[GB] Oftel's New Conditional Access Guidelines and Rejection of Complaint about Charges on Public Service Broadcaster

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Tony Prosser
University of Bristol Law School

The Office of Telecommunications, Oftel, the UK's telecommunications regulator, is responsible for regulating conditional access services, including the terms on which public service broadcasters are given access to satellite platform providers (they do not apply to the digital cable platform, where "must carry" rules require free carriage). It has published a revised set of guidelines on conditional access pricing, setting out how it expects conditional access prices to be set and how operators should approach the negotiation process to agree those charges. They require that access should be granted on a fair, reasonable and non-discriminatory basis; fairness and reasonableness will be determined by what would be expected in a competitive market. Prices should thus fall between incremental and "stand-alone" costs. To avoid discrimination, comparable prices should be offered to comparable users, for comparable services, at comparable times, although differential pricing will be permitted where this does not adversely affect competition.

The Office also decided that the charges levied on ITV, the main private public service channel, by Sky Subscriber Services Limited, a subsidiary of British Sky Broadcasting, were fair, reasonable and non-discriminatory. It had received a complaint that the charges were too high and constituted anti-competitive price discrimination between ITV and other public service broadcasters. The Office conducted sensitivity analyses on the effect of disallowing various costs elements which supported the conclusion that charges were "fair and reasonable"; it also found that there were legitimate reasons for differences in price from those charged to other public service broadcasters.

The current position may be subject to change under the Communications Bill currently before Parliament. The Government expressed an intention to extend the "must carry" rules, but the Bill introduced in Parliament instead simply obliges public service broadcasters to offer their channels to satellite platforms. Charges will continue to be subject to the requirements outlined above.

"Terms of supply of conditional access: Oftel guidelines", Office of Telecommunications, 22 October 2002, available at:

http://www.oftel.gov.uk/publications/broadcasting/2002/cagu1002.htm

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"Oftel publishes decision on ITV complaint", Press Release 61/02 of 22 October 2002

http://www.oftel.gov.uk/press/releases/2002/pr61_02.htm

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