs. The ensuing commentary specifically applies to each European country's domestic football league.
5. This agreement did not include national broadcasts on Monday night, Sunday night and Thursday night. It also did include the broadcasts of local teams in regional markets where the games could be seen on the regional CBS and Fox affiliate.
6. See *supra* at footnote 4.

quite uncomplicated. It seemed that as a matter of routine, and often accompanied with a sigh and a furrowed brow, each and every soul in that conference hall lamented the competitive imbalance between European football's haves and have-nots. I was regaled with tales about how a particular football club had won its domestic league 18 out of the last 20 years. And how in Spain, before even the paint is dry on the pitch for the opening game, every fan knows that it's either Real Madrid or Barcelona (or maybe, Atletico Madrid if everything goes right for them) that will win La Liga. In Germany, it's Bayern Munich, with Borussia Dortmund as a distant runner-up. In France, well, it really is only Paris-St. Germain. In Italy these days, it is Juventus, with Inter Milan and AC Milan as outsiders.

Furthermore, and perhaps more disconcerting for me, was hearing stories about how normal it is for a child living some two to three hundred kilometres away from Madrid or Barcelona to become a diehard supporter of either one of those teams. The same stories were echoed relating to the leagues in Germany, France, Italy, Greece, Holland, Portugal and the list goes on.

So what are we left with? - England. It seems to be doing something right. After all, how many speculators had the foresight to go to Stan James and put £100 down on Leicester winning the Premier League last year? Notwithstanding the relative parity in the English Premier League, one thing is abundantly clear and cannot be denied. Namely, that there is a huge chasm, both on the pitch and in the boardroom, between a select few and the rest of European football subsisting solely on the crumbs dropped by the football aristocracy.

As I pondered all of this, scratching

my head, a few simple yet intuitive questions came to mind: How can this system be good for football? How do fans remain interested in each country's domestic league when the results are a *fait accompli*? Are stadiums empty, and if so, are television broadcasters willing to pay high fees to televise games in empty stadiums that no one is willing to watch? For that matter, are advertisers willing to pay for advertising time during the television broadcast of these games? Or, as a corollary, how are advertisers even willing to enter into any sponsorship arrangement with a team that has no chance of winning? Before I move onto the next segment, and certainly the crux of my article, I would like to set forth a few cautionary disclaimers.

Specifically, the purpose of this article is to delicately and politely prod and provoke, not to offend. That said however, as any provocateur would confess, my aim is to elicit a fervent and compelling response and, more importantly, to solicit stern and incisive criticism from my colleagues, especially those European colleagues who I have just had the pleasure of meeting and whom I hope to call friends in the very near future. With that disclaimer out of the way, I can comfortably and brazenly assert that the current European system of football is broken and should be heaved into the dustbin of history. I will begin my support of this rather bold assertion by pointing out the rather ironic contrast between the European professional sports system (particularly in football) which I have just gotten to know, and the American professional sports system which I know all too well. For all its peculiarities and legal idiosyncrasies, the American professional system, whether by way of the NBA, NFL or MLB and NHL (and even the MLS)², has done an excellent job of creating both competitive and financial parity among its teams. The strident irony, as I stated before, is that

for the most part, this so-called American system has eschewed a pure free-market capitalistic structure in favour of a system providing for wealth distribution (otherwise known as 'revenue sharing') between its small market teams and big market teams. Perhaps the finest example of the confluence between American capitalism and sports socialism can be seen in the NFL. The NFL's economic approach over the last five decades has relied on a collective outlook whereby individual teams are convinced to pool their resources and share their profits. This group of teams is made to believe that by doing so, they will be able to provide a product, by and large, which as a whole is much more valuable than the sum of its parts. In time, each and every major sports league in the US has followed suit and mirrored the NFL's economic approach, in some form or another. The financial parity which results has enhanced the competitiveness of each sports league and fostered what can arguably be called the 'golden age' of American sports.

My not so humble suggestions

Needless to say, everyone knows that it is very easy to criticise. The difficult part, of course, is offering solutions - so here are my proposed solutions:

Introduce a luxury tax

Quite possibly the least restrictive and easiest approach towards revenue sharing is the implementation of a 'luxury tax.' While other leagues in the US have various iterations of what is known as a 'salary cap'³, Major League Baseball has introduced the concept of a 'luxury tax' as a more malleable means of spending constraint for large market teams. A 'luxury tax' system in European football would function as a disincentive for large clubs to spend over a certain threshold in any particular season. A club exceeding that agreed threshold would be taxed for each Euro (or Pound, as the case

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continued

may be) over and above that threshold. This framework would incentivise high payroll clubs to spend under the luxury tax threshold, yet it would not, in any manner, strictly prohibit a club from making the financial expenditures it so desires on its players. There would be two additional components to this would-be 'luxury tax' structure. The first is that all revenue derived from the 'luxury tax' would be equally distributed among the remaining clubs in the league. The second component, and perhaps of understated importance, is that each club receiving a distribution of luxury tax revenue would be obligated to use those monies on the expenditure or acquisition of players.

Evenly distribute television revenue⁴

As there has been a paradigm shift in how entertainment is brought into our home, the television broadcasting industry has predictably gone through its own major transformation. That said, throughout the last decade or so, television has made sports an overwhelming presence in our lives. As 'on-demand' and 'time-shifted' entertainment content has become increasingly the norm in the television industry, sports programming remains the only entertainment content (other than real-time news) that cannot be 'DVR-ed.' This makes it particularly attractive to advertisers, as viewers cannot otherwise 'fast-forward' their advertisements. Live sports are said to be the last bastion of 'appointment TV,' and television networks are paying huge sums of money for them. Advertisers and sponsors, in turn, are also willing to pay these same television networks a substantial premium for advertising during their sports broadcasts. As a result, the amount of money demanded for sports broadcasting rights has skyrocketed into the stratosphere. To put some context to the precipitous growth of television revenue, in 2014, the NBA, ESPN and Turner Sports announced a new nine year, \$24 billion media rights deal. This agreement, effective as of the 2016-2017 season, will pay the NBA a total of \$2.6 billion annually. Contrast that with the previous deal made in 2007, which paid the NBA \$930 million annually, and it becomes

easy to understand why media rights are the engine behind the sports industry.

Taking head of this vast, if not colossal, source of potential revenue, European football leagues and clubs would be well served to leverage this vital resource in a discerning, collaborative and provident manner. Taking their cue from the NBA and NFL, the European football leagues and their respective clubs should agree to market and sell their media rights as one collective package. Moreover, all revenue derived from such media rights sales should be apportioned equally among all each European league's clubs. Now, as I understand it, there is a media rights revenue sharing structure for most of the larger football leagues in Europe. Most of these schemes incorporate some sort of tiered revenue distribution, whereby the larger and more successful clubs take in a larger percentage of the overall media rights revenue. Unfortunately, this results in a self-perpetuating system where these same larger and more successful clubs again enjoy what is seemingly a perpetual financial competitive advantage over their smaller brethren season after season.

On a related theme, many of these larger football leagues in Europe that have developed, or that seek to develop, a growing fan base in the expansive markets of the US, China and India should take a close look at what the NFL has been able to accomplish through its exclusive media rights deal with satellite provider, DirecTV.

In a nutshell, during the early 1990s, the NFL entered into a deal with DirecTV to offer a subscription based package that allowed a consumer to view all out-of-market games⁵. This exclusive media rights deal was separate, apart, and in addition to the NFL's national media rights deals with CBS, Fox, NBC and ESPN. Again, to provide some context as to the money involved, the recently renewed deal with DirecTV now pays the NFL \$1.5 billion annually. Seeing this kind of money thrown around, larger European leagues would be wise to at least explore similar types of arrangements with satellite providers abroad, especially in the US, China and India. For example,

in the US (and in addition to its media rights deal with beIN Sports which provides for the broadcast of two-three games fixtures week), La Liga could market a package for the remainder of the weekly fixtures to satellite consumers or could even offer satellite consumers the option of purchasing each fixture on an a-la carte basis.

Evenly distribute licensing, sponsorship and merchandising revenue⁶

Over the last few decades, sports licensing, sponsorship and merchandising has developed into a significant revenue stream for the sports leagues in the US. Much like with media rights except on a smaller scale, these American sports leagues have adopted a collective centralised approach to negotiating and marketing their brand and associated teams. In other words, each league, and not their respective individual teams, exclusively controls all licensing, sponsorship and merchandising agreements. Again, taking cue from this 'League Think' approach, European football leagues should consider bundling their respective teams' licensing, sponsorship and merchandising into individual league packages. Once again, all revenue derived from such agreements should be apportioned equally among all of the league's clubs.

Ultimately, the world of European football is at a crossroads. As they look towards their future and the potential of entering new markets, European leagues, and more specifically, elite football clubs are faced with a rather difficult decision. Namely, do they each crave a larger piece of a smaller pie, or a smaller piece of a larger pie? Will prescience prevail over shortsighted parochialism? Who knows - but in this high-speed world we live in, time will certainly reveal its answer sooner rather than later.

The author invites responses to this article - please contact the editorial team to contribute and your article may be published to continue the discussion on reforming European football.