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eSports – League Ownership, Structures and Growing Pains

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Update: On 13 May 2016 the Electronic Sports League announced the launch of the World eSports Association (“WESA”) together with several leading eSports teams¹. The aim of WESA is to help professionalise eSports and has the potential, in the future, to address some of the issues referenced below.

The global phenomenon of competitive gaming that has facilitated the rise of eSports over the last few years has meant that the value of prize money, sponsorship and streaming opportunities have risen exponentially alongside the sport. This has coincided with major investment by well known names and organisations including Mark Cuban², the entrepreneur and owner of the NBA’s Dallas Mavericks, and Amazon, which of course purchased Twitch³ in the summer of 2014 for around \$1 billion.

The revenue increase for those involved has grown at a startling pace compared with traditional sports. Whilst the increase in funding at all levels is a boon for eSports, there is a much greater risk of quick growth leading to problems like conflicts of interest and competition law issues.

Conflicts of Interest, Competition Law and Integrity

At the moment, unlike most traditional sports, eSports has no centralised governing body to apply and enforce a standardised set of rules across the industry to prevent competitive conflicts. This has meant that the ownership and running of leagues and tournaments has been left to the market. Within the last year, two of the biggest operators, Major League Gaming (“MLG”) and the Electronic Sports League (“ESL”), have been acquired by very different kinds of entity. MLG is owned and operated by Activision Blizzard which produces many popular eSports games like Call of Duty and Starcraft whilst the ESL, the self proclaimed ‘world’s largest eSports company’, had the majority of shares in its holding company, Turtle Entertainment, bought by the Modern Times Group⁴ (a digital entertainment company) in the summer of 2015.

The potential for conflict of interests and competition law concerns are clear in both MLG and ESL’s ownership structures. MLG controls access to some of the major games that are used in eSports and could in theory create anti-competitive rules such as only licensing Call of Duty to the tournaments and leagues operated by Activision Blizzard. On the other hand, a large media conglomerate like the Modern Times Group, which has also acquired the biggest Scandinavian eSports event organiser DreamHack⁵ and presumably may be looking to acquire others, could make it harder for smaller leagues and competitions to compete and survive, potentially causing competition law complaints.

Another area of concern is the possibility of a single owner controlling more than one team. If teams sharing a controlling owner are able to compete in the same tournaments or leagues, this may lead to integrity concerns as the teams could meet each other, and the owner could theoretically arrange matters in favour of one or other team. In some traditional sports regulation is in place to address this possibility. For example, Rule I.5 of the Rules of the English Premier League (“EPL”), prohibits the holding of more than 10% of the shares in any EPL club by anyone who has shares in any other club.

¹ <http://www.eslgaming.com/article/announcing-founding-wesa-world-esports-association-2856>

² <http://www.polygon.com/2015/11/23/9782788/mark-cuban-esports-colin-cowherd-idiot-fined>

³ <http://www.bbc.co.uk/news/technology-28930781>

⁴ <http://www.turtle-entertainment.com/news/mtg-to-acquire-the-majority-stake-in-the-worlds-largest-esports-company/>

⁵ <https://www.mtg.com/press-releases/mtg-acquires-dreamhack/>

Possible Model Ownership Structures

Unsurprisingly perhaps in this increasingly digital and connected world, eSports is at present developing and consolidating considerably quicker than traditional sports ever did. It is not unreasonable to imagine the organisation and ownership structure of the major leagues converging with those found in traditional sports. In the absence of a unified worldwide governing body to administer eSports, we look below at three ownership models and structures currently found in traditional sports that we could find eSports leagues, tournaments, publishers and teams developing:

1. the single owner model;
2. the team ownership model; and
3. the franchise model.

Single Ownership of the Teams

Major League Soccer (the “MLS”) is probably the biggest league to date that has successfully applied a single owner model.

Under this structure the MLS owns outright each team that participates in the league and therefore has the sole power to recruit players, negotiate their salaries, pay the players from league funds and to a large extent decide which team the players play for.

The league itself is owned by two distinct groups, owner investors and non-owner investors. These groups form the MLS Management Committee which is in charge of running and organising the league.

The owner investors have signed operating agreements with the MLS allowing them to operate teams, for example, AEG with the LA Galaxy and Stan Kroenke with the Colorado Rapids. Whilst both AEG and Kroenke might be referred to as ‘owners’ of the teams they only in fact have stakes in the MLS itself.

The MLS Management Committee pays a management fee to each team operator which is usually based on a share of all sponsorship and local broadcast revenues and approximately 50% of any match day revenue received. The owner investors of successful teams are rewarded in the first place by an increase in the management fee rather than through an increase in the value of the club they operate. If the league as a whole does well, the owner investors – and the non-owner investors – will all benefit from an increase in the value of their investment.

The integrity of the structure in terms of sporting competition is seldom questioned. All teams are essentially in the same position in that they have a common owner. This structure was challenged in the US courts in *Fraser v. Major League Soccer*⁶, however, in which eight MLS players claimed that the MLS and its investors acted as a single entity and unlawfully lessened the value of its players’ services and conspired to monopolise the first division of soccer. The District Court (and later the Court of Appeals) dismissed the claim based on the fact that the MLS was both competing with other soccer leagues in the USA and soccer leagues around the world. A single ownership model has not to our knowledge been tested in Europe.

Team Ownership of the League

Variations on this model are fairly common. Perhaps the most famous example is the EPL.

Under this structure the EPL is a private limited company that has 21 shareholders. Each of the 20 clubs that are playing in the competition at any given time is granted a share (together with the English Football Association’s ‘Golden Share’).

Each member club is independent from the others and is run in accordance with the rules of football. Whilst the EPL is responsible for the day to day running of the competition (as well as various other administrative tasks like UEFA licensing) the shareholders are the ultimate decision making body.

Both the clubs and the EPL propose rules with each club being entitled to a single vote. All rule changes and major commercial agreements require the votes of two thirds of the clubs (14 in total) to be agreed. All commercial revenues are then divided equally between the members with additional funds being

⁶ 284 F.3d 47 (1st Cir. 2002)

granted based on TV appearances and finishing league positions with individual club revenues being retained.

The integrity of the league is kept in check by each team having an equal weight of vote and internal rules like Rule I.5 mentioned above.

Franchise

The MLS aside, the major professional sports in the USA tend to be based on a version of this model. The NBA for example is an unincorporated body, run as a joint venture between the teams.

Each team is licensed by the NBA to associate itself with the league and operate in accordance with the NBA Constitution and Bylaws (the "Rules"), usually in an exclusive territorial zone. Team owners together own a corporate entity called NBA Properties that has exclusive control over the licensing of the league itself and the teams.

The Rules set out what the league together with each team can do. The NBA has a Board of Governors which is made up of a representative from each team. Whilst in general the league itself sets its own rules the Board of Governors can vote on certain issues such as new franchises and the removal of a franchise owner⁷.

The financial model has varied over time but usually means that all of the franchises place a certain amount of their individual revenue into the league, perhaps 50%, which then uses a formula to distribute this pot amongst all of the teams based on various elements. The result is that more commercially successful teams may in fact be net contributors to the league (as the amount they put in is greater than what they receive) whilst others will be net recipients. This more 'egalitarian' approach is highly characteristic of American sport and contrasts with the more 'free market' approach of, for example, the EPL.

Conclusion

There are currently hundreds of eSports teams worldwide competing in a variety of tournaments. Even though some teams have started to establish themselves as being permanent fixtures on the eSports scene this is the exception rather than the rule. A striking example of this is shown by Valve's 'The International' Dota 2 tournament in which 72% of the teams that competed in 2013 no longer existed a year later⁸.

Part of the longer term solution to this problem may lie in the structures adopted by the tournaments, leagues and teams. At present, the identity of participating teams in most tournaments or leagues involve invitation, qualification or a combination of the two. In terms of stability and a sense of permanence for the tournaments, leagues and teams, such a model is probably less effective than any of the structures looked at above.

The team ownership model whereby the teams own the league (like the EPL) seems to be a long way off, especially with such unpredictability concerning which teams will still be around in a year's time. A model of this kind may become a more realistic possibility if leading teams continue to consolidate and become more robust and powerful but the sport seems to have a way to go yet. There is another challenge as well: any such structure would need to take into account and recognise the concerns and demands of the publisher as an eSport league or tournament is nothing without the game itself.

If eSports is to continue to grow and flourish, some of the competition law concerns and integrity issues referred to earlier in this piece will need to be tackled. Governance structures and regulatory frameworks will be needed to develop and mature. At the same time, eSports will need to find ways of increasing the level of certainty and stability around its leagues and teams. One intriguing possibility is that a publisher or tournament organiser will seek either to establish or acquire its own teams thereby potentially constituting a single ownership model. Stability would be achieved with all of the power and control over an eSport being consolidated in one place. However, such a structure will also place all of the commercial risk on the organisation running it.

⁷ <http://www.cbssports.com/nba/writer/ken-berger/24657297/sale-of-clippers-to-steve-ballmer-closes-donald-sterling-out>

⁸ <http://www.dailydot.com/esports/dota-2-prize-distribution-players/>

Mitigating these issues, and creating a system whereby some commercial risk is spread to the teams, may be achieved in part in the short and medium term through evolution from the current “invitation/qualification” model to a version of the more robust – if more rigid – franchise model. Developers, tournament organisers, and perhaps in due course governing bodies, will be able to set clear rules on ownership and potential conflicts of interest whilst ensuring all eSports stakeholders have greater certainty over which teams will be participating in which events next year, the year after, and so on. This stability should in turn help to draw in more sponsors and investors, and may also increase competition for the rights amongst broadcasters and/or streaming platforms.

Speculation of this nature is of course a recipe to be proven wrong and given the central role played in eSports by rapidly evolving digital technologies and networks, we are only too aware that making predictions is an uncertain game to play. Right or wrong, the future of eSports is fascinating and we look forward to following and participating in its continuing evolution.

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