THE ECONOMIC IMPLICATIONS OF DESIGNATING SIX NATIONS AND HEINEKEN CUP RUGBY FOR FREE TO AIR BROADCASTING:

A SUBMISSION TO THE MINISTER FOR COMMUNICATIONS, ENERGY AND NATURAL RESOURCES.

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EXECUTIVE SUMMARY.

Introduction.

The Minister for Communications, Energy and Natural Resources ("the Minister") has proposed that Ireland's games in the Six Nations Rugby Football Championship ("the Six Nations") and all matches in the European Rugby Cup ("the ERC")[1] involving Irish teams should be available for live broadcast on free-to-air television channels within the State. The Minister's proposals raise some very important public policy issues regarding broadcasting, the organisation of professional sports and the relationship between sport and government. Compecon welcomes the opportunity to submit its views on the Minister's proposals.[2]

The Economics of Professional Team Sports.

There is an extensive literature on the economic characteristics of professional sports leagues which is particularly relevant to understanding the potential implications of the Minister's proposals regarding the broadcasting of rugby matches. This literature recognises that professional sports leagues have certain unique characteristics which distinguish them from other kinds of business.

Professional sports teams seek to hire suitably talented players and coaches with the aim of maximising the likelihood of success on the field subject to a budget constraint. On-field success in turn is likely to generate increased revenues by raising attendances, increasing sales of team merchandise and making the team more attractive to business sponsors.

Sports leagues require a greater degree of cooperation between member teams than is generally true of competitors in other industries. No individual team can produce a

[1] The ERC is more popularly known as the Heineken Cup but is referred to as the ERC in the present submission.

[2] The Minister also proposes to add certain Gaelic football and hurling games as well as the Cheltenham National Hunt Horse Racing Festival to the list of designated events. Our submission is confined to analysing the implications for rugby because it is a professional sport, which, unlike Gaelic games, is played in a number of countries. Consequently the Minister's proposals would appear to have wider implications for rugby than for Gaelic games. Nevertheless some of the arguments apply with equal validity to Gaelic games.

single unit of output, i.e. one match, on its own. Only by acting collectively can a league and its member clubs produce a full season of games resulting in a championship competition. Games which are a component part of such a contest are far more attractive to fans than individual games organised on an ad-hoc basis between any two teams. Whereas in other industries firms seek to take business from their rivals and would gain if their rivals were forced out of business, this is not true of sports leagues, since a team that put its rivals out of business by taking customers away from them would have no teams left to play against.

Uncertainty of outcome is widely considered to be an essential feature of sports and a major attraction for fans. Measures to ensure an even distribution of revenues are liable to make games more attractive by providing teams with an equal opportunity to hire the best players thereby improving the degree of competitive balance. In the absence of such measures, teams from larger centres of population will tend to have a larger supporter base and earn higher revenues enabling them to hire better quality players and generally be more successful. Sharing of revenues from the collective selling of broadcasting rights evenly among all the teams in the league in order to promote competitive balance is a feature of US professional sports leagues.[3]

Competitive balance is arguably less of an issue in European sports, especially football, because most leagues have a system of promotion and relegation, while the top teams qualify to play in lucrative European wide competitions such as the Champions League. Thus, although broadcasting rights are sold collectively the revenues are not distributed evenly. There is evidence that this has led to a growing revenue and competitive imbalance in European football leagues. Allied to this the abolition of restrictions on player mobility, combined with rules which restrict teams to playing in their own national leagues has led to a situation where football clubs in the four or five largest countries have been able to attract all of the top players with clubs in smaller countries lacking the financial capacity to compete for the best players. This has resulted in a decline in the quality of leagues in smaller countries

[3] The US National Football League is generally regarded as having the most even distribution of revenues between teams and as having a very high degree of competitive balance. Its revenue sharing arrangements are also seen to have enabled the *Green Bay Packers* to enjoy considerable success despite being located in a far smaller city than any of the other NFL teams. The English Rugby Premiership also operates a system of revenue sharing.

and a growing domination of European wide competitions by teams from the five largest countries. This explains why, for example, Celtic and Rangers have reportedly sought to leave the Scottish League and join the Premiership in England and why Dutch and Belgium clubs have reportedly considered establishing a joint league.

Sport and Broadcasting.

The importance of sports to broadcasters is a relatively recent phenomenon. Changes in technology mean that broadcasting has moved from a situation where content competed for scarce distribution outlets to one where abundant spectrum has led to a proliferation of television channels competing for relatively scarce content. It has also enable broadcasters to charge viewers directly whereas traditionally broadcasting was funded indirectly through advertising, State subventions or a combination of both. The value of sports broadcast rights have increased dramatically over the past ten years. A growing number of dedicated sports pay TV channels have emerged over the past decade and major sports rights have migrated to these channels. The growth in the value of sports rights in EU States broadly corresponds with the growth in subscriber numbers for pay TV channels.[4]

The value of sports rights to a broadcaster and thus the price that they are prepared to bid for such rights increases with exclusivity, scope and duration.[5] A broadcaster will pay more for the exclusive rights to broadcast sports events. Non-exclusivity not only reduces the price broadcasters are prepared to pay but also reduces the incentive for broadcasters to promote broadcasts of an event as such promotional activity is also likely to benefit its rival(s). This is likely to have a negative impact on viewing figures.

In 2009 the top 20 sports events in terms of viewer numbers in Ireland were all broadcast by RTE Two indicating that the station already arguably has a dominant position in terms of broadcasting sports events. Nine of these events are not currently designated for free-to-air broadcasting but the State broadcaster, nevertheless won the right to broadcast them.

[4] T. Hoehn and D. Lancefield, Broadcasting and Sport, *Oxford Review of Economic Policy*, 19(4) 552, (2003).
[5] Ibid.

Irish Rugby.

Compared with association football or soccer, rugby has traditionally been played in a relatively limited number of countries throughout the world.[6] Rugby has traditionally been regarded as a minority sport in Ireland ranking behind Gaelic Football, Hurling and association football in terms of participation and support.[7] For most of its history rugby operated as an amateur game and payments for playing have only been permitted since 1995.

Following the move to professionalism there has been a significant re-structuring of the sport. The two largest rugby playing countries in Europe, England and France, continue to have their own national leagues with a promotion and relegation system between the top division and lower divisions, while the top teams qualify to play in European competitions like the ERC. They are therefore similar to European football leagues. Three of the smaller countries, Ireland, Scotland and Wales established a new joint league, known as the Magner's League, in 2000/1.[8] Thus, in contrast to the situation which pertains in football, the smaller countries were able to establish a league which has a sufficiently large support base to enable them to compete with clubs in the two larger countries for players, something which they would almost certainly be unable to do if they were confined to playing in national leagues. The small number of top level rugby playing countries means that, unlike, football, the smaller countries also have a significant representation in European competitions such as the ERC. A further important factor is that international games generate the major share of the revenues, again unlike football, and this has enabled the national associations, particularly in the four smaller countries to exert a greater degree of

[6] Throughout this submission, football is used to refer to association football and rugby to refer to rugby union. There are six top level rugby playing nations in Europe: England, France, Ireland, Italy, Scotland, and Wales. The other top rugby playing countries in the world are Argentina, Australia, New Zealand and South Africa. The International Rugby Board (IRB) world rankings list a total of 95 rugby playing countries.

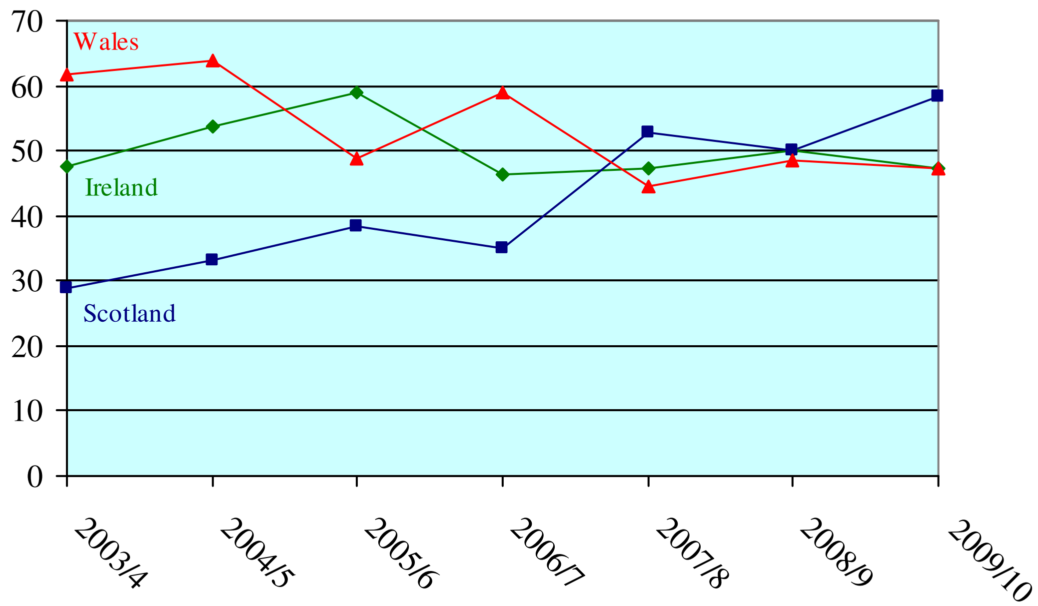
[7] In a 2009 submission to the Minister for Communications, Energy and Natural Resources, the IRFU stated: "Rugby as a sport in Ireland is a minority sport when compared with the scale of Association Football (soccer) on the one hand and the GAA on the other hand". Available at http://www.dcenr.gov.ie/Broadcasting/Designation+of+sporting+events/Submissions+Received.htm Arguably New Zealand and Wales are the only countries where rugby would be regarded as the number one sport.

[8] Two Italian teams are set to join the league from next season.

control over the organisation of the game. The Magner's League and ERC has given Irish teams the opportunity to compete in competitions at the highest level.

In the nine years of the Magner's League Irish teams have won the competition on five occasions. Welsh teams have won on four occasions while no Scottish team has yet won the competition. Irish teams have won the ERC four times in 15 years, compared with six wins for English teams and five by French teams. No Italian, Scottish or Welsh team has won the ERC. Thus Irish teams have arguably punched above their weight in both competitions. This view is supported by the overall playing record for Irish teams which shows that Irish teams have recorded high winning ratios in both the Magner's League and ERC. Fig 1 gives details of wins by country in the Magner's League.

Fig.1: % Magner's League Wins by Country



Source: http://www.magnersleague.com/history/index.php

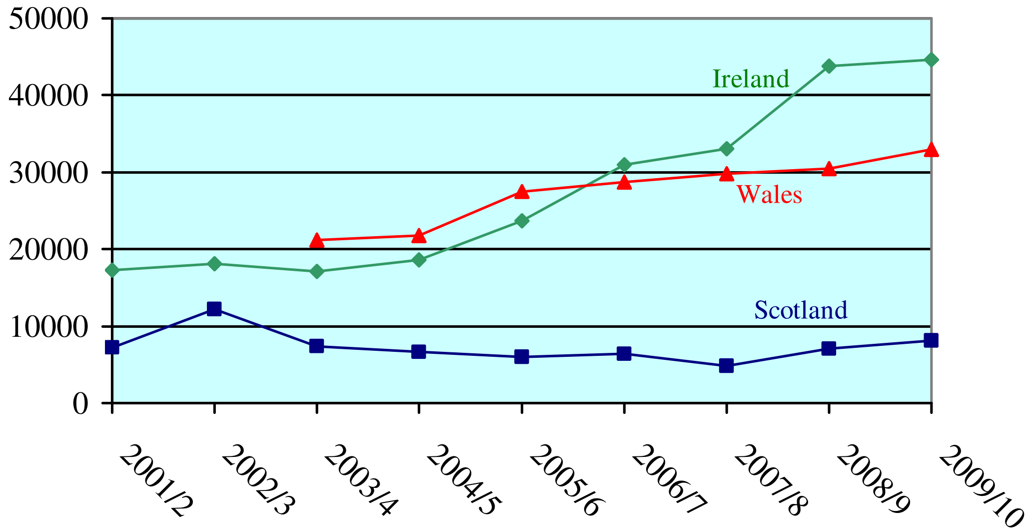
Table 1 gives details of ERC wins by country since the competition's establishment in 1995/6. The table shows that Irish teams have the best overall record in the ERC having won almost 60% of all games played (176 wins from 294 games). England and

France come next winning 57% and 56% respectively of all games played. Italy has the poorest record with Italian teams winning an average of one game out of every eight. Scottish teams have won only 29% of their games.

Table 1: ERC % Wins By Country 1995/6-2009/10	
Ireland	59.9
England	57.8
France	56.8
Wales	44.3
Scotland	29.3
Italy	12.6
Source: http://www.ercrugby.com/eng/13_70.php	

The success of Irish teams, most notably Leinster and Munster in both competitions has been reflected in growing attendances in both competitions. Fig. 2 illustrates attendances by country at Magner's League games.

Fig.2: Average Magners League Attendances by Country

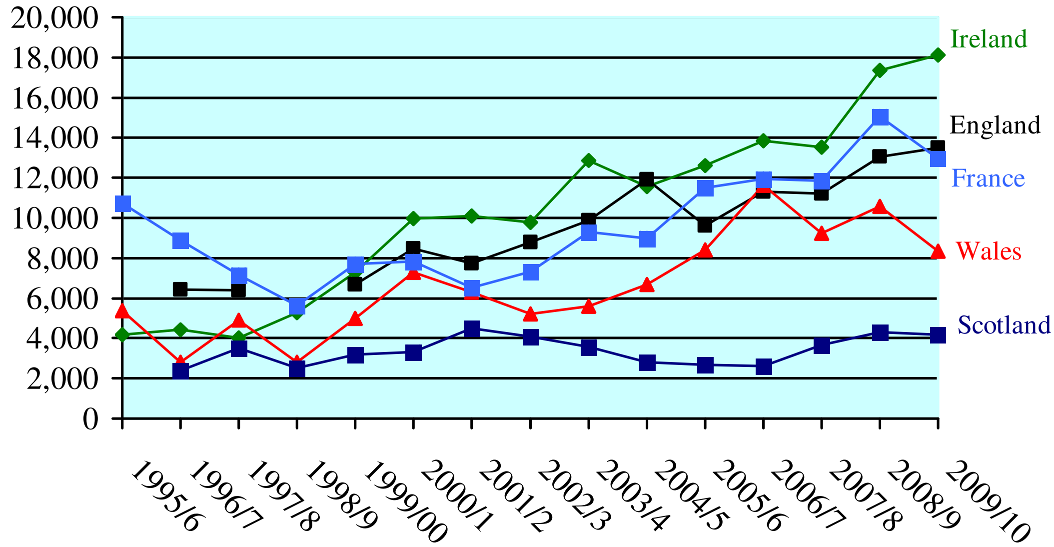


Source: http://www.magnersleague.com/history/index.php

The chart shows that the combined average attendances of the four Irish clubs have not only increased significantly but for the past four years have exceeded those of the four Welsh teams in the Magner's League, although rugby is normally regarded as the main sport in Wales. Thus in 2009/10 the four Irish teams had a combined average attendance of 44,000 compared with an average aggregate attendance of 33,000 for the four Welsh teams. The two Scottish clubs had a combined average attendance of just over 8,000.

Fig. 3 gives figures for average attendance per team per country for ERC group matches.

Fig.3: ERC Average Attendances by Team and Country



Source: http://www.ercrugby.com/eng/13_70.php

The chart again shows that the Irish teams have recorded a significant rise in attendances particularly over the past decade. Average attendances per game in Ireland have been higher than in the other participating countries for the past five seasons. Thus in 2009/10 Irish teams had an average attendance of 18,000 at group games, compared with English and French teams which drew average crowds of around 13,000, while Welsh and Scottish teams had average crowds of 8,000 and 4,000 respectively.

Much of the rise in attendances is due to Leinster and Munster and almost certainly reflects the success enjoyed by both these teams in recent years. The downside is that many of these "new" supporters have no long-term association with the teams and may drift away if the teams' performances decline.

Potential Impact of Designating Games Free-to-Air.

The Minister and the IRFU have disagreed about the likely impact of designating matches in the Six Nations and ERC as free-to-air with the IRFU arguing that it could lose as much as €10-12m as a result and the Minister suggesting that while it might lose around €3m in broadcast revenues, this could be made up from other sources. Designating events free-to-air will almost certainly reduce the price that broadcasters will pay for such events. First non-exclusive rights are worth less to broadcasters. Second there would be little incentive for the State broadcaster RTE to compete for exclusive rights when it could be reasonably confident that it would obtain rights at a much lower cost by virtue of their designation for free-to-air. Less competition would also tend to lower the price. The Minister's proposals would increase transaction costs involved in negotiating contracts and weaken the IRFU's bargaining position vis-à-vis broadcasters and the other participating countries which would again be likely to lead to a loss of revenue for the IRFU. It is difficult to believe that any lost broadcast revenue could easily be made up from other sources as that pre-supposes the existence of hitherto untapped revenue sources.

The IRFU had total income in 2009/10 of approximately €59m. A loss of €3-5m would therefore represent a very serious drop in revenue. This figure is well below the level of losses which the IRFU claims it would suffer and is in line with the Minister's suggestion that the IRFU would lose around €3m in broadcast revenue. The IRFU spends €38m on its professional teams and a further €11m on supporting the sport at club/domestic level. There is limited scope for savings in other areas such as interest and depreciation charges, which are largely outside the IRFU's control, while the administration and overheads account for a small proportion of total expenditure, again leaving little room for savings in that area, particularly as they were cut by more than €1m last year. Thus the bulk of any savings would have to come in reduced spending on professional teams and/or cuts in support to the club/domestic game. Either option would have a serious adverse effect on Irish rugby.

The success of Irish teams in recent years reflects the fact that they have been successful in retaining top Irish players and recruiting top quality overseas players. A reduced budget for the professional teams will adversely affect their ability to recruit and retain the best players. As in football there is an international market for rugby players. In recent years there has been a major exodus of top English players to French clubs which illustrates just how mobile top players are. Any reduction in IRFU revenues is likely to have a detrimental impact on the Irish teams' performances on the field. While Irish teams have experienced a strong upsurge in support in recent years, this could easily evaporate in the event of any deterioration in on-field performance. Similarly there are potential negative implications for sponsorship revenues, sponsors like to be associated with successful teams. Thus any decline in on-field performances would probably generate further revenue falls and could result in a vicious downward spiral.

There are also potentially wider implications. A decline in Irish teams performances in the ERC could ultimately lead to Ireland losing one of its ERC places. Scottish teams have struggled to make an impact in the Magner's League while they have consistently recorded poor attendances for both Magner's League and ERC games. Any deterioration in attendances for Irish teams could raise serious questions about the ongoing viability of the League. A decline in the performances of Irish teams could also reduce the degree of competitive balance thus making the League less attractive. The Magner's League has a fixed membership like US sports leagues and thus competitive balance, which has been a feature of the League up to now, is likely to be important. Any threat to the Magner's League would have very profound implications for the future of Irish rugby.

1: INTRODUCTION.

1.1: Background.

The Minister for Communications, Energy and Natural Resources ("the Minister") has proposed that Ireland's games in the Six Nations Rugby Football Championship ("the Six Nations") and all matches in the European Rugby Cup ("the ERC")[9] involving Irish teams should be available for live broadcast on free-to-air television channels within the State. The EU Audiovisual Media Services Directive ("the AMS Directive") provides that EU Member States may designate certain sporting and cultural events as being of major importance to society and require that events so designated should be available on a free-to-air television service. The Minister has instituted a consultation process inviting comments from interested parties and members of the public on his proposals. The Irish Rugby Football Union ("the IRFU") have criticised the Minister's proposals on the grounds that it would result in a serious loss of revenue to the IRFU and would thus have a detrimental impact on the sport in Ireland. The Minister's proposals raise important public policy issues in relation to broadcasting, the organisation of sports and the interaction between sporting organisations and government. Compecon welcomes the opportunity to comment on the Minister's proposals in respect of rugby.[10]

1.2: The Relevant Legislation.

In 1997, the European Parliament amended the "Television Without Frontiers" (TWF) Directive[11] by including a provision whereby Member States could, at national level, protect the right of the general public to watch broadcasts of sporting and other events that were considered to be of major importance to the country. Article 3b of the

[9] The ERC is more popularly known as the Heineken Cup but is referred to as the ERC in the present submission.

[10] The Minister also proposes to add certain Gaelic football and hurling games as well as the Cheltenham National Hunt Horse Racing Festival to the list of designated events. This submission is only concerned with analysing the implications for rugby because, unlike Gaelic games for example, it is a professional sport in which Irish teams compete on the international stage both for players and on the field. Consequently the Minister's proposals would appear to have wider implications for rugby than for Gaelic games, although some of the findings also apply to Gaelic games.

[11] Directive 97/36/EC, amending Directive 89/552/EEC, OJ 1997 202/60.

Directive allowed each Member State to establish a list of events that had to be broadcast on free to air television. The introduction of Article 3b reflected political concerns about the ability of consumers to view sports and the prices charged by pay TV providers as well as a concern that State owned free-to-air broadcasters would be unable to compete for such rights.

Following the introduction of Article 3b, the Irish Government failed to produce a list of events that were to be preserved for free to air television. In July 2002, the Football Association of Ireland ("FAI") reached an agreement with BSkyB granting it exclusive rights to broadcast the Republic of Ireland's World Cup qualifying matches live. The Government responded almost immediately announcing its intention to draw up a list of events that had to be available on free to air television.[12] In October 2002, the Government published its final list of designated sports events. It included all of the Republic of Ireland's home and away qualifying matches in the World Cup and European Championships, plus their games in the finals of both competitions; certain other games from those championships; the All Ireland Hurling and Gaelic Football Finals and Ireland's games in the Rugby World Cup Finals. Ireland's games in the Six Nations Championship were designated for deferred rather than live broadcast on free-to-air. Other sports events such as the Olympic Games were also included.

On foot of the legislation, RTE reportedly instituted court proceedings to secure the right to broadcast certain Republic of Ireland World Cup qualifying matches.[13] The case was settled when the FAI amended its arrangements with Sky to make them non-exclusive and reached agreement with RTE for the live broadcast of games. The FAI sought compensation from the Government for the consequent drop in revenue but this was refused.[14]

Like the earlier TWF Directive, the AMS Directive provides that Member States of the European Union may designate certain sporting and cultural events as being of major importance to society and require that such events should be available on a free television service. It is a matter for each individual Member State to decide whether

[12] *Sunday Business Post*, 14.7.2002.
[13] *Irish Times*, 20.5.2003.
[14] *Irish Times*, 28.5.2003.

or not to draw up a list.[15] The Directive obliges Member States to provide national legislation as the statutory basis for designating events.

The Broadcasting Act, 2009, sets out the procedure that must be followed by the Minister in relation to the designation of events. The Minister must

- consult with the organisers of the event that the Minister intends to designate and with broadcasters;
- publish a notice of the event which the Minister intends to designate and invite comments on the intended designation from members of the public;
- consult with the Minister for Tourism, Culture and Sport; and
- lay a draft of the order designating events before each House of the Oireachtas for approval.

The AMS Directive also requires Member States to inform the European Commission of the events to be designated. The Commission has a period of three months to verify that the list is compatible with EU Law, to notify other Member States and to seek the opinion of the Committee established pursuant to Article 23a of the Directive. A designation only becomes effective after the Commission has published the list in the EU Official Journal.

Section 162 of the Broadcasting Act, 2009, provides that the Minister may by order

- designate events of major importance to society for which the right of a qualifying broadcaster to provide coverage on free television services should be provided in the public interest; and
- determine whether coverage of a designated event should be available on a live, deferred or both live and deferred basis and in whole, or in part or both in whole or in part.

Should the Minister decide to designate certain events he must have regard to all the circumstances and in particular:

- the extent to which the event has a special general resonance for the people of Ireland; and

[15] The current list of events is set out in the Broadcasting (Major Events Television Coverage) Act 1999 (Designation of Major Events) Order 2003.

- the extent to which the event has a generally recognised distinct cultural importance for the people of Ireland.

In determining the extent to which these criteria have been met, the Minister may take a variety of factors into account:

- whether the event involves participation by a national or non-national team or by Irish persons; and
- past practice or experience with regard to television coverage of the event or similar events.

In making a determination as to whether coverage of a designated event should be available on a live, deferred or both live and deferred basis and in whole, or in part or both in whole or in part the Minister must consider

- the nature of the event;
- the time within the State at which the event takes place; and
- the practical broadcasting considerations.

1.3: The Minister's Proposals.

In May 2009 the Minister instituted a review of the listed sports events. In May 2010 he announced his intention to add a number of additional events to the designated list. The events to be added include:

- The Provincial Finals in the Senior Gaelic Football and Hurling Championships
- The All Ireland Championship Senior Football and Hurling Quarter finals and Semi finals.
- Ireland's games in the Six Nations Rugby Football Championship (move from deferred to live basis);
- European Rugby Cup (qualifiers - pre quarter final stages - quarter finals, semi finals and final when an Irish team is participating) live
- The Cheltenham Horseracing Festival.

The Minister has instituted a statutory consultation on the proposal to expand the list of designated events. It is worth noting that RTE, in its 2009 submission argued for the designation of Six Nations matches and the semi-finals and final of the ERC, when an Irish team was involved, for live free-to-air broadcasts.

1.4: Structure of the Submission.

The present submission is structured as follows. Section 2 describes the economic characteristics of professional sports leagues. Key features of the broadcasting industry and the broadcasting of sports are analysed in Section 3. The structure of rugby in Ireland is then described in Section 4. The economic implications of the Minister's proposals are analysed in Section 5. The main conclusions are outlined in the final section of the submission.

2: THE ECONOMICS OF PROFESSIONAL SPORTS LEAGUES.

2.1: Introduction.

Rugby operated as an amateur sport throughout most of its history and payments to players have only been permitted since 1995. Compared with football, rugby has traditionally been played in a relatively limited number of countries throughout the world. There are six top level rugby playing nations in Europe, namely England, France, Ireland, Italy, Scotland, and Wales. These six teams play in the annual Six Nations championship. Australia, New Zealand and South Africa participate in a separate annual international championship for Southern Hemisphere countries, known as the Tri-Nations. The latter tournament is due to be expanded with the admission of Argentina.[16] Rugby has traditionally been regarded as something of a minority sport in Ireland ranking behind Gaelic Football, Hurling and association football in terms of participation and support.[17]

Following the move to professionalism there has been a significant re-structuring of the sport. While national leagues continue to operate in the two larger European rugby playing countries, England and France, the smaller countries Ireland, Scotland and Wales have established a new trans-national league. In addition the ERC, which is similar in some ways to the Champions League in football involving teams from the top six European rugby playing nations, was established at more or less the same time as the move to professionalism.[18]

There is an extensive literature on the economic characteristics of professional sports leagues which is particularly relevant to understanding the potential implications of the Minister's proposals regarding the broadcasting of rugby matches. This literature

[16] The International Rugby Board (IRB) world rankings list a total of 95 rugby playing countries.
[17] In a 2009 submission to the Minister for Communications, Energy and Natural Resources, the IRFU stated: "Rugby as a sport in Ireland is a minority sport when compared with the scale of Association Football (soccer) on the one hand and the GAA on the other hand". Available at http://www.dcenr.gov.ie/Broadcasting/Designation+of+sporting+events/Submissions+Received.htm Arguably New Zealand and Wales are the only countries where rugby would be regarded as the number one sport.
[18] The sport's organisational structure and how it has changed in the professional era is described in more detail in section 4 of the submission.

recognises that professional sports leagues have certain unique characteristics which differentiate them from other kinds of business.

2.2: Why Sports Leagues Are Different.

Professional sports teams seek to hire a suitably talented group of players and a coach or team of coaches with the aim of maximising the likelihood of success on the field subject to a budget constraint. On-field success in turn is likely to generate increased revenues by raising attendances, increasing sales of team merchandise and making the team more attractive to business sponsors. Thus many sports teams can be viewed as rational profit maximising firms. A seminal study of the economics of sports leagues recognised, however, that team owners may derive psychic income from their involvement with the team and be prepared to accept losses, i.e. they may engage in behaviour which is not profit maximising. Historically, for example, many English football clubs were reliant on their chairman to provide funding. A more recent example of this is provided by Chelsea Football Club where the club's owner has been prepared to underwrite substantial losses in order to achieve on-field success.[19] Some author's have suggested that European football clubs may be win maximisers rather than profit maximisers.[20]

The literature recognises that sports leagues require a greater degree of cooperation among member teams than is generally true of most other industries, although there is disagreement regarding the extent of cooperation required.[21] The teams are competitors in a sporting sense, in that the very essence of sport involves the teams involved in a particular game trying to beat one another, and each team in the league trying to finish higher than its rivals. At the same time, the operation of the league requires considerable cooperation between the member teams, in order for it to

[19] There are examples in recent years of some French rugby clubs where rich owners are prepared to pump significant amounts of money in, albeit not on the same scale as Mr. Abramovich at Chelsea. See S. Rottenberg, The Baseball Player's Labor Market, 64(3), *Journal of Political Economy*, 242, (1956).
[20] S. Szymanski, Income Inequality, Competitive Balance, and the Attractiveness of Teams Sports: Some Evidence and a Natural Experiment, 111 *Economic Journal*, F61, (2001).
[21] No individual team can produce a single unit of output, i.e. one match, on its own. S. Goldfein, Concerted Action by Team Owners After Brown and Chicago Sports, in B. Hawk (Ed.), *International Antitrust Law & Policy*, Juris Publications, New York, 1999.

operate successfully, and attract supporters to attend matches and watch them on television.

Only by acting collectively can a league and its member clubs produce a full season of games resulting in a championship competition. Games which are a component part of such a contest would appear to be a far more attractive product than individual games organised on an ad-hoc basis between any two teams. The US Supreme Court noted that "league sports"' were "perhaps the leading example"' of a business activity that "can only be carried out jointly."[22] Whereas in other industries firms seek to take business from their rivals and would gain if their rivals were forced out of business, this is not true of sports leagues, since a team that put its rivals out of business by taking customers away from them would have no teams left to play against.

2.3: Competitive Balance.

It is suggested that the common interest of teams in sports leagues extends beyond the need to have opponents to play against and to cooperate in order to produce a league championship competition. There is a body of literature which argues that uncertainty of outcome is an essential feature of sports. This in turn requires some measures to ensure a relative degree of equality between the teams in a league. Consequently, it is argued that measures to ensure an even distribution of revenues among league members makes games more attractive to fans by providing teams with equal opportunities to hire the best players thereby improving the degree of competitive balance. In the absence of such measures, teams from larger centres of population will tend to have a larger supporter base and earn higher revenues enabling them to hire better quality players and generally be more successful.

Sharing of revenues from the collective selling of broadcasting rights evenly among all the teams in the league in order to ensure that competitive balance in the league is maintained is a feature of US professional sports leagues.[23] Szymanski observes that

[22] *National Collegiate Athletic Association v. Board of Regents of University of Oklahoma*, 468 US 85, 101 (1984).

[23] The US National Football League is generally regarded as having the most even distribution of revenues between teams and as having a very high degree of competitive balance. In addition revenue sharing arrangements are also seen to have enabled the *Green Bay Packers* to enjoy considerable success despite being located in a far smaller city than any of the other NFL teams.

"the competitive-balance issue has tended to dominate the analysis of team sports".[24] McMillan argued that competitive balance was essential to maintain a healthy level of competition in New Zealand rugby.[25] Competition agencies in the United States and the European Union have permitted collective selling arrangements for sports broadcast rights on the grounds that they improve competitive-balance.[26]

Three different concepts of uncertainty have been identified in the literature.

- short-run uncertainty of match outcome, i.e. uncertainty of the outcome of an individual game;
- medium term or seasonal uncertainty of outcome, i.e. uncertainty over which team will ultimately win the league;
- long term uncertainty of outcome, which refers to a lack of domination by one or more clubs over a number of seasons, sometimes referred to as dynamic competitive balance.[27]

Ross and Szymanksi argue that complete revenue sharing will increase competitive balance but reduce the incentives for teams to invest in developing talent.[28] Some commentators have disputed the view that revenue sharing can actually improve competitive balance.[29] Much of the economic literature on professional team sports has focussed on US sports leagues and the competitive balance argument is based on certain assumptions that may be unique to US sports leagues.[30]

1. The competitive balance argument assumes that there is a fixed supply of talent available to clubs. Such arguments would appear to have much less

[24] S. Szymanski, The Economic Design of Sporting Contests, 61 *Journal of Economic Literature* 1137 (2003).
[25] J. McMillan, Rugby Meets Economics, *New Zealand Economic Papers*, 31(1), (1997). McMillan also argues that greater competitive balance between rugby teams in New Zealand also benefited the national team, the "All Blacks".
[26] S. Szymanski and S. Kesenne, Competitive Balance and Gate Revenue Sharing in Team Sports, 52 *Journal of Industrial Economics* 165 (2004).
[27] P.J. Sloane, Rottenberg and the Economics of Sport After 50 Years: An Evaluation, IZA Discussion Paper no. 2175, (2006).
[28] S.F. Ross and S. Szymanski, *The Law & Economics of Optimal Sports League Design*, Tanaka Business School Discussion Papers, TPS/DP05/36, (2005). Sloane above n 27 also supports the view that revenue sharing improves competitive balance.
[29] R. Fort, and J. Quirk, Cross Subsidisation, Incentives and Outcomes in Professional Team Sports Leagues, 33 *Journal of Economic Literature* 1265 (1995); P. Downward and A. Dawson, *The Economics of Professional Team Sports*, Routledge, London, (1995); M. Cave and R. Crandall, Sports Rights and the Broadcast Industry, 111 *Economic Journal* F4, (2001); Szymanski (2003) above n 24; 37 Above n 26.
[30] Above n 26

validity in the case of football within the EU as teams can recruit players from other national leagues and indeed teams hire players from all over the world.

2. US sports leagues and football leagues in Europe which have important implications for the competitive balance argument. First, US sports leagues are closed leagues with league membership fixed, i.e. there is no system of promotion and relegation between the top league and lower leagues, unlike football in Europe.
3. In US sports there are no international club competitions like the UEFA Champions League in football or the ERC in rugby.

In effect US leagues involve games between the same teams every season which arguably makes competitive balance more important for maintaining interest among supporters. Maintaining supporter interest is essential to maintain overall league revenue. This means that US sports teams have a common interest in promoting competitive balance in order to maximise total league revenues.

In contrast teams in European football leagues do not share the same common interest in promoting competitive balance. Teams are likely to suffer a significant loss in revenue if they are relegated from the top division. Similarly teams that qualify to play in the Champions League earn substantial extra revenues as a result. Thus the larger, more successful teams have little interest in greater competitive balance within the league. It is not in the interests of the top football teams in any country that every team should have a broadly equal chance of reaching the Champions League or of being relegated.

2.4: European Football.

In contrast to the NFL and other professional sports leagues in the United States, equal sharing of revenues is far less common in sports leagues in other countries, particularly football in Europe. For example, the English FA Premier League (FAPL) involves an unequal distribution revenues earned from the collective sale of broadcast rights. 50% of total broadcasting revenue is divided between each of the 20 Premier League clubs on an equal share basis, while relegated clubs also receive some of this money in the form of a "parachute payment"'. Of the remainder, 25% is paid as facility fees, which are determined by the number of times a club's games are broadcast and the remaining 25% is based on merit payments, determined by the position that a club finishes in the league. Higher placed clubs' games are more likely to be broadcast than those of lower placed clubs.

The effect of both the merit payments and facilities fees is to introduce a degree of inequality in the distribution of broadcast revenues between clubs. In 2008/9, the revenue of the highest earning club was six times that of the lowest earning club. The most uneven distribution of income was recorded in the Spanish league where the richest club had revenues 25 times greater than the poorest.[31]

Following the conclusion of the initial agreement between the FAPL and BSkyB, concerns were expressed that it would result in spiralling income inequality between clubs reducing competitive balance.[32] The evidence indicates that such prediction has proven accurate. Massey, for example, reported evidence of a growing competitive imbalance in the FAPL.[33] Similarly Arnaut observed:

> "Worryingly, however, in recent years there has been a significant decline in competitive balance in a number of top-flight football leagues across Europe, which is supported by statistical analysis."[34]

Cross border competitions such as the Champions League also increase the income disparity between clubs at national level. It is estimated, for example, that Arsenal who reached the Champions League final in 2005/6 earned around £25m in broadcast revenues from their participation in that competition, compared with £27m from their share of FAPL broadcast revenues.

The distribution of money between the 32 teams in the group stages of the Champions League comprises two elements. 50% is distributed on the basis of teams' on-field performances, while the other 50% is distributed according to the relative value of the

[31] Deloitte *Annual Review of Football Finance 2008/9*.
[32] M. Baimbridge, S. Cameron, and P. Dawson, Satellite Television and the Demand for Football: A Whole New Ballgame?, (1996), 43 *Scottish Journal of Political Economy* 317
[33] P. Massey, Are Sports Cartels Different? An Analysis of EU Commission Decisions Concerning Collective Selling Agreements for Football Broadcasting Rights, 30(1) *World Competition,* 87, (2007).
[34] J.L.Arnaut, Independent European Sport Review 2006, http://www.independentfootballreview.com/docA3619.pdf, para 3.67.

broadcast market in a team's home country. The home country then divides the broadcast share among its own participating clubs on the basis of their performances in the competition.[35] The broadcast share of the pool is therefore skewed in favour of larger countries as they have larger broadcast markets. For example, Porto who won the Champions League in the 2003/4 season received a total of £13m from broadcasting revenues but £11.7m was due to performance bonuses and only £1.3m (10%) was from the broadcast pool due to the fact that the Portuguese broadcast market is relatively small in European terms.[36]

Historically European football had closed product and labour markets. Leagues are organised along national lines with teams not permitted to join a league outside of the jurisdiction in which they are located.[37] Historically player mobility, in most countries, was limited by the transfer system which prevented players leaving the clubs that employed them, even if their contracts had expired and by limits on the number of foreign players that a team could employ. Under this system, clubs in larger markets in each national league enjoyed higher revenues than those in smaller towns and cities. As a result the larger clubs, tended, in general to attract the better players and therefore tended to be more successful than those in smaller markets. In other words within each national league teams from larger cities tended to win leagues more often than small town teams.

The situation changed in the mid 1990s as a result of the European Court of Justice decision in the *Bosman* case. This resulted in a major reform of football's transfer system with players effectively becoming free agents once their contracts had expired. The judgment also resulted in the abolition of restrictions on the number of foreign players a team could hire. This means that European football now has a fully mobile labour market but product markets remained closed with teams still confined to playing in their own national leagues.

[35] For example, in the 2009/10 season, England had four participants so the broadcast share was split among them on the basis of their Champions League results.
[36] R. Parkes, UEFA Champions League: The Icing or the Cake?, in Deloitte, *Football Money League The Climbers and the Sliders*, Deloitte, London, 2005.
[37] Attempts in the early 1990s to re-locate English and Scottish teams to Dublin in order to have a Dublin franchise in the English and/or Scottish League were prevented, for example. It is also reported that the two largest Scottish teams, Celtic and Rangers, have attempted to join the FA Premier League in more recent times.

The position post-Bosman therefore is that all teams compete for players in an open European labour market. This means that teams in smaller countries must compete for players with those from larger countries, with the latter having budgets up to 15 times greater.[38] This naturally leads to a situation where the best players have tended to move to the richest leagues in Europe thus widening the gap between teams from smaller and larger countries. Kesenne, for example, highlights the fact that the opening up of the labour market while leagues remain fixed along national lines has meant that top teams in countries such as Belgium and Holland, including Ajax a team which won the European Cup on several occasions in the 1970s, simply cannot compete with big clubs from larger countries for players.[39] He notes that to have the same ratio of population to top division football teams as England, Belgium would have to reduce its league to just four or five clubs. Szymanski claims that the top Dutch and Belgian clubs considered establishing a single league but were prevented from doing so by rigid national demarcations.[40]

The opening up of the football labour market has bid up players wages in both large and small countries. In the latter case, wages increase because, while the top players move to clubs in larger Member States, this reduces the overall supply of talent available in smaller countries thus bidding up wages for the remaining lower quality players. Kesenne reports how this trend has led to the near bankruptcy of several Belgian and Dutch top division clubs.[41]

The combination of a liberalised labour market and a closed product market has resulted in a growing imbalance in European wide competitions such as the Champions League. This imbalance is further exacerbated by the way in which the allocation of Champions League broadcasting revenues is biased in favour of teams

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[38] S. Kesenne, The Peculiar International Economics of Professional Football in Europe, *Scottish Journal of Political Economy*, 54(3), 388, (2007). This paper reported that the average team in the FAPL had a budget 12 times greater than that of the average team in the top division in Belgium, although attendances were only 3.5 times greater.
[39] Ibid.
[40] S. Szymanski, *Playbooks and Checkbooks An Introduction to the Economics of Modern Sports*, Princeton, Princeton University Press, (2009).
[41] Kesenne 2007 at 31. On competition between European football leagues for players see also F. Palomino and J. Sakovics, Inter-League Competition for Talent vs. Competitive Balance, 22(6) *International Journal of Industrial Organization*, 783, (2004).

from the larger countries. In order to compete at a European level, successful teams from smaller countries need to be "too strong" for their own domestic league.[42] There are some examples of teams from smaller countries using money obtained through participation in the Champions League to hire better players enabling them to dominate their domestic league.[43] There are examples of some Irish football teams seeking to adopt such a model and getting into serious financial difficulties as a result.[44]

2.5: Conclusions

Professional sports teams seek to attract the best combination of players and coaches subject to an overall budget constraint in order to achieve on field success. Such success in turn generates increased revenue from ticket sales, sponsorship and merchandise sales.

Professional sports teams and leagues differ from other businesses in that they require close cooperation between competitors in order to produce a viable product in the form of a league championship competition. Much of the literature on sports leagues stresses the importance of competitive balance as a means of maximising supporter interest and the need for revenue sharing to achieve such balance. This literature is largely reflective of US sports leagues which have a fixed membership and no international competitions. In contrast member teams in European sports leagues, particularly football, have less interest in competitive balance due to the promotion and relegation system and the fact that the top teams qualify to play in lucrative European competitions such as the UEFA Champions League. Thus, there is evidence of a growing disparity in revenues within leagues and an associated reduction in competitive balance.

The European Court of Justice Bosman judgment has created a fully mobile labour market for professional footballers within the EU while clubs remain tied to their

[42] Above n 27.
[43] Rosenborg in Norway is one example of this.
[44] Shelbourne, for example, won the Eircom League in 2008 but were relegated because of financial difficulties. It would appear that the club had been influenced by the Rosenborg model having played them in the Champions League qualifying rounds some years previously.

national leagues. This has resulted in clubs in the four or five largest countries recruiting virtually all of the best players playing in Europe as clubs in smaller countries are simply unable to compete. The effect of has been to reduce the quality of leagues in smaller countries and has resulted in teams from the four or five largest countries dominating European competitions such as the Champions League.

3: THE TELEVISION INDUSTRY.

3.1: Introduction.

Television involves the broadcasting of a diverse range of programmes for entertainment, educational and informational purposes. The television industry involves a sequence of activities:

1. Programme production;
2. Programme selection;
3. Programme delivery.

For most of the past fifty years the dominant technology for broadcasting programme delivery has been terrestrial transmission via an airwave signal from a broadcasting station transmitter to television receivers owned by viewers. Cable represents one alternative to terrestrial delivery. It involves sending signals along the cables from stations to receivers. In Ireland cable has tended to complement traditional terrestrial delivery, i.e. cable providers have used cable to deliver signals from terrestrial stations into viewers' homes thereby overcoming problems caused by topography, and, in the case of UK based terrestrial channels, distance from the broadcast stations.

In the past entry to traditional terrestrial broadcasting was limited due to regulation and limitations on spectrum frequency. This meant that there could only be a limited number of television channels permitted to operate in order to avoid problems of signal interference.

3.2: The Television Industry in Ireland.

Television broadcasting in Ireland was a legal state monopoly until 1998. The State owned RTE has operated a national television service since 1961. It currently operates two television services, RTE1 and RTE 2 while another state owned broadcaster, TG4, is intended to broadcast Irish language programmes. The privately owned TV3 operates two national television channels TV3 and 3e. All five Irish terrestrial channels earn revenue from the sale of television advertising. RTE also receives income from television licence fees and other sources.

In addition to the four television channels listed above, a number of UK terrestrial television channels are widely available throughout the state. The main ones are:

- The two BBC channels which are State owned and are financed from UK television licence fees;
- Ulster Television (UTV) which holds the UK regional commercial franchise for Northern Ireland and is a commercial station financed from advertising revenues.
- Channel 4 a commercial channel also financed from advertising revenues.
- Channel 5 is another UK commercial station, although it is not as widely available within the State.

In addition there are a number of satellite channels available. The most notable being those channels which form part of the BSkyB network. This group includes both advertiser financed channels (Sky 1 and Sky News) as well as direct payment services (sports and film channels).

3.3: Financing of Television Broadcasting.

There are three conventional mechanisms for financing television broadcasting:

1. Advertiser payment;
2. Government subvention; and
3. Audience payment.

(i) Advertiser Financing.

Historically broadcasters could not charge TV viewers directly for watching their programmes. Thus commercial broadcasters traditionally supplied programmes free of direct charge to viewers and still do so today. Broadcasters effectively sell programme audiences to advertisers who seek, by attachment of their messages to programmes, to inform and persuade customers to buy particular goods or services. The issue of who ultimately pays for programmes depends upon the extent to which advertisers can pass television advertising costs on to consumers in the form of higher prices for the advertised products. The revenue from advertising is proportional to the popularity of the broadcasting station, called *rating*, which is the percentage of people within the target audience who view a specific programme or commercial in a given time period.

When television is financed by advertising in this way it means that broadcasters are effectively engaged in non-price competition for viewers. The scheduling of programmes constitutes the major strategic variable. There is only a limited time period for targeting particular audiences, which means that stations compete head to head for viewers at those times. Advertiser financing, combined with a limit on the number of broadcasters, results in a tendency for stations to broadcast the same types of programmes, e.g. crime dramas, at exactly the same time.[45] Non price competition effectively induces broadcasters to limit differentiation resulting in a tendency towards "lowest common denominator" programmes.

The limited programme diversity produced by advertiser financing of broadcasting may be regarded as a form of market failure. "Indeed this market failure in scheduling has created an entirely new industry in which cable stations specialize in round-the-clock news, shopping, sports, where each programme is repeated every one to two hours."[46]

The provision of a wider range of programmes by commercial channels may be considered desirable on public policy grounds as certain kinds of programmes may be regarded as either public or merit goods. These arguments are advanced to support government intervention which often involves regulation and/or some subvention of the television industry. For example, the State may set regulations for programme content which may be seen as a way of encouraging programme diversity.

(ii) State Subvention.

[45] This arises where there is a high level of viewer preference for particular types of programmes which means that broadcasters may attract higher audiences by transmitting similar programmes at the same time rather than by providing different types of programmes. Programming is determined by advertisers who are interested in those programmes which attract the most viewers.
[46] O. Shy, (2001): *The Economics of Network Industries,* Cambridge University Press.

Government subvention of television broadcasting involves the payment of subsidies by the State based on its powers of taxation. Funding may come from general taxation or from earmarked taxes such as television licence fees. In the UK the state owned BBC is financed entirely from televisions licence revenues. Here in Ireland the state owned RTE is financed through a combination of income from television licence revenue and advertising income.

As noted earlier government subvention of television broadcasting is justified as necessary to ensure greater programme diversity by ensuring broadcasting of complementary or minority taste programmes. It can also be used to encourage the provision of particular types of programmes, e.g. current affairs, children's programmes, for social or political reasons. State subvention, however, gives rise to "principal-agent" problems. Viewers (the principals) have no easy way of transmitting their preferences to the public broadcaster (the agent). Consequently management and staff of the public broadcaster may substitute their own preferences for those of viewers. Similarly production of certain types of cultural programmes may sometimes reflect "capture" by special interest groups.

(iii) Direct Payment.

In the case of direct payments by viewers, programming is determined to some degree by the preferences of individual viewers, as measured by their willingness to pay for particular programmes or programme services. In contrast to the situation that arises with advertiser financing, direct payment closely approximates the situation that arises with respect to most other products. Direct payment has emerged relatively recently as technological developments has enabled broadcasters to charge viewers directly by scrambling signals which has led to the emergence of satellite broadcasters offering subscription services to sports and/or movie channels and/or charging for specific programmes, again usually sports events or films, on a pay per view basis.

It should be noted that while direct payment mechanisms reduce the information asymmetry problems associated with advertiser financing, they may give rise to an alternative form of market failure. Once programmes have been produced and transmitted the marginal cost of supplying extra viewers is virtually zero. However, a private operator will set prices above this level thereby excluding consumers who would be willing to pay the marginal cost of providing the service. From an economics point of view this results in allocative inefficiency.

3.4: Broadcasting of Sports.

The importance of sports to broadcasters is a relatively recent phenomenon. Changes in technology mean that broadcasting has moved from a situation where content competed for scarce distribution outlets to one where abundant spectrum has led to a proliferation of television channels competing for relatively scarce content.[47] A growing number of dedicated sports pay TV channels have emerged over the past decade.

Football is by far the most broadcast sport in EU Member States. Other sports come a very distant second.[48] In 2002 football accounted for 46% of total sports broadcasting rights fees in the five largest EU Member States.[49] This contrasts with the position in the US where there are four major professional sports which attract large television audiences: American football, baseball, basketball and ice hockey. In larger EU States, broadcast rights for national football leagues account for the bulk of broadcast revenues. Champions League broadcast revenues account for only 14% of total football broadcast rights in the top five EU Member States.[50]

The value of sports broadcast rights have increased dramatically over the past ten years. Major sports rights have migrated to pay TV channels in EU countries and to premium satellite and cable services in the US, although free-to-air channels in the US are able to compete for rights due to scale economies. The growth in the value of sports rights particularly in EU States broadly corresponds with the growth in subscriber numbers for pay TV channels.[51]

47 Hoehn and Lancefield above n 4.
48 Ibid.
49 Ibid. the Big 5 are Germany, the UK, France, Italy and Spain. The German figure at 31% was significantly lower than in the other large Member States but was partly distorted by the collapse of the Kirsch broadcast group. In 1998 football accounted for 42% of sports broadcast rights in Germany. If Germany is excluded from the 2002 figures football's share of broadcasting rights across the remaining four of the big 5 states increases to 55%.
50 Ibid.
51 Ibid.

Sports rights are valuable to broadcasters for three reasons:

(i) generating advertising and programme sponsorship revenue, particularly by attracting 16–34 ABC1 males the most difficult to reach, and high-disposable-income consumer group;

(ii) driving subscription penetration and reducing churn by building loyalty, and, increasingly, driving interactive revenues (such as betting) in digital pay-TV and online distribution markets; and

(iii) achieving public-service obligations, including the coverage of a wide range of sports, minority sports, and 'national games'.[52]

Failing to secure a sufficient portfolio of sports rights or overpaying for such rights can often spell serious trouble for a broadcaster.[53]

The value of sports rights to a broadcaster and thus the price that they are prepared to bid for such rights increases with exclusivity, scope and duration.[54] A broadcaster will obviously pay more for the exclusive rights to broadcast sports events In addition non-exclusivity obviously reduces the incentive for broadcasters to promote broadcasts of an event as such promotional activity is also likely to benefit its rival(s). This is likely to reduce viewer numbers.

Details of the most watched sporting events in Ireland in 2009 are shown in Table 3.1. The top 20 sports events in terms of viewer numbers were all broadcast by RTE Two indicating that the station already arguably has a dominant position in terms of broadcasting sports events. The highest audience total was recorded for the France v Ireland World Cup play-off football match which had an average viewing figure of 955,000. Only four sports featured in the top twenty events football, rugby, Gaelic football and hurling. Ten of the top twenty events were football games, nine of them Ireland World Cup qualifying games, the tenth being the Champions League final. The list included four of Ireland's six nations rugby games, four Gaelic football games and two hurling matches. Nine of the top twenty events are not currently designated for free-to-air broadcasting but the State broadcaster, nevertheless won the right to broadcast them.

[52] Ibid.
[53] Ibid.
[54] Ibid.

Table 3.1: Top 20 Sports Events, Adults 15+					
Rank & Sports Event	Match	Channel	Av TVR	Av 000's	Av Share
1. World Cup Qualifier Play-Off	France v Ireland	RTÉ Two	27.71	955.5	62.44%
2. RBS 6 Nations Rugby	Wales v Ireland	RTÉ Two	25.18	865.8	67.69%
3. RBS 6 Nations Rugby	Ireland v England	RTÉ Two	21.24	730.3	59.75%
4. The Sunday Game Live	Senior Hurling Final: Tipperary v Kilkenny	RTÉ Two	19.81	683.1	67.55%
5. The Sunday Game Live	Senior Football Final: Kerry v Cork	RTÉ Two	18.23	628.7	61.24%
6. World Cup Qualifier Play-Off	Ireland v France	RTÉ Two	17.46	602.2	42.35%
7. World Cup Qualifier	Italy v Ireland	RTÉ Two	17.38	597.5	43.94%
8. RBS 6 Nations Rugby	Scotland v Ireland	RTÉ Two	17.33	595.8	52.90%
9. RBS 6 Nations Rugby	Ireland v France	RTÉ Two	17.07	586.7	50.92%
10. World Cup Qualifier	Ireland v Bulgaria	RTÉ Two	17.02	585.1	45.52%
11. The Sunday Game Live	Senior Football Semi-Final: Cork v Tyrone	RTÉ Two	16.25	560.8	56.99%
12. World Cup Qualifier	Ireland v Georgia	RTÉ Two	16.12	554.1	37.60%
13. World Cup Qualifier	Bulgaria v Ireland	RTÉ Two	14.53	501.6	42.38%
14. World Cup Qualifier	Cyprus v Ireland	RTÉ Two	13.83	477.0	39.44%
15. World Cup Qualifier	Ireland v Italy	RTÉ Two	13.73	473.3	37.58%
16. The Sunday Game Live	Senior Football Semi Final: Kerry v Meath	RTÉ Two	13.47	464.9	53.05%
17. The Monday Game Live	Senior Football Quarter Final: Dublin v Kerry	RTÉ Two	13.42	463.1	58.81%
18. Champions League	Final: Manchester United v Barcelona	RTÉ Two	13.36	461.1	34.10%
19. World Cup Qualifier	Ireland v Montenegro	RTÉ Two	12.68	437.1	32.46%
20. The Sunday Game Live	Senior Hurling Semi Final: Kilkenny v Waterford	RTÉ Two	12.67	437.3	52.17%
Source: AGB Nielsen Media Research Based on ROI Commercial Channels, 1st January - 31st December 2009					

3.5: Conclusions.

Traditional broadcasting technologies prevented broadcasters from charging viewers directly for television programmes. Thus broadcasters historically were financed by Government subvention, through advertising or a combination of the two. Changes in technology have resulted in a proliferation in television channels while permitting broadcasters to charge viewers directly. This has led to the growth in the number of pay-TV channels. The proliferation in television channels has also reversed the situation where content had to compete for scarce broadcast outlets to one where programming is now relatively scarce. This has increased the importance of sports broadcast rights to broadcasters. Exclusive broadcast rights are worth more to broadcasters and thus the price that broadcasters are prepared to bid for such rights increases with exclusivity, scope and duration.

4: RUGBY IN IRELAND.

4.1: Historical Background.

The World governing body for rugby is the International Rugby Board (IRB) which was founded in 1886 and has its headquarters in Dublin. Compared with football, rugby, at least at the top level, has traditionally been played in a relatively limited number of countries throughout the world. There are six top level rugby playing nations in Europe, namely England, France, Ireland, Italy, Scotland, and Wales which play in the annual Six Nations championship. The three main Southern Hemisphere rugby playing countries, Australia, New Zealand and South Africa, participate in a separate annual international championship, known as the tri-nations. The latter tournament is due to be expanded with the admission of Argentina.[55]

Dublin University, founded in 1854, was the first organised rugby club in Ireland.[56] A number of other clubs were established over the following twenty years or so and in 1874 two unions were established to oversee the game. The Irish Football Union had jurisdiction over clubs in Leinster, Munster and parts of Ulster; the Northern Football Union of Ireland controlled the Belfast area. In 1879 the two Unions agreed to amalgamate, thereby establishing the IRFU. By 1886 there were twenty-six clubs affiliated to the Union of which ten were in Ulster, nine in Leinster, seven in Munster. The Connacht Branch was formed in that year. The IRFU operates on an all-Ireland basis.

Historically rugby clubs in Ireland were organised into four provincial leagues. In addition there were four provincial representative teams that played against one another in the annual inter-provincial championship. An all Ireland league competition for clubs was established at the beginning of the 1989/90 season with approximately 50 teams divided into a hierarchical four division structure. The all Ireland League (AIL) continues to operate.

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[55] The International Rugby Board (IRB) world rankings list a total of 95 rugby playing countries.
[56] This description of the evolution of rugby in Ireland is based on information contained on the IRFU website http://www.irishrugby.ie

4.2: The Move to Professionalism.

Rugby operated as an amateur sport for most of its history with the rules prohibiting payments to players for playing. In 1895 there was a split in the IRB with a breakaway group establishing the sport of rugby league which permitted payments to players.[57] Historically rugby league was largely confined to the North of England. Today the main rugby league playing countries are Australia, England, France, New Zealand and Papua New Guinea.[58]

In 1995, the IRB changed its rules and allowed payments to players for playing. Thus rugby has only operated as a professional team sport for the past 15 years. It is believed that the IRFU opposed the move to professionalism at that time.

The IRFU has adopted a policy of centrally contracting all of its leading players who are based within Ireland. All centrally contracted players play for one of the four provincial teams with the IRFU largely controlling which provincial team an individual plays for so that the IRFU effectively operates four full time professional teams. In addition the provincial teams are each allowed to contract a number of non-Irish players, with the aim of enabling them to compete in the ERC and Magner's League which are trans-national competitions.

The IRFU also limits the number of games that its top players can play to around 30 per season. With the Ireland international team generally playing around ten games per season,[59] this limits the number of games that international players can play for their provincial teams. This in effect means that the top professional players are rarely involved in games at club level in the AIL

4.3: Changes in the Structure of Rugby.

[57] There are some notable differences in the playing rules of the two sports so that rugby league was not simply a professional version of rugby union.

[58] http://en.wikipedia.org/wiki/Rugby_league

[59] There are five games per season in the six nation's championship. In addition Ireland and the other Northern Hemisphere countries normally play 2-3 games every autumn against the main Southern Hemisphere teams and/or developing rugby nations and then play 2-3 away games against the Southern Hemisphere teams during the Northern Hemisphere summer months.

Following the move to professionalism there have been a number of structural changes to the way rugby has operated in Ireland and many of the other top ranked European rugby countries. While at club level the AIL continues to operate, it was quite clear that there was an insufficient fan base to support a full time professional league of up to fifty clubs. Indeed there is probably not a sufficient fan base to support a full-time professional top division of even ten clubs. At the same time the four team Inter-Provincial Championship was too small to operate as a viable professional league.

A new competition known as the Celtic League, subsequently renamed the Magner's League, was launched at the start of the 2001/2 season. The league is made up of teams from Ireland, Scotland and Wales and is due to expand to include two Italian teams for the first time next season. The size of the league and the format of the competition have varied over time. In effect the Magner's League has become the top league in Ireland, Scotland and Wales, although national club leagues continue to operate below it. In contrast England and France continue to have their own national club leagues.

The ERC was launched at the beginning of the 1995/6 season. In some respects this competition might be seen as a rugby equivalent to the football's UEFA Champions League, although there are some important differences which are considered in section 4.6. Participation in the ERC is confined to teams from the six top tier rugby playing countries in Europe:- England, France, Ireland, Italy, Scotland and Wales, although English and Scottish teams did not participate in the first season of the competition.[60] While the entrants from the other participating countries were originally club teams, the IRFU secured agreement to enter provincial representative teams in the competition. The Scottish and Welsh Rugby Unions have subsequently adopted a similar approach. A second European competition known as the European Challenge Cup (ECC) (renamed the Amlin Cup) was launched in 1996. It involves teams ranking below those qualifying for the ERC.

[60] Romania had one team in the ERC in its first year but has not participated since.

All four of the Irish teams play in the Magner's League while three of the four also play in the ERC with the fourth competing in the ECC. The Irish international team plays in the annual Six Nations championship.

4.4: The Six Nations.

The first international rugby match was played between England and Scotland in 1871. In 1883 the Home International Championship was inaugurated, comprising England, Ireland, Scotland and Wales. Ireland first won the championship in 1894. In 1910 the championship was expanded to five teams with France, who had played in four of the tournaments up to that point, officially joining the championship. France were ejected from the tournament in 1931 but were re-admitted when it resumed in 1947 after the Second World War. In 2000 the tournament was expanded to become the "Six Nations" with the admission of Italy.

Played annually, the format of the Championship is simple: each team plays every other team once, with home field advantage alternating from one year to the next. Two points are awarded for a win, one for a draw and none for a loss. Victory in every game results in a "Grand Slam". Within the overall championship, England Ireland, Scotland and Wales also compete for the "Triple Crown" which requires that one of the four teams wins all of its matches against the other three countries.

In 2004 Six Nations Rugby Limited (SNRL) was established and assigned responsibility for major contract negotiations. According to SNRL's CEO John Feehan, "Before that, if I did a television deal, I would have to get each individual council member to sign it".[61] According to Mr. Feehan, SNRL generates income of around stg£80-90m per annum through the sale of broadcast rights and central sponsorship.[62] The vast bulk of the money from the competition is channelled back to the participating national associations. 75% of the profits generated by SNRL is divided equally between the six participating countries, 15% is allocated on the basis

[61] D. Owen, Six Nations Winning Formula, *Financial Times*, 10.3.2010.
[62] Ibid.

of the number of clubs in each country with the final 10% allocated on the basis of final standings in the competition.[63]

4.5: The Magner's League.

The two larger rugby playing countries in Europe, England and France, have their own national leagues which operate along similar lines to European football leagues with a system of promotion and relegation and the top teams from each country qualifying to play in the ERC. The other four rugby playing countries do not have a sufficient fan base to support a full-time professional league. Ireland, for example, has four professional teams and the IRFU has in the past considered reducing this to three by dropping Connacht for financial reasons. As in the case of European football there is a fully mobile labour market for rugby players involving the six major European rugby nations. Unlike football where teams are confined to operating in their own national leagues, the four smaller rugby playing countries in Europe have come together to establish a joint league thereby giving the participating clubs access to a larger market which places their teams in a stronger position to compete for players with clubs from the two larger countries. Arguably this has served to avoid the sort of situation which has emerged in football where clubs in the smaller countries are unable to compete with those in the larger ones for the best players.[64]

In its first season the league consisted of 15 teams (9 from Wales, 4 from Ireland and 2 from Scotland) divided into two sections with the top four from each section qualifying for the knock-out stages. A third Scottish team was added in the second season bringing the number of teams to 16 while the format of the competition remained unchanged. In 2003/4 the format changed to a straightforward league competition involving 12 teams with the number of Welsh teams reduced to 5 with regional teams replacing club teams. The league was reduced to 11 teams the following season with one of the Welsh teams dropping out and was further reduced to 10 in 2007/8 with the withdrawal of one of the Scottish teams. Thus for the past

[63] Ibid.

[64] We noted in section 4 that the combination of an open labour market combined with a restriction on teams competing in their own national league means that teams from smaller countries are unable to compete with those from larger countries for the best players those lowering the quality of those leagues and leaving their teams unable to compete at European level.

three seasons the league had 10 participating teams: 4 Irish, 4 Welsh and 2 Scottish. A play-off to decide the league winners involving the top four teams was introduced in 2009/10. The number of teams is due to increase to 12 for the 2010/11 season with the admission of two Italian teams.

The Magner's League is more akin to US style sports leagues than European football leagues with no system of promotion or relegation so that membership is largely fixed.[65] There would appear to be little room for expansion of the league as there appears to be little scope to introduce additional teams from Ireland, Scotland or Wales, and there may be little scope to add any Italian teams beyond the two admitted for the 2010/11 season.[66] In addition most of the Magner's League teams qualify to play in the ERC so that the existence of a European competition does not create the divergence of interest between the league members which is observed in European football leagues.[67] Competitive balance may therefore be quite important for the long-term viability of the Magner's league. The introduction in 2009/10 of a play-off involving the top four teams at the end of the regular league season to decide the championship represents a move to improve one facet of competitive balance by increasing seasonal uncertainty and ensuring that more teams remain in contention for the league as it reaches its final stages.[68]

[65] It is probably also reasonable to argue that, like American sports leagues, there is a relatively limited pool of talent limited to the six European countries with the top four Southern Hemisphere rugby playing countries being the only external source of playing talent. It is suggested that New Zealand and South Africa each have around 600 players playing abroad in professional or semi-professional leagues, many of whom would be playing in Europe. G. Thornley, Northern Hemisphere set must react – quickly, *Irish Times,* 15.6.2010.

[66] There would also appear to be little scope to expand into other EU countries at least for the foreseeable future.

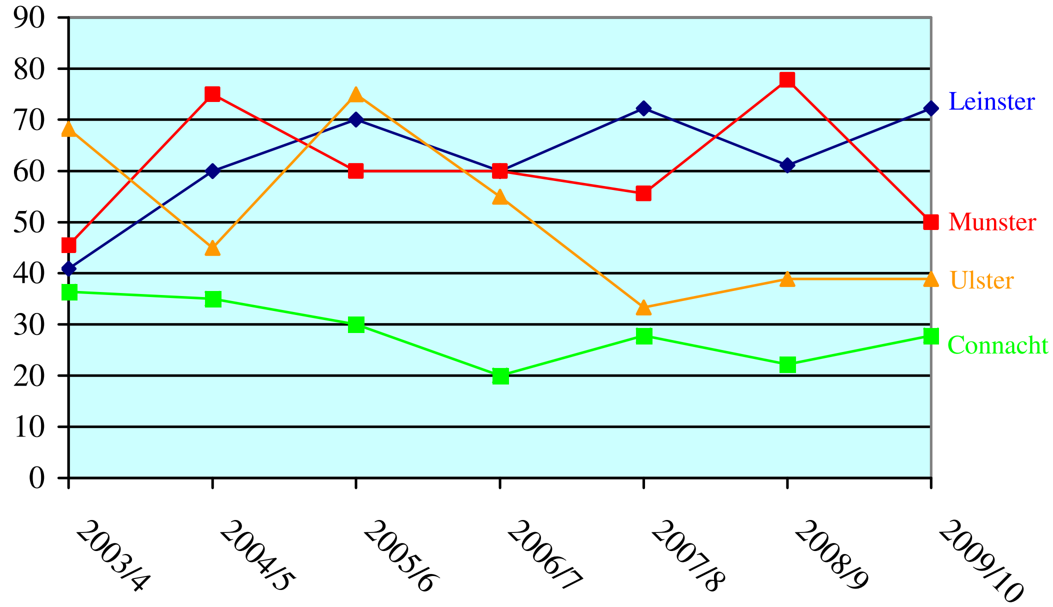
[67] This is because the ERC allocates places to teams from each of the three Magner's League countries rather than on the solely on the basis of league position. Both Scottish teams and, prior to 2010 all four Welsh Magner's League teams qualified for the ERC. Ireland has three ERC places which are allocated according to how the four Irish teams finish in the Magner's league so to that extent there is some limited competition to qualify for the ERC.

[68] Such a move is probably important for maintaining supporter interest. In the absence of any system of relegation and the very limited competition to qualify for the ERC, a play-off significantly reduces the number of potentially meaningless games in the latter stages of the season. A study by Fourie and Siebrits on a study of uncertainty of outcome in individual games over the period 2005/6-2007/8 found that the Magner's League displayed a high degree of competitive balance on that measure. J. Fourie and K. Siebrits, *From Competitive Balance to Match Attractiveness in Rugby Union,* Stellenbosch Economic Working Papers, 09/08, 2008. In nine seasons 5 different teams have won the league and no team has triumphed in successive seasons indicating a high degree of dynamic competitive balance so that the Magner's League scores highly on all three measures of competitive balance.

In the nine seasons of the Magner's League, an Irish team has won the championship on five occasions. Leinster and Munster have each won the league twice and Ulster won it once. The remaining four championships were won by Welsh teams. Interestingly the first Welsh success came after Wales followed the IRFU model and re-organised its club teams into regional teams.

Fig. 4.1 looks at the performances of the four Irish teams in the Magner's League in more detail illustrating the percentage of games won by each team each season since it moved to a straight league format in 2003/4.

Fig.4.1: Irish Teams % Wins in Magner's League



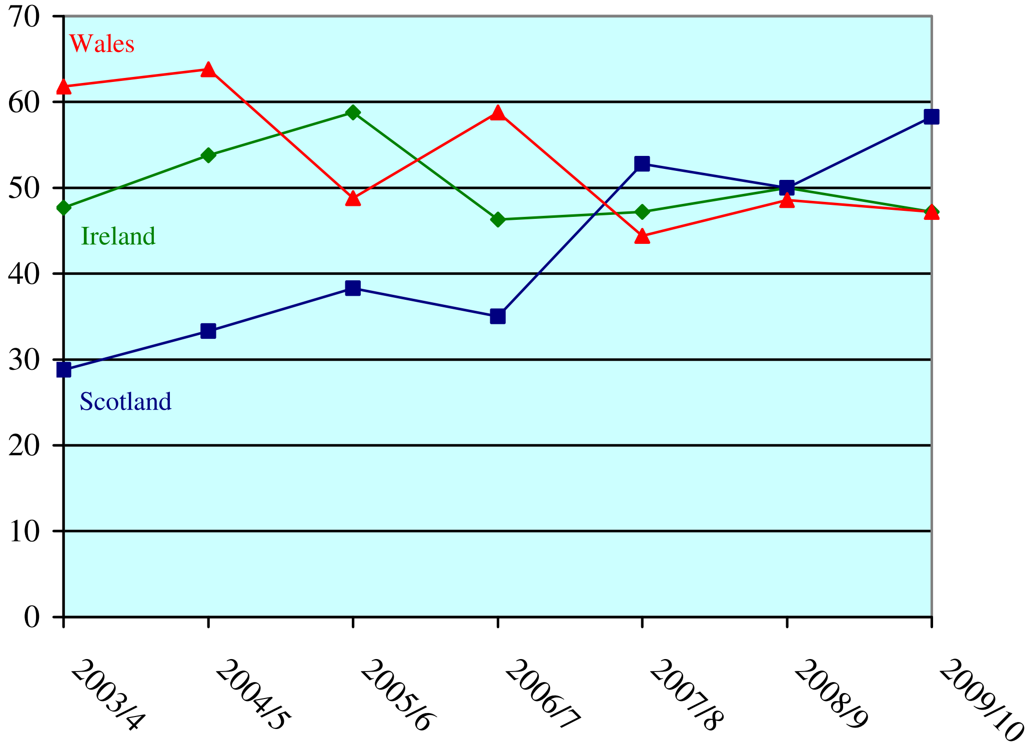
Source: http://www.magnersleague.com/history/index.php

The chart shows that Connacht clearly has a relatively poor record, having generally won less than 30% of its matches in each of the last five seasons. Leinster's win percentage has not dipped below 60% since 2003/4 while Munster's win percentage has not fallen below 50% during that period. Ulster's record in the first three seasons compares with that of Leinster and Munster but its performances have deteriorated over the past four seasons with its win ratio dropping back to around 40%. Overall

Leinster has won 62% of all their games over the past seven seasons, Munster 60% and Ulster 52%. Connacht has only won 29% of their games.

Fig. 4.2 compares winning percentages by country since 2003/4.

Fig.4.2: % Magner's League Wins by Country



Source: http://www.magnersleague.com/history/index.php

The chart shows that the Scottish teams have performed worse than Irish and Welsh teams until relatively recently, with a win ratio below 40% in the first four years. They have, however, shown a significant improvement over the past three seasons and have exceeded the Irish and Welsh teams in terms of win percentages in two of the past three seasons. The performance of Irish and Welsh teams has been broadly similar over time. Overall Welsh teams have won 54% of all their games, the Irish teams 50% and the Scottish teams 40%. The chart suggests increased competitive balance at least as between countries over the past few years with the improved performance of Scottish teams.

Table 4.1 details win percentages for each of the ten teams which have participated in the league over the entire period since 2003/4 when the league switched from two sections to a straight league format.

Table 4.1: Magner's League Win % by Team 2003/4-2009/10	
Leinster	61.8
Munster	60.3
Cardiff	59.6
Ospreys	58.1
Ulster	51.5
Scarlets	50.0
Edinburgh	49.3
Newport Gwent Dragons	47.1
Glasgow	42.6
Connacht	28.7
Source: http://www.magnersleague.com/history/index.php	

The table shows that Leinster and Munster respectively have the highest win ratio, both having won more than 60% of games played over the period since 2003/4. At the other extreme Connacht's win ratio of 29% is well below that of all other teams in the league.

4.6: The ERC

15 teams took part in the ERC in its first season but this has since expanded to 24. The places are distributed as follows. England and France each receive six automatic places. Ireland and Wales receive three each, Scotland two and Italy one.[69] With effect from the 2010/11 season the previous year's winners of the ERC and Amlin Cup also qualify.[70]

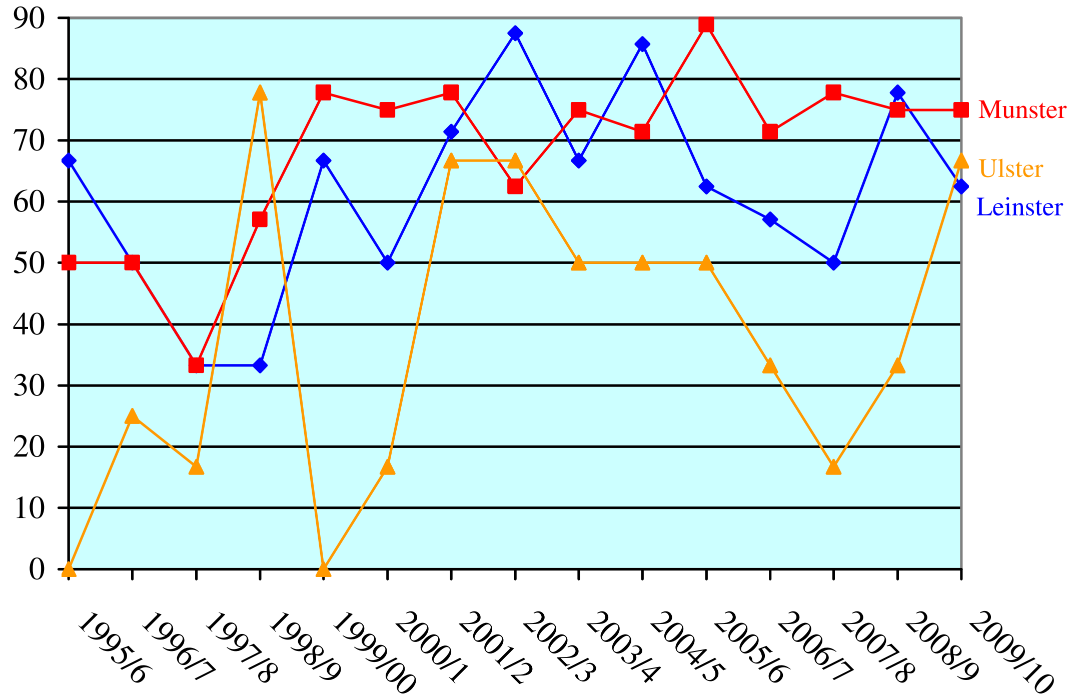
[69] Wales previously had four entrants.
[70] The number of English and French participants is capped at seven, even if teams from these countries won both the ERC and ECC. In that case the final place is allocated to the highest non-qualifying ERC ranked team.

The 24 participating teams are divided into six groups of four with each team playing the other teams in their group twice on a home and away basis. The top six teams in each group qualify for the quarter-finals with the two best of the six group runners-up joining them.[71]

Irish teams have won the ERC four times in its 15 year history with Munster winning the competition twice and Leinster and Ulster each winning it once. There have been six English winners and five French winners. To date no Scottish, Welsh or Italian team has won the ERC.

Fig.4.3 measures the on-field performances of Irish teams in the ERC in more detail showing their win percentage for each season of the competition. The chart includes pool games and games in the knock-out stages.

Fig.4.3: Irish Teams's % ERC Wins



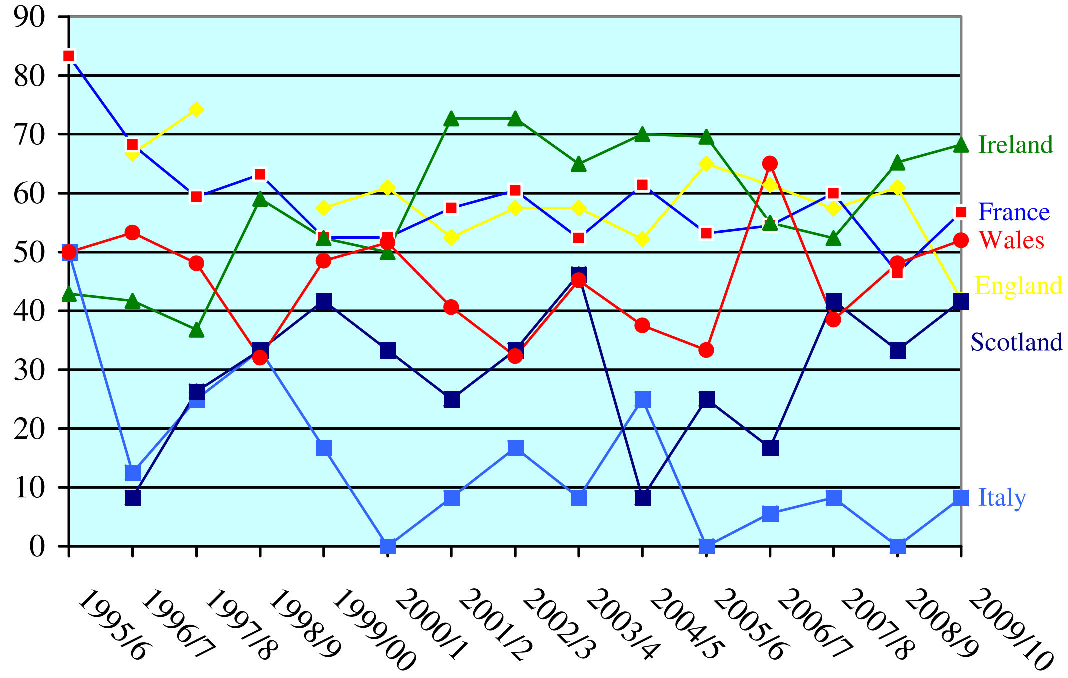
Source: http://www.ercrugby.com/eng/13_70.php

[71] The format of the competition means that it is arguably more difficult to qualify for the knock-out stages than in the case of the Champion's League in football. Qualification is often not decided until the final round of games thus maintaining supporter interest.

The chart shows that Leinster and Munster have both performed consistently well over the past decade. Munster's performances have been particularly strong with a win ratio that has only dipped below 70% once since 1999/2000. Leinster's win ratio has been over 60% in three of the past 11 seasons. Ulster's form has been somewhat more erratic. It had a win ratio of almost 80% in 1998/9 when it won the tournament but failed to win a single game the following season. Similarly its win ratio was below 40% over the 2006/7-2008/9 period but showed a considerable improvement last season.

Fig.4.4 illustrates winning trends in ERC games by country.[72]

Fig.4.4: ERC % Wins by Country



Source: http://www.ercrugby.com/eng/13_70.php

The chart confirms that Irish teams have enjoyed considerable success in the ERC. In seven of the past nine seasons, Irish teams recorded the highest win ratio of any of the

[72] As in football's Champions League, teams from the same country are kept apart in the pool stages of the competition although when England and France have seven participating teams, one group will have two English teams and one group two French teams. Obviously teams from the same country may play against one another at the knock-out stages. Nevertheless the majority of matches by definition involve games between teams from different countries.

participating countries. Thus for much of the past decade Irish teams have not only outperformed those from the other smaller rugby playing countries, i.e. Scotland, Wales and Italy, but they have also consistently outperformed those from the two larger rugby nations, England and France. The chart also shows that the Italian teams have consistently been the weakest performers in the ERC failing to win a single game on several occasions. As in the Magners League, Scottish teams have also performed poorly for most of the period, although they have shown a significant improvement over the past three seasons.

The overall win record per country in the ERC is shown in Table 4.2

Table 4.2: ERC % Wins By Country 1995/6-2009/10	
Ireland	59.9
England	57.8
France	56.8
Wales	44.3
Scotland	29.3
Italy	12.6
Source: http://www.ercrugby.com/eng/13_70.php	

The table shows that Irish teams have the best overall record in the competition having won almost 60% of all games played (176 wins from 294 games). England and France come next winning 57% and 56% respectively of all games played. Italy has the poorest record with Italian teams winning an average of one game out of every eight. The figures also confirm the relatively poor performance by Scottish teams which have won only 29% of their games.

4.7: Attendances.

Table 4.3 gives details of average attendances for the four Irish provincial teams for each season of the Magner's League.

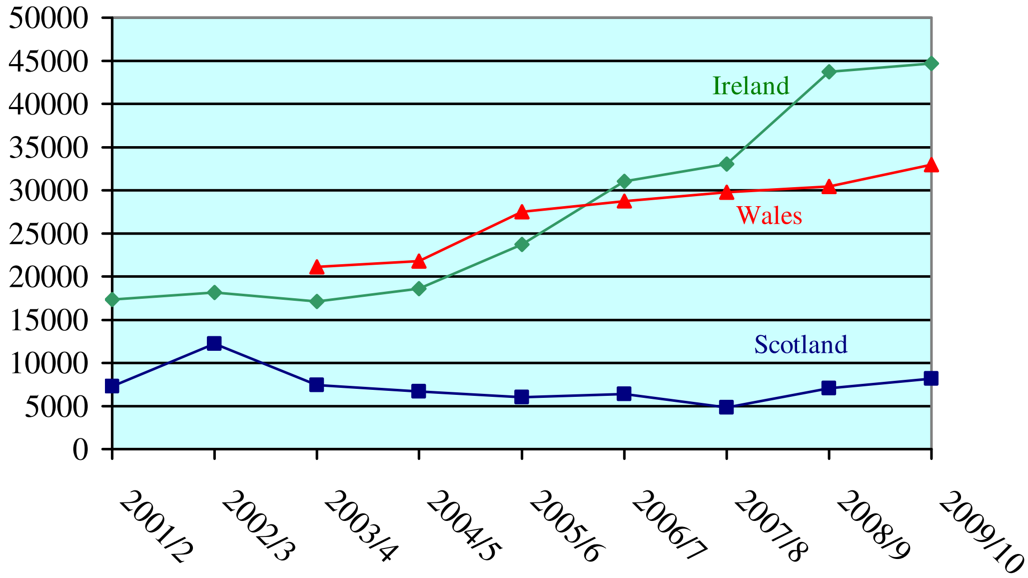
Table 4.3: Irish Teams' Average Magner's League Home Attendances.						
	Number of Games	Leinster	Munster	Ulster	Connacht	**Total**
2001/2	3	3,585	5,538	8,500	935	**17,305**
2002/3	3	5,500	4,677	8,375	2,833	**18,133**
2003/4	11	3,234	4,575	6,850	2,444	**17,105**
2004/5	10	4,385	5,617	6,693	1,935	**18,629**
2005/6	10	5,814	6,890	9,182	1,790	**23,676**
2006/6	10	11,892	6,922	10,207	1,981	**31,001**
2007/8	10	14,361	6,757	9,861	2,260	**33,039**
2008/9	10	14.728	17,931	9,092	1,989	**43,740**
2009/10	9	14,992	18,633	8,863	2,148	**44,636**
Note: We have only included attendances at regular season home games, i.e. play-off games were excluded. There were play-off games in the first two seasons and these were re-introduced in 2009/10.						
Source: http://www.magnersleague.com/history/index.php						

The average aggregate attendance for all four teams has increased quite dramatically in the space of nine seasons from 17,300 to 44,600 with particularly strong growth in attendances since 2005/6. The growth in attendances has largely been confined to Leinster and Munster. The latter team has had the highest average attendances for the past two seasons, although prior to that attendances had been well below those of Leinster. Ulster which recorded the highest average attendances in the early years of the competition has not recorded any significant increase over time with attendances oscillating up and down within a relatively narrow range. Finally the figures show a relatively low level of support for the weakest of the four teams, Connacht. The growth in attendances for Leinster and Munster reflects the increase in capacity in Munster's Thomond Park ground and Leinster's move to a larger ground at the RDS. The growth in attendances also, however, appears to reflect the success enjoyed by both teams in recent seasons.

Fig 4.5 looks at average Magner's League attendances by country since its inauguration in 2001/2.[73]

[73] The figures thus show the average aggregate attendance of all teams for each of the three countries. Attendance figures for Wales are only given back to 2003/4 because of the restructuring in Welsh

Fig.4.5: Average Magners League Attendances by Country



Source: http://www.magnersleague.com/history/index.php

The chart clearly shows the rapid growth in attendances recorded by the Irish teams. Attendances have also risen significantly in Wales but not to the same extent. Initially average attendances for the four Irish teams were lower than those of the four Welsh teams but this position has been reversed since 2006/7. In 2009/10 the four Irish teams had a combined average attendance of 44,600 compared with almost 33,000 for the four Welsh teams. These figures are perhaps surprising as traditionally rugby has been seen as the major sport in Wales.

The chart also shows that the Magner's League has had much less impact in Scotland where average aggregate attendances have remained fairly flat, apart from 2002/3, the first year a third Scottish team entered league, which gave attendances a one off boost. Thus attendances in Scotland averaged just over 8,000 in 2009/10 compared with over 12,000 in 2002/3. Three of the four Irish teams and two of the four Welsh teams had individual average attendances which exceeded the combined total of the two Scottish teams in 2009/10. Average attendances per team, which takes account of the fact that

rugby from 9 clubs to 4 regions in that year. From 2002/3 to 2006/7 there were three Scottish teams in the league.

there are only two Scottish teams compared with four for Ireland and Wales, in 2009/10, were over 11,000 per Irish team, more than 8,000 per Welsh team but only 4,000 per Scottish team. Such figures raise questions about the long-term future of Scottish teams which may pose problems for the Magner's League.

Table 4.4: Irish Teams' Average Attendances at ERC Group Matches

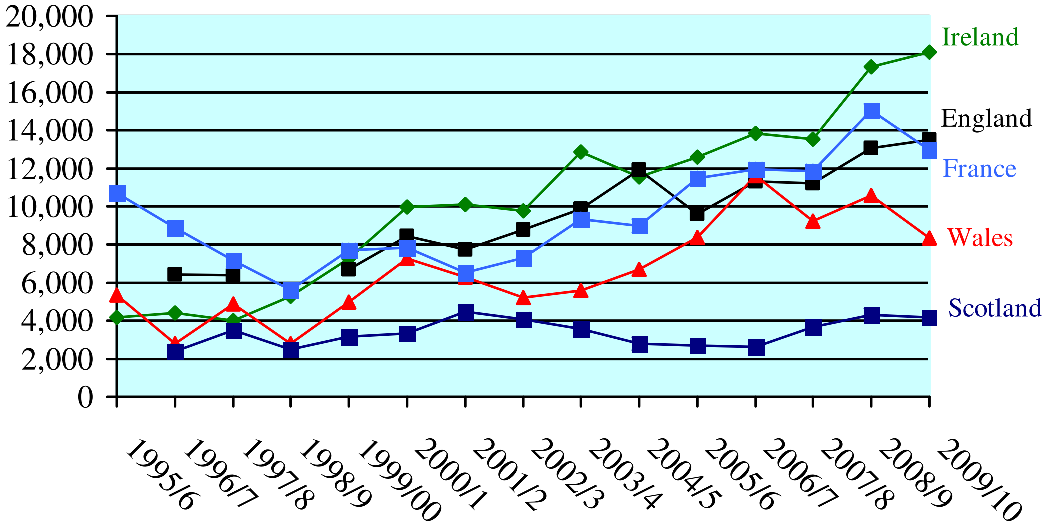
	Leinster	Munster	Ulster	**Total**
1995/6	4,000	6,000	2,500	**12,500**
1996/7	3,750	3,750	5,750	**13,250**
1997/8	6,287	7,000	3,283	**16,550**
1998/9	5,500	2,500	7,833	**15,833**
1999/00	4,833	8,333	8,667	**21,833**
2000/1	6,833	10,533	12,500	**29,867**
2001/2	7,500	11,000	11,833	**30,333**
2002/3	7,000	10,600	11,717	**29,317**
2003/4	14,954	12,167	11,489	**38,610**
2004/5	11,900	13,295	9.452	**34,647**
2005/6	12,243	13,300	12,284	**37,827**
2006/7	15,861	13,067	12,599	**41,526**
2007/8	17,799	12,487	10,335	**40,821**
2008/9	17,680	25,041	9,329	**52,050**
2009/10	18,279	26,000	10,591	**54,337**

Source: http://www.ercrugby.com/eng/13_70.php

The table shows a dramatic rise in average attendances for the Irish teams' home games in the ERC group stages. The combined average attendance of the three Irish teams in the ERC in the group stage games has increased from 12,500 in 1995/6 to over 54,000 in 2009/10. As in the case of the Magner's League attendances increased by rather modest amounts in the early years which presumably reflects the fact that new competitions take a little time to win acceptance from supporters but have grown sharply since 2001/2. Munster and Leinster each had average attendances in 2009/10 which were well in excess of the total attendance for all three teams in 1998/9. Munster recorded the biggest increase in average attendances followed by Leinster. In contrast to the Magner's League, Ulster also recorded significant increases in attendance figures up to 2001/2 but they have been static or even declining for most of the past decade. As in the Magner's League, the growth in support would seem to reflect a combination of increased capacity and on-field success.

Fig.4.6 shows trends in average attendance per team per pool game for each of the countries represented.

Fig.4.6: ERC Average Attendances by Country



Source: http://www.ercrugby.com/eng/13_70.php

The chart shows that Irish teams have had the highest average attendances per team in ERC group games for the past decade. The average attendance per team per game in 2009/10 for the Irish teams was 18,000. The corresponding figures for England and France respectively were 13,500 and 12,900. England, Ireland and Wales have all recorded significant growth in average attendance per team per game since the launch of the ERC, although the Welsh figures have fallen in recent years. French teams had the highest average attendances in the early years of the competition but recorded a decline which has since been reversed. The attendances of the Scottish teams were significantly lower than those of the other participating countries with Scottish teams having an average attendance per game for ERC pool matches of only 4,000 which is not very different to their average attendance for Magner's League games.

Table 4.5 gives details of average attendances at ERC group stage games for all 24 participating teams for the 2009/10 season.

Table 4.5: Average Attendances at ERC Group Games 2009/10

Team	Country	Average Attendance
Munster	Ireland	26,000
Toulouse	France	25,533
Leicester	England	21,014
London Irish	England	19.515
Leinster	Ireland	18,279
Clermont Auvergne	France	14.703
Northampton	England	12,901
Perpignan	France	12,230
Bath	England	11,382
Harlequins	England	11,118
Ospreys	Wales	10.946
Gloucester	England	10.764
Cardiff	Wales	10.270
Ulster	Ireland	10,059
Brive	France	9,100
Stade Francais	France	8,144
Biarritz	France	8,067
Scarlets	Wales	8,030
Sale	England	7,913
Newport/Gwent	Wales	4,148?
Edinburgh	Scotland	4,926
Viadana	Italy	4,823
Benetton Treviso	Italy	3,760
Glasgow	Scotland	3,400

Source: http://www.ercrugby.com/eng/13_70.php

Ireland's Munster had the highest average home attendances for ERC group stage games at 26,000 closely followed by Toulouse of France with 25,500. Two English teams Leicester who averaged just over 21,000 and London Irish who averaged 19.500 were ranked third and fourth respectively. A second Irish team Leinster were ranked fifth with average home attendances of over 18,000. The worst supported teams were the two Scots and two Italian teams.

Table 4.6 compares attendances between ERC and Magner's League games for the three Irish teams that play in both competitions.

Table 4.6: Average Home Attendances ERC v Magner's League Games

	Leinster		Munster		Ulster	
	Magners	ERC	Magners	ERC	Magners	ERC
2001/2	3,585	7,500	5,538	11,000	8,500	11,833
2002/3	5,500	7,000	4,677	10,600	8,375	11,717
2003/4	3,234	14,954	4,576	12,167	6,850	11,489
2004/5	4,385	11,900	5,617	13,295	6,693	9.452
2005/6	5,814	12,243	6,890	13,300	9,182	12,284
2006/7	11,892	15,861	6,922	13,067	10,207	12,599
2007/8	14,361	17,799	6,757	12,487	9,861	10,335
2008/9	14,728	17,680	17,931	25,041	9,092	9,329
2009/10	14,992	18,279	18,633	26,000	8,863	10,591

Source: Tables 4.5 and 4.6.

The table shows that for all three teams, average attendances at ERC games are higher than those for Magner's League games. This is perhaps not very surprising as the ERC is arguably a more prestigious competition. It must be remembered that when the Magner's League commenced in 2001/2, the ERC was in its sixth season. The gap has arguably closed over time as the Magner's League has become more established. The table confirms trends illustrated in previous tables showing that Munster and Leinster have significantly increased their average attendances for home games in both competitions. It also shows, however, that Ulster has not increased its average attendances in either competition over the past decade. Ulster arguably had a higher level of support than the other two teams at the start of the decade but has been unable to expand its supporter base, unlike Leinster and Munster.

4.8: Conclusions.

The move to professionalism in 1995 has resulted in major changes in the structure of Irish rugby. A new league comprising teams from the three smaller rugby playing countries has been established, while the limited number of rugby playing countries means that teams from those countries play in the top European competition the ERC. This has arguably enabled teams in the smaller countries to compete for players with those in the two bigger countries, England and France. This contrasts with the position facing football teams in smaller European countries which are confined to operating in national leagues which have declined in quality as the best players have been recruited by clubs in the larger countries. This has also left smaller country teams unable to compete against the teams from bigger countries in European competitions.

Results wise the Irish teams have tended to punch above their weight having won four ERC's and five Magner's Leagues. Irish teams' win percentage in both the ERC and Magner's League compares quite favourably with those of the other participating countries over the period since the competitions were launched. The fact that Scotland and Wales, two of the three other smaller rugby playing countries have sought to adopt the Irish model support the view that the IRFU has adopted a successful business model for the professional era..

Leinster and Munster have recorded substantial increases in attendances for both Magner's League and ERC group stage games over the past few years. Their attendances are among the highest of any of the participating teams in both competitions.

5: IMPLICATIONS OF DESIGNATING CERTAIN GAMES AS FREE-TO-AIR.

5.1: Introduction.

We noted in section 2 how many sports leagues involve a degree of revenue sharing. In England the Guinness Premiership in rugby has a revenue sharing arrangement where all revenues are split equally between the teams. This includes revenues received by those teams participating in competitions such as the ERC and ECC which goes into the overall revenue pool which is shared by all of the Premiership teams.[74] The Magner's League, ERC and ECC competitions in which the four Irish professional teams compete are trans-national rather than national competitions. Under the auspices of the IRFU the four Irish teams operate a form of revenue sharing. While the clubs keep a percentage of their home gate receipts for ERC matches, for example, a significant proportion is paid over to the IRFU. In addition broadcast revenues from such competitions along with any prize money won are paid over to the IRFU. In turn the IRFU funds a sizeable share of the costs of the four teams. This arrangement works against the backdrop that in rugby (and cricket) in contrast to the situation that pertains in football, most of the revenues from professional games are generated from international games.

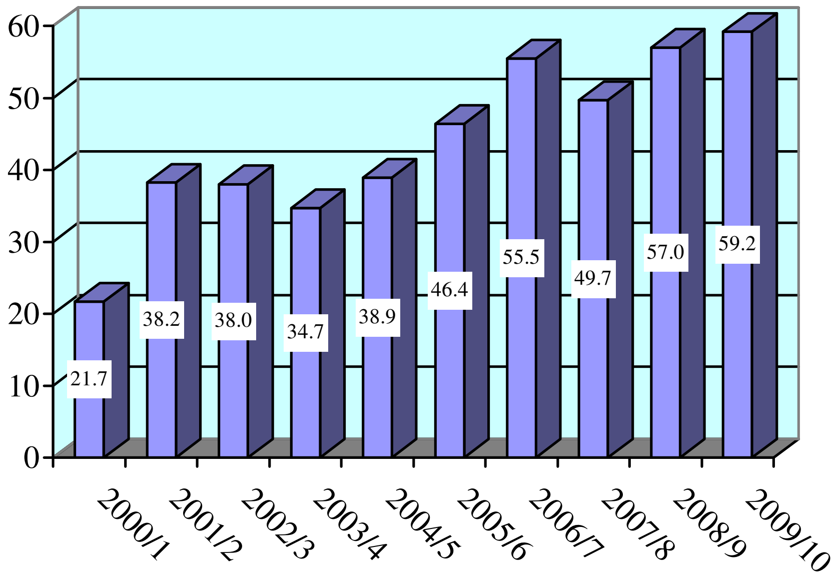
Fig. 5.1 illustrates that IRFU revenues have increased quite significantly over the past decade. Total reported IRFU revenues have increased from almost €22m in 2001 to more than €59m in 2009 an increase of 172%. Revenues jumped sharply after 2001 but then remained fairly flat between in nominal up to 2004/5, which indicates a decline in revenue in real terms. Revenue has increased sharply from €39m in 2004/5

[74] The English Premiership clubs are also subject to a salary cap. While revenue sharing and salary caps apply in many US sports leagues as a way of ensuring competitive balance, in the case of English rugby they appear to be primarily designed to ensure the long-term viability of all of the league's member clubs rather than as a means of achieving competitive balance. Indeed as pointed out in leagues which have promotion and relegation and qualification for international competitions, teams tend to have much less interest in competitive balance. Nevertheless an analysis of various rugby competitions over the period 2005/6-2007/8 indicates that the Premiership displayed a high level of competitive balance. See Fourie and Siebits (2008) above n 68.

to just over €59 in 2008/9. There is a noticeable jump in revenue after 2005/6 which coincides with the switch of ERC games to pay TV.

Fig.5.1: IRFU Revenue

€m

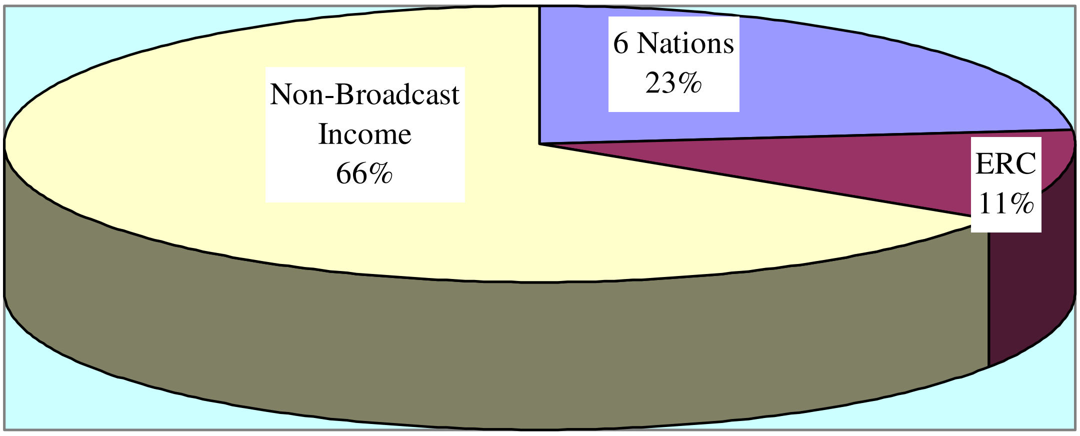


Source: IRFU Annual Reports, various years.

Fig. 5.2 shows broadcasting revenues from the 6 Nations and ERC as a proportion of total IRFU revenue. The reported figures for IRFU revenue indicate its share of broadcast revenue from the Six Nations amounted to approximately €11m or 23% of its total revenue in 2008/9. Its share of broadcast revenue from ERC games amounted to a further €5m. Thus combined broadcast revenues from the two competitions that would be affected by the Minister's proposals amounted to approximately €16m or 34% of the IRFU's total income. In addition the IRFU also receives income from broadcasting rights for its autumn international matches, generally played against visiting Southern Hemisphere teams and from Magner's League games. According to the 2009/10 IRFU Annual Report broadcast income from both the Six Nations increased while advertising revenues declined which suggests that Six Nations and ERC broadcast revenues have increased as a proportion of total revenue.[75]

[75] The Report combines revenue from ticket sales and broadcast rights to international matches so it was not possible to establish exact figures for broadcast revenue for 2009/10.

Fig.5.2 Broadcast Revenue as % IRFU Total Revenue 2008/9

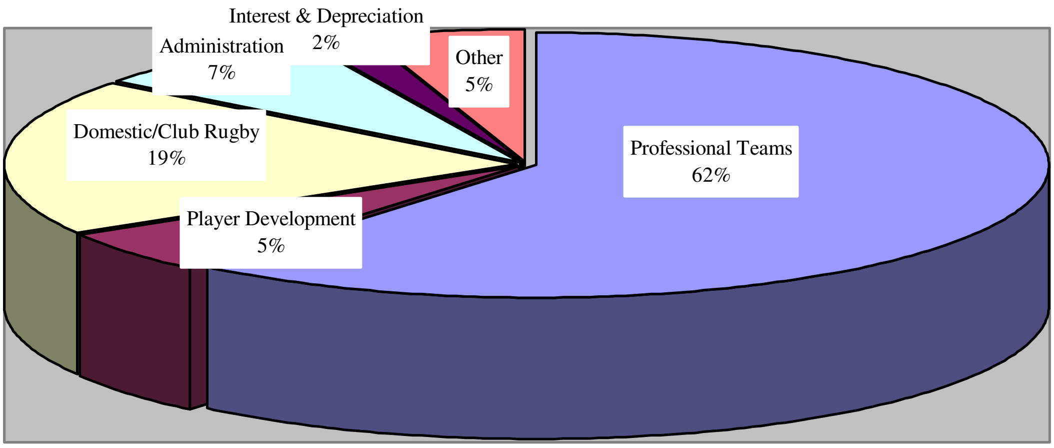


Unlike football, income from international games dominates income from club competitions in rugby and cricket.[76] The CEO of SNRL has stated that the Six Nations "is what pays for the elite game in the Northern Hemisphere."[77] According to the IRFU Annual Report income from international games (both ticket sales and broadcast rights) accounted for €35.5m or 60% of its total revenue in 2009/10.[78]

Fig.5.3 gives a breakdown of IRFU expenditure. The chart shows that the largest single element of IRFU expenditure was accounted for by the cost of operating professional teams which accounted for 62% of total expenditure at €35m. A further €3m was spent on development squads, comprising the four provincial teams' development squads and the international under 20 and other under age teams.[79] Thus the total cost of the professional teams, including development squads comes to €38m or 67% of total expenditure. Support to domestic/club rugby accounted for 19% of total expenditure with the remaining 14% absorbed by administration, overheads, interest and depreciation.

[76] Sloane (2006) above n 27.
[77] Owen, (2010) above n 61
[78] IRFU *Annual Reports 2008/9*and *2009/10* .
[79] This represented a decline of €250,000 on the previous year due to the IRFU not participating in international sevens tournaments.

Fig.5.3: % Distribution of IRFU Expenditure



Source: IRFU *Annual Report 2008/9s*

5.2: Financial Impact of the Minister's Proposals.

The Minister has indicated that he proposes designating the Irish international team's games in the Six Nations Championship and all games involving Irish teams in the ERC for broadcasting on free-to-air television.[80] The IRFU have claimed that this would inflict serious damage on Irish rugby as they could potentially lose as much as €12m in broadcasting revenues as a result. They have been supported by the CEO's of the Six Nations and ERC. The Minister naturally enough has disputed this figure and has argued that the proposal, if implemented, would have no impact on IRFU revenues. Specifically the Minister has claimed that the IRFU would at most lose approximately €3m in broadcast income which, he believes, could be made up by additional revenue from advertising, sponsorship and replica shirt sales.

[80] There is some confusion as to whether the Minister's proposals would include Ulster which is headquartered outside the jurisdiction. Currently Six Nations games are designated for deferred broadcast on free-to-air channels although the State owned RTE currently hold the rights to broadcast Ireland's six nations games live until 2013.

Various authors have criticised the AMS Directive precisely because enabling Governments to regulate which broadcasters sports bodies can sell their rights to, inevitably leads to a reduction in rights. Thus De la Fuente pointed out that the Directive might actually harm sports, since it reduces their ability to earn the maximum possible for the sale of their broadcasting rights.[81] The Directive has been described as a rather blunt intervention which tends to distort the sports bidding market by depressing the value of sports rights by allocating rights to different broadcasters.[82] They also point out that *ex-ante* uncertainty of regulatory intervention can reduce the size of the bid, and affect future incentives to invest in the sport and/or broadcast, resulting in dynamic inefficiency.[83]

Having exclusive rights to specific sports events is worth far more to broadcasters than non-exclusive rights and that will be reflected in the price that broadcasters are prepared to pay. The Minister argues that his proposals would not stop a pay TV channel from bidding for and acquiring the rights to the designated rugby matches. If they are successful, however, they would be required to supply coverage to a free-to-air channel for simultaneous broadcast while charging the free-to-air channel a "normal" rate. Thus in an article published in the *Irish Times*, the Minister wrote:

> "Sporting organisations are entitled to enter into any commercial arrangements they wish on the broadcasting of their events, but RTE, TV3, and TG4 would have the right to pay normal rights to show the event."[84]

There is the obvious question as to what constitutes a normal right in such circumstances. If there has been a competitive bidding process then the winning bid represents the market value of the rights. It is unclear how one could establish the correct price to charge the free-to-air channel.[85]

A pay TV channel would be prepared to pay less for non exclusive rights because such rights are worth less to it, even though it could recoup some of the cost by selling the rights on to a free-to-air channel. As the rights are non exclusive the pay TV

[81] J-P De la Fuente, Let's Call Time on the TV Protection Racket, *Financial Times*, 22.8.1997.
[82] C. Cowie, and M. Williams, The Economics of Sports Rights, *Telecommunications Policy*, 21(7), 619, (1997).
[83] Hoehn and Lancefield, (2003), above n 4.
[84] E. Ryan TD, More at Stake than Money as we Tackle Vital Issue, *Irish Times,* 21.5.2010.
[85] There are legislative provisions to have the fees charged to free-to-air broadcasters decided by arbitration but this still begs the question of the basis on which such fees might be set.

channel would earn less from advertising slots during the game. Being denied exclusive rights makes it harder for pay TV channels to attract subscribers which will also affect the amount it is prepared to pay for such events over time. Thus the value of the Irish rights is likely to be reduced as broadcasters will be prepared to pay less.[86]

Designating events as free-to-air equally means that there is no need for a free-to-air broadcaster to bid for the rights since it will almost certainly obtain the rights at a lower cost because it can simply demand that it is entitled to broadcast the event. Given RTE's dominance in sports coverage it could simply opt out of any bidding process and simply seek to obtain the rights from a successful pay TV bidder at a "normal" rate. There seems little likelihood that TV3 could hope to outbid a pay TV channel. Thus at worst RTE might have to bid against TV3 to be supplied by the pay TV channel. Competition would be reduced as RTE would have little incentive to bid against a pay-TV channel and this would also reduce the price for the broadcast rights.

At present the Six Nations and ERC organisations sell the broadcast rights collectively. While this arguably constitutes a cartel arrangement, as pointed out in section 2, there are reasonably good arguments for permitting sports bodies to sell broadcast rights on a collective basis. If the Irish broadcast rights to matches involving Irish teams are non-exclusive then this raises some problems. There are two possibilities, the relevant organising bodies could still sell the Irish rights to games involving Irish teams or they could leave to the IRFU to negotiate a deal for the Irish broadcast rights to its teams' matches. If the IRFU have to negotiate on their own they would obviously have less bargaining power relative to the broadcasters which further reduces the price they can obtain. Either option would increase transactions costs as the number of contracts that must be negotiated is increased so there are increased administration costs which again will mean a reduction in income to the IRFU.

Exclusive selling of any match requires joint selling by the two teams involved. At one point the RFU sought to sell exclusive rights to England's home rugby matches to

[86] The ERC CEO Mr. John Feehan has claimed that international broadcasters viewed Ireland and UK as a single market – any interference would thus make the entire market less attractive.

BSkyB only to be met with the response that their opponents would not turn up to play if they were denied a share of the broadcasting revenue.[87] The IRFU's bargaining position vis-à-vis the other participating countries would also be reduced if the Minister's proposals were implemented. In other words, the revenue Ireland might expect to obtain as a result of matches involving its teams being broadcast in other countries is also likely to be reduced, while other teams might also look for a larger share of the Irish rights.

The ERC would also face problems in terms of negotiating agreements for the Irish broadcast rights to the competition. Matches involving the Irish teams at the group stages would have to be broadcast on free-to-air. The position regarding games at the knock-out stages would be problematic. Thus, for example, depending on results and the draw for the knock out stages, two of the four quarter finals, both semi-finals and the final could all involve Irish teams.[88] Thus in terms of the Irish broadcast rights there would be no way of knowing *ex ante* how many of the games at the knockout stages would be subject to the requirement that they would have to be available free-to-air in Ireland. This again would almost certainly reduce the value of the broadcast rights at least in respect of Ireland. It seems likely that in such circumstances the other participating countries might be less generous in their negotiations with the IRFU when it comes to sharing out the overall revenues.

Other sporting organisations have expressed the view that designating events as free-to-air reduces the value of broadcast rights. In its 2009 submission to the Minister, the Football Association of Ireland, stated:

> "In our view the listing of events interferes with the market place and so considerably reduces the price paid for those rights. Furthermore there is no proper compensation paid to cover this loss."[89]

[87] A. Robertson, The Application of European Competition Law to Sports Broadcasting, 25(4) *World Competition*, 25(4), (2002). This is not an issue in the US where the courts have ruled that the broadcast rights to a game are vested in the home team. *Pittsburgh Athletic Co. v. KQV Broad Co.* 24 F. Supp. 490 (W.D. Pa. 1938).
[88] If the Minister's proposal includes matches involving Ulster, then potentially three quarter finals could be designated free-to-air.
[89] FAI submission of 29th May 2009, available at: http://www.dcenr.gov.ie/Broadcasting/Designation+of+sporting+events/Submissions+Received.htm

An independent study commissioned on behalf of the England and Wales Cricket Board (ECB) concluded that the sport could be up to stg£30m-a-year poorer if cricket was prevented from selling TV rights on the open market.[90]

Similarly the views expressed by RTE in its submission make for interesting reading. It states:

> "It remains RTE's firm view that the practice of designation of major sporting events is overwhelmingly in the public interest and that the rights of the audience to view and therefore participate in the major events discussed here supersede the rights of the sporting organisations to maximise revenue from the sale of exclusive television rights."

It then seeks to qualify this by stating:

> "Indeed, RTE does not perceive a sporting organisation's ability to generate significant returns from its rights to be significantly impaired through the designation of carefully selected rights."[91]

No evidence is advanced in support of this perception

The RTE submission also states that it commissioned a report by Dr. Paul Rouse of the School of History and Archives at University College Dublin in mid 2007 "to better understand what happens when sporting organisations sell their broadcasting rights to pay-tv companies." RTE cites various conclusions from this report although it did not include a copy with its submission. Significantly it states:

> "Aside from the negative and exclusionary impacts on the audience, there is significant evidence of the extremely damaging impacts of the sale of broadcasting rights to pay-tv on the sports themselves and on the sporting organisations involved. Rouse argues that once broadcast rights are sold to a Pay-tv organisation, the huge sums of money involved create a dependency in the sport on the continuity of high levels of funding, thus ceding inordinate and increasing power to the source of the funding."[92]

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[90] D. Hopps, Ashes will remain on Pay-TV, hints sports Minister Hugh Robertson, The *Guardian,* 24th June 2010.
[91] RTE submission to DCENR re Designated Events – May 2009, p.2, available at: http://www.dcenr.gov.ie/Broadcasting/Designation+of+sporting+events/Submissions+Received.htm
[92] Ibid. p.5.

This statement recognises that sports organisations will earn significantly more from their broadcasting rights if they are able to sell them without restrictions. The Minister's proposal to designate Six Nations and ERC games for broadcast on free-to-air will therefore reduce the value of those rights.

It is difficult to quantify the likely loss in revenue that the IRFU would suffer. The IRFU have indicated that they would lose in the region of €10-12m. This figure appears to be based on a view that the Irish broadcast rights to the two competitions on their own are worth approximately €5m, while the IRFU claims that it receives a total of around €16m from the joint selling arrangement.[93] It would still be entitled to some share of the broadcast rights in respect of games shown in other countries.

Even the Minister's estimate would suggest a loss of almost 20% of IRFU broadcast revenue or around 5% of its total revenue. This represents a significant amount of income and it is difficult to believe that it could be replaced quite as easily as the Minister suggests.

A reasonable working assumption is that the actual revenue loss is likely to lie somewhere between the figures cited by the Minister and the IRFU, say around €3-5m which is erring slightly on the side of the Minister. This would still amount to around 5-9% of the IRFU's total revenue. While that might appear relatively modest, it is difficult to believe that an organisation with total revenue of around €59m could easily absorb a drop in income of €3-5m. Undoubtedly such a shortfall would have a significant impact.[94]

The Minister has argued that the loss in revenue could be made good from other sources. This pre-supposes the existence of hitherto untapped sources of revenue

[93] IRFU CEO Mr. Philip Brown reportedly told an Oireachtas Committee that "the Irish TV market contributes €5 million a year to the central pot but the IRFU gets €16 million." *Irish Times,* 3.6.2010. Mr. Brown was also reported as saying with regard to the IRFU's income from broadcasting "A lot of that would accrue from English or other markets where we get back more than people might actually pay for the rights in Ireland." *Irish Times* 1.6.2010. These figures seem broadly consistent with estimates of SNRL's total income from broadcasting rights cited elsewhere in this submission.

[94] Even a loss of just €3m the amount suggested by the Minister would be quite significant as it would have significant effects at the margin.

which seems unlikely in our view. The Minister has rejected claims that his figures are based on a hunch.

> "Nothing can be done on a 'hunch'. All involves careful policy analysis, statutory consultation, discussion, listening and feedback."[95]

Despite his claims of careful analysis, the Minister has so far not made such analysis available. If there is detailed evidence that supports the Minister's position, why not make it available as this would facilitate a more informed debate. At the very least it seems reasonable to expect the Minister to produce detailed evidence to back up his claims that any lost broadcast revenue could be made up from other sources.

The Minister has argued that the audience for games on pay TV channels is only around 20% of that for games on free-to-air channels, although the source of these figures is unclear.

> "The evidence both from home and abroad indicates that when events are only available on pay TV, the audience typically reduces by some 80 per cent. More specifically, the evidence in Ireland seems to show that the audience of children can be decimated."[96]

Thus according to the Minister, limiting games to pay TV channels means that the IRFU is losing a large number of potential supporters.

> "I believe that if you don't have a support base, if you lose 80 per cent of the audience which is what you do when you move away from a free-to-air service" holding on "to your audience is crucial to future revenue."

Essentially this implies that the Minister is better informed than the IRFU about what is in its long-term interests. As pointed out in section 4 of this submission, the IRFU arguably has a very good track record when it comes to running its business since rugby became a professional sport. Under the circumstances it would require strong evidence to support a claim by the Minister that he is in a better position to decide what is in the best interests of Irish rugby than those who have been responsible for running the sport over the past 15 years.

5.3: Implications for Irish Rugby.

[95] Ryan, (2010) above n 82.
[96] Ibid. The Minister's article cites no source in support of this claim.

We now consider the likely impact on Irish rugby if it suffered a drop in revenue of the order of €3-5m. The important point to remember from Fig.5.3 is that spending on its professional teams accounts for 67% of IRFU expenditure. It seems reasonable to assume that interest and depreciation charges are largely outside the IRFU's control. Administration and overheads account for only 7% of expenditure so the bulk of savings would have to come from the €49m that is spent on professional teams and supporting domestic/club rugby, where spending would have to be cut by between 6% and 10%.[97] To put the numbers in some sort of context, a squad of 35 players earning an average of, say, €80,000 would cost €2.8m. In addition there would obviously also be costs of coaching, medical and other back-up staff. It is not unrealistic, therefore, to suggest that the potential loss in revenue would be equivalent to the cost of IRFU support to one team. As previously pointed out, the IRFU has in the past considered dropping the Connacht team for financial reasons. Alternatively if the loss in revenue translated into cuts in spending on domestic/club rugby, then it would represent a major reduction (27-45%) which would almost certainly have very serious repercussions on the game at grass roots level.

The IRFU and its teams are competing for players in an international labour market. The top Irish players could easily choose to go and play elsewhere. The success of Irish teams in recent years also reflects their ability to sign top class international players from other countries including South Africa and New Zealand. It is unlikely that Irish teams would have enjoyed the same degree of success if they had been unable to complement their top home bred players with such top overseas players. We noted in section 4 of this submission how football teams in the four or five largest European countries had essentially cornered the market in signing all of the best players due to their greater financial strength. Admittedly, as pointed out, the IRFU is not in the position that smaller countries find themselves in in football because its teams are (a) not confined to playing in a national league and (b) participate in the ERC. Nevertheless any significant reduction in revenue would be likely to have serious implications on their ability to attract and retain top quality players.

[97] The IRFU's Annual Report for 2009/10 shows that administration and overhead costs were reduced by almost €1.5 to just over €4m in 2009/10 which again indicates that there is little scope for further savings in that area.

The IRFU expenditure of €35m on four professional teams compares with top French clubs, such as Stade Français and Toulouse, each of which have total budgets of €16m or more, with players' salaries accounting for around half of this total, while English club Northampton recorded annual turnover of stg£12m. A salary cap is to be imposed on French clubs from next season but it is set at around €8m which is more or less in line with their existing expenditure on player salaries.[98]

English clubs are also subject to a salary cap of around £4m although there is likely to be some pressure to raise this as there has been a significant outflow of top English players to French clubs over the past two seasons. According to France's Ligue Nationale de Rugby, close to 30 English players were employed by Top 14 clubs this season, roughly double the figure for 2007-08.[99] This shows how quickly players can move between countries. It is estimated the average player's salary in England's Guinness Premiership is roughly stg£80,000 a year, compared with just over stg£100,000 in the French Top 14.[100] The salary cap is also seen to be somewhat outdated. For example, it represents just one third of Northampton's annual turnover.

Fluctuations in the sterling/euro exchange rate are widely seen as one of the chief explanations for the exodus of English players to France in recent seasons.[101] The appreciation of the Euro relative to Sterling made French salaries appear relatively attractive. Thus any decline in the Euro relative to Sterling will make English salaries more attractive to players in Euro zone countries, including Ireland. The IRFU needs to offer an equally attractive package if it is to recruit and retain the best players, without whom it would not be possible to compete successfully.

It is suggested that rugby benefits from Government measures such as the special tax treatment for professional sports people. Undoubtedly such measures may have made it more attractive for Irish players to play for Irish teams in recent years. In January 2008, however, France introduced new tax measures which benefit professional rugby players going to play in that country. According to Jérôme Sanz of Ingéfinance 64, a

[98] S. Johnson, Rugby Hits a Pay Wall, *Financial Times,* 10.3.2010.
[99] D. Owen, Old Foes Wage New Battle, *Financial Times*, 10.3.2010.
[100] Ibid.
[101] Ibid.

financial adviser to athletes in a variety of sports including rugby, the tax measure – which aims to entice talented expatriates and foreigners to France – may offer international-calibre players a tax-free deduction of 30 per cent of earnings for five years. To qualify, players (whether French or foreigners) must not have resided in France in the previous five years; must be prepared to make France their main domicile for tax purposes; and must be paid more than the average salary in their field of expertise.[102]

Any reduction in player salaries would be likely to make it more attractive for the best Irish based players to go and play elsewhere. Similarly any reduction in squad numbers would raise doubts about the IRFU's ability to continue its policy of limiting its top international players to playing around 30 games a season. Either option would be likely to have a negative effect on the performances of Irish teams in both the Magner's League and ERC. This would almost certainly have knock-on effects in terms of attendances and sponsorship. Sponsors want their products to be associated with successful teams after all. The analysis in section 4 showed that Irish teams' attendances, notably Leinster and Munster, have significantly increased over the past decade. The flip-side is that such fans do not necessarily have a strong long term allegiance to those teams and attendances could drop very quickly if Irish teams become less successful.

Any significant drop in attendances for Magner's League games might also have wider repercussions for that competition. In section 4 we noted that the competition does not appear to have captured the imagination of Scottish sports fans, to put it mildly, while their teams' playing record has also been relatively poor. Any deterioration in the playing strength of the Irish teams, given that Connacht are already consistently poor performers, would seriously affect the competitive balance of the Magner's League competition. If that were associated with a fall in Irish attendances, there could be question marks about the competition in the medium term. This might be seen as somewhat alarmist but, as Owen pointed out, in respect of the Six Nations:

[102] Ibid.

> "The nature of sport is such that, even if a recipe has worked for 127 years, it could lose its savour very quickly. The best example of this is the UK's home international football championship, featuring England, Northern Ireland, Scotland and Wales, which was abandoned in 1984 after a century."[103]

The Magner's League does not have a long tradition as it is only ten years old. In this sort of scenario, Welsh teams might think of looking elsewhere. Welsh teams already compete against English clubs in the Anglo-Welsh cup.

Anything that negatively impacts the ongoing viability of the Magner's League would have very serious implications for Irish (and Scottish) rugby as it would leave both countries' teams without a viable professional league competition.

The Minister and some commentators have argued that the issue of broadcasting Six Nations and ERC rugby matches is about more than just revenue.[104] Such arguments ignore the fundamental fact that rugby is now a professional sport, and, as pointed out, Irish teams compete in international competitions in the context of an international market for players. In order to compete sports teams must hire players and coaches of a sufficiently high calibre. Effectively Irish rugby needs to be able to offer a package that is attractive compared to what is on offer elsewhere if it is to recruit and retain the best players. At present Irish rugby has an advantage relative to the other top team sports as its teams compete at a top international level. It is able to offer fans the opportunity of going to watch matches involving some of the world's top rugby players at the highest level. This is not available to football (because as we noted, football teams are limited to national leagues and teams from smaller countries have little prospect of reaching the group stages of the Champions League, for example) or to Gaelic games (because to all intents and purposes it is a purely domestic sport).

One of the reasons for the success of Irish teams in recent years has been their ability to attract top overseas players. Whether one likes it or not such players are unlikely to come to Ireland unless Irish teams are able to pay the going rate for their services.

[103] Ibid.
[104] The Minister wrote an op-ed piece in the *Irish Times* which was headed 'More at stake than money as we tackle vital issue, above n 82. See also T. McGurk, IRFU is playing the man, not the ball, *Sunday Business Post*, 23.5.2010.

Such players do not have particular allegiance to Ireland. Equally top home grown players are likely to move abroad if it becomes more attractive. One cannot criticise them for seeking to maximise their earnings during what is essentially a very limited playing career. One can argue that it should not just be about money, but in professional sport success depends on it.

The Minister and his party (correctly) favour charging for essential services such as water supply and refuse collection to reflect the fact that there is a cost involved in supplying such services. It is difficult to reconcile this view with the idea that people should be entitled to watch rugby matches on television for free.

5.4: Impact on Viewers.

The Minister has argued that having sports events on pay-TV channels greatly reduces the numbers watching the event. The evidence in support of this is rather limited as the Minister has only cited one or two examples.

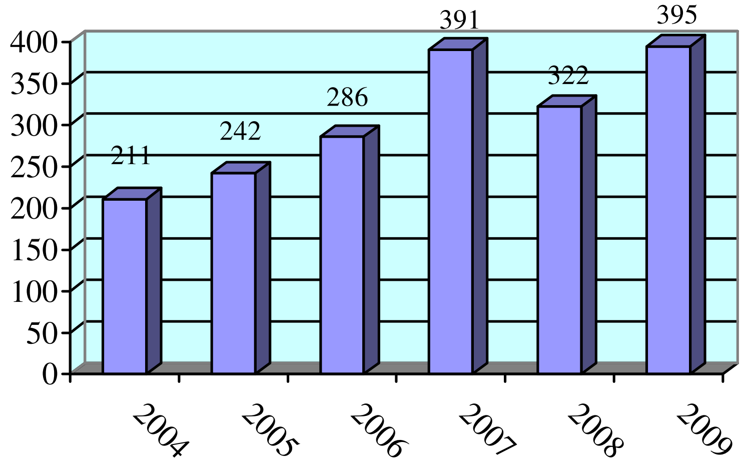
Fig. 5.4 illustrates trends in television viewing figures for Ireland's Six Nations Rugby matches since 2004. The chart shows that average viewing figures have increased substantially, rising by 87% between 2004 and 2009. The latter year coincided with Ireland's first Grand Slam success in the competition for over sixty years. As with the growing attendances at Munster and Leinster matches, the increase in audience numbers is probably due largely to the on-field success of Irish teams over this period, a point acknowledged by RTE which stated:

> "The success of Irish teams at national and provincial level has been the main driver of this. [Increase in viewer figures]."[105]

The obvious question is whether such interest would be sustained if Irish teams do not continue to enjoy such high levels of success in the future. It should also be noted that even the very high figures recorded in 2009 represented an audience share of 39%.

[105] RTE submission to DCENR re Designated Events – May 2009, p.12. Available at: http://www.dcenr.gov.ie/Broadcasting/Designation+of+sporting+events/Submissions+Received.htm

Fig.5.4: Six Nations TV Audiences ('000)



RTE submission to DCENR re Designated Events – May 2009, p.12.

In its May 2009 submission RTE argued:

> "The ready availability to view these major events allows the casual or occasional sports fan, as well as the non-fan caught up in the momentum of success, to participate in these events with minimal effort."[106]

This argument suggests that sports bodies such as the IRFU should be permanently denied the opportunity to maximise revenues in order to facilitate those with relatively limited interest in the sport but who might wish to view particularly important games, if and when, Irish teams are doing particularly well.

RTE has also argued that limiting games to pay-TV channels encourages people to go to pubs to view games and, in the case of parents to bring their children. It cites a survey conducted in respect of one game in 2007 which found that one in five parents had watched the game in a pub. It acknowledges, however, even when games are shown on free-to-air television, that many people may go to the pub to watch the game. It may well be that more people watch games in pubs on free-to-air than on pay-TV channels[107]

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[106] Ibid.

[107] If only 10% of those who reportedly viewed the Munster v Biarritz ERC final in 2006 watched the game in a pub, this would amount to 53,000 people, which is probably more than the number who would watch games on pay-TV in pubs given the audience numbers quoted for such games.

5.5: Conclusions.

The designation of certain rugby matches for free-to-air broadcasting is likely to have a significant negative effect on Irish rugby. Contrary to what the Minister has claimed, it is highly likely that a requirement that games be broadcast on free-to-air television would reduce the price that broadcasters would be prepared to pay for the rights to such matches. This is simply because non-exclusive rights are worth less to broadcasters. It is likely that it would also reduce competition between broadcasters to bid for the rights which would also tend to reduce the price of the broadcast rights. The proposal might also negatively impact IRFU revenues in other ways. At the very least it would increase the transaction costs involved in negotiating agreements with broadcasters, while it may also weaken the IRFU's bargaining position vis-à-vis the other major European rugby nations which currently sell broadcast rights to the Six Nations and ERC on a collective basis.

There have been conflicting estimates by the Minister and IRFU regarding the extent of any loss in revenues. The Minister has even suggested that any loss in broadcasting revenues could be made up from other sources, although this seems unrealistic in our view. A drop in revenue of around €3-5m, which is closer to the Minister's estimate of losses than the IRFU's would represent a very significant loss to the IRFU. Such a reduction would be likely to have a very serious impact on the IRFU's professional teams and/or its support for the game at grass roots level. The amounts involved would represent 27-45% of the total which the IRFU currently spends on promoting the game below professional level.

Irish teams have enjoyed considerable success on the field in recent seasons. This has been based on recruiting the appropriate mix of top quality playing and coaching resources. Any reduction in IRFU revenues would potentially threaten the ability of Irish teams to compete effectively in the Magner's League and ERC by reducing their ability to recruit and retain top quality players and could ultimately lead to the loss of one of Ireland's ERC places. This in turn would be expected to have knock-on effects down the line in terms of declines in attendances and sponsorship income, ultimately resulting in a vicious downward spiral.

6: CONCLUSIONS.

There is an extensive literature on the economic characteristics of professional sports leagues which is particularly relevant to understanding the potential implications of the Minister's proposals regarding the broadcasting of rugby matches. Professional sports teams and leagues differ from other businesses in that they require close cooperation in order to produce a viable product in the form of a league championship competition. Much of the literature on sports leagues stresses the importance of competitive balance as a means of maximising supporter interest and the need for revenue sharing to achieve such balance. This literature largely reflects the experience of US sports leagues which have a fixed membership and no international competitions. In contrast member teams in European sports leagues, particularly football, have less interest in competitive balance due to the promotion and relegation system and the fact that the top teams qualify to play in lucrative European competitions such as the UEFA Champions League.

There is evidence of a growing disparity in revenues within European football leagues and an associated reduction in competitive balance. In addition the European Court of Justice *Bosman* judgment has created a fully mobile labour market for professional footballers within the EU while clubs remain tied to their national leagues. This has resulted in clubs in the four or five largest countries recruiting virtually all of the best players in Europe as clubs in smaller countries are simply unable to compete. The effect of has been a reduction in league quality in smaller countries and the domination of European competitions such as the Champions League by teams from the four or five largest countries.

Traditional broadcasting technologies prevented broadcasters from charging viewers directly for television programmes. Thus broadcasters were historically financed by Government subvention, by advertising or a combination of the two. Changes in technology have resulted in a proliferation in television channels and have permitted broadcasters to charge viewers directly. This has led to the growth in the number of pay-TV channels. Such changes have reversed the situation where content had to compete for scarce broadcast outlets to one where programming is now relatively scarce. This has increased the importance of sports broadcast rights to broadcasters. Exclusive broadcast rights are worth more to broadcasters and thus the price that broadcasters are prepared to bid for such rights increases with exclusivity, scope and duration.

The move to professionalism in 1995 has resulted in major changes in the structure of Irish rugby. A new league, the Magner's League, comprising teams from the three smaller European rugby playing countries has been established. There are thus two important differences between the structures of football and rugby in Europe which are particularly important for teams from smaller countries. In rugby teams from the smaller countries are not restricted to national leagues while the limited number of rugby playing countries means that teams from smaller countries play in the top European competition the ERC. This has prevented, at least to some extent, the emergence of a situation where teams in the two bigger countries, England and France sign up all the best players.

Irish teams have tended to punch above their weight having won four ERC's and five Magner's Leagues. Irish teams' win percentage in both the ERC and Magner's League compares quite favourably with those of the other participating countries over the period since the competitions were launched. The fact that Scotland and Wales, two of the three other smaller rugby playing countries have sought to adopt the Irish model of regional teams is a further indication that the IRFU model is a successful one.

Leinster and Munster have recorded substantial increases in attendances for both Magner's League and ERC group stage games over the past few years. Their attendances are among the highest of any of the participating teams in both competitions.

The designation of certain rugby matches for free-to-air broadcasting is likely to have a significant negative effect on Irish rugby. It is highly likely that a requirement that games be broadcast on free-to-air television would reduce the price that broadcasters would be prepared to pay for the rights to such matches. This is simply because non-exclusive rights are worth less to broadcasters. It is likely that it would also reduce competition between broadcasters to bid for the rights which would also tend to reduce the price paid. The proposals might also negatively impact IRFU revenues in other ways. At the very least it would increase the transaction costs involved in negotiating agreements with broadcasters, while it might also weaken the IRFU's bargaining position vis-à-vis the other major European rugby nations which currently sell broadcast rights to the Six Nations and ERC on a collective basis. It would also give rise to significant difficulties for the ERC as there would be no way of knowing *ex ante* how many games in the knock-out stages of the competition would be affected which would again reduce the value of the broadcast rights.

There have been conflicting estimates by the Minister and IRFU regarding the extent of any loss in revenues. The Minister has even suggested that any loss in broadcasting revenues could be made up from other sources, although this seems unrealistic in our view as it would imply that there are significant untapped revenue sources available to the IRFU. A drop in revenue of around €3-5m, which is closer to the Minister's estimate of losses than the IRFU's would represent a very significant loss to the IRFU. Such a reduction would be likely to have a very serious impact on the IRFU's professional teams and/or its support for the game at grass roots level.

Irish teams have enjoyed considerable success on the field in recent seasons. This has been based on recruiting the appropriate mix of top quality playing and coaching resources. Any reduction in IRFU revenues would potentially threaten the ability of Irish teams to compete effectively in the Magner's League and ERC by reducing their ability to recruit and retain players of sufficient quality. The English experience which saw a significant exodus of top players to French clubs within a relatively short period of time provides a salutary lesson in this regard. A decline in performances would be likely to have knock-on effects down the line in terms of declines in attendances and sponsorship income and could cost Ireland one of its ERC places. Further declines in revenue as a result would further restrict the ability of Irish teams to attract quality players and could ultimately result in a vicious downward spiral for Irish rugby.

COMPECON – WHO WE ARE.

Compecon Limited is an independent economic consultancy specialising in the application of state of the art economic analysis to competition policy issues, mergers and industry regulation. Founded in 2001 and based in Dublin, Compecon has established itself as one of the leading Irish economic consulting firms in competition and regulatory issues. Compecon is directed by Patrick Massey, an economist with 30 years experience in both the private and public sectors in Ireland and overseas. We are supported by a number of leading academic economists. This means that Compecon is in a unique position to offer high quality analysis and advice to clients on competition and regulatory matters. Compecon has advised many of Ireland's leading companies on competition matters, mergers and regulatory issues.

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