A Market in Two Halves…Why Ofcom Should Still Make BSkyB Offer Sports to its Competitors

With Ofcom's review of the obligations placed on BSkyB to offer its sports content wholesale to other operators underway, ***Paul Smith*** *of De Montfort University argues that due to the duel nature of sports broadcasting these obligations are needed to bring down costs for consumers.*

Last month, Ofcom announced its plan to review the 'wholesale must offer' obligation it first imposed on BSkyB's premium sports channels, *Sky Sports 1* and *2*, back in 2010. No doubt BSkyB will be hoping that Ofcom's stated intention to consider 'market developments' since 2010, such as the emergence of BT Sport and the growth of broadband as an alternative delivery technology for pay-TV, will lead the regulator to conclude that its 'must offer' obligation is no longer necessary. In fact, to ensure competition within UK pay-TV and to deliver lower prices for consumers more, not less, regulatory intervention is required from Ofcom. At least in part, the reason for this stems from the underlying structure of the sports broadcasting market – appropriately, it's a market of two halves.

Competition = rising costs

As all economists (and even most non-economists nowadays) know, increased competition between suppliers leads to lower prices for consumers. Or, at least, that's what should happen, but, that's not been the story with UK (premium sports) pay-TV over the last decade or so. In January, Ofcom published research on the 'cost and value of communications services in the UK' since 2004. For the most part, there was good news for consumers.

Over the last ten years, competition has 'underpinned declines in real prices', particularly for broadband access. Pay-TV, however, was deemed an exceptional case. According to Ofcom, subscribers to BSkyB's sports channels have seen 'real terms price increases' of over 10 per cent since 2004, and subscribers to *Sky Sports* channels via Virgin Media have had to stomach even steeper price rises. Paradoxically then, the emergence of increased competition for BSkyB (albeit with varying degrees of success) in the shape of Setanta, ESPN and latterly BT has been accompanied by rising costs for consumers.

Two sided markets in sports

To some extent, this trend can be explained by the expansion in the amount of coverage of top level sport offered by UK sports broadcasters over the last decade (e.g. more Premier league football matches, a new Formula One channel etc.), but this is, at best, only a partial explanation. A full explanation requires an understanding of the fact that the sports broadcasting market is actually two separate (albeit interconnected) markets. First, there is the (upstream) sports rights market for the sale of sports rights by sports organisations to broadcasters. And, second, there is the (downstream) sports programming market, where broadcasters sell channels to consumers. For the most part, the sports rights market has been the main focus of regulatory attention, both in the UK and across Europe.

The late 1990s and early 2000s witnessed a steady stream of competition cases at both national and EU level, which examined the anti-competitive impact of the collective selling of live football rights by top European leagues and competitions. Critics argued that collective selling enabled leagues act like cartels so as to maximise the value of their rights, which, in turn, strengthened the market position of already dominant pay-TV broadcasters, as they were the only ones who can afford to purchase the rights. In response, supporters of collective selling claimed that the selling of rights (to home matches) by individual teams would lead to vast income discrepancies and undermine the competitive balance of the league. And, there is at least some evidence to support this argument from the experience of individual selling in Spain and Italy.

The prices viewers pay for Premier League football have increased. Photo by Tuan Hoang Nguyen CC BY-NC 2.0

Sports organisers benefiting from competition

Weighing up both sides of the argument, the EU (and most national regulators) opted to allow collective selling, but only with the introduction of measures designed to ensure competition, such as the unbundling of rights into smaller packages, limits on the lengths of exclusive contracts and the unbundling of new media rights. In the UK, EU level regulatory intervention (eventually) led to the ending BSkyB's monopoly of live Premier League football and this allowed rival broadcasters to compete for other sports rights too.

Crucially, however, the chief beneficiaries of increased competition in the sports rights market have been leading sports organisations (and highly paid (mostly) sportsmen), rather than consumers due to the escalation in the value of premium sports content. A clear example is the case of Premier League football, with the total paid for (three seasons of) live television rights rising from around £1.8 billion in 2009 to over £3 billion by 2012 – and this sum is itself likely to be surpassed when bidding for the next round of Premier League rights begins later this year.

Widening must offer could lower prices for consumers

So, are pay-TV viewers, and more specifically sports fans, inevitably going to be faced with rising bills as sports broadcasters pass on the escalating cost of acquiring rights (either directly via increased charges for sports channels, or indirectly via increased costs for other communication services, such as broadband access)? In the short term, probably, yes. But, not necessarily in the long term, and here's why the future regulation of the sports programming market via Ofcom's 'wholesale must offer' review is so important.

By ensuring that a pay-TV broadcaster (such as BSkyB) which controls most, if not all, the most valuable sports rights has to provide its content (at regulated prices) to rival delivery platforms the regulator can prevent (or at least limit) the use of exclusive premium sports rights to stifle competition in the pay-TV market. Much to Sky's annoyance, under the terms of Ofcom's existing 'must offer' ruling, it is forced to supply its sports channels to rival delivery platforms, but they do not necessarily have to reciprocate. To date, commercial logic (i.e. access to Sky Digital's approximately 10 million subscribers) has led BT to make its sports channels available via Sky Digital, but this may not always be the case. With this in mind, there's a clear case for the widening of Ofcom's 'must offer' ruling to include other premium sports channels (as well as *Sky Sports 1* and 2).

In effect, this approach would be to treat premium sports channels as 'essential facilities' to be provided to rival delivery platforms on "fair, reasonable and non-discriminatory" terms. In the long run, this could dilute the incentive for broadcasters to bid such eye watering sums for sports rights, which could, in turn, result in lower prices for consumers. Of course, as a result, leading sports organisations, and Premier League footballers in particular, might have to learn to cope with a little less money – but, on balance, I think I could probably live with that!

This post 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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