

Mr Thomas Horton
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Mr Richard Masters
Chief Executive
The Football Association Premier League Limited
Brunel Building
57 North Wharf Road
London, W2 1HQ

23 June 2020

Dear Mr Masters,

Re: Takeover of Newcastle United FC
My client: Newcastle United Supporters Trust (Newcastle United Supporters Society Limited IP030721) (“NUST”)

I write on behalf of NUST in respect of the reported takeover of Newcastle United FC (“NUFC”) and the Kingdom of Saudi Arabia’s Public Investment Fund’s (“KSA PIF”) involvement with the same. In particular I write to:

1. With reference to the publicly known factual background and the Football Association Premier League’s (“FAPL”) Owners’ and Directors’ Test (“ODT”), counter the opposition to the KSA PIF’s involvement in the proposed takeover of NUFC that has been communicated to you and the FAPL generally from, *inter alia*, beIN Media Group LLC (“beIN”) and Amnesty International UK; and
2. Express NUST’s support of the proposed takeover of NUFC and the KSA PIF’s involvement in the same.

The KSA PIF and the ODT

The KSA PIF

The King of the Kingdom of Saudi Arabia (“KSA”), HRH King Salman bin Abdulaziz Al-Saud, is the head of state and is the Prime Minister. The King can issue royal decrees that are legally binding, similar to a statute.

The Crown Prince of the KSA, HRH Prince Mohammed bin Salman Al-Saud, is second to the King and is the King’s designated successor.

The Council of Ministers, also known as the Cabinet, advises the King and consists of the King as Prime Minister, the Crown Prince who is Deputy Prime Minister and also a Minister with portfolio, 21 other Ministers with portfolio and seven other ministers of state. The Council of Ministers can pass resolutions by a majority vote and such resolutions are legally binding, again similar to a statute.

The Council of Economic and Development Affairs (“CEDA”) is a sub-cabinet that oversees all economic and developmental affairs of the KSA and is headed by the Crown Prince (and has been headed by Crown Prince, HRH Mohammed bin Salman Abdulaziz Al-Saud since 2015, before he was appointed Crown Prince).

The KSA PIF is a sovereign wealth fund that operates for the benefit of the KSA and which was established by royal decree in 1971. In 2015 the KSA’s Council of Ministers issued a resolution which required the KSA PIF ‘to report to CEDA’ and, consequently, the board of the KSA PIF was later re-formed. The KSA PIF board now includes HRH Prince Mohammed bin Salman Al-Saud as chairman, along with other Ministers. The KSA PIF board is responsible for ‘the long-term strategy for the fund, approves the business plan and the annual budget, PIF’s organization and governance structures, investment pools, and major investment decisions’.

The KSA PIF’s ‘Program 2018-2020’ identifies the KSA PIF’s ‘Funding Sources’ and ‘Governance and Operating Model’, which indicates that the KSA PIF is an entity separate to the KSA system of government. Further, Qatari- and the KSA-based lawyers have reviewed the KSA’s laws applicable to the KSA PIF to advise that the KSA PIF is a separate legal entity to the KSA system of government.

It has been reported that KSA PIF will be acquiring an 80% shareholding in NUFC, or alternatively acquiring an 80% shareholding in the company that owns NUFC as a result of the proposed takeover.

It is unknown what NUFC’s company structure will be, or who will be the director(s) of, NUFC or the company that owns NUFC following the proposed takeover. It is also unknown whether any such 80% shareholding to be acquired by KSA PIF will carry voting rights.

Opposition to KSA PIF’s involvement

Notable opposition to KSA PIF’s involvement in the proposed takeover of NUFC has been seen from beIN and Amnesty International UK:

1. beIN (by way of its chief executive Yousef al-Obaidly and a letter from counsel instructed by beIN) has accused the KSA government of supporting the piracy of beIN’s intellectual property, in particular by supporting beoutQ’s illegal streaming and broadcasting of the contents of beIN’s sports channels. Further, beIN has asserted that the KSA government would become a shadow director (see s. 251 of the Companies Act 2006) as a consequence of KSA PIF’s involvement with the proposed takeover of NUFC. Accordingly, beIN has made the argument that KSA PIF should not pass the ODT.
2. Amnesty International UK (by way of a letter from Kate Allen, director of Amnesty International UK dated 20 April 2020) has highlighted the KSA government’s alleged human rights violations. Similarly and accordingly, Amnesty International UK has made the argument that the KSA PIF should not pass the ODT.

The ODT

The ODT adds to the eligibility and ineligibility of persons being a director of a company in the UK provided for in the Companies Act 2006 and the Company Directors Disqualification Act 1986.

I am sure that you, and those advising in any application of the ODT to the proposed takeover of NUFC, are familiar with the definitions of the FAPL's Rules ("**the Rules**"), in particular the definitions of:

1. 'Club' (see rule A.1.31 of the Rules);
2. 'Associated Undertaking' (see rule A.1.15 of the Rules);
3. 'Fellow Subsidiary Undertaking' (see rule A.1.68 of the Rules);
4. 'Group Undertaking' (see rule A.1.83 of the Rules);
5. 'Parent Undertaking' (See rules A.1.136 and A.1.186 of the Rules);
6. 'Person' (see rule A.1.138 of the Rules);
7. 'Director' (see rule A.1.56 of the Rules); and
8. 'Control' (see rule A.1.50 of the Rules).

When a 'Person' proposes to become a 'Director' of a 'Club', then the Club is required to submit to the FAPL board a completed 'Declaration' in respect of that person (see rule F.4.1 of the Rules). The FAPL board then considers the Declaration and decides whether or not that Person is to be confirmed as a Director of the Club or is liable to be disqualified pursuant to rule F.1 of the Rules.

Rule F.1 of the Rules provides several requirements that if not complied with will result in a Person being disqualified from acting or not being permitted to act as a Director of a Club. In focus for the purpose of the proposed takeover of NUFC are rules F.1.5 and F.1.6 of the Rules, which state that a Person shall be disqualified from acting or not be permitted to act as a Director of a Club if:

*'[He] has a Conviction (which is not a Spent Conviction) imposed by a court of the United Kingdom or a competent court of foreign jurisdiction... in respect of which an unsuspended sentence of at least 12 months' imprisonment was imposed; ... **in respect of any offence involving any act which could reasonably be considered to be dishonest** (and, for the avoidance of doubt, irrespective of the actual sentence imposed); ... in respect of an offence set out in Appendix 1 (Schedule of Offences) or a directly analogous offence in a foreign jurisdiction (and, for the avoidance of doubt, irrespective of the actual sentence imposed)' (emphasis added); and*

*'[In] the reasonable opinion of the Board, he has engaged in **conduct outside the United Kingdom that would constitute an offence of the sort described in Rules F.1.5.2 or F.1.5.3, if such conduct had taken place in the United Kingdom, whether or not such conduct resulted in a Conviction**' (emphasis added).*

Besides news reports, the only known circumstantial evidence in respect of the proposed takeover of NUFC and the KSA PIF's acquisition of an 80% shareholding in NUFC, or

alternatively acquiring an 80% shareholding in the company that owns NUFC as a result of the proposed takeover of NUFC, is the incorporation of NCUK Investment Limited (012415316) (“**NCUK**”) on 21 January 2020, which the KSA PIF could be using as a SPV in the proposed takeover of NUFC. KSA PIF is the owner/sole shareholder of NCUK. Further, the directors of NCUK are HE Yasir Othman Al-Rumayyan (the governor of the KSA PIF) and Bander A Mogren (the chief operating officer of the KSA PIF).

If the KSA PIF is to acquire an 80% shareholding in NUFC or the company that owns NUFC as a result of the proposed takeover and if those shares have voting rights, the KSA PIF would amount to a Director for the purposes of the ODT because of its greater than ‘30 per cent or more of the total voting rights exercisable at general meetings’.

Similarly, if NCUK is to be used by the KSA PIF to acquire an 80% shareholding in NUFC or the company that owns NUFC as a result of the proposed takeover and if those shares have voting rights, the KSA PIF would still be caught by the ODT as the KSA PIF’s ownership of NCUK is caught by the definition of Person and ‘Group Undertaking’ or ‘Parent Undertaking’.

In either of those circumstances, then, pursuant to rule F.4 of the Rules, NUFC would have to submit a Declaration to the FAPL board confirming that KSA PIF is permitted to be a Director and is not disqualified due to any of the reasons set out in rule F.1 of the Rules.

KSA PIF should pass the ODT

Whilst beIN’s and Amnesty International UK’s opposition is respectfully noted, the bases of such opposition is insufficient to cause the KSA PIF to be disqualified from acting or not be permitted to act as a Director pursuant to rule F.1 of the Rules:

1. Firstly, unless it is demonstrated that the KSA PIF itself has facilitated or funded beoutQ, the degree of separation between the KSA’s system of government and the KSA PIF – that the KSA PIF is a separate legal entity and is operated for the benefit of the KSA but not by the KSA *per se* – is sufficient for the KSA PIF to avoid disqualification as a Director pursuant to the ODT.
2. Secondly, on 16 June 2020 a Panel established by the World Trade Organization’s (WTO) Dispute Settlement Body released a report – *Panel Report, Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, WT/DS567/R 16 June 2020 (“**the Report**”). The Report was made following claims by Qatar against KSA for KSA’s alleged breaches of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“**the TRIPS Agreement**”). That Report found:
 - a. KSA is required to ‘bring its measures into conformity with its obligations under the TRIPS Agreement’ (see the Report, para. 8.3). Those ‘measures’ are (i) anti-sympathy measures that resulted in preventing beIN from obtaining legal counsel in the KSA to enforce its intellectual property rights through civil enforcement procedures before the KSA’s courts contrary to article 41.1 and 42 of the TRIPS Agreement; and (ii) the KSA failing to apply criminal procedures and penalties to beoutQ despite evidence establishing *prima facie* that beoutQ is operated by individuals or entities under the jurisdiction of the KSA, contrary to article 61 of the TRIPS Agreement;

- b. However, the KSA is not required to bring into conformity measure (i) because the KSA established that measure (i) satisfied article 73(b)(iii) of the TRIPS Agreement and therefore KSA is not prevented from continuing with measure (i);
 - c. There was no finding or identification that the KSA government or any individual was responsible for the broadcasting or supporting of beoutQ's piracy, but Qatar merely '*established a prima facie case that beoutQ is operated by individuals or entities subject to the criminal jurisdiction of KSA*' (see the Report, para. 7.155). Accordingly, the evidence supporting such a case is still subject to scrutiny and capable of being rebutted when the KSA's courts consider the same.
 - d. Whilst the Report refers to Tweets made by '*prominent Saudi nationals*' promoting beoutQ, the Panel highlighted that those Tweets were highlighted '*not because they are attributable to the Government of [the KSA], but because they are evidence that beoutQ was promoted by prominent individuals and newspapers within [the KSA], which is relevant to the question of whether beoutQ is operated by individuals or entities subject to the criminal jurisdiction of [the KSA]*' (see the Report, para. 7.113-7.117).
3. Thirdly, the suggestion that the KSA government would become a shadow director following KSA PIF's involvement of the proposed takeover of NUFC is legally unsupportable and presumptuous. A shadow director is a '*person in accordance with whose directions or instructions the directors of a company are accustomed to act*' (see s. 251 of the Companies Act 2006). It is impossible to make an assessment of whether a Person is a shadow director of a company before it can be demonstrated that the majority of that company's directors are accustomed to act upon that shadow director's instructions. In other words, it is impossible to make an assessment whether the majority of the to-be appointed directors of NUFC, or the company that will own NUFC, as a result of the proposed takeover are accustomed to act upon the instructions of another Person as those directors do not yet exist and/or are yet to take any actions.
 4. Fourthly, even if point 3 herein is not agreed with, the argument that the KSA government will be a shadow director and therefore disqualify or not permit KSA PIF to act as a Director was based upon the KSA government "*supporting beoutQ's illegal streaming and broadcasting of the contents of beIN's sports channels*", which is a finding that was *not* made by the Report.
 5. Fifthly and lastly, while the KSA's alleged human rights violations are abhorrent, unless it is demonstrated that the KSA PIF itself has facilitated or caused those alleged human rights violations, the degree of separation between the KSA's system of government and the KSA PIF – again, that the KSA PIF is a separate legal entity and is operated for the benefit of the KSA but not by the KSA *per se* – is sufficient for the KSA PIF to avoid disqualification as a Director pursuant to the ODT. It is important to note that what has been highlighted to you and FAPL are only *allegations* of human rights violations, and allegations that are against the KSA government, not the KSA PIF. Moreover, the ODT does not provide for any ethical, character or moral test. If the ODT did provide such tests, you would no doubt agree that mere allegations against the KSA government and not the KSA PIF, a separate legal entity, would be insufficient for the KSA PIF to be disqualified from acting or not be permitted to act as a Director.

Based on the above, and notwithstanding communications you and FAPL have received to the contrary, KSA PIF should not be disqualified from acting or not be permitted to act as a Director.

NUST support

In consideration of the above, NUST wishes to express to you its support of KSA PIF's involvement in the proposed takeover of NUFC. Additionally, a vote of NUST's members showed that 96.7% of NUST's members are in support of the proposed takeover of NUFC and KSA PIF's involvement with the same.

Conclusion

NUST wished to highlight the points set out in this letter for your attention to ensure that the same are included in the FAPL board's considerations when making any decision in respect of the KSA PIF pursuant to the ODT.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Horton', with a long horizontal flourish extending to the right.

Thomas Horton
3 Hare Court Chambers

RM/LG

29 June 2020



Mr Thomas Horton
3 Hare Court Chambers
Temple
London
EC4Y 7BJ

Dear Mr Horton,

I write in reply to your letter of 23 June concerning the prospective takeover of Newcastle United FC by a company based in Saudi Arabia.

You will appreciate that these matters are often subject to media speculation but at their heart are due processes, required by UK law and by the Premier League's own rules, which cannot be conducted in public and on which we cannot comment. However, I can assure you that these processes go beyond those required by UK Company Law and they are applied with equal rigour to every prospective purchase of a Premier League Club.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a series of loops and a long horizontal stroke.

RICHARD MASTERS
Chief Executive