

U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY,
INSURANCE, AND DATA SECURITY
“EXAMINING THE GOVERNANCE AND INTEGRITY OF INTERNATIONAL SOCCER”
JULY 15, 2015

QUESTIONS FOR THE RECORD
SENATOR MARIA CANTWELL

Questions for Mr. Dan Flynn:

Background: The FIFA Regulations on the Status and Transfer of Players (RSTP) establishes a system that mandates that a professional soccer club signing a player to a professional contract or paying a transfer fee for a player must pay training compensation and solidarity fees to all of the player’s previous youth clubs from ages 12-23. The FIFA RSTP apply worldwide and do not establish any exemptions for the United States, USSF or Major League Soccer (MLS), and the Bylaws of the USSF contain no exemption from the RSTP. However, in view of a letter of complaint dated June 29, 2015, from the Crossfire Foundation, Inc., a youth soccer club in Redmond, Washington, to the FIFA Executive Committee, a pattern and practice has come to light demonstrating that the USSF both consents to and assists in MLS’ practice of taking solidarity fees owed to non-MLS youth soccer clubs in the United States, and also interferes with US youth clubs seeking training compensation from foreign professional soccer clubs. Furthermore, the USSF itself prevents foreign professional clubs from otherwise paying solidarity fees and training compensation to non-MLS American youth soccer clubs by claiming that receipt of these fees in the US by youth soccer clubs is illegal under US law.

Question 1. MLS took the entire solidarity fee for the transfer of the US soccer players including DeAndre Yedlin, Clint Dempsey, and Jozy Altidore, and paid none of it to any of their respective US youth soccer clubs that were owed portions of the fees. Please describe this process and explain why the solidarity fees are not awarded to youth clubs as called for in FIFA regulations.

US Soccer Response to Question No. 1

This is a complex issue involving consideration of antitrust and other laws that is difficult to explain in a relatively short response. Nevertheless, US Soccer provides the following information.

By way of background, the *Fraser* order was entered in 1997 by a federal district court in connection with the partial resolution of an antitrust class action suit brought by MLS players. That order followed a decision issued by the European Court of Justice in 1995, called *Bosman*. In that case, the ECJ considered the legality of a precursor to the current RSTP -- FIFA rules requiring that a transfer fee be paid to a player’s former club if the player signed with another club after his contract had expired. The ECJ determined that this rule negatively impacted the mobility of players and, therefore, violated the European Union Treaty. In response to the *Bosman* opinion, FIFA began developing a new approach to the player movement process which is now embodied in the RSTP.

Consistent with the ruling in *Bosman* and given the antitrust laws of this country, US Soccer agreed in *Fraser* that it would not enforce transfer fee or similar restrictions that FIFA might impose on the movement of players who were “out of contract.” Some aspects of the current FIFA RSTP may be considered applicable to out-of-contract players and, therefore, the *Fraser* order would apply in those circumstances.

In addition, US Soccer concluded, with the advice of outside counsel, that enforcing the RSTP with respect to the training compensation and solidarity payment mechanisms could be found to violate the antitrust laws of the United States given their potential impact on the mobility of players. Given recent European court decisions regarding player mobility—and in light of the growth of the sport of soccer in the United States, including the emergence since 2007 of the Development Academy, whose clubs often directly fund the training of elite players—that analysis is currently being brought up-to-date. But, US Soccer has chosen not to enforce those aspects of the RSTP system that are of questionable legal validity in this country and which might expose US Soccer to increased legal risk.

Over the past several years, several intermediate courts in Europe have determined that some methods of training compensation and solidarity payment mechanisms are unlawful and violate the EU Treaty. In other words, the decisions by the intermediate European courts are consistent with the conclusion US Soccer reached regarding the potential for antitrust risk. This issue is likely to make its way back to the ECJ in the near future; as a result, the viability of the RSTP may be subject to significant scrutiny in Europe over the next several years.

With that background, and while not intending to speak for MLS, it is our understanding that MLS agreed to transfer the players referred to in return for a specific transfer fee based, in part, on US Soccer’s long-stated policy not to enforce the RSTP solidarity mechanism. As we understand it, if US Soccer enforced the solidarity mechanism MLS would have demanded higher transfer fees, as this fee was agreed upon with the understanding that no portion of it would in turn be “passed on” by MLS. Of course, there is no way of knowing whether any of the transferee clubs would have paid a higher transfer fee for any of these players and, if they would not, whether the transfer of these players would have occurred.

We do note that US Soccer’s decision not to enforce the RSTP is not limited to MLS and its players. Transfers of NASL players or USL players to foreign leagues are treated in the same manner. In other words, US Soccer’s decision not to enforce the RSTP applies is not applied in a discriminatory manner but applies evenly to all leagues and all US players.

Question 2. If the USSF maintains that a consent decree in the case of *Fraser v. MLS* mandates that solidarity fees not be paid, please explain how that consent decree, which only USSF has signed and is bound by, denies any US youth soccer club from receiving training compensation and solidarity fees, yet allows the MLS to collect these same fees.

US Soccer Response to Question No. 2

See US Soccer Response to Question No. 1

Question 3. How does U.S. law, or the Fraser consent decree, bar US youth clubs from receiving training compensation from US professional teams, especially with respect to "scholarship" players who received training from their US youth clubs without paying a club training fee?

US Soccer Response to Question No. 3

See US Soccer Response to Question No. 1

Question 4. If USSF has determined that U.S. antitrust law or the Fraser consent decree prevent the award of training compensation to US youth soccer clubs within the U.S., why has USSF has not created or attempted to create a US system for compensating US youth clubs for their training role in US youth players, both men and women?

US Soccer Response to Question No. 4

Any US Soccer-imposed system applicable to the movement of players between and among clubs in the United States would be subject to the same legal risks discussed above (and perhaps additional risks). Further, the stated goal of the RSTP system is to compensate amateur teams for their investment in player development. Historically, in the United States (as distinct from many countries elsewhere throughout the world), the cost of player training and development was typically borne by the families of young players, and in the case of top-level players, by US Soccer itself. Development clubs have certainly grown in the United States over the past several years and we understand that Development Academy clubs are granting more scholarships than before—and that evolution will be one of the factors considered in the new legal analysis being conducted by US Soccer's outside counsel.