



England and Wales Cricket Board

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The Secretary
Senate Environment, Communications, Information Technology
and the Arts Legislation Committee
Parliament House
Canberra
ACT 2006
Australia

16 February 2005

Dear Secretary

Submission on the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004

This submission is made by the England and Wales Cricket Board Limited (ECB).

Introduction

ECB only became aware of the inquiry on 11th February 2005. On 11th February 2005 ECB accessed the inquiry website at (http://www.aph.gov.au/Senate/committee/ecita_ctte/anti_siphon/submissions/sublist.htm) and read the various submissions to the inquiry including inter alia the FreeTV Australia submission dated 2 February 2005. We received kind written permission to make a late submission on 15th February 2005.

ECB does not wish to comment in great detail on the Australian legislation (including the anti-siphoning list) or the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004 except in so far as it relates to the ECB and the Ashes when played in the UK including the sale of ECB television broadcast rights in Australia.

Background

The FreeTV Australia submission dated 2 February 2004 refers to the Ashes series as well as the ECB's sale of domestic cricket rights for the cricket seasons 2006 to 2009.

In order that the inquiry may know the facts, the ECB submits as follows:

ECB Tender Process for Domestic UK Media Rights

Domestic Television and Radio Rights

- On 9 September 2004, the ECB commenced a tender process by which it invited bids for various packages of rights for Cricket Seasons 2006, 2007, 2008 and 2009 including live television broadcast and radio commentary rights and television broadcast highlights rights to Test Matches, One Day Internationals, International Twenty20 matches and many domestic competitions organised and promoted by the ECB.
- The Invitation to Tender (ITT) contained instructions as to the process by which each recipient could construct a bid, details about the packages available, an outline fixture list and draft proforma agreements.
- Interested parties were obliged to sign and return a standard Non-Disclosure Agreement to the ECB prior to receipt of the ITT.
- The ITT was dispatched to all TV broadcasters that, in the reasonable opinion of the ECB and its advisers, would be interested in the acquisition of the rights. All terrestrial broadcasters and a number of other operators in the UK each received a copy of the ITT.
- The ITT was drafted by Denton Wilde Sapte (a pre-eminent sports & EU London based law firm) with the input and assistance of Octagon CSI (member of the Interpublic Group), an international and domestic specialist media and broadcast consultancy.
- The ITT was also drafted in accordance with specialist UK and European Community competition and regulatory advice provided by Denton Wilde Sapte.
- The ECB recognised that most television broadcasters would not have the scheduling capacity to bid for all matches (either domestic or international) which were covered by the ITT. The rights were therefore divided into 27 packages consisting of live and highlights rights for each competition, both international and domestic. Broadcasters were not expected to bid for all matches of a particular competition, for example all 7 Test Matches, but could bid for some, (for example only 3 or 5 Test Matches).
- The tender process was crafted in a non-discriminatory way so as to allow as many broadcasters as possible the opportunity to consider acquiring the rights to cricket coverage. Following preliminary consultations, packages were designed in an effort to attract as many broadcasters as possible.
- The price necessary to acquire any package was not set out in the ITT since broadcasters were required to bid for the rights. The fact that the recipients of the ITT were to make unilateral offers meant that the price was to be dictated by market forces. This ensured that the price of the live package and the highlights package was fair, reasonable and non-discriminatory as between television broadcasters.
- Interested parties were obliged to sign and return a Non-Disclosure Agreement to the ECB.
- The recipients of the ITT were given a reasonable time in which to respond with their bids. Having received the ITT on 9 September 2004, recipients were given 20 days to submit any bid (by 12 noon on 29 September 2004). All recipients were given the same timeframe. Indeed, as the ECB had previously made presentations to broadcasters about the rights and its vision for English cricket, recipients had also been given prior notice that the ITT was on the horizon before it was distributed.
- During the 20 day period (9 - 29 September) the ECB made itself, its media advisers (Octagon CSI Limited) and its lawyers (Denton Wilde Sapte) available to all broadcasters to provide clarifications and to answer questions.

- Recipients of the ITT were invited to explain to the ECB, on 23 September 2004, how cricket would be presented were they to be awarded the rights for any matches.
- A number of bids were received in accordance with the ITT by 12 noon on 29 September 2004.
- Bidders were short listed on 29 September 2004 and negotiations commenced in order to refine bids and create legal certainty.
- Negotiations with the preferred bidders reached their conclusion and the ECB Management Board made its decision which was notified to the press and public on 15th December 2004.
- The ECB has granted, commencing May 2006, British Sky Broadcasting Limited (**Sky**) the exclusive live television broadcast rights to the Test matches played in England during seasons 2006 to 2009 (inclusive) (the **Test Matches**) (the **Live Package**).
- The ECB has granted, commencing May 2006, the television broadcast highlights rights to the Test Matches (the **Highlights Package**) to Channel 5 Broadcasting Limited (**Channel 5**).

Conclusion of Domestic Bidding Process

For reasons of commercial confidentiality ECB cannot give specific details on which broadcasters bid or did not bid, the details of any broadcaster bid or the individual price paid by the successful broadcasters. However, BBC has confirmed publicly that it did not bid for terrestrial television rights and only bid for domestic radio rights. ECB's choices were obviously limited as evidenced by public statements that fee payments to First Class Counties and other stakeholders may have to be reduced by substantial margins between 2006 and 2009. If the ECB accepted a lower bid ensuring live terrestrial television for all Test Matches then many cricket clubs would have suffered, players would have been retrenched and many grass roots, coaching and volunteer programs would have ceased to exist in England and Wales. The long term affect on cricket would have been devastating.

A strong financial base for the game is essential. The game must be able to budget years in advance. The bids accepted by the ECB guarantees the future development of the England team and the development of grass roots cricket. Worldwide, cricket has to be able to sell its rights for the best possible price. ECB has secured £220 million over 4 years (2006 to 2009) for its domestic television and radio rights deals.

ECB is excited by the fact that Sky will be broadcasting Test Matches and One Day Internationals (ODI's) from 2006 to 2009. Highlights will be broadcast by Channel 5 in peak time between 19.15 and 20.00 hours each evening. The research shows 21 million people watch television at that time including the majority of boys and girls.

ECB and Sky and Channel 5 complied with all relevant UK and EU law. Sky has applied for OFCOM consent to broadcast exclusive live coverage of cricket Test Matches played in England in 2006 to 2009. This is a Group B Listed Event (see www.ofcom.org.uk) which means that the rights to broadcast highlights must have been offered to broadcasters providing services in the other category from Sky, as specified in the Broadcasting Act 1996 (ie. BBC1, BBC 2, Channel 4 and ITV). Channel 5 does not fall within this category. The rules that apply are set out in the Code on Sports and Other Listed and Designated Events (revised January 2002).

British Sky Broadcasting Limited (**Sky**) has been essential to rights holders in the UK. The cricket coverage by Sky has been innovative and leading in technology delivery as well as paying competitive rates for sports rights. Sky has been an excellent supporter of cricket worldwide over the years. Sky is the only broadcaster prepared to cover overseas England cricket tours. People's viewing habits are changing and cricket will be spread across a number of media platforms. Sky has already reached 26% of market share with Sky Sports accessible in 11 million homes (including through cable operators) and Freeview now reaching 5 million homes. The UK Government has recognised that the listed events have to be drafted in such a way that a sensible balance is reached between protection

of sports events on terrestrial television and pay television. Market forces have to play a role in determining the sports rights market and the governments in Europe and the US understand that a free market must play the major role in determining access and value. In fact in the US, a free market operates within what is the most sophisticated sports market in the world.

Press Article attached to FreeTV Australia Submission

Greg Dyke's statement that cricket promised the Government that at least half England's Test matches would stay on terrestrial television is in fact ill-informed and incorrect. No such agreement or "promise" exists. No assurance was made to Chris Smith so the article is incorrect and flawed in the arguments it presents. Furthermore, the article does not mention the growth in Sky subscribers (Sky Sports is now in 7 million homes directly and 11 million with cable – potentially 16 million with Sky Sports on Freeview) or the Channel 5 highlights with 21 million potential viewers in prime time between 7 and 8pm in the evening.

Conclusions

The inquiry should recognize that overseas rights holders such as the ECB need to derive reasonable commercial returns from the sale of its domestic and overseas television rights. Listed events legislation worldwide is relaxing and moving away from the limitations previously imposed by governments. Market forces are starting to govern events as should be the case in sophisticated markets such as the US, UK and Australia. If not, overseas rights holders may be more and more unwilling to sell sports rights in the Australian market. Healthy competition between free and pay television operators is to be encouraged. Similar arguments have been raised in relation to the battle for ownership of WMC Resources.

ECB has complied with UK and EU law throughout its sale of domestic television rights. In relation to the Ashes 2005 (and other domestic England cricket matches) the ECB has complied with all relevant Australian laws and regulations.

Yours faithfully

Not signed as sent electronically

Giles Clarke
Chairman of ECB Marketing Advisory Committee and Board Director