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**Plenary Session 2 - Premium Sports Media Rights
Background Document¹**
Roland Belfin, RTR (AT)

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1 Introduction

Sport has always been an important pillar of the audiovisual industry. The transmission of live major sporting events is one of the main “crowd pullers” for linear broadcasting. Sport events also play an important role for the identity and integration of society.

However, the issue of sports rights has only featured a couple of times on the agenda of EPRA meetings. On these occasions, the discussion focused on the list of events of major importance to society. In 2001, in Barcelona, a working group² first discussed the practicalities of implementing the new provisions of the revised Television Without Frontiers Directive on major events. In Budva in 2014, a workgroup³ looked into the implementation of Article 14 of the Audiovisual Media Services Directive taking into consideration the different approaches of the countries whose lists had recently been amended and the main issues they had experienced during and after the proceedings.

The issue of the tension inherent to sports rights between public interest and free competition and how to find the right balance between the two has also been addressed in Yerevan in 2016 during a plenary debate on the future for free to view television⁴.

¹ **Disclaimer:** this document has been produced for an internal meeting by EPRA, an informal network of 53 regulatory authorities in the field of audiovisual media services. It is not a fully comprehensive overview of the issues, nor does it represent the views or the official position of EPRA or of any member within the EPRA network.

² <https://www.epra.org/attachments/barcelona-wg1-major-events-background-paper>

³ <https://www.epra.org/attachments/budva-wg3-major-events-introduction>

⁴ <https://www.epra.org/attachments/yerevan-plenary-i-is-there-still-a-future-for-free-to-view-tv-introductory-paper>

The consultation for EPRA's Work Programme 2019 revealed a renewed interest of many regulators for the issue of sports rights. Against this backdrop, the second plenary session in Sarajevo will examine developments in respect of content rights, with reference to the evolving nature of the value chain within the audiovisual ecosystem and discuss whether there is a role to play for media regulators.

Premium sports content is of key importance for the media industry. The value chain of production, management of the rights, distribution and consumption is relatively complex and currently subject to dynamic and significant changes. These changes give rise to new regulatory and competition issues and challenges arise. The aim of this document is to give a compact overview of these developments.

2 Sports rights: hot topics and key messages

2.1 Premium sports content and its importance for the media industry

Key message: premium sports content is of key importance for the media industry

There are several reasons why premium sports rights are of such high importance for the media industry:

- **High reach and high advertising potential:** premium sports have the potential to attract huge audiences and therefore can directly generate advertising revenue⁵. In addition to that, there are positive effects on the rest of the programme (or offer) and there is a positive contribution to the image, strategic positioning and customer retention of an offer. The premium sports media environment is extremely interesting for the advertising industry as it covers both – a relatively broad audience and a focussed audience. Most events also provide the possibility of regular and long-term contacts with the (same) audience.
- **Low threat of on demand substitution:** as 97 percent of sporting events are consumed live, the threat to be substituted by VOD is – in contrast to premium films and series – very limited.
- **High importance for live broadcasting programmes:** a live sports event is nearly not substitutable by any other content for a fan. As a consequence, the importance of sports broadcasting for providers of linear live programmes is traditionally very high⁶.
- **High innovation potential:** premium sports offer the potential to create side products around the main offer such as second screen offers, apps, games, access to in-depth information and data, etc. which can be used to build a community and/or to generate

⁵ A recent illustration of the key importance of premium sports rights for Pay TV is the case of Mediaset. After years of heavy spending to secure football rights as it competed with rival Sky Italia, Mediaset Premium then cut back on investment. Last year it lost rights to broadcast Serie A and UEFA Champions League football matches, leading to a huge loss of subscribers: <https://www.reuters.com/article/us-mediasset-pay-tv/mediasset-to-move-pay-tv-content-to-video-streaming-app-after-losing-customers-source-idUSKCN1S51LX>

⁶ In the US, in 2011, out of the 100 most watched broadcasts, roughly half were sports. By 2018, more than 90% of the most watched broadcasts were live sport events: <https://on.ft.com/2WEA9ji>

additional revenues. It also offers promising opportunities for future technologies like 360 degree videos and VR.

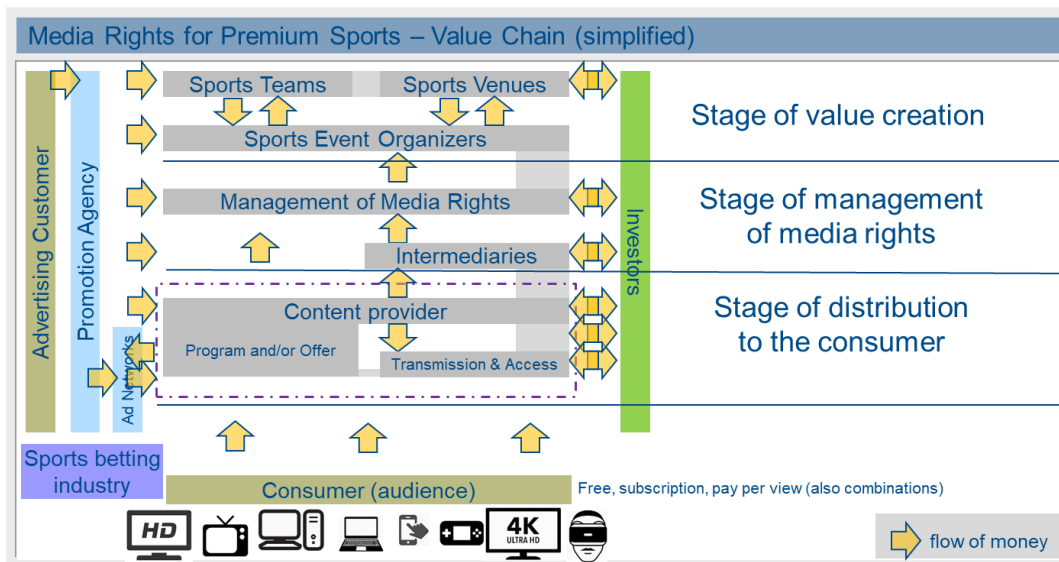
Premium sports are a limited resource: as the number of premium sport events is limited, the content has a high profile of exclusivity.

2.2 Sports media rights and their impact on media and the audience

Key message: sports media rights & their impact on media and audience is a highly complex topic

To describe the functioning of the market, the value chain is analysed from the beginning of value creation during the sports event until the media consumption by the end-user.

The value chain can be roughly characterised in **three stages**: the stage of value creation, the stage of management of the media rights and the stage of distribution of the content to the end user. At all stages of the value chain, advertising (and opportunities) and financing play an important role.



Stage of content creation

Media rights are an important source of revenue in all the most important professional sports for sports teams/leagues, sports organisers and hosting venues. For Formula 1, approximately one third of the total revenue originated from broadcasting in 2018. FIFA has generated a share of 54% of their total revenue from broadcasting rights in 2018. The broadcasting rights' share in the total revenue of UEFA amounts to 81% for the business year 2017/2018.

Stage of management of media rights

Collective sale: in most cases, rights management is carried out collectively for a set of sports events by international sports rights agencies (such as Infront Sports & Media, Mediapro and Lagardère). Some sports associations (like Formula One Management or TEAM Marketing as an entity of UEFA) use their own media rights agencies. The management of sports rights – especially sublicensing can

also be undertaken by subsidiaries of broadcasters (e.g. the agency SportA in Germany is a subsidiary of ARD and ZDF).

With regards to the collective sale of sports media rights, the European Commission has set the policy in this area with several key decisions (e.g. about UEFA Champions League in 2003⁷). These decisions also served as a model for National Competition Authorities (NCAs), which have been adopting an increasing number of decisions in this area in recent years. In this context, the limitation of the duration and scope of exclusive vertical contracts, or the so-called 'no single buyer' obligations were identified as relevant topics in the decisions.

Role of sports rights agencies: sports rights agencies usually try to maximise their total revenue and profit (in most cases on an international basis). Some part of the revenue is usually redistributed to the sports event organisers, teams and venues.

The different rights management entities around the world have adopted different policies and practices regarding the sale of media rights. Nevertheless, the issues relating to sports media rights can be summarised as a list of topics:

- Exclusivity (territorial, temporal, per platform, e.g. free TV)
- Number and kind of packages (live, including online, composition of the package, right to pick certain events, etc.)
- Sublicensing and reselling
- Coverage obligations and rights
- Commercial exploitation (obligations and rights)
- Organizational and procedural issues: timing of the licensing process, transparency of the bidding process, selection criteria, minimum bid, withdrawal of tender process, exclusion within the tender process, Combined and/or conditional offers.

The design and result of the process of managing the rights determine how the distribution of the content to the end user will happen and what packages and choice will be available.

The prices of premium sports media rights have dramatically increased over many years. This has happened in all exclusive areas such as Premier League, Bundesliga, Formula One, FIFA and UEFA events. As a consequence of the rising costs refinancing gets increasingly difficult for media companies.

Stage of content delivery

At the stage of content delivery, several dimensions are relevant. In terms of players, we can witness competition between classical broadcasting companies (public service broadcasters and commercial broadcasters), telecommunications companies (e.g. BT) and over the top (OTT) players such as DAZN, Youtube and Facebook. A second dimension of competition is between national and international market participants.

At the physical transport layer, we can distinguish between satellite, cable, terrestrial, IPTV and Internet. As most of the premium sports content is consumed live, the quality of service of the

⁷ 2003/778/EC: Commission Decision of 23 July 2003 (COMP/C.2-37.398) Joint selling of the commercial rights of the UEFA Champions League) <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003D0778>

transport layer is very important. This fact makes premium sports content especially interesting for providers of broadband connections as in this case the content also has the potential to push additional demand for higher and reliable broadband speeds.

Stage of consumption

Most consumption happens linear (live/near live). Therefore, at the time being, non-linear (VOD) content plays a secondary role. Consumption can be without a charge or with additional charges (e.g. pay per view or subscription models based on monthly fees).

There is an ongoing competition between pay and free premium sports offers.

Advertising

Along the whole value chain, advertising also plays an important role. It takes place at all levels of the premium content value chain (e.g. sponsoring of a football club, exclusive partnership with a league or online or TV advertising during a specific live event).

In this context, the potential audience for the premium content is one of the major factors influencing its pricing and the commercial strategies that revolve around the management of media rights.

It is important to note that the different opportunities to reach the audience strongly depend on whether access to sports content is free of charge or behind a paywall.

The whole advertising chain consists of different levels which are interconnected. For example, advertising provisions and restrictions included at the licensing stage might limit other advertising opportunities at other stages of the value chain. Against this background, the topic of transparency towards the end user is also relevant.

2.3 Regulatory tools

Key message: there are already some regulatory tools in place to safeguard access to premium sports content and foster competition. The tools are used by different regulatory entities

General competition law (EU-level and national) focusses on issues like minimizing the risk of market foreclosure as a result of exclusivity and bundling media rights, the risk of output restrictions and the risk of monopolisation.

For the competition risk of **market foreclosure**, remedies like the provision of a reasonable amount of different rights packages and earmarked packages for special markets/platforms (new media rights) and limitations of duration of exclusive contracts (e.g. for football a maximum of three seasons) are applied.

Relating to the risk of **output restrictions**, remedies such as a fall-back option to clubs for unsold or unused rights or the possibility of parallel exploitation of less valuable rights by clubs are used.

Against the risk of **monopolization**, “no single buyer” obligations are applied. These obligations can include a clause stipulating an obligation for an exclusive right holder to sublicense a certain amount

of the sports events (e.g. a fixed number of football games to free-TV) – sometimes called a *must offer* obligation.

List of events of major importance to society (Article 14 - Audiovisual Media Services Directive, Article 9a - European Convention on Transfrontier Television): in order to enforce the right to access events that are considered of particular significance for the public, both the Council of Europe and the EU have introduced a mechanism according to which certain events are ensured free-to-air coverage, live and in full where possible. These events have to be selected in advance by the states that wish to grant access to them, and they must respond to specific information needs that are linked to their societal relevance. Most EU countries have put the Summer Olympic Games, the FIFA World Cup and the UEFA European Championship on the list. The lists also show a great variety in the different countries concerning the preferred sports events⁸.

Short news reporting (Article 15 - Audiovisual Media Services Directive): for major events, the public is granted the right to access the events in full, where possible, and the events as such have to be listed in order to produce effects. Conversely, the right to short news reporting responds to the right of audiovisual media providers to inform the public of events of high interest in news programmes, and is applicable without any preliminary selection of the events. The events have to be assessed on a case-by-case basis and the short extracts must in any event not pre-empt the exclusive rights from their commercial value, meaning that they must be limited in their scope.

In several countries, such as Austria, the media regulatory authority is involved in issues like monitoring the fair market behaviour of the public service broadcaster during the acquisition of media rights. This provision aims to avoid cross subsidies from the public service funding to the rest of the market. The compliance of premium sports broadcasts with commercial advertising rules also plays an important role in the field of monitoring.

2.4 Profound changes in the value chain

Key message: ongoing changes and major developments at all levels of the value chain

Stage of content creation

New players: at the stage of content creation, there are some new investors in the market. For example, Liberty Media Corporation acquired Formula One in 2016 and this had significant impact on the development of the media content.

New and rising classical sports events: over the last years, the dynamic for creating and developing new premium sports events increased. Examples for this are the new UEFA Nations League (first season 2018/2019), the rising FIA Formula E racing series and the planned extension of FIFA world cup (number of participating teams).

New “genre” of Sports: over recent years, e-Sports took off in terms of revenues and also media attention. Examples for premium e-Sports events are Dota 2, League of Legends, FIFA 19, Virtual

⁸ For an updated overview of the lists of events of major importance for society in Europe, see: <https://www.epra.org/attachments/current-list-of-major-events-across-europe-status-january-2019> (EPRA members' only)

Bundesliga, etc.). It is of course questionable whether this sport is comparable to the classical sports but at least the market mechanics are comparable. First experience shows that also the market – in terms of packaging these new offers together with classical sport products - sees it in the same segment.

New technologies: a lot of new technologies (such as 360 degree videos and VR) are already tested during premium sports events. There is also a new trend to offer combinations of the main (live) feed and “enriched” niche feeds (e.g. for the second screen).

Stage of management of media rights

At the stage of management of media rights, there is a trend towards **higher concentration** of the media rights agencies. Because of the higher and more fragmented demand for premium sports rights, the importance of media rights agencies increases as they decide on the strategic parameters of a rights tender. Over the last years, a trend towards an increasing relevance of **intermediary** media rights agencies can be identified. One example is the Discovery deal for the Olympic Games. Discovery has acquired exclusive access to all TV and Internet coverage in over 50 European countries for the Olympic Games in 2020 and 2024 and for the Winter Olympics in 2018 and 2022. Due to the changing usage patterns of media consumption and a rising number of end user devices, the rights **packages** (e.g. special online packages) also get more **fragmented**.

Over the last years, in nearly all markets the **prices** for the media rights have increased substantially. A further **increase** is considered as possible and realistic.

Over the last years, we could witness strong competition of **international players** and **national players** to get the premium sports rights for a certain country. There is a trend that premium rights move increasingly from **free offers to pay offers**⁹. Another trend is that several **public service broadcasters have to cut costs** which results in reduced offers of premium sports content for the audience.

New demand by new players: new actors like telecommunication companies and OTT players came into the market and increased the demand for premium sports rights.

Stage of content delivery

At the stage of content delivery, there is a trend that also traditional **telecom providers** (e.g. BT) substantially invest in premium sports content. Premium sports content provides telecom operators with an additional possibility to differentiate their core products like broadband service or mobile service towards the end user.

Existing OTT players enter the market: over recent years, premium content became increasingly interesting for over the top (OTT) players. Several large platforms added premium sports to their existing portfolio. Examples are investments of Amazon, Youtube, Facebook, Twitter in premium sports content. As an example, in August 2017, it was announced that Amazon would take ownership of the UK rights for all ATP World Tour tennis events. Facebook began with exclusive streaming of 25 MLB (Major League Baseball) games in 2018 in the US.

⁹ For some illustration and trends on free to air TV, see the presentation given by Gilles Fontaine, European Audiovisual Observatory, on 20 October 2016 at the 44th EPRA Meeting in Yerevan: <https://www.epra.org/attachments/yerevan-plenary-i-is-there-still-a-future-for-free-to-view-tv-future-of-fta-tv-presentation-by-gilles-fontaine-eao>

New sport OTTs: in addition to the move of existing platforms, new sports-centred platforms (e.g. beIN SPORTS, DAZN (August 2016)) have also been launched.

New offers for new genres: especially in the fast growing area of e-Sports, new pay TV channels are entering the market (e.g. launch of esports1 programme in January 2019).

New own offers of associations, teams and sportspersons: several sport federations and clubs are increasingly focussing on a direct-to-customer strategy (“cut out the middle man”). The current trend of moving the main content from free offers behind the paywall is likely to gain importance in the future in order to keep directly in touch with the respective fan communities. Examples of this are broadcasts of football games on the own website of a football club or the recent extension of the F1 online offer.

2.5 Threats and challenges

Key message: the functioning of the premium sports market and the current developments give rise to a number of threats and challenges

Access to free premium sports: further to the shift of premium sports content from free to pay, the question then arises as to what offers at all will remain in the free domain. This is a major issue as sports have a strong capacity for identity creation. A key question is also how it can be guaranteed that all kind of users have the possibility to access premium sports content.

Role of public service media: public service media, which was one of the "safe havens" for free premium sports, is in particular faced with a dilemma. If PSM abandons premium sports broadcasting, it may widen the generation gap, adversely affect their mass appeal and the acceptance of citizens to pay the broadcasting fees. On the other hand, if PSM continues with premium sports, other media policy actors are likely to question the efficient use of resources and the legitimacy of including premium sports into the public service remit.

Role of traditional broadcasting: traditional broadcasters find themselves in fierce competition with big global players. The question is whether traditional broadcasting companies will be able to continue to be a substantial player in the premium sports content market.

Sustainability of investment: if the prices for premium sports rights further increase, refinancing will get increasingly difficult. One key issue is what happens if the “bubble bursts”. Another issue is that rising prices might result in a situation where only larger companies have the possibility to finance such content.

Transparency, choice and fragmentation: one issue is how to ensure that the consumer has a high level of transparency on which kind of premium sports content is included in which packages. In relation with this issue, it might happen that the relevant content is fragmented and only available if the consumer subscribes to several packages.

Responsibility and transparency relating to advertising: because of the multi-layer nature of the advertising chain, new challenges concerning the transparency and responsibility in the area of commercial communication arise. For example, what kind of advertising is included already in the “international feed” and what is based on active overlay by the media company in a transmission?

Increasing editorial influence: if the editorial influence of content producers, sports associations and right holders increase, there might be a threat for independent reporting. This can lead to biased reporting about ventures, events, organising countries or also about participants (active or audiences) of a sporting event.

3 Structure of the Plenary Session

After an introduction by EPRA Board Sponsor and Vice-Chairperson *Oliver Gerber*, the session will start with a keynote by Session Content Producer *Dr Roland Belfin*, RTR GmbH (AT)

In his keynote, he will highlight:

- The **complex value chain** for premium sports rights
- The ever **growing competition** in the field of premium sports
- The increasing **complexity of coverage**

Then we will hear short statements on current challenges by:

- *Elias Gallego Garcia*, Sports Rights Sales and Acquisitions at Mediapro
- *Oliver Quast*, Senior Legal Counsel Business & Sports at EBU

The short statements will be followed by an open discussion with the audience and the panellists jointly moderated by the Session Chair and the Content Producer.

4 Questions for debate

Key question: is there a need for new regulatory approaches?

General aim: what is the general aim of the development in the area of premium sports in mass media? Is there an increasing risk of a market failure and therefore a need for further regulatory action and tools at all?

Further development of “traditional” tools: are the existing "traditional" regulatory tools of audiovisual regulators effective enough to tackle the arising new issues? This raises the question how regulatory tools should be further developed.

Role of authorities and coordination: who shall take the lead to deal with the arising issues? Is there a stronger role for competition authorities, and/or audiovisual regulators and/or other regulators such as telecommunication regulators? Is there a need for closer cooperation?

Need, areas and level of harmonization: in which areas is there a need for further harmonization, what level of harmonization is necessary and how can this be reached in practice?

Minimum offer: what new instruments could be used in the future to ensure that a minimum set of live premium sports will remain available to a mass audience without extra payment?

Fragmentation: how can the end user be supported to cope with disadvantages of fragmentation – such as the need to subscribe to many packages and increasing lack of transparency in terms of availability and pricing?

Future role of public service broadcasting: what shall be the future role of public service broadcasting in relation to premium sports? How can this role be defined to take into account the most important dynamic developments?

List of events of major importance to society: where are the limits of this remedy and will this remedy be effective enough in the future?

Short news reporting: where are the limits of this remedy and will this remedy be effective enough in the future?

Safeguarding editorial independence: what can be done against the threat of increasing editorial influence? Is there a need for measures in this area?