

COMPETITION LAW ISSUES FOR NEW MEDIA SPORTS RIGHTS IN EUROPE

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Context

TV rights of sports events play an important role in the development of the new broadcasting markets, which experienced recently an unprecedented growth (Andreff, 1987). This growth resulted principally from a liberalisation of the access for private operators to create TV channels that many incumbent telecommunication operators took up (Geradin, 2005). Also, the technological development of TV has contributed to the growth and emergence of a regulation from the Commission; we have seen the appearance of new entrants, which are now opening up new possibilities to create electronic pay services (Schaub, 2002). Following recent innovation, 3G mobile services seemed until recently more like marketing services but are now experiencing new development. They will be more and more regarded by cost-conscious consumers with great caution in the near future. Mobile Technologies now represent middle terms opportunities for Sport and addresses the key questions of what regulatory framework will be drawn in the near future. From a regulation point of view, the European Commission has decided to launch a broad investigation regarding the sale of sports rights to Internet companies and to providers of the third generation (3G) of mobile phone services. Sports rights and notably football rights are powerful drivers for the sale of pay-TV subscriptions that have the potential of enhancing new markets (Abdourazakou, 2004). Examining the realities and potential of the value chain for sports rights holders and network operators, this paper analyses the emergence of a regulation of new media sports rights in Europe. Main issue is that sports rights owners are usually interested in selling exclusive sports rights in order to get the best price on the market. As the example of pay TV has shown in the past, this strategy lead both to a foreclosure of the broadcasting markets and affects consumers' welfare.

Methods

To assess these questions, the author relies on a qualitative methodology integrating different experts shown in the following table. The different experts have answered a semi directive interview of fifteen questions concerning the regulation for new media sports rights in Europe.

Table 1: Interviews with European experts

source: Yann 2004

<i>Nom de l'organisation</i>	<i>Experts</i>	<i>Fonction</i>
IOC, BBC.	A	Director of the Olympic host broadcaster
France Télévision.	B	Sport journalist
EBU	C	Sports rights director
	D	Sports rights marketing
	E	Director of sports information for radios
Freshfields Brukhaus Deringer,	F	Lawyer
Ministre de la Jeunesse et des Sports.	G	Minister
Tour de France	H	Sports rights director
Roland Garros.	I	Sports rights director
National Basketball League	J	Président
European Commission, Media division	K	Administrator
European Commission, Culture division	L	Administrator
French Audiovisual Council	M	President
	N	Administrator of rights department

Discussion and implications

Over the last few years, the Commission has adopted several important decisions over access to premium content.

Table 2: New media rights in Europe: the TV rights' model, or a new one?

<i>Competition issues</i>	<i>TV rights</i>	<i>New media rights</i>
Joint selling of rights to content	Foreclosure effects ¹	Foreclosure effects
Single bundle to pay TV and Free TV	Restriction of competition at the upstream level	-
Link up of upstream content and downstream distribution platforms	Vertical effects	Vertical effects
Access to premium content	Distortion of competition	Viable economic model and availability of rights for distribution of content
<i>Regulatory approach</i>	<i>TV rights</i>	<i>New media rights</i>
Length of exclusivity	Period of three years	Possibility for football clubs to sell internet rights on non exclusive basis ²
Award of rights contracts	Equal opportunity of bidding (Free TV and Pay TV)	The League or clubs can choose the platforms (internet providers or themselves)
Unbundling of rights	Several packages	Embargo time for new media providers ³

The Commission is now tackling the new media rights with the voluntary to launch a new framework concerning the sale of new media sports rights. Access to premium content is of critical importance for new media platforms as such content is necessary to attract viewers and gain market shares. So far, it has been difficult for these platforms to gain access to premium movies, sports, or even TV channels. Access foreclosure to premium content prevents new entry from taking place in the new media rights markets which is not good for consumers' welfare (Cremer, 2000). This difficulty for new media platforms of gaining access to premium content is in great part due to the existence of long-term exclusive contracts between sports rights' owners and pay-TV operators. In some recent decisions, such as *UEFA* and *Bundesliga*, the Commission took measures to reduce the length and the scope of the exclusivity in order to prevent the monopolization of premium content rights by some pay-TV operators. These decisions also contain specific measures to facilitate the acquisition of premium content rights by new media platforms.

References

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¹ Commission Decision of 23rd July 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/C.2-37.398), OJ L 291 of 8 November 2003, pp.25- 55 at § 83

² The re-notified Agreement provides that "(both) UEFA (...) and the clubs (...) will have a right to provide audio/video content via UMTS services available 5 minutes after the action has taken place (technical transformation delay)"

³ the embargo had been explicitly criticized by Internet service providers, which submitted observations on the UEFA re-notified agreement.