

Bosman ruling: market deregulation and competition destabilisation?

Content and legal scope

The Bosman ruling was delivered by the ECJ on the 15th of December 1995, after five years of litigation with national and European football governing bodies and the Belgian courts. Jean-Marc Bosman, a Belgian player, opposed his club RFC Liège, when it refused to transfer him to the French club USL Dunkerque, in 1990. Bosman contested the possibility for the Belgian club to demand a transfer fee when his contract had expired, as well as the existence of quotas limiting the number of foreign players at a club, who are EU nationals, to three.

Before the ECJ's ruling in 1995, it was customary for clubs to require the payment of a transfer fee when a player left for a new club, even though the player was no longer bound by an employment contract. Any transfer was therefore subject to the agreement of the home club. In addition, the national associations and UEFA imposed quotas on the number of foreign players per team. As a result, clubs relied mainly on training academies and, exceptionally, on certain players with a strong international reputation.

These rules, which were very favourable to the clubs, tended to stabilise both the staff and the coaches' game plans, guarantee a certain return on investment in the training of young people, and keep the remuneration of footballers at relatively moderate levels. The ECJ's challenge to these principles will reverse the balance of power between clubs and players by giving the latter unprecedented bargaining power.

The ECJ ruling includes two decisions:

1. players at the end of their contract are free to sign for the club of their choice without their home club being able to claim a transfer fee in accordance with Article 39 of the Treaty of Rome prohibiting any restriction on the free movement of workers.
2. the regulations introducing nationality quotas in football are contrary to Article 48 of the Treaty of Rome on the free movement of nationals of a Member State wishing to take up paid employment in another Member State. As a result, the European Union has demanded that football's governing bodies amend the transfer regulations to remove these two obstacles to the community principle of free movement.

Moreover, the Bosman case law was subsequently extended to all sports with the abolition of player quotas based on nationality for non-EU nationals ("Malaja" ruling, 30 December 2002 by the French

Conseil d'Etat) and to those from countries that have concluded a non-discrimination agreement with the European Union: Russia, countries in the African and Caribbean-Pacific zones as well as the four Mercosur countries - Argentina, Brazil, Paraguay, Uruguay - (ECJ judgments "Kolpak", 8 May 2003 and "Simutenkov", 12 April 2005). In fact, all professional athletes - not only footballers - can move without hindrance in more than one hundred and thirty countries in the world (apart from North America, South America and Asia). The assimilation of professional sport into an economic activity subject to liberal EU rules has had a considerable impact on European sport, especially football.

Economic consequences

The Bosman ruling significantly weakened the quota system previously in force, while the development of football, with the arrival of pay-tv channels following the deregulation of the audiovisual markets, enabled most clubs to increase their revenue and expand their recruitment areas. These legal and economic factors have led to a surge in demand from clubs and inflation in the number of transactions. The wealthiest clubs try to attract the best players regardless of their origin.

For example, Zinedine Zidane left Juventus for Real Madrid in 1999 for €78 million, an unheard-of amount at the time, whereas he had been transferred from Bordeaux to Turin in 1994 for just €3.5 million. However, the record termination fee comes from the 2017 transfer of Neymar from Barcelona to PSG for €222 million. Overall, transfer spending rose from €403 million in 1994-55 to €1.7 billion in 1999-2000, then to €3 billion in 2010-11 and to €8 billion in 2017-18, a 20-fold increase from pre-Bosman to post-Bosman.

Moreover, the liberal functioning of the players' market has been accompanied by a speculative practice by clubs wishing to make substantial capital gains from the increasing number of transfers. Most clubs are indeed counting on a resale before the end of the contract, within a fairly short time, either to make up deficits to meet certain accounting obligations, or more rarely to make a profit and distribute dividends to shareholders. The frequent signing of long-term contracts is a method of circumventing the Bosman ruling, as the original deadline is never reached since the transfer price depends on the number of years of the contract remaining.

The free movement of footballers has given rise to a sharp increase in demand from clubs, which has contributed to inflation in the remuneration demanded by players, who are more frequently solicited for their services than in the past and take advantage of transfers to negotiate salary increases. Indeed, if a player wants to leave his club before the end of his contract, he has the means through pressure to obtain his agreement. By playing poorly, he

weakens the competitive potential of his team and reduces the value of the early termination fee that his club will receive. This balance of power is almost always concluded in favour of the athletes, helped by their agents, who are paid in the form of commissions calculated as a percentage of the transactions. Between 1997 and 2007, footballers' salaries rose by 235% in the five main leagues (Germany, England, Spain, France and Italy).

For superstars, the increase in income has accelerated exponentially because they alone, in a position of a virtual monopoly of the supply of their talent, can bring into play the competition between the big clubs that have benefited from the considerable increase in TV rights. As a result, the number of footballers included in the world's 50 highest earners is increasing. In 2021, it included ten players - three of them in the top ten, with Lionel Messi (107 million euros) in second place, Cristiano Ronaldo (99 million euros) in third place and Neymar (78 million euros) in sixth place - who were not included at all in the previous ranking.

The deregulation of professional sport has also resulted in an excessive concentration of economic resources in a small number of leagues and clubs, as three indicators show: 90% of salary increases, 85% of transfer fees and 75% of profits in this area are attributable to the five main European leagues (2017-2018 season) [UEFA, 2020]. Yet, the financialisation of professional sport alters the singularity of competition. The promotion of the uncertainty of the result - a fundamental sporting principle - likely requires strong regulation to balance the economic resources between the clubs, and thus strengthen their competitiveness.

The alignment of professional sport with the rules of economic activity has accelerated the transformation of the athlete into a financial asset, characterised by the potential to generate income streams (gate receipts, by-products) for which the acquisition date and the resale date must be optimised. Moreover, this speculative logic amplifies the change in the shareholding of clubs, with an increase in the number of takeovers by investors from outside of sport who orient their governance towards short-term policies to the detriment of the construction of medium and long-term development projects.

Sporting consequences

The globalisation of the footballers' labour market is a well-established process. The number of player transfers between clubs not belonging to the same countries increased tenfold between 1995 and 2018, reaching 16,533 transactions in 2018 [Drut, 2019]. The average share of foreign players in the squads of the five main European

leagues has steadily increased: from 18.6% in 1995-1996 (the last season before the Bosman ruling took effect) to 46.7% in 2015-2016 (with consequent differences between France, 33.9%, and England, 66.4%) [CIES, 2016].

Similarly, the migration of sportsmen and women from developing to developed countries has increased, as have the requests for the naturalisation of top athletes. This phenomenon, activated by sports agents, reflects a real 'muscle drain' from the South to the North, which considerably impoverishes the potential and competitiveness of the countries of origin of these flows. The average age of the first international migration of footballers from the five main European leagues has steadily decreased from 24.3 years in 1980 to 21.1 years in 2015 as a result of the increasing recruitment of under-age players often from developing countries [CIES, 2016].

Post-Bosman players appear to be more productive than those who played during the pre-Bosman era given the increased competition within the workforce [see Radoman, 2017 for a study of the impact of the Bosman ruling in the English Premier League]. The increasing mobility of footballers undermines the stability of teams' squads, as well as the building of a playing style. On average, a player stays with the same club for two years, a period that is decreasing every year. Very few players reach the end of their contract, as their clubs push them to renew their contracts regularly to secure a transfer fee. Moreover, mobility is occurring earlier and earlier in players' careers. The continuing decline in the proportion of club-developed footballers reflects this process.

Does the access of clubs to the labour market facilitated by the Bosman case law, contribute to a greater concentration of talent in a small number of rich clubs putting competitive balance in danger? Alternatively, do labour market regulations, by hindering the mobility of professional players, limit this concentration of the best players and preserve competitive balance?

For some sports economists, these obstacles to the free movement of players cannot have any effect on the distribution of talent and do not balance out the competition, contrary to their intended purpose. Big clubs will always attract talent. It is beneficial for small teams to sell their talent if the financial proceeds of such sales are greater than the loss of revenue or losses caused by those same teams' subsequent poor sporting results. And it is also profitable for the big clubs to buy the best talent if the gains obtained are greater than the transfer fee to be paid. The only effect of a constraint on the mobility of players would be to change the distribution of the rent to the benefit of the club owners and to the detriment of the players whose reduced bargaining power is accompanied by a comparably low level of remuneration.

For European clubs, which are supposed to maximise sporting gains, it can be said that the post-Bosman deregulation of the sports labour and sporting-spectacle markets has had an impact on competitive balance by increasing the economic and sporting segmentation of the leagues [Bourg, 1998]. The big clubs belonging to the five main leagues have thus been able to capture the major part of the commercial revenues of their championships and the Champions League due to the choice of pay-tv to broadcast the matches of the most prestigious teams as a priority in order to benefit from the best audiences. This development has gradually led to the disappearance within the European elite of many development clubs that are financially unable to retain their talent (Glasgow Celtic, FC Porto, RSC Anderlecht, AS Saint Etienne, FC Nantes, etc.).

There is a correlation between the concentration of financial means and the concentration of sporting gains, which can signify an economic determination of victories. A dozen or so clubs regularly win their national competitions, take part in the final stages of the lucrative Champions League every season and have budgets in excess of 600 million euros (Real Madrid, F.C Barcelona, Liverpool, Manchester United, Manchester City, Juventus Turin, Bayern Munich, PSG, etc.). Now, at the start of each season, the uncertainty of results is limited to a few questions. In Spain, who will win the title, Barcelona or Real Madrid? In Germany, Italy and France, who will finish second to Bayern Munich, Juventus and PSG respectively? In the Champions League, will there be an unexpected club in the quarterfinals to challenge the clubs that regularly compete at this stage of the competition?

The deregulation of transfers has also had a favourable effect on external recruitment to the detriment of in-house training. This trend is aggravated by the plethora of foreign players recruited - commercially more interesting to value before a transfer - at the expense of local or national players. The pool of national teams is thus impoverished by the limited access of eligible players to starting positions at their clubs. On average, football teams in Europe have only two to three homegrown players out of the starting eleven.

Lessons and perspectives

The liberalisation of the sporting market from 1995 onwards is all the more important as professional sport is a highly skilled labour industry. The mobility of players, no longer regulated by a restrictive system, weakens the budgetary situation of professional clubs increasingly dependent on the balance of transfers (positive or negative balance of the total transfer fees received and the total transfer fees paid) and on the uncontrolled evolution of the clubs' wage

bill, which is increasing rapidly and represents two-thirds of their operating costs.

The massive influx of capital from new club owners (oligarchs, billionaires, investment funds, state sovereign wealth funds, etc.), eager to win sports titles and/or make short-term profits, destabilises the transfer market, as other clubs are forced to strengthen, and go into debt, just to remain competitive. The free movement of footballers negatively affects the overall quality of European leagues by unbalancing national leagues and diminishing their interest. The consistency of the trends observed suggests that a real change is taking place in European top-level football. The big question remains is how far this process can go without jeopardising the attractiveness of the competitions and without undermining the credibility of the sport!

Further information:

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