Competition Law and Access to Premium Content

Lessons for Pluralism Regulation

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What is ‘premium content’?
Access to premium content as an enforcement priority

Right holders

Channel operators

Multichannel distributors

Is premium content an ‘indispensable’ input?
Access to premium content as an enforcement priority

- Economic considerations help explain action by the European Commission
  - Premium content is typically licensed by right holders on an *exclusive basis*
  - Exclusive licensing has had two major consequences:
    - ‘Migration’ of premium content to subscription-based ‘pay TV’ (see, by contrast, the US)
    - The markets for the acquisition and the exploitation of premium content *tend towards monopoly* (‘premium content bottleneck’)

Access to premium content as an enforcement priority

- UEFA
- Premier League
- Majors

Sky Sports

Wholesale access

Virgin
- Cable

BSkyB
- Satellite

‘Premium content bottleneck’

Right holders

Multichannel distributors

• An openly regulatory stance was introduced in UEFA Champions League
  – Approach confined to the joint selling of television rights for top sports events
  – Main features of the regulatory approach:
    • The length of exclusivity is limited to three years
    • The right holder is required to license its content in several packages (‘sale in packages’)
    • In some cases (Premier League case), the right holder is subject to the ‘single buyer rule’
Access to premium content in *Premier League* (2006)

- **Premier League**
  - **Gold package**
  - **Silver package**
  - **Bronze package**

**Bottleneck incumbent**
Access to premium content as a settled area of the law

‘[…] in the area of marketing of media rights for sports events, the Commission has, after adopting commitment decisions in the cases DFB and FA Premier League, considered that further action in this field should not be a priority for it as the existing commitment decisions appeared to provide sufficient orientation to operators and national competition authorities to deal with domestic media markets effectively and consistently’ (emphasis added)
‘deal with [...] media markets effectively and consistently’. Really?

• Action by the European Commission in this field can has, by and large, failed:
  – Sale in packages has never been an effective remedy
  – Intervention has harmed consumes without improving the conditions of competition
  – A rigid *ex ante* approach is likely to benefit incumbents at the expense of new entrants
# Sale in packages: a stillborn remedy

<table>
<thead>
<tr>
<th>Member State</th>
<th>Auction date</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>FR</td>
<td>• 2002</td>
<td>• Winner takes all</td>
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<tr>
<td></td>
<td>• 2004</td>
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<td></td>
<td>• 2008</td>
<td>• Orange <em>enters</em></td>
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<td>UK</td>
<td>• 2003</td>
<td>• Winner takes all</td>
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<tr>
<td></td>
<td>• 2006</td>
<td>• Single buyer rule</td>
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<td></td>
<td>• 2009</td>
<td>• 5/6 to incumbent</td>
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Lessons for pluralism regulation

• Do not ignore the economic features of the markets in which intervention takes place
  – If a market tends towards monopoly, introducing rivalry will not work
  – Alternative approaches may be considered

• ‘If it’s fixed, don’t break it’
  – Competition ‘for’ the market is not a ‘lesser’ form of competition and it may work
  – There is evidence that acquisition markets are more competitive than assumed (e.g. Belgium, Spain)