Legal Negotiations

Fall 2023

Final Scored Negotiation

Confidential Information for the National Basketball Association

 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 Amazon to discuss a streaming rights package with them. This is not an exclusive deal as you will likely be negotiating and contracting with other streaming services as well, including possibly Netflix, Hulu, Disney, Peacock, and others. However, the league would like no more than three (3) media partners as having too many could make it difficult for fans to find live games or fall victim to subscription fatigue.

 Additionally, both ESPN and WBD, 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, the league is not opposed to going all-in on streaming if Amazon can present a good enough package – and justification – for the NBA to say goodbye to cable.

 Additionally, NBA.com or the NBA app may serve as the digital front door to help fans find where certain games are streaming. You are interested in finding out creative solutions/ideas from Amazon as to how this could work best.

 It is important to note that you do not yet have authority to bind the league to any specific deal as you 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:

* The NBA prefer to have no more than three (3) packages as it decides among TV carriers and streaming services but would be willing to go up to five (5) if ESPN and TNT offer good deals.
* You prefer to keep your options open to TV/cable and streaming but could be convinced to suggest and support streaming only **if** Amazon provides compelling arguments, justifications, and option packages.
* ESPN head John Skipper predicted earlier this year that the league could get between 200% and 350% more in its new agreement.
* You are interested to see if Amazon offers an advertising-supported tier similar to what Netflix has announced. If so, and if Amazon can agree that any NBA streaming would be at this level, the league would be much more interested in working with Amazon over Hulu or Peacock.
* You would like details on how Amazon would propose marketing an NBA package.
* The league prefers a global reach and would like to know what Amazon’s global reach statistics are, if relevant.
* The average age of an NBA viewer is 49, and 26% of viewers are under 35. Given this information, the league would like to hear some of Amazon’s ideas on how to engage and attract a younger audience & subscribers.
* Between Amazon and Apple, league officials are currently more comfortable with choosing Amazon as a potential streaming partner.
* 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.” While Apple has deals to carry Major League Soccer and “Friday Night Baseball” for Major League Baseball, the NBA isn’t convinced that Apple will prioritize marketing for the league’s games in the same way other streaming services might. Apple TV+ has never disclosed how many subscribers it has.
* The league is willing to entertain all offers and bids but is looking for a partner who is willing to bid in the ballpark of at least $1.5 billion per season (similar to the NFL deal with Amazon).
* Ideally, Amazon will agree to at least 10-year deal at the $1.5 billion per season rate, but you can negotiate an increase over time, if desired. Additionally, you can negotiate for a lower per season rate, if needed and if the deal is aligned with the NBA’s other interests.
* The league is aware that Amazon’s debut broadcast with the NFL Thursday nights had an average audience of 13 million viewers, and that Prime Video signed off the 2022 regular season averaging 9.58 viewers per game. The league would like some type of assurance that Amazon believes that the numbers would be comparable – if not higher – for the NBA.