

## Football Trials

David Harbord and Stefan Szymanski

26 October 2003

David Harbord is Director of Market Analysis Ltd. Stefan Szymanski is Professor of Economics at The Business School, Imperial College London. This article will appear in the *European Competition Law Review* in February 2004.

### Introduction

Last January, to the evident relief of the Football Association, BSkyB affirmed that broadcasting live Premier League football matches was of fundamental importance to its business, and suggested it would still be willing to pay up to £1 billion to retain exclusive access to the rights it has held since 1992. This was good news to the FAPL, given forecasts that lack of competition in future rights auctions - due to the collapse of ITV Digital and the financial misfortunes of Telewest and NTL - would result in the rights being sold for a much lower value.<sup>1</sup> By some miraculous coincidence, when the results of the FAPL's latest rights auctions were announced in August, £1 billion turned out to be exactly what BSkyB will be paying, give or take £20 million or so.

A key attribute of a well-designed, competitive auction is that it elicits bidders' true willingness to pay for the article being sold, and the FAPL's recent auctions certainly seem to have achieved this, at least in BSkyB's case. It is unusual, however, for a bidder as savvy as BSkyB to announce their willingness to pay to the seller months in advance, and equally unusual for an auction to achieve this result in the absence of any real competition. Yet this is what has happened in the recent Premier League rights auctions.

To recap briefly, under pressure from the European Commission, in June the FAPL changed the format of its auction for the broadcasting rights to live Premier League games by splitting the TV rights into three packages: a Gold and a Silver package with 38 games each, and a Bronze package of 62

less valuable games.<sup>2</sup> Further pressure from the Commission in July resulted in a split of the Bronze package into two equal-sized packages. The purpose of the Commission was to ensure that there would be genuine competition for the packages, and that not all of the live rights would end up under the control of single pay-TV broadcaster (i.e. BSkyB). But all of this was to no avail. On 8 August it was announced that BSkyB had again secured all of the live rights for a price of £1.024 billion, compared with the £1.2 billion it paid for 66 live games per season under the previous deal. And there had reportedly been *no competition at all* for the Gold and Silver packages, and very little for the Bronze packages. Faced with BSkyB's pre-announced £1 billion offer, other potential bidders evidently thought the game not worth the candle, and stayed away.

BSkyB has now won the exclusive rights to broadcast live Premier League football in four consecutive auctions, beginning in 1992,<sup>3</sup> and the European Commission's interventions have so far had no effect. In September, Competition Commissioner Mario Monti declared that the deals were bad for competition and bad for consumers and, if anything, strengthened BSkyB's monopoly position in the broadcasting of premium sports content in Britain.<sup>4</sup> So what, if anything, should the Brussels competition authority do now?

---

1 All three companies were competing bidders in the FAPL's previous rights auctions.

---

2 The Gold package consisted of 38 games to be played on Sunday at 4pm, the Silver package of 38 Monday night games, and the Bronze package of 62 games on Saturday at kick-off times of 1pm and 5.15pm.

3 See K. Binmore and D. Harbord "Toeholds, Takeovers and Football," *European Competition Law Review*, 21: 2, February 2000, for a discussion of previous auctions.

4 An issue which has already been at the heart of numerous UK competition authority investigations. For example, the Monopolies and Mergers Commission's investigation into BSkyB's takeover bid for Manchester United, 1998/9, the Office of Fair Trading's 1999 Restrictive Trade Practices Court case against the Premier League, and the Office of Fair Trading's Competition Act investigation into BSkyB, 2001/2002.

## Objections Unheeded

In December 2002, the Commission's Competition Directorate issued a 'Statement of Objections' concerning the Premier League's sale of live football broadcasting rights, particularly the FAPL's joint selling arrangements, which the Commission argued are tantamount to price-fixing.<sup>5</sup> The Commission was concerned that these selling arrangements result in less than 30% of Premier League matches being made available for live broadcast and, when coupled with exclusivity, ensure that only big media groups can afford to acquire the bundle of rights. According to the Commission, the FAPL selling arrangements lead to higher prices, shut out competitors from key content and potentially harm football fans since they are offered less football on TV, or no coverage at all if they do not subscribe to pay TV.<sup>6</sup>

It is hard to see how the Premier League's recent auctions will have assuaged the Commission's concerns, even though the number of matches sold has increased from 28% to 36%. Nearly two thirds of the matches played will still not be available live to TV viewers.<sup>7</sup> In 2001 the Commission had raised similar objections to UEFA's selling arrangements for the Champions League competition and, according to some press commentators, recommended the solution agreed with UEFA as a template for the Premier League's recent auction. Under the UEFA deal, the Champions League broadcasting rights are also split into packages, but in a way that prevents any single broadcaster from

acquiring all of the packages,<sup>8</sup> and individual clubs can auction off any unsold rights, thus avoiding the recent FAPL debacle.

In a bizarre twist, in August the BBC came out in defence of the FAPL (and BSkyB) and suggested that the Commission's continued threats to intervene in the auction showed that it did not understand the British television market.<sup>9</sup> But this is probably the opposite of the truth. The Commission appears to understand all too well the monopolised nature of pay-TV broadcasting in Britain, made possible by the rights-selling arrangements in question. The problem for the Commission is that a "UEFA-style" approach is unlikely to work well in the current UK environment. There are now simply too few bidders left in the game who are willing to bid for rights. Forcing the FAPL to sell its broadcasting rights to multiple broadcasting companies is still a possibility, but it will likely come at the expense of a significant reduction in the amount paid for the rights and hence football clubs' revenues. This is an unpalatable alternative for the clubs which they will resist fiercely. On the other hand, allowing the cosy bilateral monopoly between the FAPL and BSkyB to persist is clearly not in consumers' interests.

Is there another way? We explore below two alternative remedies aimed at stimulating competition in broadcasting markets and in the supply of rights, and which may work better than anything so far proposed by the Commission.

## The Wrong Type of Exclusivity?

The Commission's objections to date have focused on the sale of *all* of the Premier League's (or UEFA's) live broadcasting rights *exclusively* to a single broadcaster. Absent this form of monopolisation, it has otherwise declared itself content that any rights sold should be exploited *exclusively by the*

5 See the Commission's Press Release, 20 December 2002, "Commission opens proceedings into joint selling of media rights to the English Premier League."

6 The Commission also noted that lack of competition may limit the packages of rights available for new media technologies, such as the internet and 3G mobile phones. In October 2003, BSkyB was awarded the right to broadcast live FAPL matches over the internet. Vodafone and 3 obtained the rights to show video highlights over 3G mobile phones.

7 In October, BSkyB was awarded the rights to broadcast the 242 games not covered by its £1.024 billion deal on a delayed basis, for a reported £60 million.

8 Typically by splitting the 'free-to-air' and pay-TV rights into separate packages.

9 The Guardian, 25 August 2003, "BBC Boss Defends Sky Football Deal."

*broadcaster that purchases them.*<sup>10</sup> That is, it is not that the broadcasting rights are exclusive to the broadcaster which acquires them which concerns the Commission, rather that a single broadcaster should end up as the owner of all of the rights available.

The FAPL can now argue, with some justification, that they have made packages of rights available to multiple TV companies, and BSkyB simply had the best bids. So long as the auction was conducted fairly, the Commission should now be satisfied. But does splitting the *exclusive rights* into multiple packages really achieve anything, even if more than one company comes away with a package of rights? Some recent economic analysis suggests that the answer to this question may be no, and it is instructive to understand why this is the case. This in turn requires some prior understanding of the way in which exclusive broadcasting rights are already being exploited by BSkyB in the British pay-TV market.

### Exploiting Exclusive Rights

Put simply, pay-TV companies in Britain compete by acquiring the rights to broadcast programming and selling subscriptions to viewers. There are two types of pay-TV network currently operating in the UK market: the satellite network run by BSkyB with more than 50% of subscribers, and the local cable networks largely owned by Telewest and NTL. Each company offers various packages of “basic” programming, one of which must be taken by all subscribers, and so-called “premium programming” - such as live Premier League football matches and Hollywood films - which can be purchased for an additional monthly fee.

Access to premium programming is widely viewed

as being crucial for attracting customers.<sup>11</sup> As the first entrant in the pay-TV market, BSkyB early on acquired the exclusive broadcasting rights to practically all of the Hollywood studios’ first-run films, and to the majority of the major sports events available to pay-TV. BSkyB purchases these rights under exclusive contracts with upstream rights sellers and then resells the programming to its downstream competitors (i.e. the cable companies) for variable, or per-subscriber, fees.

For example, the FAPL has sold the exclusive rights to broadcast live football matches to UK pay-TV companies in periodic auctions since 1992. BSkyB has so far always acquired these rights, and has resold the programming to its pay-TV competitors for a per-subscriber monthly fee. The implications of these contractual arrangements for competition and consumer welfare in the pay-TV market are key to understanding the issues in the Commission’s current proceedings against the FAPL.

In a recent article, Harbord and Ottaviani argued that competition to supply premium programming to consumers in the pay-TV market will be *ineffective* when resale contracts specify per-subscriber, rather than lump-sum, fees.<sup>12</sup> Resale of premium programming, such as Premier League football matches, for per-subscriber fees allows the firm which acquires the exclusive rights to prevent the dissipation of monopoly profits by increasing the marginal cost of its competitor, i.e. by *raising rivals’ costs*, while simultaneously increasing the *opportunity cost* of serving its own customers. This increased opportunity cost has exactly the same effect as an increase in the reselling firm’s marginal costs, and gives both firms an incentive to increase their retail prices to monopolistic levels. The resale price thus acts as an effective mechanism for relax-

10 See Torben Toft “TV Rights of Sports Events,” Brussels, 15 January 2003 and Miguel Mendes Pereira “Scope and Duration of Media Rights Agreements: Balancing Contractual Rights and Competition Law Concerns,” Brussels, 10 October 2003.

11 See Monopolies and Mergers Commission “BSkyB and Manchester United: Report on Proposed Merger,” HMSO, London, 1999 for evidence. Also M. Armstrong “Competition in the Pay-TV Market,” *Journal of the Japanese and International Economies*, 13, 257-280, 1999.

12 D. Harbord and M. Ottaviani “Contracts and Competition in the Pay-TV Market,” London Business School Discussion Paper in Economics, July 2001. See also D. Harbord and M. Ottaviani “Anticompetitive Contracts in the UK Pay-TV Market,” *European Competition Law Review*, March 2002.

ing downstream price competition and extracting consumer surplus from the premium product, depriving consumers of the benefits of competition.<sup>13</sup>

If instead the premium programming were sold by downstream firms who faced “uninflated” marginal costs, i.e. if each firm acquired the *nonexclusive* rights for a lump-sum fee from the rights seller, fierce downstream competition to sell the programming to consumers would result in these profits being competed away, and the benefits captured by consumers.

These observations suggest that one remedy for the competition problems identified by the Commission would be to regulate the way in which FAPL rights are sold and resold. Imposing a ban on the sale of exclusive rights would ensure that every pay-TV broadcaster had access to the programming on the same terms as its competitors, and consumers would benefit from competition to ‘sell’ the programming in the downstream TV market.<sup>14</sup>

On the other hand, splitting the exclusive rights between multiple broadcasters, as in the “UEFA-style” approach, simply creates multiple downstream monopolies in the place of one, and has no effect on pricing, profits or consumer welfare in the Harbord and Ottaviani analysis. From the point of view of consumers it does not differ from the case in which the exclusive rights are all sold to a single firm.

Another conclusion of Harbord and Ottaviani is that an upstream rights seller, such as the FAPL, will usually prefer to sell broadcasting rights exclu-

sively to downstream firms, rather than nonexclusively to all firms. Exclusive sale - followed by resale - maximises the monopoly rents available for distribution between the upstream seller and the downstream retailer which acquires the rights, while nonexclusive sale typically extracts less surplus for both upstream and downstream firms. Hence a move to ban the sale of exclusive rights by the Commission would likely be resisted by both the FAPL and downstream pay-TV companies.

## Inefficient Cartels

While a ban on the sale of exclusive rights would increase competition between broadcasters for those rights placed on the market, thus benefiting consumers who would pay lower prices to view live football matches, it would not necessarily address the restriction of choice created by collective selling. As noted by the Commission, the FAPL acts as a tight cartel which sells the rights to the matches played by all of the Premier League clubs and shares the revenues between them according to a fixed formula. Individual clubs cannot sell the rights to the matches they play on their own behalf, even if the matches will not otherwise be broadcast.

The Commission’s objection to these collective selling arrangements is that they limit media coverage of soccer events by restricting the number of live games available to broadcasters to a small percentage of the matches actually played. Neither a UEFA-type solution, nor a ban on exclusive selling, would necessarily ensure that more live games are made available for broadcast by TV companies. A ban on collective selling may be the only sure way to achieve this.

The FAPL has long argued, in defence of its output restriction, that any increase in revenues from selling additional rights would be offset by loss of attendance at the matches (i.e. in gate receipts). This issue has been the subject of a study by Szymanski et al. who provide econometric evidence suggesting that the argument is specious.<sup>15</sup> What

13 Similar anticompetitive effects have been shown to hold in some closely related economic models, such as in the literature on ‘raising rivals’ costs’ and in the patent licensing literature. See, for example, S. Salop and D. Scheffman “Cost-Raising Strategies,” *Journal of Industrial Economics*, 41(3), 1987 and C. Shapiro “Patent Licensing and R&D Rivalry,” *American Economic Review Papers and Proceedings*, 75(2), 1995.

14 The nonexclusive sale of rights is not as novel as it may appear, and has occurred already in the sale of FAPL pay-per-view rights. Following the FAPL’s auctions in June 2000, NTL returned the exclusive pay-per-view rights it had acquired for a bid of £328 million. The Premier League subsequently licensed the rights *nonexclusively* to each downstream pay-TV company for a fixed payment.

15 D. Forrest, R. Simmons and S. Szymanski “Broadcasting, Attendance and the Inefficiency of Cartels,” Imperial College London, 2003. See also S. Szymanski “Collective Selling of Broadcast Rights to Sporting Events,” *International Sport Law Review*, Issue 2, Volume 1, 2001.

Szymanski et al. show is that live broadcasts probably have negligible effects on match attendance, and so the additional revenues generated by selling more broadcasts would likely far exceed any plausible opportunity cost. If this argument is correct, the FAPL is clearly failing to maximise the joint profits of its member clubs. Szymanski et al. argue that one reason for the failure to maximise cartel profits derives from the FAPL's own distribution formula, which pays only 25% of broadcasting income to home teams - a sum which the clubs do not consider large enough to justify the risk of lost gate. In effect, the FAPL is running an inefficient cartel which implies that the Commission should be wary of any remedy which preserves the right of the FAPL to control which matches are and are not broadcast.

One remedy for this inefficiency - which harms consumers as well as football clubs - would be an outright ban on selling broadcasting rights collectively, i.e. a finding that the FAPL is an illegal cartel. Clubs would then be forced to sell the media rights to their games individually. Individual selling of rights could be achieved in a number of ways:

- (A) Clubs could offer their matches directly to distributors for sale as pay-per-view matches.
- (B) Each club could set up its own club channel and sign a distribution deal with distribution platforms (i.e. satellite and cable).
- (C) Each club could sell its rights in a wholesale market to intermediaries who would then assemble rights packages for sale to distribution platforms.

Option (A) is essentially what occurs in Italy, where all matches are made available as pay-per-view.<sup>16</sup>

Option (B) is like the situation in Major League Baseball in the United States, where most clubs run their own channels. Option (C) is as yet untested, but might prove difficult to implement unless there is genuine competition among broadcasters.

Not surprisingly, the FAPL has argued that individual selling of rights would have severe adverse consequences for the distribution of income between football clubs, even suggesting that some smaller clubs might fold entirely under such a remedy. It is true that the distribution of income from pay-per-view sales in Italy has been highly skewed, with big clubs able to generate up to EUR60m and small clubs generating as little as EUR3m, and American baseball has also struggled to find a mechanism to balance the interests of the small and large teams.<sup>17</sup> Redistribution of income is feasible through mechanisms other than collective selling, however. While Italian clubs postponed the start of the 2002 season in a dispute over broadcasting revenues, major league baseball clubs in America have managed to agree on a "luxury tax" which obliges teams that spend in excess of a fixed limit to pay a tax that is redistributed to the smaller teams.

In any case, the central issue in the Commission's investigation is not collective selling per se, but the FAPL's restriction on the number of matches sold. If the FAPL agreed to make available all of its matches for live broadcast, then the Commission might conceivably agree to the continuation of the collective selling arrangement. What seems harder to imagine is that the Commission can accept the status quo in which nearly two thirds of matches cannot be shown live, including some of those which are most attractive to viewers.<sup>18</sup>

---

<sup>16</sup> Originally, the Italian government passed legislation to oblige these rights to be divided between at least two platforms (with no platform controlling more than 60%), but now they have permitted the two satellite platforms Telepiu and Stream to merge.

---

<sup>17</sup> See, for example, R. Levin, G. Mitchell, P. Volcker and G. Will, *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics*. NY: Major League Baseball, 2000.

<sup>18</sup> For example, about one third of the matches of top teams such as Manchester United, Arsenal and Chelsea are not offered for live broadcast.

## Conclusions

The Commission has recently announced that it will issue a second 'Statement of Objections' to the Premier League, which suggests that the results of the recent rights auctions may not be allowed to stand. If so, the FAPL will need to implement a new selling procedure that addresses at least some of the Commission's concerns. However, the Commission's "UEFA-style" approach to reforming rights selling arrangements is unlikely - even if it succeeds in distributing Premier League rights amongst multiple broadcasting companies - to have much effect on either competition or consumer welfare in the British TV market. From one large monopoly, two or three smaller monopolies will have been created, not a huge step forward for a competition authority.

The problem is that the Commission is tackling the wrong kind of exclusivity. In order to improve matters significantly, not only must the rights not be sold exclusively to a single broadcaster, but *the same rights must be licensed nonexclusively to multiple broadcasters* (e.g. to each pay-TV company or platform). Absent this remedy, consumers are unlikely to benefit greatly from a reformed Premier League selling procedure.

It can also be argued that the FAPL's collective selling arrangements lie at the heart of the problem, and the fact that organisations like the Premier League act as inefficient cartels restricting output and depriving consumers of the benefits of viewing more football matches. In other countries, such as Italy and Spain, football clubs sell their matches individually. Reforms which fail to ensure that the majority - if not all - of Premier League matches are available on live TV will have stopped short of achieving their goal.

One caveat is worth mentioning in closing. If exclusive rights to broadcast live Premier League matches can be sold to 'free-to-air' TV companies, such as ITV or the BBC, this may partially succeed in achieving the Commission's objectives. At least from the point of view of consumers this would allow them to view some football matches for free, thus reducing their reliance on, and hence willingness to pay for, pay-TV. However, free-to-air broadcasters face severe capacity constraints and can broadcast only a small number of live matches per season. The bulk of the rights will of necessity remain with one or more pay-TV operators, a constraint which needs to be recognised in evaluating any remedy for the competition problems identified by the Commission.

**Market Analysis** specialises in the application of economics to regulation, competition policy and market design in the UK. Europe and internationally.

For further information concerning our services please contact David Harbord:  
Tel: +44 (0)1865 883176 Fax: +44 (0)1865 731250  
manalysis@aol.com [www.market-analysis.co.uk](http://www.market-analysis.co.uk)