Legal Negotiations

Fall 2023

Final Scored Negotiation

Confidential Information for Amazon

The NBA has never gone public with its revenue targets for its next cycle, but the three-fold increase has been widely touted. The NFL has managed to sell its rights for more than US $110 billion over ten years by taking advantage of this competition and by transforming Thursday Night Football and Sunday Ticket into streaming propositions that have attracted both Amazon and Google.

Revenue is of course hugely important to team owners, but the league also wants to ensure it has the optimum mix of free-to-air (“FTA”), pay-TV, and streaming distribution to ensure that it has wide reach and is adequately serving its diverse fanbase.

Inspired by the NFL’s recent success, the NBA is expected to carve out a package of games for a streaming platform and will expect any pay-TV partners to simulcast matches via direct-t-consumer (“DTC”) service. Given younger viewers are more likely to cut the cord, using cable exclusively is not a desirable option.

Today, you are negotiating with the NBA to discuss a streaming rights package with them. This is not an exclusive deal as you they will likely be negotiating and contracting with other streaming services as well, including possibly Netflix, Hulu, Disney, Peacock, and others. However, you believe that the league likely does not want to contract with more than three (3) media partners.

Additionally, both ESPN and Warner Brothers Discovery, as incumbents, have an exclusive negotiation window that will expire in 2024, putting them in pole position.

Amazon is an eager contender and is hoping to add the NBA to its NFL coverage and establish a year-round schedule for Prime Video. Indeed, Thursday Night Football could provide a blueprint for any Amazon production and it is also reportedly interested in securing local rights as well as national matchups. Given Diamond Sports Group’s (“DSG”) struggles, the NBA could reclaim local rights from affected teams and incorporate them into any streaming proposition. Amazon is also an NBA partner in Brazil, meaning there is a pre-existing relationship that could also expand into areas such as ecommerce.

A shift as massive as going all-in on streaming is unlikely in this cycle; however, Amazon can present a good enough package – and justification – for the NBA to say goodbye to cable, then you may be able to convince them to shift to solely streaming. This is not a requirement for you to reach a tentative agreement, though.

Additionally, you suspect that the NBA may want to use their own website or App as a digital front door to help fans find where certain games are streaming. You can engage in discussions and creative options for utilizing these apps OR possibly presenting options for Amazon to help fans find and navigate to the various streaming services that will be offering packages and games (of course you will want any deal to be more advantageous for Amazon than any other streaming service).

It is important to note that the NBA does not yet have authority to bind the league to any specific deal as they are prohibited from officially reaching any agreement(s) until April 2024.

You are permitted to conduct research and incorporate any relevant and pertinent information that you believe would be helpful in increasing value for both sides. That being said, you are not permitted to invent facts to the detriment to the other side (and for your benefit). You should be prepared to provide your sources for your information and statistics.

A few key facts for this preliminary discussion/negotiation:

* Amazon prefers to be the exclusive streaming service for the NBA, recognizing that the league will likely work with cable and the incumbents. If you can keep Netflix out of the “NBA arena”, then that is preferred, but not required.
* ESPN head John Skipper predicted earlier this year that the league could get between 200% and 350% more in its new agreement.
* You are able to suggest an advertising-supported tier similar to what Netflix has announced. You are able to offer this advertising-supported tier to the NBA, but you may not want to start off with this option to begin with.
* You can provide ideas as to ways that Amazon intends to market the NBA package. Please conduct research to come up with some creative options.
* You are uncertain if Amazon has a global reach, but can conduct research to determine if you could support a global or just U.S. reach.
* The average age of an NBA viewer is 49, and 26% of viewers are under 35. Given this information, be prepared to offer ideas on how to engage and attract a younger audience & subscribers, while also asking the NBA for their suggestions and ideas.
* Your competition includes primarily Netflix, Apple, and Peacock.
* Amazon has proven to the NBA it is serious about making a large investment in live sports, including its $1 billion per year contract to carry “Thursday Night Football.”
* You are permitted to offer in the ballpark of up to $2.75 billion per season, but you would prefer something closer to $1.5 billion per season (similar to the NFL deal with Amazon).
* Amazon can agree to a 10-year contract, but you prefer 5-years OR prefer the option to “bow out” at the end of that year’s season. If needed, you can negotiate an increase in pay over time. Additionally, you can negotiate for a higher per season rate, if needed and if the deal is aligned with Amazon’s other interests.
* Amazon’s debut broadcast with the NFL Thursday nights had an average audience of 13 million viewers, and Prime Video signed off the 2022 regular season averaging 9.58 viewers per game. You cannot guarantee similar results to the NBA, but you feel confident that the numbers will match – if not exceed – the NFL’s numbers.