[GB] Regulator Requires Sky to Supply Sports Channels to Other Retailers at Regulated Wholesale Prices

IRIS 2010-5:1/26

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The Office of Communications (Ofcom), the UK communications regulator, has now made its final decisions in its long-running investigation into the pay-TV market (see IRIS 2009-1: 13/22 and IRIS 2009-8: 14/21). It has made a number of far-reaching decisions.

The most important decision is that Sky must offer wholesale standard definition versions of Sky Sports 1 and 2 to other retailers, for example cable, terrestrial and IPTV, in order to secure fair and effective competition. The price for this 'wholesale must-offer' is set by Ofcom; Ofcom has set a price of GBP 10.63 for each of the channels, 23.4% below the current wholesale price to cable operators. The price for the bundle of both channels has been reduced by 10.5% to GBP 17.14. The price has been set on a 'retail-minus' basis, which takes the price at which Sky retails the channels to its own customers and subtracts a fixed margin to allow for efficient retailing costs. This approach is designed to minimise any negative impact on sports rights.

Secondly, Ofcom has approved Sky's request to offer pay-TV services on digital terrestrial TV. However, this has been made subject to conditions that Sky implements a wholesale deal under the supply obligation for the sports channels and that, if it decides to offer movie channels on digital terrestrial television, those channels must also be offered to other digital terrestrial television operators.

Ofcom also found that Sky is restricting the distribution of premium movies and that there is ineffective exploitation of subscription video-on-demand movie rights. However, Ofcom cannot deal with this fully using its own competition powers (which relate primarily to linear channels) and thus the regulator proposes to refer the issue under the Enterprise Act 2002 to the Competition Commission, the main UK competition authority.

Finally, Ofcom will require Sky to offer wholesale high-definition versions of Sky Sports 1 and 2; to help promote future innovation the regulator has not set wholesale prices for them but requires them to be offered on fair, reasonable and non-discriminatory terms.

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Although this is the end of a lengthy and detailed inquiry, resulting in a decision of over 650 pages, it is not the end of the story, as Sky is vigorously opposed to the outcome (as are the major owners of sports rights) and intends to appeal against the decision to the Competition Appeal Tribunal and to challenge the process by which it was reached by judicial review. A general election is also imminent and the opposition Conservative Party is pledged to reducing the powers of Ofcom.

Ofcom, 'Delivering consumer benefits in Pay TV', Press Release, 31 October 2010

http://www.ofcom.org.uk/consumer/2010/03/delivering-consumer-benefits-in-pay-tv/

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