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Sports broadcasting rights - has the sports fan benefited from the EU competition remedies?



- UK: Ofcom's Third Pay TV consultation document (June 09)
 - Regulatory intervention under its sectoral powers: wholesale must-offer obligation
 - + More targeted intervention under the competition rules to prevent further aggregation of the FAPL content by BSkyB

UK pay television market

- Digital Terrestrial Television (DTT)



- Digital Satellite



- Digital Cable



- IPTV



- THE SYMPTOMS / DIAGNOSIS ?

- FAPL joint selling agreement

- Efficiency gains
- Competition problems: exclusivity concerns, monopoly
 - Only **sky** subscribers access to Premier League content,
 - only 25 % of matches broadcasted live



- THE TREATMENT ?

- Segmentation live TV rights in 6 packages + 2 near-live packages
- No single buyer obligation
- Monitoring Trustee
- Unused rights revert to the individual clubs
- Exclusivity max. 3 years

Have consumers benefited?

- EVALUATION?
- Remedies: creation of a level playing field (macro-level)
- But limited practical effects for the final consumer
 - Remedies facilitated market entry Setanta
 - FAPL auction 2007-2010: 2
 - FAPL auction 2010-2013: 1
 - Sky viewers: additional subscription
 - ESPN on Sky Platform



- Presumed causality market level playing field - consumer benefits = questionable
- Suggestion for a stronger consumer-interest approach: impact on consumer choice?
 - German Bundeskartellamt: 2008 assessment DFB joint selling arrangements
 - Article 81(3) EC
 - Improve production/distribution of goods or promote technical and economic progress
 - Consumers receive fair share of the benefits
 - Restrictions are indispensable
 - Competition not eliminated
 - Claimed efficiencies adequately passed-on to final consumers?
 - Concept of ‘consumers’
 - Cf. Ofcom proposals to reduce cross-platform exclusivity



- Van Rompuy, B. “Fair access to exclusive sports rights still a long shot in the UK pay TV market” (2009) 14 Communications Law, nr. 4.
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