

Third Party Player Ownership: Does UEFA Need a European-wide list of Interests?

Introduction

This article goes into some detail on a topic that has fallen away from the public consciousness in the last year or so. I wrote a long piece on third party player ownership (TPPO) which you can access at www.danielgeey.com/articles. I have amended parts of that article to assess whether in the post-TPPO Tevez era, there are still TPPO issues that UEFA needs to regulate.

The first part of this article briefly describes what TPPO is and although TPPO is now effectively prohibited by the Football Association (FA), Football League (FL) and Premier League (PL), there is still a potential conflict of interest between owners of clubs and owners of the economic rights of players (outside of the UK). Please note that very few national football associations outside of the UK have TPPO prohibitions in place.

Background

TPPO in the football industry is where a football club does not own, or is not entitled to, 100% of the future transfer value of a player that is registered to play for that team. There are numerous models for third party player agreements (TPPAs) but the basic premise is that companies, businesses and/or individuals provide football clubs or players with money in return for owning a percentage of a player's future transfer value. This transfer value is also commonly referred to as a player's economic rights.

There are instances where entities will act as speculators by purchasing a percentage share in a player directly from a club in return for a lump sum that the club can then use as it wishes. Another instance is where an entity provides financial support for a young, up and coming player. This support can take the form of housing costs being met, monthly payments given to the player and his family, as well as training, travelling, equipment and educational expenses. In return the entity agrees with the player that when signing a professional contract with a football club, the entity that has invested in the development of the player will be entitled to a percentage of any future transfer fee.

Transparency, uncertainty of results and integrity of competition

Many (including this author) have argued that the rationale for the Tevez decisions¹, whilst avoiding the thorny punishment issues of fines and points deductions, was correct. An outside entity had the ability to materially influence the autonomy of a PL club. The rules quite rightly prohibited a club being straight jacketed by external pressures that could compromise the integrity of the PL competition. The rationale being that decisions, in this instance on selling Tevez and Mascherano, were taken out of West Ham's hands.

In the ENIC (CAS 98/200) decision, the transparency argument put forward in the CAS judgment, was that the rule preventing one entity owning shares in several European football clubs, was:

“an essential feature for the organization of a professional football competition and is not more extensive than is necessary to serve the fundamental goal of preventing conflicts of interest which would be publicly perceived as affecting the authenticity, and thus the uncertainty, of results in (UEFA) competitions.” (CAS 98/200 para 136)

The interesting section of the above quote relates to publicly perceived conflict prevention and the inherent need to protect the unpredictability of outcome. By analogy, similar public perception of third party owners having power to influence and dictate club policy will generally be seen as unattractive by fans and administrators alike. Just as it was vital in the Tevez tribunal and arbitration decisions for the PL to maintain the game's integrity and transparency through adherence to the PL Rules by the PL clubs, it was vital to stem any accusations of conflict of interest where notions of fair play could be eroded.

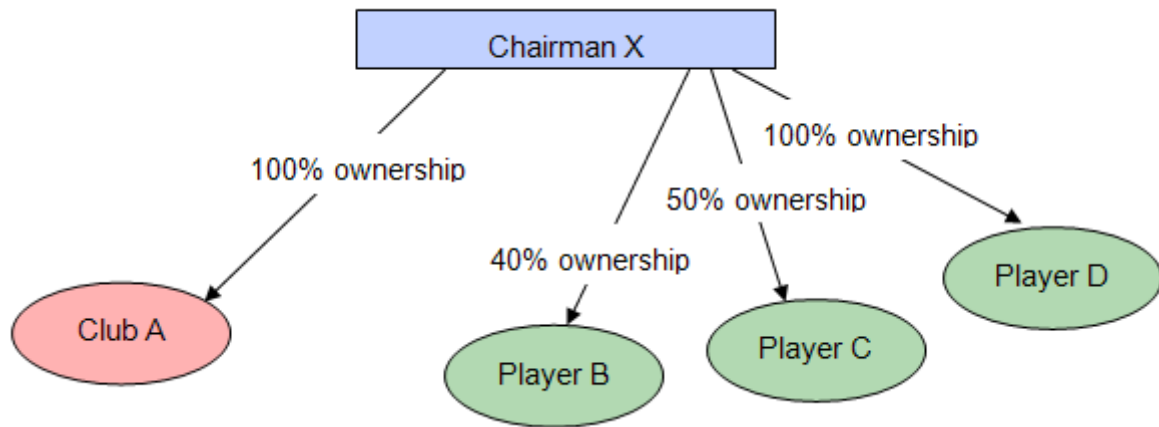
This appears to be the fundamental basis for why the PL, FL and the FA have taken what they consider are appropriate and proportionate steps to outlaw such situations reoccurring. Their mantra being; the greater transparency that is available, the greater confidence all stakeholders will have in the system. The 2009/10 PL rule change allowing for the public disclosure of any holdings of 10% or more is one example of such commendable transparency in action.

Is a publicly available list of third party player owners required to avoid any perceived UEFA club competition conflict?

Now that PL and FL clubs are prohibited from entering into TPPAs there may be a wider European context for this TPPO issue. For PL and FL clubs entering UEFA's European club competitions, there appears to be a pan-European conflict issue relating to TPPO. The basic premise is whether an individual should have an

¹ See my previous article <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume7/number2/geey/>

ownership stake in Club A and an economic stake in a player competing against Club A? The below diagram illustrates such a scenario.



What if Player D, who is 100% owned by Chairman X, plays against Club A, which is 100% owned by Chairman X?

Does UEFA need to add additional measures to ensure the highest levels of transparency to fend off accusations of conflicts of interest?

There is currently no UK or European wide register highlighting any potential conflicts of interest. Just as the PL has recently stated that information on any person or company owning 10% or more in a PL club will be publicly available from the 2009/10 season, perhaps every club owner whose club plays in a UEFA tournament should be required to disclose their connections or affiliations with any entities that own directly or indirectly any type of economic interest in a football player playing in a UEFA club tournament.

As mentioned above, transparency was highlighted by the ENIC decision as a prerequisite for ensuring fair competition, but there appears to be few safeguards in place to inform the general public and prevent conflicts between player and club ownership from occurring. Paragraph 129 of the ENIC decision stressed that:

“among the myriad of rules needed in order to organize a football competition, rules bound to protect public confidence in the authenticity of results appear to be of the utmost importance. The need to preserve the reputation and quality of the football product may bring about restraints...” (CAS 98/200 para 129)

The ENIC case only highlighted instances where an individual could not own more than one club, and crucially not where a club owner had a TPPA in place. Whether there is such a substantive logical distinction between the two types of ownership is debatable. However, bearing in mind CAS’s forceful words in needing to protect

football fans from any potential conflict and the “need to preserve the reputation and quality of the football product” (CAS 98/200, para 129) perhaps UEFA should consider taking a lead in order to maintain confidence in European club competitions.

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