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From the Director General of Fair Trading
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The Rt Hon Chris Smith MP Esq
Secretary of State for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

July 28, 1997

Dear Secretary of State,

CONSULTATION ON EVENTS LISTED UNDER PART IV OF THE BROADCASTING ACT 1996

Thank you for your letter of 10 July in which you requested views on the principles which should be applied in deciding events to be listed. I am grateful to you for giving me the opportunity to comment and will send a substantive response before your deadline of 1 September.

Yours sincerely

John S Bridgeman

**JOHN S BRIDGEMAN
DIRECTOR GENERAL OF FAIR TRADING**

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ANNEX

LISTED EVENTS - RESPONSE TO DEPARTMENT OF CULTURE, MEDIA AND SPORT'S CONSULTATION PAPER

The views of the Director General of Fair Trading

Sporting events as a national and cultural spectacle

1. As a competition authority, my approach to this issue will concentrate on the competition implications of listing events. I believe that the importance of an event in terms of national/cultural heritage is the only strong reason for listing events. Listing sports events can distort competition in the sale of sports rights, and it can distort competition between broadcasters and broadcasting media. In my view, listing events should only be adopted in clear cut cases.

The market for television sports rights

2. The distortion of competition in the sale of sports rights occurs because holders of sports rights are not free to sell their rights as they would wish. Because they are not free to sell their rights (on an exclusive basis) to subscription or pay-per-view broadcasters, they may not be able to realise the maximum value of their rights.

3. In some cases this is likely to reduce the revenue accruing to the sport (as opposed to the rights holder), and to result in a diversion of resources from that sport into other sports (which are able to realise the maximum value of their rights). This could manifest itself in a number of ways - e.g.:

- becoming less attractive to sporting talent;
- directly reducing investment in the sport where the rights holder has a remit to spend a large proportion of its revenues in developing the sport;
- reducing commercial incentives to invest in the sport; and
- reducing incentives to develop new championships.

• putting the sport at a competitive disadvantage against nations whose competition for rights is not distorted.

4. In terms of investment in the sport, this is less likely to be a serious concern if the event in question is not the main (potential) revenue earner for the sport (e.g. the FA Cup final); if the UK rights to coverage form only a small part of the overall revenue the event can earn (e.g. the Olympics, the FIFA World Cup); or if the sports rights holder is not involved in direct investment in the sport. Also, if the event's value lies primarily in historical tradition (e.g. the Boat Race) then listing those events are less likely to distort incentives to establish new competitions in the sport concerned.

5. A further qualification arises where the supplier of the television rights has significant market power. This may result from the joint selling of television rights to a championship through the championship organiser. To maximise the value of the rights, the championship organiser may opt to sell all the rights to subscription or pay-per-view broadcasters, and may even restrict the proportion of the championship it permits to be covered. In such cases there is a pre-existing distortion of the market which itself has detriments for consumers. Had individual selling of those rights by the participants been allowed, however, there may have been a migration of some television rights to terrestrial television, or an expansion of the proportion of the championship covered, in accordance with market forces. However, where such cases arise, the general competition legislation is the appropriate means of dealing with the distortion. My referral to the Restrictive Practices Court of the FA Premier League and of its agreements with BSkyB and the BBC, is a key case in point. Listing such events would be an artificial remedy to the problem.

Broadcasting

6. Listing events effectively removes the possibility that pay television broadcasters, or broadcasters with less than full UK coverage (e.g. Channel 5), are able to get exclusive rights to coverage of the event. In contrast, analogue terrestrial broadcasters with full UK coverage are guaranteed the rights to the events (although they have to compete with each other for them, of course). In the absence of listing it is likely that some of the listed events would migrate to pay television. Listing has two important, and possibly conflicting, effects on consumer welfare.

7. It results in a static increase in consumer welfare. An event broadcast on analogue terrestrial television is available to everyone who owns a television at nugatory cost. Consequently, the event would be watched by all consumers who valued watching the event above their next best option for spending their time. If that event migrated to a pay television channel, viewers would be charged a price for watching the event (either for the specific event (pay-per-view), as part of a pay channel (Sky Sports), or the search costs involved in finding and attending a venue showing the event). In this case, only those who valued the event above the price of the event would watch it. The likelihood is that fewer consumers will watch the event, and there will be a loss of consumer welfare, and of social welfare generally. This argument holds for all sporting events shown on pay television which otherwise would have been shown on analogue terrestrial television.

8. However, migration of sporting events to pay television or to Channel 5 may have a significant, positive impact on dynamic efficiency in broadcasting. Exclusive rights to sporting events have been a key driver of new methods of television delivery. If major events which are listed, or which potentially could be listed, are restricted to analogue terrestrial television, the development of these new methods of television delivery will be less rapid than would otherwise be the case.

9. The development of new broadcasting delivery networks has resulted in significant welfare gains to consumers. These new technologies reduce the capacity constraints faced by analogue terrestrial television and, in the digital future, will effectively eliminate capacity constraints on digital cable and digital satellite altogether. Encryption technology allows broadcasters to charge viewers directly for what they watch. This permits price signals to operate, and is likely to overcome the tendency of free terrestrial television to supply programming which appeals to the largest audiences. One consequence of this expansion has been a significant increase in sports coverage on UK television.

10. Furthermore, the expansion of pay television has resulted in a large increase in the value of programming content, particularly for sports, with resulting benefits for the suppliers of such content. Indeed this is the reason why listing is necessary to keep major events on terrestrial television.

General conclusion

11. Weighing up the static and dynamic effects of listing, and assessing their impact on sports and sporting bodies, is very difficult. I understand the cultural rationale for listing some events. As a rule, however, I believe that listing should only be adopted in clear-cut cases, where both the cultural rationale for access and the static welfare gain from listing is overwhelming. In other cases, I believe that market forces should be allowed to operate freely, with resulting benefits to the rights holders and to the development of broadcasting in the UK.

PROPOSED CRITERIA

"The event and its outcome has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned;"

12. I believe that the 'national resonance' of an event should be a key criterion for listing, and should be a necessary condition for listing. Indeed, I consider that all other criteria for listing should be criteria for determining whether an event is of such national importance. If an event does not have a significant 'national resonance' it should not be listed.

13. Determining which events have a national resonance will be fairly subjective. One way of approaching the issue in a rigorous way would be to use past viewing figures to determine whether an event attracts a large number of viewers who otherwise do not follow the sport on television. The BARB database can track whether a particular household watches, for example, the FA Cup final, but does not watch other football broadcast on terrestrial television. It may be possible to establish a guideline for this test. For example, it could be a requirement that, say, 50% of the viewers of such an event should be people who do not normally follow the sport. An argument against such a rule, however, is that it may unfairly discriminate against sports which are popular throughout the year (such as football) in favour of those which are less popular through the year (e.g. tennis) but have one big event (Wimbledon). A further difficulty in assessing national resonance is that it can actually grow during the course of an event if the national team is successful (e.g. Euro 96). It may be difficult to establish a generally applicable guideline in practice.

a. pre-eminent and popular event giving it particular potential for encouraging participation in the sport concerned;"

14. These are three criteria, which do not appear to be related. All events with a national resonance will be popular, but not necessarily pre-eminent, at least on sporting criteria - e.g. the boat race, secondary test matches involving the England team, matches involving the national football teams other than in the World Cup finals. Turning this criterion on its head, I would be concerned if it meant that pre-eminent events in a particular sport were listed, even if they did not have a national resonance. For example, the US Masters golf championship is a pre-eminent sporting event, but may not have a national resonance.

15. Similar comments apply about the popularity of an event. All listed events will no doubt be popular, but certainly not all popular events should be listed. Deciding what 'popular' means in practice, such that it becomes a meaningful criterion, is likely to be difficult. For example, test match audiences are probably relatively low, even if viewers who watch only a fraction of the match are included.

16. I have no information on any causal link between free-to-air television coverage and participation - snooker may be a case in point, but cricket, golf and rowing may not be. Nor do I have any information on whether particular tournaments and events are likely to have such an impact. The Department may have better information. Listing could discourage participation in a sport by reducing the flow of television revenues to it. Consequently, I have no views on whether this criterion could be formulated as an objective criterion in practice.

"It is an event which serves to unite the nation; a shared point in the national calendar;"

17. This would be another criterion for judging whether the event had national resonance. How the second point would be applied in practice is not clear, since virtually all organised sporting events follow a regular temporal pattern.

"It involves the national team in the sport concerned in a major international tournament."

18. Events involving the national team are more likely to have a national resonance than those

which do not. However, I take the view that if all events involving the national team in all substantive sports were listed, this would excessively distort the broadcasting market in favour of traditional terrestrial broadcasters. Furthermore, it could end up trivialising the meaning of national resonance. It would be preferable if other objective criteria could be applied to determine which events involving the national side were truly of national resonance.

19. Another danger with widespread application of this criterion is that television revenues resulting from the national team may accrue to the body organising the sport. These bodies are most likely to re-distribute those revenues so as to improve the sport as a whole.

20. Arguably there should be a distinction between different stages of 'major international tournaments'. Qualifying rounds may be of lower national resonance than the finals.

21. An interesting issue arises in relation to international tournaments which do not involve the national team, or which only involve the national team in some parts of the tournament. For example, only a small proportion of the World Cup finals are likely to involve the national teams. It might be possible only to list those matches which do involve the national teams, and not the rest.

Particular characteristics

"It is likely to command a large television audience;"

22. This could be made more specific. The vast majority of television audiences of terrestrial broadcasts are larger than most, if not all, audiences for satellite/cable broadcasts. For example, Italian football broadcast on Channel 4, and Football League Division One football broadcast on ITV often got higher audiences than major Premier League matches on Sky Sports. The definition of 'large audience' should be related to audiences on terrestrial television. What a 'large audience' is in this context will be fairly subjective. There appear to be two candidates for an objective measure.

23. It could refer to audiences in absolute terms. Although some of the existing listed sporting events get audiences comparable to soap operas, others do not (including test matches, individual

...s in the World Cup finals not involving the national team, and others on which I do not
...e information). Some (arbitrary) threshold could be adopted, with adjustments for events
which take long periods to complete.

24. An alternative could be to use events which have television audiences which attract large numbers of viewers who do not normally follow the sport (see earlier discussion).

"It is a regular, readily defined event of limited duration."

25. The meaning of this a bit ambiguous. The summer (and winter) test series take up several months, and football World Cup qualifying rounds can take up to two years.

"It has a history of being broadcast live on free-to-air television"

26. Most events with a national resonance will have been broadcast live on free-to-air television prior to the emergence of satellite and cable. This is a useful additional criterion for determining whether an event has a 'national resonance' in the sense that, if it was not previously broadcast on terrestrial television, it is unlikely to have national resonance. Of course, many events previously broadcast on free-to-air terrestrial will not have had national resonance. National resonance can grow, however. For example, arguably few people took much interest in snooker until television coverage of the sport was improved and increased.

Other factors

"The likely impact of listing on the broadcasting market, including the future investment in sports broadcasting, the level of competition and the position of public service broadcasters;"

27. I believe that clarification is needed on what is meant by 'investment in sports broadcasting'. If it refers to the amounts broadcasters are prepared to pay for the television rights; then listing will reduce this by reducing competition for the rights between broadcasters. If it refers to investment in coverage, I do not have a view on how this would be affected. However, I note that the expansion of satellite and cable television has led to increased competition in sports broadcasting, and has been associated with greater investments in coverage by satellite and

terrestrial broadcasters. I believe that any improvement in coverage has resulted from this additional competition. In the future, there should be added competition from the new digital channels. To the extent that it will reduce competition in sports broadcasting, listing may have a detrimental effect on sports coverage.

28. Listing directly reduces the degree of competition between broadcasters for television rights. To the extent that listing artificially impedes the development of new broadcasting media, listing also reduces competition between broadcasters in the broadcast of sports generally, and in the broadcast of other programming material. One-off events which occur infrequently are less likely to have a detrimental effect of this type. However, other events, such as test matches, qualifying rounds for international competitions, international competitions which are annual events, among others, are likely to have a distortionary effect on competition between broadcasters if they are listed.

Conclusion

29. I consider that listing events distorts investment in sport, the market for sports rights, and competition between broadcasters and broadcasting technologies. For this reason I believe that listing should be used sparingly, and only where an event clearly has 'national resonance' and where it would result in a substantial loss of consumer welfare if it were exclusive to subscription television. The criteria used for determining whether an event has national resonance should be as objective as possible, and historical viewing figures may provide such a criterion, in combination with the others discussed above.

John Bridgeman

Director General of Fair Trading