[GB] Court Clarifies Role of Regulatory Authority

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The English High Court has clarified the role of the Independent Television Commission which regulates private broadcasting in the UK. Apart from accepting the legitimacy of economic regulation by the Commission, the court indicated that it will be reluctant in future to overturn decisions of substance made by it. The facts concerned the distribution of programmes by the satellite service BSkyB and cable operators. Channels were sold in packages and premium channels with a high consumer appeal were only available to subscribers who also took a number of basic channels. The satellite and cable companies were also obliged to distribute channels to a set proportion of their subscribers. The Independent Television Commission prohibited contracts which had the effect of preventing subscribers from buying any premium channel on an à la carte basis from any package of basic channels ('unbundling'). Flextech, a provider of the channels, challenged the decision on the basis that the Commission had no power to ban the arrangements or to interfere with existing contractual rights.

The High Court dismissed Flextech's application, holding that the Commission was under a duty to secure the availability of a wide range of services and to ensure fair and effective competition; this included taking action concerning the basis on which services were offered. The Commission could be successfully challenged only if it acted unreasonably.

R v Independent Television Commission ex parte Flextech plc.

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