Third-party ownership: a controversial instrument?

Definition and characteristics

Third-party ownership (TPO) refers to the acquisition of economic rights to sportsmen and women by a third party from outside sport, who seeks to increase the value of the professional involved. The 'property' of these athletes is divided into shares and sold like any other commodity. This practice has developed strongly since the 2000s in certain team sports, particularly football.

However, given the speculative nature of the transfer market, this 'third-party ownership' has existed for a long time, in various forms and names: during the 1960s in Italy and Spain, the 1970s in South America (particularly in Brazil, where it constitutes the main form of football investment) and in Portugal and England in the 2000s [Brocard, Rossi and Semens, 2019]. The indebtedness of the clubs in these leagues has prompted them to find alternative financing solutions to strengthen and maintain their position within the elite. The exponential increase in transfer indemnities in the post-Bosman era of 1995 has favoured TPO: €403 million for the global transfer market in 1994-1995, €2.1 billion in 2008-2009 and rising to €5 billion in 2017-2018 (data from the 55 national leagues under UEFA's jurisdiction).

In practical terms, a club that does not have the funds to recruit a player can call on one or more investment funds to co-finance the transfer. In this case, the player who is 'owned' by more than one owner is no longer just an employee under contract with his club. At the end of the contractual financing period, the club must repay the investment fund(s) plus interest. In reality, the club intends to sell the player before this deadline in the hope of making a capital gain.

As an example, in 2012 FC Porto sold a third of the economic rights of French defender Eliaquim Mangala for €2.6 million out of a total value of €7.8 million, to the Doyen Sports Investments Limited fund, which is part of the Doyen group whose main activity is gold, uranium and coal mining. The Portuguese club also sold 10% of the player's rights to the company Robi Plus. The 2014 transfer of Mangala from FC Porto to Manchester City for €54 million was split as follows: €30.6 million for the selling club (56.67% of the player's 'ownership' rights), €18 million for the Doyen Sports fund (33.33% of those rights), €5.4 million for Robi Plus (10%) [Bastien, 2017]. Such a return on investment for the player's co-owners is unheard of in the business world!

TPO can provide clubs with a competitive advantage and create value, thereby contributing to their financial viability. As such, TPO has become a real source of financing for football clubs. Alternatively, a downturn in transactions would put these clubs in difficulty and they would be in a state of over-indebtedness. Several

Spanish and Portuguese clubs risked this in the 2010s (between 5 and 15% of their players are under TPO) and have achieved financial and sporting success in their domestic league and the Europa League. In many Central and Eastern European countries, the percentage of players owned by third-party companies varies between 40 and 50%: Slovenia, Montenegro, Croatia, Albania, Macedonia, Serbia, Bulgaria, Romania, Hungary and Bosnia.

Abuse of the system

TPO tends to accelerate the mobility of athletes and increase the price of transfers as third-party companies repeatedly seek the highest and fastest earnings possible. In reality, clubs sell players under TPO, not according to their sporting interests, but according to the interest of the third party. Another consequence is that players are not free to manage their careers as they might wish and are dependent on the will of non-sporting entities.

Furthermore, the profits generated by TPO are not necessarily reinvested into football. The practice of TPO accounted for 9.5% of the turnover of international and domestic football transfers, at 544 million euros (CDES and CIES estimate for 2013). The speculative concerns about the purchase and sale of athletes by the various stakeholders (agents, holding companies, investment funds, etc.) favour the search for short-term profits, independently of the sporting objectives of the clubs, which could lose control of their transfer policy and sporting strategy.

Another disadvantage of this multi-ownership of players is the conflict of interest that can undermine the integrity and fairness of competitions. Indeed, when third parties hold economic rights to players playing in teams competing at a national and international level, there is a risk of manipulation of results according to the expected profits of player trading. Moreover, it appears that several of the most important sports agents are also shareholders in investment funds specialising in TPO, with the objective being to organise non-transparent tax evasion circuits (see the journalistic investigation by the European Investigative Collaborations consortium via 'Football Leaks' published in 2016, on illegal practices in the sport).

Finally, the traders commissioned by these investment funds, which are frequently domiciled in tax havens, constitute a portfolio of young talent that can best be sold when they are 23 or 24 years old. One of the perverse effects of the TPO is the overbidding to acquire these players, often aged 15 or 16, who become the property of these funds even before they have signed their first professional contract.

What regulation?

The destabilising effect of TPO on the functioning of competitions has justified the reprobation of the European Union and the football governing bodies. FIFA has banned this practice, which has been criminalised since 2015 [Brocard, Manfredi, Mondou and Van Seggelen, 2016]. The effectiveness of this internal rule in the world of football is compromised by legal recourse initiated by some investment funds. Indeed, an absolute ban on TPO could be incompatible with European law, and its fundamental freedoms of establishment, provision of services, free movement of workers and capital. FIFA's decision could be seen as an abuse of its dominant position restricting the economic freedoms of clubs, players and third parties [Marmayou, 2016].

Without waiting for the legal debate to be settled, investors have come up with a new technique called third-party investment (TPI). The aim is to circumvent the regulatory constraints on TPO. This financial arrangement consists of a club taking on debt from an investment fund to acquire players. The funds no longer own the players directly, but hold claims on the clubs' assets and earn interest at high rates.

Of course, clubs no longer need to sell these players to pay off their debts. However, if the debt burden is too great, they may be forced to do so. When a player is sold under TPI, the selling club repays the funds from the transfer fees received. The transaction is not considered illegal as the fund holds an asset claim and not an asset. However, some of the disadvantages of the TPO are also present in the TPI: the influence of external investors on the clubs' sporting policy, the dependence of the clubs on these specialised companies, and the conflict of interest for investors involved with several clubs in the same competitions including the risk of manipulation of results.

Since the mid-2010s, another innovation has been developed to finance player transfers. This is the securitisation of debts, which consists of grouping together the debts of the clubs and cutting them up for resale in the form of bonds called ‘football or soccer bonds'. Investors know the annual interest rate, but do not necessarily know the content of these debts, the number of bonds sold nor the nature of the guarantees undertaken by the clubs to obtain loans from investment funds [Arrondel and Duhautois, 2018]. This system is inspired by the "sub-prime" at the heart of the 2008 financial crisis with toxic debts composed of bonds inflated with real estate debts of American households that would turn out to be insolvent.

With the TPOs signed before 2015 still in force and the multiplying TPIs and football bonds, international football is constantly finding additional financial means, but by submitting itself more and more to a short-term speculative logic that is external to it. In doing so, and to counteract regulation, the financial products offered to clubs are forced to become more sophisticated and, consequently, more opaque [Bringand, 2019].

Further information:

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