

Sports and Competition: Broadcasting Rights of Sports Events

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Ladies and gentlemen,

As a sports fan, it is a great pleasure for me to participate in the beautifully organised conference and to talk to you about European competition rules for the TV broadcasting of sport events. The Commission often finds itself in the position of referee and I would like to explain which competition rules we apply and what is considered to be fair play from a competition law perspective.

1. SPORTS, ECONOMICS AND COMPETITION LAW

Everybody will agree that today sport performs a very important social, integrating and cultural function. The Commission therefore fully subscribes to the Declaration on the specific character of sport adopted by the European Council in Nice.

However, we cannot close our eyes to another new phenomenon: sport has increasingly become big business. I am sure that you are well aware of the most striking examples: the increase in salaries and transfer fees of professional sportsmen and the rise in the value of TV rights.

Just a few figures: the value of TV rights of the Olympic Games jumped from 308 million Euro for the Los Angeles games in 1984 to 1.4 billion Euro for the Sydney Games in 2000. In 1992, broadcasters paid 434 million Euro for the TV rights of the English Premier League for five seasons. In 2000 they paid 2.6 billion Euro for three seasons.

As a result of the breathtaking economic growth in sports-related activities in Europe many football clubs have been transformed into companies managed like industrial organisations.

The Commission is of course aware that there is a difference between the way competition works in sport and in other economic sectors. In sport, the

aim of the game is not to eliminate the weaker competitors. There is interdependence between competing adversaries and a need to maintain a balance between them to preserve uncertainty as to results and a degree of equality in order to maintain the spectators' interest.

The Commission is not, in general, concerned with genuine 'sport rules'. Rules, without which a sport could not exist - that is, rules that are necessary for the organisation of a sport or its competitions - should not, in principle, be subject to the application of EC competition rules. Sport rules applied in an objective, transparent and non-discriminatory manner do not constitute restrictions of competition.

However, the nature and impact of sport rules are subject to constant and rapid change. Over time, some sport rules may have significant economic consequences as a result of the development of the economic aspects associated with sport. The Commission therefore has to decide on a case-by-case basis what must be regarded as a rule inherent to sport.

2. SPORTS BROADCASTING RIGHTS ARE A KEY ISSUE FOR THE MEDIA MARKETS

TV rights of sports events play an important role in the development of the TV markets – markets which experienced an unprecedented growth. This growth resulted principally from a liberalisation of the access for private operators to create TV channels – a challenge that many incumbent telecommunication operators took up.

Also, the technological development of TV has contributed to the growth. We have seen the appearance of cable and satellite distribution of TV signals. We experience digitalisation, which opens up new possibilities to create pay-TV channels. The Internet is likely to enhance this development in the future.

This new multitude of TV operators all compete for arguments to persuade viewers to pay directly for TV services, which the viewer used to be getting for “free” by simply paying an annual fee. Experience shows that sport and first run (Hollywood) feature films are the most efficient type of content to persuade viewers to pay for the new TV services which have been established at a significant cost.

In the near future, they may also convince the consumer to subscribe to new services which, for example will be made available on the basis of broadband technology such as UMTS or broadband internet streaming. Premium content has proven to be a powerful driver for the roll-out of new technologies and the development of new markets.

Consequently, TV rights for very popular sports such as football have become subject of highly competitive bidding wars between TV channels resulting in unprecedented price increases to the benefit of sport federations and clubs.

Sports coverage on television has certain particular characteristics:

- First, sport is an ephemeral product. Viewers are mainly interested in live broadcasts.
- Next, substitution is difficult. A viewer who wants to see a given event is unlikely to be satisfied with coverage of another event.
- Finally, the concentration of rights in the hands of sports federations reduces the number of rights available. Moreover, availability of rights is reduced still further by an increasing number of TV rights contracts being concluded on an exclusive basis for a long duration, or covering a large number of events. This strengthens the market position of the most

important broadcasters because they are the only operators who are able to bid for all the TV rights sold in large packages.

Here, one can find all the ingredients typical for anti-competitive effects impeding the access to the TV markets and the development of new media markets. The Commission is also concerned about a possible negative impact on the structure of the TV market towards an even higher concentration. As you know, we aim at enhancing consumer choice.

Currently, the Commission is concentrating efforts on two particular issues: **joint selling and buying** of TV rights and the **exclusivity** granted in respect of those rights.

3. HORIZONTAL RESTRICTIONS CAUSED BY JOINT SELLING

This issue of the **joint selling** of TV rights to sport events is raised in several pending cases. Joint selling of TV rights describes a situation where sport clubs assign their rights to their associations, which sell the rights on behalf of the clubs.

Normally, the associations bundle all the rights in large exclusive packages and sell them to a single broadcaster in each country. The investigation concerning the UEFA Champions League, the German football association and the English Premier League will provide the Commission with an opportunity to set out case law on this issue.

Joint selling agreements prevent clubs from competing in the sale of their rights. As a consequence, it may limit competition between broadcasters and thereby consumer choice.

The effect on competition has to be evaluated in its economic and legal context, taking into account, for example, the feasibility of participants selling rights individually.

When joint selling agreements fall under the prohibition of Article 81(1), we have to see whether they can be exempted under Article 81(3). In this context, specific factors such as the possible link between the joint selling of rights and financial solidarity between clubs or between professional and amateur sport could be taken into consideration with all other relevant factors, as long as they are quantifiable and objectively defined.

However, the possibility for less restrictive models for joint selling also has to be examined. I recall that some national competition authorities have already reached their own conclusions on the question of joint selling of football rights. Several of these authorities encourage the individual sale of such rights. This is the case in the Netherlands in Italy and in the United Kingdom.

4. VERTICAL RESTRICTIONS CAUSED BY EXCLUSIVITY

Joint selling can additionally facilitate practices, such as the granting of a long duration of exclusivity and the preferential treatment of one set of rights at the expense of another. We have for example seen a reluctance of sports associations in granting Internet and UMTS-rights because broadcasters fear that the Internet will undermine the value of their TV rights. We have just started an investigation into the policy of the International Olympic Committee regarding the non-exploitation of new media rights.

The granting of broadcasting rights for sport events on an exclusive basis is undoubtedly an established commercial practice. It enhances the value of TV rights for sport events, particularly as interest in, and therefore the value of, sport events is ephemeral. We consider that exclusive contracts for a single sport event or for one season in a given championship would not normally pose any competition problem. However, exclusivity of a longer

duration and for a wide range of rights can restrict competition, as it is likely to lead to market foreclosure. This is particularly the case if the broadcaster is in a dominant position or if the market is oligopolistic in nature.

Such cases are characterised by a combination of joint selling with exclusivity. This aggravates the competition problems because it generally results in only one broadcaster getting all the (valuable) TV-rights to the exclusion of all other broadcasters. In such situations often not all rights are exploited. This reduces output by limiting the availability of TV rights.

Let me illustrate with an example from England: Nearly 400 games are played each season in the English Premier League. Only ca. 100 games are broadcast live. The remaining games are only shown as highlights - if at all. The example clearly shows that a limitation of output is to the detriment of the consumer. It immediately limits his or her choice in sport-related services and broadcasts.

Sometimes these exclusivity arrangements contain provisions about an automatic renewal. The Commission considers this to be anti-competitive. We have for example told the Premier League and BSkyB that BSkyB's right to match the financial terms of the highest bid from any third party, when renewing the agreement was not acceptable.

In the Sport 7 case such a preferential renewal clause was also held to be anti-competitive. The Commission considered that the granting by the Dutch football association of an exclusive licence to a new broadcaster, Sport 7, for the duration of seven years was caught by article 81(1) and could not be exempted as it eliminated competition for the rights for too long a period. In addition, the re-negotiation process foreseen at the end of the contract gave Sport 7 an advantage because it had the right to match the

bid of its competitors. This kind of provisions – so called “English clauses” - distorts competition and makes a reallocation of the rights at the expiry of the exclusive contract nearly impossible.

This does not mean that contracts of a longer duration are never justified. Such is the case when a new operator requires such a contract to ensure successful entry into the television market. It is also the case when an operator wishes to develop a new technology, which requires heavy investments.

When exclusivity is likely to lead to the foreclosure of access to the TV markets, remedies can be envisaged to limit the damage caused to third parties' access to these markets. A sub-licensing system may be a possible remedy. However, the mere establishment of a sub-licensing system is not in itself a satisfactory solution. The terms must be fair, reasonable and non-discriminatory so that the sub-licensees get a real chance to compete on the market.

5. DIFFERENT ASSESSMENT OF JOINT BUYING

I now come to another economic practice: the joint buying arrangements. They will normally not pose any competition problems when a group of operators join forces, which individually would not have the resources to acquire the rights. In such a situation, collective purchasing could even prove pro-competitive. However, the stronger a market position the joint buying group occupies, the more appreciable any possible anti-competitive effect. The duration of the exclusivity and the scope of the acquired rights must then be examined very closely.

An example of a joint buying arrangement raising competition concerns, which the Commission is investigating, relates to Audiovisual Sport here in Spain. It is a joint venture between Telefónica and Sogecable, which

brought together the two most powerful competitors for the acquisition of football TV rights in Spain. They have acquired all TV rights of football, which are of interest in Spain.

Our *interim* intervention in 2000 obliged the parties to **sub-license** the pay-TV rights to all interested broadcasters. Initially a significant reduction of the consumer prices for pay-per-view was recorded following the Commission's intervention.

However, the main case is still pending since there are still some important competition concerns to be resolved. Therefore, I cannot at this stage give an indication of the possible outcome.

6. CONCLUSION

The changes **of the sports world** and particularly its commercialisation raise many new issues for the application of European competition law. The Commission tries to clarify the scope of application of the EC competition rules in the context of sport, while fully taking into account the particular character of the sector.

Our objective is to maintain open and competitive TV markets and a level playing field for all parties and to remove obstacles for new markets to develop. This will be to the benefit of the consumer by increasing his or her choice.

Ladies and gentlemen, I hope you can sympathise with and support this approach.