

## **ENGLAND AND WALES CRICKET BOARD (ECB)**

### **RESPONSE TO OCFOM CONSULTATION 'THIRD PHASE PAY-TV'**

The ECB has very recently become aware of the third phase of Ofcom's consultation into pay-tv. This document specifically refers to the role of the ECB and the rights we sell to broadcasters. We are therefore very concerned that OFCOM has not sought to engage us in any discussions on this issue nor to send the consultation materials to us.

This approach heightens our concerns that OFCOM has pre-determined its views on this subject and will seek a remedy that could have a very damaging impact on cricket in this country, particularly our ability to invest in cricket at the grassroots level.

The ECB relies on a competitive broadcasting environment to secure good value for our media rights that leads to investment in the game. We believe that there is healthy competition in the tv market as can be evidenced from the fact that broadcasters including the BBC, ITV, Channel 4, Five, BskyB (Sky) and ESPN have all recently bid for and won rights to show major international sporting events. We do not believe the definition of pay-tv is a vital distinction as consumers have to pay for the services of the BBC and all other broadcasters through the licence fee and advertising respectively. Three of the broadcasters mentioned above are a key part of the ECB's current broadcast arrangements helping cricket to reach very wide audiences.

In our tender arrangements for broadcasters, the ECB specifically allows broadcasters to bid for packages of our various matches so as to encourage competition and allow different broadcasters to invest in cricket. Our tenders are usually for four years only so as to allow new entrants the opportunity and respond to changes in the market place. We would be happy to make these arrangements available to OFCOM. These tender arrangements create competition and meet regulatory requirements – we are therefore concerned as to why OFCOM is seeking a further level of intervention and would request further evidence for the assertion that BskyB has deliberately aggregated content without OFCOM providing details of the bids made for cricket and sports rights by other operators.

The ECB notes that the initial complaints and evidence put to OFCOM has been made by operators who to date have chosen not seek to invest in content themselves. It is wrong that the views of these operators should hold sway to the detriment of sports rights holders and cricket participants and fans. We are extremely concerned that should the remedy OFCOM propose be implemented then there will be less incentive for broadcasters to bid for sports rights, and therefore the value of sports rights, will be significantly diminished.

The ECB would welcome explanation from OFCOM as to why it believes that platform operators/retailers and new entrants will in future make bids for cricket rights if they can obtain them cheaply at a wholesale level from Sky. The remedy proposed by OFCOM will enable operators to ignore our tender arrangements and just sit back and free load on the investment of others.

The ECB believes that if OFCOM has competition concerns about Sky then it should use competition powers to address the issue rather than to rely on backdoor regulatory mechanisms to introduce mechanisms that will impinge on sports rights holders.

As the governing body responsible for cricket in England and Wales, it is our duty to oversee the health of our game and to grow it. We believe that Ofcom's actions will lessen our ability to do this.

There is no clear evidence that consumers are being harmed by the current situation through lack of choice or high prices and the situation would in fact be worse for consumers if the value of sports rights was diminished and this led to a reduction in the quality of sporting competitions that depend on revenue from the sale of broadcasting rights. In fact just the opposite, there has never been a wider choice of cricket available to consumers including media coverage, radio coverage, prime time terrestrial highlights, new media applications and pay-tv viewers. The latest independent survey evidence conducted for the ECB demonstrates that cricket continues to attract an ever increasing number of followers. The latest research shows 12.7m adults (16+) class themselves as cricket fans - this is 3.2m up on summer 2008.

ECB's YouTube channel has had more than 1 million video views in 2009; it was the most viewed on YouTube's UK network the day after the Ashes finale, and 11th with the global YouTube audience.

Over the course of the summer over 20m individual streams of International daily match highlights have been viewed by fans online via the ECB's syndicated highlights service. Participating websites include The Sun Online, telegraph.co.uk, timesonline, guardian online, independent online and cricinfo. This is in effect a pay-tv service as the content is generated around advertising which creates an income stream for cricket and is funded by the original site.

This evidence describes the many ways by which fans are engaging with cricket and the development of many of them relies on the continued health of the ECB. We urge OFCOM to take a new look at the way in which cricket fans are choosing to interact with cricket (and sports fans more widely) as we believe it will raise significant questions as to whether the remedies currently proposed will create public benefit set against the downside there will be to the health of our sport.

The ECB believes that Ofcom has an obligation to consider the impact of its remedy on sports rights holders and that it has not yet done this. We would therefore request that OFCOM undertakes this work and does not proceed any further until it has consulted with the ECB and other rights holders on this subject. When OFCOM does this we will be able to demonstrate to you the public benefit our sports and its fans secure at present as a result of competitive bidding. Additionally we will be able to highlight the broader investment that sky has made in our sports including the commitment it has to showing cricket from Test level to county level, to club and women's cricket and the grassroots projects it invests in.

The ECB shall be raising this issue with the DCMS, not least as we believe that the imposition of the remedy currently proposed will lead to a direct impact on the commitments and partnerships we have in place with the DCMS to meet policy objectives we share with them including getting more people playing cricket, particularly among women, girls and ethnic minority communities.

**David Collier**  
**Chief Executive**  
**England and Wales Cricket Board**

**18 September 2009**