[GB] Regulator Rejects Complaint where Sky Sports Refused to Carry Advertisement for Rival Service

IRIS 2013-9:1/16

Tony Prosser
University of Bristol Law School

Ofcom, the UK communications regulator, rejected on 20 June 2013 a complaint of undue discrimination made by British Telecommunications (BT) about the refusal of British Sky Broadcasting (BSkyB) to carry an advertisement for BT's new sports channels on Sky Sports. The Communications Act 2003, s.319, requires Ofcom to secure that there is no undue discrimination between advertisers, and this is implemented through its Code on the Prevention of Undue Discrimination between Broadcast Advertisers. BSB had refused to carry the advertisement because it does not itself retail the BT channels. It claimed that to carry the advertisement would pose risks to its own sports channels and brands and the investment it had made in them as BT could run advertisements making derogatory comparisons with them, and the advertisements would reduce the clarity and effectiveness of Sky's own advertising. BT argued that ordinary commercial motives could not be a legitimate basis for discrimination.

Ofcom emphasised that the rule, which had originated in 1954, had to be interpreted against the background of a changed media landscape with a wide range of opportunities for advertising. Sky's refusal did constitute discrimination as it was differentiating between advertising its own services and those of BT, and also between BT and ESPN, another sports broadcaster retailed by BSkyB whose advertisements it does carry. Ofcom then assessed whether the discrimination was 'undue'. It considered that ordinary commercial motives can be a legitimate aim, and these could include brand protection and the protection of revenue against a rival channel in the same genre. The same considerations did not apply to ESPN, which is retailed by BSkyB.

The regulator then considered the proportionality of the refusal. BT had argued that it would be possible to negotiate specific conditions that would alleviate BSkyB's concerns about brand and revenue protection, and indeed it had offered not to denigrate Sky Sports channels or to run more advertisements than those for ESPN. However, Ofcom considered that it was more important to assess whether there were other channels that an advertiser could access at limited additional cost. It considered that failure to access Sky Sports would have only a limited impact on BT's planned advertising campaign as it has opportunities to advertise on general entertainment channels.

© European Audiovisual Observatory (Council of Europe) 2026

Ofcom, 'Refusal to broadcast advertisements for BT Sport channels', 20 June 2013

http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/1103007/bt-sport.pdf

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026