



EUROPEAN BROADCASTING UNION

UNION EUROPEENNE DE RADIO-TELEVISION

Legal Department

Département juridique

English only

25.7.2001/3

DAJ/WR/mp

Sports Broadcasting Rights and EC Competition Law^{*}

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** This article is based on a paper provided for a panel discussion on the collective selling of sports television broadcasting rights at an international conference in London on 12 October 1999.*

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I. Introduction

Applying EC (or national) competition law to the business aspects of the broadcasting of sports events is nothing new, but it remains a difficult and largely unknown issue. Let me try to give you some guidelines.

The collective exploitation of sports broadcasting rights is not, of itself, a dominantly negative factor in determining legality under competition law. The existing case law clarifies that most, if not all, objections were raised against the (additional) *conditions* of such practices, such as the excessive duration of the rights packages and, in combination with the extensive exclusivity, its blocking effect on the development of new broadcasting services.

II. The relevant market

One of the main unresolved questions concerns the relevant market for sports broadcasting rights (see, for example, the orientation document by the EC Commission, Broadcasting of Sports Events and Competition Law, Competition Policy Newsletter, June 1998.)

Competition law is concerned with the effects that anti-competitive agreements or practices have on the consumer. Consequently, determining relevant markets calls for inquiries into the impact that restrictive agreements have on the opposite side of the market by asking about the effect on the choices of the enterprises which are the clients of the parties to a restrictive agreement. Thus, the anti-competitive effects of restrictions of supply will be assessed in terms of whether the demand side does have reasonable supply alternatives (substitute products) to meet its needs, reasonable being defined by price and quality. Conversely, anti-competitive effects of restriction of demand (such as collective buying) will be assessed in terms of whether the supply side may reasonably turn to other enterprises or whether it may reasonably modify its offer. The two tests are different because when suppliers are faced with restrictive demand, they are normally in no real position to modify the nature of the product or service they offer.

Applying these seemingly simple tests to the markets for sports rights meets with several difficulties.

Firstly, collective buying by television organizations (or any other restrictive agreement) will have effects on both sides, the up-stream market for the acquisition of sports rights and the down-stream market for the exploitation of the acquired rights. But it is primarily the latter aspect which interests antitrust authorities. They are concerned with the question of whether the collectively acquired rights unduly enhance the position of broadcasters vis-à-vis their clients or consumers, i.e. advertising agencies in the case of commercial television and television viewers in the case of pay-TV; or, in other words, whether the position of competing broadcasters vis-à-vis these same consumers is weakened.

The second problem is that the substitutability of individual broadcast offers is not what really matters. This is already obvious as far as the advertising agency is concerned, since it consumes not television broadcasts as such but television space for advertising. For the agency, the value of the broadcast offer and its substitutability (in the eyes of the audience) is of interest only as a factor - albeit a major factor - in determining the value of the television advertising space. This is frequently overlooked when television programmes are held to be too different to be substitutable. For the advertising agency, it is not the content of a programme as such that matters but only its value in terms of attractiveness to viewers. For them, therefore, all programmes are basically interchangeable if they attract the same number of viewers, whether or not the programmes involve a sports event. Consequently, very different sports events may be substitutable as a matter of guaranteeing attractive television advertising space.

Thirdly, sports broadcasting rights have certain aspects which make them unique. Each sports event is characterized by its particular "live" value, which will (almost) completely diminish as soon as the event is over. This short-lived nature has special consequences for the different forms of use in broadcasting; a weekly sports event or even a European football final cannot be exploited to the same extent as a new James Bond film. For the same reason, the live broadcasting rights to such sports events are only attractive to the broadcaster on an exclusive basis.

Fourthly, the objective of the "relevant market" test is to assess correctly existing competitive relationships. In addition to the products or services concerned, as well as the territorial limits of markets, the time factor has to be taken into consideration. Competition is a process, and services are rendered over time. Therefore, relevant time periods must be determined. There may be single events which by their nature also determine the relevant time window. But competition between broadcasters is mostly determined by programme differentiation. The broadcaster's programmes may be specialized (dedicated channels) or they may be mixed programme services. It is the mix over time which defines the service offered, and the time period defines the relevant market.

As far as the consumer of pay-TV is concerned, it can also be assumed that every sport has its own characteristics and specific financial circumstances. In particular from the point of view of the potential recipient of sports broadcasting services, the general public interested in sport as a whole, one type of sport is not likely to be a real substitute for another, and even a possible selection of the most popular sports (such as football, motor racing, tennis, rugby, skiing, boxing and ice hockey) will depend on the cultural background of that public.

From the viewpoint of broadcasters and rights marketing agencies, therefore, the differences between each sport do not create as many separate markets for the corresponding broadcasting rights. In order to accept the logic of this view, we should be prepared to admit that, under traditional competition law principles, the restraining effects on competition are usually

assessed on a short-term basis, whereas the relevant market for sports broadcasting rights requires a long-term analysis; the predominant question for any broadcaster is not how to attract as many spectators as possible *for a given broadcast production* but how to achieve a (sufficiently high) audience share *for (at least) a complete broadcasting season*. Any broadcaster, whether or not it has already established itself on the market, needs some "special offers" on a regular basis to attract the attention of the potential audience, but no broadcaster could deny that the ultimate challenge for its full programme package is to maintain a more or less permanent share of the audience as a whole.

On the other hand, it is evident that the relevant market for sports broadcasting rights cannot be determined by the actual or potential spectator, as in that case not only different types of sports, but also individual matches from the same sports competition or even within a given tournament, as well as each single match of the national team, will have varying degrees of spectator appeal. Just as the substitutability of feature films cannot be annulled by assuming that a Disney film will appeal to a different audience from a James Bond film (and even among the existing James Bond films you will find varying spectator appeal, partly because different actors have played the hero), the demarcation of the relevant market for sports broadcasting rights would be largely unpredictable, if not virtually impossible, if the emphasis were put on the potential audience.

As a result of these specific characteristics of sports events and broadcasting, there are always various "premium" sports events during a broadcasting season, such as a weekly football championship match or a tennis tournament, which are sufficiently attractive to a substantial part of the potential audience. From the broadcaster's point of view, such events within a particular type of sport (i.e. apart from the so-called "major events", which take place only once a year or even less often) are to a large extent interchangeable, as long as they can be used throughout the broadcast season to maintain the audience attention or share level.

For example, although the potential audience for football is likely to be different from that of tennis, for broadcasters and rights marketing agencies the broadcasting rights for a particular selection of tennis tournaments are regarded as a substitute for a given series of European football matches. The extent to which broadcasting rights to sports events are substitutable is even more obvious with respect to the *less popular* sports.

These consequences of the special nature of the relevant market for sports broadcasting rights imply that the demand side of this market has a certain level of choice available and, thus, there is no absolute necessity for any broadcaster or agency to acquire the live broadcasting rights to a particular batch of events of these sports.

III. National case law on football television rights

The creation by a sports federation of a "solidarity pool" to share the income from the broadcasting rights in one way or another in order to maintain the necessary degree of competitiveness among the participating clubs cannot be regarded as generally incompatible with EC competition law. In each case, however, it remains to be seen whether the actual conditions for creating such a pool could help justify a possible exemption for the central marketing of the broadcasting rights. Most cases which were decided under national competition law involved the sale of television broadcasting rights on a collective and exclusive basis by the national football federations.

1. *France*

The most "drastic" approach seems to have been introduced in France, where the national football federation is designated by law (Art. 17/18 of the Law No. 84-610 of 16 July 1984, as amended in 1992) as the sole authority for exploiting the broadcasting rights to the matches of the official competitions, which are organized by that authority, on a collective basis. However, although the federation thereby enjoys a *sui generis* type of right, it should be recalled that the original basis thereof is to be found in unfair competition law (Art. 1382 of the *Code Civil*).

This unique position of (in fact, all) official sports federations has been reinforced by an amendment of the law in 1992, which was confirmed by a decision of the Supreme Court in 1994 (*Fédération Française de Football ./. La Cinq*). According to that decision, the French Football Federation participates in providing the public service of sport by exercising the prerogatives of public power. Even though the existing broadcasting agreements between the Federation and the broadcasters were governed by private law, the exclusivity of these contracts was deemed not to be discriminatory. However, the law prohibits the conclusion of exclusive broadcasting agreements for more than five years.

2. *Netherlands*

The opposite situation from that of France can probably be found in the Netherlands, where the objections to collective selling caused the collapse of the proposed football channel "Sport 7". The Dutch Football Federation wished to sell the broadcasting rights for the first national football league to a commercial channel of which the Federation would also be one of the main shareholders. However, the proposal broke down after an Appeal Court's decision that these rights belonged (at least) also to the clubs, based on their ability to control public access to the matches in their stadiums, and that the national Federation could not obtain those rights on an exclusive basis simply through a change in the statutes (Hof Amsterdam, 8 November 1996, RvdW/KG 1996, No. 448 - *Feyenoord/KNVB*).

Later, shortly before the new Competition Act entered into force, the Dutch Football Federation asked for an exemption (under the old rules) to its collective sale of the broadcasting rights with respect to "extracts" from the matches in the national championship (the most popular clubs had sold the rights to live broadcasts of their home matches on an individual basis to Canal+). The exclusive position of the Football Federation was limited to 24 hours after the last match of the day on which most of the matches were played; after that period, the clubs were free to sell these rights individually. The Ministry for Economic Affairs took account of the possible interests of the viewers in having all highlights shown by a single broadcaster on a fixed time, but was not convinced that such interests alone could justify the exemption, even in combination with the argument that the championship as a whole would be at risk; financial inequality among the clubs could also be reduced by creating a "solidarity fund" on the basis of collecting a certain percentage of the revenue which was generated individually. The exemption was nevertheless granted, but limited to "a reasonable time" (see also *Lugard, Markt & Mededinging* 1998/No. 1, 28).

3. Germany

In a judgment handed down in December 1997, the German Supreme Court confirmed two decisions of the Federal Cartel Authority that, with respect to football matches played in Germany in the UEFA Cup and the European Cup Winners' Cup, the German Football Federation is not allowed, on the basis of national competition law, to market centrally the broadcasting rights for these matches, by imposing on the associated clubs a statutory obligation to grant these exploitation rights exclusively to the Federation.

Concerning the matches played by the club teams in their home stadia, the Court considered that the respective clubs were the real organizers of these matches, since they provide the ingredients (the players) and the local infrastructure which result in the "product" in which the spectator is interested. Following on from the explanatory regulations in the UEFA competition bye-laws, the home club is not only responsible for the organization and cost of its matches in the European competitions but is also entitled to the revenue therefrom. Under these circumstances, the Court held that the clubs, at least, were entitled to exploit the broadcasting rights.

The Court deemed it possible that UEFA would be entitled to share in the revenue from the rights, but since UEFA was not a party to the proceedings this question was left undecided. In contrast, with respect to the UEFA and European Cup matches involved, the activities of the German Football Federation were regarded as limited to merely a coordination role, which could provide a better, balanced exploitation of the broadcasting rights but did not actually bring about the existence of the transmissions as such.

Since the individual UEFA and European Cup matches were capable of being exploited separately, there was no compelling need to sell as a package the broadcasting rights for the matches of all the clubs which had qualified. Thus, the central marketing of the broadcasting rights by the Federation eliminated any competition over the prices or conditions that might be set by the individual clubs.

An exemption for a "rationalization cartel" was also refused by the Court, because the system of central exploitation, as applied by the German Football Federation, would merely serve to increase the revenue from the broadcasting rights and would not improve any cost-benefit relationship. For the same reason, the central marketing of the rights could not be justified by the "pooling" principle based on solidarity among the clubs.

Contrary to the situation in the United States, the Court considered that an exemption under competition law could not follow on from the social or political aim of retaining a sufficiently large number of clubs which are (also) financially capable of participating in the leagues. Otherwise, such a justification would seem to enable the Federation to cover all of its costs simply by increasing the broadcasting fees, and those fees would have to be financed at least partly by television viewers of the matches. However, this observation must be seen in the context of the Court's emphasis that the decision concerns only the two European Championships, the situation regarding the central marketing of national sports leagues being a quite separate issue.

After it became known last year that the revision of the German Competition Act would include an explicit exemption in favour of the collective selling of broadcasting rights by sports associations for matches organized by such associations, the European Commission stated its opposition to this development in so far as such an exemption might apply to matches in the national league but, when applied to European championships, would be subject to EU competition law. The German Football Federation was therefore forced to notify the collective selling of the television and radio broadcasting rights to the matches in the first and second national football leagues and the matches in the national cup competition for negative clearance or an exemption under EU competition law (see EC *Official Journal* of 9 January 1999, C 6, p. 10.)

4. Spain

In 1998, the Audiencia Nacional confirmed the decision of the Spanish Competition Authority in 1993 that the agreements between the Federation and some Spanish broadcasters on the live transmissions of the national football championship matches were unlawful, because the scope of the exclusivity was too wide. The term of the contracts was eight years and they covered world-wide broadcasting rights, including highlights and the commercial exploitation of videos, for all competitions organized by the Federation. The Federation had also agreed not to sell any rights to any other broadcaster and, in addition thereto, to extend the agreement for another term of five years if the broadcasters were prepared to match any other offer.

However, the decision of the Audiencia Nacional has been appealed to the Supreme Court, and as far as I know, the issue is still under debate.

5. *Italy (and the United Kingdom)*

During the past summer, we have been presented with new case law. On 1 July 1999, the Italian Competition Authority prohibited collective selling practices by the national football federation (Lega Calcio) with respect to live transmissions of the Serie A and Serie B championship matches, but allowed them for the making of highlights programmes while granting an exemption as regards to the "knock-out phase" of the national Cup competition. (The decision is available at the website of the Italian Competition Authority, at <http://www.agcm.it>.) In contrast, a few weeks later the Restrictive Practices Court in the United Kingdom concluded that the collective sale of broadcasting rights is generally not contrary to the public interest.

The case in the United Kingdom, as decided by the Restrictive Practices Court on 28 July 1999 (available at <http://www.courtservice.gov.uk>), will be explained in detail by other panellists.

With respect to the Italian decision, the Authority considered that the Lega Calcio did not assume any immediate entrepreneurial risk for the specific organization of each individual match, but that its institutional task was limited to a general involvement of a technical and administrative nature. Thus, the Lega Calcio was not regarded as being entitled to ownership, or even co-ownership, of the broadcasting rights involved.

Moreover, the Authority considered that the purposes for which the Lega Calcio had been established, namely to provide mutual support for its member clubs through the promotion of financial equality and to maintain a high level of consumer interest in sports events, were not sufficient to justify the selling of all broadcasting rights on a collective basis. The Authority found that redistribution of income among the major and minor clubs, which is necessary to maintain a competitive balance among them, could also be achieved by adopting alternative mechanisms which were equally effective but less restrictive (for example, by collecting shares of the income of the individual clubs on the basis of a gradually increasing scale).

On the other hand, the centralized marketing of the broadcasting rights with respect to the *highlights* of Serie A and Serie B championship matches did not restrict competition, because it would seem to be extremely complicated to sell these rights individually. In addition, that practice could even change their characteristics altogether; for example, it would seem difficult to offer a complete review of all matches played on a given day. The rights to broadcast the highlights of these matches would thus have real value only if they were sold as a single package.

Finally, concerning the matches in the *Coppa Italia*, the Authority considered that it was technically possible to sell the broadcasting rights to these matches on an individual basis. However, it concluded that by limiting the collective sale to the matches played in the immediate elimination rounds, under the statutory changes which the Lega Calcio had introduced in March 1999, the rule was eligible for an exemption. The reasons for granting this exemption (for three years) were the high transaction costs related to the large number of clubs involved (48), the uncertainty faced by broadcasters when they wished to acquire the broadcasting rights (as it would be unknown until immediately after each match from whom rights were to be acquired), the need to ease the transition towards a system in which most of the rights will be negotiated on an individual basis, and the fact that these rights would represent only 10 to 12% of the market for premium sports broadcasting rights.

IV. Conclusions

1. Main lessons

What do we learn from this overview, other than finding a lack of uniformity which nobody would have reasonably expected? Were the specific clauses of the UK agreements so different from the circumstances which resulted in the prohibition of the collective selling arrangements in several other countries? Or are the UK authorities protecting the primary nature of football as a sport more than others (also bearing in mind the complete prohibition of the proposed merger between BSkyB and Manchester United); and if the answer is affirmative, is this because UK competition law has yet to be modernized in line with the rules of the EC Treaty? Or is it simply caused by the great cultural attachment to football that has traditionally existed in the United Kingdom, so that the outcome may be different from an investigation of similar arrangements with respect to - for example - skiing?

For the United Kingdom Court, the substance of the relevant exclusivity clauses was the obligation not to grant to any broadcaster other than Sky or the BBC "the opportunity to experience and use for its own purposes the entertainment which consists of the playing of the match", if the purpose of that attendance is the making of any broadcast intended for reception within the agreed territory. Under this approach, the broadcasting rights are based primarily on the *providing of entertainment services in the form of witnessing the playing of the match*. This implies a different notion than the so-called "arena rights", which merely derive from the basic principle under civil law that the home club may allow or refuse anybody admission to its premises (as, for example, under Dutch case law).

In the latter case, only the home club will be regarded as the possible proprietor of the broadcasting rights to its home matches, whilst the entertainment services approach presupposes significantly stronger involvement by the organizer of the national championship as a whole. This is confirmed by the United Kingdom Court's consideration that the main "production" of the League and its member clubs, i.e. the 380 matches of a Premier League

season, is not limited by the exclusive position of the League to sell the broadcasting rights to these matches. Subsequently, the idea of jointly or collectively "co-producing" football entertainment services logically reduces the restrictive extent of binding rules between the federation and the clubs on the collective sale of the broadcasting rights.

The decision of the Italian Competition Authority seems to fall between these positions, as it emphasizes the right of the home club to prevent stadium access, but this is accompanied by the entitlement of the organizer of an event, under the law on unfair competition, to enjoy the fruits of the commercial exploitation thereof. In line with its purely economic approach, however, the Authority did not grant the visiting club any co-ownership rights. When a competition is based on an equal number of home and away matches, this may not be decisive or even relevant. However, the United Kingdom Court recognized more realistically that the entertainment value of a match at least depends on two clubs and that the value of the television rights in any individual Premier League match is also affected by the value of the League competition itself; thereby, it shows the necessary respect for the entitlement of visiting clubs to share in the proceeds of the rights to matches for which they have also mobilized their entertainment forces.

The different approaches to the notion of broadcasting rights also explain the decision of the German Supreme Court, since the input of the German Football Federation was not sufficient to justify any co-ownership of the broadcasting rights to the European matches between clubs of different leagues; the position of the UEFA was not a subject of that decision. However, it should be realized that such Cup competitions *on the national level*, although perhaps also involving knock-out matches in the final phase, are nevertheless different, because the value of these national Cup matches depends, to a much larger extent than at the European level, on the actual achievements of the clubs concerned within the national competitions, and thus shows more involvement by the organizer of both competitions. Other reasons that may justify the collective sale of national Cup matches are given by the Italian Competition Authority.

According to a paper issued by the European Commission (which I referred to earlier), the determination of the notion and ownership of the broadcasting rights is only a matter of national law. Does this mean that the European Union will have to accept divergent opinions on the legitimacy of collective selling? To a certain extent, the current cases before the Commission will pave the way for the application of national competition law. On the other hand, we have come to realize that it is not the difference *between the sports* but the difference between the *types of competition* which leads to different approaches.

2. *Alternatives to collective selling?*

In view of the extraordinary increase in the value of broadcasting rights for popular sports, it is realistic to assume that in many national sports leagues a strict system of individual negotiations by the clubs will steadily jeopardize the financial situation of the less successful

clubs. A certain "polarization" effect is already visible in the extent and intensity of the commercial activities of individual sports clubs: only the most popular ones are capable of generating high income. Any individual selling regime must therefore include some restrictions in order to safeguard the competitive balance among the clubs and thus maintain the competition as a whole.

Removing the right of the national federation to negotiate on a collective basis, in favour of a situation where the clubs compete with each other for broadcasting revenue, will result in shifting the balance of competition towards and among broadcasters. But that will not necessarily lead to an increase in the choice of televised sports, as the market for broadcasting is currently dominated by the sale of *exclusive rights*. Thus, another solution may be to allow collective selling only if broadcasting rights are not granted on an exclusive basis to a single broadcaster. However, the United Kingdom Court had many doubts about the feasibility of such a solution, and, moreover, it does not diminish the applicability of competition law.

3. *Alternatives to collecting and sharing the income?*

The most critical point may therefore be the *specific method for collecting and sharing the income* from the television rights by the national federation. From that point of view, a possible exemption for central marketing of broadcasting rights to the matches of the national football championship - and this can probably be extended to many other national sports competitions - will depend largely on the alternative means of maintaining the viability of that national competition. For example, the German Court clarifies that merely sharing the revenue among all participating clubs for their own financial benefit is not sufficient to justify complete restraint of the club's own marketing possibilities.

Moreover, to maintain the existing structure of national championships as such, the Italian Authority has indicated that the rules for supporting financial equality among the clubs could be placed under more scrutiny than the test applied by the United Kingdom Court. Less restrictive practices by the sports federations, such as merely requiring a (differentiated) percentage of the individually achieved revenue, in order to create a "social fund" for the less popular clubs, will be less prohibitive under competition law. For example, in 1994, the Austrian Supreme Court allowed its national skiing federation to make the exclusive nomination of local committees for the organization of international championships dependent on receiving a large share of the marketing revenue of the nominated committee (notably the advertising and sponsorship rights) but with a guarantee of financing the organizational costs.

Thus, concerning the future arrangements for the sale of the Premier League broadcasting rights, i.e. after the termination of the current agreements in 2001, it is far from certain that an investigation under the new UK Competition Act will yield the same result, even assuming that similar agreements are concluded. On publishing its White Paper on Competitiveness, prior to the enactment of the new Competition Act, the United Kingdom Government promised to use the new Act to "get tough on anti-competitive behaviour".

Nevertheless, the fundamental flaw of proposing alternative redistribution schemes is that it is still unclear how the creation of such "social funds" could function in practice: What would be a "fair" percentage to collect and how would the necessary consensus on that percentage be established among the clubs? Would it not be more realistic to assume that such a system will even increase the cost of the rights for broadcasters, since the more popular clubs would be likely to recoup the expected "loss" of income by raising the overall price for their home matches?

4. *Neglected interests*

Since public service broadcasters always take account of the interests of minorities and the public as a whole, there are a number of "players" whose interests should not be neglected - notably the less popular sports, and the viewing public.

For example, the mere possibility of a sports event forming the content of a television broadcast does not transform that event into a purely commercial product and even less does it deprive the event of its *human, social and cultural dimension*. Why should the public be forced to pay more and more for viewing sports events which are part of their own cultural environment? (It should not be overlooked that higher costs for broadcasting rights will raise the prices for the advertising customers, and these costs will thus be paid by the public consuming the advertised goods or services.) The socially integrative role of sport in each European society should not be put at risk, which implies that an investigation under national or European competition law cannot limit itself to purely economic deliberations in order to meet the desire of the most popular clubs to be more successful in financial terms.

Neither would it be socially acceptable for the general public to be obliged to pay more (whether for decoders or for pay-per-view) in order to be able to watch the same sports events that they are used to watching. At least the German Supreme Court and the United Kingdom Court seemed to have recognized - and disliked - the development whereby the increased cost of sports broadcasting rights is allocated to the potential audience. This means that practical solutions aimed at promoting the social and cultural aspects of sport and resulting in a considerable reduction in the financial burden on the audience would be a highly relevant factor with respect to a possible exemption under the rules for rationalization cartels. Further case law should therefore put more emphasis on these aspects.

Of course, the responsibility for maintaining *the interest of the public in each sport as a whole* remains, in any case, a matter for both the clubs and the federation. However, with respect to the practice of central marketing from a competition law point of view, the situation would seem to be very different, if even the successful clubs in a given sport were unable to derive sufficient income from the broadcasting rights, because of the overall lack of popularity of the sport as such. In such situations, there is a strong social reason for the collective exploitation of those rights in order to maintain the public's interest in the sport as a whole.

In view of the growing desire of the larger football clubs in several European countries to prefer the conclusion of individual contracts for pay-per-view broadcasting, it may be assumed that the rights market with respect to the *live* broadcasting of football matches will change to some extent. In fact, in all countries where collective selling is practiced, the federations have not been reluctant to involve the pay-TV market; on the contrary, the colossal increase in the cost of the broadcasting rights is at least partly caused by the attractiveness of these rights for pay-TV operators - and the willingness of the federations to grant them these rights - on an exclusive basis. However, if the attractiveness of pay-TV for the audience affects the *live attendance* of football matches and the *game* of football in general, an own goal will have been scored.

The sports federations are already aware of the risks of "over-commercialization", which are the result of the increasing control of popular clubs by media companies. For example, a new UEFA rule prohibits the control of more than one club in the same UEFA club competition. (See the Communication by the EC Commission *Official Journal* of 17.12.1999, C 363.) However, this is only the tip of the iceberg; in my view, preserving the integrity of sport should involve the more fundamental question of placing a proper limit on *any substantial form* of ownership of a football club by a media company. In cases where such a limit cannot be set by present merger regulations, as a result of the high "thresholds" to be passed (the proposed BSkyB/Manchester United merger was an exception), this task should be taken on by the federations.

Whether these developments could have any effect on the conditions for the sale of broadcasting rights to *highlights* programmes is even less predictable. Whereas both the Italian and United Kingdom decisions allowed the central marketing thereof, partly because their sale on an individual basis would not seem to be practicable, the Dutch Ministry assumed the opposite (but without any full investigation). The UK approach is more reasonable, as it concentrated on the exclusivity of the rights and held such exclusivity to be more difficult to justify, in cases where it is possible to include time windows between such programmes.

5. *New EC Commission - new hope?*

One of the conclusions of the first European Union Conference on Sport was the consideration that "the interests of sport are best served by a system of collective sale of rights, in particular by federations". However, the contrasting results of the decisions on the collective selling of broadcasting rights by the national football federation still leave many doubts about the circumstances under which such practices are legitimate. It is to be hoped that the present cases before the new European Commission will add more transparency to the issue.
