

# Agenda

## Advancing economics in business

### Marketing of football broadcasting rights: is competition off-side?

**In June 2014 the world's eyes will be on the FIFA World Cup in Brazil, but competition authorities are paying close attention to the way football broadcast rights are being marketed. Dr Christian Huveneers, Oxera Associate and assessor at the Belgian Competition Authority, discusses the economics of sports broadcast rights, how competition concerns can arise, and how they can be dealt with**

Over the last 30 years, a 'sports industry' has developed in Europe, representing a significant part of the European economy (about 4% of Europe's GDP and 5.5% of its labour force).<sup>1</sup> Some recent developments raise questions about the compatibility of the conducts and rules emanating from sports-governing bodies with competition law. For example, clubs agree to lend players to each other as a talent-sharing mechanism; and sports federations make agreements to implement some types of labour market controls, on the grounds that they even out competition between clubs and provide financial stability for the clubs by restricting players' salaries. In 2010, the Union of European Football Associations (UEFA) released its Financial Fair Play Regulations, which aim to ensure that football clubs are financially viable and duly sanctioned, by preventing clubs that suffer from operating losses (possibly on the assumption that this represents overspending on players' salaries) from competing in European club competitions, which, in competition terms, amounts to a partial foreclosure.<sup>2</sup>

The most-debated type of decision by sports-governing bodies is the 'central' or 'joint selling' of football broadcasting rights, whereby all the clubs in a league agree to sell their media rights collectively through their league or federation, and allocate the proceeds of the sale between all clubs as a revenue-sharing mechanism.

Until recently, there seemed to be a widespread idea that, in the realm of sport, such decisions by governing bodies could not give rise to competition concerns—or, at least, that 'sport cartels' were different from other cartels. However, at the end of November 2013, the European Commission announced a probe into the sales of pay-TV rights.

In 2011, the Belgian Competition Authority also expressed its concerns with the modification of the relegation rules of the Belgian professional football league (Pro League), which

eventually forced the Pro League to reject the modifications. Specifically, relegation would have been based on the results over the previous three years, instead of the current year's results alone. The Pro League argued that the aim of the projected new rules was to give more certainty to those clubs that had proven their ability over a long period that they would stay in the top league.

The Authority's view was that the envisaged rules of relegation would decrease the risk of relegation for incumbents (i.e. the clubs that had remained in the top league for some time), and increase the risk of relegation for those clubs that had recently been promoted to the top league, and that this would reduce interbrand competition. It concluded that softening interbrand competition was more important than the Pro League's argument about financial certainty.

#### The market for sport as a multi-sided platform

The market players in the sports industry are the athletes, clubs, federations and leagues. They benefit from the attractiveness of broadcasting sports events for TV channels. They also benefit from the fact that broadcast sports events that attract large audiences are rewarding for advertisers, and clubs, federations and sports leagues have business relationships with these advertising firms in order to generate funding alongside their traditional source of income (the sale of stadium tickets). These sources of income include the sale of media rights, advertising on TV, 'in the stadium advertising', shirt advertising, sponsoring and merchandising (e.g. the sale of t-shirts).

In economic terms, there is a demand in the 'sports market' not only for stadium visits (the demand of

individual consumers), but also for TV coverage (the demand of TV operators) and advertising. There are also interrelationships among these demands: typically, the more people who watch the game in the stadium (strong demand for stadium visits), the more attractive it is for private firms to buy advertising space in the stadium and on the players' shirts; and the larger the TV audience, the more attractive it is for advertisers to buy advertising time on television. The sports market therefore brings together different groups of customers, and different avenues of income. In terms of modern economic theory, the sports market is thus a multi-sided or platform market—i.e. a market where platforms bring together different groups of customers.

TV viewers and advertisers are also brought together by the platform of pay-TV broadcasters—i.e. the pay-TV market is itself a two-sided market with relationships between the audience and revenue from advertisers: the larger the audience for a channel, the higher the advertising rates charged by the TV operator broadcasting that channel. Hence, the TV operator may have an incentive to lower the price on one side (the TV audience), in order to maximise the audience and, by so doing, be in a position to boost its revenues from advertising. The TV operator might even broadcast some (premium) sport content for free. Providing the product to consumers for free is not unusual on two-sided platforms, as exemplified by the free press or Google, whose business models are based on revenues from advertising.

## Why do competition authorities focus on the regulation of the sales of football media rights?

Competition authorities regulate the sale of football media rights because of their importance in both the 'football market' and the TV market. In the football market, sales of broadcasting rights have become the main source of revenue for sports organisations and clubs. In France, for example, the share of TV rights in football club budgets is reported to amount to 50–60%.<sup>3</sup>

In the European pay-TV market, acquiring exclusive broadcasting rights of major football events has been recognised as an essential element in entering and expanding in the market. As stated by the European Commission, for example:<sup>4</sup>

rights to recent premium films and most regular football events where national teams participate [...] constitute the essential factor (the 'drivers') that leads consumers to subscribe to a particular pay-TV channel / platform.

More generally, competition among pay-TV operators focuses on the differentiation of their programmes and on innovation; product differentiation in the media sector primarily means access to specific, premium content, such as Hollywood movies and major sports events,<sup>5</sup> while innovation in the media sector means exclusivity.

This explains why exclusivity is so important in the acquisition of broadcasting rights. In the absence of exclusivity, a second (or even third) competing TV operator could broadcast the same sports event simultaneously on another channel. If the TV audience is split between two (or three) channels, the value of the product would decline for each TV operator.

## What is special about the sports market, and the economics of football in particular, that makes broadcasting rights of sport events so valuable? What makes sports cartels different from other cartels?

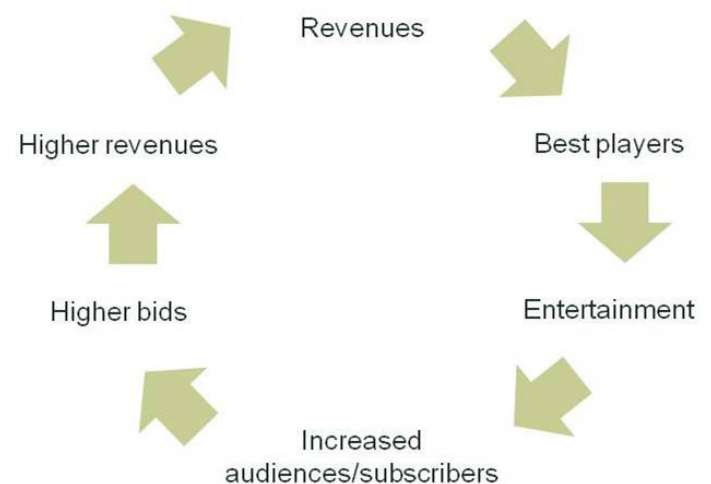
In order to be attractive, a game requires some suspense. It must therefore be equitable, implying some equality between the players—whereas competition in other markets generally aims at pushing rivals out of the market.

There is therefore something special about competition in the sports market: every club or team engaged in a race, such as a football championship, aims to reach the top of the game, but simultaneously benefits from their rivals' existence, and even from their rivals' economic viability and their success and performance. This is the reasoning behind UEFA's Financial Fair Play provisions in professional football. The suspense and attractiveness make the broadcasting rights of the sports events more valuable and allow the federations, leagues and clubs involved to increase their revenues through the sale of exclusive broadcasting rights.

This triggers a 'virtuous circle' for the clubs and their federations and leagues. Money brought to the clubs by deals on media rights allows them to hire the best players. By so doing, the clubs produce increased entertainment and quality, not only selling more merchandise and more tickets, but also raising audience and subscriber numbers for the benefit of TV broadcasters, which are incentivised to offer even higher prize money for the bidding of exclusive broadcasting rights, generating even more revenues for clubs, federations and leagues.

This can be represented by the following causality chain.

**Figure 1 Causality chain in the football market**



Source: Oxera.

**How can the public bodies in charge of regulation, especially competition authorities, organise a fair allocation among football clubs of the huge revenues generated by the sale of broadcasting rights? In other words, how can they bring about a level playing field for clubs? Some soccer championships seem to be persistently dominated by certain clubs, which become richer and more dominant every year that they play in the lucrative European Champions League or Europa League.**

The usual solution to this problem is the centralised marketing model, whereby the league centralises the sale of broadcasting rights on behalf of the clubs. This model is intended to allow the proceeds of the sale to be allocated more evenly between the 'rich and the famous' and the not-so-famous clubs than in the 'decentralised' model, where each club sells its own rights (and where only some clubs can sell their media rights at a high price, thereby widening the gap between the rich and poor clubs).

However, the European Commission considered that the centralised marketing model restricted competition because it involves price-fixing and strengthens the position of the strongest broadcasters, who are the only ones able to bid for all the rights. In terms of competition law, centralised selling breaches the cartel prohibition contained in paragraph 1 of Article 101 TFEU and in corresponding provisions of national competition law. However, paragraph 3 of Article 101 TFEU states that the prohibition of paragraph 1 may be declared inapplicable when the agreement between undertakings (here, the football clubs):

contributes to improving the production or distribution of goods or to technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not [...] afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question

Accordingly, the case law takes into consideration that the centralised marketing model allegedly brings about a more equal distribution between clubs of the proceeds of the joint selling of media rights, and eventually enhances the attractiveness of the sports events; and possibly also, that centralised marketing contributes to wider social objectives as some revenues from collective selling are redistributed to lower levels, including amateur and junior leagues and clubs.

In order to prevent joint selling from eliminating competition in the media market, the case law imposed three conditions:

1. the broadcasting rights have to be offered for sale in several balanced packages (condition relating to the content);
2. the rights have to be granted after an open, transparent and non-discriminatory bidding process (condition relating to the procedure);

3. the rights are granted for a period of no longer than three or four years (condition relating to the term).

Furthermore, the case law has grown more restrictive over time by occasionally imposing the 'no single buyer' rule, which precludes the sale to a single broadcaster of all the packages of exclusive rights to live matches.<sup>6</sup>

Does the centralised sale of broadcasting rights actually achieve the alleged benefits of redistribution of the proceeds from the sale to lower-level clubs (the 'competitive balance' argument), and thereby increased suspense in the football championships? Compare the outturn for the last 17 seasons of the German Bundesliga, which follows the model of centralised marketing, and the Spanish championship, where the decentralised marketing model applies. The competitive balance argument from the centralised marketing model would imply that the championship titles should have been distributed more equally over time in Germany than in Spain. In fact, the opposite has occurred: in Spain, the clubs with the strongest image, Barcelona and Real Madrid, have been sharing the titles with other clubs such as Valencia and La Coruna, whereas in Germany, Bayern Munich won ten of the last 17 championships.

There are also negative side-effects of joint selling: centralised marketing destroys some incentives to invest in the most expensive players because the resulting increase in the quality of the team, and thus in the value of the club's broadcasting rights, will also benefit the other clubs in the league through the redistribution of incomes from the selling of the rights. By contrast, in decentralised marketing there is more incentive to invest in the best players and in the quality of the team because almost all the positive effects of the investment will be enjoyed by the investing club.

**Is exclusivity in soccer broadcasting rights putting competition off-side? The risk for competition in the broadcasting market stems from the fact that exclusivity of all broadcasting rights of a national football league for the benefit of a strong market player would exclude other TV broadcasters or potential entrants who cannot afford to bid for all the rights.**

The centralised marketing of exclusive broadcasting rights threatens effective competition in the broadcast market, as exclusivity of all such rights may jeopardise the existence of those TV operators that cannot afford to bid for all the rights. (If the different packages of exclusive rights for live matches are granted to different distribution platforms, exclusivity is less of an issue, but consumers wanting to watch all live matches would have to subscribe to several platforms.) The case law developed by European competition authorities subjects the centralised selling of football media rights to strict conditions, even sometimes to the no-single-buyer rule.

A well-known example is the case of BSkyB which, having bought most of the broadcasting rights of the British Premier

League, came under scrutiny by the UK communications regulator, Ofcom. In view of the strong position of BSkyB in the pay-TV market, Ofcom required that BSkyB offer some packages of broadcasting rights and some sports channels to competing TV broadcasters. This is the 'Must-Offer' obligation, which amounts to considering football broadcasting rights as a 'must have', and perhaps even as an 'essential facility' in terms of competition law.<sup>7</sup>

The Must-Offer obligation has two objectives: to allow as many consumers as possible to access a great choice of quality content, and to avoid the foreclosing effects of exclusive broadcasting rights. Making access to most sought-after premium sports channels such as Sky Sports 1 and 2 possible for broadcasters on platforms other than BSkyB's is also instrumental to the objective of encouraging investment in the development of new distribution platforms, thereby promoting infrastructure-based competition. This is because regular football events are a main driver for consumers to subscribe to a particular platform, and the subscriber base is the most important intangible asset of a pay-TV operator and its platform.<sup>8</sup>

Specifically, Ofcom applied the 'wholesale model' of the Must-Offer by requiring that BSkyB's Sports 1 and 2 channels were made available to competing TV broadcasters on distribution platforms other than BSkyB's at some wholesale prices. The wholesale model of the Must-Offer nevertheless had to avoid two pitfalls: chilling innovation, and excessive wholesale prices.

The starting point of the first pitfall is that innovation in broadcasting amounts to the search for exclusive content, while the wholesale model of the Must-Offer follows a logic of non-exclusivity. There are two possible solutions to this issue. One, of a regulatory nature, is for the competition authority to follow the 'retail model' of the Must-Offer, where the TV operator owner of premium content must enable alternative operators to include its premium content in their portfolio, but the owner retains control over the relationship with subscribers to those alternative operators with regard to their channels. Thus, alternative operators would de facto act as agents for the content's owner: they would sell subscriptions to premium content on behalf of the owner, at retail prices fixed by the owner. The retail model allows the regulated owner to enjoy more benefits of its investment in premium content than the wholesale model does.

Another solution to the issue of the incentive to seek exclusivity is provided by economic analysis: for a profit-maximising owner of premium channels, it can be

profitable to resell the premium channel with its exclusive content voluntarily, for per-subscriber fees, to other distribution platforms. This is because, given the low marginal cost of supply, there is profit to be made from supplying attractive content to viewers on rival platforms.<sup>9</sup>

The second pitfall of the wholesale model of the Must-Offer is the setting of the wholesale prices: the owner of the premium channels could set the wholesale price for access to exclusive content at such a high level that the competing broadcasters and distribution platforms have to charge their own customers a high retail price in order to cover their costs. This would dampen price competition in the retail market and increase the equilibrium retail prices: the Must-Offer and the ensuing non-exclusivity are therefore not consumer-friendly. It appears that this is what happened in the UK when BSkyB engaged in the resale of Sky Sports 1 and 2 to other distribution platforms, on the basis of the number of viewers. The high access price charged by BSkyB eventually led to the intervention of Ofcom, which commissioned a study into BSkyB's profitability. The results of the study support the prediction of high wholesale prices.<sup>10</sup> This led Ofcom to set the prices at which Sky Sports 1 and 2 were required to be offered to retailers on platforms other than BSkyB's.<sup>11</sup>

## Conclusion

The way in which TV rights are granted influences the TV market. For sports media rights, exclusivity is the key word for broadcasters, but this may be detrimental to enabling competing TV broadcasters to stay in the market. Regulating the sale of football broadcasting rights is therefore a nut for competition authorities to crack.

The challenge facing the competition authorities is to reach several simultaneous objectives: allowing as many consumers as possible to access a great choice of quality content without having to subscribe to several platforms, and protecting effective competition in the broadcasting market—even encouraging infrastructure-based competition—without stifling innovation (i.e. the search for exclusive premium content).

One instrument that might enable this is the Must-Offer obligation, with some fine-tuning of access prices. Such a multi-objective stance is required from competition authorities not only in regulating the sale of sports broadcasting rights, but also for merger control and alleged abuse of dominance cases in this industry.

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- <sup>1</sup> Lillesveen, E.C. (2011), 'EU Competition Law and the Financial Fair Play Rules: the legal framework for UEFA's attempt to tackle unsustainable spending in European Football', presentation at the seminar 'Sports and Competition Law', Hungarian Competition Authority, Budapest, 7 September.
- <sup>2</sup> See 'Fair play and Respect', UEFA website, available at <http://www.uefa.com/news/newsid=2493.html>, accessed 19 December 2013.
- <sup>3</sup> Deloitte (2013), 'Annual Review of Football Finance 2013 – Highlights', June; FIFA (2012), 'Financial Report 2011'.
- <sup>4</sup> Commission Decision of 2 April 2003 in Case COMP/M. 2876, Newscorp/Telepiu.
- <sup>5</sup> See, for example, Geradin, D. (2005), 'Access to Content by new Media Platforms: A Review of the Competition Law Problem', *European Law Review*, **30**:1, pp. 68–94.
- <sup>6</sup> European Commission (2006), 'Decision relating to a proceeding pursuant to Article 81 of the EC Treaty (COMP/C–2/38.173 – Joint selling of media rights to the FA Premier League)', March.
- <sup>7</sup> Lefever, K. and Kerremans, R. (2011), 'Football on (Must-)Offer', *European Competition Law Review*, **12**, pp. 621–8.
- <sup>8</sup> Oxera (2009), 'BSkyB's profitability in the context of the Ofcom market investigation', prepared for Ofcom, June.
- <sup>9</sup> See Weeds, H. (2013), 'TV Wars: Exclusive Content and Platform Competition in Pay TV', University of Essex working paper, 12 December.
- <sup>10</sup> See Oxera (2009), 'BSkyB's profitability in the context of the Ofcom market investigation', prepared for Ofcom, June. Oxera found that returns for BSkyB wholesale activities appear higher than for BSkyB retail activities and, at the wholesale level, that returns for premium channels appear higher than for basic channels.
- <sup>11</sup> Ofcom (2010), 'Pay TV statement', non-confidential version, 31 March.