

6 Views of other parties

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Broadcasters and cable operators

British Broadcasting Corporation

6.1. The BBC believed that BSkyB was already dominant in the supply of premium TV channels in the UK, in particular the supply of premium TV sports channels, which it defined as the relevant market. Manchester United was the pre-eminent football club in English football generally and within the Premier League specifically.

6.2. The proposed merger would reinforce BSkyB's dominance of the relevant market by giving it control over Manchester United, in itself an important source of premium pay TV programming material; and also control over Manchester United as a football club, which was more than any other club in a position to influence other clubs as to the persons to whom, and the terms on which, premium TV football material was made available in the UK. These effects could be expected to make it even more difficult for potential competitors to enter into or succeed in the relevant market. And if, after the merger, BSkyB were, for example, to lose the live TV rights to the Premier League (or to be in danger of losing them), Manchester United could credibly threaten to leave the Premier League as a means of achieving BSkyB's objectives.

6.3. This strengthened dominant position would have resultant anti-competitive effects in the relevant market and would pose a threat to plurality of the media. Further, at present Manchester United's incentives were well aligned with those of other Premier League clubs which reflected the interests of football as a whole. Those incentives were to maximize the value of their rights by selling live TV rights (usually to a pay TV operator) separately from highlight TV rights and live radio rights to free-to-air broadcasters. These arrangements gave the generality of the public good, free coverage of football in that form.

6.4. If the proposed merger were allowed, the BBC believed that the incentives for the joint BSkyB/Manchester United would change so that the highlight rights and live radio rights to games in which Manchester United was involved (not just Premier League matches but also national and European cup competitions) may no longer be made available, at least on fair terms, to free-to-air broadcasters. The joint operation would have an incentive to do this in order to enhance the value to BSkyB of its live rights and to enhance further its dominance in the relevant market. The joint activity would not merely have the incentive but was also likely to have a significant ability to achieve this, whether or not collective selling of football rights continued. It also needed to be borne in mind that the BBC was a free-to-air broadcaster dependent on the licence fee for finance; in these circumstances,

if the live TV rights for Premier League matches continued to be sold as a block, exclusively, the BBC would not expect to bid for these rights at the next auction.

6.5. Thus the proposed merger, if implemented, would enhance BSkyB's dominance in the relevant market. It would also pose a grave risk that the public would be denied free-to-air access via TV highlights and live radio to a significant part of the most important English club football matches. Football today was enjoyed by millions of people on free-to-air TV (without any detriment to clubs in gate revenue—grounds for major clubs played, in many instances, to capacity). Free-to-air TV allowed the overwhelming majority who could not be physically accommodated within the grounds, or travel to them, to enjoy a major national sport. Given the national importance of football, and the large number of people who followed it, such a denial of free-to-air access would constitute a significant welfare loss.

6.6. The BBC said that on both those grounds the proposed merger could be expected to operate against the public interest and should be prohibited. But if the merger were nonetheless allowed to proceed, one of the BBC's proposals for safeguards was that BSkyB should undertake not to buy the rights to highlights, recorded games or live radio broadcasts and that live rights should be sold pursuant to an open, transparent auction.

Cable & Wireless Communications plc

6.7. CWC was formed in 1997 from the merger of Mercury Communications and three UK cable companies, Videotron, Nynex and Bell Cablemedia. CWC provides integrated telecommunications and TV entertainment services in the UK. It acts as a distributor in the pay TV market and provides service to more than 780,000 customers. CWC enters into wholesale agreements with broadcasters such as the BBC and BSkyB to deliver channels to its customers.

6.8. CWC said that pay TV channels could be categorized into two types: basic channels and premium channels. Premium channels distinguished themselves from basic channels by having sufficient identity and value with the consumer that they were typically offered individually, rather than in a package.

6.9. Unlike BSkyB, CWC said that it did not undertake production of channels for distribution on its network (aside from minor local channels required under certain of its ITC licences). As such, CWC was not vertically integrated and had a strong commercial incentive to offer those channels that were highly valued by its customers, within the current capacity constraints of its analogue distribution network. CWC said that it planned to introduce digital transmission of TV into its network in 1999, resulting in a significant increase in distribution capacity.

6.10. CWC said that it had a direct commercial interest in the outcome of this inquiry. BSkyB was CWC's most important supplier of channels, representing a substantial proportion of CWC's total programming costs and the majority of its premium programming costs. BSkyB was also CWC's largest competitor, through BSkyB's DTH to home satellite business. Furthermore, CWC wished to ensure effective competition in the upstream supply of wholesale sports channels.

6.11. CWC said that the relevant markets for consideration of the proposed merger were the supply of UK football broadcasting rights, the wholesale supply of UK pay TV sports channels to retail distributors and the retail supply of pay TV in the UK.

6.12. Manchester United was the premier football club in the UK's Premier League; it had significant power in the supply of football broadcasting rights in the UK. And it could credibly threaten to withdraw from the Premier League, a threat which would be of great concern to most of the other clubs, in order to ensure that BSkyB was offered the Premier League live broadcasting rights at the next auction, in 2001. BSkyB held a dominant position in the UK pay TV retail market, a near monopoly position in the market for the wholesale supply of premium sports channels and had a monopoly position in the wholesale supply of live Premier League football. The proposed merger would replace BSkyB's existing vertical arrangements (already the subject of an OFT referral to the RPC) with vertical integration.

6.13. CWC said that the proposed merger would substantially reinforce BSkyB's existing market positions by:

- (a) distorting market behaviour in the supply of UK Premier League football rights, whereby the likelihood of ongoing supply of these key rights to BSkyB would be greatly increased;
- (b) continued foreclosure of effective competition in the wholesale supply of premium sports channels; and
- (c) allowing BSkyB to use this strengthened dominant position over premium rights and programming to consolidate its downstream dominance in the pay TV market and to continue to distort competition in this market.

6.14. BSkyB was subject to existing regulatory controls in the form of a published rate card and undertakings relating to its wholesale supply of programming to cable operators. These regulatory controls had not prevented BSkyB from engaging in behaviour that had significantly restricted competition in UK pay TV. The proposed merger would substantially increase the likelihood of this behaviour being perpetuated.

6.15. The proposed concentration raised substantial public interest concerns. CWC said that it had been unable to identify compensating public interest benefits. The primary purpose of the merger would appear to be to reinforce BSkyB's dominant position in the pay TV market. CWC believed, therefore, that the merger should not be allowed.

6.16. Ex-post regulation would prove ineffective in addressing the anti-competitive effects of the proposed merger. It was impossible to have a fair and competitive market for the supply of television rights when one party was a significant player on both sides of the market. The most that safeguards could achieve would be to try to limit the degree of market distortion introduced; it could not entirely be eradicated. However, if the merger were allowed, then the following safeguards were essential to minimize the adverse market impact that would result:

- (a) Were collective sale of the Premier League to be maintained:
 - (i) the Premier League should not be allowed to sell broadcast rights exclusively to any broadcaster, including BSkyB;
 - (ii) Manchester United should be prevented from participating in the analysis of bids and voting for the granting of broadcasting rights to Premier League games; and
 - (iii) Manchester United should be required to remain part of the collective selling procedure and abide by the decisions of the Premier League.
- (b) Were collective sale to be dismantled:
 - (i) no single broadcaster should be allowed to obtain control over exclusive rights to Premier League football; and
 - (ii) Manchester United must supply its rights to other broadcasters on a non-discriminatory basis. BSkyB should not have exclusive control of Manchester United broadcast rights.
- (c) Buy-to-block arrangements and constructions of like effect should be outlawed from all existing and future contracts relating to Premier League rights, whether sold individually or collectively.
- (d) There should be guaranteed wholesale supply by BSkyB to competing distributors of channels that exploit Premier League content on a non-discriminatory basis.
- (e) Audited annual accounts should be published separating BSkyB's business into the following activities:

- (i) Manchester United;
- (ii) BSkyB Programming; and
- (iii) BSkyB Retail Distribution.

Carlton Television Limited

6.17. We asked Carlton for its views on whether or not it was realistic to consider that free-to-air ITV services were possible or likely bidders for the live TV rights to Premier League matches in future auctions, on the assumptions: (a) that collective selling continued; and (b) that individual selling took place (whether as a result of the outcome of the present RPC case or some other cause).

6.18. Carlton said that if collective selling continued in the manner so far adopted by the Premier League, where the only packages of rights available were to 60 live games or highlights rights, then ITV would be unable to afford to carry the 60 live games in its network schedule. Even making the assumption that the costs of such rights remained constant (which, given the history of Premier League rights auctions to date, was highly improbable), the annual sum paid by BSkyB over the term of the current contract had been the equivalent of over one-quarter of ITV's annual network programme budget for all network programmes, including commissioned programmes, news, sport and films, in 1999. The expenditure of over a quarter of the network's annual programme budget on a single sports property accounting for 120 programme hours a year was simply not economic, despite the fact that ITV was the best funded of all the terrestrial channels. It was, however, possible that ITV would consider bidding for the highlights package of Premier League games, just as it did in 1996 when the BBC was successful.

6.19. If individual selling were to be allowed to take place, ITV would certainly consider bidding, either as a network or on a regional basis. If individual selling caused the number of available games to increase, and thereby placed a more realistic value on the rights costs of such games, ITV would be interested in complementing its existing coverage of live UEFA Champions' League and FA Cup football with additional Premier League coverage. In particular, Carlton believed that ITV's regional structure would lend itself to a greater number of games being made available on a local basis, therefore giving football supporters more games of particular interest to particular regions than was the case with the limited national coverage of the present arrangement.

6.20. Carlton added that if ITV were to achieve break-even on the putative rights and production cost under the present BSkyB arrangement, advertising revenue would need to be generated significantly above £240 million a year (to take account of the percentage of qualifying revenue payable in special broadcasting taxes under the terms of its Channel 3 licences). Such a sum would be in excess of 15 per cent of ITV's total annual gross advertising revenue and would therefore not be generated by the comparatively low number of programme hours represented by the rights available under the collective selling arrangement.

6.21. Asked about the cost involved in mounting a bid for the rights to live Premier League matches, Carlton said it anticipated that the rights fees for a renewal of the current contract would be higher than the current fees, plus a share of pay-per-view TV revenues earned by the licensee under a future contract.

Channel Four Television Corporation

6.22. Channel 4 said that it was unlikely to be directly affected by the merger as it did not have any plans to broadcast Premier League football. Neither did it believe that it was appropriate for Channel 4 to have a policy on matters regarding the ownership of football clubs.

6.23. However, competition policy up to now had not had to deal with the ownership of sporting clubs and the rights to broadcast matches being brought together into one market. Channel 4 was concerned that as a matter of principle there should be a separation between the buying and the selling of rights. When collective negotiations for the broadcast rights for Premier League football took place, it was its view that those clubs owned by broadcasters and with a direct interest should not form part of the negotiating team.

Granada Group PLC

6.24. [

Details omitted. See note on page iv.

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6.25. Granada said that BSkyB had around 3.4 million pay TV subscribers. The competing cable market was fragmented across a number of suppliers, giving a combined cable market of around 2.6 million subscribers. Consequently BSkyB had around 57 per cent of this combined market with the next largest player having just a 15 per cent share. It was widely accepted that the key factor in the relationship between pay TV and football rights would be the size of the individual club's supporter base, as this would determine the overall market potential for pay revenues. According to research, the supporter base of Manchester United (across England and Wales) was estimated at 3.3 million fans, which was significantly ahead of the fan base of the next largest club and formed a dominant share of the overall fan base of the Premier League (estimated at around 15 million fans). Thus Manchester United represented around 22 per cent of the Premier League fan base.

6.26. [

Details omitted. See note on page iv.

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6.27. The company felt that it was realistic to consider that free-to-air services could be possible bidders for live TV rights in future auctions, whether in a collective selling or individual selling framework. There was uncertainty, until the value of the next rights deal was known, how achievable the advertising revenue needed to cover bid costs would be.

6.28. Granada considered that if there was a significant price tag uplift in the next auction (over the current £670 million five-year deal), bid costs could only be recouped by spreading access to the matches to all broadcasting platforms, which would additionally provide greater diversity for viewers. If this were to happen it was important that no one broadcaster was allowed to dominate the negotiations to the extent that it could command exclusivity, or act as the gatekeeper to the detriment of other competitors.

Independent Television News Limited

6.29. ITN said that it was, after the BBC, the largest producer of TV and radio news in the UK. It believed it was in the public interest that TV viewers had the right to see in their news bulletins an account of the main sports events of the day including short extracts of match action footage. It also believed that this was becoming an increasingly important right in a TV world where more and more events were available only on subscription channels, perhaps particularly for those viewers who could not afford or who did not wish to pay for TV coverage of sports events. This situation would be exacerbated as sports broadcasters started to broadcast sports events on a pay-per-view basis.

6.30. In a society where the majority of people got their news from TV, it was vital that TV news was free to report news quickly, accurately and free from commercial influences. This view was shared by Parliament which had legislated to provide the so-called 'fair dealing' exception under copyright law whereby news bulletins could use short extracts from match action without infringing the copyright of the broadcaster which originally broadcast the match. Parliament specifically reinforced the provisions of the Copyright Act 1988 on TV news access to sporting events in the Broadcasting Act 1996 to ensure that pay TV broadcasters did not use contract law—in the form of subscriber agreements—to prevent the operation of the 'fair dealing' copyright law exception. However, as the copyright legislation did not define what was or was not 'fair', various UK broadcasters had agreed a Sports News Access Code in order to define what was fair and to agree a fair balance between the interests of news organizations and sports broadcasters.

6.31. ITN believed that the fair dealing provisions of the Copyright Act 1998 and the provisions of the Sports News Access Code applied equally to pay-per-view TV events, and therefore it intended to continue to use brief extracts from such events to report the news as soon as possible in its news programmes. ITN strongly believed that the long UK tradition of news reporting of such events worked in the interests of both the committed sports fan and the general public, and that the sports broadcasters' interests were sufficiently served by exclusive agreements in respect of live transmissions alone.

6.32. ITN said that BSkyB had consistently tried to prevent TV news organizations from reporting the results of pay-per-view TV boxing contests until a considerable time period had elapsed after the event. This contrasted with the provisions of the Sports News Access Code which provided for news organizations to report sports news on an 'as it happens' basis. Prior to the Broadcasting Act 1996, BSkyB was able to use the terms of its standard subscriber agreement to dictate to news organizations the terms under which they could use extracts from pay-per-view TV fights to report the news. Since Parliament had prevented this practice, BSkyB had used threats of legal action (to the effect that prompt use of extracts would not be 'fair' and therefore not within the fair dealing exception), and commercial pressure to try to force ITN to delay its use of fight extracts for news purposes. Despite threats of legal action and commercial pressure ITN continued to apply the same principles of news access (which BSkyB had agreed should apply to non-pay-per-view TV events) to the pay-per-view TV events which BSkyB had broadcast.

6.33. ITN would be very concerned if BSkyB were to seek to use its position as owner of Manchester United to deny ITN access to Manchester United's players, officials and premises for legitimate news-gathering purposes. Major clubs such as Manchester United normally treated requests for interviews and facilities on a fair basis, without undue priority for one national news organization over another. If Manchester United was owned by BSkyB, which also owned Sky News, a number of dangers arose:

- Sky News would be consistently better treated than its rivals;
- rather than allow ITN to interview players and officials on matters of public interest, Manchester United might only release 'pooled' interviews conducted by the Sky News service of its owner, BSkyB; and
- BSkyB would use its position as owner of Manchester United to seek to control the behaviour of news organizations in their reporting of Manchester United's matches broadcast on a pay-per-view basis by threatening to deny them access to the club's players, officials and premises unless the news organizations behaved in a way which was acceptable to BSkyB. All news organizations should be granted such access on an unconditional and non-discriminatory basis.

6.34. ITN said that if the merger were allowed to proceed, then conditions should be attached which would prevent such potential abuse by BSkyB of its monopoly position in the news reporting of Manchester United.

ITV Network Limited

6.35. ITV said that its interest was in preserving access to football rights, notably the rights to broadcast Premier League football. It was concerned that BSkyB as a dominant force in the market for pay TV services, and as a putative owner of Manchester United, could have access to sufficient levers to prevent the market for football rights operating properly. The company confirmed that next time round, in 2001, ITV would be a potential bidder for the highlights contract for Premier League TV rights but, although it was not possible to eliminate all possible circumstances so far in advance, ITV was not likely to be in a position to be bidders for the live TV rights to Premier League matches. These would almost certainly go to pay TV.

6.36. ITV was also concerned about the confidentiality of information supplied to the Premier League in the course of rights negotiations. It would need protection from the automatic transference of this information to BSkyB, as a competitor for rights. It would need reassurance that access to major rights (for instance, to the Premier League) would be preserved despite BSkyB's ownership of one of the league's most influential clubs.

6.37. ITV said that because of the strength of BSkyB's market position already, it would seek clear, transparent and enforceable measures to prevent ITV's access to football rights being prejudiced by this merger. It was opposed to the merger going ahead because it was not confident that the remedies discussed would be effective in practice, particularly in circumstances where the Premier League was not able to negotiate collectively on behalf of the clubs.

NTL Group Limited

6.38. NTL is a diversified communications company with interests in broadcast transmission, media, telecommunications and the Internet. It told us that it was the third largest cable operator in the UK with a customer base of some 800,000 subscribers, which was about 12 per cent of the pay TV market. It currently holds 42 cable franchises in the UK, four of which are held by companies jointly owned with Telewest. Following completion of its acquisition of Diamond Cable Communications PLC, which is expected to take place shortly, this figure will rise to 57. NTL, through its subsidiary Premium TV Limited (PTV), has a recently acquired shareholding of 6.3 per cent in Newcastle United plc. PTV has obtained an irrevocable undertaking from the majority shareholder in Newcastle United that that shareholder would accept a general offer for the shares in Newcastle United at not less than a given price if PTV chose to make it; the irrevocable undertaking is exercisable within certain time constraints.

6.39. NTL said that a difficulty in the pay TV market stemmed from the fact that mainstream premium channels, in particular premium sports and movies, were available only from BSkyB. Consumers were prepared to pay to watch movies and sports in a way in which they were not prepared to pay to watch other types of TV entertainment. In particular, they were prepared to pay to watch live Premier League football, which was one of the key drivers in the sports pay TV market.

6.40. Because BSkyB sports and movie channels were indispensable to NTL's business, and BSkyB the only supplier, NTL was forced to accept whatever terms and conditions of supply BSkyB proposed. The current terms and conditions offered limited NTL's ability to compete with BSkyB in a number of ways. First, the wholesale price of the BSkyB sports and movie channels to cable distributors was influenced by the high cost of Premier League rights. This obviously raised the retail price of rights and deterred potential customers. The second major obstacle was the structure of BSkyB's prices; it adopted a policy of deep discounting its channels, which meant that the price of the first premium channel was very high, with the price of subsequent premium channels (irrespective of whether the customer bought movies or sports) being substantially discounted.

6.41. NTL said that it had adopted a two-pronged approach to try to redress the imbalance in the pay TV market caused by BSkyB's virtual monopoly over the premium sports and movie rights, and to increase competition in the market to the benefit of its customers. NTL, together with other cable operators, had challenged BSkyB's terms and conditions of supply, but had not achieved as much success as had been hoped. It had actively opposed bundling, or high carriage requirements, and was

broadly content with the ITC's decision on this. It was also supporting the OFT in its case against the Premier League. NTL's view was that consumers would be better served by individual selling of rights. NTL said that, in an attempt to try to liberalize the market, it was trying to obtain sports and movie rights directly for itself and had been involved in several projects designed to achieve this.

6.42. One of these projects in relation to sports rights was the acquisition of PTV. PTV was established to market and exploit sports broadcasting rights in the UK. One of its aims was to develop premium TV services in the UK, to be made available on all platforms and aimed at providing competition to Sky Sports. PTV had entered into an agreement with Eurosport for the production of a British version of the Eurosport channel, and PTV's current plan was (subject to securing the appropriate rights, a key element of which would be Premier League football) to launch a premium sports service to be cross-promoted through British Eurosport. Eurosport and PTV had hoped that British Eurosport would be available to the consumer on all distribution platforms; ONdigital and NTL had agreed to take it, but Eurosport and BSkyB had not yet agreed terms.

6.43. NTL said that Premier League rights would be top of its wish-list for any sports channel created. The right to show some Premier League games as part of original non-BSkyB programming could give NTL's cable business a massive boost for the future. Premier League rights would also be useful in developing new local programming, which would enable it to attract local advertisers. However, the exclusive deal in place between the Premier League and BSkyB prevented it from getting those rights at present. PTV's recent investment in Newcastle United was a small step towards trying to open up this market, and the company's support for the proposal to end exclusive collective selling of Premiership rights was another. NTL's aim therefore was to make sports and movie rights more widely available to consumers at more competitive prices, thus giving value to its customers.

6.44. In an earlier submission, jointly with Telewest, the company had said that one of the key concerns of other organizations about the proposed merger was that, if BSkyB were to lose the next Premier League rights auction, in 2001, it would instruct Manchester United to break free from the Premier League and sell its rights individually to BSkyB. Later, however, it pointed out that BSkyB/Manchester United would only have one vote in 20 in any campaign to change to individual selling. NTL said that it had nothing against individual selling as such. In fact one of its main aims in gaining a 'seat at the table' would be to persuade the other clubs of the merits of individual selling.

6.45. It believed that the acquisition of Manchester United by BSkyB would give it, arguably, the most influential seat at the table, and BSkyB could use that seat to argue for the kind of organization of the auction process that suited it. This was why it was so important that other broadcasters, like NTL, should be able to participate. The value of such a seat was not only on the day the clubs had to make a decision on the rights contract but, more important, in the process that led up to it.

6.46. NTL also considered that BSkyB would obtain a significant 'toehold' advantage in the rights auction, if it was the only broadcaster to merge with a club. A bidder with an equity stake in the seller would always bid more aggressively than an otherwise identical bidder without such a stake. It had a greater incentive to increase its bid because a percentage of the bid (if it was successful) would be returned to it and because (even if it was unsuccessful) it would drive up the bid price and thus its share in Premier League revenues. This would exacerbate the so-called 'winner's curse' effect arising from BSkyB's current position in the market place whereby a competitor could be deterred from bidding at all, or at least aggressively, for fear that if it won, its winning bid would have been higher than the real value to it of the rights.

6.47. NTL did not believe, however, that some of the other concerns expressed—particularly about individual selling—were justified. There was no reason to believe that individual selling, properly administered, would do other than enhance Premier League football in the UK, or that it would undermine the ability of the Premier League to raise funds centrally and redistribute them within the Premier League to ensure support for the smaller clubs and football at lower levels. Further, it was unlikely to increase the risk of the larger clubs breaking away from the Premier League so long as the Premier League continued to meet the aspirations of its members. With individual selling, many more matches would be shown on TV by a number of different broadcasters. There was no reason why they should not all be available on all broadcasting platforms, however, so the consumer was unlikely to have to invest in a variety of packages, equipment and broadcast

services, and the price per match for access to Premier League football could be expected to fall in the light of greater availability of matches.

ONdigital plc

6.48. ONdigital is a subsidiary of British Digital Broadcasting Holdings Limited, a joint venture company owned by Carlton and Granada. It holds licences for, and operates, three of the six multiplexes (B, C and D) for digital terrestrial TV in the UK. It is a direct and effective competitor to BSkyB's digital satellite platform.

6.49. ONdigital told us that BSkyB was originally a shareholder in ONdigital. However, during the consultation process prior to the award of the multiplex licences, the ITC notified ONdigital that it had competition concerns about BSkyB's shareholding. These concerns stemmed in part from the difficulties that would arise if BSkyB were both a seller of rights to platforms and, simultaneously, a buyer through its powerful influence as a shareholder in ONdigital. The ITC indicated that the competition concerns could be addressed by BSkyB ceasing to be a shareholder in ONdigital but it was also made clear that BSkyB's programme services should not be removed from the channel line-up proposed in the application. In June 1997, therefore, BSkyB withdrew as a shareholder in ONdigital and an agreement was reached on the continued supply of programming.

6.50. ONdigital said that BSkyB was currently the only provider of premium sports channels, and it referred to the DGFT's *Review of BSkyB's Position in the Wholesale Pay TV Market* which concluded that BSkyB had, and would continue to have, first mover advantage in sports programming for some time to come. BSkyB also had the benefit of long-term exclusive rights to broadcast Premier League football.

6.51. It thought the takeover of Manchester United by BSkyB would be detrimental to competition in the market for the acquisition of sports programming rights, and would ultimately contribute to the foreclosure of the pay TV market by precluding the establishment of competing premium sports channels. The emergence of competing channels would be beneficial to subscribers as it would lead to lower fees.

6.52. ONdigital considered that by strengthening its dominance in the pay TV market as a result of the acquisition of Manchester United BSkyB would also prejudice the ability of alternative distribution platforms, particularly DTT, to compete with BSkyB's satellite platform. Access to the rights to show football, the key component of sports programming, was the main driver of subscription to pay TV and was vital to DTT's development. It was therefore critical that the market for the acquisition of these rights was kept as competitive as possible. The introduction of DTT and other alternative distribution methods was in the interests of consumers as it would increase choice and serve to drive down costs. ONdigital stated that significant changes to a number of market factors in the last 12 months meant that it would be seeking to acquire significant premium rights in order to compete more effectively with BSkyB.

6.53. ONdigital thought the merger also gave BSkyB a significant advantage in the selling of collective TV rights. As the dominant player in the affected market, and owner of the most powerful Premier League club, BSkyB would be able to influence any decision by the Premier League about who obtained the rights. BSkyB would also have access to information about the rights sale process which other broadcasters would be denied. Also in the bidding process BSkyB, as owner of Manchester United, would benefit from substantial cross-subsidization which would enable it artificially to increase its bid.

6.54. ONdigital thought that the acquisition should not be permitted unless suitable undertakings were obtained, in order to:

- (a) ensure a level playing field if, in the future, rights were to be sold individually. Such undertakings should set out fair, reasonable and non-discriminatory terms on which third parties would be able to gain access to rights to televise Manchester United matches; and

- (b) deal with the conflict of interest between BSkyB's pay TV and football interests which would arise in the bidding for collective TV rights.

ONdigital believed that the above undertakings should continue in effect for so long as BSkyB was dominant in the affected markets.

Telewest Communications plc

6.55. Telewest believed that, depending upon BSkyB's intentions in relation to the use of Manchester United rights, the merger could have the potential to significantly distort competition in the market for broadcasting rights in Premier League football, and also in the broadcasting market generally; and the impact of the merger on the operation of the Premier League and the UK football industry generally could be contrary to the public interest, if the rights were used to promote a particular distribution platform or TV channel to the exclusion of competitors.

6.56. BSkyB had a position of considerable market power at two of the key stages of the supply chain for the UK pay TV market: at the wholesale level (the provision of pay TV channels to other pay TV distributors) and the retail level (the provision of pay TV services to consumers).

6.57. Telewest was dependent on BSkyB for premium content and in particular Premier League football, which Telewest believed was of key significance for all pay TV distributors in the UK. In Telewest's view, this content was currently being made available by BSkyB to other pay TV distributors, including Telewest, on terms which did not encourage them to expand the market. This was ultimately detrimental to consumers.

6.58. Manchester United was by far the most popular and financially successful football club in the Premier League and in the UK. Ownership of Manchester United could provide any broadcaster with disproportionate influence in future negotiations for Premier League broadcast rights. Telewest said in an earlier submission, jointly with another broadcaster, that one of the key concerns of other organizations about the proposed merger was that, if BSkyB were to lose the next Premier League rights auction, in 2001, it could instruct Manchester United to break free from the Premier League and sell its rights individually to BSkyB.

6.59. In the event that BSkyB, with its already considerable market power, were to take control of Manchester United, that market power could be further extended. This could have a detrimental effect on the ability of other pay TV distributors to compete effectively at any level of the supply chain. Equally, Manchester United's dominance within the Premier League could be reinforced, potentially affecting the quality of the competition and its value to supporters.

6.60. Telewest said that, if BSkyB were to build a retail proposition around Manchester United's live broadcast matches, it would be essential that that proposition was made available to other pay TV distributors including cable companies on fair and non-discriminatory terms if further and more severe distortion of competition at retail level was not to result. In any event, it was not currently clear to Telewest how the proposed merger would be in the broader interests of consumers.

Trans World International (UK) Inc

6.61. Trans World International (UK) Inc (TWI) said it assumed that BSkyB's intentions for making a bid for Manchester United were to get a seat at the negotiating table when it came to the renewal of the Premier League TV deal in the UK, the ongoing pay-per-view TV discussions, and to acquire a valuable brand name and a profitable company.

6.62. BSkyB's TV negotiating position might be improved if it acquired Manchester United. Nonetheless, TWI believed that the rules of the Premier League were drawn up on a one-club one-vote basis so that Manchester United, a commercially important voice, would only have one vote out of 20.

No doubt the Premier League would introduce rules to avoid any conflict of interest between BSkyB's position as a negotiator for acquisition of TV rights and as the owner of a Premier League club.

6.63. TWI was of the view that the proposed merger would not greatly change the current situation. Manchester United was probably, commercially, the most important football club in the UK and, if the conditions were right, regardless of whether it was owned by BSkyB or not, it might want to go it alone and negotiate the sale of its TV rights direct, for example, as evidenced by its current negotiations with the European Super League.

6.64. TWI said that ownership of football clubs by large media groups seemed a logical and natural development of the European market place. This was borne out, for example, by the situation in Spain where several clubs were owned by media groups and in France where Paris St Germain was owned by a pay TV broadcaster.

United News & Media plc

6.65. UNM said that football broadcasting rights represented an essential 'raw material' which had been the main driver of the growth of pay for TV subscription. It was against this background that the proposed merger should be assessed. BSkyB clearly wished to reduce competition for those valuable rights by controlling them rather than merely benefiting from a long-term contract.

6.66. UNM considered that the precise effects of BSkyB's involvement should be assessed on the basis of several outcomes to the RPC investigation into the collective sale of rights by the Premier League:

- (a) that the Premier League continues to sell all broadcasting rights collectively because it retains the ability to prevent clubs from selling their rights individually;
- (b) that the Premier League continues to sell all or the vast majority of rights collectively but the clubs can choose to sell some rights individually; or
- (c) that the majority of broadcasting rights to Premier League matches are sold individually by clubs or in packages by groups of clubs.

6.67. UNM commented on the competition implications of the bid under each of the above alternatives, as follows:

- (a) In such circumstances it might be suggested that BSkyB's ownership of Manchester United would have very little impact on which broadcaster the collective rights would be awarded to or the terms of the award because Manchester United was only one of 20 Premier League clubs. However, UNM argued that this view was mistaken because:
 - (i) Manchester United was the most influential club in the Premier League, having more than double the turnover of any other club, over three times the average for the Premier League and being the most profitable by a similarly large margin. In the light of these facts it could be strongly argued that it exerts material influence over the Premier League as a whole.
 - (ii) Manchester United would be privy to confidential information about the bids for rights received from other broadcasters. This information would be very valuable from BSkyB's perspective in formulating any future bid for rights. This might have a similar effect to the 'meeting the competition clause' which the DGFT referred to the RPC because it might enable BSkyB to match rivals' bids.
- (b) UNM considered that BSkyB would substantially prefer that broadcasting rights were sold collectively because this made it easier for it to win all the rights to the main matches. Manchester enjoyed the largest club following in the UK. By agreeing to be included in a

collectively licensed Premier League package it not only enhanced the prospects and price for such a package but also made agreement to a collective licensing approach more likely to happen.

- (c) In this scenario, control over the most popular club might enable BSkyB to control the sale of significant packages of rights because many of the smaller clubs would wish to be part of the sales organizations which sold the rights of one or more of the leading clubs. Again this would assist BSkyB in limiting the allocation of these valuable rights to rival broadcasters. The rights which it could not directly control through its control over the organization which sold Manchester United's rights might be insufficiently attractive to another broadcaster with the consequence that BSkyB could acquire them cheaply. UNM believed that it was likely that the Premier League would wish to license highlights and subscription packages collectively but that individual clubs would control their own pay-per-view TV rights in the future. If BSkyB controlled Manchester United's pay-per-view TV rights it could distort the market by packaging them with those of other clubs.

6.68. UNM said that the merger might raise a number of other wider competition and public interest issues. First, BSkyB would acquire material influence over the Premier League, irrespective of its control over the allocation of its broadcasting rights. As a broadcaster, its interests were primarily in maximizing its pay TV revenue and it might pursue this by pressing for changes which were in its favour, for example by broadcasting more live matches than was consistent with maximizing clubs' total income or by pressing for changes in the scheduling of fixtures. This might compromise the health of small clubs, inter-league competition and the wellbeing of the League as a whole.

6.69. Furthermore, UNM was concerned as a newspaper proprietor, as well as a broadcaster, by the possible foreclosing effect that BSkyB's ownership of Manchester United might have in relation to access by the media to the club's staff and players. BSkyB and/or News International were already thought to have commenced interference with team matters by endeavouring to sign for Manchester United, against the manager's wishes, a Japanese player, for the reason, apparently, that his presence in the team would be likely to improve ratings of News International's interests in the Far East. UNM believed that there was a very real prospect that such interference, to the benefit of BSkyB and News International and the detriment of their competitors, would become commonplace.

6.70. In general, UNM believed that there were issues in the governance of sport in Britain, particularly football, where the influences of broadcasters on the development of sport needed to be understood more clearly than they were now.

Football authorities

Fédération Internationale de Football Association

6.71. Fédération Internationale de Football Association (FIFA) considered the proposed merger to be essentially a business matter between the parties directly concerned and did not feel entitled to intervene in this relationship unless specifically asked to do so by the FA. FIFA's concern lay primarily in the parties ensuring that, given the nature of a football club with such an exceptionally wide fan base as Manchester United, due allowance be made for appropriate consultation of season ticket holders and other committed fans of the club.

The Football Association and The Football League

6.72. The FA and the Football League made a joint submission and attended a hearing. They said that a merger between the dominant broadcaster and pre-eminent football club in the UK raised three serious questions for competition and the public interest. These were:

- (a) Would BSkyB, by acquiring Manchester United, so increase its prospects of acquiring football rights that other broadcasters would be inhibited in their ability to compete with BSkyB in the supply of sports channels in the UK or in the pay TV market generally?
- (b) Would any preference which BSkyB, as the dominant sports broadcaster, might give to Manchester United (specifically in terms of airtime and on-screen promotion) so strengthen the position of Manchester United that other clubs would increasingly be unable to compete (both in a financial sense and on the field)?
- (c) Would BSkyB, through its vertical relationship with the most influential football club in the UK, seek to influence the way in which football was played, screened and administered to the benefit of its broadcasting schedule and to the possible detriment of fans, players and the game?

6.73. The FA and Football League felt that answering these questions was made significantly more difficult by virtue of uncertainty as to how football rights would be sold in the future and consequent uncertainty as to the future relationship between broadcasters, football bodies and football clubs. The uncertainty arose as a result of the current case before the RPC concerning the Premier League's collective licensing arrangement.

6.74. At its simplest, there appeared to be two options for the future: collective licensing and individual licensing. The position was not, however, simple. While the DGFT had raised objections to continued collective licensing, he had not addressed the alternatives, and in particular what was meant by 'individual licensing'. It was far from clear, therefore, exactly what would be involved were the DGFT to win his case. It could be that each club sold its home matches (for particular games, for a season, or for a number of seasons); or it could be that the two clubs taking part in a game would act as joint licensors (in which case sales would presumably be on a game by game basis). Broadcasters might buy games on a kind of 'spot market', for a season or for a number of seasons; or might buy subject to a condition that it could conclude a deal with a sufficient number of clubs to put together a package which was attractive to the football viewer.

6.75. The FA and Football League said that there could be little doubt that, were BSkyB to acquire Manchester United, the club would look favourably on any bid for rights by BSkyB. First, it would be unusual, other things being equal, for a subsidiary to act contrary to the interests of its parent unless there were compelling reasons so to do; this would not be the case unless the BSkyB bid was manifestly inferior. Second, it would be in Manchester United's interest to favour a bid from BSkyB, since BSkyB would be likely to give Manchester United better support and promotion on its channels than any non-integrated broadcaster. Manchester United would be able to influence the auction of rights, increasing the likelihood that BSkyB would be the successful bidder, in a number of ways:

- (a) It could supply to BSkyB confidential information on the bids received and the bidders which could help BSkyB formulate a winning bid.
- (b) It could (in an era of collective licensing) use its influence to encourage the FA and the Premier League (where it could also exercise its voting rights) to grant rights to BSkyB. Major clubs have in the past had such influence and have exercised it effectively.
- (c) It could be expected (in an era of individual licensing) to license its rights to BSkyB. BSkyB would then be able to try to persuade other clubs to license rights to it, not just on the basis that it had the largest captive subscriber base (which it does), but also on the basis that they could join the package which comprised the UK's most famous team. For many clubs, the lure of joining a Manchester United package would be irresistible.

6.76. The FA and Football League regarded Manchester United's ability to influence other clubs as significant, not least in the area of broadcasting rights. Confidentiality was difficult to secure and the inference of 'corridor gossip', from which BSkyB could obtain advantages over other broadcasters, was significant. Manchester United's ability to influence other clubs through its access to, and participation in, corridor gossip should not be underestimated. Further, if other clubs were disinclined to follow Manchester United's lead, it could credibly threaten to withdraw from a competition or league to join or set up a Super League. It was senior clubs, dissatisfied with arrangements within the

Football League, which left to form the Premier League. Less successful clubs within the Premier League would have a strong incentive to accept Manchester United's preferences if the consequences of not doing so could be debasing to the value of the league through the departure of its most prestigious member.

6.77. The merger of Manchester United and BSkyB might be expected, then, to increase significantly the prospects of BSkyB winning and retaining football rights (whether under a system of collective or individual licensing). There could be no doubt that having these rights gave a broadcaster an overwhelming advantage. BSkyB's success in becoming the dominant supplier of sports channels was widely attributed to its securing the Premier League rights. Its ability to hold on to these rights was likely to be the key to its future success. And, for the reasons set out above, the acquisition of Manchester United was certain to assist it in gaining preferred access, thereby entrenching its market position and limiting on an indefinite basis the ability of its competitors to succeed.

6.78. The FA and Football League said that, as owner of Manchester United, it would be in BSkyB's interest to promote football in general, and Manchester United in particular. Whenever promoting football on its various football slots, arranging interviews or programmes on the development of the game, or the history of different clubs etc, BSkyB would have an interest in promoting Manchester United.

6.79. Being promoted in this way by BSkyB would unfairly enhance Manchester United's ability to compete with other clubs, both in the sporting and the economic sense. No other club could expect the same level of promotion from BSkyB or any competitor—BSkyB was, after all, the dominant supplier of sports channels and had the widest subscriber base. Thus, Manchester United, already the best-known team in the country and probably the world, could expect its reputation to grow still further; it could expect this only as a result of being linked with the dominant broadcaster. This created a serious distortion of competition because no other club could hope to find a deal offering the same level of promotion.

6.80. Greater promotion and greater reputation were hugely beneficial to a club; they expanded the appeal of its matches and of its merchandise. Already, through merchandising sales, Manchester United was the most financially successful of clubs. Additional promotion on the dominant service would extend this advantage. Incremental revenues could then be ploughed back into the club, for example into buying key players. Economic success could thus be converted into sporting success, and the reputation of the club would grow even further. Backing by the dominant broadcaster could put Manchester United out of reach of any other club. If this backing enabled Manchester United to enhance its reputation, its finances and its players, it could fast become a team which could be expected to win virtually all of its matches. This would inevitably be highly damaging to the sport and the public interest, given that a key ingredient in capturing the public imagination was the debate and excitement as to who would win a match and a championship.

6.81. The FA and Football League believed that BSkyB and Manchester United might argue that they would not take steps which would damage the Premier League or the game, as this would ultimately be against their own commercial interests. Nonetheless, it remained likely that immediate financial interests might encourage BSkyB and Manchester United to take steps which could damage the game, provided they did not regard the possible damage as 'too serious'. Moreover, the taking of decisions which could cause risk to the Premier League and the game would rest with the parties—clearly an unattractive outcome for the public interest.

6.82. A broadcaster owning a club could seek to exert disproportionate influence on the many and varied administrative arrangements for the game. Whereas the FA and Football League (and Premier League) were set up and were required under their constitution to take decisions in the best interest of the game, the pressure which BSkyB would exert might be expected to have an entirely different objective: to ensure that the game was not administered in a way which could damage the value of the televised rights.

6.83. The FA and Football League said that such intervention could cause considerable damage to the game, for example a broadcaster owning a club could:

- (a) try to divert funding derived from selling rights to football matches and presently put aside to fund the future of sport, with a view to using the incremental revenue to enhance its broadcasting activities or the position of the club it owned; and
- (b) exert additional pressure to televise football at certain times, for instance on Saturday afternoons, without due consideration of the potential damage to the amateur and youth games on which the future of the sport depended, on the basis that televising football at that time could increase subscriber revenues. There was already evidence that BSkyB had required certain fixtures to be played at particular times and on particular days, and evidence from rugby league had shown that BSkyB required the times of year at which a sport was to be played to be changed.

6.84. There was no doubt that BSkyB, by acquiring Manchester United, would improve its chances of acquiring football rights. There was no doubt that acquisition of football rights conferred on the broadcaster a substantial competitive advantage. There was no doubt that BSkyB would be incentivized to promote its subsidiary as aggressively as possible. And there was no doubt that promotion by the dominant sports broadcaster with the widest sports audience would give Manchester United a significant advantage.

6.85. The merger was therefore likely to entrench BSkyB's dominating position in broadcasting *and* Manchester United's pre-eminent position in English football. Other broadcasters and clubs would not be able to compete effectively. A competing broadcaster could not, by acquiring a competing club, hope to gain the same level of influence over the game or the auction of rights as BSkyB would obtain by acquiring Manchester United; broadcasters not owning clubs would have even less influence. A competing club would not be able to achieve the same level of promotion that Manchester United would achieve through its links with BSkyB since no other broadcaster could offer promotion to such a large dedicated subscriber base.

6.86. For these reasons, the FA and Football League believed that the proposed merger would inevitably lead to distortions of competition contrary to the public interest.

6.87. As regards possible undertakings, the FA and Football League believed that, in an era of individual licensing, there was unlikely to be any remedy short of prohibiting the merger that would be effective in eliminating the anti-competitive effects which this merger might be expected to bring about. It would be more feasible to mitigate anti-competitive effects arising from the merger were the current system of collective licensing to continue. A system of collective licensing (which would prevent the merged company from deciding alone where the Manchester United 'magnet' was to be located), coupled with behavioural undertakings on ring-fencing of confidential information held by Manchester United and establishment of Chinese walls (limiting the prospect of the merged company exerting influence over awards of TV rights), could reduce the anti-competitive effects which would arise from the merger. However, key decisions would still be taken by a collective, of which Manchester United would form part, and the risk of distortion was still considerable. Undertakings would be required. Even here, however, the safeguards from undertakings could not be watertight. They would need to include, among others, undertakings that provided for the ring-fencing of information about bids for broadcasting rights and for ensuring that Manchester United did not attend any meetings to discuss rival bids or have any vote in relation to those bids. But they would not eliminate the risk of information seeping out and fuelling 'corridor gossip' which there was no way of preventing. The worst outcome, and one which the FA and Football League urged the MMC to seek to avoid, was one where individual licensing was introduced *and* BSkyB and Manchester United were permitted to combine. In that situation, the FA and Football League feared the result would be that the merged entity would become the monopoly controller and retailer of televised football.

The Football Association Premier League

6.88. The Premier League said that there were significant links between the football market and TV broadcasting in particular. The relationship between TV broadcasting and football was therefore of considerable importance. The licensing of TV rights to football represented one of the most important sources of revenue to the clubs in the Premier League, particularly the smaller clubs. Clubs benefited not only from the substantial amounts of revenue generated by TV broadcasting, but also from the fact

that under the Premier League arrangements each club was guaranteed a minimum amount. TV coverage of the championship, and hence the participating clubs and their matches, enhanced the clubs' abilities to generate income from other sources such as advertising, sponsorship and hospitality. The collective licensing of TV rights by the Premier League, together with the revenue distribution arrangements which formed an integral part of the licensing arrangements, had directly contributed to the success of the championship and to the provision to the viewing public of high-quality TV coverage of the championship.

6.89. The Premier League said that BSkyB was an important player in the broadcasting of sports events, and, in particular, football. It was active at both the wholesale and retail levels. It was until recently the only significant supplier of subscription and/or pay-per-view TV that offered coverage throughout the UK, cable TV franchises being offered only on a local or regional basis. More recently ONdigital had launched a substantially nationwide digital transmission service, but the uptake for that service was still fairly limited. The Premier League took the view that BSkyB was a major player in the broadcasting market, a position it was likely to retain in the emerging digital era.

6.90. Manchester United was one of the most successful clubs in the Premier League, and was by far the most successful in financial terms. It enjoyed the widest supporter base of any club in the Premier League. That position had enabled it to secure lucrative sponsorship and advertising deals, and to engage successfully in ancillary football-related activities such as merchandising and hospitality. So far as Premier League football was concerned, Manchester United owned one ordinary share in the Premier League, which entitled it to a single vote along with the other 19 clubs. In general, decisions required a majority of not less than two-thirds of the votes cast. That voting structure ensured that each club had an equal say in matters relating to Premier League football (such as the conclusion of broadcasting arrangements) and limited the extent to which any one club could exercise decisive influence over the Premier League.

6.91. The Premier League said that one of the key issues in the merger concerned the future of the broadcasting rights for its games. BSkyB was the present holder of the contract for live TV transmissions. The Premier League also believed that it was likely that only BSkyB and other pay TV broadcasters would be able to compete for these live rights, and that the BBC and ITV would remain strong contenders for match highlights. The Premier League explained that under current arrangements it sold the broadcasting rights to the championship on a collective basis. That arrangement had enabled the Premier League to secure greater revenue on behalf of the clubs as a whole than would otherwise have been the case with, for example, individual licensing. Arrangements embodied in the rules provided for an equitable distribution of the domestic TV revenue: 50 per cent was distributed equally between the 20 clubs; one-quarter was distributed on the basis of the clubs' relative position in the Premier League at the end of the season; and one-quarter was distributed on the basis of the number of appearances a club made in live broadcasts. The Premier League rules also provided for the equitable distribution of the overseas TV and other sponsorship and commercial revenue.

6.92. The Premier League said that the MMC should have regard to the fact that the current collective selling arrangements were under challenge by the DGFT. It believed that a prohibition by the RPC of the collective selling of broadcasting rights to the Premier League championship would be highly detrimental to the championship, the clubs, broadcasters and the public. Unless the rights were sold as an exclusive package, the value of the rights to a broadcaster and, hence, to the clubs would be substantially diminished as the amount any broadcaster was prepared to pay for a non-exclusive package would be much less.

6.93. Many benefits would be lost if individual licensing were to be forced upon the clubs by the RPC. There would also be very severe practical difficulties in introducing any system of individual licensing, since any club seeking to sell the broadcasting rights to its home matches would require the co-operation of all the other clubs. In addition, individual licensing would lead to significant additional transaction costs being incurred by each club, both in negotiating with broadcasters and in rescheduling matches.

6.94. The adverse effects were likely to affect the smaller clubs more acutely than the larger clubs. Sold on an individual basis the rights to broadcast the matches of the leading clubs were likely to be more attractive than the rights to the matches of the less well-known clubs. So the present imbalances

between the larger and the smaller clubs would be exacerbated and the competitiveness and excitement of the championship would be reduced.

6.95. Although a number of Premier League clubs had initially reacted strongly against the proposed merger and had considered that Manchester United should be expelled from the Premier League, reports that the Premier League had recommended the prohibition of the merger were inaccurate. The Chief Executive of the Premier League stressed that there was no Premier League view on the proposed merger. He said that the views which he expressed were personal views, although he believed them to reflect the views of at least two-thirds of Premier League clubs. He explained that his views were largely directed to the practical consequences of the proposed merger. His views could be summarized as follows:

- (a) On the assumption that collective selling continued, the merger would have some adverse effects which would require effective safeguards. These adverse effects arose from conflicts of interest and access by BSkyB to confidential information concerning competing bidders for the Premier League's broadcasting rights.
- (b) If, however, the Premier League were required to allow clubs to license their rights individually, the adverse effects would be much more marked. The merger would confer a considerable competitive advantage on BSkyB. The Premier League had been unable to identify hypothetical behavioural remedies that would remove the adverse effects. Prohibiting BSkyB from broadcasting Manchester United matches or compelling it to license the home matches of Manchester United to another broadcaster would itself create distortions and probably prevent the full value of TV rights for the championship from being realized.

It was, however, difficult to express the collective views of the Premier League clubs as a whole on the merger. Views varied from club to club and varied over time in response to developments.

6.96. The merger would also have an indirect impact on the development of pay-per-view TV for football. It could have adverse implications for match attendances and scheduling requirements. The Premier League wanted to get the development of pay-per-view TV right in the interests of supporters, spectators and football as a whole. Broadcasters were keen to go ahead with the development. And if this merger were followed by other broadcasters/club mergers—as was extremely likely in the Premier League's view—there was a danger that the interests of broadcasters would override those of football. The Premier League, however, said that it had long recognized that pay-per-view TV services were likely to become a feature of the broadcasting of football, including Premier League football. The 1996 agreement with BSkyB acknowledged that there might be some broadcasting of matches (additional to the 'basic' package of 60 matches) on a pay-per-view basis, but no actual obligations had yet been undertaken by either BSkyB or the Premier League.

6.97. In the context of the proposed merger, the Premier League said that Manchester United was undoubtedly a successful club, whose participation in the Premier League was important. While there would be disadvantages to Manchester United if it were to leave the Premier League, it could credibly threaten to do so if, for example, BSkyB failed to secure the Premier League broadcasting rights at the next auction, in 2001. A successful and popular club such as Manchester United, particularly with the backing of a major broadcaster with links to international media interests, would be better placed than most clubs to secure participation—possibly together with other leading Premier League clubs—in alternative leagues or championships, including opportunities overseas. The threat of this happening was a credible one. Its credibility would be enhanced still further if collective licensing ceased. If Manchester United and other major clubs did go down this path and join or form a new league, the consequences would be the break-up of the present Premier League and, probably, the acquisition by BSkyB of rights to broadcast the matches of the new league.

6.98. Referring to powers to expel clubs that infringed Premier League rules and resolutions, the Premier League said that it believed powers to expel a club were available if needed, although they were very much a weapon of last resort, and that despite some continuing uncertainty they would not fall within Article 85 of the Treaty of Rome.

6.99. The Premier League said that it was still considering the pros and cons of establishing its own pay TV channel for broadcasting its matches. A number of studies had been done on it, but it was as yet uncertain whether the Premier League clubs wanted to go ahead with it. The merger would, however, be a potential obstacle to setting up such a channel.

6.100. The Premier League also feared that the level of investment in Manchester United would increase considerably after the merger, and that this would risk opening a yet wider gap between Manchester United and the other clubs in the Premier League. The risk was that the situation in England would become similar to Scotland (where there were just two clubs which dominated the Scottish Premier League). It was difficult to believe that BSkyB would limit the amount of money going into Manchester United just in order to keep the competition exciting. In addition there was a danger that BSkyB, as part of a major international media group, would begin to exert influence over the governing bodies in football—the FA, the Football League and the Premier League.

6.101. The Premier League said that it was very difficult to assess the full effects which the ownership of football clubs by broadcasters would have, although it seemed likely that a major consequence would be to exacerbate the imbalance between the larger and the smaller clubs. The impact which ownership of football clubs by broadcasters would have was likely to vary according to the nature of the broadcasters concerned. The impact would be very much more significant in the absence of collective licensing, since one could reasonably expect the club-owning broadcasters to reserve the broadcasting rights to their own clubs' home matches to themselves.

6.102. Those broadcasters which did not own football clubs would be disadvantaged vis-à-vis those that did. The Premier League also felt that if there were a number of other broadcasters/club mergers, it would be difficult to envisage the collective licensing system surviving, whatever the RPC's verdict on the issues. And it could envisage no circumstances in which individual licensing deals, in aggregate, could begin to match the levels of collective licensing deals. The Premier League's economists had examined the questions in great depth in the context of the RPC proceedings. One or two clubs might earn considerably more than at present, but the rest would suffer large losses.

6.103. If it were practicable to ensure sufficient and effective safeguards to protect confidential information about competing bids and to secure the integrity of the bidding and decision-making process, the Premier League believed that, in the context of collective licensing, the merger should not give BSkyB undue influence over the decision of the Premier League on the sale of TV rights. However, although the rules which had applied to bidding for previous TV contracts had been intended to prevent clubs from having contact with broadcasters, there was a real risk that, in future, BSkyB, as owner of Manchester United, would gain access to confidential information concerning bids from competing broadcasters. Each club was necessarily provided with information on which to form a view in relation to the relative merits of competing bids. That information was not available to the competing broadcasters, and access to that information would confer on BSkyB considerable advantage over other broadcasters.

6.104. There had been some informal contact between clubs and broadcasters both in 1992 and in 1996. On neither occasion was the auction conducted on strict sealed-bid lines. This had been because different bidders had wanted to bid on different bases; and the former Chief Executive of the Premier League, Mr Rick Parry, said that though it had been difficult to compare the bids because of this, in his view requiring bidders to meet a specification was not the way to optimize revenues. The 1996 round, however, was better organized and conducted closer to a sealed-bid manner; the actual bid offers were not revealed to the Premier League negotiators until 5 June 1996, the day before presentations were made to the clubs and a decision was taken. The Premier League intended to start preparing for the 2001 round during summer 1999. From this stage onwards there would be a danger of confidential information getting into BSkyB's hands, putting it in a privileged position. This was because there would need to be discussions between the Premier League and the clubs on the kind of structure they wanted for the impending rights deal. Although some might say that Manchester United should be excluded from this process, it would be very difficult to penalize the club in this way and, in addition, an exclusion arrangement of this kind would probably not be effective in denying Manchester United access to sensitive information.

6.105. The Premier League believed that the proposed merger would discourage others from bidding or increase their costs of doing so, particularly if rival broadcasters perceived there to be a risk that BSkyB would have access to confidential information concerning their bids and/or negotiations with the Premier League. For similar reasons, the Premier League also believed that access to confidential information would enable BSkyB to tailor its bid in ways that would not be so readily open to it in the absence of such information. That would have the effect of reducing the competition between BSkyB and rival broadcasters, and enable BSkyB to reduce risks inherent in participation in a competitive tendering process. It might even enable it to make a reduced bid.

6.106. As regarded possible remedies, the Premier League said that, if the merger were allowed to proceed, there was a need, as a minimum, to ensure that:

- (a) the businesses and management of BSkyB and Manchester United were kept separate and 'ring-fenced' so as to minimize conflicts of interest and undue preference; and to enable monitoring by the appropriate regulatory authorities;
- (b) there were tightly drafted undertakings to prevent confidential information being passed by Manchester United to BSkyB; and
- (c) BSkyB undertook not to give Manchester United undue preference in the choice of matches to be broadcast.

6.107. The Premier League believed that these remedies would go some way towards alleviating the adverse effects of the merger, provided collective licensing remained in place. It warned, however, that even behavioural remedies such as these might well be ineffective. They depended to a considerable extent on the successful operation of Chinese walls; there was no guarantee that these could operate satisfactorily. In the absence of collective licensing, it was difficult to see how any remedy other than prohibition of the merger would address the adverse effects.

The Scottish Football Association

6.108. The Scottish Football Association (SFA) did not comment directly on the proposed merger. It said that the most obvious concerns would arise in regard to conflicts of interest if a TV company were to become the owner or controller of a leading Scottish football club. Currently the SFA, the Scottish Premier League and the Scottish Football League negotiate individually with various TV companies for the rights to broadcast their matches. The aim naturally was to obtain the highest fee possible from the companies bidding for those rights and the correct level of exposure for the sport.

6.109. As the owner or controller of a member club, the TV company through the club could have representation on the SFA's Council and its committees, or on the Management Committees of the League(s), and would have access to reports of all committee business and decisions. With such inside information of the SFA's or League(s) affairs, the TV company would undoubtedly hold an unfair position in relation to that of the SFA or League(s) and other bidders should it be involved in bidding for the broadcasting rights to the SFA's matches. The ability of a TV company, directly or indirectly, to gain an unfair advantage in the commercial aspects of a football league or football association was worthy of serious analysis and was of considerable public interest.

6.110. The SFA said that it would appear to be the case too that there could be conflicts of interest arising in relation to the Government's policies on events listed under Part IV of the Broadcasting Act 1996, and in the wider European sphere, to the EC's 'Television without Frontiers' Directive. The Directive sets out rules that were meant to strike the right balance between the means of guaranteeing public access to broadcasts of major events, respecting the property rights and contractual freedom of event organizers and ensuring fair competition in broadcasting services throughout Europe.

The Scottish Football League

6.111. The Scottish Football League (SFL) said that in its experience of negotiating TV and other commercial contracts over many years, it seemed clear to it that for any football league to attempt to negotiate a commercial contract with a TV company, which was also a leading member club of that league, was an untenable situation for both parties.

6.112. As a League club, the TV company would be entitled to request, or even demand, detailed information as to the League's proposed responses to the various proposals put forward by the TV company and to request or demand details of the competitive commercial packages being offered by alternative broadcasters or sponsors. If the club had representation on the League's Committee of Management, then that representative would find it difficult not to become privy to even more confidential information. This potential lack of confidentiality would leave the League's negotiating body without any real credibility and actively discourage third parties from dealing with the League leading to a non-competitive situation. This would not be in the best interests of other clubs in the League or the public.

6.113. So far as safeguards were concerned, the SFL's Management Committee did not think that any permanent or realistic safeguards could be put in place. The football world was notoriously prone to leaked information, possibly because of the intense media interest in all of its activities. The conflict of interest caused by a club and a TV company being the same entity or being companies within the same group could only lead to hostile media comment and not unreasonable complaints by competitors.

Union des Associations Européennes de Football

6.114. UEFA said that it would appear to it that the proposed merger between BSkyB and Manchester United was primarily an internal matter for the UK authorities to assess. However, it noted that the acquisition of football clubs by large media groups was a developing trend which was already under way in various European countries and it viewed these developments with concern. Though it was difficult to assess what impact this development had had on the market for TV rights, UEFA suspected that, as a general rule, these developments served to increase the financial disparities between the top clubs and those below them. Whilst it was clear that football had become increasingly commercial in recent years, and although UEFA welcomed financial support for football, it feared that it would be a negative development for the sport if competition was ever to be reduced to a small number of teams which had been fortunate to secure the backing of a major investor. UEFA had no desire to see top-level European football operating as a closed shop, with entry reserved exclusively for the richest clubs.

6.115. UEFA invited us to reflect on the structures which had been adopted in American Football and which had, over the past 30 years, resulted in the considerable commercial and sporting success of the NFL. Whilst it might not be necessary, or possible, to replicate these US structures in Europe, UEFA believed that the European competition authorities could certainly benefit from a familiarity with the philosophy that underlined them. It was clearly of crucial importance for the success of the league (and the sport) for there to be a fair share of the revenues to all the competing teams. It also believed that this objective could most readily be attained if bidding for TV rights to the Premier League remained open, and if the global rights deal achieved by the League was in the interests of all the clubs, and not just a select few. It would certainly seem more difficult to achieve such a balanced result if, for example, BSkyB tried to acquire other clubs in the Premier League, as well as Manchester United, and it invited us to consider the implication of a condition precluding this. It was imperative that, whatever the outcome of this inquiry, the Premier League should remain able to select a broadcast partner that was able to deliver the best result for the entire membership of the Premier League.

6.116. Given the enormous interest in football today, UEFA did not consider that it was either realistic or desirable to prevent large media groups from investing in football clubs. Nevertheless, particularly in the light of these developments, it firmly believed that it was essential that the regulatory authorities supported structures which helped maintain a degree of financial and sporting balance between clubs. In this respect, UEFA said that the proposed acquisition of Manchester United

by BSkyB could not, and should not, be seen in isolation from the ongoing investigation which the OFT was conducting with regard to central marketing of TV rights by the English Premier League.

6.117. In UEFA's view, competition would not be enhanced if the rich clubs got richer and the poor got poorer. On the contrary, the quality of competition between clubs in the league would certainly suffer. Moreover there would be a reduction in the amount of quality football available to consumers, TV stations and sponsors. It was principally for these reasons that UEFA itself followed a centralized and co-ordinated approach which aimed to redistribute revenues in order to maintain a degree of balance (and thus healthy competition) between its national member associations. It believed that it was important for regulatory authorities to understand that central marketing was neither a cartel arrangement nor a relic from the former Soviet Union; it was, in fact, a necessary and efficient means to enhance and maintain a competitive balance between teams in a sports league. It was, above all, quality and variety of competition which gave football its real entertainment value in the first place.

6.118. UEFA observed that a fusion of a huge media concern like News International and a huge football club like Manchester United was likely to exacerbate existing financial imbalances between clubs in the English Premier League. Thus, if the merger were allowed to proceed it believed that it was all the more vital for the regulatory authorities to encourage (and not condemn) league structures which operated to share out revenues in an equitable manner and which served to stimulate the overall level of competition between teams. As a condition of the merger being allowed to proceed, a balancing mechanism should be found which enabled other clubs to remain in effective competition with Manchester United. In its view, the best way of achieving this was to endorse the collective selling of TV rights, and the fair redistribution of collectively-generated income.

6.119. A further issue that arose in relation to the acquisition of football clubs by media and other business groups was the question of cross-ownership. UEFA had adopted a rule in 1998 which prevented commonly-controlled teams from participating in the same UEFA competition. It was a fundamental responsibility of UEFA to protect the integrity of its competitions and it believed that sporting integrity could clearly be compromised if two clubs controlled by one and the same legal entity were drawn to play against each other in the same tournament. In its view, any reasonable person would immediately see an inherent conflict of interest in such a situation.

6.120. Though the issue of cross-ownership did not arise directly in relation to a merger between BSkyB and Manchester United, the matter might arise if, for example, BSkyB also sought to acquire a controlling interest in another major European football club. Two clubs controlled by BSkyB would not be eligible to participate in the same UEFA club competition. In addition, the rules of the English Premier League provide that (without a special consent from the board) no single person could own more than 10 per cent of the issued share capital of a club if that same person already had a direct or indirect interest of more than 10 per cent in another club. In UEFA's view, rules of this nature were vital to preserve the integrity of football and its image with the public.

6.121. UEFA believed that it would be detrimental both for football and for competition if a media group were to acquire more than one leading football club in Europe. At either the domestic level or at the European level (or both) serious doubts could arise as to the integrity of the contest between commonly-controlled teams. For this reason, UEFA also suggested that, if the merger were approved, a condition should be imposed which precluded BSkyB from purchasing another major club in Europe.

6.122. UEFA referred to the conflict of interest that would arise if BSkyB were to acquire Manchester United. BSkyB was both a substantial investor in, and also a partner of, the Premier League, and recently this company achieved the same status vis-à-vis Manchester United, just one among 20 clubs within the Premiership. This situation would undoubtedly lead to a conflict of interest that would be to the detriment of the other 19 clubs in the Premier League.

Football clubs

Premier League

The Arsenal Football Club plc

6.123. The Arsenal Football Club plc had no objection to the proposed merger. It believed that the involvement of the media, in particular BSkyB, had transformed English football in the 1990s, and that the Premier League was now regarded as one of the best in the world. Investment by media companies in football clubs was a logical next step in the development of football in the UK, and ultimately could only be for the long-term benefit of the game.

Aston Villa Football Club PLC

6.124. Aston Villa Football Club PLC (Aston Villa) believed that the proposed merger could only lead to the wider promotion of the professional game to the benefit of everyone concerned and should therefore be allowed to proceed.

6.125. It said that the Premier League was the envy of all the European leagues and clubs, which was due to the continual improvement in standards both in playing ability and in facilities for supporters. Also, the media in general had been responsible for the massive increase in the popularity of professional football in the Premier League.

6.126. Aston Villa said that this popularity had in turn encouraged professional football clubs to become public listed companies, which had resulted in additional finance from outside sources being invested in clubs. It therefore saw no reason why BSkyB, a media company with worldwide operations, could not become a major shareholder in a club such as Manchester United.

Leeds United AFC Limited

6.127. Leeds United AFC Limited (Leeds United) said that it had no objection to the proposed merger, and that it should be allowed to proceed. It believed that there was substantial emotion generated with regard to the BSkyB bid for Manchester United, which would not have been forthcoming had it been any other company making the proposed takeover. It said that, although there were potential conflicts of interest in TV negotiations, were Manchester United to be allowed to participate in such discussions it believed that such conflicts could easily be resolved.

Newcastle United PLC

6.128. Newcastle United PLC (Newcastle United) submitted its views prior to the board of the company becoming aware of the potential offer for the company by NTL. It said that it saw no reason to object to the proposed merger between BSkyB and Manchester United, nor did it see any reason why this bid should be treated differently than would be the case if the entity being acquired were not a Premier League football club.

6.129. It said that two fundamental principles applied. First, Manchester United had sought a listing as a public limited company in order to give it access to capital markets for the optimum development of the business and the shareholders benefited through the marketability of their shareholdings in that business. Secondly, any company which sought a listing on the Stock Exchange must understand that, for whatever reason, it might be the target for acquisition by another business.

6.130. Newcastle United was of the view that there were no circumstances within the structure or activities of a football club that would override these basic precepts, and if there were, they should

have been made clear at the time the listing was achieved. It believed that the proposed merger would not operate against the public interest, as it was part of the vertical integration process that applied in many industry sectors, and Manchester United was only one of 20 members of the Premier League.

6.131. Newcastle United also believed that, given the increasing attractiveness of professional football internationally and the changes in consumer attitudes towards developing technology, it had always seemed likely that businesses with a global reach (whether in media, leisure or consumer brands) would be interested at some stage in strategic alliances with leading football clubs.

Southampton Football Club Limited

6.132. Southampton Football Club Limited (Southampton) said that the proposed merger would inevitably create conflicts of interest, which would need to be handled with care and transparency. However, the merger should help effective delivery of live football to those people who, for whatever reason, were unable to attend matches.

6.133. Southampton said that the structure of football was changing in favour of the larger clubs, very often to the detriment of the smaller ones, but that it was difficult to see how the proposed merger accentuated this process. A far greater potential threat to the structure of football in the UK rested in the outcome of the OFT's investigation into the Premier League.

6.134. In conclusion, Southampton said that free markets tended to operate better than those that were heavily regulated. Public companies were in the shop window and, as such, were potential takeover targets.

Tottenham Hotspur plc

6.135. Tottenham Hotspur plc (Tottenham Hotspur) argued that the proposed merger should be allowed to proceed. If BSkyB were to acquire Manchester United, it would not result in BSkyB having increased influence in the running of the Premier League, in the same way that the wealthy backers of clubs such as Blackburn and Liverpool had no special influence. The Premier League was a well-managed business; Manchester United had only one vote out of 20, and the situation would not change whoever owned the club. Furthermore, major decisions of the Premier League required a two-thirds majority of its members.

6.136. Tottenham Hotspur said that the only anomaly it envisaged would be a possible objection to Manchester United's involvement in Premier League TV contract negotiations. Apart from that, and in its experience as a founder member of the Premier League, Tottenham Hotspur could not think of any other area whereby a media company could have influence in the future running of the game. If the sale of TV rights were to become a matter for each individual Premier League club (as opposed to the present collective arrangement), Manchester United would not have any advantage over other clubs in selling its rights simply because it was owned by BSkyB. It needed two teams to create a game of football; no opponents would play Manchester United unless they received an equal share of the revenue from TV. In this scenario, any refusal by Manchester United to co-operate fairly with other clubs would result in it being ostracized; clubs would be unwilling to participate in matches with it.

6.137. Tottenham Hotspur commented that on numerous occasions when collectively discussing commercial contracts, the clubs, including Tottenham Hotspur itself, had declared conflicts of interest. In a worst case scenario it would not be unreasonable for the constitution of the Premier League to change, so that any club having a media company as a shareholder (say above 3 per cent) would no longer be able to participate in, or be privy to, contractual issues relating to future TV contracts. Considering that these negotiations were normally held every four years or so, it would not be onerous on Manchester United to have no input in this isolated matter. Tottenham Hotspur assumed that the proposed merger between BSkyB and Manchester United was something mutually desired by both parties and, as such, felt that Manchester United would agree, if asked by the majority of the other clubs, to accept non-participation in TV matters.

6.138. Tottenham Hotspur said that it was difficult to see why a media company would, from a public interest point of view, be a less desirable shareholder in a football club than, for example, a pension fund or a property company. Media ownership of football clubs was already prevalent in countries such as France, Italy, Switzerland and the USA, and it expected to see similar acquisitions of football clubs by media companies in the UK in future. English football must be allowed to move forward; the football industry needed more investment and this should be encouraged. Football clubs would continue to become public companies, thus enabling them to raise the necessary capital to invest in new stadiums and in quality players.

Football League

Brentford Football & Sports Club plc

6.139. Brentford Football & Sports Club plc objected to the proposed merger. If the merger were allowed to proceed, it believed that a number of other clubs would become attractive to media groups and this would polarize the wealthy clubs in the UK to the detriment of the football industry. The future of other professional football clubs in England must be considered simply because of the potential effects on employment for a large part of the country's workforce that was engaged in football.

Brighton & Hove Albion Football Club Limited

6.140. Brighton & Hove Albion Football Club Limited was opposed to the proposed merger which, it said, could not be seen as fair or as being in the best interests of football and football supporters. A merger of the country's biggest football club and sport's largest media backer would compromise the integrity of any future negotiations between the Premier League and BSkyB. It threatened the even-handed approach necessary to spread the revenue derived from TV more fairly throughout the four English football divisions thus encouraging football to flourish at all levels, rather than see this income become even more concentrated for the benefit of an elite group of clubs.

Cambridge United FC

6.141. Cambridge United FC (Cambridge) believed that the proposed merger represented a high degree of risk for the nation's football industry. Should the merger proceed, it might result in a significant reduction in the Premier and Football Leagues' ability to negotiate the best commercial broadcasting agreements when the current agreements with BSkyB expired. Similarly, Manchester United would be in a privileged position (as part of BSkyB) to make its own broadcasting arrangements at the expense of the other football clubs. This could clearly result in a further decline in the financial fortunes of many of the smaller clubs, possibly forcing some of them out of business.

6.142. Cambridge said that if the proposed merger were allowed to proceed, it would be a signal to other broadcasters and media groups to acquire the other financially-strong clubs in the Premier League and thus committing the less attractive clubs to certain failure. It believed, therefore, that the merger should be prohibited because of its potentially damaging effects.

Supporters' clubs and associations

Football Supporters' Association

6.143. The Football Supporters' Association (FSA) told us that it was a democratic, direct membership organization, which had been in existence for over 13 years and represented the interests of fans on a wide range of issues. The FSA was opposed to the proposed merger between BSkyB and Manchester United.

6.144. It said that the creation of the Premier League had led to an imbalance in football whereby clubs in the Premier League received an increasingly disproportionate amount of income relative to clubs in the Nationwide League, feeder leagues and non-league clubs. It was imperative that football managed itself in such a way so that priority was given to the buoyancy of the league structure, by encouraging young people to play and watch the game and supporting youth development. If the Premier League were to continue to collectively negotiate a national TV deal, the merger would prevent fair competition among broadcasters, as the Premier League would be unable to continue with the present sealed-bid system when the contract was next negotiated in 2002. This could lead to BSkyB retaining the contract even without making the best offer, which would be detrimental to the interests of other Premier League clubs.

6.145. The FSA believed that ownership of Manchester United by an organization of BSkyB's size and influence would result in increasing resources being diverted to one football club at the expense of the rest; an exacerbation of the very inequalities that were strangling the game at grass roots. More importantly, because BSkyB was a communications company, it was inevitable that owning Manchester United would result in a prioritization of televised football ahead of the live game and Manchester United being used as a 'televisual product' over the club in the community.

6.146. As football was now televised by BSkyB on several different days during the week (Sunday afternoon, Monday and Friday evenings), people were making decisions to watch televised matches rather than travel to see live games, with the following effects:

- (a) a reduction in the number of people watching live football in the lower divisions, thereby making those clubs unsustainable; and
- (b) a reduction in the excitement of the game both for people watching it live and on TV.

6.147. The FSA believed that the merger would lead to an even greater number of Manchester United's games being switched to kick-off times that were less convenient for supporters who wished to attend matches in person. Evening matches were more difficult to attend for those supporters who lived some distance from Manchester (including the many Manchester United supporters in other parts of the country, and for supporters of the away team), especially for those dependent on public transport.

6.148. If in the coming years this had the effect of making the TV football 'product' less exciting, companies like BSkyB would reduce their investment leaving the game with nothing. The merger would mean that no Manchester United home games would be shown on terrestrial TV, and would increase the cost to supporters who watched matches on TV, especially if the matches were only broadcast on a pay-per-view TV channel. This would exclude those on low incomes and those who were too young to be able to watch the games in licensed premises. There would also be an impact on younger footballers who wished to improve their skills by studying top players in action. If Manchester United's home games were restricted to a dedicated MUTV channel this would have a particular impact on the away team's supporters who would not want the expense of subscribing to this channel for one match per season, but who might have difficulty getting to see the matches in person, since Manchester United allocated only 3,000 tickets to each visiting club.

6.149. The FSA felt that most football fans would agree that BSkyB's presentation of football was superior to that of the other broadcasters, particularly ITV. Fans wanted to see more discussion of the issues in football, not just what was happening on the pitch. For example, from a football point of view, fans were interested in what managers were trying to achieve; what was happening behind the scenes; and how the clubs were performing financially. The FSA said that when ITV had the contract to broadcast matches in the period up to and including the 1991/92 season, it was very limited over which clubs it chose to feature; Liverpool and Manchester United were featured heavily, even when both clubs were not having a particularly good season. At present, BSkyB offered a much better spread of clubs within the Premier League, but the FSA believed that that was under threat by the proposed merger. If it were allowed to proceed, it feared that Manchester United's matches would be broadcast weekly regardless of how successful the other, smaller, clubs might be.

6.150. The FSA added that the outcome of this inquiry would set a precedent as to whether or not it was acceptable for broadcasting companies to acquire football clubs. It noted that NTL had acquired an option to purchase a controlling interest in Newcastle United, but had announced that it would await the outcome of this inquiry before deciding whether or not to exercise that option.

Independent Manchester United Supporters' Association

6.151. The Independent Manchester United Supporters' Association (IMUSA) said that it was widely recognized that BSkyB was dominant in the market for pay TV in the UK. Control of Manchester United would enable BSkyB to reinforce that position of dominance because it would hand BSkyB even greater control of live rights to Premier League football for the foreseeable future than it would otherwise enjoy, thereby seriously undermining the competitive threat posed to BSkyB by digital terrestrial TV and cable. Detrimental effects might in particular be felt in the following markets within the pay TV sector, namely the markets for: Premier League rights; retail supply of pay TV packages; and wholesale supply of pay TV programming.

6.152. The IMUSA said that the proposed merger raised questions about the potential adverse impact on competition within the pay TV sector of BSkyB extending its vertical integration downstream.

6.153. With regard to the market for Premier League broadcasting rights, the IMUSA referred to the DGFT's *Review of BSkyB's Position in the Wholesale Pay TV Market* of December 1996, which stated that 'we were satisfied that there were no close substitutes for live Premier League rights. On a hypothetical monopolist test live Premier League football would constitute a separate market'. The IMUSA said that this conclusion simply reflected that consumers much preferred to watch sport as it happened, and that other sports did not provide an effective substitute for football. Moreover, football from other leagues (lower English leagues or foreign leagues) was no substitute for Premier League football. Therefore, exclusive control of live rights to Premier League football foreclosed a relevant market because live Premiership football constituted a discrete market.

6.154. At present, the rights to broadcast Premiership football were awarded on a collective basis by the Premier League. In 1992 BSkyB was awarded exclusive live rights to broadcast Premiership football, and it currently holds them until 2001. However, BSkyB had argued that this did not constitute a barrier to entry into the market for live rights to Premiership football (and thus foreclosure of the market) on the basis that rights were awarded through a bidding competition open to all broadcasters.

6.155. The IMUSA said that the merit of such an argument was debatable. The dominance which BSkyB enjoyed over the UK pay TV sector, at both retail and wholesale levels, meant that it already enjoyed revenue streams significantly beyond those of rival broadcasters. BSkyB, if need be, could also raise additional revenues by increasing its retail and wholesale prices for programming. This enabled it to bid for sports and movie rights at prices which rival broadcasters could not readily match. In these circumstances, it was questionable whether bidding competitions for rights were truly meaningful.

6.156. If BSkyB were to acquire Manchester United, the balance of power in negotiations for Premier League rights would change in a way that could only reinforce BSkyB's position of strength when seeking to secure exclusive live rights, thereby reinforcing its dominance throughout the pay TV sector.

6.157. It was self-evident that a BSkyB-controlled Manchester United would object to live Premier League rights being awarded to any broadcaster other than BSkyB. Although Premiership rights were at present negotiated on a collective basis by the Premier League and Manchester United was but one of 20 clubs in the Premiership, the Premier League would in practice be most unlikely to award live rights to a particular broadcaster against the wishes of Manchester United.

6.158. The IMUSA said that Mr Murdoch's business had already been linked with Media Partners' proposals for a European Super League and Media Partners was linked to Silvio Berlusconi who in turn controlled Mediastat. Against this background, the Premier League could be expected to become even more wary of the risk of Manchester United under the control of BSkyB withdrawing

from the Premiership. Other broadcasters would therefore be at a significant competitive disadvantage when seeking to secure live Premiership rights from the Premier League if BSkyB controlled Manchester United.

6.159. The negotiating process would be distorted in BSkyB's favour simply by virtue of the fact that it would effectively find itself on both sides of the negotiating table if it controlled Manchester United. Manchester United would be in a position to help ensure that BSkyB's bid was more competitive than those of other broadcasters. The manner in which it secured the Premier League rights in 1992 seemed to illustrate this point.

6.160. Even if BSkyB's offer for Premiership rights was higher than the offers of other broadcasters, competition could nonetheless be distorted if it controlled Manchester United. Manchester United was, arguably, the most commercially sophisticated of the Premier League clubs, to which many Premiership clubs looked for commercial leadership. Manchester United under the control of BSkyB would not look to extract as high an offer as possible from BSkyB, but simply to ensure that it secured the rights. It was conceivable, therefore, that if it controlled Manchester United, BSkyB would be able to secure Premiership rights for less money than if Manchester United was acting independently.

6.161. Moreover, if the merger went ahead, it would make it difficult to maintain the quota system which helped the smaller, less popular clubs, by limiting the number of times any club could be shown live in any season. Therefore, competition in the market for live Premiership broadcasting rights would be (even further) significantly distorted in favour of BSkyB if Manchester United were to be controlled by it.

6.162. The collective basis on which the Premier League negotiated rights was due to be considered by the RPC. Even if live Premiership rights were negotiated on an individual basis, competition would still be significantly distorted:

- (a) BSkyB would, it could reasonably be assumed, automatically secure the rights to Manchester United's home games, which in themselves were among the most lucrative of Premiership rights and, unlike most Premiership rights, they could be used on a pay-per-view basis.
- (b) Given Manchester United's commercial sophistication, it could be expected (if acting independently) to obtain full market value for its rights, such that other less commercially-sophisticated clubs would be able to use Manchester United's deal as a comparative benchmark when seeking to negotiate full market value for their own rights. Without Manchester United's commercial leadership, other clubs would be less able to bargain effectively with BSkyB and other broadcasters.
- (c) BSkyB could make use of Manchester United's influence when negotiating with other clubs.
- (d) Other major clubs, such as Arsenal and Liverpool, would have in mind the desirability of being aligned with the same broadcaster as Manchester United if the breakaway European Super League came to fruition.
- (e) The revenue stream from Manchester United's home games would enable BSkyB to offer prices for other rights that rival broadcasters could not match.

6.163. Therefore, although BSkyB's control of Manchester United would not necessarily lead to total foreclosure of the market if there were individual negotiation of Premiership rights, it would nonetheless lead to a significant, and potentially harmful, level of foreclosure. If collective negotiation remained, the foreclosure effects were greater and more certain. Foreclosure of the market for Premiership rights could be expected to have a significant adverse impact on the retail and wholesale supply of pay TV packages.

6.164. With regard to the market for the retail supply of pay TV packages, the IMUSA said that movie and sports channels were the main reasons why consumers were willing to make the investment

(in receiving equipment and/or subscriptions) to receive pay TV. Premiership football was the most important type of sport for a broadcaster to be able to show in order to persuade consumers to subscribe for its pay TV package. Moreover, Manchester United's games accounted for a significant share of total viewing of Premiership games. An analysis of BSkyB's viewing figures for Premiership games during the 1997/98 season had shown that 20 per cent of all Premiership games shown live by BSkyB involved Manchester United; that these games accounted for 26.6 per cent of total viewing of live Premiership games; and that average viewing of Manchester United games was 33 per cent greater than average viewing of Premiership games generally. The IMUSA said that it should be noted that these figures in all probability understated the attraction to viewers of Manchester United games, as compared with games involving other clubs, because the quota system relating to the broadcast of Premiership games imposed a cap on the number of Manchester United games that could be shown live in a season. Without this cap, Manchester United games would most likely account for an even higher share of all games shown live. The relative attraction of Manchester United's games to viewers was demonstrated by the fact that seven of the ten most-watched live football games (on both free and pay TV) in 1997/98 involved the club.

6.165. The strength of Manchester United's following meant that it was one of the few clubs in the Premier League which could expect to broadcast its home games on a pay-per-view basis profitably. If BSkyB were to acquire control of Manchester United, it would be able to broadcast the club's home games exclusively on a pay-per-view basis. The fact that rival broadcasters, unlike BSkyB, would be unable to offer the club's home games as part of their pay TV package would put them at a competitive disadvantage compared with BSkyB when marketing their services to consumers.

6.166. Competition in the retail market would potentially be distorted even if BSkyB did not retain Manchester United's home games solely for its own satellite service. The importance of Premier League football to consumers meant that a broadcaster would be at a severe competitive disadvantage if it could not offer Premiership football as part of its pay TV package. This would mean that if BSkyB held exclusive live rights to Premiership football, then its competitors (ONdigital and cable operators) were in practice forced to buy BSkyB's premium sports channels in order to market their pay TV packages against BSkyB's satellite service effectively—assuming that BSkyB did not sell/broadcast live Premiership programming separately.

6.167. Consequently, competition would also be distorted in respect of the retail supply of pay TV packages if BSkyB was permitted to acquire Manchester United because the resulting foreclosure effect on the market for Premier League rights would mean that broadcasters would have to buy BSkyB's premium sports channels indefinitely, thereby making them heavily dependent upon BSkyB.

6.168. This would be the case even if Premiership rights in future fell to be negotiated by clubs individually, rather than collectively as at present. For the reasons set out earlier, the market for Premiership rights would still in practice be significantly foreclosed such that the live Premiership rights which rival broadcasters could realistically expect to acquire would not be as attractive to consumers as the live Premiership rights forming the basis of BSkyB's offering.

6.169. Moreover, BSkyB enjoyed control not only of Premier League rights, but also over most, if not all, other major sports events of significant interest to UK consumers. Therefore, even in a world of individual bargaining of Premiership rights, rival broadcasters would find it virtually impossible to create a premium sports channel with content capable of competing with BSkyB's offering. As a result, rival broadcasters would in practice still be forced to buy BSkyB's premium sports channels.

6.170. The ability of BSkyB's competitors to mount a serious long-term competitive challenge to it in the retail market would be significantly undermined if they were dependent upon BSkyB for the supply of premium sports channels. BSkyB would be able to take steps to head off any significant challenge from a competitor at the retail level. The IMUSA said that the following potential abuses were open to BSkyB, and were extreme examples:

- (a) BSkyB could refuse to supply its premium sports channels, thereby precluding its competitor from being able to offer a pay TV package attractive to consumers.

- (b) It could charge high prices for its premium sports channels, in effect forcing its competitor either to pass the extra cost on to its consumers (thereby making its offering less attractive than BSkyB's satellite service) or to absorb the extra cost itself (thereby reducing its profitability).
- (c) It could make the supply of its premium sports channels conditional upon its competitor also buying other BSkyB channels, for example its basic channels.
- (d) In reality, BSkyB would not need to implement such clear-cut cases of abuse in order to put its competitors at a competitive disadvantage. Given BSkyB's current dominance of the pay TV sector, any potential competitive disadvantage to its competitors was cause for concern.

6.171. With regard to the market for the wholesale supply of pay TV programming, the IMUSA said that it was driven by demand at the retail level. Therefore, the most lucrative types of programming to be able to supply at the wholesale level were those which were used to make up premium channels, ie sports and movie programming.

6.172. On the basis that live Premier League football was the most important type of sport for a broadcaster to be able to offer consumers, foreclosure by BSkyB of the market for live Premiership rights would also have an adverse effect upon BSkyB's competitors in the wholesale market; it would deny them access to the rights required to be able to provide an important type of sport, and therefore pay TV, programming at the wholesale level.

6.173. The IMUSA submitted views on a number of issues concerning the wider public interest, including the impact of the merger on supporters and the future of professional football. It said that the proposed merger was a further significant development that could see the end of football in England as we currently knew it. It would mark the end of Manchester United as an independent entity. Until now the club had been a largely self-contained operation; even when it became a PLC the football club had remained the core of the business. This would not be the case if Manchester United PLC became just a small part of News Corporation's global media empire.

6.174. Football supporters were part of the lifeblood of the sport, and without them to create the atmosphere the whole spectacle of professional football would be gravely diminished. Manchester United enjoyed loyal and dedicated support from large numbers of supporters; this support had been maintained both in times of success and failure. The wealth of football clubs generally was largely generated through supporters; they contributed through their attendance at games, purchasing of club merchandise and through revenue generated by them watching the game on TV. However, despite their importance, the views of football supporters had largely been ignored by those who ran the game. The IMUSA submitted that the views and interests of supporters would be even further marginalized if Manchester United became simply one part of News Corporation's empire. It also believed that this would be the case for supporters of other clubs that were acquired in this way.

6.175. Football was not just another commodity and so football supporters could not be seen as ordinary consumers. By and large they did not change brands depending on quality and price. Once committed to a particular club, supporters could never experience the same emotions for another one. Deep loyalty to clubs had often been built up within families over many generations. A side-effect of this loyalty was that football fans were ripe for exploitation. It had been demonstrated over recent years that supporters would endure a great deal to continue to watch and be identified with their particular team.

6.176. The IMUSA believed that BSkyB's main motivation for acquiring Manchester United was not its love of football. Should the RPC rule against the Premier League's current collective selling arrangements, BSkyB would want to preserve its position by having control of the biggest club. It wanted to ensure its place in any future collective negotiations, including those regarding a possible breakaway European Super League. The interests of Manchester United supporters were of a secondary, if any, importance to BSkyB. The IMUSA was concerned that the proposed merger would lead to supporters facing even greater exploitation than was already the case. In particular:

- (a) Watching football matches at grounds and on TV were partial substitutes for each other. The merger would give BSkyB a monopoly in both media for Manchester United's home games.

Common ownership of these partial substitutes could be expected to result in price increases, both for match tickets and watching the game on TV.

- (b) Supporters would face still greater exploitation through the cost of club merchandise.
- (c) Team selection could be determined in order to serve the commercial interests of News Corporation.
- (d) Kick-off times could be subject to further considerable disruption should News Corporation wish to show live games in other parts of the world, including south-east Asia where it had extensive TV interests.

6.177. Manchester United was not just a business. Despite its success and international support, it remained, like other clubs, an integral part of its local community and the heritage of the country generally. Football was a game of great drama and emotion that touched many people's lives. The IMUSA was concerned that once Manchester United had lost its independence as part of News Corporation, all of this would be jeopardized. In particular:

- (a) The interests of Manchester United could be sacrificed to the overall interests of News Corporation, thus:
 - (i) News Corporation attached great importance to increasing its penetration of the Asian market. One strategy that it might adopt to achieve this would be to ensure that Manchester United's first team included popular Asian players.
 - (ii) Players could be sold to suit the interests of News Corporation's global empire despite the adverse effects this might have on the club.
 - (iii) Manchester United was currently under no legal obligation to negotiate with more than one supplier in relation to broadcasting rights, and it was unlikely that there would be any arm's length negotiations with BSKyB; BSKyB, in effect, would be the monopoly broadcaster of Manchester United's games. Consequently, it was questionable whether the club would receive full value for these rights.
 - (iv) If a European Super League was formed, it might be in Manchester United's best interests to join, but BSKyB might not permit this unless it had secured the TV rights.
- (b) At some point in the future the club might be relocated to another part of England, or even to another country, as had been the case in other sporting acquisitions by News Corporation.
- (c) The distinctive identity of the team, including the club strip, could be threatened if it conflicted with News Corporation's commercial interests.

6.178. The IMUSA said that its concerns about the future of football were not fanciful. In Australia, Rugby League was thrown into turmoil by the intervention of Rupert Murdoch through his cable TV company, Foxtel. In 1994 attendances were at an all-time high and the sport had dominated the TV ratings. Foxtel wanted the TV rights in order to attract subscribers, but these were contracted to a rival company. Foxtel therefore decided to try to establish a rival Super League by tempting more than 200 players to defect, offering them huge salaries and cash bonuses. The game was deeply damaged as a result, with poor TV ratings and attendances becoming the norm in both leagues.

6.179. In Mexico, two media conglomerates owned four of the 18 first division clubs, all of which were linked to one of the two broadcasters that transmitted every league and cup game. These teams regularly swapped players. The media companies organized competitions and played a part in arranging kick-off times; they also determined which club would represent Mexico in international competitions. This was not based on winning domestic trophies, but on viewing figures.

6.180. The IMUSA said that the proposed merger raised a number of concerns in relation to football, including:

- (a) the impact on football of the major clubs becoming the property of media corporations in terms of competition between clubs. The IMUSA believed that the commercial interests of BSkyB in having a close competitive league in which different teams won were not the same as those of Manchester United which should want to win all the time;
- (b) the impact of kick-off times to suit the schedules of media companies. The IMUSA said that the advent of clubs being owned by TV stations could see football becoming almost continuous as they sought to avoid other big matches that might damage viewing figures. Live televised football could already be seen almost every night of the week;
- (c) the impact of the development of a few super clubs on smaller teams and on the lower league. The IMUSA commented that hopes of smaller teams rising to the top were already increasingly remote, and they could become non-existent, particularly if a European Super League were established, with no automatic promotion or relegation. This could harm much of the romance of football;
- (d) the IMUSA believed that the merger would undoubtedly bring forward the likelihood of a European Super League. However, there had been no consultation as to whether that was what football supporters wanted, or whether it would be good for the game generally;
- (e) the impact of this and other mergers on football finances. The IMUSA was concerned that none of the money paid by BSkyB in this transaction was likely to benefit the football club, with the proceeds going instead to the directors and shareholders; and
- (f) the FA's rules currently prevented anyone from owning more than one club. However, now that football was becoming big business this rule might constitute an illegal restraint of trade and could be unenforceable. If so, BSkyB could acquire further clubs and this would raise serious questions regarding conflicts of interest, and the running of the game generally.

6.181. IMUSA also submitted a report on the globalization of sport.

Portsmouth FC Supporters' Club

6.182. Portsmouth FC Supporters' Club, Central Branch (PSC), said that, if the merger were allowed to proceed, then BSkyB would be involved in negotiations for TV rights both as a buyer and a seller of football. This would give rise to a strong conflict of interest, as the best deal for football might not necessarily equate to the best deal for BSkyB as a TV company. Ownership of Manchester United by BSkyB might also involve it in discussions concerning the future structures of both the domestic and European games. Manchester United, as the largest and wealthiest club in England, had a greater influence than many of the smaller clubs; in this situation further conflicts of interest were bound to occur as BSkyB focused its priorities on whatever course of action provided the most lucrative TV contract. These issues raised serious doubts as to whether a merger of this nature was fair and in the best interests of football and the public.

6.183. The PSC said that to a certain extent the FA fulfilled the role of a regulatory body. With limited legal powers it seemed unlikely that the FA would be able to exert any influence on a football club as dominant as Manchester United controlled by BSkyB. It was also uncertain what effect the proposed merger would have on the availability of English players for international matches.

6.184. The PSC was extremely concerned about the consequences of a merger of this nature on football. If BSkyB succeeded in its bid for Manchester United, it was almost certain that other TV companies would follow suit. Ownership of football clubs by powerful TV companies would undoubtedly affect attendances at matches, admission prices, players' wages, TV revenues and youth football policies. The effects would cascade down from the large Premier League clubs to the Nationwide and non-league clubs. The ever-widening gap between the rich and poor clubs would increase and it was felt that this would ultimately lead to a reduction in the number of clubs and the subsequent decline of football; this could not, under any circumstances, be in the public interest.

6.185. The PSC added that vast numbers of people actively participated in supporting or playing football at all levels throughout the UK. It was likely that companies such as BSkyB would have little regard for the views of these people, as its priority was to generate profits for its shareholders. Football was already too expensive for many families to be able to attend matches on a regular basis. It feared that if the proposed merger were allowed, then football would be a step closer to alienating itself entirely from working class people.

Professional Footballers' Association

6.186. The Professional Footballers' Association (PFA) represents over 4,000 professional footballers in England and Wales. It said that professional football needed to have effective competition if it was to succeed as a public entertainment, and needed to have a strong administrative framework and effective rules so as to preserve a true element of competition. Football was seen by the European Court of Justice, in the 'Bosman' ruling, as having considerable social importance in the community and it was therefore important to maintain a system which involved as many local communities as possible, and hence as many teams, through which players could develop. The success of football as a sport depended entirely upon a strong infrastructure. Control of the laws of the game, the rules of competitions, the disciplining of players and the administrative and social development of the sport for the benefit of all involved—not least the spectators—must rest in the hands of independent bodies such as the FA and Football League, the Premier League and the PFA. If financial control of the game were to be concentrated in the hands of a few clubs and TV companies worldwide (and one club and one broadcaster in the UK), then the game of football would suffer, as would the mass of spectators and local footballing communities.

6.187. Having a policy of 'survival of the fittest' in football could destroy the game and was against the public interest, when considering that over half of the 20 million supporters who watched live games each year did so outside the Premier League. Football could be destroyed by allowing just a few British clubs to become so powerful that the game was effectively ruined for all other professionals.

6.188. The PFA said that collective bargaining was one of the methods of maintaining a balance, whilst still enabling top clubs to reap the rewards of their success. For this reason the Premier League TV agreement was beneficial. Each TV company could compete for TV rights, but the collective bargaining position of the Premier League enabled it to secure for footballers much income from television—as much as was going to be obtained in any other manner—and yet have some impact on the distribution of that money so as to preserve the competitive element and integrity of the game. A sport which allowed itself to be dominated by TV must perform in whichever way the media wished to package it.

6.189. It followed, therefore, that, if a dominant TV company were to take over the most successful football club, then there would be a quantum leap forward in the domination of the game by that partnership. There would no longer be free bargaining between football clubs (albeit collectively) and different TV companies. A TV company controlling the most desirable club would have a totally unfair advantage, and for all practical purposes would dominate any future negotiations over TV rights and the division of income. This would soon result in many smaller clubs either having to be wound up or being absorbed as nursery clubs into the more dominant clubs in their particular areas. At present, football is a social sport enjoyed by large numbers of people every week; the fear was that it might become a TV sport where people wishing to watch top-class football had no option but to stay at home and watch the same dominant clubs playing each other each week.

6.190. The PFA said that if the proposed merger between BSkyB and Manchester United were allowed it would operate against the interests of fair competition in sport, which was essential if it was to survive; and, because football was the major spectator sport in the country, the merger would be very much against the public interest as was evidenced by the public outcry following the announcement of the bid.

Shareholders United Against Murdoch

6.191. SUAM submitted views on behalf of over 270 shareholders in Manchester United, who together held an estimated 700,000 shares, and who were all supporters of the club. It said that the proposed merger would operate against the public interest and for this reason it should be prohibited. There were no suitable undertakings that could address the public interest concerns that would arise if the proposed merger were allowed to proceed.

6.192. SUAM said that Manchester United was the leading English Premier League football club by a considerable distance and was thus a significant content provider of premium broadcasting rights, which were themselves a discrete relevant market for the purposes of competition analysis.

6.193. The vertical integration of Manchester United and BSkyB would reinforce BSkyB's existing dominance in a number of pay TV markets and would facilitate the leveraging of this dominant position into any developing digital TV markets for pay TV and pay-per-view TV, in particular the wholesale pay TV market in the UK, the retail pay TV market in the UK and the wholesale supply of sports channels for retail pay TV. The vertical integration would either give BSkyB a distinct advantage in the negotiation of the collective rights to broadcast Premier League football or deprive BSkyB's actual or potential competitors in each of those markets of the opportunity to negotiate, at the very least, exclusive agreements for the broadcasting rights to Manchester United's content.

6.194. In any event, the proposed acquisition would inhibit the development of a competitive pay TV market in the UK. Broadcasting rights to premium content had been recognized as a key facilitator of new entry into the market and a key driver of subscriptions to pay TV. Consumers would rightly conclude that obtaining pay TV from BSkyB would provide a (near) guarantee of the option to view live matches involving Manchester United that could not be matched by its pay TV competitors. This would permanently distort the existing pay TV and any developing digital pay TV markets by inhibiting new entry and/or expansion, thereby reducing the level of competition and consumer choice.

6.195. SUAM said that the proposed merger would distort the competition for the championship of the Premier League. A significant factor in the competition for the league championship was the ability of clubs to finance the acquisition of new players where necessary. The proposed merger would inevitably distort the value of Manchester United's rights to broadcast its content, which would in turn have an impact on the ability of Manchester United to buy new players.

6.196. BSkyB would inevitably under- or over-compensate for the club's inability to realize the full value of its broadcasting rights in a free and competitive market on a regular basis, and this would affect the amount of money that the club would have to obtain new players. This would itself distort competition between Manchester United and other clubs in their quest for the championship.

6.197. SUAM believed that the proposed acquisition would have a detrimental impact on the choice available to consumers wishing to watch live matches involving Manchester United. At present, there were only two main channels of distribution of the club's matches: obtaining tickets to watch the match at Old Trafford and retail pay TV (whether cable or DTH).

6.198. Currently, the price of watching live matches via the two main channels of distribution was determined by different entities, the football club on the one hand and the broadcaster on the other. These, to a certain degree at least, acted as a competitive restraint upon one another.

6.199. With the development of pay-per-view TV through digital TV, it was likely that a clear link between the prices for watching the matches through these two different channels would develop; thus there would come to be recognized a separate market for live Manchester United matches.

6.200. SUAM said that it would be against the public interest for one enterprise (the vertically integrated BSkyB/Manchester United) to have the ability to determine prices for both channels of distribution. The proposed merger would have a serious detrimental impact in that it would inhibit the development of a competitive pay-per-view TV alternative, thereby depriving consumers of choice and, as a consequence of that choice, a constraint upon the prices charged for attending matches and vice versa.

6.201. SUAM believed that undertakings were not appropriate in this case to address the concerns arising out of the strengthening of BSkyB's existing dominant positions. Digital TV pay TV markets were currently at a transitional stage; the advantage that BSkyB would gain by acquiring Manchester United would permanently distort competition in this area, preventing the development of a competitive environment. No undertakings could address this.

6.202. SUAM said that, even if apparently satisfactory undertakings could be found, it could be expected that BSkyB would not, due to the influence of Rupert Murdoch, honour such undertakings. It cited a number of occasions where Mr Murdoch had not honoured undertakings, or where he had reneged on promises given. These included reneging on important promises when bidding to buy the *News of the World* in 1969; failure to honour binding undertakings given when he bought *The Times* and *The Sunday Times* in January 1981; and reneging on an agreement with the electricians' union at Wapping in 1986. SUAM submitted that Mr Murdoch's failure to honour legally binding obligations was itself persuasive evidence of a significant risk that BSkyB would attempt to use its enhanced position to gain an unfair competitive advantage to the detriment of customers and competitors.

6.203. In relation to the avoidance of cross-subsidy (a requirement on the part of BSkyB to give full value to Manchester United for the broadcasting rights of its matches), undertakings would not be adequate, since it would not be possible to determine the full value of the broadcasting rights Manchester United would have been able to realize if the club was vertically integrated with the dominant competitor in pay TV markets.

6.204. SUAM said that any undertakings designed to address the potentially significant reduction in choice—in terms of price at least—for consumers wishing to watch Manchester United live, whether at the stadium or via retail pay TV, could only be addressed by introducing price controls on a permanent basis to what was currently an unregulated industry.

6.205. With regard to other public interest concerns, SUAM said that we should take into account the special nature of sport generally, and the particular interests of football fans in particular. There was no doubt that a very strong bond existed between the football fan and that club that he or she supported, and it was inevitable that this bond was one that was in conflict with a corporate entity whose responsibility must necessarily be to its shareholders. The subordination of the interests of Manchester United—the club and its supporters—to BSkyB would be an obvious consequence of the acquisition. Furthermore, we should consider the broader interest of media ownership, at a time when increasing concentration and cross-media ownership was taking place at a rapid rate.

6.206. Finally, SUAM also pointed out that, if there was a merger between BSkyB and Canal+ — as had recently been discussed in the press—Manchester United's prospects of playing in European competitions would be significantly jeopardized. UEFA's rules, in SUAM's understanding, prohibited clubs with common owners from taking part in the same UEFA competitions, and Canal+ already owned Paris St Germain. If, for example, Paris St Germain finished in a better leading place in its league than Manchester United did in the Premier League, there would be pressure for Manchester United to give way to the French club. The situation might also give rise to claims for compensation for whichever of the two clubs had to yield to the other. In addition, the possible BSkyB/Canal+ merger could be taken as evidence of BSkyB's strategy of 'collecting' football clubs in tandem with other broadcasters dominant in separate markets, to the detriment of competition in football.

The National Federation of Football Supporters' Clubs

6.207. The National Federation of Football Supporters' Clubs (NFFSC) said that Manchester United and BSkyB were in dominant positions within the football and sports broadcasting industries respectively. A merger between them would inevitably increase their respective abilities to influence the game of football and its coverage by TV; their joint aim would be to maximize their dominance in each, and this would have a monopolistic effect.

6.208. The NFFSC said that the attraction of football to the public depended upon varied and repetitive comparison of the relative merit of teams of comparable ability. Any arrangement that reduced this competitiveness in matches, or the accessibility through TV to the performances of a wide variety of teams at more than one level of the game, was bound to be against the public interest. There

was as much concern at the non-professional levels of the game about the potential effects of the merger as there was among supporters of clubs which currently competed directly with Manchester United.

6.209. The NFFSC was not convinced by assurances given by the two parties that they did not wish to make any radical changes to the current structure of the game or its coverage on TV. It said that the merger should not be approved as it did not believe that the assurances given were consistent with the commercial advantages available to the merged enterprise of ignoring them. If, however, the merger were allowed to proceed, then conditions should be imposed which would protect those critical features of the status quo.

Government departments and regulators

Department of Culture, Media and Sport

6.210. The Department of Culture, Media and Sport (DCMS) said that its concerns related to the possible consequences for football should the proposed merger be allowed to proceed. Although several top European clubs were owned by TV companies, this was unprecedented in the UK. The implications for such a merger for the sports and broadcasting market should be thoroughly examined and principles should be established to guide policy for the future. This case was particularly important. BSkyB had the leading role in developing the market for TV coverage of the Premier League; a merger with Manchester United, the club with the largest following in the UK, would appear to concentrate power dramatically. Although vertical integration along these lines had obvious attractions for the club and the broadcaster, it was already apparent that the merged company could have two unfair advantages:

- (a) access to the counsels of the Premier League, and a powerful say in decisions about League policy, as it negotiated with broadcasters including BSkyB; and
- (b) access to the negotiating position of other broadcasters and carriers, and to the offers made by them for League rights.

6.211. The DCMS said that consideration should be given to the extent to which the Premier League could itself guard against these dangers, especially as this might mean excluding one of its leading members from all information about rights sale. Even if the club management were excluded, there were many informal channels through which it could obtain this sort of information in a way which was not open to broadcasters themselves. The DCMS considered that there was a case for obtaining assurances from the Premier League on the form of negotiations for future broadcasting contracts.

6.212. The DCMS noted that the referral of the current Premier League deal to the RPC seemed to indicate a preference on the part of the OFT for single club TV contracts over collective League negotiations. It believed that there was much to be said for collective arrangements, and it was concerned that the focus of commercial interests on a few top teams would create less incentive for maintaining a wide base of strong football clubs. If a small group of clubs at the top of the Premiership were taken over by large companies then the gulf between them and the rest would widen further. It believed that this did not augur well for the future of balanced football competition in the UK. Recent press reports suggested that a number of Premiership clubs were holding talks (possibly about merging) with media companies anxious to get into this market. From the point of view of access to expertise and capital, the DCMS could see that there were some potential advantages in this for a limited number of football clubs. However, it did not think that this was the only way open to them to develop further the commercial opportunities available to them.

6.213. A football club was more important to its home town than other types of businesses which were governed only by commercial considerations. Commercial pressures had undoubtedly changed the game significantly over recent years but there was a feeling that this should not continue to go unchecked. The danger was that a major and irreversible change would be pushed through which

would have effects well beyond this case, and which needed to be thought through carefully before irrevocable action was taken.

Independent Television Commission

6.214. Mr Peter Rogers, Chief Executive of the ITC, said that the ITC had always wanted to see effective competition for the rights to broadcast sporting events. For that reason, he believed that any acquisition by a broadcaster of a business such as a football club needed careful investigation, to ensure that there would be effective competition. The issue was particularly acute in the case of Premier League football clubs. His principal concern here was that the proposed merger might reinforce or sustain BSkyB's dominant position in the pay TV market. His view was that the market for pay TV in the UK was the relevant market for the purposes of this merger inquiry. Within pay TV the key driver for it was premium product, and top-quality football was a substantial part of that premium product. BSkyB's dominance derived from a number of sources, but of particular significance was the fact that BSkyB was the only significant provider of premium sports channels in the UK. It was likely that BSkyB would remain dominant unless, and until, competing broadcasters had access to premium football rights on an equitable basis.

6.215. In order for the TV rights market to function successfully, a necessary (but not sufficient) criterion was that there must be the prospect of realistic competition for the acquisition of premium sports rights. But there were a number of potential barriers to entry for new channel operators. BSkyB had a first mover advantage in DTH which made it very difficult for an operator to launch a DTH channel outside BSkyB's package. There was also a considerable barrier to a new entrant getting a premium package of sports programmes together. While there were potentially a vast number of sports rights available, the portfolio of rights from which it was possible to attract paying subscribers was very limited. BSkyB's practice of deep discounting the prices of its premium channels could also be a barrier to entry. The ITC was investigating this practice but had not yet reached a conclusion on deep discounting, however. There were two potential concerns on this: given the discounts, it could make it harder for a new entrant to come into the market. The second concern was that the pricing structure could be strongly incentivizing subscribers to buy all BSkyB's premium channels, thereby reinforcing BSkyB's dominant position. It was also alive to the possibility that competitors to BSkyB might deny BSkyB access to distributing premium sports content (for example, if BSkyB lost the next TV live rights contract for Premier League matches). If BSkyB asked the ITC to intervene in these circumstances, the ITC would probably investigate, to see whether the refusal to supply was anti-competitive.

6.216. The prospect of realistic competition for the key rights was a relevant concern whatever the outcome of the OFT's case against the Premier League and BSkyB. Even if the Premier League clubs were required to sell rights separately, BSkyB might still turn out to be the sole buyer of the key rights given its current substantial subscriber base and its financial strength. This was more likely to be the outcome—at least in relation to the rights to show Manchester United games—if BSkyB was also the seller of rights to Manchester United games.

6.217. One of the key concerns Mr Rogers had over the proposed merger was that it might allow BSkyB an unfair advantage in the run-up to the TV rights auction for Premier League matches over its competitors in the knowledge that would be available to it—for example, in terms of the Premier League's policy, its medium-term outlook, scheduling—quite apart from pricing information. Advance knowledge of the framework of the next auction would be very valuable to it.

6.218. If the current Premier League selling arrangements continued, then, although Manchester United was just one of 20 clubs, Mr Rogers saw some merit in requiring Manchester United not to participate in the selling of rights. This reflected the advantages that BSkyB could have by having a seat on both sides of the negotiating table.

6.219. The disadvantage of this approach, however, was that enforcement would be difficult. Under individual selling, on the other hand, Mr Rogers considered that one possible remedy would be to ensure access for other broadcasters to Manchester United's games. As a general principle in competition policy, Mr Rogers considered that structural solutions were often preferable to

behavioural ones. If a behavioural solution was imposed, any undertakings had to be capable of being monitored and enforced.

Trade unions and professional associations

Broadcasting Entertainment Cinematograph & Theatre Union

6.220. The Broadcasting Entertainment Cinematograph & Theatre Union (BECTU) represents 30,000 workers in the media and entertainment sector. It believed that the proposed merger raised serious competition issues, and that these were compounded by the fact that the media was a sector in which monopoly power had a resonance and a danger far beyond one which was narrowly economic. The BECTU highlighted a number of specific arguments against excessive concentration of ownership in the media, and these were in addition to the many general arguments against monopoly power. These concerned the need for diversity, representativeness and freedom of expression; and for a plurality of views and interests to be expressed and reflected. It therefore urged particular caution because BSkyB was part of a media conglomerate, News International, with powerful existing interests throughout the broadcasting sector, including production, distribution and conditional access technology.

6.221. The BECTU believed that the proposed merger would create a monopoly in the discrete and lucrative market for televised football in the UK; a monopoly in the very area of broadcasting which, together with feature films, was widely regarded as the key to long-term future dominance in subscription and pay-per-view TV. It believed that this was clearly against the public interest and the merger therefore should not be allowed to proceed.

6.222. BSkyB already held a position of marked influence in the market for televised football in the UK, as was evidenced by its frequently-demonstrated ability to determine the dates and times of fixtures, and by its power to limit terrestrial coverage of Premier League football to highlights only. The Premiership TV rights were due to be renegotiated in 2001. BSkyB, as owner of Manchester United, would have major leverage on both sides of the negotiating table and this would, in the BECTU's view, move the company from a position of already undue influence to one of unacceptable dominance. Other TV companies would therefore face unfair competition, as would other football clubs.

6.223. If, as was possible, the collective system of negotiating Premiership football rights were to break down and be replaced by individual clubs negotiating their own TV rights, then BSkyB, as owner of currently the most financially powerful and best supported club, would again be in a potential monopoly position. BSkyB would be able to exploit Manchester United's dominance within football, provide the club with financially advantageous deals compared with other clubs, and effectively exercise a power of veto within televised football, since many broadcasting deals would not proceed without the agreement and participation of Manchester United.

6.224. For these reasons alone, which rested on consideration of the broadcast market, the BECTU believed that the merger should not be allowed. It also believed that there were additional reasons concerned with the impact on professional football why the merger was not in the public interest. Professional football was easily the most popular spectator sport in the UK. The game's popularity, which was built over generations, had rested on a genuine degree of openness in competition, even at the highest level. This was still recognized to some extent within the current Premiership TV deal, under which 50 per cent of the monies were spread equally among all 20 Premier League clubs. If the merger were allowed to proceed, it was likely that there would be pressure for change, since both BSkyB and Manchester United would have a vested interest in the redistribution of revenue in a way that was more favourable to them, but less equal overall. If collective negotiations for TV rights were replaced by clubs negotiating individually, there would, in the BECTU's view, quickly develop an extreme disparity between the TV revenues flowing to a handful of dominant clubs (principally Manchester United) and the rest.

6.225. The BECTU further believed that there was a broader public interest in preserving professional football from total control by the media market place. In the long term, it was easy to see a future in which the timing of games, the structure of competitions, the rules of the game and even the location of clubs (on a franchising basis) were all subject to corporate media interests. Such undesirable developments would be unwelcome in a game which historically owed its popularity to its supporters, and to whom the media companies were ultimately not benefactors but parasites. It believed that we should have regard to these broader public interest issues as well.

National Union of Journalists

6.226. The National Union of Journalists (NUJ) was opposed to the merger, stating that, if it were allowed to proceed, then BSkyB would have a seat on both sides of the negotiating table when it came to discussing TV rights for major football matches. The NUJ said that because of its huge financial backing, BSkyB had been able to outbid the terrestrial channels for the TV rights to broadcast Premiership football. As a result, football, which was once accessible to every TV licence-holder in the UK, was becoming increasingly the preserve of those who could afford the additional cost of satellite TV. It believed that the cost of watching live football on BSkyB channels would increase, which would put the sport even further beyond the reach of the majority of people. The NUJ added that there must be serious concerns that the merger could be the death knell of Britain's national sport.

Portsmouth Trades Council

6.227. Portsmouth Trades Council was strongly opposed to the merger. It said that if it were allowed to proceed, BSkyB would have a monopoly which could destroy the game of football and severely damage British broadcasting. It also feared that many people would be unable to afford the increased cost of attending matches, and therefore the only option available to them to watch live football would be through BSkyB's pay-per-view TV service.

Local authorities

City of Salford Council

6.228. The proposed merger was considered by the Policy Committee of City of Salford Council at its 9 December 1998 meeting, and the resolution of the Committee, acting on behalf and with the authority of the Council, was as follows:

It resolved that the MMC be informed that the proposed merger was against the public interest in that such a merger was likely to give the merged company sufficient power to acquire the exclusive rights to Premier League football and deny the residents of Salford who relied on public service television (a significant number of whom supported Manchester United, having regard to its proximity to, and links with, Salford) the opportunity of watching Manchester United matches on television.

Manchester City Council

6.229. Manchester City Council's Policy and Resources Committee considered a report of the Council's Chief Executive on the implications of the proposed merger at its meeting on 28 September 1998. The report highlighted the following issues:

- (a) The merger would mean that Manchester United would become a subsidiary of News Corporation, a company that had corporate interests which were much different from those of the average Manchester United fan. The reason behind the BSkyB bid was that it would give News Corporation a very strong negotiating position when the Premier League's TV rights were next renegotiated. It would undoubtedly give the company a highly marketable brand

name and image. This represented a trend towards commercial interests taking precedence over the more traditional cultural aspects of football, such as a club being focused for local pride and loyalty. For example, it could mean that the local derby games between Manchester City and Manchester United (the return of which many local fans looked forward to once Manchester City returned to the Premier League) might never happen because Manchester United could, by then, be in a Europe-wide football league. It could also mean that, as happened when BSkyB bought the rights to televise rugby league, the days, times and even the season during which games were played could be changed completely. To some extent this had already happened with the creation of the Premier League, but nobody had yet advocated moving the football season to the summer months.

- (b) Football could be made less accessible to its traditional supporters. There appeared to be a general level of public hostility to the proposed merger, because there was a perception that the merger would leave the average football supporter worse off through increased ticket prices and the cost of watching live matches on TV (as a result of televised football becoming available exclusively on pay-per-view TV). Manchester United's ticket prices were currently the sixth lowest in the Premier League.
- (c) There could be a further undermining of the foundations of the national game. According to most commentators, the proposed merger represented a further development in the trend that began with the creation of the Premier League in 1992 and the league's two subsequent deals with BSkyB for exclusive TV rights which had created an elite group of 20 or so cash-rich football clubs. Many of these clubs, which were now quoted companies, had been successful in luring top foreign players into the English game. This meant that fewer players were brought into the Premier League from clubs in the lower divisions; very little revenue from TV was redistributed to those smaller clubs, and the gulf between the larger and smaller clubs had widened. Many clubs in the lower divisions were already facing a precarious existence.
- (d) A merger between BSkyB and Manchester United could have a domino effect leading to other Premier League clubs being acquired. The general view among City analysts was that these clubs would become the target of takeover bids in the near future.

6.230. Members of the Committee commented that Manchester United was very important to the City of Manchester. The club was one of the most famous in the world and had spread the image of Manchester around the globe. It also played a major role in the local economy, both in the attraction of visitors and also in sustaining a market for the sale of locally-produced sporting goods. It was in the interests of the City of Manchester and, therefore, the Council that the club continued to be successful. However, successful clubs depended on their local fan base, and whilst it was recognized that the proposed merger might attract additional investment, there were concerns that a change of ownership would result in a loss of the relationship with the local community and its fan base. This would create a situation which, especially if other clubs were to be the subject of similar takeovers, could result in permanent damage to the national game. Football might now be seen by some as merely a currently very successful part of the leisure industry, but its future depended on its retaining positive links with supporters and in allowing them a more effective voice in how clubs were run.

Oldham Metropolitan Borough Council

6.231. The Council felt that the proposed merger should not be allowed to proceed on the grounds of the dominance of BSkyB in televising both Premiership and Nationwide League football. There was now almost no football available on terrestrial TV, and the ability to view it was now generally only available through subscription channels. If ownership of a prime national and international football club was added to the BSkyB media group, then there was an even greater prospect and possibility of concentrating football into even fewer hands, resulting in more limited access to the great majority of people. It was difficult to see how effective checks and balances could be introduced to avoid further dominance of the sport within the UK and Europe. In the Council's view, the proposed merger would operate against the public interest and that of the smaller clubs which, through their local links, were accessed by young people both as players and through the wider community. Smaller clubs provided a focus and link in the operation of the natural progression of the game.

6.232. If the merger were allowed to proceed, there was a possibility that other major national and international media companies might acquire the other top English football clubs. This, in the Council's view, would create the prospect of a cartel which would serve only the interests of that grouping and concentrate football at the top level into five or six cities. This would be unhelpful for the long-term health of the game and would exclude the possibility of the smaller clubs progressing to the top.

Trafford Metropolitan Borough Council

6.233. Trafford Metropolitan Borough Council said that it was in a unique position with regard to Manchester United because the club was located within the borough. Given the importance of Manchester United, both locally and nationally, the relationship between the club and the Council was paramount. The Council said that it did not have the information available to it to determine if there were potential conflicts of interest arising from the merger and/or whether or not it might be expected to operate against the public interest. As a result, the Council did not express a view. However, it highlighted a number of issues which were important to Trafford and which should be safeguarded for the future:

- (a) Manchester United was a world leader and it brought many intangible benefits to the area in general, and Trafford in particular. The idea that Manchester United should be held back because of lack of progress elsewhere in the industry would not be applied in any other competitive situation and should not be applied in this case.
- (b) The club was a centre of excellence and a role model for youth throughout the region. Any merger with a TV company that moved the focus of attention from fans attending games at the club towards a view at home-based approach would fail to maximize the potential beneficial impact of Manchester United in dealing with youth issues in particular, which, in the Council's view, had not been fully exploited. Furthermore, the interests of TV and the interests of Manchester United needed to be separated in any negotiations relating to football contracts.
- (c) Manchester United and the Council had recently entered into a travel and community plan as part of the latest proposals for extending the ground capacity. The plan, which was expected to bring benefits of £1 million to the local community, indicated that the current management of the club was becoming responsive to these issues. The obligation to continue and develop these good neighbour approaches should be encouraged within any future plans for the club.

Councillor Mark Clayton

6.234. Councillor Mark Clayton, a member of Manchester City Council, believed that the merger created an uncompetitive situation within the broadcasting industry. BSkyB already had a virtual monopoly of English language satellite TV. By purchasing Manchester United BSkyB gained control of MUTV, further extending its monopoly.

6.235. Councillor Clayton also said that whilst in theory terrestrial digital and cable TV provided competition for BSkyB, they were not available nationwide and were often more difficult to receive in their coverage areas than analogue satellite transmissions. They were not therefore serious competitors.

Other parties

Football Research Unit, University of Liverpool

6.236. The Football Research Unit (FRU) said that central to both the modern media industry and the modern football industry was the ability to control exclusive access to the TV rights for coverage of live football matches. Securing such rights was often the first strategy which any new (or struggling) TV company adopted in an attempt to increase market share, advertising revenue and profitability as a short-term measure to consolidate or establish itself. The pursuit of this strategy by BSkyB since 1988 had allowed it to buy exclusive rights to a range of sports in the UK, including Premier League football in 1992. For football clubs, the sale of TV rights was possibly the most lucrative contract they would sign, and was increasingly central to other revenue streams and club operations, such as merchandising, sponsorship, advertising and corporate hospitality.

6.237. The FRU expected to see frenzied activity over the next few years by media companies to sign deals with football clubs to replace the existing arrangements, and also attempts by the clubs to maximize the revenue they received from that process. In this sense, the key variable in the modern football and media industries was the process whereby such rights were bought and sold.

6.238. The FRU said that allowing BSkyB's bid for Manchester United to proceed would have a damaging effect; by allowing a media company to control a club's ability to sell its TV rights would not only damage the club's revenue (by excluding other potential bidders), but would clearly restrict the level of competition within the media market. Any TV company that secured exclusive rights to Manchester United's games would be in a very strong position; the proposed merger would close an important avenue by which TV companies competed, and also eliminate a central plank of the most effective competitive strategy open to new and established TV companies. This was particularly true in view of BSkyB's existing dominant market position. The level of competition in the industry would be reduced and the scope for new companies entering the market would be affected.

6.239. The FRU said that there was an issue concerning the existing deal between Manchester United, Granada and BSkyB relating to MUTV. A joint venture of this kind offered regional media companies in particular a potentially very lucrative way of increasing market share and penetration, and in competing with national rivals. The implications for Granada of the merger proceeding were potentially damaging; to have its business decisions and strategies subject to examination and approval by BSkyB was clearly undesirable, and it raised issues of fair competition within the industry.

6.240. The FRU believed that there were clearly predictable ways in which the proposed merger would damage competitiveness in the media industry and in the sports rights industry. The merger would strengthen BSkyB's existing monopoly position and deepen the dependence of the football industry on one supplier, as well as creating clear conflicts of interest within some of the most crucial processes of the modern football industry. The public interest would not be served by allowing the merger to proceed.

The Institute of Professional Sport

6.241. The Institute of Professional Sport (IPS), which is the representative body for 14 professional player associations in Britain, said that its membership was concerned about the proposed merger. There was a very real danger that if BSkyB controlled Manchester United then team selection could be influenced by TV issues. This was particularly relevant in the case of TV companies wishing to break into new markets, most notably China. It was conceivable that this could result in players being picked for their popularity in foreign TV markets and not for their footballing abilities. Such an outcome would be more likely if football clubs were owned by TV companies. Given that the national team was drawn from professional clubs, the importance of clubs like Manchester United in providing the building blocks for the present and future England teams should be noted. For this reason, the membership of the IPS believed that the proposed merger might be contrary to the interests of the English football team and, as such, contrary to the public interest.

6.242. The IPS said that there was also a real danger that a merger between BSkyB and Manchester United could result in the creation of a super-club. The nature of football, and indeed all sporting competition, was such that the game was best served by competition among equals. Football had a unique place in British history, heritage and culture. The creation of a super-club would be detrimental to the best interests of football.

6.243. If the merger were allowed to proceed, it was conceivable that the only opportunities available to the public to watch Manchester United's games on terrestrial, free-to-air TV would be on those occasions when the club reached the FA Cup final. The IPS suggested that to deny the public the opportunity to watch what was arguably the country's most popular football club on free TV would be contrary to the spirit of the legislation on listed events. The IPS would support the ITC in its desire for effective competition for sporting TV rights and strongly believed that the proposed merger was contrary to that aim.

Labour Finance & Industry Group

6.244. The Labour Finance & Industry Group (LFIG) highlighted a number of changes in the football market which had taken place in recent years, including: the formation of the Premier League as a sellers' cartel, which represented the most successful and financially-powerful clubs; the concentration of resources (particularly media and sponsorship income) in the top clubs; the emergence of TV (as opposed to gate receipts) as the main retail outlet for Premiership clubs, together with the vast increase in revenue from TV and advertising/sponsorship; and the changing social base of the game, coupled with increased admission prices. The LFIG believed that further changes in the market were likely, including the possible formation of a European Super League and the unravelling of the Premier League cartel. The long-term effect of these changes was difficult to assess, but it was becoming increasingly apparent that they would lead to increased concentration of power in the hands of a small number of clubs.

6.245. The LFIG said that the proposed merger between BSkyB and Manchester United was a clear proposal for vertical integration. Recent merger talks between Carlton and Arsenal had been called off, but had it proceeded, the effect would have been the same in that it would have guaranteed weekly exposure of Arsenal on TV. The LFIG noted that, if the RPC were to rule against the Premier League in favour of individual selling of rights, then that was precisely the outcome that could be expected to result. If the merger between BSkyB and Manchester United were allowed to proceed, without conditions, then Carlton and other prospective acquiring media groups would expect unconditional clearance for similar transactions. The LFIG said that, with the introduction of digital TV, there was no doubt that the smaller clubs would establish links with broadcasters. However, the market share of those broadcasters, and the revenue flowing from such links, would be very small by comparison.

6.246. The LFIG believed that the merger would lead to a restriction or distortion of competition, which would be contrary to the public interest. In its view, if the merger were allowed to proceed unconditionally, there was a possibility that the integration of football clubs into media groups would rapidly lead to a restriction of effective competition. This would mean that a group of six or eight clubs would enjoy the bulk of financial returns and a near monopoly of sporting honours.

Manchester Institute for Popular Culture

6.247. Dr Adam Brown, a Research Fellow at the Manchester Institute for Popular Culture, a Faculty of Humanities research unit of Manchester Metropolitan University, and also a member of the Government's Football Task Force Working Group, provided evidence and also attended a hearing.

6.248. He believed that the proposed merger should not be permitted because football held a historically different position in our society to other sporting activities. Football had become a significant industry with an estimated value of \$250 billion worldwide. Its major source of revenue was ticket sales for live games, with the vast majority of fans who attended live games also watching TV football.

6.249. Dr Brown said that fans had an emotional 'support' for a particular club. Each football club was therefore a monopoly as it was the sole supplier of the product its fans wished to see. Brand loyalty, rather than the quality of football or value for money, was the determining factor in consumption.

6.250. The success of the Premier League had widened the wealth gap between the clubs in the Premier League and those in the lower divisions which had remained part of the Nationwide League. The commercial success of many clubs had been based on the exploitation of fan loyalty, primarily through the raising of prices for attending games and the development of new income streams such as club merchandising.

6.251. Dr Brown believed that the ownership of football clubs as PLCs was itself contentious and problematic. Because the legal commercial obligation of PLCs was to maximize profit for shareholders, this would involve exploiting the fans to the fullest extent. This conflicted with the aim of the fans which was to keep ticket prices low.

6.252. He said that if the merger went ahead, for the first time in this country a football club would be owned by a TV corporation. He was concerned that the interests of the TV company and its shareholders would be placed above the interests of the football club, its fans and shareholders. The increase in football clubs' revenue had been largely TV driven, and any takeover of a club by a TV company was likely to increase the wealth gap between the richer clubs and the poorer ones. The resources available to Manchester United as a subsidiary of BSkyB would make their success and domination of footballing competitions almost inevitable. This would pose an unacceptable threat to fair competition.

6.253. At present BSkyB held TV contracts with the Football League and the Premier League. There was some redistribution of income from the sale of broadcasting rights between Premier League teams and teams in the lower divisions, for example 'parachute' payments to teams relegated at the end of the season from the Premier League. If BSkyB's interest was concentrated at the top of the game with only one club, this would threaten this redistribution of monies which many smaller clubs depended on for their survival.

6.254. Dr Brown said that as well as threatening fair competition within football the merger also posed a serious threat to free competition for the broadcast rights to televised football. BSkyB's ownership of Manchester United would threaten free competition between broadcasters for the acquisition of top-flight football.

6.255. He thought that if BSkyB were to continue as the sole provider of live Premiership football further conflicts of interest would arise. This could arguably be the case even if it remained a significant, but not sole, supplier of live Premiership football. The success of the Premier League depended on the provision of exciting football with meaningful competition between teams. As the owner of Manchester United, BSkyB would want the team to win everything in order to please its fans. As the broadcaster of Premier League matches, BSkyB would want to maintain an exciting competition with an unpredictable outcome in order to keep interest and thereby viewing figures high.

Mr John Williams, Sir Norman Chester Centre for Football Research

6.256. Mr John Williams of the Sir Norman Chester Centre for Football Research believed BSkyB wished to buy Manchester United in order to be in a stronger strategic business position in world sports markets, to take advantage of pay-per-view football TV and to exploit the business opportunities which would emerge with the formation of a new European Super League when it eventually arrives.

6.257. He believed Manchester United fans feared the club would lose its local and footballing identity and also its independence if it became just another part of an international business empire with linked media, sports and leisure interests. Another concern was the effect the acquisition would have on the whole of the English game. If BSkyB were allowed ownership of the largest of all English clubs it could, for example, implement unpopular changes. Without Manchester United the English Premier League would be devalued considerably and TV rights would potentially be much less

valuable. If Manchester United was owned by BSkyB it would sit uncomfortably, but profitably, in both the rights owners' and rights buyers' camps in any future TV negotiations.

6.258. News International, the parent company of BSkyB, owned a substantial proportion of the British daily press which it could use to advertise and promote Manchester United to the detriment of other teams.

6.259. If in the future domestic TV negotiations were agreed against the preferred interests of BSkyB it might set off collective reactions involving other clubs abroad which themselves were already owned by rival, but similar, TV interests, for example the formation of a European Super League.

6.260. Mr Williams said that there was no reason to assume that a transnational corporation such as BSkyB had any interests, beyond commercial ones, in maintaining and supporting current domestic sporting competition. If the commercial interests of BSkyB did not coincide with the domestic sporting ones, changes were likely to occur quickly with or without the sanction of club supporters.

Professor Jonathan Michie and others

6.261. Professor Michie and nine other academics, with an interest in competition issues and also in football, submitted evidence. They said that football played an important part in the cultural, sporting and social life of large sections of the public. An appreciation of this, and of the nature of the industry and of the peculiar brand loyalty of the fans, was important for a proper understanding of the effect that the acquisition of football clubs by broadcasting companies would have.

6.262. The proposed acquisition of Manchester United by BSkyB would lead to several anti-competitive practices and restrictions on competition. First, it would distort the bargaining process over the rights to televise live Premiership football, to the detriment of other broadcasters, and also to the detriment of other Premiership clubs. Secondly, the vertical integration of the broadcaster and content provider would, again, restrict competition to the detriment of other broadcasters, would threaten to further distort the competitive process through the use of cross-subsidies, and would represent a form of vertical foreclosure, impeding competition. Thirdly, it was likely that the proposed acquisition would lead to cross-media promotion. And fourthly, it would create a monopoly supplier for viewing live Manchester United games by way of attendance at the ground on the one hand, or by viewing through pay TV on the other. This monopoly position could be used to the detriment of attending fans both through pricing decisions and through action taken to favour the global pay TV market, such as the changing of match dates and times. In addition to these various threats to the competitive process, and potential abuses of monopoly power, the proposed merger would also act against the public interest.

6.263. Commenting on matters concerning the public interest, the group of academics said that the proposed merger represented a serious threat to the interests of football in Britain as a leisure activity, as well as a business sector. It was important to maintain (and indeed strengthen) the current links between the various sectors of the football industry. The majority of Premier League players started their careers in the lower divisions, including non-league football. The majority also ended their careers there, either as players, managers, or in some other football-related occupation. There were therefore strong bonds within the game. These links were vital to the continued health of the sector, and in the long term even to the success of individual Premiership clubs, despite the fact that over the short and medium term their profitability could be boosted by neglecting such links.

6.264. It was important to stress two points: first, wealthy individuals have in the past bought football clubs, and clubs have also been floated as PLCs. The proposed merger was quite different from all previous takeovers or flotations in that it would leave the football club as only a small part of the parent company's operations. In addition, the main interest of BSkyB, namely broadcasting, would be other than football, and yet at the same time there would be a strong incentive to use the football club part of the business in the interests of the parent company. The importance of the link between Manchester United and other football clubs in England would become, at best, less important in the eyes of BSkyB's shareholders. Secondly, the proposed merger could not be considered in isolation. If the merger were allowed to proceed, it was likely to provoke subsequent takeovers of other major

Premier League clubs. Such a process would be inimical to the long-term development of the game as a whole. It could even lead towards a formal breakaway of such 'super-clubs' from the rest of the league.

6.265. There was also the local monopoly aspect of football clubs that needed to be taken into account. Football fans almost invariably supported only one team and this support was translated commercially through attending matches and watching or listening to them through TV and radio, and through the purchasing of associated goods and services. Such fans could not easily switch their loyalty to another football club; support and loyalty created a lock-in to one club. Thus the owners of football clubs were, in effect, local monopoly suppliers of a unique product and this raised major regulatory concerns. The proposed merger represented a serious risk that this monopoly power would be exploited to the detriment of the public interest.

6.266. The group of academics concluded that the proposed merger would create restrictions on competition and would lead to anti-competitive practices. There were no suitable or credible undertakings that could address these concerns. The importance of the public interest concerns identified, and the danger of the commercialization of the game damaging the public interest, had led the FA to introduce Rule 34 which required football clubs to adopt particular Articles of Association limiting the extent to which they could be exploited commercially. Rule 34 had been circumvented to a large extent by the creation of PLCs as holding companies of football clubs, with only the latter being bound by the regulatory restrictions. However, the need for regulatory restraint was greater than ever. This was indeed the background to the Government establishing the Football Task Force to investigate such issues. It was clear that BSkyB envisaged no such restrictions on its commercial operations. For these reasons, and also in view of the threats to competition, the proposed merger should not be allowed to proceed.

The Parliamentary Football Group

6.267. The Parliamentary Football Group (PFG) has over 150 members consisting of MPs and members of the House of Lords of all parties. It said that the merger was not in the public interest because it was an abuse of a dominant position; consumers of the game in general would not receive a fair share of any resulting benefit to the parties involved, and it would substantially eliminate competition.

6.268. The effect of the merger would mean that BSkyB, which was the largest purchaser of televised football, would also become the owner of the largest football club in Europe and, in effect, have a seat on both sides of the negotiating table, and by reason of its strength would have an unfair influence in proportion to other clubs. Manchester United was, in comparison with other Premier League clubs, already in an extremely dominant and powerful position when it came to inflating players' wages within the industry. It purchased a large proportion of the best players available and it held on to top players even if they wanted to move to other clubs which wished to sign them.

6.269. The PFG said that the gap between the richer and poorer clubs in the Premier League was already huge and growing. The sheer size and strength of Manchester United meant that it was already four or five times bigger than its average opponents in the Premier League, and compared with European clubs it was bigger than both Inter Milan and Juventus together. Manchester United's profits in the 1998/99 season would be around £30 million, with many other clubs not making a profit.

6.270. The effect of the massive growth of TV income had had its effect on the game at all levels. Some of the new income had been beneficial in that stadiums and facilities had been improved. Attendances, on average, had not suffered and the public, through watching televised satellite matches in licensed premises, had been able to see the best football relatively cheaply. However, it was the smaller clubs which had been hit the hardest. Many of them now found themselves having to play each other in midweek competitions in winter and on the same evenings when the Premiership clubs competing in European competitions were being broadcast live by satellite TV, or even free on terrestrial channels. The gate receipts of these smaller clubs suffered as a result.

6.271. The PFG said that, unfortunately, a great deal of the new money coming into the game had simply gone on higher wages for players. The top players all had experienced international agents who realized that there was a worldwide shortage of players good enough to play in the Premier League; these players demanded very high wages and signing-on fees. There had been a 30 per cent increase in players' wages in each of the last four years. The smaller clubs could not afford to pay such wages, and from a workforce of some 2,500 players nearly 600 had been made redundant in 1997. The market was severely distorted because of the wages explosion, and it enabled the bigger clubs to disadvantage those competitors with smaller incomes.

6.272. The PFG was also concerned about recent reports that Manchester United was attempting to circumvent the Premier League and work permit rules. It was trying to do so by forging closer links with Royal Antwerp, thereby opening the door for African and other non-EU players to gain easier access to EU work permits and therefore become eligible to play in the Premier League. This would have an adverse effect on the England national team in that the progression of young players in the top league clubs would be severely restricted. If the proposed merger were allowed to proceed, it was almost certain that a number of other top Premier League clubs would also be acquired by media interests and the gap between the top and bottom clubs would widen still further.

6.273. The PFG said that another reason why BSkyB wished to acquire Manchester United was much more to do with TV than with football. BSkyB satellite pay TV was already an unfair competitor with both the BBC and ITV in that the commercial TV companies were awarded franchises and paid levies to HM Treasury. The BBC was restrained in its licensing and advertising and also had to operate in the public interest under the terms of its charter. No such restrictions were attached to BSkyB, which gave it an unfair negotiating advantage.

6.274. In terms of media ownership and coverage, the proposed merger raised other concerns. There were clear signs that the different arms of News International were being used to promote each other's sales and interests. If Manchester United were to be acquired by BSkyB, it would present BSkyB with privileged access to news stories, as well as giving the club unlimited promotional opportunities. There was no doubt that BSkyB's profits would be drastically reduced if it were to lose the rights to broadcast Premier League football.

6.275. If the Premier League were to win its case with the OFT then BSkyB, as owner of the most powerful club in the Premiership, would have considerable influence as to who got the rights to any new TV contract. Although Manchester United only had one vote, it could use its position of dominance to influence the outcome of any negotiations by threatening either to leave the Premier League and enter a European Super League, or to sell its TV rights on an individual basis.

6.276. The PFG said that this highly uncertain, unpredictable and fluid situation was obviously a 'minefield', and a wrong decision by the MMC could have an enormous effect on the whole of the national game. If the proposed merger were allowed to proceed then fans would have little or no allegiance to their home town clubs. Football was a unique heritage which should be preserved for the nation and not for international speculators.

Mr Roger Gale MP

6.277. Mr Roger Gale MP said that, as Vice-Chairman of the Conservative back bench Culture, Media and Sport Committee and on behalf of those of his constituents who took an interest in such matters, he wished to oppose the proposed merger on the following grounds.

6.278. BSkyB already enjoyed an unfair and uncompetitive position resulting from the failure of broadcasting legislation to impose upon BSkyB the same franchise costs as those imposed upon terrestrial TV. This had, inevitably, given it a distinct advantage when competing for sports rights. Further unfair competition would be created if BSkyB, while owning the largest Premier League club, were allowed to take part with the remaining Premier League and other clubs in the renegotiation of TV rights for the future coverage of the game.

6.279. It was already the case that at the top of the Premier League an uncompetitive situation was developing; a small number of the very large clubs dominated the market and if large media companies, such as BSKyB (or indeed any other multimedia company), were allowed to acquire Premier League clubs then it was quite clearly only a matter of time before these top league organizations left the Premier League to become part of a European Super League. In such circumstances it seemed likely that ordinary fans would, unless they were prepared to subscribe to satellite TV services, be denied access to the game and the clubs that they supported.

6.280. Mr Gale said that shareholdings in the large clubs were concentrated in the hands of very few, very large shareholders while the supporters' power lay in the hands of a very large number of small, or non-shareholding, supporters. The interests of supporters must be taken into account when considering any possible acquisitions of sporting clubs. Unless the MMC acted now to prevent this trend, it seemed likely that not only would BSKyB acquire Manchester United but other top Premier League clubs would face similar predatory action which would be detrimental to the game and the national interest.

Ms Joan Walley MP

6.281. Ms Joan Walley MP was concerned about the future of football should the proposed merger be allowed to proceed. Football remained the top national spectator sport in the country and, as such, it was in the public interest that every aspect of the industry should now be scrutinized. As an industry it employed a significant number of people, and the potential for profits from related commercial sponsorship and broadcasting opportunities was immense. The proposed merger brought to the fore all the concerns as to how football could, should or would change as a result of the conflicting pressures of business and sport. Ms Walley wanted urgent consideration given as to how the wider commercial and broadcasting interests could be balanced alongside the equally important rights of smaller clubs and of supporters. Without the necessary checks and balances the game as a whole would be threatened.

6.282. Ms Walley believed that it was in the public interest that football remained viable at all levels of the game as currently played throughout the country. That was not to say that football should be immune from the pressures and changes in the worlds of company finance, broadcasting, national and international competition, fiscal, economic and social policy. First and foremost, football was about sport and competition within sport, and this went beyond commercial considerations. The proposed merger was a purely commercial proposition and, as such, it forced the authorities to focus on the wider implications for football arising from the merger. If this merger, or others involving football clubs and companies with broadcasting interests, were allowed to proceed, the outcome for the remaining less wealthy, and commercially less attractive, clubs in the Premiership and other leagues would be catastrophic.

6.283. The unique way in which football had developed in the UK meant that the proposed merger would have repercussions for all league clubs. It was essential that the likely consequences of the merger were fully examined from the point of view of the game as a whole and not just from a single perspective of the business interests and empires of the two companies under scrutiny.

6.284. Ms Walley said that the combined commercial interests of Manchester United and BSKyB could not be synonymous with the responsibilities which football clubs had in complying with the conditions agreed by those clubs participating in the Premier League and the FA. It was in the interests of football as a whole that these apparently contradictory interests should now be unbundled. Football's governing bodies should not be undermined and effectively made redundant and ineffective on account of commercial developments which had not been sufficiently scrutinized.

6.285. The proposed merger would lead to a blurring of boundaries between the interests of football and those of broadcasting. In this case, it would result in one club having privileged inside information in respect of its dealings relating to the sale of TV rights. Any increased profits for Manchester United were likely to be at the direct expense of the other Premiership clubs. This financial inequality would undermine the basis on which competition in sport was based and could lead to Manchester United having an unfair advantage, and eventually to the demise of the equality on which competition in sport depended. This was a matter for football's governing bodies, which had

responsibility for the rules of the game. Yet a merger of the kind proposed would mean that the football authorities would have less power to control and safeguard the game; it would undermine their authority, and there would simply be matters outside their remit and control. They would become increasingly powerless to oversee the game as the issue of TV rights and the controlling interests of the broadcasting companies usurped their authority.

6.286. Ms Walley said that the proposed merger was a timely reminder that a complete overhaul of the structure of football was long overdue, and that some regulation of the commercial interests in football was now essential.

Mr Derek Wyatt MP

6.287. Mr Derek Wyatt MP said that the issue in this inquiry was essentially whether or not BSkyB would have access to privileged information regarding the next and subsequent rounds of negotiations for the sale of TV rights. A possible solution to the problem would be that any organization (whether sports or entertainment) that had rights to sell to the UK market should be bound by the following conditions:

- (a) the organization concerned to send its sale document to its client list;
- (b) all bidders for rights to be required to send their bids to the OFT by a specified date;
- (c) the offers for rights packages to be opened by the OFT;
- (d) the bidders' names to be made public;
- (e) the OFT and the rights owners to jointly announce the winners, giving reasons; and
- (f) the OFT not to allow any new bids, or changes to the offers, after the closing date.

Individuals

6.288. We received written representations from almost 300 members of the public, all of whom were opposed to the merger. The following main points were made:

The existing market

- (a) Since the formation of the Premier League, the bigger clubs had acquired too much power, at the expense of the smaller clubs.
- (b) BSkyB already had a monopoly over other broadcasters.
- (c) Pay-per-view TV was potentially a very lucrative market and was the motivation behind BSkyB's bid. Manchester United was by far the biggest attraction in English football. Both companies were only concerned about profit.
- (d) The BBC and ITV franchise agreements prevented them from charging subscriptions, which put them at a disadvantage when bidding against BSkyB.
- (e) Football clubs exploited supporter loyalty by increasing ticket prices in the knowledge that supporters did not switch loyalties between clubs.
- (f) BSkyB used football to tempt people to subscribe to its satellite system; and, once it achieved its target audience, prices were then raised significantly. Matches were broadcast over three channels, thus forcing viewers who wanted to see their team to subscribe to all its sports

channels (and to other channels they did not particularly want, as they were part of the package).

- (g) The ease with which broadcasting was now available on new digital transponders would effectively allow clubs such as Manchester United to produce their own match transmissions. Subscribers would be attracted to MUTV for no better reason than not having to purchase the viewing rights for channels they did not want.
- (h) Manchester United was already in a monopoly position because its customers were fans whose loyalty prevented them from supporting another club.
- (i) Ticket prices had risen significantly since the intervention of BSkyB as broadcaster, and this would not have occurred in a free market environment. It might be argued that the price rises were due to the requirement to have all-seater stadiums but the increases had far exceeded those expected following the Taylor report.
- (j) Subscribers to BSkyB sport were already in a monopoly trading environment. They were forced to pay what BSkyB demanded because the product they wanted was not available elsewhere.
- (k) Directors of football clubs saw fans as generators of cash, and ignored their views. Members of Manchester United paid up to £15 per year to join the club; in any other football club, members would expect to have a say in how the club was run.

Effects of the merger on competition

- (a) If the merger were allowed to proceed, the only way that viewers could see Manchester United's matches would be by way of BSkyB.
- (b) Manchester United would be expected to support BSkyB in negotiations for TV rights.
- (c) The merger would enable BSkyB to be (a controlling interest) on 'both sides of the table'.
- (d) BSkyB's parent, News International, was already very powerful in the UK media market. The merger would make it even more powerful and give BSkyB a monopoly over football.
- (e) The merger would put an end to competition; other TV companies and the smaller football clubs would be the casualties.
- (f) The merger would lead to a monopoly within football, and hence job losses in the industry.
- (g) News International was debt-ridden; Manchester United would be used to keep afloat the unprofitable parts of the organization.
- (h) BSkyB would have access to privileged information, which would give it an unfair advantage over other broadcasters when bidding for TV rights.
- (i) European club competitions that were currently available free on terrestrial TV would be lost to BSkyB if the merger went ahead.
- (j) Reporting by BSkyB or by News International would be biased in favour of Manchester United. BSkyB would feature matches mainly involving Manchester United to the detriment of other clubs and their fans.
- (k) Football clubs or other sporting organizations should not be controlled by media companies because of potential conflicts of interest.

- (l) A potential European 'Super League' involving Manchester United could be jeopardized by BSkyB if it were not guaranteed TV rights to the competition.

Effects of the merger on consumers

- (a) The merger would lead to increased costs for Manchester United fans both through higher ticket prices and higher TV subscription charges.
- (b) The merger would lead to the scheduling of matches being subordinated to broadcasting interests, with live matches being timed to suit TV audiences, possibly abroad, to the detriment of those wishing to attend matches.
- (c) Team selection would be determined by broadcasting interests. For example, Asian players could be added to the Manchester United squad in order to attract audiences in Asia even though this was not in the interests of Manchester United.
- (d) Manchester United would be treated as a cash cow by BSkyB. If BSkyB or its parent, News International, got into financial difficulties, the profits of Manchester United would be used to support the group rather than being reinvested in the club. The club might be forced to sell valuable world-class players to raise money for the group. This would adversely affect the club's sporting performance.
- (e) Conversely, the merged group would be so much wealthier than most other clubs that its ability to buy the best players could make it virtually unbeatable, causing (sporting) competition with other clubs to become less interesting. The only effective competition in football would be at international level.

Wider issues

- (a) A watchdog should be established to deal with issues such as ticket pricing and ground facilities.
- (b) Measures should be introduced to ensure that terrestrial TV was better able to compete for the rights to broadcast live sport in the UK.
- (c) The merger would lead to people with no real interest in football itself running the game. Football clubs should be the subject of special regulations that prevented them from being acquired by conglomerates, as this effectively alienated the clubs from their roots and their supporters.

D J MORRIS (*Chairman*)

N H FINNEY

D J JENKINS

R J MUNSON

G F OWEN

P A BOYS (*Secretary*)

12 March 1999