[GB] Ofcom Decisions on the Regulation of the Pay-TV Market

IRIS 2010-9:1/38

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It was already becoming apparent before the completion of the pay-TV review that the British regulator Ofcom's task of regulating the pay-TV markets would not end with the review's publication on 31 March 2010.

Ofcom has now put its thinking in more concrete terms in two decisions: it has referred an investigation into possible distortions of competition in BSkyB's marketing of Hollywood films to the Competition Commission (CC) for further examination and taken action itself on the conditions for the distribution of the channels Sky Sports 1 and 2, prohibiting Sky, according to reports, from limiting the use of set-top boxes in its wholesale contract with Top Up TV.

The decision of 4 August 2010 on the marketing of films concerns two specific markets of particular importance for pay-TV in the United Kingdom: the market for first-run films from the major Hollywood studios on pay-TV and the wholesale market for pay-TV packages containing film channels based on these rights. Ofcom assumes that a combination of several market features has adverse effects on competition, leading in turn to reduced choice, less innovation and higher prices. The market situation, it says, gives Sky in particular an incentive to impede competition. It notes that a previous consultation revealed that no change in the marketing structures could be expected without regulation. However, as its own sectoral powers are unlikely to solve the problems relating to competition it decided to refer the matter to the CC, which now has two years to investigate the situation and take any necessary measures.

In the meantime Ofcom has prohibited Sky from using a clause in its wholesale contract with the digital television group Top Up TV that would limit the models of set-top box that can be used for the distribution of Sky Sports. In the context of the pay-TV review, Top Up TV, as one of the four companies that initiated the investigation, was ordered to begin negotiations with Sky on the distribution of the two premium channels Sky Sports 1 and 2. In the course of these negotiations, Sky opposed Top Up TV's plans to introduce a new digital receiver capable of receiving not only the two sports channels but also other digital terrestrial channels, including the Freeview offering and the linear Top Up TV channels, but not additional premium content.

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Ofcom has now ordered the removal of the clause from the contract as it would restrict the market for Top Up TV to existing customers and customers willing to purchase a more expensive set-top box with a hard-disk recorder. Sky has already announced its intention to appeal against the decision, arguing that the mere reselling of Sky Sports 1 and 2 was not intended by Ofcom itself in the original obligation to supply since the aim of this obligation was to promote innovation.

In the pay-TV review, Ofcom states that BSkyB must offer its premium sports channels Sky Sports 1 and 2 to all competing platforms at a price set by Ofcom (see IRIS 2010-5/26 and IRIS 2009-8/21).

The terrestrial pay-TV service offered by Sky and Arqiva under the name Picnic has been approved subject to an agreement actually being reached on the provision of sports channels to wholesale customers. If Picnic offers feature films, the relevant channels must also be made available to other terrestrial television providers.

On the other hand, Ofcom held that it did not have the power to regulate video-on-demand film rights, initiating a further consultation on the subject and then referring the matter to the Competition Commission.

Ofcom decision of 4 August 2010

http://stakeholders.ofcom.org.uk/consultations/movies_reference/statement/

Ofcom decision on the pay-TV market of 31 March 2010

http://www.ofcom.org.uk/consult/condocs/third_paytv/statement/

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