

REVIEW OF UK'S FREE – TO – AIR LISTED EVENTS REGIME

BACKGROUND

The government can intervene when it feels that citizens should be able to access special or nationally significant events by ensuring they appear on free-to-air television channels. The drawing up of a list for 'important' national or international events to be shown on free-to-air television channels is permissible under EC law¹. In the UK such a list has been created using the Broadcasting Act 1996 in which a qualifying free-to-air channel is one "...for which no payments need to be made for reception beyond the normal TV licence fee; and whose broadcast is capable of being received by 95% of the UK population".² In April 2008 the Secretary of State for Culture Media and Sport (SOS) initiated a review of the UK's free-to-air listed events regime

THE REVIEW

The review considered:

- The principle of having a list;
- The criteria against which events may be listed; and
- The content of any list.

CRITERIA FOR LISTING:

"*The major event test*" must be passed in order for an event to be listed; it is based on fulfilling the following criteria:

- The event must have special resonance i.e. it must be more than a regularly scheduled event such as a league match;
- It is likely to be An important national (FA Cup final) or international event (World Cup, Olympics, international match);
- The event should [most likely] attract a large television audience.

The effect of having a "list" on a sport or sporting body was not considered by the review panel as this is the concern of the SOS. Possible impacts which may occur if a sport were listed include loss of revenue, which would inevitably come from pay-to-view channels. The SOS therefore considers that in addition to the major event test, an impact assessment should be carried out to assess the implications of listing for each sport, event, and the broadcasters

¹ The Audio Visual Media Services Directive (AVMS Directive)

² Currently BBC1, BBC2, ITV, Channel 4 and Five are "qualifying channels"

THE IMPACT ASSESSMENT

The impact assessment to be carried out by the SOS is important given that 'the list' has the potential to affect all those who are directly involved including the individual sport, sporting body and the broadcaster. Potentially the list restricts rights such as [the sports/sports bodies] intellectual property rights (IPR) and [the broadcasters] EC freedoms to provide and receive services, however, given the 'legitimate' role of the list, "interference with these rights is [viewed as] justifiable"³.

This provides for a conundrum as the events which are being listed are inevitably those with the greatest market value given the interest they attract, but listing will automatically restrict competition, effectively driving down the value. The proposed answer to this is that revenue can be generated in alternative ways and any loss can be offset through a "well balanced commercial strategy" reliant on a diverse income stream, as opposed to being over reliant on one. An additional, foreseen benefit is based on the theory that listing will lead to greater access/awareness of the sport which will result in higher participation; however there is no empirical evidence with which to support this hypothesis⁴.

It is proposed that the following factors should be considered in the impact assessment:

- The extent of any adverse impacts upon a sporting body;
- The extent of any positive commercial or other benefits resulting from being listed;
- The duration or irremediability of such adverse effects – are these measures likely to have a long term or short term impact and can these be mitigated?
- The extent of any net adverse financial effect upon a sport or sporting body commercial rights holder;
- The impacts of such measures on broadcasters and commercial rights holders;
- The consumer detriment, in terms of lost drivers for broadcasting innovation, technical improvements to coverage and other developments;
- Any additional beneficial/adverse effects such as the impact of listing upon participation in sport;
- The extent of direct and indirect public funding provided to a sport, both in the recent past and prospectively.

LISTED EVENTS

The recommendation of the criteria for listing a "major event" is a 'modernised and simplified' version of the 1998 criteria, but it is essentially the same with the key factors being national importance, pre-eminence of the event and its ability to command a large TV audience. The recommended events include:

- The Summer Olympics;
- The FIFA World Cup Finals;
- The UEFA European Football Championship Finals;
- The FA Cup Final;

³ DCMS (2009) "Review of free-to-air listed events". DCMS Consultation Document. DCMS: London [online] accessed 05/04/10 available from: http://www.culture.gov.uk/reference_library/consultations/6496.aspx/

⁴ Frontier Economics (2009) "The impact of listed events on the viewing and funding of sports". Frontier Economics: London

- The Scottish FA Cup Final (in Scotland);
- The Grand National;
- Home and away qualification matches in the FIFA World Cup and UEFA European Football Championships (in the home nation to which they relate);
- The Wimbledon Tennis Championship in its entirety;
- The Open Golf Championship;
- The Rugby Union World Cup Tournament in its entirety;
- Cricket's Home Ashes Test Matches; and
- Wales matches in the Six Nations Rugby Championship (in Wales).

Examples of events that are no longer recommended for listing include:

- The Winter Olympics;
- The Derby;
- The Rugby League Challenge Cup Final;
- The Six Nations Championship involving the home countries (outside of matches in Wales);
- The commonwealth games; and
- The Ryder Cup.

One of the reasons events have been removed from the list is based on television viewing numbers, for example: The Derby and the Challenge Cup Final attract less than 2 million viewers and have therefore been dropped from the list although regional events which attract less viewers remain, for example: the Scottish Cup Final, which attracts less than half a million viewers [in Scotland only] was retained, while in Wales, coverage of the Six Nations rugby tournaments is listed, given that rugby is the national sport where as it is not listed in any other of the 'home nations', even though all of them are involved in the tournament. Northern Ireland does not have any nationally significant events on the list and the potential listing of qualifying for the soccer World Cup and European Championships could affect the Irish Football Associations (IFA) lucrative deal with SKY (pay-to-view) to broadcast all of Northern Ireland's home football internationals.

IMPLICATIONS OF PROPOSALS

The importance of this list is endorsed by the SOS with the review concluding that, a list is important in ensuring that all UK citizens have the ability to watch major events and believes that such a list safeguards the interests of the 'significant' proportion of the population who do not have access to pay-to-view channels, (particularly those on low incomes) and allows them to take part in the 'enjoyment and celebration' of these events.

In Northern Ireland, however, the IFA signed a deal with SKY to broadcast all of their home internationals over the period 2008-2012, taking in qualifying matches for the 2010 World Cup and 2012 European Championships. So while the SOS recommends that the impact on the Sport, the spectators and the broadcasters is considered, the IFA take the view that money is fundamental to the sustainability of the sport and it provides funding for football at all levels in Northern Ireland⁵ and should therefore take precedence.

⁵ BBC Sport (2007) "SKY TV Deal to net IFA over £10 million" [online] accessed 22/03/2010 available from: <http://news.bbc.co.uk/sport1/hi/football/internationals/6599507.stm>

Over its course, this deal will have earned the IFA more than £10 million; five times more than the £2million previously paid by the [free-to-view] BBC for similar rights. It is therefore the case that while this contract does potentially limit a 'significant proportion' of the populations' ability to watch Northern Ireland football matches, regardless of the significance or special resonance, that the impact of not having this deal would have been more detrimental to the sport.

A similar situation exists in both Wales and Scotland. The Scottish Football Association (SFA) is 'bitterly opposed' to the proposal to list Scotland Matches stating that the loss [of £12m pounds per year] would "...have seriously damaging and far reaching implications for every level of Scottish football".⁶ As part of the review process a visit was made to Wales where the panel met with the Football Association of Wales (FAW); the key points gleaned of this visit were⁷:

- 40% of the FAW's income is derived from the Sky deal and competition is crucial.
- Listing would be catastrophic for football in Wales;
- Listing effectively taxes the right holder in the absence of compensation for the diminution in the value of rights;

The IFA were contacted by the author of this paper in order that their views of these proposals could be presented, unfortunately they were unable to comment, however, they have provided a written response to the DCMS consultation.

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⁶ Halliday, S. (2010) "Gordon Smith hopes proposals for Scotland games will not see the light of day". The Scotsman, 18th March 2010 [online] accessed 31/03/2010 available from:

<http://thescotsman.scotsman.com/international/Gordon-Smith--hopes-TV.6161335.jp>

⁷ DCMS (2010) Free-to-Air Listed Events Review: Panel visit to Ty Hywel, National Assembly for Wales, Cardiff Bay, Tuesday 2nd June [online] accessed 31/03/2010 available from: http://www.culture.gov.uk/reference_library/consultations/6444.aspx