



OFCOM Pay TV Phase Three Consultation

Submission from the PGA European Tour

September 2009

Introduction

The PGA European Tour (PGAET) welcomes the opportunity to consult with Ofcom in the third phase of its Pay TV consultation. Although PGAET has not contributed to the first two phases, it notes that the third phase has identified golf (and specifically the European Tour and the Ryder Cup) to be significant components of Sky's content aggregation. As Ofcom believes that this aggregation has enabled Sky to achieve market power in wholesale markets for premium sports, we believe that it is incumbent upon PGAET to share its views with Ofcom to help achieve the most accurate conclusion of the consultation.

The role of Pay TV in the UK TV Market for Sport

PGAET has recently concluded its consultation with the DCMS Free-to-Air (FTA) Review Panel for listed events. In our submission we emphasised the importance of self-regulation (such as our commitment to the CCPR voluntary code) in balancing the expectations of all the stakeholders in our sport. During the review process, we were made aware of DCMS' concerns about the limited access to content through pay TV. Whilst we recognise that the focus of the DCMS consultation was somewhat different, we are unable to reconcile DCMS' concerns about the limited availability of Pay TV on the one hand with Ofcom's assertion that Sky has achieved market power and is in need of regulation on the other.

Pay TV in the UK is unquestionably a major business success story. Few, if any, other Pay TV operations in Europe have been able to offer the same diversity of content to their audiences or achieve the same levels of subscription. In sport, Sky has created a platform that has enabled audiences to consume their desired sports in far greater quantity and depth than ever before. Indeed, Ofcom notes that Sky Sports channels "contain large volumes of regular and frequent live sporting events which a significant number of consumers find highly valuable" suggesting that Ofcom shares PGAET's view that Sky is doing a very good job at delivering precisely what sports audiences want.

Besides its longstanding and ongoing relationship with the BBC both in television and radio, the European Tour has enjoyed a very successful partnership with Sky over the past 15 years which has allowed all its principal tournaments to be broadcast live and extensively to UK audiences including, for the first time, shot-by-shot coverage of the Ryder Cup. This has meant not only unparalleled access to golf for the fan base, but has delivered vital funds back to the development of the sport. For example, and not least as a result of its commitment to the CCPR voluntary code, significant sums from European Tour and Ryder Cup rights income are invested into golf every year through the PGA's grassroots programme, the Ryder Cup Trust, the Golf Foundation and the European Tour's own support programmes.



The TV Sports Rights Market

Because of the complexities of televising live golf and the specialised skills required, PGAET has created its own television production company (PGA European Tour Productions) to wholesale its programming to Pay TV and FTA channels. In this way PGAET has created a season-long televisual and multi-media experience of consistent quality for golf fans around the globe, culminating in the biennial Ryder Cup Matches between Europe and the USA. PGAET Productions has a long-standing commitment to innovation in golf broadcasting and in 2008 became the first European production company to offer all its programming in High Definition (HD) to its broadcasters.

In selling its products, PGAET, like all sports rights holders, is dependent on a vibrant free market amongst potential broadcasters for its content. In its most recent UK TV rights tender process in 2007, PGAET received strong bids for various rights packages from the Pay TV sector from both Sky and Setanta, a process in which Sky was ultimately successful.

PGAET recognises that due to the pressures of other programming, FTATV is increasingly not in a position to do sport programming justice, particularly given the very significant time demands of a sport such as golf. It was therefore no great surprise that during the last tender process, the BBC successfully bid jointly with Sky for the package of rights to the tournaments it had previously broadcast on an exclusive basis. It is worth noting that no FTA broadcasters bid for the live rights to the Ryder Cup.

PGAET believes that Ofcom's proposed remedy of a wholesale "must offer" obligation on Sky will significantly alter the free market dynamics of the TV sports rights market to the detriment of audiences and rights holders alike. Far from promoting competition for sports rights amongst broadcasters, it will minimise any incentive for a potential broadcaster to bid for sports rights itself, since any platform would be guaranteed to get Sky's sports channels through the Ofcom arrangement – at a price set by Ofcom, rather than the market. PGAET believes that such a move would inevitably reduce Sky's income and hence reduce the rights fees available to rights holders for their content. In turn, this would reduce the money flowing into the game at both the professional and grass roots level – finance which over the past 15 years has helped produce the strongest European Tour and European Ryder Cup teams in history.

Furthermore, PGAET believes that Ofcom's proposed remedy will reduce innovation in the Pay TV market, rather than increase it. Without the ability to differentiate itself from other platforms, it is difficult to see why Sky would continue to invest massively in improving the TV audience experience from which other platforms would immediately be able to benefit.

Ultimately, PGAET believes that Ofcom's proposed remedy would have the opposite effect of the one intended. By regulating the availability of Sky's channels, it would effectively make Sky the *de facto* provider of sports programming, further restricting the ability of new broadcasters and channels to enter the marketplace.



The Pay TV Sports Audience

PGAET believes that the vast majority of sports fans recognise the market reality of Pay TV for sport. Premium sports content is very expensive to produce and like any other commodity comes at a price to the end consumer, particularly when broadcast over dedicated 24/7 channels. The cost of Pay TV in the UK is broadly similar to, and in some cases cheaper than comparable services in the European Union and the United States.

PGAET notes that the basis for Ofcom's consultation centres on Ofcom's belief that the Pay TV Market is not working for consumers. PGAET is unconvinced by Ofcom's evidence to this effect. PGAET believes that the non-conclusion of wholesale agreements with platforms such as DTT is much more likely to be the result of the difficulty of identifying viable business models for the parties concerned (particularly where the consumer expectation of free content is so high) than a conscious restriction of distribution by Sky.

PGAET can understand the frustrations of operators who did not invest at the appropriate time or capitalise on the same opportunities as those available to Sky, but does not believe that this translates into a lack of opportunity for the consumer. Missed business opportunities on behalf of the operators perhaps, but not market failure.

Conclusion

PGAET believes that Ofcom's intended intervention into the Pay TV wholesale market is inappropriate. Sky channels are already readily available to consumers via satellite, cable, IPTV, broadband and mobile telephony and additional access via new platforms is simply a matter of time and the alignment of market conditions. In our view, there is no evidence of market failure and therefore no grounds for regulatory intervention.

Ofcom has not demonstrated the necessary understanding of how the sports rights market works and its proposed remedies will not only fail to deliver the intended results, but will damage the markets for both consumers and rights holders alike, reducing consumer choice, stifling innovation and significantly reducing the available income streams for the development of professional and amateur sport in the UK.



ANNEX 1 – The European Tour

About The European Tour

The PGA European Tour, a company limited by guarantee, operates a broad range of business initiatives essential to its primary mission of administering professional tournament golf. It is a unique business which generates profits for the benefit of the Members – the tournament players – who receive their dividends by way of competing and winning prize money.

The European Tour International Schedule is a vigorous, thriving global brand; the European Challenge Tour focuses on the future; and the European Senior Tour provides a new start for champions celebrating their 50th birthday.

The start of the 2009 season also heralded The European Tour's new corporate identity, featuring the iconic silhouette image of six-time Open Champion Harry Vardon and a world skyline graphic depicting many of the geographical elements built into The Race to Dubai's 51 tournaments in 26 destinations.

George O'Grady, the Chief Executive of The European Tour, heads the administration staff of 142 based at headquarters in Wentworth, Surrey, with a Board of Directors comprising 12 elected past and present Tour Members and a Tournament Committee of 15 players.

The present Board is: Neil Coles MBE (Chairman), Angel Gallardo (Vice-Chairman), Maurice Bembridge, Roger Chapman, Paul Eales, David Jones, Robert Lee, John O'Leary, Mark Roe, David J Russell, Ove Sellberg and Jamie Spence.

The present Tournament Committee comprises: Thomas Björn (Chairman), Darren Clarke, Gonzalo Fernandez-Castaño, Richard Finch, Joakim Haeggman, Christopher Hanell, Raphaël Jacquelin, Miguel Angel Jiménez, Robert Karlsson, Barry Lane, Paul Lawrie MBE, Paul McGinley, Colin Montgomerie OBE, Mark Roe, and Henrik Stenson.

The growth and development of The European Tour is well documented. In 2008 The European Tour International Schedule consisted of 50 tournaments in 25 countries with prize money of €116,892,269 (£92,867,458) compared to a total prize fund of £250,000 when the Tour was born in 1972. The European Challenge Tour and the European Senior Tour had prize funds of €6,017,394 (£4,694,487) and €7,729,284 (£5,985,197) respectively in 2008. The European Challenge Tour consisted of 33 tournaments in 24 countries and the European Senior Tour 18 tournaments in 13 countries.

The funds drawn from sponsors and suppliers, television and ticket sales, support a thriving international community in which The European Tour actively promotes the game at all levels.



Television History of The European Tour

Up until the mid-1980's TV coverage of the European Tour was restricted to coverage primarily on the BBC in the UK and sporadic local coverage of events in Continental Europe. The first series of weekly highlights programmes was commissioned by the European Tour in 1987, providing the international golf viewer with regular access to European Tour programming for the first time.

The dramatic growth of dedicated sports channels on satellite and cable TV at the end of the 1980s, combined with the success of European Tour players on the world stage both individually and via the Ryder Cup, led to the creation of the Tour's own television production company, European Tour Productions (ETP), a joint venture with the International Management Group (IMG). ETP then developed a specialist live golf team which has now produced upwards of 400 European Tour events including the last 7 Ryder Cups. Each week on the European Tour up to 20 hours of live programming is delivered to over 30 customers worldwide, with coverage supplemented by a high quality weekly half hour magazine programme. Since the beginning of 2008 all coverage has been produced in HD.



ANNEX 2 – The Ryder Cup

About The Ryder Cup

Besides governing the European Tour, the European Challenge Tour and the European Senior Tour, PGAET is the majority shareholder (60%) of Ryder Cup Europe LLP (RCE) within which the European rights to the Ryder Cup are vested. The remaining 40% shareholding is divided equally between the PGAs of Europe and the PGA of Great Britain and Ireland.

The television coverage of the Ryder Cup dates back to the 1970s when final day highlights of the matches held in Britain alternated between ITV and the BBC. A BBC contract from 1981 to 1993 provided additional coverage of the home matches, but with little or no coverage of the matches in the United States.

A new Sky contract from 1995 provided full live coverage of all 3 days, including the opening and closing ceremonies of both home and away matches. This contract was subsequently renewed, with BBC showing highlights of home and away matches too. During the TV rights tender process for 2009-2012, Sky and the BBC bid jointly for (and won) the live and highlights rights respectively.

About The PGA of Great Britain and Ireland

The PGA has operated as the governing body for professional golfers in Great Britain and Ireland since 1901, its objectives being to have significant and responsible influence within the game of golf in its core territories and across the world. The PGA seeks to act as custodians for the traditions of the game whilst identifying and fulfilling the golfing and business interests/needs of its members and promoting golf for the benefit and participation of all.

About the PGAs of Europe

The PGAs of Europe is an Association of individual European country PGAs whose objective is to act as a support role to individual PGAs on a business-to-business basis. The PGAs of Europe now represents 25 member countries in Continental Europe and, with The PGA of Great Britain and Ireland, have in excess of 12,000 professional members. The PGAs of Europe strives to raise standards and opportunities collectively across Europe in the education and employment of golf professionals, as well as representing member countries with governments and other legislative and influential bodies in the promotion of the game and the interests of professional golfers in general.

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