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**Agenda Item 3a. Competition issues in the sale of audiovisual
rights for major sporting events**

Presentation by
Dr. Joseph Wilson

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Competition Issues in the Sale of Audiovisual Rights for Cricket in Pakistan & India



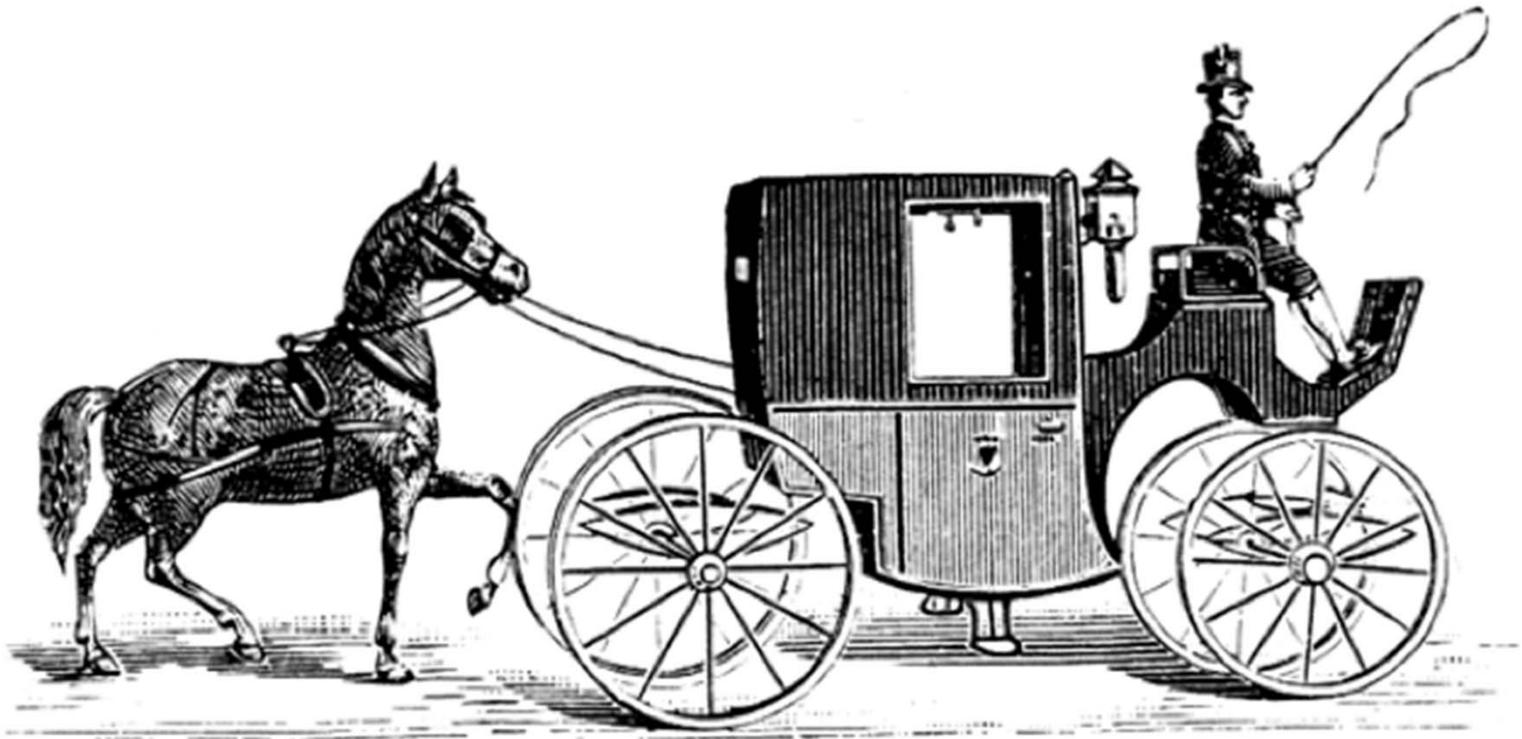
Dr. Joseph Wilson
12 July 2018, IGE, UNCTAD, Geneva

Context

- Cricket mostly played by former British Colonies:
 - England, India, Pakistan, Bangladesh, Australia, New Zealand, Sri Lanka, South Africa, West Indies, Zimbabwe (approx. 2 Billion viewers)
 - India – Pakistan 1.5 billion viewers
 - Until late 1980s, both countries have a state run TV station, PTV in Pakistan, and Doordarshan in India
 - Historically, PTV and DD were responsible for producing (content) and transmitting live cricket matches

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- Liberalization of the electronic media started in 1990s
 - Cricket Boards of both Pakistan and India sold TV rights for cricket matches for the first time in 1993, to Trans World International - a New York based global sports and event management companies.
 - Both PTV and DD now have to pay to get broadcasting rights for transmitting over its terrestrial network - more than 50% population still have access only to the free to air terrestrial network.

Governments' Absence of Vision lead to Viewers' Woes



Blackouts of Important Matches

Rifts between incumbents (PTV and DD) and new entrants result in blackout of important matches at a number of times.

In 2003, first one-day match between Pakistan and NZ was not aired owing to dispute of rights between PTV and Geo. The then president, who ex officio is also the Patron in Chief of PCB had to intervene to ensure the following matches are aired.

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- Terrestrial viewers suffered time and again.
 - In 2007, PTV did not broadcast Twenty20 World Cup;
 - in 2009 PTV did not buy the rights for Pakistan –Australia test series played in UAE as it was not a profitable commercial venture;
 - in 2013 PTV again did not bid for the TV rights of Pakistan's cricket series against Sri Lanka and South Africa played in UAE for lack of funds

India

- In 1993, DD blocked uplink facility for TWI and the first match between South Africa and West Indies played on 14 November 1993 was blocked out.
- Doordarshan was not able to telecast live India-Pakistan series held in Pakistan from 7 January to 19 February 2006,
- Again, Doordarshan was not able to telecast India-West Indies series held in West Indies in May 2006.
- In January 2007, West Indies team visited India. Nimbus held telecast rights . Nimbus and DD could not reach an agreement, and thus the first ODI between India and West Indies held in Nagpur on 21 January 2007 could not be telecast on DD's terrestrial network, depriving millions of cricket-fans from entertainment.

Public Interest v. Commercial Interest

- The public interest in watching live transmissions, which are carried over airwaves – a scarce natural resource and public property – comes in conflict with the pure commercial transaction of selling broadcasting rights exclusively to a highest bidder.
- The conflict between public interest and sanctity of commercial contract is ironed out through litigation in the Indian superior courts in a series of judgments spanning over a period of twenty-two years from 1995 to 2017.

Important Cases in India

- Government Monopoly in Broadcasting was Shattered (Supreme Court, 1995)
- Sharing of Terrestrial Feed for a Fee: Citizen v. PB (Madras H.C., 2004)
- Feed Clear of Advertisements : Star Sports India v. Prasar Baharati, (S.C., May 2016)
- Free Feed for Transmission to Terrestrial Network Only: (Union of India v. BCCI, S.C., 2017)

Outcome of Court Decisions

- that a monopoly (of State) in broadcasting and telecasting is not permissible;
- that airwaves are a public property;
- that the fundamental right to speech and expression includes viewing the game of cricket ;
- that the rights of viewers, the public at large, are paramount;
- Since broadcasting is carried over airwaves, it must be shared with the owner of airwaves, *i.e*, the public at large, and the national broadcaster is the representative of the public.
- the national broadcaster must re-telecast the live feed on it terrestrial and DTH networks, so that people who are connected to cable network should not a get a free ride.
- the live feed shared with the national broadcaster should be free of advertisements from the broadcaster or content owner

Competition Issues Posed by Cricket Boards

■ **BCCI and Broadcaster's Prohibited Agreement: IPL Case (CCI, 2017).**

- BCCI represents and warrants that it shall not organize, sanction, recognize, or support during the Rights period another professional domestic Indian T20 competition that is competitive to the league.
- The commission imposed a fine of INR 520 million rupees (\$8 million) on BCCI for abusing its dominant position, by restricting and foreclosing competition in the relevant market organization of professional domestic cricket leagues/events in India

■ **Broadcasting Revenues and Output Restrictions**

- The contracted series to be played in 2015 between India and Pakistan could not take place over the dispute between BCCI and PCB, as to where the matches will be held and who will take the broadcasting revenue.



The paper is posted on IGE's site

Thank you for your attention.

Joseph.wilson@mail.mcgill.ca