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Authors	Butler, Robert;Massey, Patrick
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UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

HAS COMPETITION IN THE MARKET FOR SUBSCRIPTION SPORTS BROADCASTING BENEFITTED CONSUMERS? THE CASE OF THE ENGLISH PREMIER LEAGUE

Abstract

This paper investigates the peculiar nature of competition in the broadcasting market for live English Premier League matches in the United Kingdom. Following the movement from free-to-air to subscription television in 1992, British Sky Broadcasting secured a monopoly on live broadcasting rights. The exclusive arrangements were later found to be in breach of European competition law and resulted in competition from the start of the 2007-08 season. However, competition has not reduced prices charged to consumers. Both the overall cost to consumers and the price per game are higher with competing broadcasters than under a monopoly.

Key words: Competition, broadcasting, Premier League.

Introduction

Founded in 1888, the Football League is the oldest structure of interconnected football leagues in the world. For the best part of a century the only way to view Football League matches in England was by attending as a spectator. The British Broadcasting Corporation (BBC) screened highlights of its first football match on 16th September 1937, a specially-arranged fixture between Arsenal's first and second teams (British Broadcasting Corporation, 2006). The first live match did not appear for nearly a decade later and consisted of a twenty minute first half, and thirty-five minute second half broadcast. Despite attempts to broadcast European club competitions from the 1950s, the FA Cup Final and a collection of England international matches remained the only live games on United Kingdom (UK) television. This was to change in the 1980s when Independent Television (ITV) and the BBC reached agreement with the Football League to broadcast selected games for the 1983-84 season (Baimbridge et al., 1996). Free-to-air broadcasters continued to screen a limited number of live matches throughout the 1980s and early 1990s. During this ten-year period the value of rights rose by more than 300% (Baimbridge et al., 1996).

British Sky Broadcasting (BSkyB) purchased exclusive rights to sixty games of the newly formed English Premier League (EPL) for the 1992-1993 season, and the subsequent four seasons. This moved top-flight league football in England from free-to-air channels to subscription television, with games broadcast live through the company's subscription channel *Sky Sports*. BSkyB continued to hold monopoly rights on live EPL games until the start of the 2007-2008 season. The arrival of competition was the result of an objection by the European Commission to the legality of the exclusive broadcasting arrangements. Since then Setanta Sports, Entertainment and Sports Programming Network (ESPN) and British Telecom (BT)

have all secured exclusive access to a number of live EPL games, and have co-existed in the market with incumbent BSkyB. This paper examines the extent to which competition has reduced subscription fees.

The paper is structured as follows: Section 2 provides an overview of the evolution of live televised football in England. Section 3 examines existing competition law related to sports broadcasting. Section 4 presents data and analysis of the price paid by UK customers for access to live EPL games under six different arrangements from the 2000-01 season. Section 5 discusses the implications of the findings. Section 6 concludes the paper.

The Evolution of Live Televised Football in the UK

Historically, spectrum scarcity and technology limited the number of television channels available to broadcast live football, with competition for airtime amongst programme producers intense (Szymanski, 2006). While this could be suggested as one of the main reasons for the absence of regular live football on television screens for the majority of the twentieth century, Noll (2007, p.402) points out that "pre-1980s scarcity in television was primarily a policy decision", with countries deliberately not using their broadcasting spectrum. The advent of satellite broadcasting changed the position from one where content competed for scarce distribution outlets, to one where there is an abundance of spectrum competing for scarce content. Over time major sports rights have migrated to subscription channels in most European countries (Hoehn and Lancefield, 2003).[1]

[1] This is in contrast to the United States where free-to-air broadcasters can compete for such programmes (Szymanski, 2006).

Szymanski (2006) observes that most sports were initially wary of television due to concerns that live broadcasts would reduce attendances. Historically, the Football League, the body that oversaw all football in England from 1888 to 1992, was opposed to live broadcasts for precisely this reason (Dobson and Goddard, 2011). Harbord and Szymanski (2004) noted that the EPL has continued to advance this argument to justify limits on the number of matches broadcast live but suggest that EPL attendances increased following the introduction of live broadcasts. Similarly, Szymanski (2009) claims that such concerns underestimated the power of television to market the product, make it more attractive to consumers and increase attendances over time.

The arrival of regular live football in the autumn of 1983 was a consequence of a decision in 1978 by London Weekend Television (LWT) to break ranks with the other members of the commercial ITV network and seek to negotiate an exclusive broadcast arrangement for live English football. LWT were prevented from doing so by the Office of Fair Trading (OFT) (Dobson and Goddard, 2011). This situation would not continue and free-to-air channels BBC and ITV began broadcasting a limited number of league matches from the start of the 1983-84 season. The number of matches broadcast live reflected a combination of the football authority's traditional concerns about adverse effects on attendances and the need for free-to-air broadcasters to schedule matches at times that would attract peak audiences (Baimbridge et al., 1996).

The free-to-air channels operated as a buyer cartel, acting as the sole purchaser, resulting in a bilateral monopoly (Cave and Crandall, 2001 and Dobson and Goddard, 2011). Power during this period clearly lay with the broadcasters, as demonstrated by the fact that when the Football League sought better terms at the start of the 1985-86 season, the broadcasters withdrew

coverage and imposed a blackout for the first half of the season (Baimbridge et al., 1996). The prices paid during the first three broadcasting rounds were clearly below the competitive level.

Over the course of the next three decades, the composition and frequency of live televised football changed entirely. Today live football is almost ubiquitous. With the commencement of *Sky Sports*' live Friday night match from the start of the 2016-17 season, it is possible to watch live EPL, Champions League or Europa League football every night of the week, for almost one-third of the calendar year. The evolution of broadcast providers, the number of games screened live and value of rights packages per season are listed in Table 1.

Table 1: Live Football Broadcast from 1983 to 2022

Years	Contract Duration	Broadcaster	Matches per Season	Annual Rights (£m)	Price per Live Match (£m)
1983-85	2 Years	BBC/ITV	10	2.6	0.26
1986	6 Months	BBC/ITV	6	1.3	0.22
1986-88	2 Years	BBC/ITV	14	3.1	0.22
1988-92	4 years	ITV	18	11.0	0.61
1992-97	5 Years	BSkyB	60	42.8	0.71
1997-01	4 Years	BSkyB	60	167.5	2.79
2001-04	3 Years	BSkyB	110	400.0	3.64
2004-07	3 Years	BSkyB	138	341.3	2.47
2007-10	3 Years	BSkyB/Setanta Sports	138	568.7	4.12
2010-13	3 Years	BSkyB/ESPN	138	591.0	4.28
2013-16	3 Years	BSkyB/BT	158	1,006.0	6.37
2016-19	3 Years	BSkyB/BT	168	1,712.0	10.19
2019-22	3 Years	BSkyB/BT	200	1,488.0*	9.30*

Source: Baimbridge et al 1996 and British Broadcasting Corporation (2015 and 2018)
* Data for 2019-22 is based on the sale of the first 160 games.

Contract negotiations for the right to broadcast four seasons of live football from 1988 to 1992 saw the arrival of privately owned broadcasters to the bidding process, when subscription provider British Satellite Broadcasting (BSB), which later became BSkyB following a merger with Sky in 1990, entered negotiations with league clubs. The entry of BSkyB brought an end to the terrestrial television cartel which had artificially depressed prices. A competitive round

of negotiations began, and in the face of a threat by leading clubs to conclude a deal with BSB, ITV secured an exclusive four-year contract at a substantially increased fee of £11m per season. The higher price reflected a surge in demand for live football, and an increase in the number of matches broadcast per season from 14 to 18 (Baimbridge et al., 1996). The price per match trebled from £0.22m to £0.61m. The deal also ended the BBCs access to live top-flight league matches.

ITV's monopoly would be short-lived. Following discussions between leading clubs and LWT in late 1990, the FA Premier League (now known as the EPL) was formed for the 1992-1993 season. This new top tier league of English football consisted of twenty-two teams, and broke away from the remaining three divisions of the Football League. Central to the EPL foundation was an agreement with BSkyB, allowing subscription channel *Sky Sports* exclusive live broadcasting rights to sixty matches per season, over five seasons, from 1992 to 1997. This agreement was extended on three further occasions in 1997, 2001 and 2004, and resulted in a BSkyB broadcasting monopoly of live EPL matches for fifteen seasons. The composition of broadcasting rights by channel, since the start of the EPL, is outlined in Table 2.

Table 2: Broadcasters and Live Games from 1992 to 2022

Seasons	No. of Packages	Sky Sports	Prem Plus	Setanta Sports	ESPN	BT Sports	Total
1992–1997	1	60	–	–	–	–	60
1997–2001	1	60	–	–	–	–	60
2001–2004	1	70	40	–	–	–	110
2004–2007	1	88	50	–	–	–	138
2007–2009	6	96	–	42	–	–	138
2009-2010*	6	96	–	–	42	–	138
2010–2013	6	115	–	–	23	–	138
2013–2016	7	116	–	–	–	38	154
2016–2019	7	126	–	–	–	42	168
2019–2022**	7	128	–	–	–	32	200

Source: Ofcom (2015) and British Broadcasting Corporation (2018)

* Season sold as part of the 2007-2010 broadcasting deal but re-sold to ESPN following failure of Setanta Sports to pay for rights for the 2009-2010 campaign. ** The sale of broadcasting packages "F" and "G" are yet to be decided. It is possible than *Sky Sports* and *BT Sport* could screen more than 128 and 32 games respectively.

Hoehn and Lancefield (2003) state that rights fees increased significantly in 2001 due to aggressive bidding by ITV Digital. Thus, BSkyB retained exclusive rights to EPL matches but at a much higher price. The collapse of ITV Digital combined with financial difficulties of UK cable operators led to reduced competition and a drop in the value of broadcast rights in 2004 (Ofcom, 2005). At the time Hoehn and Lancefield (2003:556) wrongly predicted that "there are some signs that the market for rights has peaked, or even that this bubble has burst." However, the price resumed its upward trajectory in 2007 as "greater competition for rights facilitated by an increase in the number of live packages spurred a bidding war between BSkyB, Setanta Sports and Virgin Media even though the European Commission had required the EPL to sell live rights to more than one broadcaster" (Ofcom, 2007a: 19). This has continued to be the case, with the price paid per game higher than at any other time since the advent of regular live broadcasting of EPL games.

Limited competition emerged periodically in the form of live broadcasts of lower tier Football League matches. From 1993 to 1996, ITV screened selected Football League matches live on a regional basis. However, these matches switched to BSkyB from 1997 to 2000 under a deal which saw broadcast payments rise from £16 million to £30 million per season (Dobson and Goddard, 2011). This compares with annual EPL broadcast revenue at that time of £167.5 million (see Table 2). ITV won back the live broadcast rights to Football League matches in 2000 with a bid of £315 million. Matches were broadcast on a new terrestrial subscription service, *ONEdigital*, owned by the two largest ITV franchisees, Carlton and Granada. An attempt was made to rebrand the service as ITV Digital in July 2001 but it was subsequently liquidated in April 2002 with only £135 million having been paid to the Football League. BSkyB subsequently acquired the rights to Football League matches from 2003 to 2007 for a

reported £95 million (Dobson and Goddard, 2011). The vast difference between the fees paid for EPL and Football League broadcast rights indicates that the two are not close substitutes.

In 2001 BSkyB launched *Premiership Plus* (subsequently rebranded as *PremPlus* at the start of the 2004-05 season) which broadcast live matches on a pay-per-view basis, requiring subscribers to make an additional payment on top of their annual subscription to view such matches. Of the 110 EPL matches per season broadcast by BSkyB between 2001 and 2004, 40 were broadcast on a pay-per-view basis. This figure increased to 50 out of 138 live matches between 2004 and 2007. During the 2006-07 season, the last which BSkyB had sole rights to all live games, *Sky Sports* broadcast 88 matches with a further 50 matches broadcast on the *PremPlus* pay-per-view channel.

BSkyB's EPL monopoly ended in 2007 with the European Commission requiring the league to split the sale of the 138 live matches, for the three seasons from August 2007 to May 2010, into six broadcasting packages, with a stipulation that no one broadcaster could acquire the rights to more than five of the packages. Dobson and Goddard (2011) point out that the differences in timing of broadcast slots meant that the attractiveness of the various packages to broadcasters differed.[2] Competition first arrived in the form of Setanta Sports, an Irish broadcaster, who won the rights to two of the six broadcasting packages (42 matches) from 2007 to 2010. Following Setanta Sports' entry, BSkyB discontinued the *PremPlus* pay-per-view service, with all live matches subsequently included in the annual *Sky Sports* subscription fee.

[2] Sunday afternoon matches draw higher audiences than Saturday and Monday evening matches.

Two years into the contract Setanta Sports defaulted on its payment to the EPL, blaming slow growth in subscriber numbers, which persistently lagged behind projections and were forced to exit the market (Dobson and Goddard, 2011). American sports broadcaster ESPN stepped in and took over the two Setanta Sports packages for the remainder of the contract. The 2010-2013 rights auction saw ESPN's role reduced to just one package as BSkyB managed to win five of the six packages for sale. In August 2013 ESPN departed and were replaced by BT. The telecoms giant secured the rights to two of the now seven broadcasting packages on offer and had exclusive rights to 38 live matches per season until the end of the 2015-2016 season, broadcast through subscription channel *BT Sport*. The 2016-2019 broadcasting rights saw an increase in the number of live games, from 154 per season to 168. Again, BSkyB secured exclusive rights to five of the packages for sale, and BT the remaining two. Between them, the companies paid a record £5.14 billion for the three seasons until May 2019 (The Guardian, 2015). The most recent agreement, covering live broadcasts from August 2019 to May 2022, was partially concluded in February 2018 when 160 of the 200 available live games were sold to both BSkyB (128) and BT (32). Interestingly, the total annual rights and the price per game are lower in comparison to the 2016-19 broadcasting agreement.

The Market for Sports Broadcasting and Competition Law

Two-stage game of Competition for Sports Broadcasters

Hoehn and Lancefield (2003) suggest that broadcasters compete in a two-stage game, the first stage involves competing for the rights and then, if rights are non-exclusive or face close substitutes, broadcasters compete in respect of the quality of their coverage and analysis. We noted in Table 2 that the value of EPL broadcast rights has increased dramatically over time. This increase reflects competition between broadcasters to secure the rights. The second stage

of the game, as described by Hoehn and Lancefield (2003), is competition for viewers and the impact of more than one broadcaster on consumers. Noll (2007) points out that the equilibrium point for a competitive free-to-air broadcast market will have more games but a lower average audience, and advertising revenue per game, than the monopoly equilibrium. Similarly, he suggests that a subscription channel monopoly will have lower demand for sports rights than a group of competing subscription channels. The monopolist will add quantity only as long as it increases net revenues – fees from new subscribers, advertising revenues from viewers who otherwise would not be watching subscription channels and revenues from an increased subscription price for existing subscribers arising from offering more quantity – and will ignore the audience that is diverted from other subscription channels. Nevertheless, this suggests that competition in the subscription channel market should benefit consumers.

The European Union (EU) experience contrasts with that of the United States (US). Cave and Crandall (2001), for example, argue that it is unlikely that broadcast arrangements result in an important restriction of output in most US professional sports. Hoehn and Lancefield (2003) state US television markets are generally considered to be highly competitive compared to those in EU member states and that it is commonly accepted that US consumers get a better deal than their EU counterparts in terms of choice and price of sport. Szymanski (2009) notes that in the US, free-to-air broadcasters are able to bid successfully for major sports rights because broadcasters are permitted more advertising time. The Sports Broadcasting Act of 1961 only grants an antitrust exemption for collective selling to free-to-air broadcasters. US broadcasters also enjoy a much larger advertising market than European free-to-air broadcasters, which are largely confined to individual member states.

Noll (2007) observes that European markets are not as competitive as they could possibly be, arguing that many countries encourage "centralized rights sales". This results in a deterioration in consumer rights as it both limits choice and raises prices. Noll (2007) suggests that technology could address the lack of competition on the broadcast side, as restrictions on broadcasters would hasten the growth of alternative channels such as internet broadcasting. Hoehn and Lancefield (2003) take a different view, arguing that differences in the price of television sports between EU member states are not due to differences in market structure, and thus not reflective of differences in the level of competition in different national markets, but are the result of regulatory interventions.

There is evidence to support the view that centralised selling of broadcast rights may not benefit consumers. Forrest et al., (2004) showed that cartel behaviour resulted in the EPL restricting the number of live matches broadcast to below the competitive level. Noll (2007) points out that the immediate effect of the passing of the US Sports Broadcasting Act in 1961, permitting centralised selling of broadcast rights by the National Football League (NFL), was to reduce the number of televised games in baseball and American football while rights fees more than tripled.[3] In contrast after the National Collegiate Athletic Association (NCAA) lost the power to require the centralized sale of rights, the number of live Saturday telecasts of college football increased from one on each of two networks to several games telecast simultaneously, for more than twelve hours on three terrestrial and three subscription channels. Cave and Crandall (2001) also report that the number of matches broadcast increased while there was a large decline in the price per match following the US Supreme Court judgment in the NCAA case.[4]

[3] See Horowitz, Ira (1974). "Sports Broadcasting." In *Government and the Sports Business*, Roger G. Noll (ed.). Washington: Brookings Institution, pp. 275-324.

[4] *National Collegiate Athletic Association* v. *Board of Regents of University of Oklahoma*, 468 US 85, 101 (1984). The Court applied a rule of reason test rather than concluding that the arrangements constituted a *per se* cartel violation.

It is worth noting, under the 2016–2019 broadcasting deal, only 168 out of 380 EPL matches per season are broadcast live. This is less than half of the matches and suggests that the EPL is continuing to restrict output. While the 2019–2022 broadcasting agreement increases this to 200 games per season, scope for greater competition exists.

Competition Law and Sports Broadcasting

Cairns et al., (1986) observe that sports leagues provide excellent opportunities for studying cartel behaviour while Fort and Quirk (1995:1265) describe sports leagues as "classic, even textbook, examples of cartels." In the past the Football League set minimum admission prices. According to Dobson and Goddard (2011:163) the original objective of such measures "was to prevent clubs from attempting to poach spectators from other clubs in the same geographic catchment area by cutting prices". Collective selling of sports broadcast rights has been subject to competition law actions in a number of jurisdictions. There have been numerous decisions in relation to the collective selling of football broadcast rights by the European Commission and EU member state competition authorities since the 1990s (Massey and Daly, 2003; Massey, 2007). These have primarily focused on two issues. Firstly, whether collective selling constitutes a cartel and secondly, if this then restricts competition in downstream broadcast markets. Szymanksi (2006) argues that competition agency interventions have tended to focus more on the latter issue than the former.

Pons (1999) suggests that the European Commission views collective selling of sports broadcasting rights as restricting competition if it involves price fixing, limits the availability of rights to football matches, and strengthens the market position of the most important broadcasters because they are the only one able to bid for all the rights. In the US collective selling of broadcast rights by the NFL was found to be in breach of the Sherman Act. However,

Congress intervened and enacted the Sports Broadcasting Act, 1961, granting an antitrust exemption in respect of collective selling by the NFL to free-to-air broadcasters (Szymanski, 2006). The exemption does not apply to college football and, as previously noted, the US Supreme Court subsequently ruled that the collective sale of broadcast rights to college football matches violated Section 1 of the Sherman Act.

The OFT challenged the 1996 agreement between the EPL and BSkyB in the Restrictive Practices Court, alleging that by selling the broadcasting rights collectively, EPL clubs were effectively operating a cartel. The OFT distinguished between what it described as broad exclusivity, whereby one party has the exclusive right to broadcast a match and no one else could broadcast any other game, and narrow exclusivity, whereby one party has the exclusive right to broadcast a particular match but there was no restriction on another party being granted the right to broadcast another game. The OFT attacked broad exclusivity but not narrow exclusivity. Robertson (2002) argued that broadcasters would be unlikely to broadcast a match unless they had exclusive rights to that match (narrow exclusivity). The Court found that the agreement was not in breach of UK competition law as it existed at that time[5] and took the view that the product being sold by the EPL was the league championship as a whole and not just individual league matches. The Court rejected the view that the EPL was a "cartel" which restricted output, despite evidence that BSkyB would have liked to show more than the 60 live matches allowed by the agreement. According to the Court, the EPL was in a different position to producers of other goods where marginal revenue falls as output rises, thus concluding that restricting the number of matches to be broadcast would reduce revenues from the sale of broadcasting rights unless the extra costs of televising a game (mainly due to lower

[5] The case predated the UK's *Competition Act, 1998,* and was brought under the *Restrictive Trade Practices Act, 1976,* which provided that restrictive agreements could be exempted if they satisfied a wide public interest test.

attendances) exceeded the marginal revenue obtained from selling rights to an additional match.

Massey (2007) argues that the Court's view begs the obvious question as to why the EPL restricted the number of games to be broadcast if selling more games would have increased profits. He suggests that total output in terms of matches broadcast, would almost certainly have been higher if individual selling had been permitted. This suggests that the agreement reduced output and consumer welfare, giving rise to deadweight losses. This adverse effect on consumer welfare, which is arguably the main effect of restrictions on competition, seems not to have been considered by the Court. Harbord and Szymanski (2004) also argued that the collective sale of broadcast rights by the EPL had a significant negative effect on consumer welfare.

Roberston (2002) claimed that the European Commission regarded joint selling of broadcast rights as inherently restrictive of competition. The Commission nevertheless exempted the original 1992 agreement between the EPL and BSkyB on the basis that the latter, which had only commenced operations in 1990, needed such a lengthy period of exclusivity to facilitate its entry to what was then a new market, i.e. satellite broadcasting.[6] The Commission decision thus focused on the effects in the downstream broadcast market and essentially ignored the cartel issues. Subsequently, the Commission accepted an exclusive agreement of three years duration in respect of broadcasting of football matches in Spain.[7]

[6] *Football Association/BSkyB Footbal*l, 1993 OJ, C94/6.
[7] *Audiovisual Sport*, 1997 OJ C 361/5 and 361/7.

The Commission initially objected to collective selling arrangements in respect of broadcasting rights for the UEFA Champions League and argued that:

> "*In the absence of the joint selling agreement the football clubs would set such prices and conditions independently of one another and in competition with one another. The reduction in competition caused by the joint selling arrangement therefore leads to uniform prices compared to a situation with individual selling.*"[8]

In July 2003 the Commission nevertheless exempted collective selling of Champions League broadcast rights after UEFA agreed to split the rights to ensure that there would be a minimum of two broadcasters in each country, one of which must be a free-to-air broadcaster, and to shorten the duration of its broadcast contracts.[9] Following the UK Court judgment in the EPL case, the Commission sent a Statement of Objections to the EPL in December 2002, indicating that the collective selling arrangements were anti-competitive and in breach of Article 101 of the EU Treaty and that:

> "*Joint selling is tantamount to price-fixing, which could only be exempted if the restrictions of competition were strictly necessary to ensure the legitimate goals pursued by the arrangements for example solidarity among clubs – and if they resulted in benefits for other interested parties, in particular football fans*."[10]

The Commission statement highlighted the fact that the arrangements prevented clubs from selling any rights on their own, even those not included in the BSkyB agreement, with the result that approximately 25% of EPL matches were broadcast live. In March 2006 the Commission adopted a formal decision, making revisions to the broadcast arrangements offered by the EPL and BSkyB legally binding. The new arrangements provided that from the 2007-08 season onwards live television rights would be split into six packages, comprising a total of 138 matches, with no single broadcaster allowed to acquire more than five of the packages. As

[8] *UEFA Champions League*, 2003, OJ L291/25 para 114.
[9] Where the television broadcast rights to a particular game are not sold by UEFA, the home club can sell the rights. Similarly, clubs are responsible for the sale of rights with respect to internet broadcasts and mobile phone rights.
[10] Commission opens proceedings into joint selling of media rights to the EPL, European Commission Press Release 20.12.2001, IP/02/1951.

discussed in Section 2, this resulted in Setanta Sports securing the rights to two of the six live packages for the period 2007-10, bringing the BSkyB monopoly to an end. In addition, two packages comprising the remaining 242 games in the season had to be offered for near live broadcast, i.e. within a few hours of the matches having been played. The arrangements also provided individual clubs with a right to sell their own home matches if such rights were not taken up under one of the live or near-live packages. Since 2004-05 BSkyB has broadcast all EPL matches not broadcast live on a near-live basis. However, audiences for near-live broadcasts are relatively low. Ofcom (2005) reported that less than 10% of EPL viewers watched near-live broadcasts.

Although EU competition law involves no *per se* rules, it is generally considered that practices such as price fixing and joint selling are almost always contrary to Article 101(1) and highly unlikely to satisfy the requirements of Article 101(3). The Commission nevertheless accepted the basic principle of collective selling in both the UEFA and EPL cases and focused instead on ensuring that a single broadcaster could not secure broadcast rights to all matches in both competitions. It appears that the Commission was persuaded by the argument that collective selling improved competitive balance, although the evidence would not appear to support such arguments (Peeters, 2011). Cave and Crandall (2001) point out that the situation in the EU differs significantly from that in the US in two major respects. Firstly, in the US public interest in sports is distributed across a number of different professional sports, whereas in most EU countries football plays a pre-eminent role. Secondly, broadcasting in the US, especially pay broadcasting, is not dominated by one or a small number of firms as it is in the EU.

Cave and Crandall (2001) argue that this combination of circumstances creates a situation in which EU sports rights holders can through collective selling, exploit a dominant position in

the markets and, if they wish, leverage that market power into broadcasting. They suggest that, while collective selling of broadcasting rights is not inherently objectionable, collective selling combined with exclusivity - involving the sale of a limited number of games to a single broadcaster, with further sales of other games being prohibited - poses genuine competition concerns. The Commission decisions in both the UEFA and EPL cases can thus be seen as an attempt to address this concern. The question arises as to whether substituting a duopoly for a monopoly is likely to prove sufficient to address such problems.

The European Court of Justice (ECJ) Judgement in the *Murphy* case is also worth mentioning given its potential implications for sports broadcasting within the EU.[11] This case involved a referral to the Court by the High Court of England and Wales under Article 234 of the Treaty on the Functioning of the European Union (TFEU). Ms Murphy was a pub landlady who had used a decoding device to show EPL matches being broadcast by a Greek television company in her pub. The ECJ ruled that the existing arrangements involving territorially exclusive licenses for the live transmission of football matches were incompatible with the free movement of services and EU competition law, insofar as it prohibited the supply of decoder boxes and cards on sale in other member states, and resulted in "artificial" and "disproportionate" price differences between partitioned national markets (Doukas, 2012). The Court also found that the showing of such matches in venues such as pubs involved an infringement of the EPL's intellectual property rights. Thus commercial premises may not use such devices to access signals from broadcasts in other member states as this would involve an infringement of copyright. The judgment however, found that there would be no violation of

[11] *Football Association Premier League Limited v QC Leisure* and *Karen Murphy v Media Protection Services Limited, joined c*ases C-403/08 and C-429/08 [2012] 1 CMLR 29.

EPL copyright if a Greek satellite decoder that enabled access to EPL matches was used privately, by individual consumers within their own homes.

The Impact of Broadcaster Competition on Subscription Fees

Since the end of ITVs agreement with the Football League in May 1992, live EPL matches have only been available on subscription channels. From 1992 to 2007, a total of fifteen EPL seasons, every live game broadcast in the UK could be viewed by subscribing to a single provider – BSkyB. As discussed in Section 2, this is no longer the case as two subscriptions are now required. Prior to 2007 this gave *Sky Sports* subscribers access to all 1,284 live matches from the channels' inaugural match on the 16th of August 1992 between Nottingham Forest and Liverpool and the last games of the 2006-07 season. 270 of these games had to be purchased on a pay-per-view basis meaning customers of the basic *Sky Sports* subscription had access to nearly 80% of all live games during these fifteen seasons. An obvious question arises as to what extent the decision by the European Commission, to prevent a single broadcaster from purchasing all available broadcasting rights, has benefitted consumers?

Before this question is examined, an issue needs to be addressed regarding the variety of live sport available all sports subscriptions channels. This analysis considers only the EPL content and is a limitation of the work. However, evidence suggests the majority of subscribers see additional sports content as a bonus and would un-subscribe if a channel ceased to hold the rights to screen live EPL football. It has been widely recognised in the literature that football is far and away the most popular sport in Europe and therefore the most important from a broadcasters' perspective. Cave and Crandall (2001) state that in European countries football stands out as the most commercialised sport with the most valuable broadcasting rights.

Robertson (2002) argued that EPL football and Formula 1 were probably the only two sports broadcasting rights sufficiently important to broadcasters to be capable of raising competition problems. Similarly, Hoehn and Lancefield (2003) state football is the most broadcast sport in the EU, with other sports coming a distant second in comparison.

This view is also supported by market research. Ofcom (2005) stated that one quarter of the UK adult population described themselves as fans of the EPL while one third of all EPL fans were *Sky Sports* subscribers[12]. 64% of EPL fans indicated that availability of live EPL matches was their main reason for subscribing to *Sky Sports* with almost 60% of these stating that they would discontinue their subscription if the channel did not broadcast any EPL matches live (Ofcom, 2005). The average audience for EPL games on *Sky Sports* was approximately one million. When matches on *PremPlus* are included the average audience for EPL matches was 700,000. This compare to average UK audiences of 200,000 for Spain's La Liga matches, 150,000 for Heineken Cup rugby and just 60,000 for Serie A matches (Ofcom, 2005). This trend is also reflected in the price of broadcast rights as Ofcom (2005) reported that BSkyB paid €341 million per season to broadcast live EPL matches but only €3 million per annum to broadcast live La Liga matches in the UK at that time.

26,000 pubs in the UK subscribed to *Sky Sports*. A survey of pub operators indicated that showing live EPL matches increased business and that pub operators regarded live EPL matches as important for their business. Pubs represent a particularly valuable market segment for subscription broadcasters yielding almost as much revenue as the residential market

[12] The 2005 Ofcom research asked EPL fans and *Sky Sports* subscribers a variety of questions. The responses indicated that 64% of EPL fans felt the number of live matches on television was about right, while 46% of fans neither approved nor disapproved of the idea of having different matches broadcast simultaneously. The report can be accessed at http://ec.europa.eu/competition/antitrust/cases/dec_docs/38173/38173_104_7.pdf.

(Ofcom, 2005 and 2010a). In 2007 Ofcom reported that football was the most popular sport on television by some distance stating:

> *"Football is undeniably the most valued sport. Nearly six in ten of those who say that a specific sport is their main reason for watching sport on television spontaneously cite football as one that they must have to make their service worth having. This is three times higher than for any other sport.*" (Ofcom, 2007b: 35).

Ofcom (2007a) reported that 85% of the broadcast revenue for the top ten sports events in the UK was due to football with the EPL accounting for 52% of the total. The next highest single sporting competition was the FIFA World Cup, and accounted for under 9% of revenue. Ofcom (2015) reports similar findings, and demonstrates the longevity and stability of interest in the EPL. The report states that 67% of all sports subscribers see football as essential content. This makes the sport three-times as important as any other sport to the average viewer (Ofcom, 2015). One in six deemed the EPL essential viewing, making this the most popular product on the sports broadcasting platform.

The importance of football to the success of a subscription channel is further supported by the actions of *BT Sport* since its launch on the 1st of August 2013. The channel has accumulated a disproportionate volume of live football, relative to its other offerings, and holds exclusive live broadcasting rights to not just the EPL, but also the FA Cup, UEFA Champions League, UEFA Europa League, Serie A, Bundesliga, Ligue 1, Portugal's Primeira Liga, the FA Community Shield and the FA Trophy. The channel also has exclusive rights to broadcast MotoGP and rugby union's Aviva Premiership and Champions Cup, and Major League Baseball's National League. BT has accumulated these right in less than five years. This supports Hoehn and Lancefield (2003) who claim that it is almost inconceivable that a major broadcaster would not bid for premium sports rights. The authors point out that failure to secure a specific portfolio of sports rights, or overpaying for rights, can often spell disaster for a broadcaster.

Given the evidence supporting the importance of football, and particularly the EPL to subscribers, what impact has the 2007 European Commission ruling had on prices charged in the UK? Table 3 illustrates the evolution of charges facing UK customers under the various different competitive structures since the 2000-01 season. Table 3 estimates the total cost of subscribing for all live matches broadcast over the course of a season, taking the cheapest (season ticket) option for pay-per-view *Premiership Plus* and *PremPlus*, in real (inflation adjusted) terms. We divide the total cost per season by the number of matches broadcast to arrive at a price per match. Table 3 shows the price per match for six separate periods. (A more detailed analysis of prices is included in Appendices 1 and 2).

Table 3: Real Cost of Live Football – Selected Years 2000-2017

Years	Subscription Channel(s)	Games per Season	Total Cost 2015 Prices	Price per Game 2015 Prices
2000-2001	Sky Sports	60	£182.35	£3.04
2003-2004	Sky Sports/Premiership Plus	110	£262.99	£2.39
2006-2007	Sky Sports/PremPlus	138	£299.91	£2.17
2007-2008	Sky Sports/Setanta Sports	138	£410.94	£2.98
2009-2010	Sky Sports/ESPN	138	£318.45	£2.31
2011-2012	Sky Sports/ESPN	138	£328.03	£2.38
2015-2016	Sky Sports/BT Sport	154	£455.00	£2.95
2016-2017	Sky Sports/BT Sport	168	£458.19	£2.73

Sources: The Guardian (2007) and Ofcom (2010b and 2015).
*Based on inflation rate with 2015 as base year.

Sky Sports Monopoly – 2000 to 2007

During the 2000-01 season, *Sky Sports* broadcast 60 live matches. Ofcom (2010b) provided information on the cost of BSkyB subscription charges which indicates that the monthly cost of accessing *Sky Sports* was £18.24. Assuming a ten-month subscription covering the months August to May, when the EPL is played, UK subscribers would have paid a total of £182.35 or £3.04 per game in 2015 prices for all sixty live matches.

By 2003-04 *Sky Sports* subscription package consisted of 70 live EPL matches. A further 40 additional games were available on a pay-per-view basis by acquiring *Premiership Plus*. Whilst games could be purchased on a game-by-game basis, the cheapest way to access all 40 pay-per-view matches was by means of a season ticket which cost an additional £71.08 on top of the standard package. The overall payment to BSkyB rose from £182.35 to £262.99. The real cost per game, however, fell by 21% to £2.39 at least for those customers who availed of the season ticket option for pay-per-view matches.

The third season considered is the last of BSkyB's monopoly when a total of 138 matches were broadcast live, with 50 of these being pay-per-view, and the season ticket priced at £78.24. This pushed the total cost to the consumer to £299.91. However, given the increase in the number of live games from 110 to 138, the price per game continued to fall, to £2.17.

Overall from 2000-01 to 2006-07 when BSkyB had a monopoly on live EPL broadcasts, the price per game declined by nearly 29% in real terms. A significant factor in this decline was BSkyB's adoption of two-part tariffs with a number of games included in the standard subscription combined with additional games available on a pay-per-view basis. However, considering the standard BSkyB package, the average price per game declined by 17% in real terms from £3.04 to £2.52 (see Appendix 1).

Sky Sports Setanta Sports/ESPN Duopoly – 2007 to 2013

Setanta Sports commenced live EPL broadcasting at the start of the 2007-2008 season, with a real subscription fee of £18.68 per month. Again assuming a ten-month subscription, the total cost of *Setanta Sports* for the season was £186.76 or £4.45 for each of the 46 live games broadcast. The entry of *Setanta Sports* coincided with BSkyB dropping its pay-per-view

option[13] while its standard subscription remained largely unchanged but included an extra eight games. For those on the standard *Sky Sports* package the price per game fell by 7% in real terms. Those fans who had previously availed of the season ticket option, and wished to retain access to all 138 live matches, saw the cost of doing so increase from approximately £300 to £411 for the same number of matches. Thus the price per game increased from £2.17 to £2.98 for this group, an increase of 37%.

It is useful to consider the impact of such changes on consumer welfare. We assume that there are two types of consumer; those who had previously subscribed to the basic *Sky Sports* package and those wishing to view all live matches who would have previously availed of the season ticket option to watch pay-per-view games on *PremPlus*. Viewing figures suggest that the first group was much larger than the second.

The first group, those who just subscribed to standard *Sky Sports* package, were largely unaffected and may have experienced a marginal increase in welfare. They got an extra 4 matches per season while the total cost of their subscription increased by £2.50 in constant prices resulting in a 3% reduction in the real price per game. The cost to the second group of a combined subscription to *Sky Sports* and *Setanta Sports* in order to retain access to all live EPL matches was £111 per season higher in 2015 prices than the combined cost of *Sky Sports* and a *PremPlus* season ticket. This group therefore suffered significant welfare losses involving a transfer in consumer surplus to the broadcasters, mainly Setanta Sports, and deadweight losses in the case of *PremPlus* subscribers who chose not to subscribe to *Setanta Sports*. Overall it

[13] It should be noted, average audiences for *PremPlus* matches were much lower than for matches on *Sky Sports* main channel, 211,000 versus 1,000,000 in 2004-05, for example, while average *PremPlus* match audiences were 18% lower in 2004-05 than in 2003-04. (Ofcom, 2005). Pay-per-view proved much less successful than expected. (Ofcom, 2007a). Thus it is possible that pay-per-view might have been dropped in the absence of competitive entry, although such entry might have hastened its demise.

seems likely that there was a significant net loss in consumer welfare. Although the majority of consumers who only subscribed to *Sky Sports* were more or less unaffected, more committed fans interested in having access to all live EPL matches clearly experienced a large reduction in welfare. Of course this assumes that BSkyB would not have increased its prices if it had retained its monopoly. All we can say in this regard is that prices had fallen in real terms over the previous six seasons under BSkyB's monopoly.

This trend continued once ESPN replaced *Setanta Sports* following the collapse of the channel at the start of the 2009-10 season. While the total price to view all games on *Sky Sports* and ESPN did fall by just over 20% when compared to the BSkyB and Setanta Sports duopoly, the overall cost in real terms of both packages was more than 6% higher than the last season of the BSkyB monopoly during the 2006-07 season. The same number of games were broadcast in both the 2006-07 and 2009-10 seasons. Customers were worse off in both an overall sense, as they paid a higher price for access to all live games, and on a per-match basis.

Sky Sports and BT Sport Duopoly – 2013 to 2019

The replacement of ESPN with *BT Sport* has done nothing to improve price competition in the market. The total price to UK consumers for access to all live games during the 2015-16 season (combined cost of subscribing to both *Sky Sports* and *BT Sport*) reached a record high of £455.00, an increase of almost 28% on the previous period.

At £21 per month during the 2015-16 season for 38 games screened on its channel, *BT Sport* cost subscribers £210 for a ten-month period or £5.53 per game, although it should be noted that BT broadband customers receive its sports channels for free. BSkyB retained the most popular Sunday afternoon slots so the higher BT price cannot be attributed to their having

secured the best slots. The price per match on *BT Sport* is 2.6 times the price on *Sky Sports* and is 36% more expensive in real terms compared to the *Setanta Sports* price of 2007-08. Interestingly, Ofcom (2005) reported 34% of EPL fans who watched live matches would be prepared to pay an additional £5 or more per match to watch more live matches.

Discussion

Harbord and Szymanski (2004) argued that there was no difference between the EPL selling broadcast rights to a single subscription broadcaster and splitting the rights between subscription broadcasters. They concluded that splitting rights in this way would simply create two or more downstream monopolies instead of one and leave consumers no better off. The evidence presented in Section 4 demonstrates that UK customers have not benefitted, in the form of lower prices, from the introduction of competition since 2007. Table 3 conclusively demonstrates that prices have risen sharply on two occasions since 2000, in 2007-08 and 2015-16. Both coincided with the arrival of a new entrant into the market. It appears that the European Commission decision to prevent a single broadcaster from purchasing all of the available broadcasting packages has not created a competitive environment and price competition. Instead it has created a dynamic where two monopolies exist, each operating in a different market and selling a different product, as Harbord and Szymanski (2004) predicted. This was surely not the intention of the European Commission when it ended the BSkyB monopoly in 2007 and suggests more radical action is required.

There are a number of possible remedies which could be adopted. Firstly, regulators could prohibit collective selling and require clubs to sell rights on an individual basis. Noll (2007) argues strong teams, in big cities, will earn more from decentralised selling. This may raise

concerns about competitive balance, and could explain the tendency within the EU towards collective selling, which has replaced individual selling of rights in both Italy and Spain. Noll (2007) argues that over time, centralised selling of sports rights will cause increasing harm to consumers, as it restricts choice and leads to higher prices. Secondly, the individual sale of matches, not included in one of the live broadcast packages, could be permitted. As previously pointed out, the European Commission's 2006 decision provides individual clubs with a right to sell their own home matches in cases where the match is not included in any of the live or near-live packages. At present all matches not broadcast live are included in near live broadcasts, thereby preventing these games from being sold individually. Amending the conditions, so that any match not broadcast live could be sold on an individual basis, would increase competition. Clubs would not be precluded from concluding individual live broadcast deals for matches included in near-live broadcast packages. This would permit the possibility of different games being broadcast simultaneously. The behaviour of the competing broadcasters would then be no different to that of any firm operating in a competitive environment. An even more radical solution would be to prevent exclusive selling of rights, enabling more than one broadcaster to broadcast any game. Essentially, this is what used to happen in the case of the FA Cup Final, which was the only football match broadcast live prior to 1983, and shown by both BBC and ITV.

Thirdly, regulators could further limit the number of packages that a single broadcaster could acquire to, for example, less than half of those for sale. In most markets, an undertaking with more than 70% market share would be regarded as having a dominant position. While a dominant position of itself is not illegal under EU competition law, granting an exemption to an arrangement that has effectively permitted the establishment of such a dominant position represents a poor outcome from a competition policy perspective. It could also reserve at least

one of the packages for a free-to-air broadcaster. This could extend to a solution suggested by Harbord & Szymanski (2004) whereby a subscription broadcaster is required to resell part of a package to a free-to-air broadcaster, for a flat fee, on a non-exclusive basis. They argue that a per subscriber fee dampens competition in the downstream platform market whereas a flat fee would lead to monopoly rents being competed away.

It is also important to consider that the long-term sustainability of more than one broadcaster given the pricing behaviour of Setanta Sports previously, and currently BT. Both broadcasters appear to contradict standard economic theory. Operating under Bertrand competition and providing a differentiated product to BSkyB, as secondary entrants to the market, one would assume that the broadcasters would charge a lower unit cost for their product in order to compete with the incumbent. This is not the case. It is difficult to see how this strategy can be successful for BT in the long-run, with Setanta Sports' demise providing clear evidence of this.

BT may be using the football content as a means of selling its broadband services, illustrated by the fact that *BT Sport* comes free with the company's internet offering. By increasing its presence in the broadband market BT may be able to avoid the fate of Setanta Sports.

It should be noted that focusing on price alone may not tell the whole story. Ofcom (2007a:7) state that the growing role of subscription fees in sports broadcasting has increased innovation, as competition has intensified, with much of this led by BSkyB "who have been keen to differentiate themselves from the established terrestrial players". We may be observing that consumers are prepared to pay more for a higher quality product. However, if Formula 1 is to be used as an example, attempts to introduce a pay-per-view option, offering higher quality coverage such as statistical information and better camera angles proved unsuccessful and was

withdrawn after just twelve months (Ofcom, 2007a). It is a proposition that cannot be tested in the case of EPL football since consumers do not have the option of choosing a lower priced, lower quality option.

Noll (2007) argues that technology will eliminate regulatory restrictions on broadcasting in European countries as restrictions on terrestrial and satellite broadcasters will hasten the growth of internet and other content delivery platforms, although he questions whether this will address consumer harm due to collective selling of broadcast rights. It is reported that Amazon and others are likely to bid for the as yet unallocated packages for 2019–2022 EPL broadcasting rights. The ECJ judgment in *Murphy* may undermine broadcasters' ability to segregate EU markets along national lines. There have also been murmurings from clubs in favour of individual rather than collective rights selling (Guardian, 2017). Might the market therefore provide a solution for consumers where regulators have failed? This is a question for future research.

Conclusion

This paper considers the impact of the European Commission's attempts to increase competition in the market for broadcasting live EPL games. It demonstrates that prohibiting a single broadcaster from purchasing all live games, introduced for the 2007-08 season, has done nothing to reduce the cost to customers in the UK. Rather, the arrival of competition has resulted in an increase in both the price per game and has led to a substantial increase in the total cost to consumers. An annual subscription fee in excess of £450 for the 2016-17 season is more than 50% higher than the cost faced by those paying to access all live games under the final year of the BSkyB monopoly. By limiting the number of packages a single broadcaster

can buy and placing restrictions on the screening of matches, intervention in the market has effectively resulted in the establishment of two monopolies, coexisting in different markets. This has resulted in a situation where consumers are worse off than under the original monopoly, and is an unintended consequence of the European Commission's failure to impose more radical reforms.

The dynamics of this market need to be considered more carefully. The regulator could successfully reduce prices by prohibiting collective selling, permitting individual clubs to sell rights for their matches not included in a live broadcast package, or further reducing the number of packages any individual broadcaster could acquire to 50%. Additionally, the regulator could require some matches be broadcast on a free-to-air basis. Such options could increase competition by enabling competing broadcasters to screen different matches at the same time. A more radical solution would involve eliminating the sale of exclusive rights to matches. These options should be considered if regulators wish to increase consumer welfare. It remains to be seen whether technological and other market developments might provide a solution for consumers where regulators have failed.

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Appendices

Appendix 1: Real Cost of *Sky Sports* UK Subscriber – Selected Seasons

Season	Cost of Sky Sports	Sky Sports Games	Price per Game	Cost of PremPlus	PremPlus Games	Price per Game	Cost to Subscriber	Games	Price per Game
2000-2001	£182.35	60	£3.04	-	-	-	£182.35	60	£3.04
2003-2004	£191.91	70	£2.74	£71.08	40	£1.78	£262.99	110	£2.39
2006-2007	£221.67	88	£2.52	£78.24	50	£1.56	£299.91	138	£2.17
2007-2008	£224.18	96	£2.34	-	-	-	£224.18	96	£2.34
2009-2010	£217.06	96	£2.26	-	-	-	£217.06	96	£2.26
2011-2012	£233.98	115	£2.03	-	-	-	£233.98	115	£2.03
2015-2016	£245.00	116	£2.11	-	-	-	£245.00	116	£2.11
2016-2017	£246.72	126	£1.96	-	-	-	£246.72	126	£1.96

Sources: The Guardian (2007) and Ofcom (2010b and 2015).

Appendix 2: Real Cost of 2nd Subscription Channel to UK Subscriber – Selected Seasons

Season	Cost of 2nd Subscription	Games	Price per Game
2000-2001	-	-	-
2003-2004	-	-	-
2006-2007	-	-	-
2007-2008	£186.76	42	£4.45
2009-2010	£101.39	42	£2.41
2011-2012	£94.05	23	£4.09
2015-2016	£210.00	38	£5.53
2016-2017	£211.47	42	£5.04

Sources: The Guardian (2007) and Ofcom (2010b and 2015).