

OFCOM – PAY TV PHASE 3 DOCUMENT
RESPONSE BY THE RUGBY FOOTBALL UNION

Overview

1. The Rugby Football Union (RFU) is the governing body for rugby union in England. The RFU has over 2,000 clubs and 3,000 schools in membership and a playing population in excess of 2.2m. Players in rugby union are supported by network of over 50,000 volunteers, 35,000 coaches, 30,000 referees and numerous other helpers.
2. Rugby Union is played by all sections of the community at the grassroots level and contributes in many areas of the development of an individual's talent through the core values of the game; Teamwork, Respect, Enjoyment, Discipline and Sportsmanship.
3. The RFU invests its annual financial surplus (other than a small amount put into reserves) into the grassroots of the game to improve the quality of rugby union, its member clubs and talent of the many hundreds of thousands of young people in the sport.

Introduction

4. The RFU 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 RFU and the rights we sell to broadcasters. We are therefore very concerned that OFCOM has not sought to engage us, as a key rights holder in any discussions on this issue nor sent the consultation materials to us.
5. This approach heightens our concerns that OFCOM has pre-determined its views on this subject and is seeking a remedy that could have a very damaging impact on rugby union in this country, particularly our ability to invest in rugby union at the grassroots.

6. The RFU 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 UK 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 RFU's current broadcast arrangements helping rugby union to reach wide audiences across the country.
7. The RFU notes that the initial complaints and evidence put to OFCOM have been made by operators who to date have chosen not seek to invest in content themselves. Neither BT, nor Virgin Media have even approached the RFU to acquire any rights. It is wrong that the views of these operators should hold sway to the detriment of sports rights holders, rugby union participants and fans. We are extremely concerned that should the remedy OFCOM proposes be implemented, there will be less incentive for broadcasters to bid for sports rights, and therefore the value of sports rights, will be significantly diminished.

The effect on the RFU of what OFCOM proposes.

8. In brief terms 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.
9. The RFU would welcome explanation from OFCOM as to why it believes that platform operators/retailers and new entrants will in future make bids for rugby union rights if they can obtain them cheaply at a wholesale level from Sky. The RFU believes that if Sky is forced to wholesale its content, other platform operators, retailers or new entrants will be unlikely to bid directly for the RFU's

broadcast rights. Why should they if they can obtain them cheaply, on a pre-packaged basis wholesale basis from Sky? What OFCOM is proposing will only benefit those platform operators and retailers who have shown little or no 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 RFU and the financial damage it will do to all the major UK sports.

The Importance of Television to the RFU

10. The RFU and other sports rights holders have to balance the need to secure best revenues from their rights with the need to secure widespread exposure for their sport. The RFU and other sports rights holders are best placed to take these decisions not OFCOM. The RFU believes that what OFCOM proposes will in addition to severely reducing the value of primary sports rights, also destroy the secondary market in delayed, highlights and mobile rights.
11. The RFU has clearly set out its broadcast strategy in each of its three Strategic Plans going back to 2000/01. Each of these Plans has been publicly available to all member clubs and the general public and have been posted, in full, on the RFU's website. Set out below is an extract from the RFU's current strategic plan (2008/2009 – 2015/16) which sets out the RFU's broadcast objectives:

429 *The sustainability of good TV revenues balanced with good exposure is crucial to the growth objectives for the game. Contracting solely with terrestrial broadcasters would not deliver the required revenues; contracting solely with satellite broadcasters would not deliver the required exposure. Not all the televising contracts of Twickenham matches are under the control of the RFU. The Six Nations Committee and ERC, for example, negotiate the contracts for broadcast coverage of their tournaments. 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>RWC</i>	<i>IRB</i>	<i>ITV</i>	<i>ITV</i>
<i>Six Nations</i>	<i>Six Nations Committee</i>	<i>BBC</i>	<i>BBC</i>
<i>Heineken Cup</i>	<i>ERC</i>	<i>Sky</i>	<i>Sky</i>
<i>Guinness Premiership</i>	<i>PRL</i>	<i>Sky</i>	<i>Sky/BBC</i>
<i>Guinness Playoffs</i>	<i>PRL</i>	<i>Sky</i>	<i>Sky/BBC</i>
<i>RFU Autumn Int 'ls</i>	<i>RFU</i>	<i>Sky</i>	<i>BBC</i>
<i>EDF Energy Cup</i>	<i>RFU</i>	<i>BBC</i>	<i>BBC</i>
<i>IRB 7's</i>	<i>IRB</i>	<i>BBCi/BBC</i>	<i>BBC</i>
<i>Churchill Cup</i>	<i>Churchill Cup</i>	<i>Sky</i>	<i>Sky</i>
<i>England June Tours</i>	<i>SANZAR</i>	<i>Sky</i>	<i>Sky</i>
<i>Varsity match</i>	<i>RFU</i>	<i>Sky</i>	<i>BBC</i>
<i>Lions Tour</i>	<i>SANZAR</i>	<i>Sky</i>	<i>Sky</i>
<i>Middlesex 7s</i>	<i>Middlesex Charity 7s</i>	<i>Sky</i>	<i>Sky</i>

430 *The RFU 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. This policy also delivers the political requirements of balanced coverage of major sports events.*

12. The sale of broadcasting rights has been of enormous importance to the RFU. As you can see the RFU balances very carefully the need to secure best revenues with the need to ensure as wide coverage as possible for the sport. Both the BBC and ITV own exclusive live rights to important rugby tournaments.

13. The RFU invests 100% of its broadcast revenues in the grassroots game. If OFCOM's proposed remedy is proceeded with, the value of those broadcast rights will dramatically diminish and the amount the RFU is therefore able to give the grassroots game will reduce correspondingly. This will have a massive impact on grassroots rugby union clubs around the country in terms of the facilities and coaching that can be provided for the grassroots. For the record the RFU has a large number of full time employees developing the grassroots game: 46 Rugby Development Officers, 8 Coach Development Officers, 165 Grassroots Rugby Coaches providing essential support and services to grassroots clubs, schools and HE/FE institutions. In addition the RFU has established and funds the Rugby Football Foundation (RFF) which provides grants and interest free loans to grassroots clubs for the improvement of club houses, changing rooms and pitches. Furthermore the RFU has also established and funds the RFU Injured Players Foundation (IPF) which provides essential care and financial support to critically injured players and their families.
14. In our tender arrangements for broadcasters, the RFU specifically allows broadcasters to bid for packages of our various matches so as to encourage competition and allow different broadcasters to invest in rugby union. Our tenders are for between 3 and 5 years so as to allow new entrants the opportunity and respond to changes in the market place. 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 we request further evidence for the assertion that Sky has deliberately aggregated content. The RFU believes that the remedy proposed by OFCOM will in fact enable operators to ignore our tender arrangements and rely on OFCOM to secure rights for them without making any investment in or contribution to the sport themselves.
15. The RFU is also concerned at a number of fundamental inaccuracies regarding rugby union in OFCOM's report. If OFCOM had consulted the RFU and other sports governing bodies these inaccuracies could have been avoided. At paragraph 4.95, OFCOM implies that the only rugby union content on Sky is the Heineken Cup and Guinness Premiership. However the most valuable right on Sky is in fact the England Autumn Internationals and summer tours.

16. At paragraph 4.109 it is stated that *“there is also some rugby union found on FTA. This includes the highly valued but brief Six Nations (scheduled over 5 weekends each year), a number of England international matches, Magners League rugby and the EDF Energy Cups”*. OFCOM neglects to mention the fact that the Scottish Rugby Union, Irish Rugby Union and Welsh Rugby Union have current agreements that provide that all Scotland’s, Ireland’s and Wales’ Autumn International test matches (in addition to the Six Nations) are on free to air television. This means that the vast majority of domestic rugby union internationals in the UK are in fact on free to air television rather than subscription television. The BBC has contracted to broadcast far more rugby union internationals than Sky has been able to contract. This, coupled with the much higher viewing figures for the Six Nations means that the vast majority of rugby union viewed in Great Britain is on free to air television.
17. We have set out below the monthly adult reach and monthly adult unique viewer figures. The source for these is BARB.

	Monthly Adult Reach	Monthly Adult Unique Viewers	Current Rugby Programming
BBC	93%	44,733,000	RBS 6 Nations, EDF Cup
BBC2	86%	41,366,000	RBS 6 Nations, Rugby World Cup until 2007 (known to date), Guinness Premiership highlights
ITV1	92%	44,252,000	
ITV2	59%	24,978,000	
ITV4	35%	17,485,000	
C4	87%	41,847,000	
Five	79%	37,999,000	
			England Autumn Internationals, Heineken Cup, Guinness Premiership,

			Super 14, Tri-Nations, iRB Sevens Series
Sky Sports 1	18%	7,620,660	
Sky Sports 2	14%	5,927,180	
Sky Sports 3	9%	3,810,330	
ITV 4	41%	17,358,170	Premiership Highlights
Setanta	10%	4,233,700	Celtic League
GB Eurosport	7%	3,497,000	

18. We also set out in the Appendix to this response the average audience viewing figures for the Six Nations in 2009 and the BBC Highlight Audience Delivery for the England Autumn Internationals in 2008. As you can see, the average audience figures for the Six Nations range between 5 and 11 million with an average of 8.3 million viewers per match.
19. The highlights programme from the England team's Autumn Internationals on the BBC attracts an average audience of just under one million viewers. It should be noted that Sky's live broadcast of these matches generally attracts some one million viewers. To describe there being "some" rugby on free to air television and the Six Nations tournament as "brief" is a massive understatement of the importance of the Six Nations to those who watch it and the amount of international test rugby union shown on free to air television.

The Nature of TV Rights

20. For a rights holder such as the RFU to extract the best value from its TV rights, the key matches and competitions must be sold on an exclusive basis. However there is a further very important consideration when selling TV rights. International matches, the GP and the Heineken Cup are attractive to all broadcasters but it is in the RFU's and the game of rugby union's interests to secure coverage for the lesser matches and competitions as well. The free-to-air broadcasters have, over the years, shown little or no interest in these lesser

matches and competitions. However Sky has always been willing to provide coverage for them at Sky's own cost. With broadcast coverage comes the opportunity for the organisers of these lesser matches and competitions to attract sponsorship.

21. For example in the RFU's recent agreement with Sky which will take effect from the start of the 2010/2011 season Sky has agreed to broadcast the following lesser matches and competitions as part of the package which includes the exclusive live rights to England's Autumn Internationals and other test and international matches.

- England Saxons matches - the Saxons are England's second XV.
- England U20 and U18 matches
- The Churchill Cup involving the Saxons and developing countries.
- iRB Sevens Series involving eight tournaments around the world.
- Women's Rugby World Cup in 2010
- The Championship – the second league below the Guinness Premiership
- The Anglo-Welsh Cup
- The British and Irish Cup – between level 2 teams in England, Ireland, Scotland & Wales
- The Varsity Match
- The Army & Navy Match
- The Daily Mails Schools Cup – over 1500 schools enter for this each year
- The County Championship – a cup competition between Counties on an amateur basis
- The England Counties XV – the best County players who are amateur/semi-professional
- The National Clubs Championship – the finals between clubs finishing top of the leagues at levels 5, 6 & 7
- The Middlesex Sevens

22. Would Sky be prepared to cover the substantial production cost involved in providing television coverage for these lesser matches and competitions without

the benefit of exclusivity to the England international matches? It is our view that Sky would not be able or prepared to give coverage to these matches in these circumstances. The OFCOM paper does not consider who, in the absence of Sky coverage, would provide coverage for these matches and this is a point OFCOM needs to answer.

Wider Implications of a Forced Wholesale of Rights

23. It should also be remembered that what we are referring to are “live” exclusive rights. The RFU also offers for sale the ‘As Live’ and ‘delayed’ rights, the highlights rights, internet and mobile rights to third parties. At the moment there is currently a growing and valuable secondary market in highlights and delayed rights packages and also mobile rights. If the remedies proposed by OFCOM are implemented, there will be no incentive whatsoever on any terrestrial broadcaster or mobile operator to buy those highlights, delayed rights or mobile packages. OFCOM would therefore by its actions destroy the secondary market in television rights that the sports rights holders currently enjoy.

Equity, Innovation and Quality

24. Sky’s involvement with rugby union over the last 12 years has done an enormous amount to improve the quality of the television broadcast of rugby union. 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. By ensuring that women’s matches such as the Women’s Rugby World Cup in 2010 are covered by Sky, the RFU is ensuring that equity issues are dealt with. Sky was also the only broadcaster willing to bid for the recent “Help for Heroes” match at Twickenham that generated some £1.4m for the “Help for Heroes” charity. It should be noted that the BBC in fact declined the opportunity to broadcast the “Help for Heroes” match despite the broadcast rights to that match being offered for free. Indeed no free to air broadcaster showed any interest in the rights. The position was the same in 2005 when the RFU hosted a match at Twickenham between the Northern Hemisphere and the Southern Hemisphere to raise money

for the Tsunami victims appeal. This demonstrates the inability of the BBC and other free to air broadcasters to cover and schedule any rugby other than international and test matches.

25. 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

26. The OFCOM report seems to assume that Sky is the only broadcaster that has acquired exclusive rights to rugby union. This is not the case. The BBC holds and has held for many years the exclusive broadcast rights to the Six Nations tournament. In addition it owns the exclusive rights to the Autumn Internationals of Wales, Ireland and Scotland. ITV currently holds and has held since 1991 the exclusive broadcast rights to the Rugby World Cup – now the third largest global sporting event after the Olympics and the FIFA World Cup. 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 Six Nations and autumn internationals and to ITV in relation to the Rugby World Cup, although this would destroy the value of those rights as well. Moreover would the same apply to the BBC and ITV exclusive rights to the Olympics and the FIFA World Cup? If OFCOM is not proposing to extend its remedies across the board it is difficult not to draw the conclusion that OFCOM is seeking to sanction Sky and Sky alone. OFCOM has not considered the impact of the sporting events and matches which fall into the category of Listed Events in any of its proposals.

Retailers other than Sky

27. Contrary to what is set out at paragraph 1.70, retailers other than Sky would simply be able to buy core premium channels on the cheap.

Conclusions

28. OFCOM appreciates that rights holders may be affected by its proposed remedy but massively underestimates what effect that might be. For the reasons set out above, the proposed remedy OFCOM proposes will significantly diminish the incentive on any broadcaster to bid for sports rights and therefore the value of those sports rights will be dramatically reduced. The RFU estimates that the value of its exclusive live, terrestrial and mobile rights would be reduced by some 60% as a result of OFCOM's proposals.
29. OFCOM's proposals are rejected by the RFU for the following reasons:
 - 1 They will result in a reduction in the amount Sky is willing to pay for rugby union rights which will affect support and development of the grassroots game across England;
 - 2 They will result in a significant reduction in the coverage given to the lesser matches and competitions which will negatively impact on the grassroots game and their ability to attract some commercial revenues;
 - 3 They will result in a reduction in the financial support that the RFU is able to provide to the grassroots game and severely impact on the RFU's ability to maintain its field force of development officers and grassroots rugby union helping grass roots clubs, schools and HE/FE institutions;
 4. They will reduce the financial support that the RFU is able to provide to its charitable foundations. These are the RFF which provides grants and interest free loans to grassroots clubs for capital improvements to their pitches and facilities and the Injured Players Foundation which provides financial and other support for critically injured players and their families.

30. The RFU 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 RFU 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 rugby union from International level to club and women's rugby union and the grassroots projects it invests in.
31. The RFU 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 government policy objectives including getting more people playing sport particularly among women, girls and ethnic minority communities.

APPENDIX