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BROADCASTING AND SPORT

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The broadcasting of sport is heavily regulated. Our main finding is that common trends, and differences, in the quality, quantity, and price of televised sport across Europe and USA cannot be adequately explained without reference to policy interventions by national and supranational government, and by competition and regulatory authorities. These interventions have a significant impact on the organization and governance of sports, as well as the structure of broadcasting markets and the conduct of broadcasting companies. Foreclosure of broadcasting markets through exclusive, long-term contracts, bundling and vertical integration, access of viewers to major sporting events, and collective selling stand out as the most significant policy issues. We conclude by noting a number of policy implications.

I. INTRODUCTION

This paper analyses the symbiotic relationship between broadcasting and sport. The analytical framework is as follows. We review the economic evidence of the role of sport at different levels of the broadcasting value chain, contrasting the situation across the EU, and between the EU and the USA, and focusing on TV broadcasting.[2] We adopt an economic and comparative approach examining the themes of policy interventions and their effects on market outcomes and the commercial behaviour of broadcasters.

There is a commonly held view that US TV consumers receive a better deal than their European counterparts in terms of the choice and price of televised sport. At the same time, US broadcasters reportedly pay the highest rights fees for the top US sports and global sporting events, suggesting that sports

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[2] By broadcasting, we mean the visual or audio transmission of a sporting contest through the use of sports intellectual property rights, whether by television, radio, Internet, 3G, or other distribution method, and by organizational structure, from specialist content provider to vertically integrated broadcaster. Our analysis holds for other forms of broadcasting distribution.

content suppliers (athletes, clubs and governing bodies) also receive a better deal. This may be a bit of a caricature and simplification of the situation. It is well recognized that significant differences also exist across European countries in terms of the TV coverage of sports, and the scope and level of rights fees.

Language and culture are two major structural differences between US and European broadcasting of sport markets. The USA is, like Europe, politically heterogeneous and its major regions share different traditions and historical and economic development. However, the USA does not have language-determined broadcasting markets with a significant presence of public-service broadcasters. This major difference manifests itself in an absence of major and truly pan-European broadcasters, at least so far, as well as significant content and advertising regulation.[3] There are some trends under way, however, whereby the strongest media broadcasters are investing outside their home country (Vivendi Universal (Canal +), News Corporation (BSkyB), Bertelsmann) and it may be only a question of time before we find two or three major commercial networks operating in Europe, not too dissimilar to the US situation.

These frequently observed, and sometimes hotly debated, differences of market characteristics and outcomes across TV markets raise a number of economic and policy questions. First of all, does the empirical evidence confirm the higher values generated by televised sport for consumers and content suppliers in the USA? If so, can we explain the evidence as a result of market forces and structure? Is it that, for example, US sports are better organized and more effectively sold to broadcasters than their European counterparts? Is it that US viewers are more willing to pay high subscription fees and support better-financed competitions? Are US broadcasting markets comparatively more competitive? Or is it that the US regulatory regime has more effectively promoted competitive outcomes that benefit viewers and sport alike?

Our paper addresses some of these questions directly. Our central thesis is that common trends, and differences, in the quality, quantity, and price of televised sport across the EU and USA cannot be adequately explained without reference to policy interventions by national and supranational governments, and by competition and regulatory authorities. These interventions have a significant impact on the organization and governance of sports, as well as the structure of broadcasting markets and the conduct of broadcasting companies. These interventions are most clearly visible at the upstream level of sports content supply, where intervention has been used to prevent the collective selling/purchasing of sport rights and, in some cases, to regulate the investment by media companies in sporting organizations. Interventions are, however, felt at least as strongly, if not more so, at the downstream level of channel distribution, where horizontal and vertical integration of broadcasting activities affect market outcomes and are generally highly regulated to prevent foreclosure of markets and competition. Contrary to expectations, the broadcasting of sport in the USA is at least as highly regulated as in the EU.

The paper is structured as follows. In section II we explore the differences between the USA and European countries with respect to the acquisition and value of TV sports rights for major sports, and review the recent trends in televised sport. In section III we analyse the main policy concern of foreclosure of content in broadcasting markets in more detail, as well as the collective sale of TV rights. Section IV concludes and outlines some policy implications

II. TRENDS IN THE BROADCASTING OF SPORT IN THE USA AND EU

The importance to broadcasters of rights to sporting contests and championships is still a fairly recent phenomenon. In the era of spectrum limitations, restrictive licensing, and content regulation, sport did not play the role it plays today. Over time, broadcasting markets have moved from situations of content competing for scarce distribution outlets, to abundant spectrum available for relatively scarce content (Cowie and Williams, 1997). It is almost

[3] There are several pan-European channels, such as Discovery, MTV, Eurosport, TCM, etc., some of which broadcast as genuinely pan-European in content and format. Others operate either with different audio channels (Eurosport) or have regional language channels which share the same content and formats (MTV).

inconceivable that a major national broadcaster would not bid for premium sports rights. Failure to secure a sufficient portfolio of sports rights or overpaying for rights can often spell trouble for a broadcaster, either from a commercial or public-policy perspective (for example, Sport 7 in the Netherlands, Kirch in Germany, and ITV Digital in the UK).

The popularity of the broadcasting of individual sporting events is driven by many factors, including the involvement of national stars or teams and the history, success, and participation of sport in the country.[4] Sports rights are valuable to broadcasters in: (i) generating advertising and programme sponsorship revenue, particularly by attracting the most difficult to reach, and high-disposable-income consumer group, the 16–34 ABC1 males; (ii) driving subscription penetration and reducing churn by building loyalty, and, increasingly, driving interactive revenues (such as betting) in digital pay-TV and online distribution markets, which can also have positive spillover effects to the broadcaster's overall brand, as well as demand for other content and products; and (iii) achieving public-service obligations, including the coverage of a wide range of sports, minority sports, and 'national games'.[5]

The value of the rights, defined in terms of the incremental discounted cashflows for broadcasters with commercial revenues, increases with the exclusivity, scope, and duration of the rights, as with all forms of investment in intellectual property—the broadcaster does not wish to see the returns from its risky, significant investment expropriated or competed away by a third party. Broadcasters compete in a two-stage game of, first, winning access to the rights, and then, second, if the rights are non-exclusive or face close substitutes, competing on the quality of the coverage and analysis. *Ex-ante* uncertainty of regulatory intervention can reduce the size of the bid, and affect future incentives to invest in the sport and/or broadcast, resulting in dynamic inefficiency. We return to this point later in the paper.

The supply of sport depends on the marginal costs of producing additional output of televised sport at the broadcasting and sporting organizer levels. These marginal costs are generally very low, except perhaps for certain event- or equipment-based sports, such as motor sports, horse racing, and sailing. The supply also depends heavily on the willingness of the sporting body to adjust fixture schedules, start times, and contest length to increase commercial revenues. Together with market-specific characteristics, at the wholesale and retail distribution levels, the demand for, and supply of, sports rights shapes the outcome of competition between broadcasters for sports rights in terms of level of fees and quantity and quality of output offered to viewers.

(i) Trends in the Acquisition of Sports Rights

Similar levels of rights fees, at around $5 billion per annum, are paid for major sports between the US and the top 5 European TV markets (Table 1). The same is true for the respective top-rated sports, American Football in the USA (National Football League (NFL) contract only) and European club football in Europe (domestic and European soccer championships), both of which earn around 45 per cent of all rights fees. The picture is not consistent across Europe: club football earns the lowest share of fees in Germany, at 31 per cent compared with 54 per cent and 72 per cent for the UK and Spain respectively. The low share in Germany is partly due to the collapse of the major rights holder, Kirch. In 1998, the share of club football rights was much higher, at 42 per cent.

Interestingly, the domestic value of the only major pan-European sports league, the UEFA Champions League, represents only a fraction of the value of the domestic soccer league contract in the five major EU countries (Table 2). This is despite the fact that the competition is well-established and has been expanded into a year-long tournament.

The explosion of media-rights fees over the last decade has been well documented and is staggering, reaching an increase of 900 per cent for the soccer World Cup rights in Europe and a 380 per cent increase for the rights to broadcast the Olympic Games via the members of the European Broadcasting Union (EBU) as illustrated in Table 3. In the EU, football is by far the most heavily broadcast sport, especially in the majority of the largest and

[4] See Bird (1982) and Peel and Thomas (1988).
[5] We discuss listed events and anti-siphoning legislation below.

Table 1
Sports Rights Fees in the USA and Europe, 2002 ($m)

	USA	Top 5 EU	Germany	UK	France	Italy	Spain
Rights fees of major sports	4,931	5,159	1,617	1,479	721	913	429
Football/soccer fees	2,200	2,390	436	794	455	395	310
%	45	46	31	54	63	43	72

Note: USA includes network TV fees for NFL, National Basketball Association (NBA), Olympics, Major League Baseball (MLB), National Association for Stock Car Auto Racing (NASCAR), college basketball and football, golf, and National Hockey League (NHL).
Sources: Kagan (2003); *Screen Digest* (2003); Informa Media (2003); PricewaterhouseCoopers (2003).

Table 2
UEFA Champions League Rights in Relation to Domestic League Rights 2002 ($m)

	Top 5 EU	Germany	UK	France	Italy	Spain
All club football/soccer rights	2,247	436	794	455	395	310
UEFA Champions League	318	44	120	61	59	34
%	14	10	15	13	15	11

Sources: *Screen Digest* (2003); Informa Media (2003); PricewaterhouseCoopers (2003).

Table 3
Selected Sports Rights Contracts

Event	Earlier contract	Cost	Later contract	Cost	% increase
NFL contract US	Fox 1994–8	$1.1 billion p.a.	CBS 1998–2005	$2.2 billion p.a.	100
Football World Cup	EBU for 1990, 1994, 1998	$240m	Kirch Group for 2002 and 2006	$2.36 billion	900
Premier League Football Live (UK)	BSkyB 1997–2001	£170m p.a.	BSkyB 2001–4	£370m p.a.	120
Premier League Highlights (UK)	BBC 1997–2001	£18m p.a.	ITV 2001–4	£61m p.a.	240
FA Cup Live (UK)	ITV and BSkyB 1997–2001	£32.5m p.a.	BBC & BSkyB 2001–4	£133m p.a.	310
UEFA Champions League (UK deal)	ITV 1996–9	£25m p.a.	ITV & ONDigital 1999–2003	£62.5m p.a.	150
Summer Olympics	EBU 1996 Games	$90m	EBU 2008 Games	$433m	380

Note: The 2001–4 BBC & BSkyB contract includes live rights for England international matches. *Sources*: Kagan (1999); Department of Culture, Media and Sport; Competition Commission; European Commission.

Table 4
Growth in Value of Sports Rights across Europe 1998–2002

	Top 5 EU	Germany	UK	France	Italy	Spain
Rights fees of major sports 2002 ($m)	5,159	1,617	1,479	721	913	429
Rights fees of major sports 1998 ($m)	2,845	793	840	451	500	261
Change (%)	81	104	76	60	83	64
Growth in cable/satellite TV households (%)	68	68	27	100	264	122

Sources: Kagan (1999); PricewaterhouseCoopers (2003).

wealthiest European countries, with other sports, ranging from Formula 1 to skiing to handball, usually coming a distant second.

For the 4-year period 1998–2002, Table 4 shows an increase in the total value of sports rights for the five major European countries of around 80 per cent, a figure that is similar for the major league sports deals, renegotiated over the last 5 years in the USA (Kagan, 2003). This increase roughly correlates with the average growth in pay-TV subscribers. On a country-by-country basis this correlation is less clear: Germany shows the highest increase, with 104 per cent against an increase in pay-TV households of 68 per cent, and France, the lowest among this group of countries in terms of growth of sports rights, shows a rise in pay-TV households of 100 per cent. In the UK the number of pay-TV households did not increase by as much as elsewhere, but rights fees nevertheless increased by 76 per cent. This was due, among other reasons, to the challenge to the leading pay-TV broadcaster from a digital terrestrial alternative, ITV Digital (now Freeview), which bid aggressively for rights.

There are some signs that the market for rights has peaked, or even that this bubble has burst. For example, rights fees to the Italian Premier League fell by 1 per cent during 2001/2 to €433m, having risen consistently from €23m in 1993/4. The new UK Premier League pay-TV deal fell from a previous value of £1.1 billion to £1.024 billion for a similar 3-year period starting 2004/5, having been signed without the approval of the European Commission (EC), which had been investigating the deal. At the same time, the structuring of rights deals has become increasingly sophisticated and complex, covering a wider range of channels and platforms. In some cases, this has been driven by the sports governing body and in other cases by the competition authority—for example, the settlement between UEFA and the EC in 2003 resulted in 14 separate rights packages and three live packages being offered to ensure there were no unused rights.

In summary, we can observe certain common themes and trends between the USA and the group of top five European countries regarding the development of televised sport. In both cases, the value of sports rights has increased sharply over the last decade. As is discussed further below, major rights have tended to migrate to pay-TV platforms in Europe and premium cable and satellite services in the USA. Interestingly, we find overall a similar share of the value of sports rights being appropriated by the major sport—soccer in Europe and American football in the USA.

(ii) US Market Overview

US TV markets are generally considered to be highly competitive in comparison with their European counterparts. This is thought to be the case particularly for sports programming, which offers multi-channel TV viewers, who make up over 80 per cent of television households (TVHH), a wide choice at low prices. Cable TV stations are the main delivery mechanism, with a collective penetration of 85 per cent of TVHHs (Federal Communications Commission (FCC), 2002). They offer, on average, around 60 channels in over 33,000 cable communities, including 14.5 local channels and 44.9 regional or nationally broadcast channels (including non-sports channels). Average annual rates for cable subscribers in 2000/1 amounted to $444, split between basic and premium components. Basic cable services include the retransmission of free-to-air broadcast channels, national and regional

Table 5
Summary of Broadcast and Cable Hours by Sport, USA (1999)

	Broadcast hours	Cable hours
Auto racing	119	3,145
Baseball	145	1,445
Basketball	332	1,569
Football	512	1,589
Golf	352	913
Hockey	127	1,199
Tennis	115	487
Other	254	6,983
Total	1,956	17,330

advertising-financed cable channels such as MTV, CNN, and ESPN. Premium cable packages include dedicated film channels, such as HBO. Basic cable services cost on average $154 p.a. (of which around $24 goes to ESPN) and premium programming $256 p.a. with most customers (89 per cent) taking the combined option. Direct-to-home (DTH) satellite broadcasters have penetrated around 15 per cent of all US TVHHs. DirecTV, the larger of the two satellite operators, has built up 10.8m subscribers (10 per cent of all TVHHs) and carries the successful Sunday Ticket for all away-from-home NFL games at an annual price of $200, as well as 24 regional sports channels.

The importance and range of sport in the US broadcasting market is illustrated by Vogel (2001) in his summary of US broadcast and cable hours devoted to sport events in 1999 by type of sports (see Table 5). Football is the most popular sports programming for national broadcast networks; auto racing is the most popular sports programming for cable. The supply of televised sport on cable is a multiple of that supplied by national free-to-air broadcasters.

Historically, the three US national broadcast networks maintained their domination of major sports rights contracts amid fierce competition and were supported by the revenues from advertisers who were keen to gain access to key socio-demographic groups among the 105m TVHHs. This competition was enhanced through the emergence of Fox, when it won the most prestigious national contract of the NFL in 1994 from CBS. CBS re-entered the bidding for the new contract in 1998, resulting in a doubling of the value of the NFL contract to $2.2 billion per annum. The NFL contract commands the largest share of revenues accruing to the four major league sports in the USA, with basketball taking the second largest share, ahead of baseball.[6] These valuable contracts demonstrate the advertising-derived purchasing power of the national broadcast networks.

The past decade has also witnessed a significant expansion of dedicated sports programming through nationally distributed cable channels, such as ESPN (owned by Disney) or Turner Sports, regional cable networks, such as Fox Sports Net (owned by NewsCorp), and satellite channels, such as DirecTV (currently subject to a takeover bid by NewsCorp). ESPN reaches almost 86m TVHHs (82 per cent of all TVHH in the USA). Fox Sports Net reaches 50m TVHHs (48 per cent). Cave and Crandall (2001) argue that with the entry of DTH satellite broadcasting, new powerful bidders for sports rights have emerged. They observe that DirecTV has succeeded in obtaining the national rights to NFL, MLB, NHL, and NBA games. Zimbalist (2003) documents the long-term trend with evidence from MLB and the NHL, with the most striking evidence from baseball: 'In 1987, the average team had 80.7 games shown locally on broadcast TV and 35.1 games on cable. By 2003, these numbers had practically reversed with 43.1 games on broadcast TV and 90.1 games on cable.'

Szymanski (2003) claims that increased migration of sports programming to subscription TV and pay

[6] See also Cave and Crandall (2001). NBA rights in 2001/2 were worth $661m and MLB rights $524m according to Kagan (2003).

Table 6
European TV Market Comparison

	Germany	UK	France	Italy	Spain
TVHH (m)	35	22	22	21	12
Cable HH (m)	20	3	4	0	1
DTH HH (m)	12	6	3	2	2
Cable revenue/subscription ($)	178	438	292	360	190
DTH revenue/subscription ($)	315	485	400	353	430
Licence fee ($)	190	166	125	100	0
Dedicated sports channels	5	25	11	19	15

Sources: PricewaterhouseCoopers (2003); *Screen Digest* (2003).

per view is further possible with Murdoch's pursuit of DirecTV. If successful in clearing the regulatory hurdles, this would combine the strong sports programming of NewsCorp.'s Fox cable network with DirecTV's own successful sports programming. Szymanski's thesis is that the ability to appropriate the willingness to pay for top sporting events will allow Murdoch to outbid the broadcast networks, as happened in Europe. Specific characteristics of the US sports and the US TV market have stopped this happening so far: (i) although the NFL contract is by far the biggest revenue generator in sport, there are other major sports that stimulate major viewer interest, unlike in Europe where football (soccer) dominates; (ii) economies of scale in the larger US market mean that free-to-air broadcasters, unlike their national counterparts in Europe, can afford to bid for sports rights; (iii) US sports also make significant efforts to be TV-friendly by fitting into advertising schedules; and (iv) regulation, which has been relatively slower to allow entry in the US pay-TV market.

(iii) European Market Overview

The USA and the top five European broadcasting markets taken together have over 100m TVHH each. Germany is the biggest European TV market with 35m TVHH, the next three (UK, France, and Italy) have 21–22m each, with Spain being the fifth largest TV market with 12m. While in aggregate of similar size, and sharing the same political superstructure in the form of the European Union, these five countries, along with other countries in Europe, exhibit a number of significant structural, cultural, and regulatory differences. Nevertheless, it is instructive to compare the major EU countries in aggregate with the US TV market.

The choice of televised sport and the prices European consumers pay varies considerably, illustrated in Table 6 for the five largest European TV markets. In the UK, the number of sports channels is high, with over 40 per cent of TVHHs subscribing to cable or satellite channels. Prices are quite similar to those charged in the USA, at $438 for cable in the UK against $444 for the USA, but, in addition, in the UK a licence fee of $166 is payable. The UK has the highest level of pay-TV charges, but also the highest number of sports channels across the five countries surveyed. In Germany, by contrast, basic cable charges for 30 channels are relatively low and similar to US basic cable prices (just under $15 per month as against $13 in the USA). In Italy, France, and Spain (where there is no general TV licence fee) viewers pay very different prices, depending on their connection and chosen viewing format.

The major difference between the USA and Europe lies in the status of public-service broadcasters who are generally financed with a compulsory licence fee (except Spain) and advertising (except the UK). The other key difference is that the USA has an almost complete penetration of multi-channel TV through cable and/or satellite. No European country achieves these levels of penetration except Germany, but there we find that the basic cable offering of 30 channels has little sports programming compared to countries with a strong pay-TV or a premium cable tradition.

Does this picture of differing number of channels, cable household penetration, prices, and other market outcomes suggest a causal relationship between market structure and market outcome? Not immediately. Admittedly, Germany offers televised sport at low prices and has witnessed competition between the two major commercial media companies, Kirch and Bertelsmann, on the one hand, and the two state-owned national broadcasters, on the other. However, this country has not developed premium sports channels offering extensive live sport to many viewers, as in the USA.[7] The UK and France have developed most successfully premium sports channels on satellite and cable delivery platforms, one with a dominant satellite broadcaster (BSkyB in the UK), the other with competing satellite broadcasters (Canal+ and TPS in France). If a link exists, it is not obvious from the data presented in Table 6 and for the USA in sub-section II(ii) above. Furthermore, as examined in sub-section II(i), in spite of these different market structures there do not appear to be fundamental differences in the value and trends in sports rights. In the following section, we therefore examine whether these market outcomes can be explained by policy interventions.

III. POLICY INTERVENTIONS REGARDING THE COMPETITION FOR SPORT RIGHTS

Similar concerns govern a wide range of policy interventions of competition authorities, media regulators, and legislators in the USA and EU. The USA has a substantial body of *ex-ante* legislation in place to prevent foreclosure of competition, the distribution and delivery markets are highly regulated, and only the market structure at the wholesale level is competitive. The EU represents a highly fragmented market place and multi-jurisdictional regulatory environment in which merger policy interventions and listed-events legislation have been used to prevent the complete migration of sports programming to pay-TV, while competition law has been used *ex-post* to limit foreclosure of content in national broadcasting markets, sometimes with adverse effects on the development and innovation. In the EU and USA we observe a tension between considerations of allocative and dynamic efficiency, leading to different types of intervention across countries and time.

These policies have been implemented based upon a concern that broadcasters would, without intervention, follow a number of strategies to ensure that they alone would gain valuable sports rights and foreclose other broadcasters' access to the sports rights. This can be thought of in terms of the essential facility doctrine, which notes that certain upstream (sport) inputs are essential/indispensable for downstream broadcasters to compete in the relevant market, and cannot be easily replicated without significantly raising costs.[8] This requires dominance in the upstream sports market and can create or reinforce dominance in the broadcasting markets (Abbamonte and Rabassa, 2001). In some cases, sports governing bodies have attempted to foreclose other competitions at the upstream level too.

Foreclosure and enhanced concentration across the broadcasting value chain can be achieved through a variety of means:

- the sale of exclusive, long-term contracts to broadcasters (vertical restraints) (Aghion and Bolton, 1987);
- bundling of rights (Whinston, 1990);
- vertical integration between the broadcaster and sporting entity (Hart and Tirole, 1990);
- horizontal integration (mergers) between broadcasters;
- distribution terms for channel providers;
- collective arrangements between broadcasters (e.g. the EBU); and
- specific policy rules (e.g. listed-events legislation).

At the same time, governing bodies have taken a number of steps with a view to preserving the quality and integrity of the sport, and hence the value of the broadcasting rights (we do not focus on other sports restrictions, such as player transfers) through:

- the collective sale of broadcasting rights;

[7] Parlasca and Szymanski (2002) ascribe this to the collective selling of soccer rights and claim that this is (*a*) not in the interest of clubs and (*b*) would not happen under individual selling.

[8] For an overview of the economics of foreclosure, see Rey and Tirole (2003). This paper was originally prepared for the European Commission where it made a considerable impact on subsequent policy decisions.

- the timing of broadcasting; and
- the ownership of teams playing within the same competition.

Below we discuss these foreclosure issues and how they have affected broadcasters in the USA and Europe and then turn to some of the restrictions adopted by governing bodies.

(i) Foreclosure Issues in the EU

In the EU, the broadcasting of sport has been transformed as a result of technological and regulatory changes over the last 20 years. Before the 1980s, most EU broadcasting industries consisted of state-run channels with limited spectrum scarcity funded by a combination of licence fees, advertising and/or government debt. In effect, there were often close relationships between the governing bodies and the broadcasters, without the need for extensive public bidding. This changed as governments embarked on a programme of liberalizing spectrum allocation to allow the development of commercial TV, while maintaining some form of content regulation. State funding and content regulation of broadcasters, however, still plays a significant role in EU broadcasting. Sport content played an important role in the development of commercial TV. Technology developments, and a further easing of regulatory and spectrum constraints, led to the advent of pay-TV and pay-per-view from the early 1990s onwards, with a strong emphasis on sports programming and the migration of most live TV rights to the premier national football leagues to pay-TV. New broadcasters, from BSkyB to Canal+, sank in significant investments to kick-start the new technology wave, requiring premium content to drive satellite penetration across Europe—sport, along with films, was the ‘battering ram’ to achieve this.

The strong role of public-service broadcasting manifests itself in the collective purchase of sports rights by EU public-service broadcasters through the European Broadcasting Union (EBU). The EBU system seeks to reduce transaction costs and contributes to improvements in the quantity and quality of TV programmes, particularly in smaller EU countries. The EC granted an exemption to competition law subject to conditions relating to access to third parties:[9] reasonable terms and conditions for deferred transmissions, extracts, and news, but also live transmissions with regard to all events which the EBU members do not themselves broadcast live. The operation of this sub-licensing mechanism to offset the restriction of competition is still the subject of a lengthy appeal in what is the longest running EU sports broadcasting competition case.

Support for public-service broadcasters, and therefore universal access to sporting events for viewers, has also been achieved through listed-events legislation, the revised Television Without Frontiers Directive (TWFD) (European Parliament and the Council, 1997), which originated in the UK. This influential piece of legislation sets out the basic level of European TV regulation across all programme genres, relating to programme standards and origination to safeguard certain public-interest objectives, such as pluralism, cultural and linguistic diversity, the right of reply, consumer protection, and protection of minors. It allows EU member states to list sporting and cultural events that they consider to be of major national importance and should be made available to, though not necessarily shown on, free-to-air TV.[10]

This intervention is based upon a concern that top sporting events, such as the World Cup and Olympics, would migrate or be siphoned off to pay-TV and hence be inaccessible to the majority of the population (see Solberg (2001) for a full discussion of listed events). Access, equity, and national pride over-ride the costs of intervention to the pay-TV broadcasting and sports markets. This rather blunt intervention dictates the broadcasting distribution method, which tends to distort the sports bidding market by depressing the value of sports rights by allocating rights to different broadcasters (Cowie and Williams, 1997) and runs counter to the moves in the broadcasting industries to move away from administrative-based mechanisms—see Cave (2002) for his recommendations on how price-based mechanisms should be used in the allocation of broadcasting, and other uses of, spectrum.

The revision of the TWFD will present an opportunity to evaluate the costs and benefits of this

[9] COMP/32.150—EBU (Eurovision), *Official Journal*, L151, 2000.

[10] This is superimposed by national legislation, aimed at fostering public-policy goals, such as diversity and quality of content, pluralism of voices, media-concentration control, and ownership restrictions.

intervention, in light of its usage and recent and future developments in distribution technology and take-up, which might mean that the free-to-air and pay-TV distinction and the focus on the TV medium become increasingly redundant.

EU merger authorities have also taken a strong stance to avoid foreclosure issues, particularly in emerging pay-TV markets. Kirch/Bertelsmann tried several times to combine their operations but faced unacceptable structural remedies, such as divestitures or the severance of structural links. In its investigation of the proposed joint venture, MSG, the European Commission was concerned about the likely dominance in the pay-TV infrastructure services market.[11] In addition, the Commission identified two distinct foreclosure issues:

- MSG's parents could foreclose the market for administrative and technical services by virtue of their strong position as owners of vast libraries of programming and as a nearly monopolistic operator of the cable TV network; and

- the resulting durable dominant position of MSG could, in turn, be used to foreclose the market for pay-TV services and cable TV networks to future competition.

With regard to the monopolization of the pay-TV infrastructure service market—the first relevant market identified by the EC—the Commission appears to have neglected the fact that although any dominance of the pay-TV infrastructure market may be inevitable, technology may change the economic environment and dominance may be short lived. This market was always likely to be developed by very few players and be subject to structural entry barriers (owing to the role of encryption standards and economies of scale in subscription management). Moreover, given the inevitability of a dominant standard developing, it may even be in the best interest of consumers to be served by one standard only, rather than multiple standards, which can be inefficient.

The foreclosure argument relates mainly to the second relevant market, the emerging market for pay-TV at the time. The EC believed that Bertelsmann/Kirch would use their control of MSG to disadvantage potential competitors in the pay-TV market. This type of behaviour is certainly possible and has been at the heart of the debate over the practices adopted by BSkyB in the UK pay-TV market.[12]

Recently, the EC has moved towards using more behavioural remedies to avoid foreclosure, which comes with additional regulation, typically involving monitoring pricing and market behaviour. The horizontal mergers of pay-TV operators, Via Digital and Sogecable in Spain, and Stream and Telepiù in Italy, raised concerns about the creation of a near monopoly in pay-TV and monopsony in the markets for the acquisition of rights.[13]

The significant behavioural commitments agreed by the Italian pay-TV operators involved a reduction in the duration of exclusivity agreements with premium content providers and the establishment of a sub-licensing scheme through a wholesale offer (along with commitments related to the distribution system), both of which will have a substantial impact on market outcomes and structures. Ongoing exclusive contracts were terminated, future contracts restricted to 2 years' duration and the new entity agreed to waive rights to all platforms apart from DTH. This behavioural solution will require pricing the rights on the basis of the retail minus principle, and will imply an account separation and cost allocation between wholesale and retail operation of the platform to avoid the issues of margin squeeze looked at by the UK Office of Fair Trading (OFT) in its abuse-of-dominance investigation into whether the pricing of BSkyB's premium sports and films channels led to a squeeze on the financial margins of the downstream distributors (OFT, 2002). Hence, the use of post-merger commitments attempts to avoid the future problems in competition law.

The EC ruling in Italy was set against a backdrop of an existing Italian government regulation which

[11] See Commission Decision, *Official Journal*, L364/1, 31 December 1994.
[12] See Hoehn *et al*. (1997) for more details.
[13] 'Commission Closes its Probe of Audiovisual Sport after Sogecable/Vía Digital Merger', IP/03/655, 8 May 2003, COMP/37.809 - RVM/Telefónica+Sogecable+5 and 'Commission Clears Merger between Stream and Telepiù Subject to Conditions', IP/03/478, 2 April 2003, M.2876.

prohibits a single broadcaster, irrespective of distribution platform, from owning the rights to more than 60 per cent of live football matches. In this case, government policy had mandated the distribution of rights between broadcasters before the intervention of merger policy; this example contrasts with Germany, where the government intervened to ensure that the collective sale of premium football was exempted from national competition law (see below) following a competition investigation.

At the same time, in the EU the record of successful antitrust, as opposed to public-policy, intervention preventing foreclosure of TV content markets, particularly in the pay-TV sector, is mixed and still developing. It is only very recently that the EC merger policy has become more flexible in the acceptance of behavioural remedies instead of structural remedies. Merger policy has been generally more aggressive than Article 81/82 interventions, which have been the subject of long investigations. This stance might be expected to follow through into future Article 81/82 investigations, leading to a more regulatory approach requiring monitoring of pricing and other distribution practices.

(ii) Foreclosure Issues in the USA

Sport programming in the USA, because of its central role in the market, receives the special attention of the Federal Communication Commission (FCC), which has the remit to monitor vertical integration, development of market structures, and conditions affecting competition with respect to distribution and programming purchase in every annual report. In contrast to the practice of most competition authorities in the USA and EU, the FCC reviews competition across a widely defined market for video programming delivery. This market definition includes free-to-air broadcasts, subscription and pay-TV cable offerings, as well as satellite TV (FCC, 2002).

Since the major liberalization of the cable sector in 1989, the FCC monitors carefully the state of competition in the liberalized cable TV sector, after a long period of tight regulation of local cable networks aimed at protecting local free-to-air broadcasting: there has been a ‘stop–go’ approach to regulation in the USA. When cable tariffs dramatically increased after liberalization, together with the number of channels included in the basic cable package, Congress became concerned and passed the 1992 Cable Act giving the FCC renewed powers to regulate tariffs of basic cable services. This re-regulation of cable TV, which led to mandated price cuts of over 20 per cent, proved unsuccessful and was superseded by the 1996 Telecommunications Act which aimed to create improved conditions for entry by local competitors, in particular local telecommunications companies. The history of regulation and deregulation of the US cable TV sector is an interesting one and has been well documented in the economics literature.[14]

Historically, the FCC has been concerned about striking a balance between supporting the beneficial effects of vertical integration (incentives to expand channel capacity and taking risk in new programming ventures, for example) and anti-competitive foreclosure effects. In 2002 it reported that vertical integration between MVPD operators and programming suppliers stood at 30 per cent, having decreased from a level of 35 per cent over a longer period in the 1990s.[15] The advantages of vertical integration in US TV market are limited not least because of access rules that force the programming networks to supply competing downstream operators on non-discriminatory terms.[16] In its 2002 report the FCC notes complaints from DBS operators that these access rules are being avoided with respect to important regional and local sports programming. In general, the FCC is not overly concerned that foreclosure of the TV market or parts thereof through the behaviour of integrated broadcast networks with involvement in programming is a major problem. It does, however, comment on the MVPD market segment of multiple dwellings, where long-term exclusive distribution contracts appear to raise foreclosure issues.

[14] For evaluation of regulatory changes in the cable TV sector, see Crandall and Furchtgott-Roth (1996), Emmons and Prager (1997), and Cave and Crandall (2001). For a general overview of the US TV industry and regulation regarding the scope of activities of the broadcast networks, see Vogel (2001, chs 6 and 7).

[15] See FCC (2002).

[16] Cable Television Consumer Protection and Competition Act of 1992; Pub. L. No. 102-385, 106 Stat. 1460 (1992).

Back in 1994 the FCC published a major report reviewing the migration of sports programming from free-to-air broadcasting to subscription TV (mainly cable).[17] This report found that no such migration had taken place and that US viewers were not being deprived of sport programming requiring anti-siphoning rules to be reintroduced. The USA had anti-siphoning rules for years until they were overturned by the courts in 1977 in *Home Box Office v. FCC*.[18] The courts found that the FCC had not properly justified these rules, leaving it open for the FCC to draw up revised rules that met this criticism. The definition that the FCC adopted in this report was one of loss of sports programming by free-to-air networks rather than relative gains by cable or satellite TV operators. If the latter definition had been adopted, the increased level of coverage of sports by subscription or pay-TV channels would have shown up very clearly. The report showed some striking differences in the local and regional pattern of games broadcast free-to-air and on cable. Local broadcasts were mainly for away games of a home team, whereas regional cable tended to show home games, thus limiting any potential negative effects of live TV coverage, or at least offering direct compensation. The FCC observes that the increase in choice of sports programming has come largely through cable's pursuit of live home games and games played by non-local teams leaving relatively few games.

This trend has, as discussed above, continued with a majority of MLB and NHL games now being shown on local cable.[19] Should the predicted migration to subscription and pay-per-view (discussed above) happen in the USA as a consequence of the increased ability of cable and DBS operators to increase subscriptions (as a result of cable and ownership liberalization and mergers), the FCC may well be asked by Congress to consider intervention again.

In the USA, the merger between Disney and Capital Cities/ABC, announced in 1995 and completed in early 1996, illustrates how key players in the media market in the USA were beginning to react to the liberalization of the media and telecom sectors and the technological opportunities brought about by the application of digital technology to the audio-visual sector (liberalization in terms of the repeal of the 'Finsyn' rules). The Department of Justice (DoJ) did not appear to have any major difficulty with the identification of the largely complementary, rather than competitive, nature of the activities of the two companies in competitive markets at every level. The two companies were found to operate in markets that are distinct in two important dimensions: pay-TV versus free-to-air delivery on the one hand and product characteristics (children/animation and sports programming) on the other. Even in the local TV market of Los Angeles, where the companies had to give an undertaking to seek a structural remedy, divestment (Disney owned its own TV station in that market), there were 22 channels that compete in the sale of airtime. Vertical integration does not—in the absence of market power at either stage—require policy intervention because foreclosure issues hardly arise.

While the largely vertical mergers between broadcasters and studios in the mid- to late 1990s did not meet with major objections by the US antitrust authorities, the planned horizontal merger between the two major satellite broadcasters who have strong sport positions, EchoStar and DirecTV, was abandoned after the DoJ objected and filed suit to block the acquisition in October 2002.[20] The principal reasons given by the DoJ were the creation of a monopoly in those (rural) areas where cable TV was not available and a duopoly in those areas where cable TV was the only alternative multichannel video-programming distribution service. The claimed efficiencies of the merger were not sufficient to outweigh the adverse effects on competition on a pan-USA basis. This decision opened the way for NewsCorp. to bid for a controlling stake in DirecTV in spring 2003, a proposal which would not lead to the removal of a rival DBS broadcaster but rather to a horizontal and vertical concentration between a network broadcaster (with strong cable interests) and a satellite TV operator. Like Fox, DirecTV is strong in sport broadcasting, and it will

[17] FCC Report No. DC-2611; PP Docket 93-21.
[18] Case reference 567 F.2d 9 (D.C. Cir.19977), cert. Denied, 434 US 829 (1977).
[19] Zimbalist (2003) discussed in section II(ii) above.
[20] See press release on www.usdoj.gov/atr/public/press_releases/2002/200412.htm

be interesting to see how the DoJ decides the more complex vertical and horizontal merger issues in this case.

(iii) Foreclosure Effects through Ownership of Sports Clubs by Media Companies

The vertical integration of broadcasting and sport companies in the EU suggests a risk minimization strategy to ensure access to sports rights on the part of the broadcasters, rather than a commercial investment in sports organizations *per se*. This contrasts with the experience of the USA, where sports ownership has a longer history and where the combination of a closed league system, franchise model, player drafts, and salary caps makes investments in sports clubs more profitable. In addition, the highly regulated sports sector in the USA does more to promote competitive balance and hence there is not so much of a tendency towards the supremacy of major teams, which then become attractive to broadcasters (Hoehn and Szymanski, 1999).

This trend of vertical integration across the EU and the USA seems to have subsided now and, indeed, a number of broadcasters, such as BSkyB (Manchester United), NTL Europe (Aston Villa), Canal+ (French soccer's Paris St Germain), News Corporation (MLB's Los Angeles Dodgers), M6 (French soccer's Bordeaux), and AOL Time Warner (basketball's Atlanta Hawks and ice hockey's Atlanta Thrashers), sold their stakes owing to a combination of the fall of rights values, commercial realities of operating sports and broadcasting businesses, and following the intervention of the UK Competition Commission (see below). At the same time, the value-creators, whether they are the teams, individuals, or governing bodies, have looked to gain more control over the valuable broadcasting revenue streams, regaining the rents that have been extracted by the broadcasters. This has created a challenge and potential conflict between the traditional roles of a governing body as a regulator with a new role as a commercial entity, and similarly between the governing body and the teams and individuals it represents.

The blocking by the UK Competition Commission of BSkyB's take-over of Manchester United is the leading EU precedent on foreclosure from such vertical integration (Competition Commission, 1999). Reportedly, the decision stopped further investment in football (for example, NTL dropped its bid for Newcastle United, fearing a Competition Commission investigation), and other sporting clubs in the UK. The England and Wales Premier League responded by implementing a rule which limited broadcasters to 10 per cent ownership of clubs. This decision contrasts with a seemingly more lenient approach across Europe. The French competition authority did not investigate the acquisition of Paris St Germain by Canal+, perhaps because of its more lenient approach to vertical integration (cited in Jenny, 1998); the same applies to the Italian Mediaset–AC Milan and Cecchi Gori–Fiorentina relationships, given that they had preceded the present Italian competition law according to the Competition Commission.

The Competition Commission blocked the bid on the basis that BSkyB's stake would affect the bidding for future Premier League rights in its favour, and hence would foreclose the narrow market definition of the pay-TV premium sports channel provider market, irrespective of the different collective and individual selling scenarios that were analysed, given that the Restrictive Practices Court case was ongoing (see section III(iv)). It rejected a wide range of proposed remedies, such as different auction designs, on the basis of policing problems and a lack of credible sanctions against a failure to comply. The Competition Commission was also concerned about the impact of the potential exit from the Premier League were BSkyB not to win the rights, which third parties believed to be credible, and the impact of further similar mergers on the broadcasting market.

This decision, based upon the UK's old public-interest test (revised into a more objective, economics-focused 'substantial lessening of competition' test in the Enterprise Act 2002) relied on the impact of BSkyB's toehold at Manchester United, and its access to information in the bidding process, making it easier for BSkyB to win the rights auction. This 'toehold effect' relies on the ability of BSkyB to internalize the auction bid cost within the new company—for example, if BSkyB were to bid £100 for the rights, Manchester United receives £5 back and hence the net bid is £95. The other bidders know this when they bid, especially if it is an ascending or

English auction. If they win, they will realize that they may have paid more for the rights than they are worth, and will suffer the 'winner's curse'. As a result, they will be more cautious in their bidding (Bulow *et al*., 1999).

(iv) Restrictions by Governing Bodies—Collective Selling, Bundling, and Restrictions on Distribution

Competition authorities have focused on the potentially anti-competitive effects of the most harmful combination of long-term, exclusive, and wide scope of rights with collective, or cartelized, selling (on behalf of member clubs or individuals) and purchasing arrangements. This combination can result in foreclosure and concentration in broadcasting markets, and restrict price competition and limit output in the sports market. Similar concerns relate also to the bundling of rights, such as pay-TV and free-TV channels, or radio and TV (as was common until the last two decades).

Typically, the debate has centred on whether the sports governing body or league is acting as a cartel, by reducing the number of games on TV and increasing the price, and whether the sport in question is genuinely a joint product (Flynn and Gilbert, 2001). Moreover, competition authorities have investigated whether the economic benefits from the redistribution of rights income within the league to maintain competitive balance and uncertainty of outcome in the relevant sports market outweigh the restrictions on competition, in both the sports and broadcasting markets. Parlasca and Szymanski (2002) argue strongly that collective selling with a restriction of output has reduced consumer choice, fostered media concentration, and restricted the growth of small and medium-sized clubs in Germany and the UK.

To date, competition authorities across Europe have focused their efforts on TV and premium sports, such as football and Formula 1. National authorities, acting ahead of the EC, all considered that collective selling was restrictive, but offered very different solutions, creating uncertainty for broadcasters with pan-European interests. The now outdated UK Restrictive Practices Court (RPC) decision in 1999 allowed collective selling on the basis that it was in the public interest. The Court accepted the argument that collective selling for the beneficial distribution of rights income, based upon an acceptance that the Premier League was a joint product and a concern about the feasibility of individual selling. National competition authorities in the Netherlands and Italy (Tonazzi, 2003), however, ruled in favour of individual selling.

In Germany and France there has been a direct conflict between the governments and national and EU competition authorities. In both cases, the governments intervened on public-policy grounds to exempt collective selling from national competition law, in the German case after the competition authority had ruled in favour of individual selling (Rumphorst, 2001). More recently, the French government has relaxed its position by allowing governing bodies to assign ownership of some rights to the clubs.

By comparison, the EC has been relatively slow to act, with a number of the sports rights investigations under Article 81 of the EC Treaty taking more than 2 years to complete. It appears the Commission position has softened over time—it now accepts contract durations of 3 years (or longer when there is new entry, or significant investments involved), contrary to its stated preference for a 1-year duration up until a year ago, and recognizes that collective selling can be more efficient than individual selling, as long as there are no unused rights or restrictions on new media rights (as outlined during the UEFA Champions League, UK Premier League, and International Olympic Committee investigations). In the last case, this requirement is to help foster the new media markets, which is both a competition and policy objective of the EC.

The EC recognizes that collective selling avoids the transaction costs associated with individual negotiations, and in the case of league competitions, the hold-up problems associated with broadcasters waiting for others to bid, which causes delays,[21] uncertainty, and, in some cases, the sport not being broadcast (as in Spain). In the case of the new agreed arrangements for the UEFA Champions League, UEFA still has the right to sell rights on a collective basis for the first week, on an open-auction basis, but any unused rights revert back to

[21] 'ERT Acquires Greek Soccer Rights to End TV Stand-off', Sportcal.com, 15 October 2003.

the clubs to allow there to be more than one buyer of the rights. The commercial impact of this additional quantity of the sport on TV on long-term viewer interest is, as yet, unclear. Matching rights, or English, clauses are not allowed (in Sport 7 case in the Netherlands, and the Premier League case in the UK), as it makes the future reallocation of rights between broadcasters more difficult and hence leads to foreclosure.

The collective selling of highlights rights is already generally accepted, as per the UK and Italian investigations, given the need to broadcast a comprehensive package, and the potential high transaction costs and uncertainty of acquiring all rights in an individual selling scenario.

In the USA, collective selling is not illegal *per se*. Since the passing of the 1961 Sports Broadcasting Act, exempting sponsored national telecasts, sports leagues can offer their rights to network broadcasters in a package. Collective selling is thus permitted, but not at the exclusion of individual selling, unless compelling reasons can be provided to introduce any limitations to these individual rights. As is explained in Cave and Crandall (2001) the 1961 Act 'does not legalise many other forms of restrictive agreements that may be sought by sports leagues in selling broadcast rights'. In particular, the US Supreme Court invalidated plans to limit the number of games that could be telecast.[22] The Commission seems to be moving towards this US policy, albeit without resorting to sports-specific legislation. The scope for individual selling by individual teams of the broadcast rights to local games to local broadcasters and regional networks has meant that there is no artificial restriction of local broadcasts or out-of-market broadcast of games not shown by the rights holders of a collectively agreed deal and one reason that the adverse restrictive effects of collective selling have, on the whole, not been felt in the USA.

IV. CONCLUSIONS AND POLICY RECOMMENDATIONS

The broadcasting-of-sport industry is highly regulated. Governments in most countries have been asked to moderate the frictions between diverging interests of viewers, broadcasters, and governing bodies, and have also taken measures to deal with the impact of the allocation of sports programming on competition between broadcasters. More generally, the pre-eminent position of sports programming in a channel's offering and as a key driver of a TV delivery/distribution platform has forced governments to intervene in media merger proposals, sports-rights contract negotiations, and disputes among TV distribution systems over access to content. At different times, intervention has favoured the benefits of allocative efficiency over dynamic efficiency to the detriment of the pay-TV sector and vice versa. Similarly, in the USA, liberalization and regulation of cable markets has been subject to a 'stop–go' approach.

We find that three sets of inter-linked and often-conflicting public-policy issues have played a significant role in shaping the choices and prices that TV viewers face in the EU and USA:

- potential foreclosure of markets through contracts, bundling, and vertical and horizontal mergers, with adverse effects for competing broadcasters and delivery platforms (competition and merger policy);
- access of viewers to major sporting events through government intervention (listed events policy); and
- restrictions from governing bodies to ensure the quality of coverage by broadcasters, including the monopolization of TV revenues (competition policy).

Throughout this paper we have highlighted some preliminary empirical evidence that these interventions have had an influence on the structure and development of the TV sector in particular. Further quantitative work is required to identify the exact relationship between outcomes and interventions and to assess the costs and benefits of the different interventions.

In the USA, policy concerns over foreclosure issues in the media sector have generally been prominent for some time, with *ex-ante* access rules, restrictions

[22] See *NCAA v. Board of Regents of the Univ. of Oklahoma & Univ. of Georgia Athletic Assn*, Supreme Court of the United States, 468 US 85, 1984.

on vertical integration, and strict merger control part of the regulatory landscape for decades. The FCC has played a pivotal role in establishing and policing access rules, as well as monitoring the effects of vertical integration. Over time, this regulatory approach has softened, at least until the recent block of the Echostar/Hughes (DirectTV) merger proposal. In contrast, the EU has adopted limited *ex-ante* regulation, in the form of listed-events legislation, exemptions from competition law, and country-specific intervention on the degree of vertical integration of broadcasting industries. National regulatory policies within the EU have often been divergent and so far have exhibited less consistency. In some ways this is to be expected, given the considerable differences in regulation, policy, market structure, and culture across EU member states. However, the lack of a firm framework has created considerable regulatory uncertainty and resulted in a confusing set of decisions on similar issues.

We outline a number of policy implications, particularly at the EU level, on the basis of our analysis. The revision of the Television Without Frontiers Directives provides an opportunity to confirm and clarify policy rules on the balance between free-to-air and pay-TV and foreclosure. This may provide an opportunity to set out an overall regulatory framework for the broadcasting of sport across competition law, media regulation, and public policy. This is especially important, given the speed of market and technology development and how inter-linked these policies are. This approach would build on the common EU regulatory framework for communications networks and services, which has integrated sector regulation and competition-policy principles, and would move the EU closer to the US model, if not towards a new FCC equivalent.[23]

At the same time, competition authorities across Europe should consider the use of specified time limits for competition investigations (such as mergers), which are enforced. Rigorous, and consistent application of, market-definition analysis is a particular area for significant improvement. Reducing the length of intervention and ensuring a consistent approach will help to reduce regulatory risk and uncertainty for broadcasters and governing bodies, with benefits for investment and market development, and will help to ensure that the decisions are still relevant, given the speed of development in broadcasting and sport markets.

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[23] In particular, Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), and Commission recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex-ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services.

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