

FAIR TACKLE OR FOUL: THE COMPETITION LAW IMPLICATIONS OF THE PROPOSED SPENDING CAP IN THE ENGLISH PREMIER LEAGUE

The spending cap agreed in principle by English Premier League football clubs in April 2024 raises interesting competition law questions, at a time when competition law agencies globally have increased their focus on labour market agreements which suppress employee salaries and limit employee mobility, including in the sports sector.

In theory, a spending cap may be compatible with competition law if it affords Premier League clubs sufficient flexibility in deciding the wages they pay their players, does not result in clubs having greater alignment on the wages they pay or is deemed a proportionate measure to ensure the sustainability of Premier League clubs. However, a tribunal's recent rejection of FIFA's proposed agent fee caps in England underscores the tension between regulatory control and market competition. With players themselves also increasingly invoking competition law to dispute restrictions on their wages, the proposed cap could provoke legal challenges, potentially disrupting player markets and the Premier League's attempts to promote financial sustainability in the game.

NEW RULES OF THE GAME

Premier League clubs are considering implementing a spending cap to regulate financial expenditure within the league. Sixteen of the twenty Premier League clubs have voted in favour of progressing the necessary economic and legal analysis to develop a model for such a cap which would replace the current Profit and Sustainability Rules (PSR) framework when the clubs reconvene later this month.

Existing PSR

The proposed reforms are intended to replace the current PSR which have been in place since the 2013/14 season. The PSR were introduced to broadly align with UEFA's FFP regulations as well as to "*promote financial sustainability*" and "*ensure clubs operate within their means*".

The PSR provide that Premier League clubs can make an aggregate £15 million loss over a three-year monitoring period. Additionally, losses can rise to £105 million if the additional £90 million is covered by secure funding from the club's owners. However, this funding cannot be obtained by way of a loan. If a club has losses in excess of £105 million, the club is in technical breach of the PSR and the Premier League will refer the breach to an

Key Issues

- Premier League clubs are considering implementing a spending cap to regulate financial expenditure within the league.
- Unlike the Premier League's current profit and sustainability rules or UEFA's financial fair play regulations, the new rules would not be connected to each club's losses or revenues.
- In principle, agreements between competitors which fix, cap or suppress wages risk being categorised as price fixing and therefore in breach of UK competition law.
- Recent decisions by competition authorities and tribunals, including in the UK, have shown that, in certain circumstances, spending caps can fall foul of competition law.
- However, spending caps may be considered justifiable if shown not to result in clubs having greater alignment on the player wages paid or if they are deemed necessary.

independent commission, as was the case with Everton Football Club and Nottingham Forest Football Club, with both clubs receiving points deductions during the 2023/24 season. Nottingham Forest FC was in fact subject to the lower threshold of £61 million (as opposed to £105 million) because it was in the Championship during the relevant period.

The proposed new spending cap

Whilst the details are subject to ongoing developments, the proposed spending cap is expected to be introduced by the 2025/26 season and will limit clubs' total expenditure on transfers, wages and agents' fees. The cap will limit the spending on squad costs of Premier League clubs that compete in UEFA competitions (i.e., the Champions League, Europa League and Europa Conference League) to 70% of their annual revenue. Meanwhile, clubs which do not compete in UEFA competitions, and thus do not benefit from this extra sporting prize money, shall be restricted to spending a maximum of 85% of their revenue on squad costs.

To avoid creating an imbalance between clubs, there will be an absolute limit introduced by way of a cap "anchored" to yearly broadcasting revenue. The 'anchoring multiple' is expected to be between four and five times the broadcasting revenue received by the lowest earning club in the Premier League. This would be a notable departure from the existing PSR, as the spending cap would not be linked to each club's respective losses or revenues.

The implications of setting the spending cap by reference to a multiple of the broadcasting revenue received by the lowest earning club in the league would be that certain clubs would be able to spend more on transfers, wages and agents' fees than they are currently able to do under the PSR. Contrastingly, clubs which generate significant revenues from commercial initiatives or sporting success would be more constrained in how these revenues can be reinvested.

COMPATIBILITY WITH COMPETITION LAW

UK competition law prohibits agreements or concerted practices which have the object or effect of preventing, restricting or distorting competition in the UK. Agreements in labour markets which suppress employees' pay, or restrict employee mobility or choice, may be unlawful and categorised as price-fixing or a purchasing cartel; such issues in labour markets have increasingly become an enforcement priority for competition regulators globally, including in the UK.

The extent to which the spending cap might be incompatible with UK competition law – i.e., because it results in a suppression of, or *de facto* cap on, players wages – will depend on how it is constructed.

On the one hand, prior arrangements between members of sporting competitions have been found to fall foul of competition law. For example:

- **Mexican Football:** In 2021, the Mexican competition authority, Comisión Federal de Competencia Económica, penalised the Mexican Football Federation and seventeen local football teams for participating in no-poaching and wage-fixing agreements as they collectively decided to impose a salary limit for female players based on their age.
- **Polish Motorsports:** In 2023, the Polish Office of Competition and Consumer Protection imposed a €1.2 million penalty on the nation's

premier speedway league and the national motorsports authority for colluding to set a maximum salary for riders.

On the other hand, we have seen in other sports that if the spending cap is deemed a proportionate mechanism to ensure the sustainability of clubs, or an entire league, then it may withstand scrutiny:

- **English Rugby Union:** In 2019, the English professional rugby union club Saracens Rugby Club attempted to invoke competition law to challenge a sanction for breaches of the salary cap rules. The panel found that the salary cap had the legitimate objective of ensuring that clubs operated in a financially sustainable manner as well as also safeguarding the heritage and sporting integrity of English rugby.

The panel determined that there was no appreciable restriction of competition evidenced given that: (a) notwithstanding the cap, clubs continued to successfully attract a substantial number of foreign players; and (b) Saracens Rugby Club continued to have successful European campaigns.

- **Formula 1:** In 2021, driver salaries were pre-emptively carved out from the cost cap regulations introduced that year, allowing the sport to pursue its financial sustainability goals without attracting competition law scrutiny for possible wage suppression.

Factors relevant to whether the proposed Premier League spending cap would be compatible with competition law include whether: (a) Premier League clubs retain sufficient flexibility as to the wages they pay their players; and (b) the spending cap does not lead to a reduction in wages below market forces or unintended alignment between clubs on the wages they choose to pay. However, the linkage between competition law and labour market issues is still developing (particularly in the UK and EU) such that there is some uncertainty as to how a spending cap with a moveable ceiling when league revenue increases would be perceived by a competition authority or court.

FOOTBALL (CHALLENGES) COMING HOME?

In just the last few months, FIFA's attempts to regulate the football labour market have been brought to ground by competition law challenges.

Football Association (FA) Agent Fee Caps

In December 2022, FIFA published regulations designed to cap fees payable to agents during player transfers. In June 2023, four sports agencies challenged the FA's National Football Agent Regulations (**NFAR**) which implemented the FIFA rules for English domestic transfers.

In December 2023, a tribunal blocked the implementation of the NFAR on competition law grounds, finding that:

- **Price caps should not be imposed by private bodies in a competitive market.** The clubs were no longer "*adopting unilateral policies on the market in respect to the fees that they pay agents and that is as a result of an agreement between them or a decision of the association of which they are members*".
- **The purpose of the fee cap was not to reduce abuses by agents or correct abuses or market failures.** Agents already operate in a competitive market, whereas the fee cap fixes the price at which the

agents can offer their services on that market, and price caps imposed horizontally by purchasers constitute an object restriction. In other words, the price caps were considered to have, by their very nature, the potential of restricting competition.

- **The fee cap essentially operates as a buyer's cartel.** The tribunal was unable to agree with FIFA and the FA's conclusion that there is no price fixing because the fee cap "*leaves room for agents to compete beneath the cap*" – this was insufficient, particularly in light of the high level of competition already present in this market.
- **The fee cap is likely to have anti-competitive effects.** Inevitably, the fee cap will distort competition between clubs for agency services. Revenue reductions are also likely to adversely affect the business model of such agencies in terms of reduction of investment in areas of the business that are less profitable, such as young and female players.

A full briefing on this headline case (in which this firm acted for the successful parties) is available [here](#).

Player Power – an EU competition law challenge

In April 2024, Advocate General of the European Court of Justice Maciej Szpunar, in his advisory opinion to a Belgian court, opined that FIFA's regulations regarding the contractual relationships between players and clubs might conflict with EU competition laws.

Ex-Premier League star Lassana Diarra saw his contract with Russian club FC Lokomotiv Moscow terminated, which led to claims and counterclaims involving compensation for breach of contract and unpaid wages. The player encountered challenges in securing a new club due to a provision in the regulations that meant that a new club could be held jointly and severally liable for compensation. The player's inability to transfer to Royal Charleroi Sporting Club is attributed to these conditions, prompting litigation against FIFA and URBSFA for damages and loss of earnings amounting to €6 million.

Advocate General Szpunar opined that FIFA's regulations could infringe on competition law by restricting the freedom of players to transfer between clubs and, consequently, the ability of clubs to recruit players, particularly when a player has terminated their contract without just cause.

WHAT NEXT?

The evolving landscape of the Premier League's financial regulation through proposed spending caps is a subject that merits close observation. Following further legal and economic analysis, the Premier League clubs will consider and potentially vote on a more developed set of regulations at their Annual General Meeting later this month.

As clubs navigate the complexities of aligning with different regulations, the interplay with competition law cannot be overstated. Recent tribunal decisions and regulatory actions in football and other sports serve as a cautionary tale of the potential legal pitfalls that could ensue when imposing spending caps. Players, competition authorities and the football community at large will undoubtedly be watching with interest when the developed model is presented in the coming weeks.

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