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The European Television Sports Rights Market: Balancing Culture and Commerce

By

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**Paper to be presented at the ‘Private Television in Europe’ Conference, Brussels,
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Introduction

Over the last twenty years or so, European pay-TV broadcasters, such as BSkyB and Canal Plus, have used sports rights, and football rights in particular, as a ‘battering ram’ to open up and then dominate their respective national pay-TV markets. In turn, the ever increasing sums paid for football rights have, for most part, been translated into spiraling salaries and astronomical transfer fees for players and managers at Europe’s biggest football clubs. Clearly, sport on television is big business. At the same time, however, sport is about more than just commerce, it is also a social and cultural activity practiced and valued by millions of citizens across Europe. Hence, the traditional value attached to free-to-air television coverage of sport by Europe’s public service broadcasters. This paper examines how these contrasting perspectives on television and sport – commerce and culture - are reflected in the regulation of sports broadcasting by both the European Union (EU) and national governments. In doing so, the main argument made here is for a regulatory approach that seeks to balance the commercial priorities of sports organisations and private media companies with the wider social and cultural benefits to be gained from free-to-air sports broadcasting. More specifically, this paper urges EU and national governments, first, to resist the arguments of pay-TV broadcasters and some sports organisations to reduce or water down existing legislation designed to preserve ‘major events’ for free-to-air broadcasting; and, secondly, to adopt a more rigorous approach in the application of competition policy principles to the selling of sports rights so as to challenge the market power of dominant pay-TV broadcasters.

The first section of the paper sets the scene by examining the relationship between television and sport and outlining the reasons for the escalating costs of acquiring the rights for major sporting events across Europe, mostly relating to the rise of pay-TV. This section also highlights the social and cultural value of sport and the related importance of free-to-air sports broadcasting. The second section moves on to detail the significance of EU level sports broadcasting regulation, first, in terms of the application of general EU competition policy principles to the buying and selling of sports rights and, secondly, in relation to legislation (section 14 of the AVMS Directive) designed to preserve ‘major

events' for broadcast on free-to-air television. Finally, the third section of the paper considers two national case studies, Greece and the United Kingdom (UK). Here, the paper highlights how very different regulatory approaches have been adopted in these two countries, most notably in relation to the selling of football rights. Nevertheless, both examples also demonstrate the need for a regulatory approach to sports broadcasting that reflects the social and cultural value of sport, as well as its commercial value.

Section One: Sport and television: a symbiotic relationship

Sport and television: a commercial relationship

There is a symbiotic relationship between sport and the media, but it is striking that in the era of the Internet and technological convergence, this still mainly means television. Despite the wide availability of computers, Blackberries and third generation mobile phones which allow people to follow sport, it is in fact the traditional medium of television that still attracts mass audiences. Television is the biggest sponsor of sport and, in the case of football many big clubs have launched their own TV channels. Taking advantage of the increase in spare frequencies on digital TV platforms and the growth in broadband Internet services, top clubs have launched their own TV channels, as well radio stations, mobile portals, and send their own SMS (Short Message Service) alerts. In some cases, TV channels are owners of clubs (French subscription channel Canal Plus owns Paris-based soccer team Paris Saint-Germain).

The marriage between television and football has proved durable because it is mutually beneficial. Football has become crucial to the commercial success of television, and television has made itself indispensable to football. Television has contributed to the growth and popularity of many modern sports, above all football, as it has done with many other cultural and leisure activities. Whannel (1992: 1-3) writes that 'for many people sport is television sport' [emphasis added], and while most believe that the happy marriage of sport and the mass media has enabled each to flourish (see Lever and Wheeler, 1993: 141), others, like Boyle and Haynes (2000: 54), acknowledge that 'television has come to dictate where, when and in what form sport can take place'.

So this close liaison has not been without its tensions. As Rowe (1996: 565) argues, a contentious issue concerns the common claim that television has taken over sport, and that in the process it has debased and debauched it. With sports' increasing dependency on television revenues came a shift in paradigm from understanding sport as an ideal activity¹ based on its non-commercial roots, toward increasingly viewing sport as an entertainment product. Instead of being a festival of international friendship football has clearly become a festival of commerce or global business. Such criticisms of the sport-business-TV nexus take on a social justice dimension when the commodification of TV sport develops to the level that it must be paid for directly (ibid). For example, the acquisition of the rights to top-class football by pay-TV consortia (e.g. BSkyB in Britain in 1992; Net Med Hellas in Greece in 1996; Sky Italia in Italy in 2003) caused a considerable outcry that a 'free' national cultural service had been expropriated by corporate capital.

In fact, it is the ground breaking television deals that resulted in the most dramatic turn in the contemporary relationship between television and the game. As will be shown below, revenues generated by sports rights have dramatically increased in the last two to three decades, especially for the most popular sports or events. This has changed the whole sports landscape profoundly. The value of TV sports rights exploded between 1970 and 2010. Ticket sales (which used to be 100 per cent of revenue) currently represents only 30 per cent of a football club revenue in Europe on average. Sponsorship has also increased, representing the highest sales form of communication after classic TV (and print) advertising (see <http://www.sportfive.com/index.php?id=97>). Derivative products represent 10 per cent in Europe, but may be huge in case of the most famous clubs and players. David Beckham's transfer cost from Manchester United to Real Madrid in 2003 was reimbursed through sales of its 'Number 23' Real Madrid shirt within a single summer. All this is both a cause and a consequence of evolution from amateurism to professionalism, and of high TV coverage (see <http://www.kane-consulting.com/Reports/SourceSecondaryMarket/SportEuropeas2.pdf>).

Over the past twenty years, selling the broadcasting rights of sporting events has become a very important source of revenue for many sport organisations, including leagues, federations and clubs, mainly due to their escalating costs. In Europe, the cost of acquiring broadcast rights for premium programming, such as major sporting events, has increased significantly during the 1990s, owing mainly to competition and the intense bidding wars between private channels. Pay-TV consortia such as BSkyB in the UK and Canal Plus in France, as well as privately owned terrestrial TV channels such as TF1 in France, RTL in Germany and ITV in the UK compete to win sports rights and therefore contribute to the rise of prices. Several public channels such as the BBC, the Italian RAI and the Greek ERT also spend a big part of their budget on sport to face this competition. For example, Barnett (1990) and Whannel and Williams (1993) argued that from as early as the 1980s sports had already developed as a central component in BBC’s programming schedules. The Greek ERT only recently started bidding for football rights, but this has initiated an intense debate as to whether it is justified for the indebted public broadcaster to spend licence fee money to screen football. Many scholars argue that ERT should instead focus on producing or acquiring ‘more recognizable’ public service broadcasting content such as arts, culture and education.

Table 1 shows that there was an increase of more than 120 per cent in the cost of sports rights in the period 1992-98. This trend has continued in more recent years and the cost of rights almost tripled from 1998 to 2007.

Table 1: Development of the Western European sports rights market, 1992-2007 (\$ US million)

Year	Value
1992	1,479
1995	2,083
1998	3,304
2001	5,475
2004	6,921
2007	8,757

Source: Kagan World Media, 1999; Sportfive, 2008 at <http://www.sportfive.com/index.php?id=97> (accessed 16 July 2009)

Notable examples showing the increasingly high cost of acquiring sports rights include the 2003 International Olympic Committee's (IOC) \$2.1 billion deal with the American network NBC for the US TV rights to the 2010 and 2012 Olympic Games (Tsiotsou, 2005: 76). However, the increase in the cost of broadcast rights for sports events is mostly due to an escalation of the cost of acquiring the rights for live football ² matches, brought about by the intense competition between new digital consortia which challenged established operators. Evidence of this is that in Germany in 1999 the ISL/Kirch Group, which became insolvent in 2002, offered FIFA, the International Football Federation, the astronomical sum of \$2.34 billion for the rights to broadcast the football World Cup in 2002 and 2006. Also, in 2004, France held top position for the purchase of football rights, for in December 2004 the pay-TV channel Canal Plus signed a 3-year agreement (for the period 2005-2007) under which French football teams would receive 1.8 billion Euros. And, more recently, the English Premier League's total revenues from UK pay-TV rights for the 2010-13 seasons reached a record 1,782 million GBP (2,070 EUR).

Certainly there are big variations between European countries concerning the value and growth of the sports market, for in 2007 the combined worth of the sports markets of the so-called 'big five' (the top tier football leagues are the English Premier League, the Spanish La Liga, the Italian Serie A, the French Ligue 1 and the German Bundesliga) was \$28,829 million, whereas all the other countries combined accounted for a mere \$4,479 million. The UK tops the list followed by Germany, Italy, France and Spain (see <http://www.sportfive.com/index.php?id=97>). Furthermore, in the top tier football leagues the escalating price of television rights has been translated into spiraling wage and transfer payments. For example, Real Madrid, the world's richest club, signed its latest deal in 2006 for 1,100 million EUR with Spanish broadcaster, Mediapro, for seven seasons of broadcast rights. This means that the club receives about 150 million EUR a year and can therefore afford to pay the reported 67.2 million EUR to sign Brazilian talented player Kaka from Milan and the world record 94 million EUR to sign Portuguese

star Cristiano Ronaldo from Manchester United (see Table 2). But it is not only that. Alongside the ground breaking domestic TV deal Real Madrid expects growing match-day revenues, global marketing and increased commercial income. The above playmakers' international profiles are bound to trigger a surge in shirt sales, sponsorship revenue, match ticket sales and boost Real Madrid's global fan base, in a manner similar to David Beckham's impact during his stay in the Spanish capital.

Table 2: Selective transfer deals of football players in the 2000s

Name of player	From	To	Price (in EUR)
Alessandro Nesta	Lazio	AC Milan	23 million
Lilian Thuram	Parma	Juventus	26.5 million
David Beckham	Manchester United	Real Madrid	32 million
Gaizka Mendieta	Valencia	Lazio	34.5 million
Rio Ferdinand	Leeds	Manchester United	35 million
Juan Veron	Lazio	Manchester United	35 million
Gianluigi Boffon	Parma	Juventus	37 million
Christian Vieri	Lazio	Inter Milan	38 million
Herman Crespo	Parma	Lazio	42.5 million
Luis Figo	Barcelona	Real Madrid	46 million
Zinedine Zidane	Juventus	Real Madrid	58 million
Kaka	AC Milan	Real Madrid	67.2 million
Cristiano Ronaldo	Manchester United	Real Madrid	94 million

Source: Author's analysis

Sport and television: more than just a commercial relationship

Sport is not only an economic activity, it is also a social and cultural activity practiced by millions of amateurs. Practicing sports improves health, stimulates recreation, and brings people together (Tack, 2003: 4). Many scholars have commented and recognised the genuinely social character of sport.

[Soccer] is inherent in the people. It is built into the urban psyche, as much a common experience to our children as are uncles and schools. It is not a phenomenon; it is an everyday matter. There is more eccentricity in deliberately disregarding it than in devoting a life to it. It has more significance in the national character than theatre has. Its sudden withdrawal from the people would bring deeper disconsolation than to deprive them of television. The way of play the game, organise it and reward it reflects the kind of community we are (Hopcraft, 1988 [1968]: 9, cited in Hughson et al, 2005: 161).

The European Union also considers sport as one of the areas of human activity that bring together the citizens of the Union. In 1999 the European Commission adopted a Report to the European Council with a view to maintaining the social function of sport within the Community framework (EC, 1999). Declaration No 29 attached to the 1997 Amsterdam Treaty (EU, 1997) states: ‘The Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together’. The Declaration on the specific characteristics of sport and its social function in Europe, attached to the 2000 Nice Treaty, also recognised the special characteristics of sport and provided that ‘the Community must...take account of the social, educational and cultural functions inherent in sport, in order that the code of ethics and the solidarity essential to the preservation of its social role may be protected and nurtured’. More recently, the 2007 White Paper on Sport (EC, 2007) named the following roles of sport in European society:

- A health-promotion role: sport is often associated with the improvement of the public health of European citizens (treatment of obesity; health of the elderly).
- An educational role: sport can help in various ways in the education and training of people, for example, enabling them to learn to be part of a team and to accept the principles of fair play.
- A social role: clubs, associations and federations provide a fertile ground for social inclusion.
- A recreational role: More than one third of European citizens practice a sportive activity at least once a week.
- A cultural role: sport can forge identity and bring people together.

It appears that both scholars and international bodies, such as the EU, recognise the potential of the sport movement in fostering and developing health-enhancing physical activity, forging identity, bringing citizens together and contributing to social inclusion. However, a necessary precondition for the achievement of these goals is for sport to be available and affordable to all. Hence, the importance of free-to-air sports broadcasting. Unlike their pay-TV counterparts, free-to-air broadcasters are uniquely placed to maximize the social and cultural value to be gained from sport. Indeed, it is on this basis that the sports coverage traditionally provided by many of Europe's public service broadcasters has proved so valuable. For example, during the 1930s, when it was still a monopoly broadcaster, the BBC introduced live television coverage of a number of major sporting events, including Wimbledon and the Derby (Whannel, 1992, p.14). It was, at least in part, through the BBC's coverage of these events that they became truly national in character and thus demonstrated the potential of broadcasting to act as a national public sphere. As described by Scannell,

Consider the FA Cup Final, the Grand National or Wimbledon. All these existed before broadcasting, but whereas previously they existed only for their particular sporting publics they became, through radio and television, something more. Millions now heard or saw them who had little direct interest in the sports themselves. The events became, and have remained, punctual moments in a shared national life. Broadcasting created, in effect, a new national calendar of public events' (1992, p.322-3).

In an era when sport on television is often viewed in largely commercial terms, the social and cultural value of free-to-air sports broadcasting should not be underestimated, and should remain in the foreground of debates over the regulation of sports broadcasting at both EU and national levels.

Section Two: EU Regulation of Sports Broadcasting

Over the last two decades, the contrasting perspectives on television and sport set out above – commerce and culture – have been clearly discernible in the EU's approach to the regulation of sports broadcasting. First, the application of EU competition policy to sports broadcasting has been tempered by an appreciation of the special characteristics of sport and sports broadcasting; and secondly, specific EU wide legislation has been

successfully introduced to preserve certain high profile national and/or international sporting events for coverage on free-to air television thus limiting the impact of commercially powerful pay-TV broadcasters.

EU Competition Policy

The application of EU competition policy to sports broadcasting has been largely focused on two related issues: first, the joint buying of sports rights; and, secondly, the collective selling of sports rights. In terms of the joint buying of rights, by far the most high profile example of EU involvement has been in relation to the regulation of the European Broadcasting Union (EBU). Established during the 1950s, the EBU was originally formed to further the interests of European public service broadcasters, although its membership has subsequently expanded to include some commercial broadcasters. By providing collective bidding power for its members, the EBU has traditionally enabled Europe's public service broadcasters to purchase and share the rights for international sports events, such as the Olympic Games and the European and World Cup football tournaments. Unsurprisingly, however, rival commercial broadcasters have long viewed the EBU's activities as anti-competitive because they place non-members at an inherent commercial disadvantage (EC, 1991). In response, the European Commission has overseen some reforms to the EBU's rights buying activities, including the opening up of the sub-licensing of rights to non-members. However, the Commission has not moved to prevent the EBU's joint purchasing of sports rights altogether. In this instance at least, the Commission has taken the view that the efficiency gains from not having to negotiate rights deals on an individual basis outweigh the potential losses that may arise from the collective buying of rights, hence the granting of an individual exemption under Article 81(3) of the EU Treaty (Hatton, Wagner and Armengod, 2007).

However, it seems that the European Commission's view on the joint buying of rights by the EBU is not one shared by a number of leading international sports organisations, including Fifa, Uefa and the IOC. Recently, each of these organisations has opted to negotiate the sale of their rights with individual broadcasters, rather than the EBU. Perhaps most notably, in December 2008, for the first time in more than fifty years, the

IOC rejected a bid from the EBU for rights to the 2014 (winter) and 2016 (summer) Olympics (Holmwood, 2008). Just a few months later, the IOC announced that it had agreed a deal with the sports rights agency, Sportsfive, to market these rights to individual European broadcasters. Clearly, in terms of the joint purchasing of rights, the biggest threat to the EBU, and its still largely PSB members, comes from international sports organisations keen to maximise the value of the rights to their event(s), rather than EU competition regulation. All of which serves only to heighten the importance of the EU's 'major events' legislation (see below).

The collective selling of European sports rights, and football rights in particular, has proved just as, if not more, controversial. The main advantages of collective selling by a league or a sports governing body are, first, that it allows for a single point of sale and is therefore a more straightforward and efficient way of selling rights; and secondly, that it ensures the total value of rights is maximised, which, in turn, enables leagues or governing bodies to redistribute funds so as to enhance competitive balance within their sport. By contrast, critics of collective selling argue, first, that collective selling leads to restricted supply, and secondly, that it makes it very difficult for new and small broadcasters to enter the market (Parrish and Miettinen, 2009).

Over the last decade or so, these arguments have been played out at both national (see case studies below) and EU level. At the national level, the collective selling of football rights has been favoured in two of the most significant markets, the UK and Germany, whilst, at the same time, the selling of rights by individual clubs has been adopted in various other member states, including Spain, Italy, Holland and Greece. At EU level, as with the joint buying of rights, the Commission's approach has not been to condemn collective selling outright, but rather to amend the practice so as to allow it to grant exemption under Article 81 (3) of the Treaty (or using EC Regulation 1/2003). Most significantly, during the early 2000s, the Commission oversaw a number of changes to the way that Uefa sold the rights to its *Champions League* competition, including the introduction of a three year limit to the length of any exclusive deal, the division of television rights into a number of separate (gold and silver) packages and the unbundling

of new media rights. According to the Commission, proclaimed these changes were sufficient to allow Uefa to continue to sell its rights collectively, ‘to the benefit of all stakeholders in the game’ (EC, 2003).

The Uefa case has proved particularly significant because it provided a template for the Commission’s approach to other instances of the collective selling of football rights by national leagues, most notably the Bundesliga in Germany and the English Premier League (PL) in the UK. In the Bundesliga case, again, the duration of any exclusive deal was limited to three years and the rights were unbundled into nine different packages, including separate packages for television and new media rights (EC, 2005a). The PL case, however, proved more challenging. In 2002, the Commission and the PL agreed that the live television rights for the next three seasons (2004 to 2007) would be sold in four separate packages of around 30 games (EC, 2002). However, the already dominant satellite pay-TV broadcaster, BSkyB (see below), simply bought the rights for all four live packages for a total of £1.024 billion (Boyle and Haynes, 2004, pp.48-9). Clearly, the Commission had failed to adequately counter the anti-competitive tendencies that can stem from collective selling. In response, following lengthy negotiations between the Commission and the PL, it was agreed the rights for the next three seasons (2006-7 to 2009-10) would be sold in ‘six balanced packages with no one bidder being able to buy all six packages’ (EC, 2005b). This move effectively ended BSkyB’s monopoly of the live rights to PL football, with BSkyB winning the rights to four of the packages and a rival pay-TV broadcaster, Setanta, acquiring the other two. However, given that just three years later Setanta was declared bankrupt (see below), the Commission clearly needs to intervene further, if it is to prevent BSkyB from continuing to benefit from the anti-competitive tendencies of collective selling.

With this in mind, the UK communications regulator, Ofcom, has questioned whether setting aside one package of exclusive live rights for a potential new entrant is the most effective way to promote competition within the UK communications market (Ofcom, 2009, para. 12.42). Instead, Ofcom has suggested that an alternative approach might be to reduce exclusivity, ‘by making some matches available on both DTT and existing

platforms' (para.12.42). Of course, any move to reduce exclusivity and/or compel some matches to be broadcast on free-to-air DTT channels, is likely to face intense opposition from the PL, but this approach seems necessary if the Commission is to tackle the anti-competitive tendencies that arise from the collective selling of football rights in the UK.

EU 'Major Events' Legislation

The establishment of EU legislation designed to ensure access to certain major or national events for free-to-air television viewers stemmed largely from the concerns of MEPs over the increasing domination of television sports rights by Europe's leading pay-TV broadcasters, such as Kirch, in Germany, Canal Plus, in France and, BSkyB in the UK. In May 1996, prompted by News Corporation's (eventually unsuccessful) \$2bn bid for exclusive Europe-wide rights to broadcast the Olympic games, MEPs questioned whether the EU could guarantee all its citizens access to television coverage of such major sporting events (Snoddy, 1996). Coincidentally, at around the same time, the Television Without Frontiers Directive (TVWF) was being reviewed and this provided a convenient means through which the European Parliament (EP) could press for the introduction of EU legislation on the issue. In November 1996, the EP unanimously approved the adoption of an amendment to the TVWF Directive designed to ensure that coverage of sporting events of general interest are available on free-to-air TV (EC, 1997a).

The EP's concerns were also broadly shared by Member States, not least by the UK government. Towards the end of 1996, fears were raised within the government that the UK's own listed events legislation could be circumvented by BSkyB acting in conjunction with the German pay-TV satellite broadcaster, Kirch (NMM, 1996). Against this background, in February 1997, the European Commission published formal proposals for the establishment of an EU system of listed events based on the principle of 'mutual recognition', whereby each Member State would be required to ensure that broadcasters under their jurisdiction respect the lists submitted to the Commission by other Member States (EC, 1997b, Section 6). Despite some opposition from commercial broadcasters, this proposal was formally adopted as part of the renewed 1997 TVWF

Directive and subsequently incorporated into the 2007 Audiovisual Media Services Directive (AVMS).

The EU's 'major events' legislation represents an important attempt to recognise the particular social and cultural significance of sport and, in turn, the advantages to be gained from free-to-air television coverage of sporting events. Numerous member states have taken up the opportunity to submit lists of 'major events' to the Commission in accordance with the AVMS Directive, including Austria, Belgium, Finland, France, Germany, Ireland, Italy and the UK. However, the EU's the 'major events' legislation has been viewed less positively by some commercial broadcasters and sporting organisations. Specifically, pay-TV broadcasters argue that the 'major events' legislation gives an unfair commercial advantage to free-to-air broadcasters. For example, BSkyB has described the UK's list as 'a tax on sport to subsidise terrestrial broadcasters' (BSkyB, 2009, p.7). Indeed, sporting organisations argue that 'major events' legislation diminishes the value of their rights and therefore undermines their ability to invest in the future development of their sports. Unsurprisingly, given their previously mentioned hostility to the EBU, the IOC, Uefa and Fifa have each objected to the extent to which their events have been listed. For example, the IOC's head of television, Timo Lumme, has publicly argued for only a minimum amount of coverage, including all major finals and medal events to have to be guaranteed to be available on free-to-air television (Kelso, 2009). Similarly, in 2008, Uefa and Fifa both launched cases in the European Court of Justice in an attempt to reverse the Commission's approval of the UK's listing of the European Football Championships and the football World Cup respectively, as well as Belgium's listing of the football World Cup. Football's governing bodies argued that, rather than the whole events, only matches involving the nations concerned and perhaps the final and semi-finals, could be considered as events of 'major national importance' and thus warrant listing (EC, 2008). However, in February 2011, the Court rejected these complaints and ruled that the Commission 'did not err in finding that the United Kingdom's categorisation of all World Cup and Euro matches and Belgium's categorisation of all World Cup matches as 'events of major importance' for their societies are compatible with European Union law' (Cutler, 2011). The Court's ruling provides a welcome

restatement of the EU's commitment to preserve access to major events for free-to-air television viewers. To maximise the social and cultural value available from sports broadcasting, the Commission (and members states) should continue to resist the arguments of pay-TV broadcasters and sporting organisations for the watering down of the 'major events' legislation.

Section Three: Case Studies

i) The Regulation of Sports Rights in Greece

Competition Law and sports rights in Greece

The Greek competition law applies to sports and professional football in particular, as the latter and its marketing has become a business and is considered as an important economic activity. As far as the Greek Competition Law in the field of football rights is concerned, of major importance is Article 84 of the Greek Sports Act (N. 2725/1999), which provides for the following (see Iosifidis, 2009):

- Every team has the right to allow on payment: (a) the radio or TV transmission or retransmission, in whatever means, of sport events in which it is considered the home team; (b) the production, reproduction and transmission of highlights, in whatever means and to any station; and (c) the selling or hiring of the above to third parties.
- Every home team has the right to make deals with radio and TV stations for the exclusive transmission of the above listed in paragraph 1. In the case of a game involving the national team, it is the federation rather than the home team that owns the rights of the above. The visiting team should abide by all the above provisions.
- The radio or TV station that has acquired the live transmission or retransmission rights is required to make available to other broadcasting companies - which operate legally according to the provisions of Broadcasting Laws 2328/1995 and

2664/1998 - highlights of up to three minutes duration to be used in news bulletins.

- The home teams can, if they so wish, transfer all or some of the broadcasting rights to the football federation, but the duration of such agreements should not exceed four years.
- The broadcasting rights of the national team are allocated by the football federation to universally available terrestrial TV channels in the first instance. If no such channel agrees to cover the event, then public broadcaster *ERT* has an obligation to televise the football match by putting down to the federation 40 per cent of the income that derives from the advertisements during the match, the break and the first five minutes before and after the end of the match.
- Every year and more specifically during the first two weeks of August the General Secretary for the Press, the Ministry of Culture and the Minister of Sports jointly prepare a list of local, national and international sports events that are considered of major importance. These events should be broadcast by unencrypted channels with national coverage.
- The *Greek Football Federation (EPO)* should receive 5 per cent of the income listed in paragraphs 2, 3 & 4 above and the *Greek Union of Football Clubs (EPAE)* should be the recipient of 2 per cent, provided that the income involves its participating clubs.

The developments since the 1990s

In December 1999 in Greece, pay-TV company Net Med Hellas, a subsidiary of Multichoice, launched the digital satellite package *Nova* within the framework of Law 2644 from 1998. Nova's attraction was the acquisition of the rights to screen latest blockbusters, but mainly the live coverage of the football and basketball matches of the respective Greek leagues, plus European Champions League football. Nova Sports, a

premium TV service available in Greece, is available terrestrially and via satellite on Nova and consumers are required to buy a decoder as well as a monthly fee to receive the services.

Despite a relatively rich programming offer Nova has only managed to create a relatively small subscriber base (about 350,000 subscribers in 2010). This could be attributed to several reasons: a) the small size of the Greek market (around 3 million TV households); b) the cost of purchasing the necessary reception equipment (i.e. the set-top box and the satellite dish) as well as the monthly subscription fee at about 55 Euros; c) the limited production capacity by national audio-visual Greek producers which hampered the operators' ability to offer a great deal of high quality domestic programming; and d) the abundance of free-to-air terrestrial channels with national coverage, which provided a barrier to the pick-up of pay-TV services.

Considering all the above facts, it came as no surprise that Nova failed to attract many customers and thus generate profits especially at the beginning of its operation. The real shock however came when a competing digital platform announced its intention to enter an already saturated market in which viewers could choose between many different channels, terrestrial or satellite, without having to pay extra. In early 2001 *Alpha Digital Synthesis S.A. (ADS)* launched its own digital satellite TV service. When ADS entered the market it immediately acquired the rights to broadcast live the home football matches of ten out of 16 clubs competing in the Greek league for two years. The company's shareholders thought of putting down the astronomical, for the Greek reality at least, fee of 72m Euros to persuade Greek football clubs to migrate from Nova to ADS. As a comparison, in 1996 Nova had offered just 44m Euros to broadcast live the matches of all football clubs of the Greek league for five years. When the contract ended in 2001, the football clubs decided to sell their TV rights individually and not collectively as they did in the past. ADS saw the opportunity of acquiring those rights and build up a large subscriber base by stealing some of Nova's subscribers and by attracting new ones.

The problem was that the company overpaid for those rights, in the same way as ITV Digital did in Britain and Kirch Media did in Germany. The acquisition of exclusive rights to broadcast live football matches was not enough for a building up of a large subscriber base. Football might be a national obsession but there is a limit on how much football fans are prepared to pay to watch their favourite teams. ADS eventually collapsed in September 2002, leaving Nova as the undisputable winner and many football clubs facing financial ruin (Iosifidis, Steemers and Wheeler, 2005). This closure meant that Nova remained as a sole DTV platform in operation. The company renegotiated with the Greek football clubs which had signed contracts with ADS for televising their home matches and managed to sign up most of them.

Lessons to be learned: collective v. individual selling of football rights

A lesson can perhaps be drawn that football clubs, especially in small or immature pay-TV markets, should be cautious before deciding to sell their rights individually. Until relatively recently football broadcasting rights were owned and sold by the football league organisations on behalf of their members. Within the predominantly public service broadcasting systems of Europe this was deemed acceptable. However, the advent of competition among commercial free-to-air and pay-TV channels changed the sports rights market in two ways. First, it brought about higher prices for TV rights. Second, it led to appeals on behalf of clubs for greater freedom to negotiate individual deals in the sale of their games with TV channels. In fact, since end 1996 there has been a shift in TV rights ownership away from the leagues to the clubs. The traditional system of collectively owned and collectively sold rights has been under legal challenge across Europe. In the Netherlands in 1996 the Feyenoord football club took the Dutch league to court over the sale of TV rights. It basically wanted to be able to sell its own games. A year later in Spain Barcelona and Real Madrid challenged the right of the league to sell their games on a collective basis. Following similar challenges by other clubs in other countries sports rights are today being unbundled to the benefit of the big clubs.

Clubs selling their own rights may seem an attractive proposition, particularly for the big clubs, but entails serious dangers as the Greek case demonstrated. On the contrary, a

collective selling deal is safer and can benefit all clubs. In Britain, the 20 clubs competing in Premier League are committed to a collective selling deal. This, together with the strength of the British digital pay-TV market (more than 90% are digital TV households), has resulted in strong competition for sports rights (though Sky still dominates the sports rights market).

The aftermath of ADS's closure

The agreement between Nova and ADS means that only one DTV platform may survive in the market. Digital terrestrial TV only recently launched in the country, while digital cable TV is virtually non-existent as the current infrastructure is very limited. Still, it is doubtful whether Nova can flourish, even after remaining the sole player. Following the collapse of ADS, confidence both of investors and viewers in DTV is currently low. The DTV dream has suffered drawbacks for new entrepreneurs, who had invested a lot in a high-risk sector, for viewers, who had anticipated greater programming variety, and for football clubs alike, which had seen real chances to earn large sums of TV money.

However, renewed interest is evidenced by the fact that satellite TV provider Nova was recently acquired by the large Greek telecommunications firm Forthnet. The parent company has agreed to extend Greece's Super League exclusive broadcasting TV rights for two more years until 2014 for 90 million Euros, which means that Forthnet's subsidiary will pay a total of 176 million Euros for the 2010-14 TV rights. The Super League is currently perceived as being able to attract players of a slightly higher level than in the past, partly favoured by a lucrative tax-scheme, and partly by the growing reputation of Greek football, especially following the Euro 2004 national team triumph.

ii) The Regulation of Sports Rights in the United Kingdom

Protecting the 'crown jewels': UK listed events legislation

Dating back as far as the 1950s, legislation designed to ensure that certain sporting or national events remain accessible to all television viewers (listed events) has a long history in the UK (see Smith, 2011). However, it was not until the mid-1990s that the listed events issue moved to the centre of debates on UK television policy. This was

largely a result of the rise of the satellite pay-TV broadcaster, BSkyB, during the 1990s. Chiefly on the back of acquiring the exclusive rights to broadcast live English Premier League (PL) football, by the mid 1990s, BSkyB had developed into the UK's leading pay-TV broadcaster. By 1995, BSkyB had over 4 million subscribers and recorded annual profits of over £150 million (Horsman 1997, p.xiii). Furthermore, this subscriber base enabled BSkyB to acquire further expensive live rights to other key sports events, such as the Football League, England home football internationals and Ryder Cup golf. BSkyB had established a virtuous circle of more subscribers/more sports rights (Booth and Doyle, 1997, p.280).

Against this background, cross-party political support gathered for legislative measures to guarantee BSkyB's control of sports rights did not extend to the so-called 'crown jewels' of British sport. Specifically, the fear was that, whilst the existing legislation (1990 Broadcasting Act) prevented the pay-per-view broadcasting of listed events, it did not cover subscription broadcasting. This situation was remedied by the 1996 Broadcasting Act. Following on from this, in 1997, the newly elected Labour government established a committee, chaired by Lord Gordon of Strathblane, to review the scope of the existing list. At the time, the government made it clear that it expected additions, rather than reductions, would be made to the existing list (Lewis, 1997). However, any plans to extend the list were curtailed by the pleas of sports organisations, most notably the TCCB (cricket), not to deprive them of the additional income a deal with BSkyB could provide. The Gordon Group accepted the TCCB's argument and recommended the delisting of England cricket Test Matches. More generally, the Group's principal recommendation was for the establishment of a second tier of listed events (Category B), which would be allowed to be broadcast live on subscription channels provided that adequate arrangements were made for partial live coverage, delayed coverage, highlights and radio commentary on free-to-air terrestrial channels (Gordon, 1998, p.5).³ This recommendation was accepted by the UK government with only minor amendments.⁴

In 2009, the listed events policy was again subject to a wholesale review. On this occasion, the Department for Culture, Media and Sport (DCMS) appointed the former FA

executive director, David Davies, to lead the review and, despite hearing many of the same pleas from sports organisations as Lord Gordon a decade earlier, the Davies Review reached a very different conclusion (Davies, 2009). Most significantly, in November 2009, the Davies Review recommended the extension of the main (live coverage) list to include: cricket's (home) Ashes test matches; home and away qualification matches in the FIFA World Cup and UEFA European Championships; the Wimbledon tennis Championship (in its entirety); the Open Golf Championship; the Rugby Union World Cup tournament (in its entirety); and, Wales matches in the Six Nations Rugby Championship (in Wales) (Davies, 2009, para. 170). Predictably, the reaction from sports organisations was deeply hostile, with the ECB going so far as to claim that the (re)listing of Ashes cricket would mean that the 'vast majority' of thousands of cricket coaches recruited since it first signed an exclusive deal with BSkyB would lose their jobs (Gibson, 2011). No doubt partly as a result, there has been little evidence of government support for the recommendations made by the Davies Review. The Labour government that commissioned the report was unable, or unwilling, to find time to legislate on the issue in the run up to the May 2010 UK election and, subsequently, the Conservative/Liberal Democrat coalition has shown even less desire to introduce new legislation in this area. In July 2010, the DCMS formally announced that a decision on listed events had been deferred until 2013, following the completion of digital switchover at the end of 2012 (DCMS, 2010).

ii) Competition Policy and the Selling of Premier League Football Rights

Over the last couple of decades the main challenge to BSkyB's domination of the UK sports rights market has come from the UK (and EU (see above)) competition authorities - the OFT, the Monopolies and Mergers Commission (MMC). In separate, but not unrelated cases, each regulator examined the ownership and selling of television rights to PL football. First, in February 1996, the OFT referred the PL's (1992 and 1996) exclusive television deals with BSkyB (for live rights) and the BBC (for match highlights) to the Restrictive Practices Court (RPC). In a move which had the potential to revolutionise the selling of UK sports rights, the OFT claimed that the collective selling of all PL clubs television rights by the PL was anti-competitive and illegal. However, in

July 1999, the RPC ruled that the restriction imposed on clubs by the PL's television deals with BSkyB and the BBC was, 'not unreasonable... and not contrary to the public interest' (RPC, 1999, para. 418).

Against the background of the OFT case, in September 1998, BSkyB began negotiations to buy Manchester United plc, the parent company of Manchester United Football Club, which was by some distance the PL's most commercially successful club. BSkyB's bid was motivated by a desire to reduce the uncertainty surrounding the future selling of PL rights. The bid provoked enormous public controversy and a full MMC inquiry (Brown and Walsh, 1999). Four and a half months later, the MMC concluded that the proposed merger would 'operate against the public interest' (MMC, 1999, para. 1.15). This conclusion was based on the argument that the merger would unfairly 'enhance BSkyB's ability secure Premier League rights in future', which would, in turn, 'feed through into reduced competition in the wider pay TV market' (para. 1.11). Furthermore, the MMC's rejection of the merger was based on the general belief that the public interest would be best served by keeping the ownership of football clubs and broadcasters separate.

However, subsequent PL television rights deals have demonstrated not so much the power of the (UK and EU) competition authorities to increase competition in the UK sports rights market, but rather the commercial power of BSkyB. In June 2000, the rights for the first and most important package of 66 live PL games per season were won by BSkyB with a bid of £1.1bn. The cable broadcaster, NTL, won the pay-per view rights with a bid of around £328m, but was later forced to withdraw its bid because it could no longer afford to honour the terms of the deal (NTL, 2000). Even worse, the digital terrestrial pay-TV broadcaster ONdigital (later renamed ITV Digital), who had lost out in the bidding for both the live rights packages, responded by securing a three year deal worth £315m for the live rights to Football League (FL) matches (the competition below the PL) (ONdigital, 2000). ONdigital grossly overestimated the value of the FL rights and it was its inability to make the agreed payments to the FL that pushed the broadcaster into liquidation.

The next significant challenge to BSkyB's ownership of PL football rights came from the Irish pay-TV broadcaster, Setanta. Following the intervention of the European Commission (see above) the 2006 PL rights auction saw the end of BSkyB's monopoly of the live rights to PL football. BSkyB paid £1.3 billion for four of the rights packages (92 matches per season), nearly double the amount it had paid per game under the previous deal. The remaining two packages (46 matches per season) were sold to Setanta for £392m (Owen and Terazono, 2006). However, Setanta's success proved to be short lived. During the bidding for the next PL rights deal (seasons 2010-13) it became clear that Setanta was experiencing severe financial difficulties and shortly afterwards was forced into administration and ceased broadcasting to UK viewers. In contrast, by mid 2009, BSkyB had around 9.5m subscribers and could afford to offer to pay £1.62 billion for five of the six packages of live PL rights (Blitz and Fenton, 2009). Following another auction, the single package of PL rights that had been won by Setanta was awarded to ESPN, the US sports channel owned by the Disney Corporation. However, rather than act as a direct competitor to BSkyB, the initial indications are that for the foreseeable future at least ESPN plans to operate in partnership with BSkyB. Conveniently for BSkyB, the limited competition offered by ESPN may well prove adequate to undermine the case for further regulatory intervention in the UK sports rights market.

Conclusion

This paper has examined the regulation of television sports broadcasting in Europe. The paper began by considering the relationship between television and sport. Specifically, this section summarised two contrasting perspectives: first, television and sport as big business, illustrated most clearly by the ever increasing value attached to television sports rights by pay-TV broadcasters and the spiraling transfer fees and wage levels within Europe's leading football leagues; and secondly, the importance of sport as a social and cultural activity and the vital role played in this respect by free-to-air broadcasters. The remainder of the paper detailed how these different perspectives have been reflected in the regulation of sports broadcasting by the European Union (EU) and two national governments, namely Greece and the UK. In terms of the EU, the application of competition policy principles to sports broadcasting has clearly been tempered by an

appreciation of the special characteristics of sport and sports broadcasting. Furthermore, the EU's 'major events' legislation has provided an effective means to preserve access to certain high profile national or international events for free-to-air television viewers. Given the social and cultural value to be gained from free-to-air sports broadcasting, it is important that both the EU (and national governments) continue to resist the arguments of pay-TV broadcasters and sporting organisations for the watering down of the 'major events' legislation. Finally, the Greece and UK national case studies considered in the third section of the paper served to highlight some significant difference in their regulatory approaches, most notably in relation to the selling of football rights. Nevertheless, both examples demonstrated particularly well the overriding point made in this paper: the need for a regulatory approach to sports broadcasting that reflects the social and cultural value of sport, as well as its commercial value.

¹ Sport, as we know it today, made its appearance a little over a century ago, with the organisation of the first contemporary Olympic Games in Athens in 1896.

² Football is perceived the 'king' of sports in popularity terms, but also in terms of TV rights contracts and viewership. According a Eurodata Worldwide report (2002) football is the number one sport and represents more than 60 per cent of sports events appearing in the Top 10 audiences in 60 countries.

³ The Gordon Committee advocated the following lists:

Category A: the Olympic Games; the FIFA World Cup Finals (final, semi-finals and matches involving home nations); the FA Cup final; the Scottish FA Cup Final (listed only in Scotland); the Wimbledon Tennis Tournament Finals (finals weekend); the Grand National and the Derby. Category B: Fifa World Cup finals (all matches not included above); European Football Championships (all matches not included above); FIFA World Cup qualifying matches involving Home Nations; European football qualifying matches involving Home Nations; Rugby World Cup (final, semi-final and matches involving Home Nations); Five Nations Rugby Tournament; Cricket Test Matches involving England; the Cricket World Cup (the final, semi-final and matches involving home nations); the Wimbledon Tennis Tournament (all other play than finals weekend); the Commonwealth Games; the World Athletics Championship; the Ryder Cup and Open Golf Championships (Gordon, 1998, p.11)

⁴ Most notably, the DCMS amended the proposed A list to include all matches in the FIFA World and European football finals (rather than just the final, semi-finals and matches involving the home-nations); upgraded the Rugby World Cup final from the B list to the A list; and added the Rugby League Challenge Cup final to the A list, which had not been included on either of the lists proposed by the Gordon Group (DCMS, 1998).

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