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# Multiple club ownership: disparities between rules

UEFA and its national associations have differing rules governing club ownership, which can lead to conflicts of interest when clubs with the same owner meet in European competitions. In the second part of a two-part article, Daniel Geey and Victoria Ross of Field Fisher Waterhouse LLP and Maja Rotkvic, of Jiménez de Parga Abogados, explain how conflicts between the differing rules of national associations and UEFA's overall rules could pose a threat to the integrity of football.

In the first part of this two part article, we considered third party player ownership and the resulting difficulties faced by the Premier League (the PL) and FIFA to maintain the integrity of the game. In this second half, we turn to football club ownership and consider the disparities in national and European rules. We also consider the question of multiple club ownership in Spain after a takeover of Ciudad de Murcia by Granada 74 lead to accusations of Granada purchasing its place in a higher league. In this article we look at the differences in the PL, Spanish and UEFA rules and how they serve to prevent conflict in club ownership. This leads on to the wider topic of multiple club ownership in Spain, and in Europe generally.

## English PL club ownership: the fit and proper person test

If a person or a company ('an Individual') becomes subject to the PL fit and proper person test ('the FPPT') because they fulfill the criteria below, that Individual must sign a declaration that they fulfill the conditions set out in PL Rule D.2. These conditions include not having the power to influence the management or administration of another PL or Football League club. Specifically, a person is an Individual and subject to the PL FPPT if he becomes:

- a director or a shadow director (as defined in the Companies Act 1985); or
- someone who has either a 30% shareholding interest in a PL club or has the ability to appoint or remove members of the relevant club's board.

For the sake of completeness, a person who is currently disqualified from being a director in the UK is not able to be an Individual within a PL club; nor can a person who has, subject to

certain criteria, been involved in a football club at the time of its insolvency, or who has been convicted on indictment of an offence such as fraud, deception or forgery. Similarly, an Individual cannot hold more than a 9.9% shareholding in more than one PL club.

## European club ownership: ENIC and beyond

Ownership issues have arisen when one company has had a shareholding in more than one European football club competing in the same UEFA competition. The seminal example is the CAS decision in the ENIC case<sup>1</sup>. ENIC at the time had a minority shareholding in AEK Athens FC (42.8%) and a majority shareholding in Slavia Prague (96.7%), and both clubs qualified for the UEFA Cup competition in the same season.

The CAS decision signalled the intention of the football authorities to take measures to ensure that conflicts of interest do not occur between commonly owned clubs. The rule which was subsequently brought into effect by UEFA ('the UEFA Rule') effectively prohibited clubs in which ENIC had an ownership stake from competing in the same UEFA competition. However, as the UEFA Rule had only been added after the clubs had already qualified for the following season's European club competitions (the 1999/2000 season), it only became effective for the 2000/1 season<sup>2</sup>.

The ENIC decision stated that a company or a person has an 'Interest' in a club when it has:

- the majority of the shareholders' voting rights in another club in the same UEFA club competition;
- the right to appoint or remove a majority of the directors in another club in the same UEFA club competition; or

● the majority of the shareholders' voting rights (through a Shareholders' Agreement) in another club in the same UEFA club competition.

The decision prohibited two clubs in which a person or company had an Interest from being admitted into the same UEFA club competition. The CAS stressed the need for transparency and legitimacy in all UEFA competitions. The supporters' perception of a particular game could be damaged by the differing business aims of two clubs in the same competition in which the same person or company had an Interest.

The CAS ruled that, for these purposes, a shareholding of 50.1% or more in two clubs competing in the same UEFA club competition would potentially breach Article 2 of the UEFA Rules on Integrity of Competition<sup>3</sup> ('the UEFA Integrity Rules') under the first bullet point, above.

Additionally, after the CAS cleared the UEFA Rule in time for the 2000/1 season, a further stipulation was added to the UEFA Integrity Rules. It is now prohibited for a company or person to have an Interest in a club when it has the ability to exercise a 'decisive influence' in the decision-making of another club in the same UEFA club competition.

In analysing the ENIC decision, it could be suggested that one person or company having an Interest in two clubs could face two significant conflicts, which UEFA was keen to nullify. One interesting situation could arise if a person or company had a 100% ownership stake in a non-PL European club (Team A) competing in the Champions League and had a 49% shareholding (but not an Interest) in a PL club (Team B). That person or company would have a significant shareholding, as defined

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under the PL Rules (as it is greater than 30%), and would be required to pass the PL FPPT, but the 49% shareholding would not breach the UEFA Integrity Rules. Both teams would be allowed to play in the same competition. The contrast that such a situation presents to the transparent and fair competition rationale espoused in the ENIC decision is a matter of degree.

Such questions relating to the integrity of the competition would be heightened, for example, if Team A needed to win a match against Team B to qualify for the next round, whilst Team B was not in a position to qualify for the next stage. Accusations of match fixing and footballing impropriety would almost certainly follow if Team B fielded a weakened team.

**Definition of 'control': the PL v UEFA disparity**

An anomaly exists between the PL Rules and UEFA Integrity Rules. The PL Rules define control as having a shareholding of 30% or greater. Indeed, PL Rule D.2.2 stipulates that no Individual can have a 10% stake in more than one PL club.

Conversely, the UEFA Integrity Rules would suggest that one person or company could have a 100% shareholding in one club and a 'non-decisive influence' shareholding in another club competing in the same competition, without breaching the UEFA Integrity Rules. Interestingly, when the CAS upheld the legality of the UEFA Rule in time for the 2000/1 season, the stipulation concerning 'decisive influence' was not part of the original UEFA Rule. The 'decisive influence' stipulation was added after the decision by UEFA to ensure there was a catch all provision to prevent common ownership under the 50.1% threshold. To some extent, this partially alleviates the fear that a

company or person can have a 100% and a 49% shareholding in two clubs in the same UEFA competition. This is still not as prescriptive as the relevant Spanish or PL regulations.

In Spain, for example, the shareholding threshold is 5% under Article 17 paragraph (2) of the Royal Decree on Sport Corporations<sup>4</sup>. The rule is even more stringent than the PL 10% stake obligation, but the scope of the Statute only includes the Spanish first and second divisions.

It is clear that both the PL and Spanish Rules are stricter than UEFA's Rules. The PL has put additional mechanisms in place to protect the interests of fair play and competition. The PL should be commended for going above and beyond what UEFA deem necessary to ensure transparency and accountability in order to actively regulate ownership issues. The PL are seemingly taking the lead on this front. It may therefore be an appropriate time to champion a scheme to promote transparency, accountability and fair play in the field of player ownership (described in Part 1 of this two part article) by confronting any sporting conflicts that may arise.

**Multiple club ownership in Spain**

Whilst the PL have more rigorous safeguards to prevent accusations of unfair competition, in Spain there appears to be little prohibiting one owner controlling two clubs in different divisions.

During the summer of 2007, the owner of Ciudad de Murcia ('Murcia'), a Spanish second division team, sold his shareholding in the club to the owner of Granada CF, together with the right to participate in the second division of the Spanish league for the 2007/2008 season.

The new owner, Carlos Marsa, changed the name of the club to Granada 74, SAD ('New Granada 74'), changed the registered seat of the club to another city and allowed the players under contract with Murcia to leave if they did not wish to relocate to their proposed adopted city.

The Spanish football league (LFP) allowed the registration of New Granada 74 into the Spanish second division, which was subsequently confirmed by the Superior Council for Sport in Spain. The existing Club Polideportivo Granada 74 ('Old Granada 74') (which now shares its president with New Granada 74) maintains its position in the third regional division.

The Spanish Football Federation (RFEF) came under fire from UEFA and FIFA, who considered that New Granada 74 had essentially bought their place in a higher division. CAS ruled in favour of the defendant (LNFP). The decision allowed the newly formed New Granada 74 into the Spanish second division.

In accordance with the article 17(1) of the Royal Decree 1251/1999 on Sport Corporations ('the Spanish Statute'): 'The Sport Corporations as well as the clubs participating in professional competitions on the state level, are not allowed to participate directly, or indirectly, in the capital of another sport corporation that forms part of the same professional competition, or in case they are different, pertains to the same modality of sport'.

The term 'sport corporations' refers to particular kinds of companies in the sports field, whose constitution, with certain exceptions, requires football clubs to participate in professional sporting competitions. Specifically, the term 'professional competition level' is defined in the Spanish

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Statute as only the first and second football divisions in Spain. It is significant that such legislation excludes from the scope of the Spanish Statute a regional Spanish third division. Therefore, there are no restrictions that prevent the company owning the club which plays in the regional third division from acquiring a club participating in the second division<sup>5</sup>.

The only apparent impediment to the acquisition of Murcia appeared to be article 18.2 of the FIFA Statutes. The FIFA statute states: 'In any case, the Member shall ensure that neither a natural nor a legal person (including holding companies and subsidiaries) exercises control over more than one club whenever the integrity of any match or competition could be jeopardised'.

The CAS concluded that no match or competition would be compromised. However, a different issue of ensuring that the rules of fair competition are not being by-passed remains a wholly separate, yet equally important, consideration. For example, a situation might occur in which Old Granada 74 (the club that remains in the regional third division) has the opportunity to be promoted to the second division. In this case, in line with the Spanish Statute, such a situation would have to be remedied by Old Granada 74's promotion from the third division being:

- prohibited; or
- allowed, but on condition that there is divestiture in the shareholding of either the Old or New Granada.

It should be noted, however, that the existence of the second B division in Spain between the second and regional third divisions makes promotion of this kind possible but more difficult. Another complication could arise if, for instance, New Granada 74 and

Old Granada 74 were drawn against each other in the Copa del Rey. The Copa del Rey, however, does not fall within the scope of prohibitions determined in the Spanish Statute - unsatisfactorily, it only encompasses the first and second divisions of Spanish football.

As both Old and New Granada 74 compete in different divisions (the third and second divisions respectively), and because there is a second B division in between the two divisions, the CAS concluded that the threat to the 'integrity of any match or competition' was not satisfactorily proven by the RFEF.

One reason for the CAS' rejection of the request by the RFEF for non-admittance of New Granada 74 to the Spanish second division was that the RFEF had been a signatory to an agreement with the LFP ('the Agreement'). The Agreement explicitly gave clubs and sports corporations the ability (in this instance) to sell their rights to participate in the first or the second league to third party clubs and/or sporting corporations. The CAS ruling, although following the Spanish Statute in permitting such purchases, has no doubt caused serious problems for Europe's football authorities.

In Spain, there seems to be an appreciation that the sale and purchase of Murcia has been carried out in accordance with the provisions of the Spanish Statute. Indeed, some have been surprised by the actions of RFEF, particularly because they were a signatory to the Agreement concluded between the RFEF and the LFP.

Such a scenario could be contrasted with the MK Dons ground move in England in 2002, although in that example there was no takeover by another club and no change in the division the club was playing in. The owners simply moved location and changed the

club's name. In the Spanish example, the direct consequence of the purchase of Murcia was the immediate ascent for New Granada 74 into a higher division.

### Conclusion

In the Granada example, the CAS sided with the LFP. Such a scenario could not occur in the PL because of its more stringent rules on multiple-club ownership<sup>6</sup>. FIFA have since announced that its rules will be changed to ensure that clubs can only qualify for a place in a higher division on sporting merit alone and that instances like this cannot occur in the future<sup>7</sup>. How this will be codified and what shape these rules will take could form the basis of another article.

One would suspect that the guiding rationale behind the PL Rules was to prohibit exactly the type of circumstance that has occurred in Spain. One club bypassing the notion of pure sporting competition (i.e. sporting success) in buying a club in a higher division must be viewed with concern by FIFA, UEFA and the PL alike.

What becomes abundantly clear on a review of the PL, Spanish and UEFA rules is that there is no consistent approach across Europe as to what situations in club ownership could give rise to a conflict. The ownership percentage one owner can have in two clubs in the PL is vastly different from those one can hold in two clubs in a UEFA cup or Champions League competition. The PL seems to be leading the way in its strict adherence to an almost zero tolerance no conflict rule in club ownership. Whilst one may not have technical control of a club until owning more than 50% in that club, it is undeniable that in many situations, owners with lower percentages can have great influence in a club. The PL has

taken a more prescriptive approach in defining control as 30% and even setting a 10% limit, at which they contend an influence is possible.

The UEFA Integrity Rules set a definitive limit of 'control' at 50.1% and above, although as mentioned earlier, the redrafted Rules also make reference to 'decisive influence'. The original UEFA Rule which the CAS ruled upon did not make reference to any 'decisive influence' stipulation and it is not necessarily clear what would be considered a 'decisive influence' over another club's affairs.

There is no indication that UEFA will follow the PL and tighten its rules. Presumably, they consider that their 'decisive influence' clause is a suitable catch-all provision. Such ambiguity, some would contend, equates to flexibility in being able to subjectively assess a set of circumstances on a case-by-case basis. On the other hand, detractors would point to such a provision leading only to regulatory uncertainty. With varying club ownership rules throughout Europe, perhaps a more prescriptive approach by UEFA may well be a sensible extension in order to guarantee ostensible integrity.

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**Daniel Geey** Solicitor  
**Victoria Ross** Trainee Solicitor  
 Field Fisher Waterhouse LLP  
**Maja Rotkvic** Lawyer  
 Jiménez de Parga Abogados, Madrid  
[daniel.geey@ffw.com](mailto:daniel.geey@ffw.com)  
[victoria.ross@ffw.com](mailto:victoria.ross@ffw.com)  
[mrotkvic@jimenezdeparga.com](mailto:mrotkvic@jimenezdeparga.com)

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1. I.S.L.R. 2001, 1(Mar), 122-153.
2. An interim court ruling had the effect of freezing the implementation of the UEFA rule until the outcome of the CAS hearing.
3. See <http://www.uefa.com/newsfiles/19071.pdf>
4. 'No legal or natural person which holds, directly or indirectly, a participation that equals or exceeds 5% in the voting rights of a sport corporation, may hold, directly or indirectly, a participation that equals or exceeds 5% in another sport

corporation that forms part of the same professional competition, or in case they are different, pertains to the same modality of sport'.

5. cf PL Rule D2.1.

6. Due to PL Rule D.2.1.

7. <http://uk.eurosport.yahoo.com/071029/2/vyt7.html>



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