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► **To cite this version:**

Maxence Franceschi, Vincenzo Giuffrè. THE "CAPITAL GAINS" CASE: A CALL FOR REGULATION FOR THE BLURRED VALUE OF FOOTBALL PLAYERS. *Rivista di Diritto ed Economia dello Sport*, 2023, 2023. hal-04179291

**HAL Id: hal-04179291**

**<https://hal.science/hal-04179291v1>**

Submitted on 9 Aug 2023

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# THE “CAPITAL GAINS” CASE: A CALL FOR REGULATION FOR THE BLURRED VALUE OF FOOTBALL PLAYERS

by Maxence Franceschi\* – Vincenzo Giuffrè\*\*

*ABSTRACT: From November 2020 to April 2021, several Italian football clubs have been facing financial investigations by the Italian Football Federation for potential account manipulation from March 2019 to March 2021. Clubs allegedly inflated the transfer fees paid for the acquisition or disposal of football players' rights to boost their balance sheet. The Federal Court of Appeal ruled the case on appeal on 27 May 2022, and the present article analyse the motivations of the judge, more specifically its discussion over the concept of value applied to football players' rights, the absence of a regulatory framework to control the amount paid by clubs for these rights, and the call for regulation addressed to football stakeholders. Following the appeal lodged by the Federal Prosecutor, on 20 January 2023 the Federal Court of the Italian Football Association sanctioned the Juventus football club with 15 (fifteen) points deduction from the current Serie A standings and a sports ban for 11 managers. The present article is aimed at identifying the possible regulatory interventions to frame the determination of the transfer fees paid by clubs for the acquisition of players' rights.*

*Da novembre 2020 ad aprile 2021, diverse società calcistiche italiane sono state oggetto di indagini finanziarie da parte della Federazione Italiana Giuoco Calcio per una potenziale manipolazione dei bilanci da marzo 2019 a marzo 2021. I club avrebbero aumentato i costi di trasferimento per l'acquisizione o la cessione dei diritti dei calciatori al fine di incrementare le poste del proprio bilancio. La Corte d'Appello Federale ha deciso il caso il 27 maggio 2022 e il presente articolo analizza le motivazioni del giudice, in particolare la discussione sul concetto di valore applicato ai diritti dei calciatori, l'assenza di un quadro normativo per controllare l'importo pagato dai club per questi diritti e la richiesta di regolamentazione rivolta agli stakeholder del calcio. A seguito del ricorso del procuratore federale, il 20 gennaio 2023 la Corte di Appello della Federazione Italiana Giuoco Calcio ha sanzionato la società calcistica Juventus con 15 (quindici) punti di penalizzazione da conteggiare nel campionato italiano 2022-2023 e con una serie di inibizioni 11 suoi dirigenti. Il presente articolo si propone quindi di individuare i possibili interventi normativi per inquadrare la determinazione dei corrispettivi di trasferimento pagati dai club per l'acquisizione dei diritti dei calciatori.*

JEL Codes: D46, K2, L83, M40, M48

Keywords: *Plusvalenze/Capital gains – Football Players' Value – Capital Gains – Regulation – Value Theory.*

*Valore dei calciatori – Plusvalenze – Regolamentazione – Teoria del valore.*

SUMMARY: Introduction – 1. The price and value distinction – 2. The different ideas and measurements of value – 3. The assessment of market value – 4. The limits of the market approach – 5. The capital gains issue and the lack of legal basis for player rights' valuation in Italy – 6. The warning signs and the figures of assets manipulation – 7. A retrospective two-condition triggering – 8. A mathematical calculation and a political debate – Conclusion

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\* Centre de Droit et d'Economie du Sport, University of Limoges (France) and Foot Mercato, Lyon (France), e-mail: franceschi@cdes.fr, <https://orcid.org/0000-0003-4629-7797>.

\*\* DLA Piper, Milan (Italy), e-mail: vincenzo.giuffre@dlapiper.com.

## Introduction

The Italian soccer authorities have investigated Italian football clubs that allegedly inflated valuations over 62 player trades – across two seasons – to help clubs balance their books. In summary, it has been challenged from the Public Prosecutor to football clubs the breach of Article 31 paragraph 1 of the Code of Sports Justice in force for having systematically altered the accounting documents filed with the Co.Vi.So.C.<sup>1</sup> (Supervisory Committee on Professional Football Clubs) starting at least from the quarterly situation on 31 March 2019 and at least until the quarterly situation on 31 March 2021.

In first instance, in the capital gains case, all 59 managers and members of the various boards of directors as well as the 11 clubs that ended up on trial at the FNC (Federal National Court) of the FIGC (Italian Football Federation)<sup>2</sup> were acquitted, due to the lack of objective criterion for the valuation of players.<sup>3</sup>

Consequently, the Public Prosecutor complained of the absolute lack of reasons, within the body of motivations, for which the Judge of the first instance has decided since he allegedly disappplied the principles enucleated on the subject by the Sports Justice (namely, the basic principles of loyalty, correctness, and probity). The Public Prosecutor has also challenged the assessment made by the FNC regarding the method of valuation of sports performance rights, since the decision of acquittance has been taken on the assumption that “the” method of assessing the value of the transfer/acquisition of the sports performance of a player does not exist or is not practicable.<sup>4</sup> In essence, the Public Prosecutor complained of the failure to examine the contested trades analytically.

In appeal, the FIGC Federal Court of Appeal (FCA) decision held as a general comment that some of the market values at issue in the proceedings were formed in a manner totally unrelated to a regular market transaction.<sup>5</sup> However, it confirmed the acquittal of clubs and members because a legislative criterion to establish how much a player is worth or cost does not exist.

The most relevant argument of the FCA decision is to be found in the «erroneous statement» according to which the non-existence of the method for assessing the value of the transfer/acquisition of a player's sports performance may legitimize the inclusion in the balance sheet of rights for any amount, unrelated to considerations concerning the future utility of the right as well as elements of consistency of the transaction.<sup>6</sup> To better understand the significance of this lack of a valuation method and the subsequent issues caused to the stability of Italian football, it is necessary to clarify the accounting rules governing the allocation of transfer fees in clubs' balance sheet.

For the buying club company, players' performance rights represent an intangible fixed asset, with a limited duration in time, recorded in the balance sheet assets at acquisition cost, subject to amortization over the duration of the contract.<sup>7</sup> Intangible assets are a particular category of assets, and the indications contained in OIC24 or IAS38<sup>8</sup> apply to their disclosure in the annual financial statements.

In the event that, at the end of each reporting period, the recoverable value of the right is permanently lower than the net book value (original value net of depreciation calculated up to that time), it would be necessary to reconcile the figures through impairment tests.<sup>9</sup> The depreciation and the

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<sup>1</sup> Commissione di Vigilanza sulle Società di Calcio professionistiche.

<sup>2</sup> Federazione Italiana Giuoco Calcio.

<sup>3</sup> Tribunale Federale Nazionale de la Federazione Italiana Giuoco Calcio, 15 April 2022, *Dispositivo/0112/TFNSD-2021-2022*, 2022.

<sup>4</sup> “Contesta la valutazione operata dal Tribunale federale in merito al metodo valutativo dei diritti di prestazione sportiva chiudendo la controversia affermando che ‘non esista o sia concretamente irrealizzabile’ “il” metodo di valutazione del valore del corrispettivo di cessione/acquisizione delle prestazioni sportive di un calciatore”, Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, 27 May 2022, *Decisione/0089/CFA-2021-2022*, 2022, 16.

<sup>5</sup> Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit.

<sup>6</sup> See the website <https://dirittoaldigitale.com/2022/05/30/processo-plusvalenze-calcio-intervento-normativo/> (January 2023).

<sup>7</sup> M. MANCIN, *Il bilancio delle società sportive professionistiche. Normativa civilistica, principi contabili nazionali e internazionali*, CEDAM, 2009.

<sup>8</sup> The OIC principles are the accounting principles issued by the Italian accounting body and IAS standards principles are aimed at harmonising the accounting rules of the EU member states so as to make the information contained in financial statements comparable. OIC24 or IAS38 are the accounting principles related to the intangible fixed assets.

<sup>9</sup> In accounting, impairment is a permanent reduction in the value of a company asset. It may be a fixed asset or an intangible asset. When testing an asset for impairment, the total profit, cash flow, or other benefits that can be generated by the asset is periodically compared with its current book value. If the book value of the asset exceeds the future cash flow or other benefits of the asset, the difference between the two is written off, and the value of the asset declines on the company's balance sheet. For football see e.g. P. GAZZOLA, S. AMELIO, *Impairment test in the football team financial reports*, in *Procedia Soc. Behav. Sci.*, vol. 2020, 2016, 105-114.

impairment, represent a cost allocated to the income statement, with a negative impact on income (profit and/or loss) and, therefore, on equity.

According to the FCA decision the company transferring the right before the contract expires, may recognize:

- a) a capital gain if the transfer price is higher than the net book value, with a positive impact on income for the period (gain or loss);
- b) a capital loss in the opposite case, with a negative impact on income for the period (gain or loss);
- c) no effect if the two amounts are equal.<sup>10</sup>

The execution of a transaction between two football clubs transferring a player at a value that is not economically congruous or justified leads to the overstatement<sup>11</sup> of the exchange price, with different effects on the two contracting parties:

- I) the selling club will obtain a higher capital gain, with an improvement in income and equity;
- II) the buying club will recognize an overstated value in the balance sheet with higher costs in the future, i.e., a greater negative (lower profits or higher losses) over the term of the contract. The higher costs relate to higher depreciation and, if the conditions exist, the possible subsequent depreciation of the right.

The latter element is fundamental because, according to accounting standards, in the balance sheet, individual assets cannot be recorded for amounts exceeding their economic value, which is reflected in the value of use or market value. Therefore, beyond any consideration of price, the symptoms that will occur in the future, for example a player with no prospect or with employment well below expectations, should lead to a write-down, i.e., a reduction in the book value, to avoid watering down the capital. The company owning the right to market the football player must thus assess the existence of indicators (performance, contract, popularity...) that would lead to the lower value of the asset, which is very peculiar in the football or sports sphere in general.<sup>12</sup> Failure to write down the value when the conditions are met leads to an overvaluation of the assets and net worth. In other words, “*overstating the value of an asset leads to the capitalisation of losses*”.<sup>13</sup>

A club can generally enter into a transaction at non-market values if it receives, at the same time, a ‘benefit’, which typically manifests itself in cross or opposite transactions, where the same club is both selling and buying, the contextuality of the temporal moment being of primary importance. Therefore, cross transactions become relevant if they generate capital gains for both parties. Two clubs may have an economic ‘interest’ in overvaluing the rights of a player if this generates a capital gain that increases income for the period even if it penalizes subsequent periods with higher depreciation: in this specific case, according to FIGC, there is a positive impact on income at the date of the transaction offset by higher future costs.<sup>14</sup> As a result, both companies increase the profit of the period with greater future costs, with the effect of apparently improving the current financial situation.

The lack of a valuation method acknowledged by the FCA Decision thus highlights the discretionary fixing of the transfer fees and the subsequent recording in clubs’ books. Consequently, this would make any capital gain legitimate, which cannot be tolerated, even at a sports-federal level. However, on 22 December 2022, the Federal Prosecutor lodged an appeal, and, on 20 January 2023, the Federal Court of Appeal sanctioned the Juventus football club with 15 (fifteen) point deduction from the current Serie A standings and a sports ban for 11 managers.<sup>15</sup>

This article is thus built on the discussion of the concept of value contained in the FCA Decision, and its observation that no regulatory framework exists to control the amount paid by clubs for the purchase and sale of rights of football players. The article is aimed at identifying the possible regulatory interventions to frame the determination of these transfer fees, considering that the transactions in question and the prices at which they are carried out, decisively influence the quality of the financial statements of a football club, hence even if the benefits of these operations are purely accounting they may impact the fairness of football tournaments when football teams elude the provisions of budgetary

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<sup>10</sup> Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 26.

<sup>11</sup> The understatement is not relevant because it does not affect the accounting principle of prudence.

<sup>12</sup> M. FRANCESCHI, J.-F. BROCARD, F. FOLLERT, J.-J. GOUGUET, *Determinants of football players’ valuation: A systematic review*, ResearchGate preprint, 2022.

<sup>13</sup> Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 26.

<sup>14</sup> J.-C. CATALIOTTI, T. FABRETTI, *Il business nel pallone. Analisi dei modelli organizzativi e gestionali delle società di calcio*, Ugo Mursia Editore, 2015, 206.

<sup>15</sup> Decision available on <https://www.figc.it/media/188261/176-0077-cfa-2022-2023.pdf> (last consulted on 23 January 2023). At the time of writing this article the grounds of the decisions were not available yet.

requirements for the championship entry or for the UEFA financial fair play. The proposal of a regulation shall be inspired by economic rationality and within the limits of the freedom of trade also considering the consistency between the multiple concepts of “value” formed in complex negotiations referred to by football players and teams. Therefore, the first 4 sections present the conceptual difficulties surrounding the concepts of price and value, drawing attention to the market value approach and its limits. The following ones highlight the lack of a regulatory framework to constrain the prices paid for football players’ rights before focusing on potential evolutions.

### 1. *The price and value distinction*

The questions surrounding the definition and measure of price and value have always been pivotal in the history of economic thought. We detail the main conceptual framework in which the decision integrates, and we discuss the FCA point of view by outlining controversies in price and value theories.

The decision relies on the conceptualization of the price, i.e. the transfer fee, as a factual data created in the course of a transaction: “Price [...] represents the amount of a **concluded negotiation**: it is therefore a **factual figure**, the result of the **meeting of supply and demand**, and is consequently linked to the interaction between the utility functions of the economic subjects involved in the exchange at that specific instant”.<sup>16</sup> Referring to central economic concepts of supply, demand and utility, this definition stresses two core elements: the price is an objective fact, and it is determined by the market. From a theoretical standpoint, if the definition and formation of price was one of the central questions of classical economy (see e.g., the Adam Smith’s natural price vs. market price), this definition is in line with the now commonly accepted conceptualization of price. Since the marginal revolution in the late XIX century at the latest, the price is indeed considered the result of the supply and demand meeting on the market and an objective fact that arises from the exchange.

Interestingly, the Decision also imply that the price is an ex-post information only available after the transaction is completed by using the terms “concluded negotiation”. More precisely, the price is constitutive of the transaction and cannot be understood out of the transaction settings. This temporal characteristic is central in the problem at stakes because, as the first instance Court states, no such objective and factual amount is otherwise ascertainable ex-ante.

As opposed to the precise definition of the price relying on core economic concepts, the definition of value given by the FCA is much broader: “In general, values are **estimated quantities**, the expression of a **logical proposition** that moves from certain premises and, through appropriate calculations, arrives at certain conclusions. Value is thus the result of a formulation that is in varying degrees abstract, and therefore **theoretical**”.<sup>17</sup> The Court of appeal thus attempts to give a concise definition before enriching it with discussions on the assessment of value. However, this approach lacks precision and the difficulty to define value is highlighted by the use of several mitigating terms: “in general”, “estimated”, “certain premises”, “certain conclusions”. Accordingly, if the price is conceptualized as objective and factual, the value is, on the other hand, unseizable and the result of a theoretical construct (“logical”, “theoretical”, “appropriate calculation”). The FCA has addressed that theoretical construct in the Decision.

While prices may depend on market-related evolutions such as other investment opportunities or variations in supply and demand, the Court of appeal suggests that the value only depends on player’s directly or indirectly related facts: “values vary less violently and, in any case, typically as a function of events directly or indirectly pertaining to the object of valuation”.<sup>18</sup> According to the Court of appeal, value would then be based on players’ characteristics and insensible to market changes. The judge thus seems to embrace the neoclassical point of view that a fundamental value pre-exists any actual transaction, and that it could be determined with proper methods. However, the Court of appeal’s view might be

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<sup>16</sup> “Il prezzo [...] rappresenta il corrispettivo di una negoziazione conclusa: esso è pertanto un dato fattuale, risultato dell’incontro della domanda e dell’offerta, ed è conseguentemente legato all’interazione fra le funzioni di utilità dei soggetti economici interessati allo scambio in quello specifico istante.”, translated by the authors. Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 22-23.

<sup>17</sup> “In linea generale, i valori sono grandezze stimate, espressione di una proposizione logica che muove da certe premesse e, mediante calcoli appropriati, giunge a determinate conclusioni. Il valore è quindi il risultato di una formulazione in vario grado astratta, e perciò teorica.”, translated by the authors, ibi, 22.

<sup>18</sup> “valori variano in modo meno violento e comunque tipicamente in funzione di eventi direttamente o indirettamente afferenti all’oggetto della valutazione”, translated by the authors, ibidem, 23.

reviewed in the light of the theoretical debates on the concept of value.

## 2. *The different ideas and measurements of value*

Considering the sense of detail of the FCA and the emphasis put on concepts, it is surprising and unsettling to observe that the term value (“*valore*”) is used to refer to, at least, two different ideas. Indeed, the Court of appeal distinguishes between the “*general economic value determined using theoretical valuation methods*”,<sup>19</sup> that we detailed previously, and other values subjectively defined that consider “*the strategic options that open up with the acquisition*”.<sup>20</sup> The FCA thus use the same term to label two notions of value that we could relabel respectively “*fundamental value*” and “*use value*” in line with economic theory and the history of economic thought.

As opposed to the neoclassical idea of a fundamental or intrinsic value, the use value refers to the conception brought to light by Menger, according to whom the value can only be a subjective and individual assessment.<sup>21</sup> Accordingly, for a given agent the subjective use value of a good is the increase in utility induced by a unitary increase of the good. However lacking precision on the definition of value and missing the opportunity to discuss Menger’s view, the decision suggests that it is the subjectivity of value that might pull the price away from its fundamental value. Thereafter, the Court of appeal outlines methods to assess the subjective use value.

It defines the value of the “*strategic attractiveness*” of the considered good as “*the present value of the net additional benefits achievable by the operator as a result of the purchase and sale*”.<sup>22</sup> This definition clearly refers to the net present value which consists in assessing the value of an investment by actualizing future cash-flows expected to be yielded. It is a classical way to assess the value in an income-based perspective to enhance decision-making for financial assets. Talking about players’ performance rights, the actualization rate, even more so the potential future earnings are subjective data which in turn allow the appraising club to determine its use value. The feasibility of such an approach and its implementation for players’ value has already been discussed in the football literature.<sup>23</sup>

To introduce this valuation method, the decision refers to the “*strategic desirability of the object of negotiation, a term by which reference is often made to purchasing processes in which what motivates the buyer is not the consideration of a player’s ability in itself considered, but rather the strategic options that open up with the acquisition*”.<sup>24</sup> The mention of “*options*” makes it easy to draw parallels with financial options and their extension to non-financial counterparts: real options. The main idea behind the real options theory is that every project or investment contains embedded options, hence at each period the owner can take decisions regarding their investment just as they could do it for a financial option. Several options are discussed in the literature on football players’ valuation: the option to abandon the investment (i.e. breach the contract of the player, depending on the contractual terms), the option to invest and wait (i.e. buy a player but let him time to develop for example by sending him on loan), the option to exchange one player for another, the option to keep the player and benefit from his performance, or the option to transfer the player to another club.<sup>25</sup> In a way, real option theory offers a refinement of the

<sup>19</sup> “*valore economico «generale» determinato con modalità di stima teoriche*”, translated by the authors, *ibidem*, 23.

<sup>20</sup> “*le opzioni strategiche che con l’acquisizione si dischiudono*”, translated by the authors, *ibidem*, 23.

<sup>21</sup> C. MENER, *Principles of economics*, Libertarian press, 1994, first published 1871, 328.

<sup>22</sup> “*valore attuale dei benefici addizionali netti conseguibili dall’operatore a seguito della compravendita*”, translated by the authors. Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 23.

<sup>23</sup> N. LEIFHEIT, F. FOLLERT, *Financial Player Valuation from the Perspective of the Club: The Case of Football*, in *Manag. Sport Leis.*, 2021, 1-20.

<sup>24</sup> “*appetibilità strategica dell’oggetto della trattativa, termine con il quale si fa sovente riferimento a processi d’acquisto nei quali ciò che motiva l’acquirente non è la considerazione della capacità di un calciatore in sé considerata, quanto le opzioni strategiche che con l’acquisizione si dischiudono*”, translated by the authors. Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 23.

<sup>25</sup> D. COLUCCIA, S. FONTANA, S. SOLIMENE, *An Application of the Option-Pricing Model to the Valuation of a Football Player in the ‘Serie a League’*, in *Int. J. Sport Manag. Mark.*, vol. 18, n. ½, 2018, 155-168; A. KANYINDA, C. BOUTELLER, C. KARYOTIS, *Human Capital: Assessing the Financial Value of Football Players on the Basis of Real Options Theory*, in *Invest. Manag. Financ. Innov.*, vol. 9, n. 4, 2012, 27-37; S. MAJEWSKI, A. MAJEWSKA, *Using Monte Carlo Methods for the Valuation of Intangible Assets in Sports Economics*, in *Folia Oeconomica Stetinensia*, vol. 17, n. 2, 2017, 71-82; G. RUBIO MARTÍN, C. M. MANUEL GARCÍA, F. J. GONZÁLEZ SÁNCHEZ, Á. FÉLIZ NAVARRETE, *The wisdom of crowd, real option and game theory decisions: can they be used by clubs to improve their investment in football players?*, in *Manag. Finance*, vol. ahead-of-print, n. ahead-of-print, 2022; R. TUNARU, E. CLARK, H. VINEY, *An option pricing framework for valuation of football players*, in *Rev. Financial Econ.*, vol. 14, n. 3-4, 2005, 281-295; R. TUNARU, H. VINEY, *Valuations of Soccer Players from Statistical Performance Data*, in *J. Quant. Anal. Sports*, vol. 6, n. 2, 2010, 1-21.

net present value approach using more advanced models better suited to handle uncertainty. Conceptually both these methods allow investors – clubs in the case of football players’ rights – to assess their subjective use value and thus fix their price limit when entering the market.

### 3. *The assessment of market value*

Through the formation of prices, the market nowadays appears to be the only objective monetary valuation at hand. However, this approach relies on a theoretically complex framework with strong assumptions and leads to practical difficulties. In particular, the functioning of the transfer market allowed by the current regulations may limit the effectiveness of a market-based approach to assess the fundamental value sought by the Federal Prosecutor and discussed by the FCA.

According to neoclassical theory, a market is efficient if the competition allows the price to perfectly reflect the fundamental value.<sup>26</sup> The logical consequence is that under the efficient market assumption the market has the role to offer the best possible assessment of the fundamental value.<sup>27</sup> It is precisely the assumption made by the first instance Federal Court: “since ‘the’ method for assessing the value of the cession/acquisition of a player’s sports performance does not exist or is not feasible, that value would be given by the free market”.<sup>28</sup>

However, in the appeal decision, the FCA disagrees with this view and suggests that several estimations of the value exist and should be considered to determine if the capital gains are justified or not. Therefore, the value can’t be assessed with one optimal method, but a cluster of evidence can be built with “reference method” (we understand that they refer to the valuation method proposed by the Federal Prosecutor) and “(possibly) control method”.<sup>29</sup> On top of the Prosecutor’s estimation, the FCA mentions the value estimates proposed by CIES and KPMG to build a “reference point”.<sup>30</sup> However, we must acknowledge that these indexes are not designed to be estimations of the fundamental value or subjective value defined above, but rather estimates of the potential transfer fee, referred to as transfer values or more broadly as market values.<sup>31</sup> These estimates rely on the predictability of the football players’ transfer fees and derive market values from past transactions in a supervised learning approach. *Transfermarkt* values are also used to build up the evidence towards a “reference point”. Even though they are considered an acceptable indicator by the FCA thanks to their broad spread, it is worth noting that their empirical and conceptual validity is questioned by economic scholars.<sup>32</sup> Contrary to what their name suggests they cannot be considered market values since they do not tend towards zero when the player’s contract tend towards its end date.

Therefore, considering the two previous paragraphs, the position of the FCA may appear contradictory. Indeed, the FCA suggests that a transfer fee (price) estimate allows to assess a reference point for (fundamental) value. From an economic standpoint, this suggestion seems to support the market efficiency hypothesis even if the FCA claims not to believe in the idea “that value would be given by the free market”.

Moreover, the decision provides us with a list of the criteria used by the Prosecutor to assess the market values: “A) age; B) position; C) sporting career [...]; D) economic history of the transfers, having regard also to the contractual conditions laid down in previous transfers; E) sports employment contracts, having regard also to their duration, the remuneration envisaged”.<sup>33</sup> The role of these criteria

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<sup>26</sup> E. FAMA, *Random Walks in Stock Market Prices*, in *Financ. Anal. J.*, vol. 21, n. 5, 1965, 55-59; A. ORLÉAN, *L’empire de la valeur : Refonder l’économie*, Points, Paris, 2015.

<sup>27</sup> A. ORLÉAN, *L’empire de la valeur : Refonder l’économie*, ibi.

<sup>28</sup> “*esistendo o essendo irrealizzabile “il” metodo di valutazione del valore del corrispettivo di cessione/acquisizione delle prestazioni sportive di un calciatore, tale valore sarebbe dato dal libero mercato*”, translated by the authors. Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 24.

<sup>29</sup> “*quello di riferimento e quello (eventualmente) di controllo*”, translated by the authors, ibidem, 24.

<sup>30</sup> “*punto di riferimento*”, translated by the authors, ibidem, 23.

<sup>31</sup> M. FRANCESCHI, J.-F. BROCARD, F. FOLLERT, J.-J. GOUGUET, *What can sports economics literature learn from subjective value theory?*, ResearchGate preprint, 2023; R. POLI, R. BESSON, L. RAVENEL, *Econometric Approach to Assessing the Transfer Fees and Values of Professional Football Players*, in *Economies*, vol. 10, n. 1, 2022, 1-14.

<sup>32</sup> P. ACKERMANN, F. FOLLERT, *Einige bewertungstheoretische Anmerkungen zur Marktwertanalyse der Plattform kapitalized t.de*, in *Sciamus – Sport und Management*, vol. 3, n. 9, 2018, 21-41; D. COATES, P. PARSHAKOV, *The Wisdom of Crowds and Transfer Market Values*, in *Eur. J. Oper. Res.*, vol. 301, n. 2, 2022, 523-534; M. FRANCESCHI, J.-F. BROCARD, F. FOLLERT, J.-J. GOUGUET, *What can sports economics literature learn from subjective value theory?*, cit.

<sup>33</sup> “A) età; B) ruolo; C) carriera sportiva [...]; D) storia economica dei trasferimenti avuto riguardo anche alle condizioni

in determining the football players' valuation is backed by the empirical economic literature,<sup>34</sup> but it is surprising to observe that there is no variable related to the selling and buying clubs,<sup>35</sup> or the player's popularity.<sup>36</sup>

The tribunal and the Court of appeal examined the discrepancies between the values and the observed price, i.e., the transfer fee. It seems that the Prosecutor's measures underestimate the actual price (or, that the actual price is overvalued, as suggested by the Prosecutor) but the mismatch between built-in valuations (either market values or fundamental values) and the prices is a common thing. Examples can be found for the Transfermarkt values,<sup>37</sup> and CIES values.<sup>38</sup>

However, the discrepancies between price and value can be interpreted in two different ways: either they reflect the market inefficiencies or manipulations, or they indicate that the theoretical model used to assess value is flawed. This issue is similar to the joint hypothesis problem brought to light in the context of the testing of financial markets efficiency.<sup>39</sup> The market efficiency is hardly testable because two hypotheses are made when comparing actual prices and estimated values: the hypothesis of market efficiency and the hypothesis that the valuation model is correct. It is thus impossible to assess if the discrepancies between prices and estimated values are due to a poor estimation method or to market inefficiency. However, if one assumes that the value estimations are methodologically correct, one can suggest that the gap between price and value can shed light on market inefficiencies.

#### 4. *The limits of the market approach*

The FCA acknowledges the limited credibility of the assumption of efficiency of the market for the players' rights by stating that the matching of the price and the fundamental value is restrained by market issues: "*The reference to price for the purpose of determining the value of rights, however, may not be correct and may lead to misleading results, as the market for such rights is imperfect*".<sup>40</sup> Therefore, the FCA prefers to consider built-up amounts based on various valuation methods rather than to refer to past transactions and actual prices. The decision argues that both the uniqueness of each transfer ("*each player*

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*contrattuali fissate nei trasferimenti precedenti; E) contratti di lavoro sportivo, avuto riguardo anche alla durata, alla retribuzione prevista*", translated by the authors. Corte Federale d'Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 21.

<sup>34</sup> M. FRANCESCHI, J.-F. BROCARD, F. FOLLERT, J.-J. GOUGUET, *Determinants of football players' valuation: A systematic review*, cit.; B. FRICK, *The Football Players' Labor Market: Empirical Evidence from the Major European Leagues*, in *Scott. J. Political Econ.*, vol. 54, n. 3, 2007, 422-446; M. SERNA RODRÍGUEZ, R. A. HASSAN, A. COAD, *Uncovering Value Drivers of High Performance Soccer Players*, in *J. Sports Econ.*, vol. 20, n. 6, 2019, 819-849.

<sup>35</sup> F. CARMICHAEL, D. THOMAS, *Bargaining in the Transfer Market: Theory and Evidence*, in *Appl. Econ.*, vol. 25, n. 12, 1993, 1467-1476; F. CARMICHAEL, D. FORREST, R. SIMMONS, *The Labour Market in Association Football: Who Gets Transferred and for How Much?*, in *Bull. Econ. Res.*, vol. 51, n. 2, 1999, 125-150; B. GERRARD, S. DOBSON, *Testing for monopoly rents in the market for playing talent – Evidence from English professional football*, in *J. Econ. Stud.*, vol. 27, n. 3, 2000, 142-164; B. GERRARD, *A new approach to measuring player and team quality in professional team sports*, *Eur. Sport Manag. Q.*, vol. 1, n. 3, 2001, 219-234; B. REILLY, R. WITT, *English league transfer prices: is there a racial dimension?*, in *Appl. Econ. Lett.*, vol. 2, n. 7, 1995, 220-222; A. SPEIGHT, D. THOMAS, *Arbitrator Decision-Making in the Transfer Market: an Empirical Analysis*, in *Scott. J. Political Econ.*, vol. 44, n. 2, 1997, 198-215; A. SPEIGHT, D. THOMAS, *Football league transfers: a comparison of negotiated fees with arbitration settlements*, in *Appl. Econ. Lett.*, vol. 4, n. 1, 1997, 41-44.

<sup>36</sup> E. FRANCK, S. NÜESCH, *Talent and/or Popularity: What Does It Take to Be a Superstar?*, in *Econ. Inq.*, vol. 50, n. 1, 2012, 202-216; P. GARCIA-DEL-BARRIO, F. PUJOL, *Hidden Monopsony Rents in Winner-Take-All Markets: Sport and Economic Contribution of Spanish Soccer Players*, in *Manag. Decis. Econ.*, vol. 28, n. 1, 2007, 57-70; P. GARCIA-DEL-BARRIO, F. PUJOL, *Recruiting talent in a global sports market: appraisals of soccer players' transfer fees*, in *Manag. Finance*, vol. 47, n. 6, 2020, 789-811; S. HERM, H.-M. CALLSEN-BRACKER, H. KREIS, *When the crowd evaluates soccer players' market values: Accuracy and evaluation attributes of an online community*, in *Sport Manage. Rev.*, vol. 17, n. 4, 2014, 484-492; O. MÜLLER, A. SIMONS, M. WEINMANN, *Beyond crowd judgments: Data-driven estimation of market value in association football*, in *Eur. J. Oper. Res.*, vol. 263, n. 2, 2017, 611-624, 2017; G. RUBIO MARTÍN, C. M. MANUEL GARCÍA, A. RODRÍGUEZ-LÓPEZ, F. J. GONZÁLEZ SÁNCHEZ, *Measuring football clubs' human capital: analytical and dynamic models based on footballers' life cycles*, in *J. Intellect. Cap.*, vol. 23, no. 5, 2022; SERNA RODRÍGUEZ, R. A. HASSAN, A. COAD, *Uncovering Value Drivers of High Performance Soccer Players*, cit.

<sup>37</sup> D. CAMPA, *Exploring the Market of Soccer Player Registrations: An Empirical Analysis of the Difference Between Transfer Fees and Estimated Players' Inherent Value*, in *J. Sports Econ*, vol. 23, n. 4, 2022, 1-28; D. COATES, P. PARSHAKOV, *The Wisdom of Crowds and Transfer Market Values*, cit.

<sup>38</sup> See the website <https://football-observatory.com/IMG/sites/b5wp/2022/wp389/en/> (January 2023).

<sup>39</sup> E. FAMA, *Efficient Capital Markets: II*, in *J. Finance*, vol. 46, n. 5, 1991, 1575-1617, 1991.

<sup>40</sup> "*Il riferimento al prezzo ai fini della determinazione del valore dei diritti, può tuttavia non essere corretto e condurre a risultati fuorvianti, in quanto il mercato di tali diritti si presenta imperfetto*", translated by the authors. Corte Federale d'Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 23.



having its own characteristics”, “limited temporal validity”) and the market functioning (“negotiations”, “strong dependence and influence of external phenomena”) hamper inter-transactional comparison.

Economists would refer to the first issue – the uniqueness of each transfer – by saying that the assumption of homogeneous product is not verified. It is also an issue well-known by accounting scholars that have worked on players’ right valuation. They are well aware that under current accounting standards it is extremely difficult to evaluate or re-evaluate players in the accounts because there is no readily ascertainable market value.<sup>41</sup> Compared to the prototypical financial products such as stocks, player’s rights are not continuously evaluated by a market but rather occasionally when a transfer occur, and the market value is thus only approximated with reference to proxies that are imperfect to various degrees.

The second issue – the market functioning – is rather related to the whole market structure. First, the Decision mention the potential lack of economic rationality of football clubs due to external forces: “influence of external phenomena”.<sup>42</sup> Second, information asymmetry between clubs regarding players may harm the smooth market functioning. Theoretically, football intermediaries are meant to improve the information on the market, but the dominance of some agents may instead reinforce the distortion of talent allocation.<sup>43</sup> Third, due to the segmentation of the market for players, their bargaining power and the contractual situation of a player, some clubs do not act as price-takers on the market. More generally, this latter issue highlights the role of negotiation and bargaining strengths in the final determination of the price of players’ rights.

Indeed, the negotiation phase is crucial to reach an agreement between two clubs. Entering a negotiation, both clubs determine their subjective use value and thus their price limit – formally or not. Schematically, the transfer fee should fall in the interval formed by the selling club’s price limit and the buying club’s price limit.<sup>44</sup> The degree to which the final transfer fee will be close to one price limit or the other is a matter of bargaining power balance between clubs.<sup>45</sup> For the FCA, the determination of an estimated market value and the subjective use values of players is thus a preliminary step and serve as a negotiation basis between clubs: “The identification of a value does not, in fact, limit freedom in the exchange but merely determines certain information to support the negotiation”.<sup>46</sup>

Calling upon Nash’s bargaining theory, Carmichael & Thomas (1993) suggest that the amount of the transfer fee can be explained by the bargaining power of clubs.<sup>47</sup> Therefore, amid negotiations, the existence of certain clubs’ domination over others explains the price variation to a certain extent. The empirical literature analyzing the impact of clubs’ characteristics on players’ valuation tend to suggest that the buying club’s status shows higher evidence of influencing the valuation of player than the selling club’s status.<sup>48</sup> According to Gerrard & Dobson (2000), a club may be in a situation of monopoly when selling a player, in particular when it comes to players from the highest segment of the market, hence shifting the price upward.<sup>49</sup> These theoretical discussions and empirical evidence reinforce the view of the FCA according to which, even if a fundamental value could be ascertained, it would be highly unlikely to see it equalizing the price since there is room for subjective valuation and negotiations in the final determination of the transfer fee.

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<sup>41</sup> L.I. KULIKOVA, A.V. GOSHUNOVA, *Human Capital Accounting in Professional Sport: Evidence from Youth Professional Football*, in *Mediterr. J. Soc. Sci.*, vol. 5, n. 24, 2014, 44-48; F. J. MARTÍN LOZANO, A. CARRASCO GALLEGO, *Deficits of Accounting in the Valuation of Rights to Exploit the Performance of Professional Players in Football Clubs. A Case Study*, in *J. Manag. Control*, vol. 22, n. 3, 2011, 335-357; S. MORROW, *Accounting for Football Players. Financial and Accounting Implications of ‘Royal Club Liégois and Others V Bosnian’ for Football in the United Kingdom*, in *J. Hum. Resour. Manag.*, vol. 2, n. 1, 1997, 55-71; V.-B. OPREAN, T. OPRISOR, *Accounting for Soccer Players: Capitalization Paradigm vs. Expenditure*, in *Procedia Econ. Fin.*, vol. 15, 2014, 1647-1654; N. ROWBOTTOM, *The Application of Intangible Asset Accounting and Discretionary Policy Choices in the UK Football Industry*, in *Br. Account. Rev.*, vol. 34, n. 4, 2002, 335-355.

<sup>42</sup> “Influenza di fenomeni esterni”, translated by the authors. Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 23.

<sup>43</sup> G. ROSSI, A. SEMENS, J.-F. BROCARD, *Sports Agents and Labour Markets: Evidence from world football*, Routledge, London, 2016.

<sup>44</sup> N. LEIFHEIT, F. FOLLERT, *Financial Player Valuation from the Perspective of the Club: The Case of Football*, cit.

<sup>45</sup> F. CARMICHAEL, D. THOMAS, *Bargaining in the Transfer Market: Theory and Evidence*, cit.

<sup>46</sup> “L’individuazione di un valore non limita, difatti, la libertà nello scambio ma semplicemente determina alcune informazioni a supporto della negoziazione”, translated by the authors. Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 24.

<sup>47</sup> F. CARMICHAEL, D. THOMAS, *Bargaining in the Transfer Market: Theory and Evidence*, cit.

<sup>48</sup> M. FRANCESCHI, J.-F. BROCARD, F. FOLLERT, J.-J. GOUGUET, *Determinants of football players’ valuation: A systematic review*, cit.

<sup>49</sup> B. GERRARD, S. DOBSON, *Testing for monopoly rents in the market for playing talent – Evidence from English professional football*, cit.

To summarize, it seems impossible to propose a single value for players because there might be methodological issues. Also, even if a “*target*” value could be determined, the clubs still have all the flexibility to negotiate the amount. Several valuations proposed in the Court of appeal’s decision give a “*reference point*” and suggest that the fees might have been overvalued but there is still no consensus and scientific ground to determine an unquestionable and indisputable value. It is thus impossible to condemn the defending clubs solely based on discrepancies between valuations and actual transfer fees. Therefore, it appears, that the only way to control the determination of players rights’ prices would be to better regulate the market. In a neoclassical framework, the objective of such a regulation would then be to ensure that the price correctly reflects the fundamental value of players to achieve optimal resources allocation.

##### 5. *The capital gains issue and the lack of legal basis for player rights’ valuation in Italy*

Before entering the issue of notional capital gains, it is good to introduce the general concept of capital gains. The term capital gain indicates a gain and a source of profit. Picking up on some accounting concepts, football players are on the assets side of the balance sheet of companies and are considered intangible assets.

The contract between the player and the club constitutes the legal title for the recognition of the corresponding sports performance right. Within this category are the accounting values of the players’ rights, which represent the historical purchase price of the players. In fact, football clubs use the historical cost criterion for accounting for sports performance rights.<sup>50</sup>

Though the football players represent the most important assets for football clubs, their updated market value is not reported in the club’s official documents, since the accounting balance sheet solely contains the net book value, i.e. the historical value of the player (price paid by the club to acquire him) minus annual depreciation and write-downs.<sup>51</sup> The lack of sports or accounting rules to determine the player’s value leads to a situation where subjectivity and discretion from the relevant football teams are core elements. This has been explicitly confirmed by the FCA decision according to which there is not ‘one’ evaluation criterion neither in the federal regulations nor in any other legislation to be considered.<sup>52</sup>

In this regard it can be useful to make a focus on the growth and employment of players from the youth sector in the first team, which are amongst the objectives of the financial fair play.<sup>53</sup> The impossibility of using an objective criterion may lead football clubs to book in their balance sheet only the cost incurred for the training of the player and not the potential price of the rights related to the player, even if objectively capable of guaranteeing future economic benefits.<sup>54</sup> This circumstance leads to underestimate the value of the squad and penalizes the accounts of clubs that devote resources to the growth and employment in the first team of players from the youth sector.<sup>55</sup>

As beforementioned, several valuation methods exist, and clubs and managers can subjectively value their players by appealing to autonomously determined variables without the need to anchor prices to indisputable values (e.g., the high value of a player can be justified claiming that the career prospects are promising, and the current value of a football player will increase).

The current landscape of football players transactions shows to practitioners that the most common mistake from a legal standpoint is to associate the price paid by a football club to acquire a

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<sup>50</sup> C. GUARNA, *Le società di calcio professionistiche e l’informativa di bilancio*, Aracne, 2017.

<sup>51</sup> L. GELMINI, *Le società di calcio professionistiche nella prospettiva dell’economia d’azienda. Modelli di bilancio e valore economico dei club*, Giuffrè, 2014.

<sup>52</sup> “[L]e considerazioni del apitali federale, secondo cui non esisterebbe “un” criterio valutativo, hanno un fondamento di verità allorché, con tale affermazione, si intenda prendere atto dell’inesistenza, a livello di ordinamento federale, di criteri normativamente sanciti”. Corte Federale d’Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 24-25.

<sup>53</sup> T. A. VELEMA, *A game of snakes and ladders: Player migratory trajectories in the global football labor market*, in *Int. Rev. Sport Sociology.*, vol. 53, n. 6, 2018, 1-20.

<sup>54</sup> An example of such a phenomenon is A.S. Roma Calcio S.p.A., a company listed on the stock exchange, which in the past has not been able to record in its financial statements the value of the rights to the sports performance of Francesco Totti or Daniele De Rossi. Similar considerations can be made in the case of i) free agent players (so-called ‘parameter zero’ or ‘released player’), who do not renew their contract with their club on expiry and, therefore, a possible new club will only incur the cost related to the annual emolument, which cannot be capitalized, or ii) for players acquired at a price that, in the years following the one of acquisition, has increased considerably (e.g. the case of Milinkovic-Savic who, acquired by Lazio in the summer of 2015 for the price of EUR7 million plus bonuses, is valued at about EUR60 million by Transfermarkt on 12 December 2022).

<sup>55</sup> A. DELLO STROLOGO, D. CELENZA, *Uefa versus ifrs. I diritti alle prestazioni sportive dei giocatori professionisti: dalla rilevazione al costo a quella al fair value*, in *Riv. Dir. Sport.*, vol. 2, 2019, 296-316.

player with the player's subjective values assessed by clubs. Indeed, especially with young players, the valuation process is characterized by some extremely subjective elements such as the growth potential and future career elements which may inevitably lead to different valuations within the football ecosystem. The result of the lack of legal bases to prevent abusive fixing of transfer fees is that:

- the market tends to overvalue certain players;
- the purchasing club can be willing to spend far beyond the player's fundamental value.

According to the above, it can be inferred the reasons why the Italian football teams have been chronically dependent on player trading to maintain their financial sustainability.<sup>56</sup> The main objective and potential workaround (also considering the recommendations received from the FCA) is therefore to obtain a neutral and commonly validated valuation of the players.

Thus, the most difficult challenge for the Court of appeal was the lack of a pre-defined criteria to refer to.<sup>57</sup> In this regard, in both the FIGC accounting recommendations,<sup>58</sup> and the OIC<sup>59</sup> principles, there is no reference or conventional value that can guide the process of ascertaining the fair value of players' registration rights. Therefore, the lack of an express provision aimed at identifying the value of players' rights is to be considered decisive for the acquittal of the parties involved. The FCA was also particularly critical of the Italian legislator: "*it appears singular that in a highly regulated field, such as football, it is precisely this regulation, [i.e. the regulation on value] which plays a highly critical role in financial statements, that is lacking*".<sup>60</sup>

The Court of appeal thus found it necessary to intervene in regulatory terms in defining:

1. the value and exchange price;
2. the treatment of capital gains;
3. the valuation of the acquisition cost of the right in the years following the year of first entry in the accounts (see also the impairment test).

As already recalled above, on 22 December 2022, the Federal Prosecutor lodged an appeal pursuant to Article 63 of the Code of Sports Justice, no. 0077/CFA/2022-2023, due to new circumstances occurred after the above-mentioned decision, and the judges of appeal sanctioned exclusively the Juventus football club with 15 (fifteen) point deduction from the current Serie A standing. Although the grounds of the decision are not available yet, from a procedural standpoint the Juventus football club seems to argue that no one can be prosecuted or sentenced for an offence for which it has already been acquitted or sentenced following a final judgment in accordance with the applicable laws.

## 6. The warning signs and the figures of assets manipulation

Although being aware of the absence of certain and predefined regulatory provisions, the Federal prosecutor has nevertheless decided to examine the numerous cases submitted to its examination. For the purposes of identifying the failure to comply with accounting principles and incorrect and prudent management, the reported purchases, and sales (n = 59) were analysed referring to various transactions (n=17)<sup>61</sup> characterised by:

- reciprocity of two or more transfers between the same companies.
- temporal contextuality, effective or at least substantial, of the disposals.
- realisation of (accounting) capital gains for both companies.
- irrelevance of the disposals from a financial point of view.

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<sup>56</sup> L. NERI, A. RUSSO, M. DI DOMIZIO, G. ROSSI, *Football players and asset manipulation: the management of football transfers in Italian Serie A*, in *Eur. Sport Manag. Q.*, 2021, 1-21.

<sup>57</sup> "È questa, dunque, la questione più ardua che il Collegio si è trovato ad affrontare: la mancanza di una pre-definizione di criteri ai quali fare riferimento. E ciò, naturalmente, nel presupposto del pieno rispetto della ripartizione di funzioni – anche all'interno dell'ordinamento federale – che non consente al giudice sportivo di sostituirsi al legislatore. Tale presa d'atto, quindi, ha agito nel senso di impedire a questo Collegio di porre a sé stesso la premessa maggiore indispensabile in ogni sillogismo giudiziale: la norma espressa". Corte Federale d'Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021- 2022*, cit., 25.

<sup>58</sup> FEDERAZIONE ITALIANA GIUOCO CALCIO, *Le Raccomandazioni Contabili e il Piano dei Conti Figc*, 2021.

<sup>59</sup> Organismo Italiano Contabilità.

<sup>60</sup> "Appare infatti singolare che in ambito molto regolamentato, come quello calcistico, sia carente proprio questa disciplina che assume un ruolo di massima criticità nei bilanci", translated by the authors. Corte Federale d'Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 28.

<sup>61</sup> "L'esame delle 17 operazioni (costituite da due o più compravendite per un totale di 59 compravendite) ha evidenziato indubbiamente l'esistenza di notevoli e diffuse criticità". Corte Federale d'Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 26.

- To the aforementioned factors were also added other indications arising from, for example:
- small period between contract renewal and transfer (capital gain) - the capital gain occurred immediately following a contract renewal.
  - marked non-correlation between the purchase price of a player's rights and the average annual salary for the same player.
  - player's activity (e.g. in terms of minutes/games played) after acquisition of the rights.
  - other abnormal behaviour in the agreement (if available).

However, as a general comment, focusing only on net transaction expenditure is not consistent with the analysis of the multi-annual sports rights conducted so far. A focus on suspicious transactions put in place in previous and subsequent windows (e.g. January or July/August transfer windows) by some Italian clubs is particularly useful for the purposes of understanding the effects of recording one or more capital gains as positive income components. Indeed, the existence of a suspicious transaction should also be assessed when the transaction concerns two (or more) players exchanged during various transfer windows together with the contract length of the players involved in the transaction.<sup>62</sup>

According to the FCA Decision, the 'mirror' transactions are quantitatively relevant considering that with reference to the reported transactions, the difference between: (i) Transfermarkt values and actual transfer fees amounts to more than 195 million; while (ii) Federal Prosecutor's Office's values and actual transfer fees amounts to approximately 174 million.<sup>63</sup>

In relation to a sample of football clubs (n = 48) that participated in the Serie A and B championships in the 2016/2020 seasons, it should be noted that the incidence of the balance sheet item "other intangible assets" on total assets increased from 31% (2016) to 41% (2020).<sup>64</sup> Also, the incidence of these fixed assets on Shareholders' Equity increased from 208% (2016) to 232% (2020). On the economic level, the incidence of amortisation of intangible assets on the value of production increased from 20% (2016) to 32% (2020).<sup>65</sup>

What arouses further suspicion, in the face of significantly higher values compared to Transfermarkt and the Prosecutor's Office data is the very small and cumulated number of write-downs (over the four years always less than 4% of the amortisation of intangible assets).

### 7. A retrospective two-condition triggering

According to the FCA, the following criteria could therefore be introduced, the simultaneous exceeding of which would qualify the transaction as unlawful:

- a. price higher than a defined percentage of the average of the values inferred from qualified databases, identified by the Federal Council.
- b. multiple between the price of the player's rights and the salary of the player higher than a threshold.<sup>66</sup>

With regard to the parameter under a) (deviation between price and average of the values deducible from qualified databases), it is, in fact, evident that – for example – a tolerance of a percentage x (in any case very large) may be deemed compatible with the freedom of choice of football clubs and the role of negotiation outlined above. This percentage could also be differentiated by value brackets (e.g. up to 5 million, 30 million and more). The exceeding of this threshold would not qualify the transaction as unlawful, requiring – for this purpose – also the non-observance of the parameter under (b).

As regards parameter (b) (multiple between the price of the player's rights and the player's salary), it is reasonable to consider that the acquisition of a multi-year right to the services of a player should have a clear effect on his salary or, conversely, it is unreasonable that a player may have an annual salary equal to a few percentage points of the price of his rights. Therefore, even if the parameter (a) is exceeded, the transaction would not be suspect if accompanied by a multiple (ratio of the price of the right to the annual salary) within a 'reasonable' upper limit.

<sup>62</sup> The duration of the contract is one of the elements that most influences the price of a player and therefore when the term of the contract is very close, the price should be affected.

<sup>63</sup> The average percentage difference between Transfermarkt's prices and valuations amounts to more than 210% while compared to the values of the Prosecutor's Office prices are over 150% higher.

<sup>64</sup> FEDERAZIONE ITALIANA GIUOCO CALCIO, AREL, PWC, *Report Calcio 2021*, 2021, 100.

<sup>65</sup> Since the 2020/2021 season, there has been a very clear change in the trend. Indeed, both Serie A and Serie B clubs have significantly reduced the value of capital gains realised.

<sup>66</sup> Corte Federale d'Appello de la Federazione Italiana Giuoco Calcio, *Decisione/0089/CFA-2021-2022*, cit., 27-28.

The freedom of trade would therefore be respected, as significant price deviations from values determined beforehand, even above a defined limit, could be recorded, but a higher and indubitable principle of consistency between the price of the right and the remuneration would have to be invoked. The transaction would therefore be unlawful “*in the presence of large percentage deviations, accompanied by an inadequate remuneration with respect to the value of the rights themselves*”.<sup>67</sup>

As regards possible sanctions for the clubs involved in the investigation, Article 31 of the Code of Sports Justice of the FIGC provides that “*the club that commits the acts referred to in this paragraph is punishable by a fine with a warning*”, even going as far as the penalisation with one or more points in the respective championship, and the inhibition of the various managers involved. If, however, it is established that such suspicious transactions were necessary to enable clubs to register for the following championship, the sanctions are clubs' relegation or even exclusion from the respective leagues.

Therefore, “minor” sanctions such as fines with a warning – to which it can be added one or more penalisation points due to the gravity of the misconducts – are imposed if the fictitious transactions do not impact financially the possibility of the club registering for the following championship. While they could incur heavy sanctions such as relegation or exclusion from the championship if, in the absence of such operations, registration for the following championship was not possible.

The FCA has cleared of the charges all the directors of the companies under investigation, but the FCA's considerations are clear in the sense that there is 'no' evaluation criterion at the level of football federal system.<sup>68</sup>

This observation, together with the width of the phenomenon impose the adoption of urgent regulatory measure provided that the composite valuations would be grounded on economic rationality that offers a guarantee of fairness and equity as will be discussed below.

#### 8. A mathematical calculation and a political debate

As mentioned previously, the Federal Prosecutor Office proposed a valuation method based on tangible variables. Nonetheless, the first instance Court underlines that when proposing such a valuation, the Federal Prosecutor Office “*did not consider it necessary to attribute to each individual factor [...] a specific value in percentage terms so as to be able to standardise its assessment, which, moreover, was carried out retrospectively and without indicating, for each individual criterion, the value or weight attributed to it*”.<sup>69</sup> The first instance Court considers it as an issue, but the FCA does not agree, although it is arguable that lacking such weights or percentages may lead to uninterpretable valuations and a general lack of transparency. The discussion of the method proposed by the Federal Prosecutor opens the door to the idea that the value of the contract of a player could be determined by a set of variables and corresponding weights.

Interestingly, football stakeholders are reportedly working on potential changes of the system for the determination of the transfer fee that may rely on the same general idea. Indeed, FIFA's General Secretary, Gianni Infantino, presenting the “third package” of reforms of the FIFA Regulations on Status and Transfer of Players (RTSP), revealed that the football stakeholders were currently raising: “the big question of the transfer fees, of the financial regulation, of whether we should have a mathematic calculation of how much value a contract of a player has or whether this should be left to the discretion of clubs, agents, intermediaries or whoever else”.<sup>70</sup> In particular, the “mathematic calculation” mentioned illustrates the potential determination of the transfer fee amount with a set of observable variables and associated coefficients. Although this proposal may seem incongruous by today's standards, it is worth noting that clubs in the nineties could determine the residual value of the contract of a player by using a “coefficient factor formula by reference to a player's earnings and a multiplier factor based on his age and the end of his contract” proposed by the UEFA.<sup>71</sup>

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<sup>67</sup> “[È] irragionevole che un calciatore possa avere una retribuzione annuale pari a qualche punto percentuale del valore dei suoi diritti”, translated by the authors, ibi, 28.

<sup>68</sup> Ibidem, 24-25.

<sup>69</sup> “[La Procura federale] non ha ritenuto di dover attribuire a ogni singolo fattore, dianzi individuato, una valenza specifica in termini percentuali in modo tale da poter uniformare la propria valutazione, peraltro effettuata in via retrospettiva e senza indicazione, per ogni singolo criterio, del valore o peso ad esso attribuito”, translated by the authors, ibidem, 24.

<sup>70</sup> G. INFANTINO, *Launch of Commentary on the Regulations on Status and Transfer of Players (RTSP)*, FIFATV, 2021, 00:59:26. Available on line at <https://www.youtube.com/watch?v=HB1630g0d3k> (January 2023).

<sup>71</sup> S. MORROW, *Football Players as Human Assets. Measurement as the Critical Factor in Asset Recognition: A Case Study Investigation*, in *J Hum. Resour. Cost. Acc.*, vol. 1, 1996, 75-97; UEFA, *Principles of co-operation between member states of*

Therefore, if football stakeholders are working on an updated mathematic calculation to fix the value of a contract, the challenge ahead is twofold since the stakeholders would need to agree both on the list of parameters and the associated weights. Undoubtedly, the political strength of the parties would thus shape the calculation. Setting up a reform of the transfer system by implementing a transparent method based on a multiplier system would require having all football stakeholders onboard. However, the different parties might have different views on the reform of the transfer system and especially its objectives.

From the clubs' standpoint, it is arguable that the objectives would be to protect their investment in players – investment made either through training or trading – and to allow them to be profitable. However, it would be simplistic to consider that all clubs would have the same objective, and, on the contrary, it is likely that a club's involvement in such a reform would depend on its business model. For example, training clubs would be keen on setting a higher weight on being young while trading clubs would probably be more interested in continuing with the current system.

From the players' standpoint, the objectives put forth by the unions would probably be to protect the players – particularly the young ones –, to avoid prohibitive fees or buyout clause restraining players freedom of movement and work, and to enhance the redistribution of the value creation to players through salaries.

Given the current regulatory environment, one of the key driving forces of a transfer system reform is the discrepancies between players' wages and the fees paid. Indeed, it is not so rare to see players – often young – stay on a relatively low wages level while their estimated market values can steeply increase amidst a performance boom. A multiplier system linking players earnings and fees – mitigated by observable characteristics such as age, performance, or contract length – would then cap the potential fee unless the salary is renegotiated.

The multiplier would not be the same for all players but would rather depend on players' characteristics, the sample of which is to be determined by football stakeholders.

To keep it simple, it could be considered a multiplier depending only on the age of the player, reflecting the potential and experience of the player, and on the playing time, encapsulating the quality of the player. Consider that the younger the player and the more time spent on the pitch, the higher the multiplier. Training young players and making players participates in matches would thus be rewarded by a higher multiplier hence a higher transfer fee cap.

For the sake of clarity, consider two players:

- Player 1 is an underpaid golden boy. He is 22, played 2800 minutes this season and is committed to receive 1m€ until the end of his contract with his club
- Player 2 is a former star player. He is 36, played 1000 minutes this season and is committed to receive 20m€ until the end of his contract with his club.

The first phase of the calculation to determine the maximum price of the players, would be to assess the applicable multiplier based on players' age and minutes played. Detailing the complete process of the determination of the multiplier is out of the scope of this article but we can pick values suiting the general rules mentioned above to illustrate the idea. Player 1 is 22 and plays a lot while Player 2 is 36 and plays less, hence the multiplier would be high for Player 1, e.g., 4, and low for Player 2, e.g., 1.1. The second phase would be to calculate the maximum price payable for the players by multiplying the committed salaries by the multiplier: the cap for Player 1 would be 4m€ (1m€ x 4) and for Player 2 22m€ (20m€ x 1.1). The club owning the rights of the players and the prospective buying clubs negotiating to transfer Player 1 and Player 2 would then be able to fix the fee up to 4 and 22 m€ respectively.

Such a system would then incentivize clubs 1) to sign young players 2) make them play, and 3) offer them decent salaries to maximize the potential price paid for the rights of the players. However, the objective of the football regulatory bodies might be completely different, and the system might be tuned in two ways: by picking different players' characteristics (the ones in the example but also performance or international status for example) and by designing the multiplier calculation.

However, what would be at stake in such a reform would be the balance between the salaries and the fees, between the “worker” and the “asset” aspects of the players.

## *Conclusion*

Following the capital gains case, it appears critical the need of a regulation that would also take into consideration the concept of value of football players in the budgetary control phase, leading to the limitation of certain evaluations that do not correspond to the real characteristics of football players. Clear and solid criteria are necessary to assess the capital gains formation and their concrete use in the federal parameters – also to discourage their artificial determination – in order to appreciate their real economic value and the appropriateness of the underlying transactions.

Given the lack of a legal provision which sets out the criteria to determine the market value of a football player and considering the multiple and various positions at stake (e.g. players and football agents who would facilitate the transfers among football teams or sport national bodies who need to protect collective and higher interests) and the lengthy process required to agree on a sectorial “hard law” due to the peculiarity of the matter, the football clubs may agree in adopting the multiplier system by means of *soft law*. Even if the proposal of the Court of appeal is to adhere to the average of the values inferred from qualified databases, identified by the Federal Council, the fairest option for football teams would be to determine such criteria in advance, referring to measures that are not directly legally enforceable but that can, nonetheless, create substantive obligations through the earnest, common and unanimous consensus of the stakeholders.

Examples of soft law include guidelines, sets of principles, codes of conduct, private standards, and partnership programs, with the ultimate purpose of establishing a frame of reference to assess conduct, to contribute to the establishment of new legal standards that have not yet been enshrined in hard law.

The multiplier system would therefore be considered an instrument of normative nature with no legally binding force, and which will be applied only through voluntary acceptance of football teams. Although such soft law principles do not begin as *positive* or *hard* law, they can of course be endorsed either by courts, arbitral tribunals, or by transactional parties adopting them in their agreements or even by regulators.

Once completed, such soft law instrument would be ready for adoption by the parties as part of their agreement or ready for use as an interpretive document by courts and arbitrators.

This brings us back to our original question. Given the occurrence of capital gains reflected within the balance sheets of football clubs due to the lack of legal basis for player rights’ valuation in Italy, would these organizations be interested in accepting a soft law suggested by courts? This article argues that they should. Soft law can provide a degree of co-regulation and could increase the level of reliance that football national bodies and authorities may sometimes place upon football clubs and can provide a degree of autonomy and control for football clubs to formulate and agree best practice rules for their sectors. Finally, soft law can generate more confidence by providing practical solutions to problems already identified in relation to common activities and it may encourage the development of a collective and consistent approach among different football clubs.

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