

Reassessing the APT Rules

The Premier League's Financial Regulation Dilemma

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On 7 October 2024, the Premier League (PL) released a partially redacted version of an arbitration award in its dispute (the "APT Rules Arbitration") with Manchester City Football Club (MCFC) concerning the Associated Party Transactions rules introduced in 2021 (the "APT Rules") and amended in 2024 (the "Amended APT Rules").¹ The arbitration tribunal ruled that certain parts of the Premier League's rules were unlawful, but rejected other challenges brought by MCFC. Both MCFC and PL claimed victory in their subsequent statements,² but the APT Rules Arbitration has raised significant concerns about the governance of financial regulations in English football, with broader implications for fair market value (FMV) assessments of the PL clubs' commercial agreements.

This article explores the evolution of the PL's financial regulations including the introduction and revision of the APT Rules, key issues raised by MCFC in the APT Rules Arbitration, and the potential impact of the ruling on PL's regulatory framework.

AN INTRODUCTION TO THE PL'S FINANCIAL REGULATIONS AND RULES FOR RELATED PARTY TRANSACTIONS

In 2013/14 season, the PL introduced the Profit and Sustainability Rules (PSR) to address growing financial

imbalances among clubs and to mirror the Union of European Football Associations' (UEFA) "Financial Fair Play" (FFP) initiative.³ A PL club must comply with the PSR, which limits the maximum losses over a rolling three-year period to £105 million (PSR Threshold).⁴ As part of the PSR, the PL Board could restate any club's financial dealings with related parties or Related Party Transactions (RPT) to FMV.⁵ Although the PSR did not define what substantively was meant by an RPT, it intended to include sponsorship agreements and shareholder loans between a club and their related parties.⁶

In response to Newcastle United's acquisition by the Saudi Arabian Public Investment Fund,⁷ in December 2021, the PL introduced the APT Rules as part of the PSR, requiring clubs to obtain prior approval from the PL Board for financial dealings with related parties.⁸ The APT Rules established protocols for assessing the FMV of the such transactions and created a Databank of comparable club transactions accessible by the PL Board.⁹

The PSR and APT Rules are intended to safeguard the financial stability of the PL, promote sustainable financial decisions, prevent clubs from spending their way to the top of the PL table, and prevent clubs from inflating profits through non-arm's-length transactions with related (or associated) parties.

The APT Rules were revised in 2024,¹⁰ wherein the definition of FMV was amended, the burden of proof as to whether a transaction is at FMV shifted from the PL to the clubs, and where the PL requires further information, the time frame for FMV assessments was extended from 10 to 30 days. MCFC challenged both APT Rules and Amended APT Rules in the APT Rules Arbitration.¹¹

MANCHESTER CITY'S CHALLENGE TO APT RULES AND AMENDED APT RULES

MCFC argued that the APT Rules and Amended APT Rules were “unlawful”, particularly how the PL assessed FMV for key sponsorship agreements.¹²

First, MCFC contended that the PL’s FMV evaluations of MCFC’s sponsorship agreements with First Abu Dhabi Bank (FAB), Emirates Palace (EP), and the Etihad Aviation Group (EAG) were “unfair”. MCFC provided its own assessments, but the PL’s Regulatory Team, supported by independent experts, concluded that the sponsorship amounts were higher than comparable transactions. However, MCFC was denied access to the Databank and the comparable transaction data that formed the basis of the PL’s assessment, and MCFC was not afforded an opportunity to comment on PL’s (or independent expert’s) evaluation prior to the PL Board’s decision. The tribunal found that these actions of the PL “violated principles of procedural fairness.”¹³

In contentious situations involving evaluation of complex financial and commercial issues by experts, parties should provide clear directions for the expert’s assignment, such as the procedures for testing the expert evidence (including critique and rebuttal expert reports), preparing joint expert reports, and any requirement to attend a joint-expert meeting and/or a hearing.¹⁴ The expert typically explains their calculations in a report and discloses the information they relied upon in arriving at the conclusion, allowing the opposing expert (as well as the parties and the tribunal) to independently review their calculations and provide comments on aspects of the calculations they disagree on. These assessments are often based on commercially sensitive information (such as the Databank or comparable transaction data), which can be protected by confidentiality orders, restricting access to independent experts, legal teams and the tribunal while excluding the commercial teams of both parties. Experts

should endeavor to minimize the areas of disagreements and quantify the impact of each disagreement on their conclusions, helping the arbitrators in their deliberations on key outstanding financial and commercial issues. Finally, experts on both sides should expect the arbitrators to call on them at the hearing to ask questions about their analyses, calculations, and areas of disagreement (also known as hot tubbing).

Second, MCFC argued that shareholder loans extended to the clubs should be considered as an APT under the PSR as these loans — often non or low interest-bearing — can impact a club’s ability to comply with the PSR (i.e., interest expenses can impact compliance with PSR Threshold). The PL maintained that “shareholder exclusion permits transparent investment by owners in clubs, is not discriminatory as it applies equally to all clubs and treats shareholder loans and equity investment in the same way.” However, MCFC highlighted that approximately 35% of PL clubs’ borrowing is through shareholder loans, including all of Arsenal’s and almost all of Brighton’s. The tribunal sided with MCFC, agreeing that the exclusion of shareholder loans under the APT Rules created a competitive imbalance.¹⁵

Given the rising capital expenditures in football including player transfers and stadium developments, the inclusion of shareholder loans and associated interest costs (or lack thereof) under the APT Rules could materially impact compliance with the PSR Threshold. Following the ruling, the PL announced that “the APT Rules must now integrate the assessment of Shareholder loans” without elaborating on the issue.¹⁶ Several factors are considered in assessment of the FMV of a loan, including interest rates, loan duration, repayment terms, the currency of borrowings, and collateral/security pledges, default provisions and cures, amongst other provisions. Potential approaches to assess the FMV of shareholder loans under the PSR may involve (1) comparing the interest paid by the club on other term loans extended by financial institutions, if any; (2) pegging the interest rate used in the FMV assessments to the prevailing lending rates; or (3) calculating synthetic interest costs based on the terms of each transaction, use of funds, and financial position of the club.

Third, MCFC argued that the PL took an unreasonably long time to complete its FMV assessments. The APT

Rules stipulated 10 working days period for the PLs FMV assessments, which was later extended to 30 days. However, MCFC contended that the PLs FMV assessments extended for months. The tribunal found that the PLs delays were unjustified and did not comply with their own stipulated deadlines.¹⁷

MCFC had challenged several other aspects of the APT Rules, but the tribunal sided with the PL on the other issues and concluded that despite the procedural violations discussed above, PLs FMV assessments were “not unreasonable”. Specifically, the tribunal upheld the overall framework and objectives of the APT Rules, emphasizing their necessity for maintaining effective financial controls.¹⁸ The PL welcomed the tribunal’s endorsement of the system, but acknowledged that certain aspects would be revised to ensure transparency and procedural fairness as well as the integrity of the PLs financial regulatory framework.¹⁹

THE WAY FORWARD: ARE THE PSR AND THE APT RULES DISPUTES HERE TO STAY?

As European football — and the sports industry more broadly — undergoes a transformative phase driven by sophisticated investors and increasing financial incentives, the regulatory environment must evolve to keep pace with the sport's changing nature. The influx of capital from multinational corporations, as well as private and sovereign funds from the US and the Middle East, respectively, coupled with complex commercial arrangements and multi-club ownerships, has introduced challenges that existing regulations were not designed to address.

The PL (and other football regulators) now faces the difficult task of balancing the financial interests of clubs and their owners with the broader need for sustainability and competitive balance. Ensuring transparency and consistency in the application of financial regulations, such as FMV assessments, is essential to reducing disputes. However, the increasing complexity of club ownership structures and funding sources, multi-club ownership, as well as changing profile of club owners means that financial and commercial disputes are unlikely to disappear anytime soon.

While the PL regulators often draw inspiration from other sports regulatory bodies for ideas, other industries that have undergone similar commercialization challenges may offer valuable lessons for the PL as it navigates this uncharted territory. The alternative dispute resolution mechanisms for commercial disputes in other industries are adept at dealing with complex financial and commercial issues but would have to be tailored to the unique requirements of the sports industry.

Key issues of procedural fairness that were highlighted by the APT Rules Arbitration include club’s access to critical commercial information (i.e., the Databank and the comparable transaction data), a club’s ability to adequately challenge the PLs (or their independent expert’s) FMV assessments, and strict adherence to procedural timelines. In commercial disputes in other industries, these issues are typically addressed through confidentiality orders for commercially sensitive information, exchange of expert evidence (including critique, rebuttal and joint-expert reports), and clearly defined procedural timetables. The PL could benefit from adopting similar measures to enhance procedural fairness in football-related disputes.

Additionally, the PL must consider the importance of consistency with other financial regulations, such as UEFA’s FFP rules and those applicable to other European football clubs. The tribunal noted in its ruling that the exclusion of shareholder loans under APT Rules was inconsistent with UEFA’s FFP rules. Since the PL clubs are subject to multiple financial regulatory frameworks (i.e., the PLs PSR and UEFA’s FFP), ensuring consistency amongst these financial regulatory frameworks is crucial to ensure fair competition, especially since the foreign clubs competing in Europe are not bound by the PSR. While the financial regulations do not need to be identical, alignment can simplify compliance, increase transparency and reduce the risk of breaches and disputes.

Ultimately, how the PL resolves the issues arising from this dispute may set a precedent for future regulatory developments in European football. While this case is just one example, it reflects a broader trend suggesting that financial regulations in sports will continue to evolve in response to new pressures and varying incentives.

ENDNOTES

1. [Premier League Statement](#), 7 October 2024.
2. [Premier League Statement](#), 7 October 2024 and [MCFC Statement](#), 7 October 2024.
3. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraphs 14 and 211.
4. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 15.
5. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 321.
6. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 15.
7. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 20.
8. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 173.
9. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 48.
10. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 147.
11. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 5.
12. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph 4.
13. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph (iii), page 164.
14. [International Arbitration Practice Guideline – Party-appointed and Tribunal-appointed Experts](#), the Chartered Institute of Arbitrators, Article 4.
15. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraph (i), page 164.
16. [Premier League Statement](#), 7 October 2024.
17. [Partial Final Award](#) between MCFC and PL dated 25 September 2024, paragraphs (vi) and (vii), page 164.
18. [Premier League Statement](#), 7 October 2024.
19. [Premier League Statement](#), 7 October 2024.

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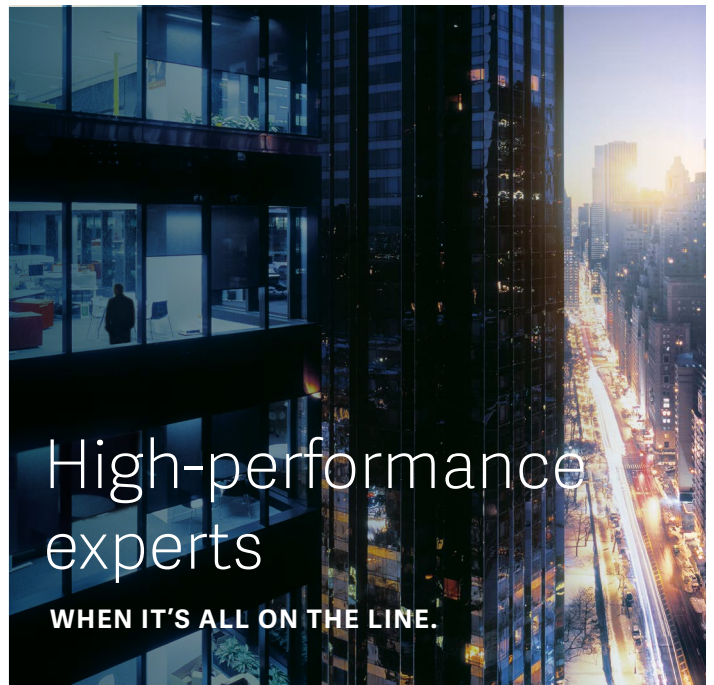
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