

INTRODUCTION

The symbiotic relationship that exists between media and sport organisations is well documented (Rowe, 2004a; Boyle and Haynes, 2009). On the one hand, sport offers a valuable source of content for media organisations. On the other, the media (mainly television broadcasters) provide an increasingly important source of revenue for sports organisations (either directly from the purchase of broadcast rights, or indirectly via exposure for sponsors). However, albeit with a few recent exceptions (Evens et al., 2013; Scherer and Rowe, 2014) the vast majority of research in this area has focused almost exclusively on Western countries, most notably the United States (US), the United Kingdom (UK) and Australia (see Cave and Crandall, 2001; Smith, 2010). The main object of this article is to highlight the important role played by television sports rights in two significant non-Western media markets, namely India and South Africa, and in doing so make a small contribution to the ‘de-Westernizing of Media Studies’ (Curran and Myung-Jin Park, 2000).

More specifically, the last couple of decades or so have witnessed the widespread use of exclusive sports rights, in Rupert Murdoch’s often quoted phrase, as a ‘battering ram’ to open up national pay-TV markets for satellite and/or cable broadcasters, such as, BSkyB (UK), Canal Plus (France) and DirecTV (US). For sports organisations, this has led to a rapid escalation in the value of their rights (Evens et al., 2013: 34). However, for many, if not quite all, policy makers and regulators (as well as rival commercial and public service broadcasters) the rights buying strategies of pay-TV broadcasters have raised significant concerns. First, underpinned by a general desire to preserve (and/or promote) ‘cultural citizenship’ (Rowe, 2004b), the actual and/or potential migration of sports coverage from free-to-air broadcasters to pay-TV has led a number of countries (e.g. Australia, France, Germany, Italy, UK), as well as the European Union (EU), to introduce measures designed to guarantee that certain sporting events remain available on free-to-air television, commonly referred to as ‘major events’, ‘listed events’ or ‘anti-siphoning’ legislation (Evens and Lefever, 2011). In other countries (e.g. US and New Zealand), proposals for such legislation have been the subject of political debate, but have not been implemented (Scherer and Sam, 2012; Cox, 1995). Secondly, the use of sports rights as a key source of market power within pay-TV has also led to the extensive application of competition law to sports broadcasting. To date at least, most regulatory attention has focused on the impact of collective (i.e. cartel) selling by sports leagues of the rights to broadcast exclusive live coverage of their sports (predominately football in Europe and the major professional leagues for American football,

basketball, baseball and ice hockey in the US). Here, regulators have for the most part opted not to ban collective selling outright, but rather to modify the process so as to facilitate increased (and fairer) competition. For example, in Europe, key football rights are now typically sold in a number of separate balanced packages via a transparent bidding process, with limits (typically three years) on the length of contracts (EC, 2007). Just as, if not more significantly, where premium sports rights are also owned by the owner of a delivery platform, regulatory intervention has been required to guarantee access to sports programming for rival delivery platforms on ‘fair, reasonable and non-discriminatory’ terms, perhaps most notably in the UK (Ofcom, 2014).

This article details how the key market trends and regulatory issues identified above are also evident in relation to sports broadcasting in India and South Africa. At the same time, however, this observation should not obscure the fact that each of these countries is worthy of study in its own right. According to India’s telecommunications and broadcasting regulator, the Telecom Regulatory Authority of India (TRAI), India is currently the world’s third largest television market, after China and the US, with approximately 161 million television households (TRAI, 2013). Furthermore, India provides a particularly good example of how sport on television has played a key role in the marketization of contemporary broadcasting, and also, in turn, been shaped by the resulting increasingly competitive television industry. Albeit a much smaller television market (approximately 11.5 million households) (OECD, 2013), the case of South Africa is also particularly interesting because of the way that, over the last couple of decades, sporting organisations and broadcasters have attempted to use sport as a means to contribute toward the wider objectives of nation building, reconciliation and democratization in post-apartheid South Africa. However, the pursuit of these objectives has taken place against the backdrop of an increasingly marketized South African broadcasting system (Duncan and Glenn, 2010). As a result, South Africa (as does India) provides a clear example of the need to balance the commercial value of sports rights with the cultural value of free-to-air sports broadcasting. The remainder of this article considers, in turn, television sports broadcasting in India and South Africa.

TELEVISION SPORTS RIGHTS IN INDIA

The TV Sports Market

Cricket is by far the most popular sport in India. In the same way that some European countries are obsessed with football (e.g. Italy and England) India is, at least as much, if not

more, obsessed by cricket. While some other sports, such as hockey and soccer, are also widely followed, India's devotion to cricket means that the commercial significance of cricket rights outstrips by far any other sport. Given its popularity, it is perhaps no surprise that the broadcasting of cricket has been intrinsically linked with the transformation of Indian broadcasting over the last couple of decades. Before the 1990s, the Indian publicly owned television broadcaster, Doordarshan, did not merely pay nothing for the rights to cover international cricket, but actually charged the cricket authorities for its services. However, this all changed when, buoyed by the launch of satellite television services and the then Indian government's deregulatory rhetoric, the Board of Control for Cricket in India (BCCI), the national governing body of all cricket in India, looked to break Doordarshan's stranglehold over cricket broadcasting (Hutton, 2010).

In 1992, the BCCI sold the television rights to the 1992-3 England tour of India to a foreign broadcaster – Trans World International, a subsidiary of US based International Management Group (IMG). To broadcast the India v. England matches, Doordarshan agreed to pay TWI US\$1 million, just over half of which was, in turn, paid to the BCCI. To the Indian cricket authorities, a new principle appeared to have been established, namely that they were free to sell the broadcast rights to their matches to the highest bidder. A year later, emulating the BCCI, the regional Cricket Association of Bengal (CAB) sold the rights for the Hero Cup one day international cricket tournament, between India, Pakistan, Sri Lanka and South Africa, to TWI. However, on this occasion the resale of the rights by TWI proved highly controversial. TWI agreed a deal to provide exclusive live coverage of the matches for the newly launched satellite broadcaster, Star TV. In response, Doordarshan launched a legal action against the deal in the Calcutta Supreme Court citing the terms of India's *1885 Telegraph Act*, which granted the Indian government exclusive control of the airwaves. With the support of the Indian government, which, despite its general support for deregulation was keen to avoid the loss of near universally available cricket coverage, Doordarshan effectively imposed a radio and television blackout on the Hero Cup. Unperturbed, the BCCI agreed a joint 5 year US\$30 million deal for the rights to broadcast Indian cricket with TWI and ESPN, the US based cable sports broadcaster. Predictably, this deal also prompted a legal challenge from Doordarshan.

In 1995, the Supreme Court found in favour of the cricket authorities (the BCCI and CAB) and issued a landmark judgement that was as significant for Indian broadcasting as whole as

it was for the broadcasting of cricket in India. The Supreme Court's ruling established three key principles (Haigh, 2011: 8-9). First, the Court ruled that India's airwaves were 'public property' and that the airwaves could no longer be regarded a state monopoly. This effectively gave a legal basis to the satellite revolution that was already taking place in India and prompted the government to formally deregulate the Indian broadcasting landscape. Second, the Court's ruling also made clear that the 'right to impart and receive information was a species of freedom of expression' guaranteed by the constitution. As is discussed more below, this emphasis on the right to receive information laid the foundations for the establishment of legislation designed to ensure that major sporting events are widely available to Indian viewers. And thirdly, the Court also urged the government to establish an independent public authority to control Indian broadcasting, what become known as Prasar Bharti, or the Broadcasting Corporation of India. Established in 1997, the introduction of Prasar Bharti has ensured a significant reduction in the direct involvement of the government in the day to day running of Doordarshan (Fursich and Shrikhande, 2007: 119). In short, arising out of a cricket dispute, the Supreme Court's judgement paved the way for the transformation of broadcasting regulation in India.

Ever since the Supreme Court's ruling there has been intense competition between rival broadcasters for the rights to international cricket matches involving the Indian national team. The result has been a dramatic escalation in the value of television rights (see Table 1) and the chief beneficiary has been the BCCI. Over the last decade or so, the BCCI has become one of the richest sporting organisations in the world (Pandey and Sinha, 2012). The fortunes of sports broadcasters in India have been more mixed. To varying degrees, all of India's major sports broadcasters have attempted to use cricket rights to attract subscribers and boost advertising revenue. However, for some at least, this has proved a costly strategy. In 2006, Mumbai based sports marketing and communication company, Nimbus Communications, surprised most observers when it outbid (by around US\$100 million) the established Indian sports broadcasters (Sony, ESPN-Star and ZEE) and secured for the rights to live cricket in India (see Table 1) (FE, 2006). Nimbus launched a dedicated sports channel, *Neo Sports*, to broadcast the matches, but despite retaining the rights with a much reduced bid four years later, the company experienced continual financial difficulties. Eventually, towards the end of 2011, the BCCI terminated its contract with Nimbus amidst claims of repeated missed and/or delayed payments (FE, 2011).

INSERT TABLE 1 HERE

By contrast, one of India's major broadcasters, Zee TV, has been repeatedly frustrated in its attempts to secure the rights to India's home cricket internationals. In 2004, Zee thought it had agreed a US\$308 million four year deal with the BCCI, but, following a legal complaint from ESPN-Star Sports over the conduct of the rights auction, the rights were re-auctioned (and awarded to Nimbus) (Larkin, 2004). In response, Zee TV set about establishing its own cricket competition, the Indian Cricket League (ICL) based on a shortened (twenty over) form of the game. However, the ICL was effectively strangled at birth. First, the BCCI issued threats of life time bans for any Indian players involved in the league. Second, the BCCI set about establishing its own officially sanctioned Twenty20 competition, the Indian Premier League (IPL). Like the ICL, the IPL was based on an annual competition between city based teams (or franchises), who would receive around 60 per cent of sponsorship revenues and 80 per cent of television revenues after production costs in the first two years, scaling down slightly thereafter. In January 2008, the BCCI triumphantly announced that Sony Entertainment (Indian rights) and the Singapore based World Sports Group (WSG) (global rights) had agreed a joint ten year deal worth just over US\$1 billion for the television rights to the IPL. At the same time, the BCCI also announced that the winning bids for the league's eight city franchises had raised \$US723.59 million (Haigh, 2011). After two low key seasons, the ICL unceremoniously folded. In contrast, a combination of world cricket stars and Bollywood glamour ensured instant overwhelming commercial success for the IPL. Furthermore, in 2009, the IPL's pot of television money got even bigger. Citing contract breaches by Sony (by now renamed Multi Screen Media (MSM)), the BCCI abruptly terminated its original IPL television rights deal and negotiated a new one. On this occasion, MSM and WSG agreed a joint nine year deal worth US\$1.5 billion, an increase of more than US\$70m per year on the previous deal (Fraser, 2009). Alongside the BCCI, the other major winners from the commercial success of the IPL have been the (mostly Indian) leading players, who have been able to earn far more from the IPL than other competitions (Mathur, 2013). At the same time, however, this has led some critics to raise concerns over the impact of the IPL (and its prioritisation by players) on other forms of the game, most notably the historically more prestigious Test Match cricket (Monga, 2012).

The launch of the IPL demonstrated not only the ongoing struggle between broadcasters for control of sports programming, but also the extent to which cricket in India has become part

of the wider global sports-business-media complex, with the repackaging of sport as a mass media spectacle to chiefly serve the commercial goals of media corporations (Rowe, 2004a). This is not to say, however, that, to date at least, sports broadcasting has been particularly profitable in India. First, the sports rights market in India is highly competitive. News Corporation's Star Sports is arguably the country's leading sports broadcaster. Historically, a joint venture between ESPN and News Corporation (ESPN Star Sports), in 2012, News Corporation purchased ESPN's 50 per cent share in the company and has also agreed a record deal for Indian cricket rights (see Table 1). However, other key sports rights are held by rival broadcasters: namely, Sony's MSM, with the rights to the IPL, and Zee TV's *Ten Sports*, which, unable to purchase the rights to Indian cricket matches, has purchased the (Indian) broadcast rights to international cricket matches controlled by five of the other leading cricket playing countries, including South Africa and the West Indies. Competition between these (and other) broadcasters is likely to ensure continuing escalation in the value of sports rights in India.

Second, the profitability of sports broadcasting (as well as pay-TV more generally) in India has been limited by a fundamental problem with the collection of subscription revenue. Largely as a historical legacy from the initial rapid and unregulated expansion of satellite broadcasting in India, the majority of Indian households receive their satellite television signals via one of the country's 60,000 local cable operators, rather than receiving their satellite signal direct to home (DTH). The result is 'revenue leakage' - it is estimated that only 20 per cent of total subscription revenue comes back to broadcasters. In mature markets, this is closer to 70 per cent (Kohli-Khandekar, 2010: 57). However, by the end of 2016, the Indian government plans to oversee the transition from existing analogue cable broadcasting system to a new 'digital addressable' cable system, which will equip each household with a metered set-top box and thus increase the potential profitability of pay-TV in India.

Thirdly, the Indian government's regulation of the maximum price that can be charged for pay-TV services is another source of frustration for pay-TV broadcasters, if not Indian viewers. For example, in 2013, TRAI proudly reported that its 'tariff orders' had ensured that the average amount paid by Indian households for pay-TV services 'remained flat' (TRAI, 2013: 46). In other areas, the regulation of sports broadcasting has also caused difficulties for pay-TV broadcasters in India.

The Regulation of Sports Broadcasting in India

A defining feature of the contemporary Indian sports broadcasting market is legislation designed to ensure that Doordarshan is not prevented from offering live coverage of major sporting events. With the rapid growth of satellite television during the late 1990s and early 2000s, and the resulting escalation in the price of sports rights, it became increasingly difficult for Doordarshan to acquire the rights to major events, particularly Indian cricket. Furthermore, despite the growth of satellite and cable television, millions of Indian households, particularly rural communities, continued to rely exclusively on Doordarshan's terrestrial service. For instance, in 2006, when Doordarshan lost the rights to (home) Indian international cricket matches, of India's 112 million television households, just under 40 million only had access to Doordarshan (Kohli-Khandekar, 2010: 56). It was against this background that, citing the need to protect the 'right to information' of Indian viewers, the Indian government issued (2005) *Policy Guidelines for the Downlinking of Television Channels*, which required sports broadcasters to share their feed with Doordarshan 'in cases of national and international sporting events of national importance' (Kilapakkam, 2008: 377). The specific events to be shared were subsequently listed in an Order from the Ministry of Information and Broadcasting (MIB) and included international events, such as the Olympic, Commonwealth and Asian games, as well as major tournaments for popular sports such as tennis, hockey and football (see Table 2). These regulations were then formally confirmed by the 2007 Sports Broadcasting Signal (mandatory sharing with Prasar Bharati) Act (SBSA, 2007). This Act also specified that the sharing of broadcast rights for listed events should take place on the basis of a revenue sharing agreement between the parties, with advertising revenue shared between the content rights owner/holder and the Prasar Bharati in the ratio of not less than 75:25 in the case of television and 50:50 in case of radio coverage (SBSA, 2007, 3(2)).

INSERT TABLE 2 HERE

As intended, the Act has certainly benefitted Doordarshan. As well as providing the broadcaster with access to much of Indian cricket, it has also been able to offer a national focus for other major sporting events. For example, Doordarshan's coverage of the 2012 London Olympics was watched by over 100 million viewers, making it the most watched non-cricket sporting event in Indian broadcasting history. Just as importantly, Doordarshan's focus on Indian athletes also meant that its coverage proved far more popular than that

offered by ESPN Star, with whom it shared the broadcast rights (Rathore, 2012). However, there have also been a number of significant difficulties with the working of the Act. Most importantly, the legislation can be criticised for offering little, if any, guidance on the criteria used to select ‘sporting events of national importance’. Key decisions over what upcoming events are to be safeguarded for free-to-air broadcast coverage are routinely left to the discretion of the Central government. This is a direct result of the open ended way that cricket is listed for protection. Under the terms of the Act, a special MIB Order dedicated to cricket declares that ‘Such Test Matches as are to be considered of high public interest by the Central Government’ are ‘sporting events of national importance’ (MIB, 2007). Consequently, to the consternation and confusion of many observers, some Test matches involving the Indian cricket team are made available via Doordarshan, but others are not, most controversially the final Test match of India’s cricketing hero, Sachin Tendulkar (Ghosh, 2013). In addition, the revenue sharing scheme set out in the Act has often resulted in Doordarshan effectively losing money when broadcasting listed events, as it could have earned more advertising revenue with its regular programming than the 25 per cent share of advertising revenue it gains from broadcasting a listed event. Consequently, Doordarshan has made repeated calls on the MIB to amend the revenue sharing model to a 50:50 split between Doordarshan and the rights holder (Jha, 2011). Like the Act itself, however, this plea is likely to face intense opposition from commercial broadcasters.

In contrast to the Sports Broadcasting Signal Act, to date, competition law has had relatively little impact on the Indian sports broadcasting market. However, given the importance of cricket to Indian pay-TV, it is perhaps unsurprising that the attention of the recently (2009) established Competition Commission of India (CCI) has been drawn to the selling of television cricket rights. In 2013, the CCI ruled that the BCCI had abused its dominant position in the award of commercial contracts to the highly lucrative Indian Premier League (IPL) and fined the governing body six per cent of average annual revenue over the last three years, around Rs 52.24 crore (CCI, 2013). In all likelihood, further regulatory intervention will be required to ensure a more open, transparent and competitive market for the selling of cricket rights.

TELEVISION SPORTS RIGHTS IN SOUTH AFRICA

The TV Sports Market

The defining feature of the South African sports broadcasting market is the dominant position of the leading pay-TV sports broadcaster, MultiChoice (part of the pan-African media conglomerate, Naspers). Over the last couple of decades, MultiChoice has based its commercial strategy on providing extensive (and often exclusive) television coverage of the most popular sports in South Africa, namely football, rugby and cricket respectively (SRSA, 2007: 25). Launched during the mid-1980s, MultiChoice's terrestrial pay-TV service, M-Net, began by securing the television rights to matches in South Africa's leading domestic rugby competition, the Currie Cup, and then, following the lifting of the sporting boycott during the early 1990s, acquired the rights to a whole host of international sporting events, perhaps most notably the (1992) cricket World Cup. By the mid-1990s, it was estimated that around 50 per cent of M-Net's decoders were sold for the sole purpose of access to sporting coverage (Baker, and Glavovic, 1996: 255).

Since the launch of its digital satellite service, DStv (1995) with its dedicated *SuperSport* sports channels, MultiChoice's domination of the South African sports broadcasting market has become even more extensive. In 1996, News Corporation agreed a ten year deal worth \$US 555 million for all SANZAR (South African, New Zealand, Australian Rugby) club rugby matches (including the 'Super 12' (now 'Super 15') competition between the leading teams from each country). MultiChoice quickly secured the South African television rights (from News Corporation) and, in 2005 and 2010, agreed new deals directly with SANZAR (Mail & Guardian, 2010). Around the same time, MultiChoice also agreed deals with the South African Rugby Union (SARU) for the rights to the annual Tri-Nations competition (between South Africa, New Zealand and Australia). As a result, by around 2007, MultiChoice controlled the rights to virtually all rugby broadcast on South African television (ICASA, 2008: 20). Furthermore, during this period, MultiChoice has exercised a similar degree of control over the coverage of cricket on South African television. MultiChoice has held rights to broadcast domestic and international cricket in South Africa since 1995 (alongside the free-to-air public service broadcaster, the SABC) (SuperSport, 2010).

In 2007, MultiChoice also acquired the television broadcast rights for South Africa's leading domestic football competition, the Premier Soccer League (PSL). The five year deal was worth R1.6 billion, around three times the value of the PSL's previous contract with the SABC, but proved highly controversial (Urmilla et al., 2010: 395). Most significantly, it was feared that the deal would deprive many South African's from access to television coverage

of PSL matches. For example, COSATU (the Congress of South African Trade Unions) publicly opposed the PSL/MultiChoice deal on the grounds that it would restrict access to PSL matches to a 'small elite of rich TV viewers while depriving millions of the working class of the opportunity to follow their favourite sport' (Mcetywa and Charter, 2007).

To some extent, the PSL/MultiChoice deal merely highlighted a fundamental dilemma faced by many sports organisations: should they seek to maximize the value of the television rights to their sport by agreeing a deal with a pay-TV broadcaster, or should they opt for a deal with a free-to-air broadcaster, which will result in less revenue (directly at least), but will provide wider audience exposure for their sport? However, given the country's political history (and its continuing legacy), in the South African context the dilemma becomes a particularly acute one. This is perhaps most apparent of all in the case of South African football. While becoming less marked over time, the popularity of different sports in South Africa continues to be divided along racial lines. Football is the most popular and widely played sport and this is largely due to its popularity amongst black South Africans, the largest (but still the poorest) ethnic group within the country (Urmilla et. al. 2010: 388). By contrast, rugby and cricket tend to be the most popular sports amongst White and Asian South Africans.

At least partly as a result of the public controversy, after a series of negotiations and legal battles, an agreement was reached between the PSL, MultiChoice and the SABC – the 'tripartite partnership' – which resulted in the SABC sub-leasing the rights from MultiChoice to broadcast 143 (110 exclusively) of the 275 games to be played during the new season (Shandu, 2008). Furthermore, in 2012, the deal was effectively renewed, with MultiChoice agreeing to pay over R2 billion for the television rights to PSL matches for five more years and to sub-license 140 games per season to the SABC (Emmett, 2011). With these deals, the PSL has attempted to balance the need to maximize the value of its broadcast rights with a desire to ensure access to its sport for all South Africans. Following the 2007 deal, each club received an unprecedented R1 million grant per month (Shandu, 2008). Furthermore, at least partly as a result of the league's continued coverage on free-to-air television, since 2007, the PSL and its individual teams have signed a number of lucrative sponsorship deals, which have combined to make it the seventh biggest earner of sponsorship revenue among football leagues worldwide (Urmilla et al., 2010: 393).

MultiChoice's control of television coverage of football, rugby and cricket in South Africa extends beyond coverage of domestic competitions and the South African national team. MultiChoice also provides extensive coverage of competitions from other countries in each of these popular sports. Most notably, the pay-TV broadcaster has long provided exclusive coverage of English Premier League football, which due to the historic ties between the two countries, has a significant following amongst South African football supporters. By contrast, much of the sports coverage provided by free-to-air broadcasters in South Africa has been secured as a result of regulatory intervention, from either the South African government itself (see below), or, as in the case of the acquisition by e.tv (South Africa's leading commercial free-to-air channel) of the rights to (some) live UEFA European Champions League football matches, by other international regulatory authorities, namely the EU.

The Regulation of Sports Broadcasting in South Africa

During the late 1990s and early 2000s, the South African government became increasingly concerned at the migration of major sporting events and competitions from free-to-air to pay-TV. For instance, in 2003, the then Minister of Sports and Recreation, Ngconde Balfour, complained that 'it is an unfortunate reality that the majority of South Africans have for years been denied this right [to access national events on television] as a result of the introduction of subscription television in this country. Free-to-air television has virtually been starved of coverage of sports events of a national interest as a result of commercial considerations' (quoted in Teer-Tomaselli, 2008: 91). Legislation was introduced to address this problem as part of the 1999 Broadcasting Act, which was then slightly amended and incorporated into the 2005 Electronic Communications (EC) Act (ICASA, 2008). The EC Act states:

Subscription services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events, as identified in the public interest from time to time, by the Authority, after Consultation with the Minister of Sport and in accordance with the regulations prescribed by the Authority' (Section 60 (1) EC Act, 2005)

Following an extensive public consultation, in 2002, the ICASA identified the particular 'national sporting events' to be covered by the legislation. Alongside major international sporting tournaments, the ICASA's list mainly comprised events from South Africa's three most popular sports – football, rugby and cricket (see Table 3). In 2010, following a further

public review, some relatively minor additions were made to the list, such as T20 cricket internationals and international boxing title contests (involving a South African team or participant), but for the most part the list remained unchanged (ICASA, 2010a).

INSERT TABLE 3 HERE

In the South African context legislation designed to unify the nation in a shared viewing experience has particular political resonance. The ICASA has explicitly noted that the ‘disparities between rich and poor’ make legislation to ensure the availability of major sports events on free-to-air television particularly necessary in South Africa (ICASA, 2008: 10). In a similar vein, the ICASA has also been keen to point out the potential role of such legislation in the wider transformation of South African society. According to the ICASA, ‘exposure to more sporting codes by historically disadvantaged individuals and communities will accelerate the transformation of the sporting codes themselves’ (ICASA, 2008: 6).

The introduction ‘major events’ legislation in South Africa has certainly had a positive impact on the provision of sports coverage via free-to-air television. Since the early 2000s, the SABC has managed to secure coverage of a number of major sporting events, and, perhaps most notably, live coverage of matches during the 2010 FIFA World Cup Finals was provided by e.tv. However, the protection offered to free-to-air viewers by South Africa’s major events legislation has some significant limitations. First, under the terms of the 2005 EC Act, a pay-TV broadcaster is not prevented from acquiring the rights to a national sporting event. The pay-TV broadcaster is merely required to sublicense the rights to such an event to a free-to-air broadcaster (ICASA, 2008: 16). And secondly, the ICASA’s *Sports Broadcasting Services Regulations* do not require the live coverage of national sporting events. A national sporting event may be ‘broadcast live, delayed live or delayed by a free-to-air broadcasting service’ (ICASA, 2010a: 7).

These two features of the legislation were deliberately constructed by the ICASA in an attempt to take into account the interests of commercial sports broadcasters and the needs of sports organisations to maximise revenue from their television rights (ICASA, 2008: 10). In doing so, however, the result has been that free-to-air viewers have often gained only limited access television coverage of major sporting events. In practice, the legislation has meant that the television rights to most events are first acquired by MultiChoice. To fulfil its public

service mandate and offer some coverage of the event, the (often cash strapped) SABC is then, as it has complained to the ICASA, forced to '[negotiate] with subscription broadcasters for secondary rights in a disadvantaged position' (ICASA, 2012: 23). On occasion, this situation has even resulted in no free-to-air television coverage for a national sporting event. For example, due to disagreement between MultiChoice and the SABC over the sublicensing of free-to-air rights, there was no coverage of South Africa's opening match in the 2012 T20 World Cup on free-to-air television (Vice, 2012).

To date at least, competition law has had little, if any, impact on the South African sports broadcasting market. However, with MultiChoice's clear domination of South African pay-TV, there is a growing realisation amongst both rival broadcasters and the ICASA, that regulatory intervention is required to facilitate increased competition within the pay-TV market. By around the end of 2013, MultiChoice's DStv accounted for around 95 per cent of the pay-TV market in South Africa, with around 4 million subscribers (OECD, 2013: 277). In 2007, the ICASA licensed a number of potential rival pay-TV operators, including: e.sat, (inspired by e.tv); Telkom TV, the broadcasting arm of the state owned telecommunications company, Telkom; and, TopTV, owned by the newly established OnDigital Media (ODM). However, at the time of writing (late 2014), only TopTV had launched a service. Moreover, towards the end of 2013, with only around 150,000 subscribers, ODM accepted a 'rescue package' from the Chinese based Star Times Group, which led to the rebranding of TopTV, as Star Sat, but this has not solved its financial and regulatory problems (Forrester, 2014).

Section 67 of the 2005 EC Act gives the ICASA responsibility to oversee competition within the communications industry. With this in mind, the SABC, e.tv, ODM and Telkom Media, all used the ICASA's public consultations on *Sport Broadcasting Services* (2008-2010) and the *Broadcasting Regulatory Framework* (2012) to call on the ICASA to launch a formal investigation to address 'competition concerns in the broadcasting market'. Perhaps most notably, Telkom Media urged the ICASA to consider the application of 'pro-competitive remedies', including the 'restriction of exclusive rights to essential content (e.g. sports and premium entertainment' and 'mandatory sale or sublicensing of rights by a licensee with SMP [significant market power] to competitors' (ICASA: 2010b: 24). Furthermore, on this very issue, towards the end of 2012, ODM made a formal complaint to the South African Competition authority, the Competition Commission, citing MultiChoice's refusal to allow it

access to its premium sports channels. By late 2014, the Commission was ‘yet to finalise its investigation’ (Speckman, 2014).

Nevertheless, both the ICASA and the South African government have offered at least tacit support for MultiChoice’s rivals. Towards the end of 2012, speaking at a consultation seminar in Cape Town, ICASA officials admitted that the Authority had not ‘dealt with the issue of sports rights’ properly in the past’ and that it would have ‘failed the country’ if it did not sort out the sports broadcasting market by the time of digital migration (Cutcher, 2012). In a similar vein, in June 2013, Dina Pule, the Communications Minister, announced a plan to issue a policy directive to ICASA in order to address competition in the broadcast sector by looking at market definition for the wholesaling of premium content (Gedye, 2013). In March 2014, ICASA finally announced the launch of a formal inquiry into ‘the state of competition in the ICT sector’ (ICASA, 2014). Clearly, a key priority for the inquiry should be the need to loosen MultiChoice’s stranglehold over premium sports rights.

CONCLUSION

As in Western countries, over the last couple of decades, exclusive television rights to sporting events and competitions have been used as a ‘battering ram’ to open up pay-TV markets in India and South Africa. Largely as a result, each country has also witnessed a significant escalation in the value of key rights, most notably cricket matches featuring the Indian national team and PSL soccer matches respectively. To some degree at least, each country has also attempted to limit the migration of sports coverage from free-to-air broadcasters to pay-TV through the introduction of major events legislation. In fact, in countries, such as India and South Africa, which are characterised by significant economic inequalities, the use of major events legislation to enhance cultural citizenship is arguably even more important than in Western countries. In both cases, however, the implementation of such legislation has not been wholly successful. In India, the criteria used for the listing of events requires clarification and the revenue sharing ratio that operates for listed events between Doordarshan and the rights holder could be adjusted so as to avoid what amounts to a financial penalty on the national broadcaster for providing coverage of major sporting events. Even more clearly, in South Africa, the existing major events legislation requires strengthening so as to guarantee South Africans access to live coverage of major sporting events and competitions, rather than merely delayed live or highlights coverage. Just as

significantly, both of these case studies also highlight the need for regulatory intervention in order to limit the use of sports rights as a source of market power within pay-TV. Broadly speaking, the case of India, and the powerful position of the BCCI, highlighted the need for the regulation of the sports rights market, most notably to ensure an open and transparent bidding process for rights and also limits on the duration of rights deals, as has become common practice with European football rights. Just as clearly, the South African case demonstrates the importance of regulation of the sports programming market. As has been found in Western markets, to ensure competition in the South African pay-TV market regulation is required to guarantee the wholesale supply of premium sports channels to rival delivery platforms on a 'fair, reasonable and non-exclusionary' terms. Overall, this article has demonstrated that sports broadcasting and its regulation is just as, if not more important, in India and South Africa as anywhere in the Western world.

REFERENCES

- Baker, R. and Glavovic, J. (1996) 'Sport and Public Service Broadcasting', in A. Mpofu, S. Manhando, and K. Tomaselli (eds) *Public Service Broadcasting: Policy Directions Towards 2000*, pp: 250-275. Johannesburg: Anthropos.
- Boyle, R. and R. Haynes (2009) *Power Play: Sport, the Media and Popular Culture*. Edinburgh: Edinburgh University Press.
- Cave, M. and Crandall, R. (2001) 'Sports rights and the broadcast industry', *Economic Journal*, 111 (469): 4-26.
- CCI (Competition Commission of India) (2013) Case No. 61/2010: 8 February. Available at: <<http://www.cci.gov.in/May2011/OrderOfCommission/612010.pdf>> (accessed April 2014).
- Cox, P. (1995) 'Flag on the Play? The Siphoning Effect on Sports Television', *Federal Communications Law Journal*, 47(3): 571-591.
- Curran, J. and Myung-Jin, P. (eds) (2000) *De-Westernizing Media Studies*. London: Routledge.
- Cutcher, R. (2012) 'ICASA Aiming to Clean Up Allocation of Sports Broadcasting Rights', *HumanIPO: Home to African Tech*. Available at: <<http://www.humanipo.com/news/2802/ICASA-aiming-to-clean-up-allocation-of-sports-broadcasting-rights>> (accessed November 2014).
- Duncan, J. and Glenn, I. (2010) 'Turning Points in South African Television Policy and Practice' in D. Moyo and W. Chuma (eds) *Media Policy in a Changing Southern Africa: Critical Reflections on Media Reforms in the Global Age*, pp. 39-72. Pretoria, UNISA Press.
- EC (European Commission) (2007) *White Paper on Sport, Annex I: Sport and EU Competition Rules*. Brussels: European Commission.
- Emmett, J. (2011) 'PSL Renews Agreement with Supersport', *SportsPro*, 22 August. Available at: <http://www.sportspromedia.com/news/south_africas_renewed_psl_agreement_with_supersport/> (accessed December 2014).

- Emmett, J. (2012) 'Star Group Takes Six Year Indian Cricket Package', *SportsPro*: 2 April 2012. Available at: <http://www.sportspromedia.com/news/star_group_takes_six_year_indian_cricket_package/> (accessed December 2012).
- Evens, T., Iosifidis, P. and Smith, P. (2013) *The Political Economy of Television Sports Rights*. Basingstoke: Palgrave.
- Evens, T. and Lefever, K. (2011) 'Watching the Football Game: Broadcasting Rights for the European Digital Television Market', *Journal of Sport & Social Issues*, 35(1): 33-49.
- FE (2006) 'Nimbus Scores Big, Bags Cricket Rights for \$612m', *The Financial Express*: 18 February. Available at <<http://www.financialexpress.com/news/story/147721>> (accessed December 2012).
- FE (2009) 'BCCI Terminates 4 Year Broadcast Deal with Nimbus', *Financial Express*, 12 December. Available at: < <http://www.financialexpress.com/news/bcci-terminates-4year-broadcast-deal-with-nimbus/887182>> (accessed December 2012).
- Forrester, C. (2014) 'TopTV Stil at Risk', *Advanced Television*, 14 October. Available at: < <http://advanced-television.com/2014/10/14/toptv-still-at-risk/>> (accessed December 2014).
- Fraser, A. (2009) 'Another Triumph for Modi as More Billions Flow for IPL', *SportsPro*, 26 March. Available at: <http://www.sportspromedia.com/news/another_triumph_for_modi_as_more_billions_flow_f_or IPL/> (accessed December 2012).
- Fursich, E. and Shrikhande, S. (2007) 'Development Broadcasting in India and Beyond: Redefining an Old Mandate in the Age of Media Globalization', *Journal of Broadcasting and Electronic Media*, 51 (1): 110-128.
- Ghosh, A. (2013) 'DD National Fails to Telecast Sachin's Last Test Match', *Indian Express*, 17 November. Available at: < <http://archive.indianexpress.com/news/dd-national-fails-to-telecast-sachins-last-test-match/1195913/1>> (accessed June 2014).
- Gedye, (2013) 'DStv's Grip on Sports Under Scrutiny', *City Press*: 2 June. Available at: < <http://www.citypress.co.za/sport/dstvs-grip-on-sports-under-scrutiny/>> (accessed December 2014).
- Haigh, G. (2011) *Sphere of Influence: Writings on Cricket and its Discontents*. London: Simon & Schuster.
- Hutton, P. (2008) 'Bowling with the Wind: A Television Producer's View on Cricket and Satellite TV in Contemporary India' in N. Mehta, (ed) *Television in India: Satellites, Politics and Cultural Change*, pp. 140-149. Oxford: Routledge.
- ICASA (Independent Communications Authority of South Africa) (2008) Review of *Sport Broadcasting Rights Regulations: Discussion Document*. Available at: < <https://www.icasa.org.za/LegislationRegulations/ExistingRegulations/SportsBroadcastingRights/Draft/tabid/246/ctl/ItemDetails/mid/888/ItemID/77/Default.aspx>> (accessed January 2013).
- ICASA (Independent Communications Authority of South Africa) (2010a) *Sport Broadcasting Services Regulations, 2010*. Available at: < <https://www.icasa.org.za/LegislationRegulations/ExistingRegulations/SportsBroadcastingRights/FinalRegulations/tabid/403/ctl/ItemDetails/mid/1310/ItemID/281/Default.aspx>> (accessed January 2013).
- ICASA (Independent Communications Authority of South Africa) (2010b) *Findings and Reasonings Document on the Sport Broadcasting Services Regulations*. Available at: <<https://www.icasa.org.za/LegislationRegulations/ExistingRegulations/SportsBroadcastingRights/FinalRegulations/tabid/403/ctl/ItemDetails/mid/1310/ItemID/280/Default.aspx>> (accessed January 2013).
- ICASA (Independent Communications Authority of South Africa) (2012) *The Review of the Broadcasting Regulatory Framework, Towards a Digitally Converged Environment*.

- Available at: < <http://www.info.gov.za/view/DownloadFileAction?id=177424>> (accessed January 2013).
- ICASA (Independent Communications Authority of South Africa) (2014) 'ICASA Launches Public Inquiry into the State of Competition in the ICT Sector', Press Release: 12 March. Available at: < https://www.icasa.org.za/AboutUs/ICASANews/tabid/630/post/Inquiry_Into_State_of_Competition_In_The_ICT/Default.aspx> (accessed December 2014).
- Jha, A. (2011) 'Prasar Bharati Wants Bigger Share of Cricket Telecast Pie', *Daily Pioneer*, 7 November. Available at: < <http://dailypioneer.com/nation/18690-prasar-bharati-wants-bigger-share-of-cricket-telecast-pie.html>> (accessed December 2012).
- Kilapakkam, S. (2008) 'Sports Broadcast Regulation and India', in B. N. Patel, (ed.) *India and International Law: Volume 2*, pp.365-379. Martinus Nijhoff: Leiden: The Netherlands.
- Kohli-Khandekar, V. (2010) *The Indian Media Business*. London: Sage.
- Larkin, J. (2004) 'Zee Hopes for Cricket Bonanza', *Wall Street Journal* (Eastern Edition): p.15.
- Mail & Guardian (2010) 'Sanzar Signs Lucrative Five-Year TV Deal' *Mail & Guardian*: 22 April: Available at: < <http://mg.co.za/article/2010-04-22-sanzar-signs-lucrative-fiveyear-tv-deal> > (accessed December 2014).
- Mathur, A. (2013) 'IPL-onomics: where Indian players call the shots', *ESPNcricinfo*: 22 April: Available at: < <http://www.espnricinfo.com/magazine/content/current/story/631508.html>> (accessed July 2015).
- Mcetywa, N. and Charter, C. (2007) 'Soccer Fans 'Sacrificed' for Financial Gain', *Sunday Tribune*, 17 June: p.4.
- MIB (Ministry of Information and Broadcasting) (2007) *Notification S.O. 1694 (e)*. New Delhi: The Gazette of India. Available at: < <http://mib.nic.in/ShowContent.aspx?uid1=7&uid2=47&uid3=0&uid4=0&uid5=0&uid6=0&uid7=0>> (accessed August 2012).
- MIB (Ministry of Information and Broadcasting) (2008) *Notification S.O. 281 (e)*. New Delhi: The Gazette of India. Available at: < <http://mib.nic.in/ShowContent.aspx?uid1=7&uid2=47&uid3=0&uid4=0&uid5=0&uid6=0&uid7=0>> (accessed August 2012).
- Monga, S. (2012) 'Why pay lip service to test cricket?', *ESPNcricinfo*: 11 June. Available at: < <http://www.espnricinfo.com/magazine/content/story/567972.html>> (accessed July 2015).
- OECD (Organisation for Economic Co-operation and Development) (2013) *Competition Issues in Television and Broadcasting*. Available at: < <http://www.oecd.org/daf/competition/TV-and-broadcasting2013.pdf> > (accessed July 2014).
- Ofcom (Office of Communications) (2014) 'Ofcom Welcomes Decision on Pay-TV 'Wholesale Must Offer'', News Release: 5 November. Available at: < http://media.ofcom.org.uk/news/2014/pay-tv-decision/?utm_source=updates&utm_medium=email&utm_campaign=pay-tv-nov14> (accessed December 2014).
- Pandey, D. and Sinha, A. (2012) 'BCCI Amongst Richest Sporting Bodies, Boasts of RS. 5300 Crore Revenue', *The Financial Express*: 5 October. Available at: < <http://www.financialexpress.com/news/bcci-among-richest-sporting-bodies-boasts-of-rs.5300crore-revenue/1012016>> (accessed December 2012).
- Rathore, V. (2012) 'India Focus Helps DD Sports Attract More Eyeballs than ESPN, Star Sports', *The Economic Times*, 28 August. Available at: < http://articles.economictimes.indiatimes.com/2012-08-28/news/33450466_1_star-sports-indian-athletes-dd-sports> (accessed December 2012).
- Rowe, D. (2004a) *Sport, Culture and the Media: The Unruly Trinity*. Berkshire: Open University Press.
- Rowe, D. (2004b) 'Watching Brief: Cultural Citizenship and Viewing Rights', *Sport in Society* 7(3): 385-402.

- SBSA (2007) Sports Broadcasting Signal (mandatory sharing with Prasar Bharati) Act. Available at: <[http://www.scatmag.com/govtpolicies/The_Sports_Broadcasting_Signals_\(Mandatory_Sharing_with_Prasad_Bharati\)_Bill,_2007.pdf](http://www.scatmag.com/govtpolicies/The_Sports_Broadcasting_Signals_(Mandatory_Sharing_with_Prasad_Bharati)_Bill,_2007.pdf)> (accessed December 2012).
- Scherer, J. and Rowe, D. (eds.) (2014) *Sport, Public Broadcasting and Cultural Citizenship: Signal Lost?*. London: Routledge.
- Scherer, J. and Sam, M.P. (2012) 'Public Broadcasting, Sport and Cultural Citizenship: Sky's the Limit in New Zealand?', *Media Culture & Society*, 34(1): 101-111.
- Shandu, K. (2008) 'The Business of Soccer and Television – What's in It?', *Journal of Marketing*. February/March: 36-37.
- Sharma, M. M. (2011) 'BCCI Caught Behind', *Economic Times*, 12 May. Available at: <<http://www.vaishlaw.com/article/BCCI-Caught%20Behind%20in%20ET%20dated%2012.5.2011.pdf>> (accessed December 2012).
- Smith, P. (2010) 'The Politics of Sports Rights: The Regulation of Television Sports Rights in the UK', *Convergence*, 16 (3): 316-333.
- SRSA (2009) (Department of Sport and Recreation) *A Case for Sport and Recreation: An Active and Winning Nation*. Available at: <[http://www.srsa.gov.za/MediaLib/Home/DocumentLibrary/Case%20for%20Sport%20-%20Oct%202009%20\(Final\).pdf](http://www.srsa.gov.za/MediaLib/Home/DocumentLibrary/Case%20for%20Sport%20-%20Oct%202009%20(Final).pdf)> (accessed January 2013).
- Speckman, A. (2014) 'South Africa Urged to lower Broadcast Barriers', *Business Day Live*: 12 October. Available at: <<http://www.bdlive.co.za/businesstimes/2014/10/12/sa-urged-to-lower-broadcast-barriers>> (accessed December 2014).
- SuperSport (2010) 'CSA and SuperSport Sign Broadcast Deal', News Release, 14 December. Available at: <http://www.supersport.com/cricket/domestic-cricket/news/101214/CSA_and_SuperSport_sign_broadcast_deal> (accessed December 2014).
- Teer-Tomaselli, R. (2008) "'National" Public Service Broadcasting: Contradictions and Dilemmas', in A. Hadland, E. Louw, S. Sesanti and H. Wasseman, (eds) *Power, Politics and Identity in South African Media*. pp.73-103. Cape Town: HSRC Press.
- TRAI (Telecom Regulatory Authority of India) (2013) *Annual Report 2012-13*. Available at: <<http://www.trai.gov.in/WriteReadData/UserFiles/Documents/AnnualReports/TRAI-English-Annual-Report-10032014.pdf>> (accessed December 2014).
- Urmilla, B., Cornelissen, S. and Swart, K. (2010) 'South Africa' in S. Hamil and S. Chadwick (eds) *Managing Football: An International Perspective*, pp. 387-406. London: Elsevier.
- Vice, T. (2012) 'SABC Stumped Over T20 Rights', *Times Live*, 21 September. Available at: <<http://www.timeslive.co.za/thetimes/2012/09/21/sabc-stumped-over-t20-rights>> (accessed January 2013).