

## **Response of Formula One Administration Limited Free-to-Air Listed Events Review**

Formula One Administration Limited and various related entities including Formula One Management Limited (collectively, "Formula One") promote the FIA Formula One World Championship (the "Championship") and hold the commercial rights to it.

Formula One's overall aim is to ensure broad coverage of each of the individual races comprising the Championship. Ensuring broad coverage is integral to the continued quality of the Championship and, consequently, its popularity. Formula One teams rely heavily on revenues from sponsors, which sponsor teams on the basis that there is broad coverage of the Championship. Trackside advertisers have similar expectations on broadcasting coverage.

Formula One licenses rights to the Championship in each country to ensure broad coverage of the Championship and selects broadcasters on the basis that they can guarantee sufficiently broad coverage of the Championship. In some countries this is achieved only through free-to-air television. In others, pay-TV provides sufficient coverage to meet Formula One's requirements.

Taking into account these objectives, Formula One responds to the questions put forward by the Department for Culture, Media and Sport as follows.

### ***Should Listing Continue?***

***There is no obligation to list events. It is a facility under EC law of which Member States can avail themselves. Not all countries choose to list: nine, including the UK, have done so.***

***Q1. Do you think that the UK should continue to protect certain major events through live or deferred coverage on free-to-air television? Please give a reason for your response.***

Formula One believes that such protection of certain major events through the requirement to broadcast them on free-to-air television is no longer necessary. This is because sufficiently broad coverage can be achieved through means other than free-to-air television and rights holders are incentivised to ensure that events are broadcast to a sufficiently broad audience to ensure extensive coverage necessary to attract advertising revenues.

Although, historically, broad coverage could be offered only through free-to-air television, with greater pay-TV penetration and digitisation, pay-TV operators are increasingly providing broader coverage available to a greater number of viewers and developing additional value-added services. This can lead to greater viewer interest in a programme. According to Ofcom's quarterly Digital Progress Report for Q4 2008, , the up-take of pay-TV services by UK consumers has been steadily increasing year after year, with 49.5% of UK households subscribed to a pay-TV service.<sup>1</sup>

Moreover, services such as pay-per-view have also become more widely available, which means that consumers do not need to subscribe to an entire package of pay-TV channels should they wish to view individual sporting events.

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<sup>1</sup> Ofcom Report, *The Communications Market: Digital Progress Report Digital TV, Q4 2008*, 6 April 2009, p.5.

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Finally, even those consumers not subscribed to access pay-TV services can still view major sporting events in local pubs which, for the most part, subscribe to premium sporting content via pay-TV. In fact, Ofcom noted that in 2007, 45,000 commercial premises were subscribed to Sky TV services.<sup>2</sup> Moreover, the Association of Licensed Multiple Retailers has stated that a pay-TV subscription is considered standard, and indeed imperative, in the operation of a pub.<sup>3</sup>

Therefore, even if an event is not available on free-to-air TV the vast majority of UK consumers still have access to view the particular event.

It should also be noted that if an event is to be broadcast on pay-TV, it is in the rights holder's commercial interest to ensure that the televised event is accessible to a large viewing audience. Accordingly, a broadcaster will only be successful in being awarded the rights to the event if it can guarantee broad television coverage. As such, a pay-TV network likely would be considered a viable competitor to a free-to-air network only if it has sufficiently broad coverage of the UK market. This would, therefore, obviate the need for the event to be listed.

Furthermore, there is a marked lack of competition among free-to-air broadcasters for the rights to premium sporting events (see response to question 6 below). This is detrimental to the rights holders of such events and, therefore, makes the listing of major sporting events inappropriate.

As stated above, Formula One licenses rights to the Championship in each country to ensure broad coverage of the Championship and selects broadcasters on the basis that they can guarantee sufficiently broad coverage of the Championship. In some countries this is achieved only through free-to-air television. In others, pay-TV provides sufficient coverage to meet Formula One's requirements. To date, Formula One has chosen to licence the rights to the British Grand Prix to free-to-air broadcasters in the UK. However, this could change in the future as the broadcast market develops, both in terms of the pay-TV and free-to-air markets. Therefore, Formula One should remain free to determine to which broadcaster it will award the rights to the Championship.

***The current arrangements only cover sporting events, but the Panel is open to suggestions for the inclusion of other events.***

***Q2. Do you think that events other than sporting events should be listed? If so, please give your reason. You will have an opportunity to suggest appropriate events at a later stage in this consultation document and do not need to do so now.***

For the reasons stated above, Formula One does not believe that sporting events should be listed. For these same reasons, non-sporting events should also not be listed.

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<sup>2</sup> *Pay TV market investigation consultation*, 18 December 2007, Annex 8 – Pay TV market overview.

<sup>3</sup> *Pay TV market investigation consultation*, submission by Association of Licensed Multiple Retailers..

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*Are the current criteria right?*

*EC legislation is permissive and also affords Member States a large measure of discretion in how they interpret an event of major importance to society.*

*In 1998 the UK Government consulted on how it should give effect, in a UK cultural context, to the idea of an event of importance to society.*

*In order to be considered, the event had to pass the essential criterion test, which was:*

- *the event has a special national resonance, not just a significance to those who ordinarily follow the sport concerned; it is an event which serves to unite the nation, a shared point on the national calendar.*

*In a sporting context such an event is likely to fall into one or both of the following categories:*

- *it is a pre-eminent national or international event in the sport;*
- *it involves the national team or national representatives in the sport concerned.*

*Q3. Do you agree that this should remain the essential criterion test? If you do not agree, please explain why and please indicate what you consider should be the essential criterion in a sporting context.*

For the reasons stated above, Formula One does not believe that sporting events should be listed.

To the extent that the listing of events continues, Formula One believes that this is a necessary criterion and should therefore remain the essential test.

In the sporting context, Formula One believes that, to the extent a listing regime is maintained, the test should be applied more narrowly. The test should be applied so that the list is limited to events in which there is a national team participating in the sport concerned, or where it is clearly the event itself that has a national significance, rather than extending the test to events involving individual representatives or “commercial” entities such as clubs or private teams. The focus of the test must be on a national affinity to the event rather than an attachment to specific clubs by their specific fans.

*The essential criterion is of course currently expressed solely in terms of sporting events.*

*Q4. If your answer to Q2 was that non-sporting events should also be considered for listing, what might an essential criterion be?*

Not applicable.

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*Having qualified under the essential criterion test, an event was more likely to be listed if it exhibited particular characteristics, such as:*

- *it is likely to command a large television audience;*
- *it has a history of being broadcast live on free-to-air television.*

***Q5. Do you consider that these characteristics remain appropriate? If you do not, or consider that additional characteristics should be included, please explain why.***

For the reasons stated above, Formula One does not believe that sporting events should be listed.

To the extent that a listing regime is maintained, Formula One considers the first characteristic to be relevant but not sufficient on its own to satisfy the test. Formula One does not consider the second characteristic to be at all relevant. This factor is regressive in nature and specifically acts to undermine the importance of developing new and innovative ways of delivering content to ever more demanding consumers. Rather, the key factor should be whether the event is of sufficient national significance.

***In deciding whether to list an event, the Secretary of State took into account other factors affecting the likely costs and benefits to the sport concerned, to the broadcasting industry and to viewers, such as:***

- *Whether it is practical to offer full live coverage on a general channel – extended events such as season-long championships involving many matches will not normally be listed in their entirety.*
- *The impact of listing in reducing the income or potential income of the sport and consequences of that reduction for its investment in increasing participation and/or improving levels of performance and/or in creating safe facilities.*
- *The likely impact of listing on the broadcasting market, including future investment in sports broadcasting, the level of competition and the position of public service broadcasters.*
- *Whether there are arrangements to ensure that access to the event is available to all viewers by means of highlights, delayed coverage and/or radio commentary.*

***The Secretary of State has regard to these other factors cumulatively. No single factor automatically commands listing as a response or disqualifies an event from consideration.***

***Q6. Are these the appropriate other factors that the Secretary of State should take into account when considering whether or not to list an event? If not, or you consider that additional factors should be taken into account, please explain why.***

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For the reasons stated above, Formula One does not believe that sporting events should be listed.

To the extent that a listing regime is maintained, Formula One agrees that the factors listed above should be taken into account by the Secretary of State in deciding whether to list an event.

With respect to the third point, Formula One believes that the likely impact of listing on the broadcasting market must be carefully considered. More specifically, a key consideration should be the effect that listing may have on the competitiveness of the broadcasting market and on the development of innovative broadcasting services.

The current financial climate has had a severe detrimental impact upon the free-to-air networks:

- ITV has recently reported losses of almost £3 billion with its profits halved from 2008 to 2009.<sup>4</sup>
- Five has reported its profits to be down 41%, its advertising revenues expected to drop by about 10% this year.<sup>5</sup>
- Channel 4's financial difficulties were highlighted as far back as 2007, with the prediction that the network is likely to be loss-making beyond 2010.<sup>6</sup>

All of these networks have been engaged in a process of restructuring, which has entailed the sale of assets and extensive staff redundancies. Furthermore, as neither Channel 4 nor Five have ever shown any inclination to acquire the rights to premium sporting events, in reality, the BBC and ITV have, to date, been the only prospective free-to-air bidders for such rights.

As such, the market has become far less competitive, with the BBC having been left as the only clearly viable bidder among free-to-air networks for the television rights to major sporting events.

The dominance of the BBC cannot be countered by the pay-TV broadcasters if they are restricted from competing with the BBC for the right to broadcast major sporting events. In particular, a fundamental consideration that must be examined is whether a lack of competition could jeopardise the quality of the coverage offered by the incumbent, to the detriment of viewers and fans of the sport. Or whether by blocking potential participants from competing in the market, listing might result in the inhibition of new and innovative services from being made available to consumers.

Accordingly, Formula One believes that listing should never be considered appropriate where there is a lack of competition on the free-to-air TV market.

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<sup>4</sup> "ITV to cut 600 jobs as losses swell to £2.7bn", The Times, 4 March 2009.

<sup>5</sup> "Channel Five cuts quarter of its workforce", Daily Mail, 5 March 2009.

<sup>6</sup> "Tough choices ahead for Channel 4", Guardian, 4 April 2007.

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*It was largely in consideration of these other factors that the Advisory Panel recommended in 1998 that the list should be divided into two – A and B. List B would include events that might be difficult to schedule, but which could be protected by way of highlights, deferred coverage or live radio commentary. The Secretary of State accepted this recommendation.*

***Q7. Do you agree that both an A and B list should be maintained? If not, please explain why.***

For the reasons stated above, Formula One does not believe that sporting events should be listed.

To the extent that a listing regime is to be maintained, then only the B list should be retained as it is the least stifling and intrusive of competition. As discussed above, the protection of competition in the market for broadcasting rights is imperative in ensuring a sufficient level of quality in the products and services offered by the incumbent broadcaster to consumers.

*As explained above, the listing arrangements are given practical effect by means of a Code of Conduct operated by Ofcom.*

***Q8. Are there any issues that you would wish to bring to our attention in regard to the way in which the listing arrangements are given practical effect by Ofcom?***

Formula One points out that the current Ofcom Code on Sports and Other Listed and Designated Events (the “Code”) fails to sufficiently address the effect of listing on the rights holder.

Sections 1.13 and 1.14 of the Code set out the matters to be taken into account by Ofcom in giving or revoking consent for exclusive coverage. Section 1.26 of the Code sets out the matters to be taken into account by Ofcom when deciding whether or not to grant consent to the exercise of rights to broadcast a listed event. In short, these sections ensure that the rights of the broadcasters are safeguarded with respect to contracting for the purchase of the broadcasting rights of listed events.

However, the Code needs to address the effect of the regime on the rights holders, as this is not adequately addressed. In particular, the Code fails to consider the possible distortion of competition in the broadcasting market and the financial effect that this would have on the rights holders. In other words, to the extent the listing regime creates a dominant position for a free-to-air broadcaster on the market for acquiring sports rights, the Code should ensure that sports rights holders are not subject to monopsonistic purchasing practices.

This issue was referred to by the OFT in its views expressed during the 1997 listed events consultation.<sup>7</sup> The OFT noted that the distortion of competition resulting from the listing

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<sup>7</sup> Letter of 22 August 1997 from John Bridgeman, Director-General of Office of Fair Trading.

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regime could lead to the inability of rights holders to realise the value of their rights, as well as a reduction in the revenues accruing to the sport itself.

Moreover, the OFT noted that the listing regime precludes pay-TV broadcasters, or broadcasters with less than full UK coverage (e.g. Five), from bidding for the events. Accordingly, the remaining free-to-air broadcaster is guaranteed the rights to the events. At the time of the 1997 consultation, the OFT appeared to conclude that there was adequate competition among free-to-air broadcasters. However, it has become evident that there is no effective competition in the current environment (see response to Question 6 above).

For example, BBC and ITV successfully made a joint bid for the exclusive rights to the 2008 UEFA Euro Championship. In submitting a joint bid, the two UK broadcasters, being the two largest free-to-air broadcaster out of the three contenders, faced little, if any, competition from the only other possible bidder, Channel 4. The BBC/ITV joint bid was a clear manifestation of the lack of competition that can result from the listing regime. In such cases, the Code provides the rights holder with no degree of discretion in seeking to protect itself from the oligopolistic or monopsonistic effects brought about by such a reduction in the market's competitiveness.

Accordingly, rights holders must be allowed greater flexibility in granting broadcasting rights in the face of reduced competition in the broadcasting market. For instance, in order to safeguard the value of the rights and financial viability of staging sporting events, listing should be subject to a pro forma minimum competitive price on the rights fee. For example, this could be based on the current license fee, to the extent that it was achieved during comparable competitive bidding, plus a formula to reflect inflation or other similar externalities). Alternatively, if the free-to-air broadcaster is unable to pay the minimum "competitive" price for the rights, then pay-TV providers should be allowed to bid for the exclusive live rights.

### ***Which Events should be Listed?***

***Ultimately the decision as to which events are listed, and whether there is one or more lists, is a matter for the Secretary of State, subject to consultation with the broadcasting authorities and affected rights holders. But the Advisory Panel is keen that its own recommendations should be informed by the widest possible views from the public, from the broadcasting and media industries, and from sports bodies and rights holders.***

### ***Q9. Do you think that the Secretary of State should:***

- ***leave the current arrangements unchanged;***
- ***move existing events between the A and B lists;***
- ***add any entirely new events; or***
- ***remove any events that are currently listed?***

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*Please give reasons for your answers.*

For the reasons stated above, Formula One does not believe that sporting events should be listed.

If listing regimes is to be maintained, it should be limited to events involving a national team.

Listing should not be expanded to include events which are club-focused or comprised of private teams, the listing of which is primarily of importance to fans of those particular clubs, rather than being based on a national cultural importance underlying the event. The list should be eliminated or reduced, but not expanded to include any additional events.

*As can be seen, the current lists are a mixture of one-off events and of single-sport or multi-disciplinary tournaments that take place over an extended period of time or over a period of days.*

*Q10. If you have suggested that live coverage of any such tournaments should be listed do you think that:*

- *the entire tournament should be listed; or*
- *only selected stages, events or matches involving national teams or representatives?*

*Please give reasons for your view and, if you favour selected listing, please specify which tournaments and which stages, events or matches.*

Not applicable.

*If your answer to Q2 was that non-sporting events should also be considered for listing:*

*Q11. Please suggest which non-sporting events you would like to see listed and why.*

Not applicable.

**Conclusion**

*In the light of the Panel's recommendations, which will be informed by the outcome of this consultation process, the Secretary of State will reach conclusions and will then consult the broadcasting authorities and any affected rights holders on how he intends to proceed in line with the requirements of the 1996 Broadcasting Act.*

*Q12. Do you have any other issues that you would like the Panel to take into account in considering what its recommendations should be?*

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There are no other issues that Formula One would like to bring to the Panel's attention.