

OFCOM – PAY TV PHASE 3 DOCUMENT
RESPONSE BY THE RUGBY FOOTBALL LEAGUE (“RFL”)

Introduction

The RFL is responding to OFCOM’s Pay TV Phase 3 Document on behalf of the RFL and Super League (Europe) Limited (“SLE”). The RFL is the governing body of rugby league in Great Britain. Its objects include fostering, governing, developing, organising and managing the game of rugby league in respect of all age groups, at all levels and for both sexes. SLE is owned by the clubs that participate in the engage Super League (the premier rugby league competition) and controls the rights in that competition.

Consultation

The RFL has only very recently become aware of the third phase of OFCOM’s consultation into pay-TV. Given the significant implications that OFCOM’s proposals would have on the game of rugby league, we are very concerned and surprised that, prior to issuing the consultation document, OFCOM did not seek to engage us in any discussions on this issue and that OFCOM did not send the consultation materials to us. These factors, together with the content of the consultation materials, cause the RFL to be concerned that OFCOM has pre-determined its views on this subject and is intending to impose regulations that could have a very damaging impact on rugby league and our ability to invest in the game.

The RFL is concerned that the proposed remedy OFCOM proposes will significantly diminish the incentive on any broadcaster to bid for sports rights (including rights in rugby league competitions) and that therefore the value of those sports rights will be dramatically reduced. This would in turn reduce the amount that we can invest in the game.

The effect on the RFL of what OFCOM proposes.

In brief terms we understand that the proposed wholesale must-offer remedy will require Sky to wholesale Sky Sports 1 and 2 to other retailers on non-DTH platforms. OFCOM will determine some conditions of supply including, most importantly, the

price at which Sky is required to wholesale. OFCOM is proposing that there should be a single price for retailers irrespective of the platform in which they operate.

The RFL believes that if Sky is forced to wholesale its content:

- a) other platform operators, or retailers or new entrants will be unlikely to bid directly for rights from the RFL if they can obtain them cheaply at a wholesale level from Sky; and accordingly
- b) the price at which Sky are prepared to bid for rights from the RFL is likely to fall.

What OFCOM is proposing will only benefit those platform operators and retailers who have shown little willingness to invest in content and support sport in the past. OFCOM clearly has failed to recognise the effect of its proposed remedy on rights holders such as the RFL.

In OFCOM's consultation, OFCOM states that its proposed action will, in the future, lead to other platform operators / retailers and new entrants bidding for sports rights. Given that they will be able to obtain such rights more cheaply at a wholesale level from Sky, we ask that OFCOM gives further consideration to this and provides evidence of why it believes this is a likely result of its proposed actions.

The Importance of Television to the RFL

The sustainability of good TV revenues balanced with good exposure is crucial to the growth of rugby league. Contracting solely with terrestrial broadcasters would not deliver the required revenues; contracting solely with satellite broadcasters would not deliver the required exposure. The RFL believes that it is best placed to take decisions regarding achieving this balance and not OFCOM.

The table below outlines for all tournament and international matches, the current rights holder and the UK TV channel the property is currently broadcast on.

<i>Property</i>	<i>Rights Holder</i>	<i>Live</i>	<i>Delayed & Highlights</i>
<i>Super League</i>	<i>SLE</i>	<i>Sky</i>	<i>BBC</i>

<i>Championship</i>	<i>RFL</i>	<i>Sky</i>	
<i>Challenge Cup</i>	<i>RFL</i>	<i>BBC</i>	<i>Sky</i>
<i>England Internationals</i>	<i>RFL</i>	<i>Sky/BBC</i>	<i>Sky/BBC</i>
<i>Championship Cup</i>	<i>RFL</i>	<i>Sky</i>	
<i>Varsity Game</i>	<i>RFL</i>	<i>Sky</i>	
<i>European Cup</i>	<i>Rugby League European Federation</i>	<i>Sky</i>	

The RFL has followed a policy of contracting both with Sky and a terrestrial broadcaster ensuring coverage on both platforms. We believe this remains the right policy to ensure the right balance of revenues and exposure. Whilst Sky's subscriber base continues to grow as does its viewing figures in multi channel homes, terrestrial coverage is still required to ensure the widest exposure for our game.

The RFL invests its receipts from its broadcast rights in the game. If OFCOM's proposed action is proceeded with, the RFL is concerned that the value of those broadcast rights is likely to dramatically diminish and the amount the RFL is therefore able to distribute to the game would reduce correspondingly. This would have a massive impact on rugby league clubs around the country. At professional and semi-professional level a number of clubs rely on the distributions to remain commercially viable. Accordingly, any reduction could mean that such clubs do not survive which would have a corresponding impact on the local economy and employment within the area. At community level, any reduction would impact the facilities and coaching that could be provided by the RFL for the grassroots games. Good facilities and coaching are essential in attracting participants (be they players, coaches or officials) to the community game and any reduction in the funding into this area would have a corresponding adverse impact on the number of participants.

At page 70 of the Consultation you state that there are limited alternatives on FTA TV for rugby league subscribers. This appears to ignore the fact that the Super League show (showing highlights of Super League matches) is aired on BBC1 weekly and the fact that the Challenge Cup is also broadcast live exclusively on the BBC.

The Nature of TV Rights

For a rights holder such as the RFL to extract the maximum value from its TV rights, they must be sold on an exclusive basis. However there is a further very important consideration when selling TV rights. It is in the RFL's interests for there to be as much different rugby league as possible on television as with increased broadcast comes the ability to attract sponsorship for those events and additional participants. The free-to-air broadcasters have no interest in the minor games. However Sky with its greater number of channels is able to show the minor games.

These games are shown on Sky 3 or Xtra and do not attract a large number of viewers. As such, Sky may only break even or make a loss in relation to the broadcasts. Sky is however prepared to produce the broadcasts as part of an overall exclusive package which also includes the premium matches. If other retailers are able to simply cherry pick the premium matches, Sky will have no incentive to continue to produce the minor matches.

Potential Actions of Sky

The RFL finds it surprising that, given the depth of analysis that has been given to certain issues in the OFCOM Consultation, no consideration seems to have been given to possible responses by Sky if the proposals are implemented. OFCOM's proposals are clearly primarily aimed at the FAPL and little consideration has been given to possible responses by Sky in relation to other sports such as rugby league.

The RFL considers that one entirely predictable response by Sky, to protect its subscriptions from loyal fans of niche sports, could be to move all its footage of particular sports onto Sky Sports 3 or Xtra. OFCOM's own data shows that where sports are shown on Sky Sports 3 or Xtra they attract lower viewing figures than when shown on Sky Sports 1 or 2 (Paragraph 4.122 of the Consultation and figure 15 on page 81 of the Consultation). As the amount that Sky are willing to pay for rights is primarily driven by viewing figures, such an action by Sky is likely to lead to a reduction in the amount that Sky are willing to pay for the rights to such sports.

Delayed and Highlights Packages

The consultation solely relates to “live” exclusive rights, the RFL feels that it is important that OFCOM take into account the fact that, where possible, a terrestrial broadcaster is always appointed for the delayed and highlights packages.

At the moment there is currently a valuable secondary market in highlights and delayed rights packages. If the remedies proposed by OFCOM are implemented there will be little incentive on any terrestrial broadcaster to buy those highlights or delayed rights given the increased market in which the live programme will have been shown.

Quality of Broadcasts

Sky’s involvement with rugby league has done an enormous amount to improve the quality of the television broadcast of rugby league. This has resulted in the free-to-air broadcasters having to improve the quality of their broadcasts. The exclusivity that has been granted to Sky has allowed Sky to invest money in innovation to ensure that quality is maintained.

The reason Sky has benefited from exclusive live television rights is because it was willing to take the risk in relation to them.

Other Exclusive Broadcasters

In rugby league Sky is not the only exclusive broadcaster. The BBC is the exclusive broadcaster of the Challenge Cup competition. If OFCOM is to force Sky to wholesale its exclusive rights, then surely the same principle should apply to the BBC in relation to the Challenge Cup. If OFCOM is not proposing to extend its remedies across the board this will create real unfairness in the market.

Summary

OFCOM appreciates that rights holders may be impacted by its proposed remedy but, in the RFL’s opinion, massively underestimates what impact that might be. OFCOM sets out at paragraph 10.77 that it believes that the likelihood of a wholesale-must-offer remedy (set on a retailer-basis) leading to a significant

decrease in rights value is low for the reasons it says are set out below. OFCOM has neglected to reflect the fact that if other retailers have the right to show Sky's exclusive content then the value of that content is massively diminished.

OFCOM's proposals are not supported by the RFL as:

- a) they may result in a reduction in the amount Sky is willing to pay for rugby league rights;
- b) they may result in a reduction in the coverage given to matches and competitions below international / engage Super League level which would adversely impact the ability to attract other commercial revenues; and
- c) they may lead to a reduction in the amount that the RFL is able to invest in its member clubs and the community game and severely impact the RFL's ability to carry out work at community level.

The RFL believes that OFCOM has an obligation to consider the impact of its remedy on sports rights holders and has not yet done this. We therefore request that OFCOM undertakes this work before proceeding further with its proposals.

The RFL will be raising its concerns on OFCOM's proposals with the DCMS as we believe that the imposition of the actions currently proposed may lead to a direct impact on the commitments and partnerships we have in place with the DCMS to meet government policy objectives including getting more people participating in sport.