Fair or foul? Competition law and the financial regulation of football - Part 1

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No video selected.

Leading football clubs are big business – but they are more than that. Most clubs have strong local roots and they attract huge publicity throughout Europe. Particularly in the United Kingdom, that has generated huge television revenues and has attracted investors from around the world. The consequences for spectators and for smaller clubs have caused widespread public concern and has led to calls for regulation of the industry.

Self-regulation by UEFA and the Premier League is part of the answer but each is itself subject to regulation in the wider public interest. In part 1 of this article, the authors summarise the new measures that UEFA and the Premier League are introducing to protect and/or promote “financial fair play” and in part 2 they sketch the likely legal issues which arise under EU law – whatever the motivation of these reforms of football finance, the history of such initiatives since the landmark Bosman ruling suggests a significant risk that they may be open to legal challenge.

Financial fair play?

In just a few months, at the start of the 2013-4 season, the first so-called ‘monitoring period’ of the UEFA Club Licensing and Financial Fair Play (“FFP”) Regulations commences. Any clubs wishing to participate in UEFA competitions such as the Champions League will have to comply with the FFP Regulations. The long-promised FFP will, therefore, come of age.

But there are still some who wonder whether FFP is based on solid legal foundations: they openly raise the question whether a court – notably the Court of Justice of the European Union (CJEU) – might strike it down. Most recently, it has been reported that a Belgian football agent has made a formal complaint to the European Commission about FFP, alleging that the Regulations are in breach of EU law.[1]

In this article, we summarise the main features of the UEFA and PL regimes and then consider the main grounds for concern that these rules might themselves be ruled unlawful.

UEFA Financial Fair Play Regulations

The FFP Regulations entered into force on 1 June 2010, and were updated (following a process of consultation) in 2012. Since then, clubs wishing to participate in European competition have been on notice that the first official 'monitoring period' will begin next season, 2013/14. Although the Regulations also introduce detailed rules for the licensing of clubs, this article concentrates on their application to the financing of clubs.

The principal objectives of the FFP Regulations are defined in Art. 2.2 as follows:

> a) to improve the economic and financial capability of the clubs, increasing their transparency and credibility;
> b) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with players, social/tax authorities and other clubs punctually;
> c) to introduce more discipline and rationality in club football finances;
> d) to encourage clubs to operate on the basis of their own revenues;
> e) to encourage responsible spending for the long-term benefit of football;
> f) to protect the long-term viability and sustainability of European club football.

Michel Platini (UEFA President) has stated that the introduction of the 'financial fair play concept':

"…should not be seen as a call for austerity and a return to the budgets of old. Football moves impressive amounts of money and that is a good thing. Nor is it a question of seeking a utopian distribution of wealth. There have always been clubs that are richer than others and there doubtless always will be. All we want is for clubs – richer and poorer alike – to spend no more than they earn and to balance their books, this being the only sure way for them to survive."

In line with these objections, clubs wishing to participate in European competition are required to comply with various 'break even requirements'. A club's economic performance is to be assessed by analysing 'relevant' income and expenditure over a three year reporting period (or, in the case of the 2013/14 season only, a two year period). For example, the 2014/15 monitoring period will require an assessment of a club's financial performance for the years 2012, 2013 and 2014.

The ‘break even’ terminology is somewhat misleading: the Regulations do not in fact require clubs to break even. For example, a club may make an aggregate loss of up €5m over a three year reporting period, yet remain ‘FFP compliant’ for the monitoring period in question. This acceptable ‘margin of error’ is termed ‘acceptable deviation’ in the Regulations. In addition, a club may incur much larger aggregate losses (of up to €45m over the relevant two/three year reporting period), provided that the excess is entirely covered by contributions from equity participants and/or related parties. In short, this further exception to the ‘break even’ rule permits (for example) wealthy club owners to subsidise spiralling wage costs or transfer fees, which would otherwise cause the club to fall foul of the Regulations.

The intention is that the Regulations will apply more strictly over time: from 2015/16 onwards the permitted level of additional deviation will decrease from €45m (over the relevant three year reporting period) to €30m; and the UEFA Executive Committee reserves the right to introduce more stringent limits in due course.

The UEFA Regulations also restrict the types of income and expenditure that count for the purpose of the FFP assessment:

1. ‘Relevant income’ is defined as:
    - revenue from gate receipts;
    - broadcasting rights;
    - sponsorship and advertising;
    - commercial activities and other operating income;
    - profit on disposal of player registrations or income from disposal of player registrations;
    - excess proceeds on disposal of tangible fixed assets;
    - finance income.
2. Relevant expenses’ are defined as:
    - cost of sales;
    - employee benefits expenses;
    - other operating expenses;
    - amortisation or costs of acquiring player registrations;
    - finance costs;
    - dividends.
3. Specific (and potentially very important) ‘carve outs’ from the definition of ‘Relevant expenses’ are:
    4.
    - depreciation/impairment of tangible fixed assets;
    - amortisation/impairment of intangible fixed assets (other than player registrations);
    - expenditure on youth development activities;
    - expenditure on community development activities,
    - any other non-monetary items;
    - finance costs directly attributable to the construction of tangible fixed assets;
    - tax expenses;
    - certain expenses from non-football operations.

It seems inevitable that these rules and exceptions will give rise to complicated legal and/or factual issues as to the proper classification of certain types of club income / expenditure, when undertaking the 'break even' analysis. For example, there is obvious cause for concern that a regime of this kind will lead to elaborate 'avoidance schemes' designed to sidestep the Regulations, for example by entering into lucrative sponsorship contracts with companies / organisations closely affiliated to the club / the club's owners; and which do not represent a fair market value for the commercial transaction in question.

In order to try and address these concerns, the Regulations expressly incorporate the concept of 'fair value', by which any 'related party' transaction must be assessed. Again, given the sums at issue in this industry, it seems inevitable that disputes will arise regarding (a) who / what constitutes a 'related party' (for the purpose of a particular financial transaction(s)); and (b) what constitutes a 'fair value' for a deal between related parties. There are already cases (for example, ground or shirt sponsorship deals) that raise precisely this type of issue.[2]

The responsibility of monitoring clubs' financial performance against the requirements of the Regulations has been assigned to the 'Club Financial Control Panel'. The Regulations do not themselves lay down any specific forms of punishment, or 'tariffs' for certain types of offending behaviour, but Art. 72 provides that: "Any breach of these regulations may be penalised by UEFA in accordance with the Procedural rules governing the UEFA Club Financial Control Body". Art. 21 of these 'Procedural rules' provides that the following disciplinary measures may be imposed against a club:

a) warning;
b) reprimand;
c) fine;
d) deduction of points;
e) withholding of revenues from a UEFA competition;
f) prohibition on registering new players in UEFA competitions;
g) restriction on the number of players that a club may register for participation in UEFA competitions;
h) disqualification from competitions in progress and/or exclusion from future competitions;
i) withdrawal of a title or award.

FA Premier League Financial Fair Play Regulations

On 11 April 2013, a majority of the FAPL clubs ratified the FAPL's own FFP Regulations. The Regulations are similar in structure to the UEFA Regulations:

- each monitoring period will require an assessment of a club's financial performance over a three year period; and
- the 'break even' description is somewhat of a misnomer.

Under the FAPL Regulations, clubs will be permitted:

- to make an aggregate loss of £15m over a three year reporting period (i.e. the acceptable deviation, which need not be guaranteed by a club's owners);
- make an aggregate loss of £105m over a three year reporting period if:

  a) the club's owners guarantee the funding;
  b) the club provides satisfactory financial forecasting projections to the PL; and
  c) £90m of the 'deficit' funding is injected into the club by way of equity (shares).

These limits are substantially higher than the respective maximum deficits of €5 and €45m stipulated by the UEFA Regulations.

The Regulations also include what has been referred to as a 'soft salary cap'. Whilst the practical implementation of this measure may be far from straightforward, in essence the position is as follows: clubs whose annual wage bill is £52m or above will only be permitted to increase their salaries by an accumulative £4m per season for each of the next three years. However, this rule on capped salary increases applies specifically to the clubs' respective shares of 'Premier League Central Fund Revenue' (most significantly, the recent £5.5 billion TV broadcasting rights package); and wage bills may be supplemented beyond these limits if clubs can demonstrate that those payments are funded by other additional revenue streams. The effect of this rule is clearly much less onerous for clubs with large income streams from non-TV rights sources, i.e. the clubs with large grounds and fan bases, than for small clubs that are heavily dependent on TV revenues to finance their businesses.

In the second part of this article, the authors discuss the possible avenues of legal challenge to FFP under EU law

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1 Guardian, "Players' agent launches legal threat to Uefa financial fair play rules", 6 May 2013: http://www.guardian.co.uk/football/2013/may/06/agent-legal-threat-uefa-financial-fair-play

2 See, e.g., http://www.financialfairplay.co.uk/latest-news/paris-st-germain-attempt-to-circumvent-ffp-rules: "Paris St-Germain have signed a huge sponsorship deal with the Qatar Tourist Authority. The four-year deal is said to be worth €150m this season, rising to €200m in the final year of the arrangement. The deal is also reported to be back-dated so that the club will receive the full €150m this season, even though deal has only just been announced. PSG are 100% owned by the Qatar Sports Initiative (QSI), which is in turn owned by the Qatar Investment Authority (QIA) – a Sovereign Wealth Fund owned by the Qatar government. … The Qatar Tourist Authority is a government funded organisation. This sponsorship deal has clearly been arranged to artificially boost the profits of PSG so that the club can comply with FFP rules. PSG are heavy spenders and without the huge deal would fail the FFP test in the first Monitoring Period.

Fair or foul? Competition law and the financial regulation of football - Part 2

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In part 2 of this article, the authors discuss the possible avenues of legal challenge to the new measures that UEFA and the Premier League are introducing to protect and/or promote "financial fair play".

Possible concerns over the legality of the UEFA and FAPL rules

It has been clear at least since the Bosman ruling of the CJEU[1] that sporting rules governing the 'economic' aspects of sport can be challenged under EU law:

a. the EU rules on the free movement of workers, Article 45 of the Treaty on the Functioning of the European Union (TFEU);
b. Article 101 TFEU, prohibiting anti-competitive agreements and decisions of an "association of undertakings" (which includes sporting bodies such as UEFA); and
c. Article 102 TFEU, prohibiting anti-competitive abuse of a dominant market position by a sporting organisation controlling a major sport.

In addition to EU law, UK law could also apply to sporting rules – in particular:

a. the Chapter I and II prohibitions of the Competition Act 1998, the domestic equivalent to Articles 101 and 102 TFEU;

b. the common law doctrine of restraint of trade, which makes restrictive provisions of an agreement unenforceable unless they can be justified as reasonable both between the parties and as a matter of public policy; and
c. public law requirements requiring UK bodies to follow fair procedures.

Post-Bosman cases such as Meca-Medina[2] and Olympique Lyonnais have confirmed that competition and free trade rules apply to sporting rules.[3] In Meca-Medina, two swimmers appealed against a ban imposed by the international governing body for swimming, FINA, for having tested positive for nandrolone, a banned substance. The swimmers' defence was that nandrolone occurred naturally in wild boar meat, which they had consumed prior to testing; in other words, there was an innocent explanation for the positive test. The defence was rejected by the FINA Doping Panel. The swimmers then complained to the Commission, arguing that the rules in question were anti-competitive and would deprive the athletes of a living.

The Commission dismissed the swimmers' argument out of hand, finding that the FINA rules were purely 'sporting rules' that fell outside the scope of EU free movement and competition law. On appeal, the CJEU found that although the rules were of a sporting nature, they also had an impact on economic activity - in that they led to periods of suspension for athletes who contravened them - and, as such, fell within the scope of EU law. The Court held (at para 47) that:

> *"the penal nature of the rules and the magnitude of the penalties applicable in the event of breach are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in. It follows that, in order not to be covered by the prohibition laid down in Article [101(1) TFEU], the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport."*

This ruling has broad implications for all sporting rules that have any significant economic impact on sportsmen or women or sporting clubs: even where such rules pursue a legitimate objective, the sporting body must show that the rules go no further than is necessary to achieve that objective – i.e. they must be proportionate to the identified aims. Unless the rules are not liable to have any significant economic impact at all, they fall within the scope of the competition rules and require careful justification if they are to survive legal challenge.

Not long after the Meca-Medina judgment, in 2007 the Commission issued a White Paper on Sport,[4] in which it recognised the application of competition law to the organisation of sport, insofar as it relegated to economic activity, but also referred to the so-called "specificity of sport", stating:

> *"The case law of the European courts and decisions of the European Commission show that the specificity of sport has been recognised and taken into account. They also provide guidance on how EU law applies to sport. In line with established case law, the specificity of sport will continue to be recognised, but it cannot be construed so as to justify a general exemption from the application of EU law".*[5]

As to what is meant by the "specificity of sport", in Heart of Midlothian v Webster & Wigan Athletic[6] – a case concerning the assessment of compensation following the unlawful termination of a Scottish footballer's contract of employment – the Court of Arbitration for Sport described it as:

> *"...a reference to the goal of finding particular solutions for the football world which enable those applying the provision to strike a reasonable balance between the needs of contractual stability, on the one hand, and the needs of free movement of players, on the other hand, i.e. to find solutions that foster the good of football by reconciling in a fair manner the various and sometimes contradictory interests of clubs and players."*

Consistently with Meca-Medina, in its White Paper the Commission went on to say that, in respect of the regulatory aspects of sport, a case-by-case assessment was called for: there is no such thing as "purely sporting rules", and the justification of restrictive rules is fact- and context-specific.[7]

In the authors' view the UEFA and PL Regulations probably do fall within the scope of EU trade law: their central purpose is to restrict the economic operation of members of UEFA and the PL respectively, which is likely to have a material effect on (inter alia) financial investment in clubs, the number / frequency of player transfers, the level of transfer fees, and player wages. If that is so, then the Regulations are potentially open to challenge and would need to be justified under EU law and competition law if they are to be lawful.

Potential challenges to FFP and PLFR could in principle come from the following sources:

a. The EU Commission or OFT (soon to be renamed the Competition and Markets Authority): each has the competence to enforce EU competition law (and, in the OFT's case, the domestic rules, too).
b. Clubs or club owners, who may argue that the rules will impact unfairly on them. There are examples of sporting clubs raising competition arguments in internal regulatory appeals (e.g. London Welsh)[8] or in court litigation (e.g. Olympique Lyonnais).
c. Players or player representatives: there are numerous examples of individual players or player organisations raising such arguments – most famously in Bosman itself, but also in cases such as Rooney[9] and Olympique Lyonnais. As noted at the outset of this article, it has very recently been reported that one football agent has already submitted a formal complaint to the Commission about the FFP Regulations.

Challenges of this kind might lead to preliminary rulings of the CJEU (as in Bosman and Olympique Lyonnais) or to appeals to the EU Courts from Commission decisions (as in Meca-Medina); in either case, the rulings would be binding on the competition authorities and/or national courts and tribunals within the EU.

Turning to the arguments that might be run by litigants, their outline is reasonably clear:

a. Complainants, particularly smaller clubs, might argue that the effect of FFP and/or PLFR is to act as a barrier to entry or expansion, restricting investment in those clubs and preventing them from competing on a 'level playing field' with their more established (and richer) counterparts. Whilst not generally perceived as ‘small’ clubs, Manchester City and Chelsea are the obvious recent examples in the UK of clubs that have benefitted from heavy investment, which has enabled them to develop their ‘brands’ and break the stranglehold traditionally enjoyed by Manchester United and Arsenal at the top of the Premier League (although not to forget the Jack Walker funded success of Blackburn Rovers in the 1994/95 season – perhaps a classic example of a spectacular ‘rise to the top’ which would be almost inconceivable in the FFP environment). More generally, it might be argued that the effect of financial fair play rules is likely to be protect or entrench the status quo: put simply, clubs with large followings and an already impressive infrastructure will be much less financially restricted than smaller clubs wanting to challenge at the highest level. Clubs with considerable income and profit streams, such as Manchester United, will generally have much greater freedom to invest in player talent than clubs with more limited income streams. However, the important point is that the opportunity for smaller clubs to ‘bridge the gap’ through: (a) owner funding; or (b) third party investment, is likely to become far tougher following the implementation of the financial fair play rules.

b. The PLFR rules in particular could be argued to be discriminatory in so far as they restrict the use of TV rights income. This revenue stream is of particular importance to the smaller FAPL members and is distributed between current and former members of the PL in a relatively fair and transparent way (that has been in place as an accepted part of the PL Rules ever since the creation of the PL). By contrast, most other forms of revenue, including those not caught by the FAPL rules, reflect the traditional dominance of a small number of clubs with large fan bases and associated revenue streams.
c. Players or player representatives might also argue that the effect of these rules is deliberately to restrict wage costs and thereby to restrict competition at the expense of players.[10] Given the scale of the financial issues, both the UEFA and the FAPL rules would potentially fall within the scope of EU as well as UK domestic law, as was the case in Bosman and Olympique Lyonnais.

If a challenge were brought, it would in practice, as explained above, be virtually impossible for the authorities to argue for any kind of blanket “sporting exception”. The onus would therefore be on UEFA (or, as the case may be, the FAPL) to justify the rules by reference to a legitimate objective(s).

The primary justification would presumably be that the rules ensure the economic viability of football as a valuable part of the UK and EU way of life. This justification would, however, require a careful explanation of why there are special reasons to restrict the economic freedom of clubs to plan their businesses as they see fit (and in particular to pay the full market rate for players as their principal “factor of production”). Presumably justification arguments would include specific factors distorting the incentives of investors, which might include:

- Popular/local pressure to preserve non-viable clubs in operation;
- State aid from individual Member States/local authorities; and/or possibly
- Perverse incentives for wealthy individuals/external funding sources to distort market competition for non-economic reasons.

Further objectives which UEFA might point to are ensuring the integrity of competitions, promoting good governance and encouraging long term infrastructure development.[11]

Interestingly, the Commission has given its support to the FFP rules, at least to some extent. On 21 March 2012, the Commission and UEFA issued a short "Joint Statement" on FFP,[12] opining that the objectives of the rules *"are also consistent with the aims and objectives of European Union policy in the field of State Aid"* (para 7); in particular, it is said that *"the financial regulations by UEFA and the State aid rules by the Commission pursue broadly the same objective of preserving fair competition between football clubs"* (para 8). The Joint Statement makes the point that stricter financial management of clubs pursuant to FFP is likely, in the long run, to lower or eliminate the need for State subsidy for a number of clubs. In a letter of the same date to Michel Platini, President of UEFA, published on UEFA's website,[13] Commissioner Almunia stated that he considered it "of paramount importance to fully support the onbjectives of the FFP, recognizing the value of robust licensing systems, including cost control mechanisms, to promote good governance in sport". Intriguingly, however, neither the Joint Statement nor the letter has anything to say about the compatibility of the FFP rules with EU competition law.

The support of the Commission, contained in the Joint Statement, would be valuable in advancing the justification arguments outlined above. The Commission appears to have a generally favourable stance towards FFP, and the Joint Statement was the culmination of considerable dialogue between the Commission and UEFA. All that said:

- as noted above, the Joint Statement curiously makes no reference to competition law; it is instead limited to the distinct field of State aid;
- the Commission's views on competition law are in any event far from the last word, as Bosman and Meca-Medina demonstrate; and
- it is clear from Bosman that the Commission has no power to grant an exemption from the EU rules on the free movement of workers.

Even if the justification arguments were accepted in principle, they must not go further than is necessary – that is to say they must be a "proportionate" response to the problem which they are intended to address. This proportionality test is likely to be the key battleground in any litigation regarding the FFP rules. Although the Courts will pay some respect to the views of sporting bodies, particularly where detailed rules strike a balance between competing interests (as is the case here), the EU Court of Justice was prepared in both Bosman (see paragraph 104) and Olympique Lyonnais (see paragraphs 38 to 50) to find that the rules of sporting associations went beyond what was needed to protect interests that were in principle legitimate.

In the event of a challenge, there would no doubt be considerable scope for argument over whether the rules in question are proportionate or disproportionate. Those seeking to challenge the FAPL rules could argue that there is little evidence that the economic viability of Premier League clubs needs any special protection: of the 54 cases of insolvency since 1992 recorded by Deloitte[14] in 2010, only one concerned a Premier League club, Portsmouth, which had by then been relegated anyway. Opponents to the FFP rules would no doubt say that clubs do not in fact need 'saving from themselves' (whether by UEFA or the FAPL), and/or certainly not to the extent stipulated by the rules.

Opponents of such rules might also argue that there are less restrictive ways of achieving the same goal, such as requiring clubs to maintain sufficient funds to pay creditors – just as UK banks have (since the 'credit crunch') been obliged to increase the amount of 'capital reserves' held on their balance sheets. As noted in an article by Dupont[15], UEFA already requires clubs to prove before the season starts that they have no overdue debts to other clubs, employees or tax authorities. Recent history confirms that UEFA has been prepared to impose significant (and, presumably, deterrent) sanctions for non-compliance with the 'non-FFP' regulatory framework; for example, in December 2012, the Spanish club Malaga was handed: (a) a one year suspension from European competition (meaning that they are ineligible to play in the next European competition for which they qualify in the next four seasons), and (b) a fine of €300,000, due to "the presence of significant overdue payables balances.[16] Opponents might also make the point that, at least initially, the exceptions to the break-even rule are such that they rules might not even achieve the objective of ensuring the viability of each and every club in the relevant competitions.

Similar arguments might be advanced by opponents of the rules in respect of the other objectives on which UEFA might rely, namely ensuring the integrity of competitions, promoting good governance and encouraging long term infrastructure development. For instance, it might be argued that, far from ensuring the integrity of competitions such as the Champions League and the FAPL, the main effect of the rules will be to entrench the status quo in which a select band of clubs prosper.

The strength of these arguments and others will depend, as ever, on the detailed evidence put forward; and perhaps also on the extent to which the tribunal in question is prepared to second guess bodies such as UEFA and the FAPL as to the most appropriate regulatory system. In this respect, although the CJEU did rule against the approach of UEFA in Bosman, and also the French collective agreement at issue in Olympique Lyonnais, the ruling in Meca Medina ultimately upheld the Commission in finding that the anti-doping rules at issue in that case were justified and proportionate.[17] It is still anyone's game.

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1 Case C-415/93 Bosman [1995] ECR I-4921

2 Case C519/04 P Meca-Medina and Majcen v Commission [2006] ECR I6991.

3 Case C-325/08 Olympique Lyonnais v. Bertrand and Newcastle FC [2010] ECR I-2177.4 See http://ec.europa.eu/sport/documents/wp_on_sport_en.pdf.

5 See section 4.1 at p 13.

6 CAS 2007/A/1298; 2007/A/1300

7 The accompanying Staff Working Document contains a very useful Annex summarising the application of EU competition law to sport: see http://ec.europa.eu/sport/documents/white-paper/whitepaper-full_en.pdf

8 Internal appeal decision of 29 June 2012, available on the RFU website: http://www.rfu.com/thegame/discipline/judgements/judgments-2012-2013/judgments-by-club/aviva-premiership/~/media/files/2013/discipline/judgments/appeals/london_welsh_rfu_disciplinary_appeal_2.ashx

9 Proactive Sports Management v. Rooney [2010] EWHC 1807 (QB); [2011] EWCA Civ 1444, CA10 It seems highly unlikely that the rules would be deemed to constitute a collective wage agreement between players and clubs, and thereby exempt from challenge: see for example paragraphs 274 to 276 of the Opinion of AG Lenz in Bosman. Players' representatives have had

minimal input in the preparation of these rules and are certainly not parties to them.

11 See Geey, D., "The UEFA Financial Fair Play Rules: a difficult balancing act", Entertainment and Sports Law Journal, June 2011 (Volume 9): http://go.warwick.ac.uk/eslj/issues/volume9/number1/geey

12 The Joint Statement is available at http://ec.europa.eu/competition/sectors/sports/joint_statement_en.pdf.13 Commissioner Almunia's letter is available at http://www.uefa.com/MultimediaFiles/Download/uefaorg/EuropeanUnion/01/77/21/75/1772175_DOWNLOAD.pdf.

14 Deloitte (2010), Annual Review of Football Finance, Deloitte Sports Business Group, Manchester: http://www.deloitte.com/view/en_GB/uk/industries/sportsbusinessgroup/sports/football/0a4be867d38f8210VgnVCM200000bb42f00aRCRD.htm

15 "Football's Anticompetitive Streak", the Wall Street Journal, 25 March 2013: http://online.wsj.com/article/SB10001424127887324077704578357992271428024.html

16 http://www.uefa.com/uefa/footballfirst/protectingthegame/financialfairplay/news/newsid=1908817.html
NB. UEFA's decision is presently being appealed by Malaga to the Court of Arbitration for Sport.

17 But see, more recently, the judgment of the Outer House of the Scottish Court of Session dismissing the Scotch Whisky Association's challenge to minimum alcohol pricing legislation in Scotland (Scotch Whisky Association , re Judicial Review [2013] ScotCS CSOH_70): there, the Court was prepared to give the legislature a relatively wide margin of appreciation when assessing the proportionality of a justification for a restriction on the free movement of goods.