

Ofcom's "Must Offer" Review Should Ensure More Competition in Sports Rights Market



Following the recent announcement from Ofcom that it would review the obligations on BSkyB to offer its sports content to other operators, **Toms Evens** of Ghent University and **Petros Iosifidis** of City University London argue that to promote competition those obligations should be boosted rather than reduced.

On 16 April 2014, Ofcom **announced to review** the 'wholesale must-offer obligation' placed on satellite pay TV operator BSkyB in relation to its Sky Sports 1 and 2 channels. As part of the *Pay TV Review Statement* of March 2010, the UK communications regulator had attempted to address BSkyB's market power in the wholesale sports programming market through the introduction of a wholesale must-offer obligation system and regulated pricing (i.e. at a 23% reduction) so that competing platforms would have access to premium sports rights.

This regulatory intervention was successfully challenged by BSkyB at the UK's Competitions Appeal Tribunal, but the Court of Appeal forced the Tribunal to reopen the case. Following this decision, Ofcom will now undertake a review of the obligation. Based on our research into sports rights we urge Ofcom to maintain, if not strengthen, BSkyB's wholesale must-offer in order to keep the UK pay TV market competitive, and create opportunities for new entrants in the market.

Changes in the market

In its statement, the regulator indicates that since imposing the wholesale must-offer on BSkyB, a number of market developments have taken place that need to be considered as part of such a review. In particular, Ofcom seems to suggest that the pay TV market has become more competitive as a result of BT Sport's acquisition of the Champions League TV rights (for a record £897m) and Virgin Media's takeover by cable giant Liberty Global (for £14bn). Moreover, the popularity of online video services including BBC iPlayer, YouView, Netflix and LOVEFiLM is putting pressure on the competitiveness of the pay TV market.

The conclusion that consumers are relying more and more on alternative platforms to watch television does not, however, imply that BSkyB's dominance over the UK sports rights markets has been reduced to a significant extent.

A dual regulatory approach for sports

In our book *The Political Economy of Television Sports Rights* we made a strong argument for a dual regulatory approach with regard to sports broadcasting. Such an approach combines the application of competition law with media-specific regulation, namely major events legislation. While the latter may be less relevant on this occasion, competition issues are at the heart of the wholesale must-offer.

It is our conviction that exclusive licenses create monopolies in the pay TV market, and allow for excessive mark-up pricing. Sports leagues as well as customers may therefore benefit from such a non-exclusive approach where live rights are licensed across multiple pay TV platforms.

Non-exclusive licensing models not only allow alternative operators to obtain key sports rights they need to enter the market, but also provide the option to customers to pick the pay TV operator of their choice. They would no longer be forced to choose a particular delivery platform on the basis of the provision of key sports programming. Since all pay TV operators would have equal access

to sports programming, increased competition in the market could result in enhanced pay TV penetration as well as reduced subscription fees.

Moving to multi-platform

In the US and several European countries, sports leagues are moving to a multi-platform strategy, agreeing licensing deals with multiple pay TV operators. By imposing wholesale must offers to dominant pay TV operators, Ofcom can support a non-exclusive licensing approach which is in itself a rather market-driven model.

This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics.

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