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PROFESSIONAL FOOTBALL: MARKET OR SOCIETY?

**Presentation
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The Commission has adopted three decisions on media rights for football matches (*UEFA, FA Premier League, Bundesliga*). They were intended to be precedents giving guidance to national competition authorities and interested parties, and they were carefully negotiated with the parties.

There are also some national decisions which are relevant. But it should not be assumed that all national markets have the same characteristics.

The Commission has several concerns about competition:

- That football clubs will join together and raise prices to broadcasters (increased prices).
- That all the valuable rights would be bought by a single television or media company, shutting other companies out of the market (foreclosure).
- That rights to broadcast matches would be sold in such a way that only important matches were broadcast. Less important games might not be broadcast at all, even by local or regional broadcasters, or might not be available on line, or on mobile phones. Highlights of matches might be available only too late, or for very brief periods (output restrictions).
- Not to allow the development of new media to be delayed or obstructed (new media concerns).

The Commission has to take into account the interests of football clubs, of pay-television, advertising-financed and public broadcasters and media companies, and of companies that advertise at football matches or advertise on television showing football programmes. But it can do this only from a Community competition law perspective. The Commission is not a regulator.

National authorities have the right to specify a limited number of events which must be available for broadcasting free-to-air. This of course affects competition on the broadcasting market. National media regulatory authorities may also have relevant powers over broadcasters and telecommunications companies.

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Commission's policy

First, broadly, the Commission has allowed clubs to sell broadcasting rights jointly, in spite of the risk that they will raise prices excessively. (The UK Office of Fair Trading in the *Premier League* case, and in the *Eredivisie* case the Dutch competition authority, took the opposite view). The Commission has taken into consideration:

- The buying power of the broadcasters (the Commission has also acted to limit joint buying by major public broadcasters in the European Broadcasting Union, not very successfully because the Court of First Instance considered that the broadcasters' commitments to sub-licence were not sufficient).
- The desirability of selling the rights to all the matches in a competition as a package with its own prestige, reputation or excitement. The television rights to a competition are more valuable than the rights to unrelated individual matches.
- The risk that only already wealthy clubs would be able to sell broadcasting rights, and the advantages for small clubs of partial pooling of royalties.
- The complications and transaction costs if broadcasters had to negotiate separately with each of the clubs.

Secondly, the Commission has intervened to limit the extent to which all the valuable rights to a given competition can be bought by a single buyer. It has done this by insisting that the rights should be divided up in various ways and sold separately, and that the company which buys the most valuable rights should not be allowed to buy all the others as well. Also, contracts were limited to a maximum of three years. Bidding was made more open and fairer as between buyers of different size and financial strength. Media rights have been split into different packages of rights including audio, internet, 3G mobile phone systems and physical media rights. Rights not otherwise used can be kept and sold by the clubs.

The best way for clubs to divide up the rights (to obtain the maximum revenue and ensure the maximum use) is a complex and sophisticated exercise. Football clubs have an interest in maintaining popular interest in the game, and therefore will want to prevent *e.g.*, the best matches being shown only on pay-per-view television.

Thirdly, the Commission, by insisting that broadcasting rights should be divided and sold separately to different buyers, has also tried to prevent output restrictions. This is intended to make sure that all broadcasting rights that have some value are bought by someone, used, and not suppressed. One effect is to benefit small clubs and local and regional broadcasters. Another effect is to ensure as far as possible that media rights are made available on new technology, *e.g.*, mobile phones.

Comments

Because the national markets are not all the same, it would be natural for some national competition authorities to be stricter, or more lenient, than the Commission. One should not necessarily expect uniform results everywhere.

The Commission is concerned only with the economic and financial aspects of professional football. Since the amounts of money involved are very large, this is fully justified. There are no valid reasons for saying that football-related media contracts should be exempt from European competition law.

The most controversial aspect, from the viewpoint of competition law, of the Commission's policy is to allow joint selling of media rights by the football clubs, since that allows them to raise the prices.