

Single-Entity and North American Soccer's Struggle for Survival

by

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Abstract

Major League Soccer [MLS] was formed using a single-entity ownership model as an antidote to professional soccer's history of failure in North America. While the league and its supporters credit single-entity as the key to sustainability, detractors cite this model as a key factor in the sport's still relatively marginalized status among professional team sports domestically, as well as the league's poor (if perhaps improving) reputation globally. This paper will explore the historical reasons for choosing this ownership model, examine the relative success or failure of this model, and question if the league's single-entity structure is the best recipe for long-term success for professional soccer in North America.

Keywords: Business Model, Ownership Structure, Sports Management

Introduction

Major League Soccer [MLS] was formed using a single-entity ownership model as an antidote to the mismanagement and failed investments that marked professional soccer's history in North America. While the league and its supporters credit single-entity as the key to sustainability, detractors cite this model as a key factor in the sport's still relatively marginalized status among professional team sports domestically, as well as the league's poor (if perhaps improving) reputation globally. The league's structure inhibits risk, a key component in any deeply rewarding competitive venture: "A drawback to single-entity status is that it provides little economic incentive at the club level" (Brown, Rascher, Nagel & McEvoy, 2010, p. 18). This paper will explore the historical reasons for choosing this ownership model, examine the relative success or failure of this model, question the legitimacy and ramifications of single-entity for North American soccer, and ultimately argue that single-entity may well be doing more harm than good for the game domestically.

A Fragmented History of Fragility and Failure

The first attempt at a professional soccer league in the United States was made in 1894, when six clubs from baseball's National League formed the American League of Professional Foot Ball Clubs, with teams formed in Boston, Brooklyn, New York, Philadelphia, Washington and Baltimore. With each team scheduled to play twenty games in the baseball off-season from October to January, the season was suspended by the sixth round, New York drawing a mere fifty spectators to the Polo Grounds in a 3-4 loss to Boston on October 18th. Commenting on the eighteen spectators (including four women) who witness Brooklyn's 3-1 win over Philadelphia that same day at Eastern Park, the New York Sun concluded "It does not look as though the sporting public in this vicinity were going to die of heart disease caused by over-enthusiasm for

the game of professional football” (*The Sun*; 1894) and baseball’s National League owners agreed, calling an abrupt halt to their soccer experiment.

The league’s failure served so cautionary the enterprise of professional soccer would not be revived until the founding of the American Soccer League in 1921. Known as the *golden years* of American soccer, the league was second only to baseball in terms of popularity. The New York teams drawing crowds in the ten-thousands for significant games in league and cup competition. But internal fighting, such as the *Soccer War* of 1928, when the league split into two rival factions for a season, and the consequences of the Great Depression on the sport’s fanbase, brought an end to the league in 1932. Later that year, a second American Soccer League reconstituted as a loosely structured semipro/minor-league setup, entrenched within ethnic communities. Soccer assumed a marginalized status as a foreign game. (Jose, 1998)

Another three decades passed before the re-emergence of professional soccer in the United States. The fledgling North American Soccer League, formed in 1968, finally caught the public’s imagination in 1975 when the world’s greatest player, Pele of Brazil, signed with the New York Cosmos. His three seasons there, culminating in the 1977 Soccer Bowl championship, triggered an explosion of interest in soccer, making the global game a popular activity nationwide. But the kids kicking the ball didn’t grow to become paying fans, or didn’t get the chance, when the league folded in 1985. While the Cosmos raised the game’s profile, their big-spending on players is often cited as the leading cause of the league’s demise, as overly-optimistic accelerated over-expansion and unrealistic efforts to mimic the star-studded cast of the Cosmos in less affluent markets contributed to the NASL’s collapse. (Dure, 2010, p. 12;

Hopkins, 2010, pp. 77)

Three strikes and you're out, xenophobic cynics said about soccer in the States.

The Formation of Major League Soccer

Major League Soccer began play in 1996, fulfilling a condition for hosting the FIFA World Cup in 1994 of providing/restoring a first-division professional league in the United States. The history of professional soccer in the United States is one of missed opportunities and outright mismanagement. Three prior failures for soccer to make it as a major league in America called for a business plan that would promote sustainability and prosperity, based upon learning from the mistakes made not only by the precursors of MLS, but especially from current strengths and weaknesses of the four established North American major leagues.

Faced with FIFA's mandate for a professional soccer league in the United States, the President of the United States Soccer Federation, Alan Rothenberg (who had prior ownership experience with the NASL's Los Angeles Aztecs and had successfully organized the 1984 Los Angeles Olympic Games), together with Mark Abbott and Ivan Gazidis, a pair of sport law and management professionals, devised a league structure based upon the principle of "cost containment" (Dure, 2010; p. 12). The trio determined "there was only one way any league should be structured and that was as a single entity with centralized control of players along with many of the key revenue streams and costs" (Hopkins, 2010; p. 76). The proposed structure received the endorsement of the United States Soccer Federation and Major League Soccer began play in 1996 with ten franchises in place run by seven owner-investor groups (Dure, 2010, p. 16). With seven of those initial ten franchises remaining in their original markets among the current nineteen now operating in the eighteenth season of Major League Soccer, and while the Designated Player rule has slightly loosened restrictions on marquee player signings, spending

remains limited under the single-entity structure, but so too does Major League Soccer's influence on the domestic sporting landscape.

Challenges and Calls for Change

MLS has faced criticism from fans, media and its own players over single-entity. The league has also had this structure challenged in court. The players brought an anti-trust suit against the league in a Boston court in 1998, claiming single-entity violates anti-trust laws by restricting competition, and accusing MLS of forming an illegal monopoly to keep their salaries down, restricting their ability to earn a living in their profession (Hopkins, 2010; pp. 116-117). But a federal jury ruled in favor of the league against the players, citing foreign leagues as competitors with MLS (Sandomir, 2000), ignoring the stranglehold the league enjoys with its sole possession of domestic first-division status, granted through the sanction of the USSF, an apparent violation of FIFA's mandate that, "A club's entitlement to take part in a domestic league championship shall depend principally on sporting merit" (FIFA, 2015, p. 66). Unlike other domestic soccer competitions (with the exceptions of Australia and India), clubs unwilling or unable to buy into the single-entity are excluded from the first-division or premier sanctioned level of play.

When *Fraser v Major League Soccer, L.L.C.* went to the United States Court of Appeals, First District, the 2002 court ruling neatly summarized the nature of MLS's form of single-entity operations:

In return for the services of the operator/investors, MLS pays each of them a "management fee" that corresponds (in large part) to the performance of their

respective team. The management fee equals the sum of one-half of local ticket receipts and concessions; the first \$1,125,000 of local broadcast revenues, increasing annually by a percentage rate, plus a 30% share (declining to 10% by 2006) of any amount above the base amount; all revenues from overseas tours; a share of one-half the net revenues from the MLS Championship Game and a share of revenues from other exhibition games.

The remaining revenues of the league are distributed in equal portions to all investors. Thus, while the investors qua investors share equally in the league's profits and losses, the individual team operators qua operators fare differently depending at least in part on the financial performance of their respective teams. It bears mentioning, however, that neither the league nor, apparently, any of its teams has yet made a profit. (*Fraser v Major League Soccer, L.L.C.*, 2002)

Thwarting the players' claim that the league conspired to monopolize soccer in the United States, deliberately restricting their salaries, the league provided a chart that "listed 67 professional soccer leagues of different divisions from 46 countries," competing with MLS for players. A representative of the then-second division team in Seattle, claiming he competed with MLS for players (without revealing their identities) further undermined the players' claim against MLS. Players had options both foreign and domestic to pursue their professional careers, ruled the Court of Appeals, and MLS therefore had legal backing to preserve single-entity.

The court's ruling upheld the most owner-friendly, least player-friendly collective bargaining agreement in North American sport; players in MLS don't enjoy "the same benefits

afforded to professional athletes in other leagues” (Jakobsze, 2010, p. 135). The league’s 2010 Collective Bargaining Agreement kept these cost control measures in place. However, the *American Needle v NFL*, Supreme Court 2010 ruling, renews antitrust scrutiny. Matthew J. Jakobsze argues that “MLS teams do not have a ‘unity of interest’ in the labor market, and thus should be exposed to antitrust scrutiny” (p. 137). The teams do compete against one another on the field, and profitability is linked with fielding competitive sides, so despite the revenue sharing scheme, Jakobsze argues, the Court misunderstood the subtleties of MLS: “Fraser effectually granted the League an undeserved antitrust exemption, and due to the ongoing mischaracterization of the League’s business structure, the League continues to be portrayed as a single-entity” (p. 155). According to Jakobsze, the recent Supreme Court ruling on *American Needle v National Football League Properties [NFLP]* revives the critique of single-entity. Major League Soccer’s approach, whereby it owns each franchise while operator-investors have the right to operate in particular markets, is in no small way an extension or adaptation of properties rights collectives like the NFL’s. “For the [Supreme] Court in *American Needle*, the fact that teams in NFLP separately controlled and owned their intellectual property—and had the potential for competition—carried the day” (p. 164). The Court decided that each NFL franchise operated individually, owning its intellectual property distinctly, therefore ruling against the NFLP.

But MLS clubs/franchises do not own their team’s intellectual property, even in the case of the New York/New Jersey franchise, with its Red Bull identity, or the second franchise in the market, New York City Football Club, despite its identification with Manchester City of England’s Premier League (for a complete list of MLS operator-investor groups by franchise as

well as league sponsors, see “About Major League Soccer,” MLS). So while Jakobsze may well be correct in saying the Court ruling in *Fraser v MLS* misunderstood the league’s single-entity structure in terms of competitiveness, the unity of intellectual property ownership for all franchises by one entity, the league, undermines Jakobsze’s claim that MLS is merely “masquerading as single entity” (p. 164).

And it is this attempt by MLS to monopolize on North American soccer’s intellectual property that caused a controversy when the league attempted to register the Cascadia Cup trademark with the Canadian Intellectual Property Office this past December (Canadian TradeMark Data, 2012). A competition conceived by the fans of the Portland, Seattle and Vancouver teams before they became MLS franchises (the league obtaining their intellectual property rights to the clubs, dating back to the days of the NASL, as a condition of their joining MLS as expansion franchises), the league claimed it simply meant to “protect” the Cup as a brand from commercial exploitation. Unsurprisingly, fans in the Pacific Northwest were cynical of the league’s patronizing claims, so MLS has been in discussion with those groups to resolve the issue amicably. (Firchau, 2013).

What the controversy over the Cascadia Cup reveals is that MLS is trying to own soccer in the US & Canada, to be identified with the game as much, if not more so, than the NFL with football or MLB with baseball, to capitalize on any revenue streams related to the sport domestically.

MLS’s claim in the *Fraser* case, that it competes against foreign leagues, has become an excuse at it struggles for relevance. MLS Commissioner Don Garber recently blamed the

league's struggle for relevance on the North American landscape, in the context of poor television ratings, on the plethora of top-flight international soccer available daily on cable television, with dedicated networks such as Fox Soccer Channel, Gol TV and BeIN Sports making the world's top teams in the English, Spanish, German and Italian leagues more familiar to American soccer fans than domestic teams. Harris argues that this adds to criticism of the league's structure, that it must modify this structure to better compete with foreign leagues:

MLS TV ratings are underwhelming not because of the quantity of soccer on US television. They're poor because Major League Soccer lacks relevance, authenticity, consistent TV times, a highlights package and quality TV production. A league that is growing on the local level where tickets are worth the price of admission doesn't mean that the TV product is something that Americans nationwide are interested in watching.

Instead of complaining that there's too much soccer on US television, it's time for Garber to make constructive changes to make the league more attractive to television. Despite his 16 years at the National Football League, that model is not the one to follow. (Harris, 2013)

While American soccer fans are delighted by the upsurge of interest and availability, it is astounding that the Commissioner of the country's ostensibly top-flight league would decry this increased presence. Garber's comments further reveal the league's desire to restrict competition and monopolize the game domestically.

Detractors and critics of Major League Soccer have often been dismissed as a lunatic fringe, none more so than “Tinfoil Ted” Westervelt, who has launched an aggressive social media campaign aimed at the critique of single-entity as a closed system. “Not only is promotion/relegation exciting, but if you want to have a global competition in your sport, you can’t go around limiting your clubs in that format because then international competitions become superfluous at best and pointless at worst” (qtd. Koczwar, 2015, p. 88). Voices such as Westervelt’s are too-often and too-easily silenced, however, mostly ignored in the scant media coverage domestic soccer receives.

One of American soccer’s most visible and well-known public figures, since his time as goalkeeper with the New York Cosmos in the 1970s to his current roles as an agent and broadcaster (providing color commentary for the New York Red Bulls’ broadcasts on the MSG Network), Shep Messing was among the first public figures working with MLS to call for an end to single-entity, arguing in March 2013 that the time had finally come to take of the training wheels and let the sport roll forward in a more ambitious manner, in order to truly become not only one of the country’s, but eventually one of the world’s most popular league (Martinez, 2013).

In 2014, the Head Coach of the US Men’s National Team, Jürgen Klinsmann criticized the absence of promotion and relegation due to the single-entity structure of MLS as inhibiting elite player development of the national talent pool, prompting a Commissioner Garber to issue harsh response with a not-so-subtle threat to any dissenting voices, saying, ‘I insist that all of those people who are paid to work in this sport –that they align with the vision that has been established’ [by MLS] (qtd. Carlisle, 2014).

Despite Garber's threats, criticism of MLS is growing, especially among advocates of a promotion-relegation system. The New York Cosmos returned to competitive play in 2013 within a revived North American Soccer League. Sanctioned as second-division by the United States Soccer Federation in 2011, the club and league aren't content to be characterized as minor league.

Cosmos Chairman Seamus O'Brien, explains: "When I agreed to take over the managing part of this [club, in 2012], I was of the same mindset as most people out there: that MLS is the only league and we would have to be in the MLS. [...] Through the due diligence process that we undertook, we rapidly came to the conclusion that we did not think it was a very good investment" (qtd. Williams, 2015). Buying in to MLS as a franchise operator-investor being the only current option for a club seeking to compete at the level sanctioned as the highest level is arguably a restriction of free trade, with MLS and the USSF arguably in collusion, blocking competition in violation of FIFA Statutes if not antitrust legislation. While single-entity was chosen as a means to protect investors, it might just as well detract investors as overly cautious, restrictive and anti-competitive. The NASL clubs are taking legal action, with antitrust and sport attorney Jeffrey Kessler representing the league in its effort to force the USSF to modify its multi-tier division structure for league sanctioning.

Meanwhile, Major League Soccer claims an advantage in a major vs. minor league structure as well as first-division status vs. lower-divisions, though these structures are mutually exclusive. Not only does this influence players, coaches and fans, it also affects media coverage and the sponsorship money such attention generates. While defectors and detractors risk being career outcasts from the domestic soccer industry, the chorus of critics decrying the single-entity structure of MLS is growing.

Balance, Boredom, Sustainability & Success

Whether or not the league's approach is truly for the good of the game and its continued growth in the United States remains the question. Soccer is successful in the United States, even if MLS is marginal among North American major leagues (Kuper & Szymanski, 2009; p. 164). Will MLS ever deliver on its promise to convert those players of soccer and fans of international soccer into supporters/consumers of the domestic top-flight? Does MLS truly seek to grow the game or is it more concerned with protecting the business? How does the steady growth of the game domestically conflict with the scarcity of franchises, providing the league with leverage in local markets as it seeks improved conditions for its stadia.

FIFA President Sepp Blatter recently criticized the United States, and dismissed MLS as irrelevant: "There is no very strong professional league [in the U.S.]. They have just the MLS but they have no professional leagues which are recognized by the American society" (qtd. ESPNFC.com, 2013). The mandate from FIFA to create a top-flight league was with the expectation that the global game would then reach a comparable level of popularity in the States as it enjoys in the rest of the world.

Not everyone agrees with Blatter, the league and its structure of course having its defenders. Alexi Lalas argues that "MLS is the most competitive league in the world -- not the biggest or always the best quality -- but Chelsea know they will win 70 percent of their games because they have the best players. That kind of superclub dominance does not live in MLS, which makes it a purer form of the game over here" (qtd. Bennet, 2013). Lalas taking this stance is ironic for those who recall his claims as General Manager of the MetroStars and then the Red Bulls that the New York/New Jersey MLS franchise would soon become a "SuperClub." But

whether or not such competitive balance makes for public interest is debatable. Garber himself concedes, "Our teams aren't clubs, they are local companies" (qtd. Archynews, 2015). Operating within single-entity, these franchises may survive as local companies, but they are ill-equipped to compete on and off the field against proper clubs on soccer's globalized stage.

In *Soccernomics*, Kuper and Szymanski cite data that reveals imbalanced leagues are more engaging. "In short, MLS lacks one of the joys of an unbalanced league: the David versus Goliath match" (Kuper & Szymanski, 2009; p. 174). The competitive balance preserved through single entity prevents the emergence of dynasties or dominant sides. The result is a bland, arguably boring sporting product.

Conclusion

The history of failure surely justifies a prudent approach to professional soccer in North America. But the single-entity structure of Major League Soccer keeps it from becoming truly major league. American sports fans expect their top-flight leagues to be the top leagues in the world in their respective sports. That's not the case with soccer and, until it is, the sport will struggle for popularity as a major league spectator sport.

Until teams can control their own destinies, with the threat of financial consequences when they fail to compete in a sporting sense, there's insufficient incentive for the top-flight soccer clubs of North American soccer to ever attain a reputation for high quality play. Civic pride and love of the game will only carry the sport so far. Those responsible for the governance of the global game on these shores need to move beyond protecting the financial interests of those who invested in the business model if the sport will ever truly thrive here and someday

become a leader in the world's most popular sport. Soccer has proven it can be popular in the United States without a truly popular professional league. The custodians of soccer need to decide if they're simply willing to settle for sustainability or if success would instead arrive only when North American soccer teams are as globally recognized as their international counterparts and as popular domestically as the top teams in the four established North American major leagues. That dream of a truly major league for soccer requires the abolition of single-entity.

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