

The FA is not offside over TV rights

Whose games are they anyway?

Simon Carne goes for goal

QUESTION & ANSWER STRUCTURE

The Office of Fair Trading (OFT) is wrong to say the Football Association (FA) and English Premier League (EPL) are operating a cartel over TV rights to football matches.

Why does the OFT think it's a cartel and why do you say it isn't?

The OFT says the 20 football clubs (or "businesses") which compete in the EPL are acting as a cartel by joining together to agree a broadcasting contract with one TV company. But you can't separate out the clubs and the EPL and still maintain the value of the matches.

Why not?

A TV company's interest in a match depends on which tournament it is part of and the status of the two teams within that tournament.

But if that's what the law requires, isn't the OFT right to seek to break up the cartel?

Well, actually, the OFT doesn't want to break up the EPL. It just wants to break-up the TV contract, which is the answer to a different accusation.

OK, well why don't we break up the EPL's TV contract and make each club get their own (and likewise for participants in all other sporting tournaments)?

Because ownership of the TV rights would be of no use to the participants without the ability to ensure that the TV company of their choice could have access to the sporting ground, which participants usually don't own – the tournament organiser usually owns the venue.

Doesn't the EPL has home and away matches?

If a court decides that a TV deal is illegal when matches are played on a "home and away" basis, but not illegal if the matches are on a neutral ground, the clubs could just sell their grounds.

The Office of Fair Trading objects to the way the FA Premier League sells the television rights to football matches. The OFT says that if any other business behaved like the Premier League, the competition authorities would intervene.

The OFT's argument, supported by Richard Prowse (Law, January 26), is that the 20 football clubs (or "businesses") that compete in the Premier League are acting as a cartel by joining together to agree on a broadcasting contract with one television company. The OFT's mistake is to think that the 20 clubs can be separated from the league and invited to negotiate their rights individually. This argument misses the point of how they derive their value.

A football match between, say, Arsenal and Liverpool cannot be separated from the competition it falls within. The commercial value of such a match depends on whether it is played in the league, the cup (which cup, which round?) or a friendly, when it usually has no value at all.

If you cannot separate the matches from the tournament without destroying the economic value of the matches, there is little logic in attaching the emotive label "cartel" to describe the tournament-organising body. After all, the regulatory response to a cartel is normally to break it up. But not even the OFT wants to break up the Premier League, only its television contract.

Faced with the real question – whether the TV rights to a sporting tournament should be owned by the organising body or by the participants – it is instructive to look at what

would happen if the law favoured the participants. Try to imagine Wimbledon's tennis tournament if the players, not the All England Lawn Tennis Club, owned the television rights. To satisfy the OFT, the rights would have to be broken down match by match and awarded to the two (or four) players in each one.

However, the rights would be unenforceable without access for the cameras. Is the All England Club to be forced to provide facilities for any and all broadcasters that the individual players choose to bring on to court with them? It is

Clubs might then just sell their grounds

true that the law can be used to enforce access to private property if the property is an "essential facility" being used in an anti-competitive manner. But not even the most hawkish of competition authorities could declare the tennis courts of Wimbledon an "essential facility".

Would the position be different if the sport were football and the event was the FA Cup Final at Wembley – or the semi-finals played at other venues of the FA's choosing? Clearly not. Ownership of the TV rights would, again, be of no use to the clubs without the ability to ensure access for the TV company of their choice.

The access problem goes away only if the matches are played at venues owned by one or other of the teams. But does it make any sense at all to say that a football league's TV deal is anti-competitive if matches are played on a "home and away" basis, but not if they are on a neutral ground? And, if the court says it does, won't the clubs just sell their grounds?

● The author is a consultant specialising in regulatory affairs.

Short explanation based strictly on the QAT

The Office of Fair Trading objects to the way the FA Premier League sells the television rights to football matches. But the OFT is wrong.

The OFT's argument is that the 20 football clubs (or "businesses") that compete in the Premier League are acting as a cartel by joining together to agree a broadcasting contract with one television company. The OFT's mistake is to think that the 20 clubs can be separated from the league and invited to negotiate their rights individually. This argument misses the point of how they derive their value.

The commercial value of a football match depends on whether it is played in the league, the cup (which cup, which round?) or a friendly, when it usually has no value at all.

Moreover, the regulatory response to a cartel is normally to break it up. But not even the OFT wants to break up the Premier League, only its television contract. The real question posed by the OFT is whether the TV rights to a sporting tournament be owned by the organising body or by the participants.

But if the TV rights were owned by the participants, they would be unenforceable without access for the TV cameras. Is Wembley or Wimbledon to be forced to provide facilities for any and all broadcasters that the individual football teams (at Wembley) and tennis players (at Wimbledon) choose to bring onto court with them?

The access problem only goes away if the matches are played at venues owned by one or other of the teams. But does it make any sense at all to say that a football league's TV deal is anti-competitive if matches are played on a "home and away" basis, but not if they are on a neutral ground? And, if the Court says it does, won't the clubs just sell their grounds? [307 words]

Embellishing the text for a newspaper audience

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If you cannot separate the matches from the tournament without destroying the economic value of the matches themselves, there is little logic in attaching the emotive label "cartel" to describe the tournament-organising body. After all, the regulatory response to a cartel is normally to break it up. But not even the OFT wants to break up the Premier League, only its television contract.

Faced with the real question – whether the TV rights to a sporting tournament be owned by the organising body or by the participants – it is instructive to look at what would happen if the law favoured the participants. Try to imagine Wimbledon's tennis tournament if the players, not the All England Lawn Tennis Club, owned the television rights. To satisfy the OFT, the rights would have to be broken down match by match and awarded to the two (or four) players in each one.

However, the rights would be unusable without access for the cameras. Is the All England Club to be forced to provide facilities for any and all broadcasters that the individual players choose to bring onto court with them? It is true that the law can be used to enforce access to private property if the property is an "essential facility" being used in an anti-competitive manner. But not even the most hawkish of competition authorities could declare the tennis courts of Wimbledon an "essential facility".

Would the position be any different if the sport were football and the event was the FA Cup final at Wembley – or the semi-finals played at other venues of the Football Association's choosing? Clearly not. Ownership of the TV rights would, once again, be of no use to the clubs without the ability to ensure access for the TV company of their choice.

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