

## Ongoing Broadcasting Challenges for the Premier League

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The news that most analysts expected was confirmed in the last few weeks as BSkyB (Sky) retained its broadcasting hold over the Premier League (PL) for the next three years. It has been awarded five out of the six available packages. Setanta, which won two packages in the last auction, has been relegated to only one package for the coming 2010-13 seasons and it remains to be seen how Setanta will best commercialise this more limited package.

The final figure the various broadcasters have paid for these sought-after rights amounts to £1.782bn, which is about a 5% increase on the previous deal. Owing to competition law concerns expressed by the European Commission before the last broadcasting auction, it was only possible for Sky to win five out of the six packages to allow a second broadcaster to enter a previously Sky dominated market.

Competition law concerns are among the key issues in another ongoing challenge currently facing the Premier League. There are currently two cases in which the PL is involved; they relate to Karen Murphy and QC Leisure. Mrs Murphy is a pub owner and QC Leisure is a stockist and supplier of foreign decoders to pubs and the general public in the UK. References have been made to the European Courts of Justice (ECJ) by the English courts because European law issues have arisen that involve the issue of highly lucrative European broadcasting rights.

In both cases, Mrs Murphy and QC Leisure have made representations that the way in which the PL enters into its contracts with various broadcasters throughout the EC infringes competition law. They argue that the PL's contractual provisions restrict the ability of PL rights holding broadcasters to screen live pictures outside their own designated territory. They also contend that this restricts the capacity of Mrs Murphy or QC Leisure to either view, or purchase decoders to view, live PL matches from any source other than the exclusive national PL rights holding broadcaster (i.e. Sky and Setanta can only broadcast their exclusive pictures in their allotted UK territory).

The PL argues that the system of national Member State restrictions is needed to protect the value that is attached to their product and that the products' live and exclusive characteristics create the value which has made the PL such a success story.

This reference from the national courts to the ECJ may take many months, if not years, to reach a conclusion so a final decision is unlikely in the near future. Interestingly, UEFA, Sky, Setanta, Canal Plus and the Motion Picture Association have all been allowed to intervene in this case in order to participate in the reference to the ECJ. It is of little

surprise that there is such interest in these references to the ECJ because the cases raise questions of fundamental importance to rights holders and broadcasters alike.

Some people believe that a decision favouring QC Leisure and Mrs Murphy would completely change the European broadcasting rights landscape. Others may point to this leading to a sea change in the way the PL matches, and other valuable rights, would be auctioned off on a EC-wide basis. It could result in a number of large broadcasters bidding for the same rights and screening them or sub-licensing them for screening to all EC households and pubs.

Ultimately, the conflict is between rights holders wishing to guard their valuable licensing and intellectual property rights (which in the PL's case has brought in billions of pounds since 1992), and the European free movement legislation which safeguards European consumers' right to purchase live PL matches from the cheapest provider in the EC. It's certainly not a battle either side is going to give up easily.