

## DCMS Free to Air Events Review

### ITV plc Response to Consultation Questions

**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.**

#### Introduction

ITV is very clear that the UK should continue to protect certain major events primarily through live (and in some cases deferred) coverage on free-to-air television at least to the extent that it does at present. The Listed Events regime as it is currently designed makes a significant contribution towards ensuring (though by no means guaranteeing) that coverage of the majority of the most significant events in the life of the UK, including its constituent nations, are available to all citizens in the UK on free to air television irrespective of where they live regardless of ability to pay (beyond payment of the BBC licence fee).

At their simplest, the Listed Events rules stem from the same instinct towards universality which underpins a national health service open to all according to need or a BBC funded by all and providing services for all. No matter where you live in the UK or how well off you are you are able to follow the biggest and most significant national and international sporting events on free to air television as the whole nation comes together. There is a basic principle at stake in this review which is the extent to which all citizens in the UK are able to participate in key sporting events in our national life.

Of course, the Listed Events rules are an intervention in the free market and therefore it is appropriate from time to time to review whether the existence of the rules and the approach to implementing those rules are justified, on balance, in the public interest. Moreover, television is changing significantly, particularly in the run up to DSO and therefore it is important to ensure that the current rules are still appropriate. However, to be clear, as we set out in more detail below, the onset of all digital broadcasting is far from a reason to seek to reduce the number of events protected or to seek to abolish the protection offered by the list altogether.

#### The ability of free coverage of listed events to unite the nation

One of the simplest ways of defending the listed events rules is by looking at the size of the audiences which the screening of those listed events continue to generate on UK television, notwithstanding the increasing competition for viewers attention. In most cases the facts speak for themselves:

- As the tables at Annex 1 show, listed sports events are often amongst the most watched television moments of the year<sup>1</sup>. For instance, in 2007 ITV1's coverage of the Rugby World Cup final peaked at 16m viewers (a 62% audience share – 51.6% share overall), in 2006 ITV1's coverage of the World Cup game between England and Sweden peaked at 21.3m viewers (67.8% share overall) and in 2004 the ITV1 and BBC1 coverage of Euro 2004 matches were the four most watched programmes of that year.
- In the last five years the only audiences in excess of 20m on UK television have been for live sports events – they truly are amongst the very few things on television which can unite the nation.
- During major football tournaments (particularly the World Cup and European Championships) clearly the England games are very popular. However, it is vitally important to note that these are by no means the only programmes to attract very large audiences. In particular:
  - Other matches in such tournaments can be hugely in demand because of their impact on the progress of England. For instance, during Euro 2004 other matches between teams in England's group attracted very high audiences (for instance Croatia v France which had a peak audience of 10.6m) or the match to decide who faced England in the quarter finals (between Spain and Portugal) which peaked at 10.4m. Similarly during the World Cup 2006, the crucial match to decide who faced England in the quarter final (between Portugal and Holland) was watched by a peak audience of 11.3m viewers.
  - There is also seemingly a huge demand for matches featuring "big" teams many of whose members are recognisable from the Premier League, whether or not the game has an impact on the progress of England or a home nation. During the World Cup 2006 this was illustrated by very large audiences for games such as Brazil v Croatia (peak 10.9m) Germany v Poland (peak 10m), Holland v Argentina (peak 9.7m) and even Japan v Brazil (9m). The 2006 World Cup final between Italy and France was watched by a peak audience of 21.6m people across ITV1 and BBC1. Even during Euro 2008 with no home nation participation there were still many games that were attracting audiences in excess of 7 or 8 million.

What do the Listed Events rules do in practice and what would happen if the rules were abolished?

It is important to be clear about the way in which, from a broadcaster's perspective, the listed events rules work and in particular to be clear that they do not offer a guarantee that particular events will appear on universally available Free to air television, though in practice most have. Whilst the rules are an intervention in the free market they are carefully designed to try to ensure that the market for the rights to listed events is not destroyed and that the price obtained by rights holders is fair and reasonable and that the broadcasters who benefit from the list do not abuse their status. In other words, the current regime seeks to achieve a balance between the competing

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<sup>1</sup> Measured by peak viewing. We are happy to provide viewing data for any Listed sports event which ITV has shown in the recent past if that would be helpful to the panel.

private interest of the rights holder (which is often to achieve the highest possible price for rights) and the public interest of ensuring that all citizens wherever they are are able to see certain events of national significance without having to pay, beyond paying the BBC licence fee.

The key components of the Listed Events rules are, in broad terms, as follows:

- The designation of services which are received by at least 95% of the population of the UK but which are provided without consideration being required for reception (currently BBC1, BBC2, ITV1, Channel 4 and Five);
- The prohibition of exclusive grants of rights to live coverage of a listed event;
- The requirement that a contract for the acquisition of the rights to show a listed event allows the inclusion of live coverage of the event only on a designated service or only on one which is not designated and, critically,
- The requirement for Ofcom consent for a broadcast by **either** a designated service (or one which does not meet the criteria for designation) where no broadcaster in the other category to the rights holding broadcaster has acquired the right to include live coverage of the whole (or relevant part) of the event in that other service.

Of all the relevant criteria it is the last of these which is critical. In practice this provision means that Ofcom consent is required where a channel in a particular category proposes to exercise a de facto exclusivity. This would be the case where, for instance:

- ITV1 (as a designated service) wishes to broadcast the whole or part of a live listed event in circumstances where the full live rights are not also held by a channel such as Sky which is not designated as meeting the universality/no consideration test or
- Sky wishes to broadcast live coverage of a listed event the broadcast rights for which are not also held by a channel such as ITV1 which does meet the designation tests.

Accordingly, the terms of the Ofcom code as to the circumstances in which consent would be granted are key. The Code specifies detailed criteria to be taken into account by Ofcom in deciding whether to grant consent (pages 22-24 of the Code) the critical element of which is that: *“Ofcom will wish to be satisfied that broadcasters have had a genuine opportunity to acquire the rights on fair and reasonable terms”* and in seeking to reach a conclusion about this Ofcom will look inter alia at:

*“(e) the price sought for the rights must have been fair, reasonable and non-discriminatory as between the two categories of programme service. What is a fair price will depend upon the rights being offered and the value of those rights to broadcasters. A wide range of prices is likely to be regarded as fair but, when required to make its own judgement on the matter, Ofcom will have regard to, inter alia,:*

- (i) previous fees for the event or similar events;*
- (ii) time of day for live coverage of the event;*

- (iii) *the revenue or audience potential associated with the live transmission of the event (eg the opportunity to sell advertising and sponsorship; the prospects for subscription income);*
- (iv) *the period for which the rights are offered;*
- (v) *competition in the market place*

*(f) such other facts and matters as appear to Ofcom to be relevant, in the particular circumstances that have arisen.*

As far as ITV is aware, Ofcom has not had to make a detailed determination as to the FRND nature of a price for the rights to UK coverage of a listed event – in part perhaps because it is now broadly understood that the price is likely to be assessed relative to the price capable of being paid by free to air broadcasters<sup>2</sup>. In other words, in a competitive auction situation were a pay-TV bid for live listed events rights to win over a Free to air bid Ofcom would, in deciding whether to grant consent to a de facto exclusive broadcast, assess the reasonableness of that bid by what a Free to air broadcaster could pay rather than what a pay-TV broadcaster might be able to pay.

However, it is very clear that the current framework does not allow Free to air broadcasters to seek to exploit the rules by offering exploitatively low bids – such bids could be legitimately beaten by pay-TV operators. This is particularly the case given that, for instance, ITV and the BBC have regularly had to apply to Ofcom under the Listed Events rules in recent years for consent to de facto exclusive broadcasts of live listed events in circumstances where no non-designated broadcaster had the live rights to the same event. Such applications lead to an Ofcom consultation during which both rights holders and competing broadcasters are invited to make representations as to whether Ofcom should grant consent to broadcast under the code and, if so, under what conditions. Accordingly, aside from the fact that we wish to successfully acquire rights in competition with the BBC and other potential bidders ITV has to be conscious of the need to be able to justify the way in which we have acquired rights to Ofcom (as well as to rights holders or other broadcasters who might otherwise seek to persuade Ofcom that a price is too low or that they did not have an adequate opportunity to acquire the rights) or face a refusal of consent from Ofcom and potentially a loss of the rights to a pay-TV provider.

In addition to the statutory rules and formal guidance it is probably also the case at present that the existence of the list of events deters aggressive attempts by pay-TV operators to seek to obtain the rights and try to win the argument with Ofcom. History suggests that the settlement of the list gives the events in question some degree of protection over and above the formal rules since attempting to purchase those rights involves a significant amount of potential political jeopardy for a pay-TV provider.

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<sup>2</sup> This is particularly the case after the House of Lords decision in *R v Independent Television Commission ex parte TV Danmark 1 Ltd* (House of Lords 25 July 2001) which, although it concerned designated events from another member state, is still directly relevant to the basis on which Ofcom can grant consent since the current relevant provisions of the Ofcom code are the same as those in the ITC code which were at issue in the case.

ITV is in little doubt that if the list and the rules did not exist in approximately their current form then gradually a number of key listed events would gravitate in whole or in part off free to air television and onto pay-TV which is obviously in a position to pay significantly more for rights than the free to air broadcasters.

This is not to say that free to air television would retain no rights at all. The precedents from non-listed football suggest that some rights might be retained on free to air television but there would be relatively few and the events/matches in question would probably be less valuable commercially (for instance highlights as in Premier League or second choice games as in Champions League) and clearly there is no guarantee of either of these. This is the case since the most valuable and most popular matches/events are usually closely related and therefore without the assistance of the Listed Events rules mass interest live sport of particular appeal to the UK as a whole on universally available free to air television would go into terminal decline leaving a substantial proportion of the population unable to follow such sporting events.

In this context, it is important to be clear about the scale of the difference between the audiences currently achieved for popular live sport on ITV1 and on pay-television and hence the scale of the potential disappointment which would result if the most significant sports events in UK life were no longer shown on free to air television.

In 2008 Sky Sports' most popular programme – the Champions League semi-final between Chelsea and Liverpool – attracted 2.5m viewers (12.3% share). In comparison, the arguably less attractive first leg of the match attracted an audience of 8.5m (34% share on ITV1). Building on this example, we set out in Annex 2 two case studies which demonstrate this using examples where ITV and a pay-TV broadcaster had rights which enabled a meaningful comparison. The first case study shows the number of viewers and share of the audience for parallel Champions League games on different nights in the past month on ITV and Sky respectively. As the case study demonstrates decisively the ITV audience is at least 3 times larger and in some cases is as nearly as much as five times larger. In this context, as the second case study shows, the audience for ITV's **delayed highlights** of recent England games has been much higher than the audience for the live match itself on Setanta.

#### Are there convincing arguments against the listed events rules?

In ITV's view there is at least one element of the current statutory regime for listed events which might require modest reform and we set this out at the end of this submission. However, this proposal is not for major change. In ITV's view the Listed Events rules continue to achieve their purpose and help the UK to strike a rather successful balance between competing interests. In ITV's view it is incumbent on those seeking to challenge the current approach to put forward compelling public interest justifications for radical change to the current regime.

Clearly we are not party to all of the arguments put forward by other parties but we set out below some of the arguments which appear to have been advanced to date in support of the suggestion that the current Listed Events regime needs a radical overhaul.

*Outside football the Listed Events rules in practice just protects the interests of the BBC.*

It is the case that in recent years ITV has tended to focus on the acquisition of the rights to football and rugby events – though many of the rights we have purchased have been for listed events. This

approach reflects ITV's **current** commercial strategy rather than being something that is settled for ever. It is clearly perfectly possible that ITV's commercial and programming strategy could change in the next few years in response to a changing market and regulatory environment and that might well involve a change to the sports covered by ITV just as ITV's approach to sport has changed in the past. As a result (and leaving to one side the question of whether just protecting BBC coverage is in itself unacceptable – we would say not) it is clear to ITV that it would be a mistake to suppose that ITV's current commercial strategy should dictate the content of the list of protected events.

*A full free market price for rights would see huge sums devoted to other public interest objectives -- grass roots sport in the UK/developing world for instance.*

There are two elements to this argument – one of fact and one of policy. As a matter of fact, for this argument to succeed it would be necessary to show that any additional surplus which might be earned by a rights holder from an increased rights premium from a pay-TV provider would genuinely be passed on to achieve public interest objectives rather than simply constituting a private profit which would not serve any broader public interest aside from the achievement of economic efficiency. It is instructive that the lesson of the Premier League to date is that a pure free market in sport results in the money flowing to those in the most powerful position to demand the rewards and a very strong case would need to be made as to how, absent legislation, the money would be **guaranteed** to go to the causes that might be put forward to justify the relaxation in the first place.

Even if this factual position could be established beyond doubt, there would still be a conflict between competing public interests – the interest of free universal distribution to the TV audience and the competing public interest of investment in grass roots sport (or whatever) which justified a higher rights price in return for less or no free to air television access. Making that trade off is a matter ultimately for politicians but it is clearly a highly vexed area of policy making with decisions having a very direct impact on people's lives, outlook and on UK life as a whole.

*DSO changes the television landscape forever.*

Digital switchover in the UK is clearly a significant development in UK television as is the increasing delivery of linear television via new distribution platforms as well as the delivery of programming on demand. However, whilst UK television will convert by the end of 2012 to digital delivery giving significantly more choice to UK viewers, many of the basic contours of UK television are already firmly established since digital television penetration is over 90% in the UK. In other words, it is possible to speculate with some accuracy now about what a post DSO television landscape might look like and to begin to prepare for that. What is very clear to ITV is that there will continue to be an important role for the Listed Events rules in this new world. So, for instance:

- Notwithstanding DSO, there are and will continue to be two basic business models in UK commercial television for some time to come – Free to air advertising financed television and Pay-television. The business of advertising financed broadcasters<sup>3</sup> is based on **inclusion**

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<sup>3</sup> Given the universal nature of the licence fee in the UK the BBC's distribution strategy is very similar to those of advertising financed providers since it seeks to offer all licence fee payers in the UK free access to its services.

since they seek to distribute their signals for free to as many people as possible in order to maximise advertising revenues. By contrast, Pay-TV models are based on **exclusion** – i.e. about distribution only to those people who are to pay directly for the receipt of the signal. Clearly the more pay-TV subscribers are willing and able to pay the smaller the audience can be in order to still leave the broadcaster with a profit. This basic contrast between the Free to air and Pay-TV business models does not change as a result of DSO.

- In addition, there is and will continue to be a deep tradition of high quality free to air television in the UK. Despite digital penetration of over 90% in the UK fewer than 50% of households currently choose to pay for television. Moreover there is no reason to think that this position will change substantially in the run up to and after Digital Switchover since many of the last analogue viewers are most resistant to (and in some cases least able to afford) pay-TV. The UK's most popular platform – DTT (known as Freeview) – is accessible very cheaply (less than £20 for a simple box) and requires no on-going subscription.
- The tradition of universality in the distribution of high quality free television in the UK will continue Post DSO in 2012. In particular, pursuant to binding Ofcom licence requirements after DSO in each region of the UK the 20 or so channels carried on the 3 public service multiplexes on DTT (which includes all of the PSB channels including the BBC channels and ITV1) will be accessible to 98.5% of each region – approximately the same reach as analogue television currently. In addition, most of those people living outside the 98.5% coverage area are also able to access the BBC/ITV Freesat service which offers a subscription free digital television delivered via satellite to the whole of the UK. In other words, there will be far more channels with over 95% UK distribution on DTT alone in the UK post the complete digital switchover in 2012.

DSO presents an opportunity for more channels to qualify as designated broadcasting channels capable of bringing live coverage of listed events for free to practically all of the UK population rather than being a moment to weaken or abolish the listed events rules. DSO should enable an expansion of the coverage of such events (as has already been seen in recent years on the BBC and ITV digital only channels) and, potentially, greater competition between free to air broadcasters for rights.

*The few universally available free to air channels designated under the Listed Events regime do not have the capacity to broadcast whole tournaments.*

This argument is rapidly becoming irrelevant as digital technology expands and will be entirely redundant nationwide post DSO in 2012. Both ITV and the BBC already seek to broadcast all of the matches in the listed events finals tournaments which they acquire either on their main channels or on their free to air digital channels (which are already accessible for free to the majority of the UK population). After the last region has switched from analogue to digital television in 2012 ITV, the BBC and Channel 4 will each offer a number of channels on DTT/Freeview that will be accessible for free to 98.5% of the population – it will be possible therefore to screen all the matches in finals tournaments to everyone in the UK for free.

### *There are other post rights sale methods of intervention*

Although the current listed events rules have struck what appears to be a fairly effective balance between the private interests of rights holders and the public interest of free universal coverage of listed events, it is clearly right to see if there are other approaches which might strike this balance even more effectively.

One of the leading alternative approaches is one of ex post intervention. In such a system there might be a free market in the acquisition of rights but with the rights to some events/matches designated to permit intervention, perhaps by ministers, in certain defined circumstances. In such a system, an intervention notice might be served in the event that a particular tournament or match was judged to have a special national or international resonance – for instance because the national team reached the final of an event or tournament.

Whilst this approach might appear to involve less intervention in the rights market than the current system there are some real issues with such an approach which in ITV's view make it far less attractive than the current system:

- The uncertainty for both rights holders and broadcasters as to whether there would be an intervention would be a serious issue and could depress rights prices since it would be difficult to be certain that the broadcaster would be able to exercise the rights without intervention and, if there was intervention, to determine the price would be achieved in exchange for a sequestration of the rights.
- Interventions would almost certainly lead to litigation, particularly in relation to price. Given the sums potentially at stake combined with the difficulty in ascertaining the value of individual matches it is hard to see the system working smoothly. Accordingly, there might well be a reluctance to intervene in anything other than a very few instances.
- The combination of the fact that it might not be possible to intervene until late in a tournament and the risk of litigation from intervention would add to the uncertainty for rights holders and broadcasters.
- The system assumes that there would be substantial sums of public money available at short notice which could be deployed to buy the rights to valuable sports events without public controversy. This assumption is likely to be misplaced.
- Ultimately this sort of system would almost certainly result in far fewer listed events appearing on television creating a far less engaging and more piecemeal television experience in which it would become hard to follow the finals of major tournaments.

### *Broadcast on pay-TV offers a Free to air opportunity in pubs and clubs.*

We recognise that many people now choose to watch the UK's most popular sports events in pubs and clubs round the country rather than at home. It might perhaps be suggested that this open access viewing is now an appropriate alternative to viewing at home on free to air television and therefore that the Listed Events regime may no longer be required in anything like its current form.

ITV believes that this argument is flawed for two main reasons:

- Clearly significant swathes of the audience are not able to watch these events out of the house in pubs and clubs – for instance, the young, the old, those with family or caring responsibilities as well as those who choose for religious or other reasons not to go to pubs.
- There is absolutely no guarantee outside heavily populated urban areas that there will be an accessible establishment offering access to the match in question. In this context, we would point the panel towards the Association of Multiple Retailers (which represents the interests of pub and bar operators) who have been vocal in their complaint at what their members see as the punitive pricing of Sky’s football package to pubs and clubs. Because of the scale of these charges and the rate of increase in recent years the ALMR state that there has been a 20% fall in the number of pubs and bars subscribing to the BSkyB service for their customers between 2003 and 2008<sup>4</sup>.

**Q2. Do you think that events other than sporting events should be listed? If so, please give your reason.**

The answer to this question depends on the purpose of the Listed Events rules. If, as we assume is the case, that the purpose of the regime is to help free to air broadcasters to ensure that the rights to particularly valuable events or tournaments (which might otherwise only be on pay-TV) are acquired for broadcast for universal reception on free to air television then it is not immediately clear to ITV what non-sports rights are currently not available to free to air broadcasters in this way. Whilst we would not rule out other events being listed we are struggling slightly to imagine what they might be.

In this context, it is important to bear in mind that listing of an event or tournament is not a guarantee that the rights to that event will be acquired and covered on television – that is a decision which broadcasters must be free to make. In other words, apart from reasons of symbolism, it is not completely clear what purpose would be served by the listing of events which would either not be of appeal to free to air broadcasters or which would be unlikely to be subject to unmatchable bids from pay-TV broadcasters.

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

In ITV’s view we believe that the 1998 essential criterion test is still valid – it has underpinned a list which has retained broad public and broadcaster support.

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

N/A

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

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<sup>4</sup> In the ALMR’s 2003 survey of its members half of pubs and bars had Sky subscriptions but by 2008 this had fallen to 4 in 10 – a fall of 20%. The rate of increase in Sky’s price to pubs and clubs has increased far more sharply in recent years than the BBC licence fee.

In broad terms we agree with the two characteristics of commanding a large television audience (which, crucially, is a relative concept) and an event having a history of being broadcast on free to air television. One point we would make is that the large television audience should be assessed for tournaments as a whole rather than expecting every single part of the whole to record a large audience. Whilst most matches in listed events will record large audiences clearly there will be some games in finals tournaments which might have slightly smaller audiences. As we set out in more detail below, in order to tell the whole story of a tournament it is important to be able to show the whole finals tournament of listed events on free television though some matches along the way may be of lesser interest to audiences (and therefore in practice will probably be of little interest to pay-TV broadcasters in any event).

**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?**

As with the characteristics these factors still appear to us to be broadly appropriate. The only refinement we would suggest is that the Secretary of State should consider the likelihood (based on the structure and arrangements within a sport) that a possible reduction in the income for a sport will genuinely<sup>5</sup> and materially impact on increasing participation and/or improving levels of performance and/in creating safe facilities.

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

Yes

**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?**

No – but see our response to question 12 below for some suggestions of amendment to simplify the current statutory regime.

**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**
- **Remove any events that are entirely listed**

In broad terms we believe that the current listed events regime has achieved its purpose and will continue to do so even more effectively when the UK has switched to digital television. In short, we do not believe that there is a good case for any significant change in the A or B list.

If there is a case for any change it is for modest additions to the current A list to reflect widespread disappointment and anger at matches involving the national team in the most popular national

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<sup>5</sup> As opposed to being the result of an artificial arrangement which is designed to maximise impact on these elements in order to maximise the chances of an event not being listed.

spectator sport (football) not appearing in recent years on universally available free to air television. In particular, we believe that, applying both the essential criterion test and taking into account the factors which the Secretary of State took into account the last time the list was revised, the following should be added to the A list:

- The World Cup qualifying games for all the nations of the UK.
- European Championship qualifying matches for all the national teams of the UK

For instance, there appears to ITV to be huge demand to watch England's qualification matches for major tournaments (World Cup and European Championships). This was acutely illustrated by the recent public outcry over the lack of free to air coverage for the opening game of England's 2010 campaign against Croatia which was only shown on Setanta initially. In this context, the live broadcast on Setanta attracted an average of 788,000 viewers (4.8% viewing share) whereas when ITV was able to negotiate to broadcast **highlights** in a late evening slot the following day, they attracted an average audience of 1.8m viewers (14% share) in comparison. For the next away qualifier, Belarus v England, the live game on Setanta attracted an average audience of 788,000 viewers (4% share) with the late evening highlights on ITV1 the same day attracting a 2.5m (20% share) audience.

**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;**
- **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**

We do not believe that major change is required to the current list of events and we certainly do not believe that there is any justification for reversing the current listing of the finals tournaments of such events as the World Cup or European championships. Indeed, if anything, as we set out above there is a case for extending the listing of those events beyond the finals tournament.

Our reasoning for this position is simple (a) there is now very significant public expectation (borne out in viewing figures) that the whole tournaments will be available on free to air television if at all possible and (b) as we set out in detail in answer to question 1 above the evidence suggests that there is enormous interest in matches in these tournaments even where the home nations are not competing in the match in question or even in the finals tournament itself. As we set out, in some cases this might be because the outcome of a match might affect the progress of a home nation in a finals tournament or simply because of the overall perception of the importance of the event and of the teams taking part.

Finally, however, there is also something very important for broadcasters (and engaging for audiences) in being able to tell the whole story of an event on free to air television so that viewers can really follow the whole tournament as opposed to simply being able to dip into a tournament only to follow the matches of a particular home nation team.

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

N/A

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

Aside from the matters of policy raised by the Listed Events rules in the UK there is one part of the current statutory framework which we believe that it is important for the panel to consider and to make recommendations for change to the Secretary of State.

There appears to ITV to be a potential loophole in the current rules which would appear to permit a pay-TV broadcaster which also owns a designated 95% free to air channel to buy (using separate non-exclusive contracts compliant with Sections 99 and 100 of the 1996 Act) the live rights to a listed event for each of the two types of channel and then to simply decide not to exercise the free to air rights. As a result of such a manoeuvre the coverage of the event might well not appear on free to air television but instead would be de facto exclusive to the Pay-TV channel. In such circumstances Ofcom consent would not be required nor would Ofcom appear to have any jurisdiction. Without doubt there would be political and reputational risks for both the broadcaster and the rights holder from such an approach but that approach appears to us in principle to be achievable under the current regime.