[GB] BSkyB Cleared of Breach of Competition Law in Supply of Premium Sports and Film Channels

IRIS 2003-2:1/15

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A year ago, the Office of Fair Trading (the UK competition authority) announced preliminary findings that it was likely to find BSkyB in breach of the 1998 Competition Act (see IRIS 2002-2: 11). The Office has now taken its final decision, which clears BSkyB of any breach of the Act.

Chapter II of the Act prohibits abuse of a dominant position, in terms almost identical to those of Article 82 of the EC Treaty. The investigation had been based on fears that BSkyB was abusing its dominance over premium pay-TV channels to distort competition against rival distributors and in favour of its own satellite distribution system. The Office concluded that BSkyB was dominant in the markets for the wholesale supply of premium sports and film channels. Competitors had complained that this dominant position had been abused through a "margin squeeze", i.e. selling the product to distributors at a price that allowed them an insufficient margin to make a profit, even if they were as efficient as BSkyB's own vertically-integrated business. The result of the Office's analysis was borderline, leading to the conclusion that there were insufficient grounds to find a breach of the Act.

Complaints were also made that BSkyB was abusing its dominant position through the "mixed bundling" of channels, i.e. offering different products together at a discount. The Office found no evidence of pricing below incremental cost or of the foreclosure of markets to competitors, so this allegation was also rejected.

Finally, complaints had been made that BSkyB had offered anti-competitive discounts based on the amount of sales of the channels by distributors to final consumers. The Office concluded that it was unlikely that discounts distorted competition or foreclosed the market to other channel suppliers. Thus the overall decision was that there had been no breach of competition law by BSkyB.

"BSkyB: The outcome of the OFT's Competition Act investigation", Office of Fair Trading, OFT 623, December 2002

http://www.oft.gov.uk/NR/rdonlyres/eccbuc6zrd63s6blscvcf7ggaeyrl3lhvajdl6o4dtzap4ffxlcng5jaxvgszt7prv5fufhfgkfn5lthpqmrg2kc37a/oft623.pdf

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Decision of the Director General of Fair Trading No CA98/20/2002 - BSkyB investigation: alleged infringement of the Chapter II prohibition, 17 December 2002, Case CP 01916-00

http://www.oft.gov.uk/Business/Competition+Act/Decisions/BSkyB.htm

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