

FIFA, UEFA And ESL Clubs: Walking The Tightrope Between Discipline, Financial Stability And Competitive Balance



Friday, 09 July 2021 By [Graham Shear](#), [Andrew Street](#), [Alec Brown](#)

While much has been said and written about the ongoing Super League story, the mindset of the various actors so far, as well as the future prospects, are most appropriately viewed through a financial lens. With respect to the two La Liga holdouts (Real Madrid and Barcelona), the more egalitarian distribution of broadcasting revenues post the [2015 Royal Decree^{\[1\]}](#) (which gave La Liga and the Spanish Football Federation the rights to sell the broadcasting rights of the Spanish football competitions and led to a more equitable distribution of [broadcasting revenue^{\[2\]}](#) throughout the league as opposed to Real Madrid and Barcelona receiving a lion's share of the pot) has substantially reduced the broadcasting revenues of (and as such increased financial pressure on) the larger association clubs. The revenue gap between the largest and smallest clubs was 12:1 just several years ago (almost half the total of which went to Real Madrid and Barcelona), and as of 2019 is down to just [3.5:1^{\[3\]}](#).

This article explores:

- The probable financial reasons behind Real Madrid, Barcelona and Juventus continuing with the Super League
- Recent Developments
- Powers of FIFA and UEFA to impose sanctions
- Regulatory tightrope that any sanctioning body has to walk
- What will be the approach to sanctions against the clubs

The Financial Motivations Behind The Super League

Real Madrid CG and FC Barcelona are fan owned membership schemes, which highlights the difference between a business which is owner-managed as opposed to one where the ownership is dissipated amongst a very large number of people who are driven by emotion. With respect to the latter, and particularly with Real Madrid and Barcelona in mind, the Chief Executive or President are elected for a very short term which could mean that their objectives are dominated by their desire for success without much in the way of latent responsibility. If the club is left with a financial hangover, that is the responsibility of the incoming president/chief executive. The purchase of “player assets” which generate immediate commercial activity, media attention, and sponsorship, can quickly turn into liabilities for future club leaders by way of bloated player contracts. This appears to be the currently the case with FC Barcelona since they cannot register new signings including the likes of Sergio Aguero and Memphis Depay (as on date of publishing this article) as their current wage bill falls foul of La Liga’s [salary limits](#).^[4] These matters combined with steadily increasing general player transfer and wage costs created something of a tinderbox, to which COVID-19 was the spark. Ownership/management structure aside, the factors that have caused these two clubs to be under such financial hardship are equally applicable to numerous other institutional clubs across Europe.

While the loss of revenue throughout the pandemic has left the debt-laden larger clubs in a precarious financial position (Deloitte has estimated it will cost the top 20 clubs in excess of €2bn revenue in the 2 pandemic years), an equally significant problem was a combination of debt repayments and the relative unavailability of finance. The three remaining Super League clubs (Real Madrid, Barcelona and Juventus) for example, had a combined net debt of €1.2bn as of [June 2020](#).^[5] Accordingly to the president of La Liga, Javier Tebas, Barcelona alone lost €350m in the 2019/2020 season – he added that clubs could expect lower turnover figures in the following [season](#).^[6] Consequently, we can expect that the current debt levels to be significantly higher than the June 2020 figures; [Barcelona](#) alone has indicated they are over €1bn in debt^[7], with [Real Madrid](#) reportedly sitting at approximately €900m debt^[8].

One view is that the primary motivation behind the formation of the Super League was to solve the member club's debt problem. Generally speaking, the normal business of the member clubs has been to run at a high temperature without the retention of much in the way of reserves. So when the pandemic and its consequences arrived^[9], this left an vast and unanticipated hole in the club's finances. What the Super League was envisaged to deliver was the immediate money to fill that hole and fill in the reserves until the pandemic recedes, by way of €300m finance, and interest payments at no more than 1%-2.5% per annum, with a term of 20+ years. This obviously presented the clubs with an enticing, very low-cost solution. Revenues and initial joining commercial cash injections aside (€100m - €350m per club), the prospect of a competition which could increase the appeal of member clubs to rating agencies might be viewed as the club's financial panacea. If a club can engage a rating agency to provide an investment grade rating, this will typically satisfy insurers and some banks' requirements as to quality of security, and make it investable. [Investment grade](#) usually means BBB- or above for the sector in which football clubs operate^[10]. What happened during the pandemic for example, in the UK, eligibility for the government Covid Corporate Financing Facility COVID support required a rating from a rating agency, and several of the clubs that received this support, for example [Arsenal](#)^[11] and [Tottenham Hotspurs](#)^[12], obtained rating from a rating agency in order to access those funds.

However, in its current anaemic state, the Super League has not only failed to resolve this problem but it has created further potentially debilitating issues for the clubs, discussed below.

Recent Developments

European football clubs are subject to a number of governing bodies, all of which are imbued with various powers and remits. For example, Spanish clubs are subject to Liga Nacional De Fútbol Profesional (La Liga) at a national level, UEFA at a European level, and FIFA internationally. The opaque nature of this system is reflected in the joint [statement](#) regarding the Super League on 18 April 2021 issued by [UEFA](#): “*we – UEFA, the English FA, RFEF [Spanish Football Federation], FIGC [Italian Football Federation], the Premier League, LaLiga, Lega Serie A, but also FIFA and all our member associations – will remain united in our efforts to stop this cynical project*”^[13].

These relationships are intertwined in such a way that one will often enforce the rules of others. Clubs are not actually members of UEFA and FIFA, rather, each national governing body (such as the FA) are, and their rules require clubs of that association (such as clubs who play in the English league governed by the FA) to comply with UEFA and FIFA rules and regulations. For example, The [FA Rules of Association](#) state that all member clubs must comply with “*the statutes and regulations of FIFA and UEFA which are in force from time to time*”^[14]. Despite this complex web of oversight, Article 49(1) of the UEFA Statutes provides a firm footing for UEFA to be the primary enforcement body in this case: “*UEFA shall have the sole jurisdiction to organise or abolish international competitions in Europe in which Member Associations and/or their clubs participate.*”

Unsurprisingly given the above, UEFA has [announced](#) that it had appointed ethics and disciplinary inspectors to conduct a disciplinary investigation into a potential violation of UEFA’s legal framework by Real Madrid, Barcelona, and Juventus FC in relation to the Super League project, and

more recently, that it has opened disciplinary proceedings against those clubs.^[15]

Investigators are granted broad powers by the [UEFA Disciplinary Regulations](#), most notably, the ability to *“request the opening of proceedings and propose disciplinary measures to be imposed on member associations, clubs and individuals”*^[16]. Should they do so, proceedings will occur under Part VI of the same regulations.

It seems probable that the charges considered by the investigators could include entering an unauthorised competition, and acting in bad faith or bringing football into disrepute^[17]. There are a range of potential sanctions set out in Article 6 the UEFA Disciplinary Regulations (reflected in Article 53 of the UEFA Statutes), ranging from warnings and fines to disqualification from current and future UEFA tournaments, and transfer embargos. There is no deadline for the conclusion of the investigation, but in the author’s experience, charges should not be expected to be laid within a month (if at all).

This is a power and process that we have seen wielded previously when an investigation into a breach of FFP by Manchester City, headed by former Belgian Prime Minister Yves Laterme, led to the club to be barred from the UEFA Champions League for 2 years and fined €30m by UEFA’s club financial control body (the ban was later [overturned on appeal](#) by the Court of Arbitration for Sport, and the fine reduced to €10m). The other nine initial super league clubs (who eventually dropped out) who reached settlements with UEFA by way of a [‘Club Commitment Declaration’](#) are not subject to the investigation., following, amongst other sanctions, their committal to pay significant sums to UEFA nominated charities^[18]. However, these measures were declared a nullity and rescinded by a Spanish Court on 1 July 2021. Judge Manuel Ruiz de Lara ruled that UEFA cannot force the Super League to dissolve and that the settlements already reached breach the temporary injunction ordered in April 2021: *“the hidden sanctions imposed on certain founding members of the Super League, under the euphemism of the ‘agreement’ by the clubs ... represents a clear failure to comply”*^[19].

The English clubs “as a gesture of goodwill” have already reached a settlement a total of a total of [£22 million](#) with the Premier League and The FA^[20], with further and harsher sanctions (including point deduction) agreed if any similar breakaway is attempted in the future^[21]. However, the Spanish Court order above also requires UEFA to direct the Premier League and Italian National Football Federation to annul all actions taken against their respective Super League clubs. It is unclear if this order has been effected or if it will ever be given the jurisdictional uncertainties. In any event, it would be expected that the associations will wait until the conclusion of the ECJ proceedings (discussed below) to take any further meaningful steps. The three clubs under investigation declined to enter into a settlement with UEFA, citing binding contracts and a hope that the league could move forward. If anything, they have shown continued resolve in their vision. Barcelona President John Laporta [said](#) “ *We will fight to defend our interests and decisions are made to make football more sustainable.*”^[22]

This comes at the same time as the Commercial Court in Madrid has [called for](#) the European Court of Justice (ECJ) to determine if UEFA and FIFA are breaching EU competition law by obstructing the creation of the Super League^[23]. This is the same Court which restrained FIFA and UEFA from prohibiting or restricting the Super League in a [preliminary ruling](#) in April 2021^[24]. This temporary injunction is at least for the duration of the aforementioned legal proceedings, meaning the UEFA investigation, or at least the conclusion of such, will be on hold for several months. Relevantly, the Court has also asked the ECJ to determine if FIFA and UEFA are able to sanction clubs who participate in the breakaway league.

The Commercial Court’s request is predominantly focused on Articles 101 and 102 of the [Treaty on the Functioning of the European Union](#) (TFEU). Article 101 prohibits any agreement (or concerted practice) whose object or effect is of prevention, restriction, or distortion of competition, and Article 102 acts to prevent dominant entities from abusing their market power and restricting competition. It is presently unclear when the ECJ will consider the request. UEFA has indicated it is confident of its position and will defend it robustly.

FIFA also retains relevant powers under the [FIFA Disciplinary Code](#), particularly Article 6, to discipline players and clubs. While one would not anticipate players will be held to account for the actions of the clubs, it is possible that FIFA will wade into the issue and look to hold the clubs accountable, although in a [statement](#) expressing its disapproval for the Super League it only went as far as to say “*FIFA will, of course, do whatever is necessary to contribute to a harmonised way forward in the overall interests of football*”^[25]. However, it would be surprising to see FIFA impose additional penalties if UEFA and/or national bodies have already done so, particularly given UEFA’s position as the primary enforcer.

As to a proper cause of action for FIFA, Article 72 of the FIFA Statutes provides “*Players and teams affiliated to member associations or provisional members of the confederations may not play matches or make sporting contacts with players or teams that are not affiliated to member associations or provisional members of the confederations without the approval of FIFA.*” In the event FIFA does decide to add its weight to the regulatory blowback, available measures under Article 6 of the FIFA Disciplinary Code include transfer bans, relegation to a lower division, and expulsion from a competition in progress or future competitions.

Given the broad ties between the levels of regulation, and the commitments made to regulators, either directly or otherwise, in order to play in domestic leagues, the Super League affair also gives rise to issues with respect to breach of contract between the clubs and their respective leagues, as well as UEFA itself, foremost of which would again involve allegations of bad faith.

The Regulatory Tightrope

These developments mark an escalation of tensions between the various parties. UEFA, FIFA, and the club’s domestic leagues now have a difficult balancing act before them when evaluating the appropriate reaction. They have to be seen to hold the clubs to account and given the rhetoric so far, seem to be intent on doing so; however, any sanctions have to be

proportionate (that is, not triggering anti-trust principles, and also not in excess of what would be reasonably expected under contract), and also not destabilising to the clubs, leagues, and football in Europe generally.

There are a number of potential sanctions, of which transfer bans (such as was handed to Chelsea by FIFA in 2019) and disqualification from future competitions, along with fines, are the most commonly mooted sanctions for the holdout clubs. A ban on registering new players is also a possibility, causing clubs to lose their ever so valuable academy assets. This notwithstanding, the impact of these punishments on other clubs, and leagues generally, deserves careful consideration. For example, several new lucrative broadcasting deals have just been announced, including for La Liga. The broadcaster(s) in question would no doubt be perturbed in the event that La Liga proceeded without Real Madrid or Barcelona for a period of time, if at all. Additionally, fan support in general may subside, and malaise may rise, if the league's stars are missing in action, further financially harming the other clubs – the impact of which shouldn't be underestimated.

The regulators are walking a tightrope between appropriate discipline and avoiding a product with substantially diminished competitiveness and quality. The ongoing and potential competition law challenges, as well as the apparent determination from the remaining 3 clubs despite unprecedented fallout, appear to foreshadow the risk of turbulence unless the path is carefully and sensitively navigated.

It seems that finding some subtlety and nuance in a combination of lesser sanctions would retain the product quality and competitiveness, while still sending the appropriate messaging. The FA's approach to the English Super League clubs, in the face of much contrition on the part of the latter, is a good example of this. However, if the leagues of the remaining 3 recalcitrant clubs allow their anger to guide them then exaggerated sanctions could be more damaging than the deterrent and penalty intended. UEFA president Aleksander Ceferin has himself [said](#) that the trio have "*paralysed themselves with the approach they took*"^[26]. La Liga and Real Madrid / Barcelona remain at an impasse – last week, [Javier Tebas](#)

[said](#) "I've spoken with Barca executives in recent days. They believe they should keep doing what they're doing and I think they're wrong....the concept of the Super League is impossible".^[27]

Subject to the current Court proceedings which will play a large role in determining what paths the governing bodies may take. In the author's view, UEFA appears likely to come down on at least one of the clubs, if not all three. If the former, it seems the most likely standout would be Real Madrid, given its utter lack of repentance and seemingly resolute intent. The road ahead in this sense will become clearer once UEFA's initial investigation has concluded, should it reach that point given the Courts' involvement. It will be interesting to observe how these broad challenges are managed, as well as the reaction of an already disconcerted fan base.

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