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## A game without penalty: Purchasing a professional club, a rational crime?

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### Abstract

This paper aims to advance a new strategic explanation for the detention of a professional football club based on criminal motivations. Despite recurring deficits, most of the French professional football teams have changed owner over the last years (22 of 40 since 2010). It is therefore difficult at first sight to understand why investors are attracted to this industry. Beyond the internal / external distinction, this article advances a new explanation based on economics of crime. Semi-structured interviews were performed and primary data was analyzed to explain that purchasing a professional football club for criminal ends would be rational. The removal of the Third Party Ownership may explain some of this phenomenon. Results also suggest that the football industry is a criminogenic market. From this, it was possible to derive consequences of the potential criminal behavior of the new investors and managerial recommendations to fight against this existing situation.

**Keywords:** sport management, strategy, economics of crime, agents

### Introduction

Between 2010/2011-2018/2019, 22 of the 40 professional French clubs changed owners. During this period<sup>3</sup>, the combined losses of the Ligue 1 and Ligue 2 clubs reached €657 million. It is therefore difficult to understand why investors are attracted to this industry. There have already been financial analyses of the determinants for the value of clubs (e.g. Scelles, Helleu, Durand and Bonnal 2013), the economic consequences for a new investor on the competitive balance (e.g. Terrien, Scelles, and Durand 2016), and the ways in which investment can increase the “soft power” of a nation (Dorsey 2018; Hassan 2018). To our knowledge, Mauws, Mason and Forster (2003) have provided the only paper which systematically analyzes the attractiveness of the professional sports industry. This research showed that the five forces associated with a club’s environment cannot explain the investors’ interest. However, internal factors characterised by Resource Based View (Barney 1991) prove to be a better indicator. Mauws and al. showed that investors are not attracted simply by the professional clubs but more by the other secondary advantages they bring.

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<sup>3</sup> The Data for the 2018/19 season are not yet available. For the rest, consult to the report of the DNCG (Direction Nationale Contrôle de Gestion – National Direction for Management Control) available here: <https://www.lfp.fr/corporate/dncg>

Privileged access to main actors in this field has allowed a unique insight to explain this attractiveness. Beyond internal/external distinctions, it became evident that it was necessary to differentiate between legal and illegal activity. Hence, a new explanation for the strategic desire to own a professional football club: owning a football club could be interesting for those with criminal intentions, can be derived from a multi-disciplinary corpus (economy, sociology and criminology). Becker's seminal paper (1968) was particularly useful for understanding the phenomenon.

It is important to say from the start that this article does not aim to demonstrate the illegality or the immorality of certain actors in this sector (Terrien and Durand 2018). This paper belongs to techno-scientific stratum (Comte-Sponville 2004): it poses questions about the rationale behind the ownership of a club for criminal ends. Defining crime is therefore unimportant. It looks at actions which demonstrate 'a consensus of damages and advantages' (Becker 1968, p.209) and hence makes it possible to avoid discussion about the morality of abortion or prostitution. These questions lie on juridical-political and ethical strata. It is for jurists and philosophers to answer these questions.

This article is structured in five parts. The first looks at explanations to deal with the following paradox: owning a professional football club is increasingly attractive despite its structural losses. The second part will demonstrate the methodological framework used to analyse this paradox and how serendipity played a role in this research. The variables associated with the instrumental calculation of potentially criminal actors (Ehrlich 1996) will be explored in the third part. The role of market structure as a vector for criminality (Farberman 1975) in professional football will be discussed (Part 4). In the last part, the consequences of using a club for criminal ends are identified and the implications are geared towards the aforementioned findings.

## **Theoretical framework**

### ***A paradoxical attractiveness***

Since 2011, the purchase of clubs or significant shares thereof has become a regular occurrence. Even though it is difficult to demonstrate (small sample size and opaque transactions), the prices seem to be forever increasing<sup>4</sup>. However, clubs have shown themselves to be operating at a loss for years and recent tendencies are far from reassuring. In 2017/18, the net losses of Ligue 1 and Ligue 2 clubs reached almost €176 million.

The attractiveness of professional football clubs to investors therefore seems paradoxical. To our knowledge, Mauws and al. (2003) provided the only systematic analysis of the attractiveness of the professional sport industry. They first used Porter's (1979) five-forces model to highlight that this market is less munificent than it used to be. Nevertheless, the new TV rights<sup>5</sup> deal signed by the professional football league (LFP) could explain this paradox. However, each increase in TV rights payment leads to a vicious circle with increased salaries and an eventual increase in losses (Andreff 2011).

Mauws and al. (2003) provided another explanation. Based on an internal approach, they concluded that a professional sport club may help to develop or sustain a competitive advantage if this asset fits a broader corporate strategy. To succeed, the club

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<sup>4</sup> It took only 45 million euros to buy 95% of the shares of the Olympic club in Marseille in 2016, against 100 million to take control of the Girondins de Bordeaux in 2018.

<sup>5</sup> The new amount of TV rights was communicated by the LFP on May 29, 2018.

<https://www.sportsbusinessdaily.com/Global/Issues/2018/05/30/Media/Ligue-Mediapro.BeIN.Sports.aspx>

must fit four conditions (VRIN, Barney 1991): to be Valuable (helping the owner to generate a competitive advantage); to be Rare (low probability for competitors to purchase another club); to be Inimitable (inability of competitors to copy the valuable strategy developed); to be Non-substituable (impossibility to achieve the same purpose through different methods).

Beyond the external/internal distinction, another one may be interesting to solve this paradoxical attractiveness.

### *Crime as a norm?*

Football and crime have been happy bedfellows for many years. This is at least what the Financial Action Task Force (2009) reported in 2009, citing the growing criminality of the football industry. Apart from problems related to match-fixing which have no direct link to the finances of a club, Dantine (2015) describes two types of financial and economic criminality: fraud linked to transfers and money laundering<sup>6</sup>. The first sort appears in the form of payments made to agents and/or directors of clubs (Andreff 2009): it is the well-known system of retrocommissions. To these, we can add the laundering of dirty money carried out by club owners. The general idea is to legitimise ill gotten gains. For this, the best available method is '*Access to ownership of a club (at law or in fact) which is likely to offer the greatest opportunities to one or several criminals*' (Dantine 2015, p.190).

Several reports have tried to shine a light on this subject. In 2007, a report by the French National Assembly (Juillot report)<sup>7</sup> showed the link between transfers and fraudulent practices and the ineffectiveness of controls. In 2006, a senatorial report<sup>8</sup> underlined how easy it was to be a football agent and how few checks were made into this anarchic profession. In 2012, a report by the TRACFIN<sup>9</sup> showed clearly the vulnerability of a club in period of crisis and how they risked accepting suspicious capital investment<sup>10</sup>.

### *Economics of crime*

The economic sciences are interested in the choices people make, including the deciding of whether or not to commit a crime. Unlike in the sociology of deviance, the economy of crime considers criminals to be rational actors. Their decisions are made with the aim of maximising their expected utility gain in balancing the benefits against the potential sanctions for the crime. This approach was led to many philosophical critiques and empirical refusa (Morgan, Maguire and Reiner 2012). Regardless of this, the rationale behind white-collar crime is widely accepted (e.g; Bonnet 2008; Cohen and Felson 1979).

Sport is a full-scale laboratory for testing economic theory. It has previously been exploited to work on the crime economy. Using the typologies proposed in criminology (Bonnet 2008), Table 1 regroups the different synergies between the crime economy and the sports industry.

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<sup>6</sup> Football Leaks unfortunately provide many recent examples of proven or suspected wrongdoing (<https://www.mediapart.fr/journal/france/dossier/football-leaks-saison-2>).

<sup>7</sup> <http://www.assemblee-nationale.fr/12/rap-info/i3741.asp>

<sup>8</sup> <https://www.senat.fr/rap/109-463/109-4631.pdf>

<sup>9</sup> Tracfin is a unit of French Ministry for Economy. Its aim is to fight against illegal financial operations, money laundering and terrorism financing

<sup>10</sup> [https://www.economie.gouv.fr/files/2012\\_rapport\\_FR.pdf](https://www.economie.gouv.fr/files/2012_rapport_FR.pdf)

**Table 1:** Crime and Punishment in Sports Industry

<b>Crime categories</b>	<b>Application in the sport industry</b>
<b>Street crime: robberies and assaults</b>	Correlations between sport games and hooliganism (Marie, 2010), larceny (Kalist and Lee, 2016), alcohol-related arrests (Merlo, Ahmedani, Barondess, Bonhert and Gold, 2010)
<b>Domestic crime</b>	Correlations between domestic and match day violence (Card and Dahl, 2011 ; White, Katz and Scarborough, 1992)
<b>White-collar crime: owners' and executives' crime against their employees and/or clients</b>	Corruption for the allocation of mega-sporting event (Chappelet & Kübler-Mabbott, 2008) or in betting scandals with government's ministers (Lee, 2008) (Those examples are not directly linked to the economics of crime)
<b>Occupational crime: employees' crime against their organisation (theft and embezzlement)</b>	Match fixing involving players (Caruso, 2008; Hill, 2009) Economics of doping (Berentsen, 2002; Maennig, 2002)

The crime economy examines street and domestic crime using an empirical approach. Econometrics therefore allows academics to analyse large databases to see the effect a match has on criminal activity. However, a theoretical approach is more often employed when analysing occupational crime. The absence of reliable data concerning fixed matches implies it is difficult to analyse these empirically<sup>11</sup>. Microeconomic tools are hence deployed to understand the balance in crime markets to propose a function which maximises social well-being to determine the “optimal level” of crime which minimises crime and monitoring costs (Erlhich 1996). Several authors have considered this method and worked on adapting Becker’s seminal model (1968) to the industry of sport. In this way and according to expected utility gain, a player, coach, referee or director could be convinced to fix a match through corruption (Forrest and Simmons 2003; Hosmer-Henner 2010) or by being a victim of extortion (Holden and Rodenberg 2015). Different variables can be transposed in the context of an investor’s criminality through his ownership of a professional football club. These variables are used in equation 1 and described in Table 2.

$$E(U^F) = (1 - p)[qU(Y + G)] + (1 - p)[(1 - q)U(Y)] \\ p[U(Y - F - R)] - U(Y) + U(C) \quad (1)$$

<sup>11</sup> The work of Hill (2010) should nevertheless be commended to build a database from the analysis of secondary data and to identify 301 match-fixing

**Table 2:** Description of the variables

Variables	Description
P	Probability of crime detection
Q	Probability of using the club for criminal purpose
Y	Current wealth
G	Gain in wealth from an undetected use of club for criminal purpose
F	Financial penalty if the crime is detected
R	Indirect penalty from a loss of reputation if the crime is detected
U(C)	Utility linked to the fact of the crime itself

The equation (1) can be broken down into several blocks: the first shows the gains if the crime succeeds, the second if the crime does not succeed and is not detected, the third is linked to the cost of being found out (e.g. fines). Next,  $U(Y)$  is the utility of the initial wealth and  $U(C)$  the utility of the crime. An actor who is risk-neutral would only commit a crime if  $E(U^F)$  is positive. The aim of this research is not to propose a microeconomic equilibrium for the crime market to define optimal law enforcement, to maximise social welfare (Erlach 1996). This paper hopes rather to show whether ownership of a club for criminal ends can be a rational choice or whether it is simply deviant behaviour.

### **Research method: from snowball sampling to serendipity**

It should be noted here that this paper did not set out to discuss whether professional sport clubs can be purchased for criminal reasons. Rather, the main hypothesis to solve the paradoxical attractiveness of the French football industry was about the renewed interest in external factors (Porter 1979). Thereafter, serendipity raised the issue of criminal purposes (Farberman 1975).

### ***Snowball sampling to reduce organisational hypocrisy***

The professional football clubs should do their utmost to satisfy their various stakeholders (Senaux 2008). This demanding context may imply institutional pressures on those organizations (Senaux 2011) leading the executives to use hypocrisy (Brunsson 1989). This trend is probably best described by the following quotation of a director of a leading football trying to define his club: ‘Which answer do you want? The one for the journalist? The one for the supporters? Or the one for the academic?’ (Senaux 2011, p. 263).

To avoid this issue and to minimize the risk of organisational hypocrisy, snowball sampling was employed to select people to be interviewed (Kelly and Chatziefstathiou 2018). Personal communication enables researchers to maximise the benefit of the ‘warm call’ (a request to someone who has a positive relationship with the contact person, Saber and Foster 2011). Hence, semi-structured interviews were performed with the stakeholders involved in such financial operations: shareholders and/or chairmen, and executives of professional football teams.

The interviews mainly dealt with the appropriateness of internal and external factors to solve the paradoxical attractiveness of the French football industry for investors.

### *Serendipity: from an external/internal to a legal/illegal distinction*

It quickly became apparent that two kinds of answers emerged. First, most of the respondents claimed that the 60% increase in the current TV rights contract went some way to explaining the attractiveness for the French football clubs. Nevertheless, most of them were also sceptical about the suggestion that this new environment would lead to increased profitability in this industry. This result is in itself interesting.

Nevertheless, not all the interviews were valuable. For some respondents, it was obvious that organisational hypocrisy was at its greatest<sup>12</sup>. A comparison between the statements and facts (based on the analysis of primary and secondary data) made it possible to avoid some irrelevant discussions (Beaud 1996). According to the political or institutional role of the respondents and/or whether the call is warm or cold, another kind of answer appeared. It was linked to illegal activities made possible by owning a professional football club. Serendipity changed the topic of this paper, as it often does when the research deals with the criminogenic market (Farberman 1975).

Then, the interview guide was amended not only to focus on the distinction between internal and external factors but also on the opposition between legal and illegal motivations. Additional semi-structured interviews were performed. The representativity of the sample was also secondary to the importance of avoiding hypocrisy from respondents (Beaud 1996). Beyond actors directly involved with professional football clubs, executives from merchant banks and from regulatory bodies DNCG and from LFP were interviewed. An investigative reporter and academic specialised in the players' agents were also interviewed.

The 18 interviews were performed from May 2018 to February 2019. Details about the final sample is provided in Table 3.

**Table 3:** Final sample

Actors (Number of clubs involved <sup>13</sup> )	First period of interviews	Second period of interviews	Total
Shareholder & Chairman	0 (0)	2 (3)	2 (3)
Shareholders	1 (1)	0 (0)	1 (1)
Chairman	3 (3)	0 (0)	3 (3)
Executives	3 (4)	2 (4)	5 (8)
Others stakeholders			
Merkant bank	0	1	1

<sup>12</sup> To provide an example, the respondent was a former shareholder of a French professional team which was purchased by new investors, including another professional football club. The respondent explained the takeover by the latter in order to use loans between the clubs. Transfermarkt (<https://www.transfermarkt.fr/>) allows check there was any example of transaction like this. Football leaks have then confirmed the suspicions about the potential illegal motivation of the purchase.

<sup>13</sup> Three executives and one shareholder have professional experiences in several football clubs.

**Table 3:** Final sample (continued)

Actors (Number of clubs involved)	First period of interviews	Second period of interviews	Total
DNCG	0	1	1
LFP	0	2	2
Lawyer specialised in sports	0	1	1
Investigative reporter	0	1	1
Academic specialised in the players' agents	0	1	1
<b>Total</b>	<b>7 (8)</b>	<b>11 (7)</b>	<b>18 (15)</b>

It is worth remembering that the aim of this paper is neither to reveal who are the criminals in the football industry, nor to assume that criminal motivations are the only explanation for purchasing a French football club. The paper only aims to provide another avenue for research by showing that it could be rational (Becker, 1968) to do act in that way.

### **A rational criminal motivation?**

The theoretical framework allowed to establish that football has proven to be an appealing domain for crimes. We have not yet explored how owning a football club can maximise illegal gain. Table 2 shows the different variables used to calculate the expected utility gain of the crime. The analyses of primary and secondary data allow to explore each of these variables.

### ***Crime Pays (Y, G and q)***

Owning a football club is a good way to launder money (Dantinne 2015). It is however unlikely that the increased interest in investing in football clubs can be explained by larger amounts of capital needing laundering. At least, no respondents indicate this possibility. However, several interviewees evoked a new actor in recent purchases of French football clubs: sports agents. A financial director of a French club stated for example that purchasing a club is:

*'A means to make money, but not necessarily through dividends, it is not for nothing that behind every buyer, systematically there is an agent, and not the most reliable ones'.*

A simple ratio makes it possible to understand the considerable benefits linked to owning a football club for an agent: on average, for every €100 earned by a professional football club, 4.6 are spent on agents fees and payments to middlemen (DNCG report 2019). For some clubs, the percentage is higher than 10%. One Ligue 1 club's figure is 18,9%. It is worth recalling that these figures only demonstrate legal commissions, even if it is forbidden to own or work within a club while working as an agent to protect against potential conflicts of interest<sup>14</sup>. Beyond declared commissions, there is nothing to prevent the practice of retrocommissions which sadly seem to be the norm in this industry (Dantinne 2015). A business model based on trading can therefore have objectives other

<sup>14</sup> Articles L222-9 et L222-10 du Code du Sport.

than simply maximising sale-value as one chairman of a club pointed out:

*'The trading of players is not only business activity between clubs but also a side-activity for agents'.*

Moreover, various actors in this industry have demonstrated the possibility of acquiring a club without any financial contribution (variable  $Y$  of the equation). This is something which a member of the DNCG whose job is to evaluate the bids of potential buyers regrets:

*'Each of the projects which we have at the moment [...], are of guys who tell themselves: me too, I could become president of a club without paying anything with an investment fund that will lend me some money at improbable rates'.*

When taking this comment into account, it becomes obvious that criminal gains associated with club ownership (variable  $G$  of the equation) are considerable and that the leverage is potentially infinite ( $Y$  can be equal to 0). Yet, it is still hard to understand why owning a club should be necessary for this type of criminal activity. It is more in terms of variable  $q$  (the probability of successfully using the club for criminal purpose) which must be found. The removal of Third Party Ownership (TPO) seems to be crucial to understanding the renewed interest of investors for football clubs. The lawyer we interviewed also declared:

*'Since the ban of TPO, purchasing of clubs is happening more and more for ever increasing sums. But scratch beneath the surface and, we quickly realise that these hedge funds or agents buy a club to do TPO through their clubs which become a sort of figurehead, an empty shell'.*

With the help of a member of the LFP, it was possible to establish each of the change in capital structure of French professional clubs for the seasons 2010/2011 – 2018/2019. On average, 2.44 changes per season were present. In the 2016/17 season (the one which followed the ban of TPO), 7 changes were identified. However, no rise was observed following the new TV rights deal. According to a former president of a L1 club, TPO allowed agents to free themselves from the risk of losing the players they represent to rivals. Yet still, the best way to control this is by investing in a club. The aim does not seem to be simply ensuring the loyalty of a player but mainly to be able to speculate on his value, as a lawyer who is specialised in this field pointed out:

*'This attraction comes from the desire to control everything and continue to do TPO. Most of the time, agents received a percentage of the future value of a player, this should no longer be the case'.*

Even if this practise is nothing new, the ownership of a club allows for better management of such activity as another chief executive officer confirmed:

*'This is not a new system. What's happening today is better organised, it's the story of agents, transfers, personal interest which are not necessarily in the best interest of a club'.*

The transferral of power from clubs to agents is well-established (Kelly & Chatzieftshiou 2018). Buying a club seems to be a new step in this process and multi-ownership would surely be the final step for controlling the 'production chain' of a football player as a member of the DNCG puts it:

*'Before, it wasn't worth owning different clubs, TPO was enough, having ownership or part-ownership of players was quite enough'.*

### *A limited deterrence (p, F, R)*

Multi-ownership does not only increase the likelihood of successful crime. It also serves in reducing the risk of detection ( $p$  in equation 1). The lawyer pointed out that owning a club in a country where transparency is less important facilitated money laundering:

*'When there is multi-ownership of clubs, there is always one in a more obscure country which allows easier movement of money [...]. When a transaction happens in Russia, Cyprus, Malta, the Balkans or South America, it's hard. So yes, that makes the whole system even more nebulous and it can spread further still'.*

Dantinne (2015) identified three principal causes of crime in the football industry. Two of those are linked to the variable  $p$ : the subjectivity of the value of a player's transfer and the lack of clarity in terms of the value of transfers and the mechanisms of their system. Multi-ownership increases the opacity and thus reduces the risk of being caught. Multi-ownership is more often associated with match-fixing (Breuer and Kaser 2017) but it also causes problems in a transfer market<sup>15</sup>. Yet multi-ownership is far from being essential for creating these complex financial dealings. A member of the DNCG who works on club purchases pointed out that it is sometimes difficult to know what a new investor is truly buying:

*'Everything is possible, they always end by buying shares from the company but sometimes indirectly. They can buy shares from the holding company which is above an another holding company which is even higher'.*

The neo-classical approach considers that beyond the likelihood of punishment, its severity would be another key element in the instrumental calculation of the potentially criminal economic agent (Erlhich 1996). This opinion is shared by Brickman (1977, p. 154) who considers that *'To be a deterrent, a penalty must cost the perpetrator more than the perpetrator can expect to gain from criminal activity, preferably much more'*. In terms of the football industry, the weakness of the  $F$  sanction does not seem to be persuasive as the lawyer points out:

*'Those caught red-handed will be investigated. Then it is the slowness of the judiciary... And these people are committing minor offences and profit from reduced punishments such as suspended sentences or other. We are talking about financial fraud, even in the worst cases, we are not seeing serious punishment'.*

So while the criminal gains can be substantial, financial and penal sanctions ( $F$ ) seem to be limited. In order to limit crime's appeal it is important that the effect on reputation ( $R$ ) be significant. It is nevertheless public knowledge that the use of figureheads<sup>16</sup> allows to continue operating even after convictions:

*'We see this in the Belgian scandal where agents spent 60 days in prison then returned to work as though nothing had happened, they mention a tax issue and continue working at the same clubs just as before' (specialist lawyer).*

The fact that the majority of the purchasers of French clubs come from overseas (8/13 since 2015) limits the potential repercussions for their reputation ( $R$ ). New investors are no longer looking for a synergy with businesses close to the club (Mauws and al. 2003), the likelihood of a double penalty is limited.

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<sup>15</sup> The Pozzo family purchased three professional football teams in England, in Italy and in Spain. Some players were involved in several transactions in few months between those teams: 9 times for Adalberto Penarada from July 2015 to June 2018; 11 times for Odion Ighalo from August 2009 to October 2014

<sup>16</sup> The drama of Emiliano Sala unfortunately shed on light the function of Willie McKay who is not registered intermediary (<https://www.theguardian.com/football/2019/feb/22/willy-mckay-agent-emiliano-sala-cardiff>).

This overview indicates for only 6 of the 7 variables applied to the instrumental calculation (Ehrlich 1996), it would be rational to look to own a club for criminal intentions: there is the potential for high gain and any potential punishment, if indeed there is one, is minimal:

*'The figures are incredible, in one year an agent can post profits of millions of euros while we might talk about passive corruption or money laundering, this will not event prevent us from working and might eventually lead to a suspended sentence within the 5-6 years so it is clear that the risks are not great and even if we are occasionally sentenced to prison, it might be on licence or such a thing, the number of nominees which exists ...'* (specialist lawyer)

This article is not trying to suggest certain actors are guilty, nor to say that all (new) investors are criminals. The utility associated to crime itself [ $U(C)$ ] is difficult to objectify, it has not been discussed in this paper. It is common to assume that this variable is negative (disutility of crime, Forrest and Simmons 2003). It is therefore possible to consider that the feeling of guilt or lack of self esteem are such that no investor would rationally engage with a professional club for criminal ends. The fact that the result of this instrumental calculation depends so much on elements which are specific to each investor once more questions the very nature of the industry.

### **A criminogenic market ?**

A criminogenic market relates to a legally established market structure which forces its participants to commit illegal acts (Farberman 1975). Whether at the level of the clubs, federations, or national legislation, several factors mean that it can be said that the industry of football is indeed criminogenic (Dantinne 2015).

### ***Market power, financial agony and Gresham's law***

Kelly and Chatzieftsthiou (2018) have demonstrated the transferral of power from clubs to agents. It seems that the latter are in a position to force clubs to employ certain practices which they dare not refuse. Stanislas Frankiel, a historian who specialises in sports agents, recently declared<sup>17</sup>: *'Club chairmen claim to be whiter than white but, to have a particular player, they are prepared to go through all sorts of people. There are agents, lawyers, but also five times more sports intermediaries of all kinds: families of players, counsellors, and even reporters or clubs' presidents. Everyone wants their piece of the pie'*.

The agents' market power in this industry is thus well established. It has been accentuated by the fact that professional football is structurally unprofitable which means that clubs 'operate chronically on the edge of financial collapse' (Storm et Nielsen 2012, p. 183). To survive, it is therefore crucial to find a payer of last resort who is capable of absorbing losses: shareholders, banks, local authorities... (Terrien, Scelles, Morrow, Maltese and Durand, 2017). This soft budget constraint (Storm and Nielsen 2012) requires turning a blind eye to the origins of certain funds, such is the reliance of the clubs on these new investors, hence the following remark from the executive recently purchased club:

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<sup>17</sup> <http://www.courrier-picard.fr/170330/article/2019-03-08/conseillers-intermediaires-les-agents-officiels-du-monde-du-foot>

*'Unlike in the more classic business sectors in French football, there has not been much investigation into the provenance of certain funds. In other words, the chairman was attracted to any kind of bank guarantee be it from Mauritania, sub-saharian Africa, no matter. He was just delighted to have it'.*

A member of the DNCG conveyed the weak guarantees that some of the buyers provide:

*'Sometimes French football attracts an unreliable, untrustworthy clientele. They are often foreign and occasionally we realise that the bank guarantees are inexistent, false or simply bad. They're certainly not always good. Sometimes there are also fraudsters or guys who want to make their money then leave'.*

The seller could also decide to turn to people with different profiles. Sadly, Gresham's law (bad money drives out good) applies to the purchases of French football clubs. Choosing a sound investor means giving up a significant financial windfall, which is not possible in a systemic greed sector (Andreff 2013), as a financial director indicated: *'There might be credible investors but chairmen are always going to look to other bids because they often overbid. If one person offers 5 million, these others will say: I'll give you 7, the chairmen always wants the maximum'.*

### ***Regulatory bodies in football: a mixture of inability, incompetence and complicity***

Every member of the regulatory bodies interviewed spoke of their impotence when trying to confront the illegal practices they know exist. Indeed, only those with an agent's licence or accreditation to practice on French territory can be investigated:

*'All the foreign agents who operate in France as figureheads as it stands can't be investigated. French agents who work abroad, we can't take actions regarding their work overseas. So we are limited to French transactions made between French agents, we can not go after people who are unlicensed, we cannot investigate the lawyers. Our scope is very limited' (member of the LFP).*

*'The club finds a pretext to pay this person for a different service: you worked as an agent but we payed you for something else. We know perfectly well the guy is an agent but there is nothing we can do. So we can only go after the guys with licenses and these are the safest blokes in the business' (member of the DNCG).*

The national regulatory bodies therefore have little recourse to deal with what is happening. Various actors also spoke of their limits when countered with the complex nature of finances used when buying these clubs. The international entanglement of these deals in any case, make any desire for control on French territory unrealistic. Moreover the international federations do not seem to want to take responsibility for the problem. Since 2015, the work of agents has been deregulated and no form of education, training or professional experience is required to do this job (Kelly and Chatzieftsthiou 2018). This deregulation has led to a proliferation of agents and intermediaries even though this rise facilitates fraud (Poli 2010). This increasingly fragmented and competitive market<sup>18</sup> is going to *'facilitate, incite and even in some hypotheses, oblige violation of the law'* (Dantinne 2015, p.189).

Beyond the external factors which were provided by the elimination of TPO (Third Party Ownership), the process of the deregulation of the job of agent that FIFA introduced has accentuated the criminogenic nature of the football industry (Dantinne

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<sup>18</sup> In January 2015, just before the deregulation of the profession, 6,885 people already had the FIFA's licence (Dantinne, 2015).

2015; this term was also used by the specialist lawyer we interviewed). It is maybe naïve to be surprised by FIFA's conduct seeing how their problems of governance have multiplied (see the special issue of *Sports in Society*, 2018, vol. 21, No 5). That is why UEFA is to blame for not having regulated the profession (Kelly and Chatziefsthio 2018).

### ***What legislative weapons exist ?***

Beyond football's own regulatory bodies, it is possible to ask questions about the lack of legislative action. 10 years passed between the Juillot report and the Braillard law<sup>19</sup> which introduced initial measures and strengthened the influence of the DNCG (cash flows checks and a framework for the work of agents). Whereas the norm is legislative inflation (Conseil d'Etat, 2006), the indifference of the French government is surprising. The opinion of the specialist lawyer is interesting when trying to understand these delays:

*'Football is very important politically, attacking football doesn't go down well, so I'm not sure they want to know [...] Look at Belgium, there have been big scandals in recent months and the political world came together. There were a number of discussions between all the ministers who could have been implicated, the presidents of the league and federation were invited to speak and ever since, I think they're quite happy that there were elections and everything involved in the affair could be put aside without further action being taken'.*

Consulting of the takeover file of a recently purchased club also outlined a former Minister of Sports as a member of the advisory board of the buying company.

Moreover a member of the LFP commented that if the Braillard law only allows to check a part of the population, it's because of the lobbying of lawyers to ensure they were exempted. From that point on, things can continue like before:

*'The lawyer would be the official agent of the player and the informal agent would have an agreement with the lawyer's office where he would be paid 90% of the revenue but would be untouchable... For this, the agents will give them research mandates, accounts of phony matches, fake scouting contacts, the supervision of made-up ghost players to justify sharing commissions and this, is illegal'.*

## **Discussion and conclusion**

### ***Theoretical and managerial implications***

This paper shows that it would be rational for an investor to look to own a club for criminal ends. Several factors in the market structure of the professional sport industry have led to this situation, whether it be in terms of the clubs (financial vulnerability), the passivity and/or the complicity of political figures at federal or governmental levels. While financial survival currently relies on the intervention of last resort payers (Storm and Nielsen 2012), it is possible to ask questions about the systemic consequences of the arrival of these new investors. In France, shareholders regularly allow for the balancing of the books of football clubs (debt write-offs or injections of capital). Yet, the purchase of a club is no longer the world of these types of people and the financing comes mainly from investment funds at

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<sup>19</sup> Law n° 2017-261 March, 1st - 2017 to preserve the ethics of sport, to strengthen the regulation and transparency of professional sport and to improve the competitiveness of clubs.

prohibitive rates (in the region of 15/16% for a member of the DNCG) which the clubs must pay back. From thereon, the financial costs increase, just like the retrocommissions, the interests of the club stop being a major factor in the decision-making and shareholders can no longer be the last resort payer...If there are financial problems, the salvation of the club relies on the clemency of the investment funds which will become the owner as a member of the LFP confirmed to us:

*'It is a system which does not really suit anyone. Not the investments which are putting themselves at risk, nor those who work at the club because they know that if things do not go well, the funds are going to take charge and it is going to be downsizing, maximising shares and liquidation of assets.'*

The process of acquiring a club relies on a two-round auction system. Economic theory considers that the winner of the auction has generally overbid in relation to the value of the asset (Capen, Clapp, and Campbell 1971). Given that the investors potentially have criminal intentions, it is possible to ask if the victim of this winner's curse (Andreff 2014) might be the buyer or the other stakeholders in the club. The buyer may individually benefit from the purchase whereas the repercussions of bankruptcy would have an effect on the entire league (Lago, Simmons, and Szymanski 2006).

At least that is the way some respondents claim, among them the investigative reporter:

*'For (those executives), the club could decline or not, it is not a problem for them when we see the lifestyle offered by the club. In all of those projects, what I see is they improve their personal bank accounts. 80% is about personal gain.'*

The financial problems of professional French clubs thus prove to be both a cause and a consequence of the criminal motivation for owning such an asset. Better financial regulation of this industry could also help. Therefore imposing a minimum personal contribution on investors according to a ratio of maximum debt would force them to carry a part of financial risk. It would allow to reconcile the contradictory interests of the stakeholders (Senaux 2008).

What is more, the elimination of TPO seems to have had a detrimental effect on the desire to own a club for new investors. The removal of transfer fees (Vassilou 2013) or elimination of agents (who could be replaced by the player's union, Kelly and Chatziefstathiou 2018) would as a result limit interest in owning a club for criminal ends. Beyond the capital gains, the legislative system could equally propose a more dissuasive scale of sanctions to limit criminal interest in this industry.

### ***Limits and perspectives***

This article aims to show the rationale of owning a club for criminal ends. In order to limit organisational hypocrisy (Brunsson 1989), the method of snowball sampling was chosen. It supplies two types of response: the first linked to the criminal motivations for new investors; a second which suggests the expertise of agents in the transfer market is the way to assure the correct management of bought clubs.

This paper is only interested in the potential rationale for owning a professional club for criminal ends (techno-scientific stratum, Comte-Sponville 2004). Hence, it does not try to show the guilt of a given actor. That is why the representative nature of the sample is secondary compared to the desire for having respondents whose answers could be trusted (Beaud 1996). Henceforth, it is possible that a (former) agent could have a criminal motivation in bought club A, whereas the expertise of another agent would be

beneficial (and legal) in club B. It is for lawyers to identify the actors for whom the inherent disutility of crime has not stopped them taking the leap.

It is also probable that the former types of investor described by Mauws and al. (2003) as being in search of synergy with their other business activity co-exist in professional French football with a new type of actor. Future research based on a larger number of interviews could allow us to understand which distinctions (internal/external, legal/illegal) would help us to better understand the paradoxical attractiveness for investors to type of business activity which has been loss-making for a number of years.

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