

Implications of the Bosman ruling for football transfer markets

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This paper seeks to assess the implications of the 1995 Judgement of the European Court of Justice on the case of Jean-Marc Bosman for the operation of football transfer markets.

Although it is inevitable that many more out-of-contract footballers will be able to move between clubs without payment of transfer fees to the selling club, it is argued that there remains a role for transfer markets in professional football, with compensation to selling clubs for training, development and replacement of players.

Introduction

Most football leagues, subject to the jurisdiction of the international ruling bodies of FIFA and, in Europe, UEFA, operate transfer markets. Typically, a buying club is required to pay a transfer fee to a selling club in order to obtain a player's registration for his services as a footballer for that club in league and cup competitions. Prior to the 1995/6 season, most leagues operated transfer markets on two basic principles. First, a transfer fee would be payable even if a player had reached the end of his contract and wanted to change clubs. Second, football leagues operated strict, protectionist controls on the number of foreign-born players who could appear in a team in a particular match.

The case of the Belgian footballer, Jean-Marc Bosman, which appeared before the European Court of Justice in 1995, challenged these principles. Bosman was offered a new contract with the Belgian club, RFC Liège, on inferior terms to his previous contract which had expired. Bosman's club refused permission for him to join a French club, US Dunkerque. The player sued RFC Liège, citing restraint of trade. The case eventually appeared before the European Court of Justice.

In judgement in December 1995, the European Court ruled that the provision, whereby out-of-contract players could only move between two clubs in different EU countries if a transfer was agreed between the clubs with compensation paid to the selling club, was incompatible with Article 48 of the Treaty of Rome which relates to freedom of movement of labour. Article 48 was also ruled as incompatible with restrictions on the number of foreign players permitted in a team.

Within the football industry, this ruling provoked panic and dire warnings. Concerns were expressed that players' asset values would have to be written off from club balance sheets, that an important source of revenue for smaller clubs would be withdrawn threatening their viability, that star players would become even more concentrated in a relatively small number of rich clubs and that domestic leagues would become 'flooded with cheap foreign imported players' who might displace domestic players.¹ The chairman of Newcastle United, Sir John Hall, commented that the ruling would '... depress transfer fees. Clubs who are on the ball will give players longer contracts and start negotiating them long before they are up. But against that, money saved on high transfer fees will go if we are not careful on salaries – and that would be the worst of all possible worlds'.²

A Football League spokesman suggested that the impact of the ruling would be to put 75% of players' jobs 'under threat'.³

Two years on, reports of the death of football transfer markets seem greatly exaggerated. The authorities in Italy and the Netherlands have abolished their internal, but not external, transfer markets. Other league authorities have concentrated on reform rather than abolition. Over the two-year period since September 1995 the total level of real spending on transfers within the English Leagues has risen considerably.⁴ This paper aims to assess some of the impacts and implications of the Bosman ruling for the football industry. It begins, in section 1, by briefly outlining the evolution of the English football transfer system. Section 2 summarises the European Court of Justice ruling and details the response of the English authorities to the ruling. Section 3 examines some economic implications of the ruling, looking in particular at mobility, training, structure of employment contracts and size of transfer fees within the professional footballers' labour market. A conclusion summarises the main points.

1. Origins of the English transfer system

The English Football League has a long history of labour market regulation. The foundations of the transfer system were established in the late nineteenth century soon after the League's formation. As Harding recounts, small-town clubs lacked drawing power and were concerned that their better players would move to larger clubs.⁵ Sharing of gate revenues was rejected as a solution by club owners, who preferred to establish control over player movement. Annual re-registration was introduced and, once signed, a player was tied to his club for as long as it wanted him. At the end of a season, a player who refused to sign a new contract could not sign for another club unless the former club gave permission. Movement of players between clubs became associated with payment of compensation fees, ostensibly to facilitate purchase of a replacement or to service a club's debt. This 'retain and transfer' system resembled indenture and was clearly far removed from a free market for players' services.⁶

In addition, the Football Association set a maximum wage for all players, which was not abolished until 1961. The legality of the retain and transfer system was challenged in a 1963 High Court case. The Football League's defence of its system was that removal would be to the detriment of competition within the League in that restrictions prevented

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powerful clubs from taking all the best players. Hence, the weak clubs would be protected and equality of sporting competition would be promoted. Also, without the prospect of compensation in the form of transfer fees, clubs would not have the incentive to invest large sums of money in the training and development of players.

These arguments recur in the courtroom discussion of the Bosman case. Essentially, there are two types of externality at work. The first relates to the nature of sporting competition. Whereas a particular team may wish to maximise its performance, the League has to consider the viability of the competition as a whole. Spectators may value 'uncertainty of outcome'; one or more teams always dominate, uncertainty of outcome is reduced and the dispersion of League points widens. The demand for football attendance may decline as the excitement of close contests is lost. It is not in the League's interest to allow this situation to develop.⁷ Forms of intervention set up by sports leagues to deal with this externality are reserve clauses, which bear some similarities with the retain and transfer system, and payroll caps, both of which are found in North American sports leagues.⁸ Revenue-sharing is another option, and this is widely practised, to varying extent, in European football leagues. These are all examples of cross-subsidies which transfer resources from larger, wealthier clubs to poorer, less well-endowed clubs in order to secure the economic viability, and continued participation, of the latter. Their intended effect is to level playing standards in league competitions.

The second externality is the poaching externality, well-known in the literature on the economics of training and first observed by Pigou.⁹ Training could result in a divergence between private and net social products, as other clubs could acquire the skills of workers trained by a club, which does not then derive the benefits in performance. In Becker's typology, footballers' human capital is specific to the industry and partly specific, but partly general, to the club.¹⁰ To the extent that other clubs can poach promising young players, there is little incentive for training. The prospect of obtaining a transfer fee as compensation for training then restores the incentive to train.¹¹

In the 1963 case, Judge Wilberforce rejected many of the Football League's arguments. In particular, he suggested that the retain and transfer system actually worked in favour of larger clubs with high market size. This was because larger, wealthier clubs could more easily afford to purchase the services of the more talented players in the transfer market. Such

clubs had larger revenues and better access to borrowing.¹²

In 1978, the retain and transfer system was removed in favour of the current system of freedom of contract. The main characteristics of this system are as follows.¹³

If a club, currently holding a player's registration, wants to retain him on expiry of contract, it must offer terms at least as good as those applicable in the best year of the old contract. If the club makes an inferior offer, if it does not want to renew the contract on the same terms, the player is eligible for a transfer without any fee attached (a 'free transfer').

If the club does make a new offer and this is rejected by the player, then he becomes eligible for a transfer subject to the payment of a fee in respect of 'fair compensation' to the selling club for loss of the player's services. The terms of fair compensation can be mutually agreed between two clubs *or*, if there is disagreement over the size of fee, the case is referred to the Football League Appeals Committee (the 'Tribunal') for arbitration, which need not be binding on the two clubs.¹⁴ There is no longer a fixed proportion of the transfer fee which accrues to the player as a 'signing-on fee'. The player, via an agent, negotiates his own signing-on fee from the buying club.

It is clear that, had these rules been applied to Bosman's transfer from RFC Liège to US Dunkerque, the player would have been granted a free transfer and the case would not have come to the European Court. The English football authorities and the Professional Footballers' Association used this observation to defend their existing regulations, but the European Court dismissed all such attempts to defend current transfer systems.

2. Responses to the Bosman ruling

In its Judgement, the European Court ruled that Article 48 of the European Treaty, which specifies freedom of movement of labour within the EU, precluded the application of rules which:

- (a) prohibited a professional footballer from moving between clubs in different EU countries, on expiry of his contract, unless a transfer fee was paid to his (selling) club
- and
- (b) restricted the number of foreign nationals from other EU member states permitted to play in teams in particular matches in domestic and European competitions.¹⁵

The Opinion of the Advocate-General, upon which the Judgement was based, made two further points:

- (i) Competitive balance was an appropriate concern for football leagues but payment of transfer fees was not the best way to achieve this and other measures should be sought which did not affect the right of freedom of movement. Revenue-sharing was strongly commended.
- (ii) Compensation to selling clubs for the costs of training and development, and as a means of protecting smaller clubs from the effects of poaching, was seen as reasonable. However, existing transfer fees did not bear a close relationship to the costs of training. Transfer fees should be limited purely to the costs of training and should only be payable upon the first transfer after a player's completion of training, as in France.¹⁶

Following the Judgement, European football authorities were required to present reforms to transfer systems. In Italy and the Netherlands, domestic transfer markets were abandoned, although purchase and sale of players into and out of these countries still commands fees.

At the time of writing, the FA Premier League, the Football League and the Professional Footballers' Association are jointly considering a plan to reform the domestic transfer market with the following four proposals:¹⁷

1. Training and development contracts for young players up to the age of 21 with one day a week reserved for study for vocational qualifications outside football.
2. If, at the age of 21, a player has served his training contract and is offered a new contract by the club but declines and leaves, then the original club should receive compensation for 'training and potential'. Further, within the 21–24 age range, any selling club relinquishing a player can claim compensation, the level of which would be established by a panel, similar to the current Football League Appeals Committee (the Tribunal).
3. From the age of 24, any player who reaches the end of his contract is then able to move with no fee attached, so there is complete freedom of contract for older players.
4. Movement of players, who are not at the end of their contract, may still be associated with

payment of transfer fees, as under current regulations, where these are negotiated voluntarily between buying and selling clubs.

This plan is under review and there remains the alternative possibility of complete freedom of contract.

Internationally, FIFA has submitted plans for global extension of the right of all players to move between countries at the end of their contract without a fee. This is prompted partly by court action in Spain involving players who negotiated contracts with new clubs after their previous contracts ended. In these cases, the 'selling' clubs demanded substantial fees as compensation.¹⁸

3. Implications of the Bosman ruling for domestic football

The Bosman ruling is just one part of considerable structural change in the football industry and it is difficult to separate its impact from others, especially the effects of satellite television on club revenues covered by Cameron elsewhere in this volume. Below, we focus purely on implications for the footballers' labour market. The Bosman ruling clearly represents another large step towards free agency for players. Beyond that, assessment of the impacts of the ruling depend very much on the assumptions made about the structure of the product and labour markets in professional football.

In England, prior to the 1978 freedom of contract provision, the footballers' labour market could be viewed as monopsonistic with controls enforcing power of buying clubs.¹⁹ This occurs because players were unable to accept offers from other clubs on expiry of their contracts. Sloane argued that monopsony exploitation, where players' wages are below their contributions to revenues, was not prevalent in football apart from star players. Since 1978, buyers' power in the labour market has been reduced and possibly eradicated altogether. In Carmichael, Forrest and Simmons²⁰ and Szymanski and Smith,²¹ the assumption is made that the transfer market is competitive. With many buyers and sellers and players traded increasingly on international markets, and with effort and ability well-observed by a network of managers, coaches and scouts, we have an approximation to a textbook competitive market. Moreover, as Szymanski and Smith show, club performance is highly positively correlated with wage bill so that the payment to teams is closely related to their output, as a competitive model would predict.

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The Bosman ruling raises many issues which require economic analysis. Below we identify five key issues for the operation of the labour market and make some conjectures on these which empirical research might usefully address.

i) Collapse of transfer markets?

This is unlikely, despite the measures adopted in Italy and the Netherlands. The Football Association, the Football League and the Professional Footballers' Association (PFA) are all committed to retention of some form of transfer market in England and Wales. Indeed, the PFA has long argued that transfer markets, with appropriate provisions for freedom of contract, confer benefits on football.²² A neglected function of transfer markets is to facilitate *efficient matching* between players, managers and clubs. A player's contribution to team performance can vary between clubs, and even within clubs, as managers and coaches change (itself part of a matching process). In order to build effective teamwork amongst his players, the manager needs to secure their services on reasonably long-term contracts. The sale of a player's registration, with compensation, enables the selling club to replace that player and restructure the playing squad around a nucleus of established players. As transfer expenditure flows through the industry, teams can make appropriate matches with players, consistent with club endowments and aspirations.

ii) Loss of transfer income to smaller clubs?

Following Szymanski and Smith, transfer fee income can be thought of as proportional to the difference between a club's desired and actual wage bill. Where this gap is positive, clubs will incur net deficits on transfer spending. Where this gap is negative, clubs will incur net surpluses on transfer activity. Using data from club accounts, table 1 shows the net transfer position of 39 English league clubs over 1989/90–1994/5. Clearly, many well-established Premiership clubs incur sizeable net transfer deficits, while several lower division clubs generate transfer surpluses which help offset operating losses.²³ Extending the period back to 1973/4 we find that only nine out of the 39 clubs switch from average net deficit to surplus or vice versa and so the pattern in the data is well-established.

In table 2, we see both the flow of players, within the English Leagues, who attract fees and the intra-League flows of transfer spending. One feature of this table is that the number of players and size of fees,

Table 1: Average surplus (–) or deficit on transfer spending within the English leagues 1989/90–1994/95 £'000

Arsenal	1,488	Manchester United	1,585
Aston Villa	807	Newcastle	2,417
Barnsley	–250	Oldham	106
Birmingham	532	Plymouth	–2
Blackburn	4,210	Preston	–133
Bolton	306	Reading	31
Brentford	–8	Rotherham	–45
Bristol Rovers	–264	Scunthorpe	–109
Burnley	355	Sheffield United	256
Bury	79	Sheffield Wednesday	1,166
Cambridge	–317	Shrewsbury	–181
Coventry	391	Southampton	482
Everton	2,372	Southend	–893
Huddersfield	–39	Swindon	–650
Hull	–220	Tottenham	887
Leeds	1,766	West Bromwich	135
Leicester	9	West Ham	924
Liverpool	3,375	Wrexham	–124
Luton	–1,237		

Note: Figures exclude transfers involving movement to or from non-English leagues.

Source: Author's calculations from data provided by Tim Kuypers and Deloitte Touche.

Table 2: Summary of 1995/6 transfers (1994/5 in parentheses) Movement of players within the English Leagues

FROM		TO			
		Premier	Football League Divisions		
	P	1	2	3	
Premier	P	32 (38)	30 (24)	15 (7)	3 (1)
Football League Divisions	1	26 (21)	31 (22)	24 (13)	11 (7)
	2	4 (6)	20 (13)	19 (10)	7 (5)
	3	5 (6)	8 (2)	14 (9)	23 (13)

Flows of Transfer Spending within the English Leagues, £'000

FROM		TO			
		Premier	Football League Divisions		
	P	1	2	3	
Premier	P	66,650 (51,885)	12,390 (10,155)	1,110 (730)	165 (60)
Football League Divisions	1	35,150 (20,375)	13,312 (6,390)	3,010 (1,841)	627.5 (250)
	2	1,100 (2,400)	8,505 (1,645)	2,175 (1,920)	292 (150)
	3	1,425 (805)	2,130 (155)	1,120 (575)	927.5 (416)

Notes: Data refer to movements for fee within English Leagues.

Player exchanges are excluded.

Source: Author's own calculations from Rothman's Football Yearbook 1995/6 and 1996/7.

involved in movement from Football League Divisions 2 and 3 to the FA Premiership are modest compared with the number and size of fees within the Premiership and between the Premiership and Division 1. To some extent, finding and selling a promising young player, from a lower division club to the Premiership, is a speculative activity, with luck playing a large part. In this respect, the transfer market is not an effective means of redistributing incomes through the Leagues. However, it must be recognised that certain clubs specialise in acquiring and selling young talented players (for example Crewe Alexandra). Also, there is considerable mobility. Many young players work their way up the divisions of the Football League before reaching the Premiership. Similarly, young players who are surplus to requirements, and many veterans, move down the divisions.

Premiership and Division 1 clubs have recently substituted foreign talent for domestic talent from the lower divisions.²⁴ In the 1996/7 season the proportion of foreign nationals in the stock of professional footballers rose beyond 5% in the English Leagues. Opportunities for lower division clubs to sell promising young players have lessened. The influx of foreign players, and resulting excess supply of domestic players, should force the wages of the latter downwards in the lower divisions, *ceteris paribus*. If transfer fees are correlated with salaries, then lower division clubs should receive lower fees for their departing players.

iii) *Increased, and more unequal, player salaries?*

We note two implications for player salaries. First, it is very likely that transfer fees that would have been paid will instead be converted into higher player salaries and signing-on fees for those who move out-of-contract without a fee. As noted, this is part of a series of steps towards free agency. Second, to the extent that players with lower division clubs receive lower wages as a result of increased foreign imports, and their likelihood of exit to the higher divisions is reduced, then the distribution of player salaries should also widen. Football is an interactive team sport in which the contribution of individual players to team performance is difficult to measure. Also, information on players' salaries is confidential. Hence, one cannot directly test these propositions on players' salaries.²⁵

iv) *Reduction of transfer fees?*

In Carmichael, Forrest and Simmons,²⁶ transfer fees are determined *conditional* on, and jointly with, the likelihood of movement. In any season, approximately

10% of professional players change clubs. If the previous experience of the 1978 freedom of contract provision is a guide, we should not expect to see a large increase in turnover.²⁷ Even so, the characteristics of players who move for fees may be different post-Bosman. For example, they may be older and more experienced and this may conceivably raise fees. Given the probability of movement, higher transfer fees will be associated with greater age and experience, with higher selling club status, with greater number of goals scored by the player and with international status. These determinants would still be relevant in transfer markets post-Bosman. Were a tribunal or panel to set fees for 21–24 year old players, it would use precisely these, and some other, factors in their decisions, judging from the evidence of English tribunal settlements in Speight and Thomas.²⁸ The tribunal would mimic the market outcome.

One precise prediction, drawn from Carmichael, Forrest and Simmons, concerns their finding of a transfer fee differential of £440,000 for England international status pre-Bosman, over and above fees for non-England internationals. Although this may partly be explained by the propensity of non-English UK international teams to select from lower division clubs, the quota restrictions on foreign players must surely be a factor determining this differential. The differential will probably be eroded post-Bosman and this may contribute to reduced fees, other things being equal.

A further important determinant of size of fees is length of contract. Where it becomes known that a player can obtain a free transfer at the end of a contract, transfer fees will become smaller the closer the player is to the end of the contract. This is a hypothesis which requires empirical investigation.

v) *Longer contracts?*

As observed in Italy and the Netherlands, a consequence of the Bosman ruling is that clubs will wish to sign players on longer contracts than previously, in many cases longer than the player would desire. Typical contract lengths in these countries have risen from two or three years to between five and ten years, in the context of an average career length of eight years. Players will have in mind the benefits of mobility while clubs will require security of the players' services. Negotiation will then result in contract lengths between players' and clubs' desired terms. In a competitive market, contract lengths should reflect optimal risk sharing,

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where there are joint risks to both club and player which include risk of injury, bad form, loss of club status by relegation, managerial turnover and other (initially) unplanned events. In a generally riskier competitive environment, one predicts an increase in typical contract length.

Clubs will become more anxious to protect their investment in players, and players will be keener to protect their ability to realise outside opportunities, by means of contingency clauses in contracts. Hence, 'sell-on' clauses guaranteeing the selling club a proportion of any future fee, components of fees conditional on appearances for club and country, and 'get-out' clauses where a player may leave following a club's relegation, may become increasingly important as clubs' and players' demand for insurance against risk increases and hence contracts become more complex.

Conclusion

Our predictions for the operation of transfer markets following the Bosman ruling are for loss of transfer income to smaller clubs, a more unequal distribution of players' salaries, lower transfer fees in the long-term and longer, more complex, contracts.

In his Opinion, Advocate-General Lenz recognised some of these implications for football. He recommended wider revenue-sharing as a means to support smaller clubs and retain league viability. In England and Wales, such a course is unlikely to be followed. Prior to the formation of the Premier League as a breakaway cartel, the Football League had already removed the entitlement of away clubs to a share of gate revenue in league matches. Following the successful bids by BSkyB for television rights in both Premier and Football Leagues, it is difficult to see the trend towards less revenue-sharing being reversed. With payroll caps also removed from the policy agenda by players' organisations, football authorities will be anxious to retain some sort of transfer market to permit some redistribution of revenues within the league. To this end, the English proposals outlined in section 2 are within the spirit of the Bosman ruling.

Exacerbation of the poaching externality remains a problem, post-Bosman. The influx of foreign players will continue and league authorities will want to retain the incentive for clubs to train rather than poach.

Currently, transfer markets across Europe remain buoyant and it is difficult to attribute this wholly to clubs repositioning their squads in anticipation of the full force of the Bosman ruling. The ruling is part of a general drift towards free agency for footballers and

the market mechanism will adapt to the imposed change. However, the externalities discussed in this paper remain critical problems for league authorities and players' organisations.

¹ *The Times* 20 and 21 September 1995.

² *The Times* 20 September 1995.

³ M. Illsdon (1997) 'The Bosman Ruling', *Goal*, January, pp. 44–47.

⁴ See G. Boon (1996) *Deloitte and Touche Annual Review of Football Finance 1996*, Manchester: Deloitte and Touche, and S. Dobson and W. Gerrard (1997) 'Testing for Rent-Sharing in Football Transfer Fees: Evidence from the English Football League', *Leeds University Business School Discussion Paper E97/03*. English Leagues denotes English and Welsh clubs in the FA.

Premiership and Football League. UEFA and FIFA treat England and Wales as a separate area autonomous from Scotland or Northern Ireland for the purposes of their regulations.

⁵ J. Harding (1991) *For the Good of the Game: The Official History of the Professional Footballers' Association*, London: Robson Books.

⁶ A. Mason (1989) *Sport in Britain: A Social History*, Cambridge: Cambridge University Press.

⁷ P. Sloane (1980) *Sport in the Market?*, London: Institute of Economic Affairs.

⁸ A. Sanderson and J. Siegfried (1997) 'The Implications of Athlete Freedom to Contract: Lessons from North America', this volume.

⁹ A. Pigou (1912) *Wealth and Welfare*, London: Macmillan.

¹⁰ G. Becker (1975) *Human Capital* 2nd edn., New York: Columbia University Press.

¹¹ Under-provision of training caused by the poaching externality is currently mitigated by government-funded youth training schemes. See G. Stewart and J. Sutherland (1996) 'The Trainee System in Professional Football in England and Wales', *Education and Training*, 24–29.

¹² J. Harding, op. cit.

¹³ D. Thomas (1996) 'Recent Developments in Sporting Labour Markets: Free Agency and New Slavery?', *The Review of Policy Issues*, 19–28.

¹⁴ A. Speight and D. Thomas (1997) 'Arbitration and Transfer Markets', *Scottish Journal of Political Economy*, 198–215.

¹⁵ Court of Justice of the European Communities, *Reports of Cases before the Court of Justice and the Court of First Instance, Section I, Court of Justice, 1995–12, Case C-415/93*, pp. 4,921–5,082.

¹⁶ In France, transfer fees are set, solely as compensation for costs of training, corresponding to the player's gross income in the preceding two years, assuming that training has lasted for more than three seasons.

¹⁷ *The Independent*, 17 January 1997.

¹⁸ The players concerned are G. Hagi (Romania) who moved from Barcelona to Galatasaray and G. Vlaovic (Croatia) who moved from Padua to Valencia.

¹⁹ P. Sloane (1969) 'The Labour Market in Professional Football', *British Journal of Industrial Relations*, 181–199.

²⁰ F. Carmichael, D. Forrest and R. Simmons (1997) 'The Labour Market in Association Football: Who Gets Transferred and for How Much', University of Salford, mimeo.

²¹ S. Szymanski and R. Smith (1997) 'The English Football Industry: Profit, Performance and Industrial Structure', *International Review of Applied Economics*, 135–154.

²² J. Harding, op. cit.

²³ G. Boon, op. cit.

²⁴ G. Boon, op. cit.

²⁵ In North America, where individual contributions to many team sports are easier to measure and where confidentiality is less of a problem, some evidence shows that movement towards free agency is associated with increased inequality of players' earnings. See P. Porter and G. Scully (1996) 'The Distribution of Earnings and the Rules of the Game', *Southern Economic Journal*, 149–162.

²⁶ F. Carmichael, D. Forrest and R. Simmons, op. cit.

²⁷ J. Harding, op. cit.

²⁸ A. Speight and D. Thomas, op. cit.