

## **II-3.2: On May 27, 2010, Ofcom (The British Office of Communication)'s Broadcasting Sanctions Committee fined Teletext Limited £225,000, following Ofcom's revocation of Teletext's public license for teletext services on January 29, 2010, which was necessary after Teletext Ltd. unilaterally ceased broadcasting teletext services on December 15, 2009.**

Wednesday 2 June 2010, by Alex Raiffe, Junior Editor

### **MAIN INFORMATION**

Ofcom (The Office of Communications), Britain's audiovisual and telecommunications regulatory authority, revoked Teletext Limited's public teletext license on January 29, 2010 and fined Teletext Ltd. £225,000 on May 27, 2010, for having unilaterally ceased broadcasting of teletext services on December 15, 2009, in advance of the expiration of its license in 2014.

### **CONTEXT AND SUMMARY**

Britain's public television channels benefit from a teletext service, which was provided by a private corporation, Teletext Limited, according to the terms of a public teletext license concluded between Ofcom (The Office of Communications), Britain's telecommunications and audiovisual regulatory authority, and Teletext Ltd., from 1993 to 2014.

In exchange for Ofcom's attribution of distribution capacity, Teletext Ltd. was required to provide national, international, and regional news, and regional non-news information via teletext. Teletext Ltd. was also free to include commercial advertisements in its broadcast.

Teletext Ltd. was selected for the public license following a competitive bidding process. Teletext Ltd. was obliged to pay an annual cash bid, and an amount of contribution to The Consolidated Fund, a public television service fund.

The amount of the cash bid was last revised in 1996, when Teletext Ltd.'s license was revised to include terrestrial digital broadcasting in addition to the analogue broadcast it already provided. Instead of paying an annual cash bid of £1.9 million and 18% of its profits to the Consolidated Fund, Teletext Ltd. only had to pay an annual cash bid of £25,000 per year and 5% of its profits to the Fund.

At that time, Ofcom estimated that Teletext's license would earn a net profit for Teletext over the 2006-2014 period, but that profits would be strongly concentrated in the first years of the license.

However, faced with declining viewers and the additional obligation of providing digital terrestrial broadcast, on one hand, and Ofcom's announcement on April 10, 2008, that it believed that teletext service would no longer be required to secure public purposes after 2014<sup>[1]</sup>, Teletext Ltd. issued a press release on July 16, 2009 announcing that it would stop broadcasting the "loss-making analogue service and a number of digital terrestrial services" in January 2010.

Teletext unilaterally ceased providing teletext services on January 29, 2010, in breach of its license. In consequence, Ofcom revoked Teletext Ltd.'s license on December 15, 2009 in accordance with Section 42 of the Broadcasting Act 1990, and Paragraph 11, Part 2, of Schedule 10 to the Act.

Paragraph 12 of Part 2 of Schedule 10 to the same act requires Ofcom to impose a fine limited to the greater of £500,000 or 7% of the qualifying revenue for the license holder's last complete accounting period.

Therefore, the maximum penalty that could have been imposed was £500,000.

Given that:

- Teletext Ltd. had a good compliance record during the period when it held the public teletext service license;
- that the provision of the service was structurally loss-making;
- that Teletext believed its license would not be renewed beyond 2014;
- that the digital capacity allocated for the carriage of public teletext services was not sufficient to allow enough commercial content to be broadcast in order to subsidize the cost of providing the service;
- that over the past four years, Teletext incurred significant losses;

It was decided to reduce the amount of the sanction to £225,000, even though:

- the cessation of teletext services has caused and will continue to cause harm to customers unless and until a new license is accorded;
- teletext is an essential means for deaf and hard-of-hearing people to access subtitling of television programs;
- that more than 2 million people in Britain accessed weather, regional and national news per week using teletext;
- and that Ofcom had estimated that the license was overall profitable between 1996 and 2014.

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[1] *Ofcom's second public service broadcasting review*, published 10 April 2008, available at [www.ofcom.org.uk/consult/con...](http://www.ofcom.org.uk/consult/con...)

## **Links with other documents in the same sector**

### **BRIEF COMMENTARY**

This decision is interesting for several reasons.

Firstly, it reveals issues with the allocation of limited resources and the Europe-wide switchover from analogue to digital television broadcast. Indeed, there is a limited band of frequencies available for digital television broadcast. Although digital broadcast provides higher quality to viewers than analogue broadcast, this decision is a result of the 'growing pains' of technological modernization: following the switchover to digital broadcast, Teletext Ltd. no longer had enough carriage space available to carry its advertising content, which made its service profitable.

Secondly, the lack of flexibility shown by Ofcom in the events leading up to the aforementioned sanction seems to reveal a decision by the regulator that teletext services, invented in the 1970's, are no longer necessary to ensure quality public television services. This may be one of the reasons that it did not allocate more frequency to Teletext Ltd. in 1996. In any case, this issue is one that will be faced by all countries in one way or another as they accomplish their changeover from analogue to digital television broadcasting.

Thirdly, the technique used by Ofcom to evaluate the 'damages' caused to consumers—and to public service as a whole—by Teletext Limited's decision to stop broadcasting teletext services before the expiration of its license, is a technique of appraisal, or assessment, of a situation that is commonly employed by regulators and competition authorities, in general. In this case, Ofcom's appraisal of the situation led to a sort of 'half-sanction'. This can be interpreted as a form of rational punishment, because it does not examine the offender's intention to harm; but rather examines the effects and reasons for the offender's behavior: this reveals the very strong divergence between classical criminal law (which punishes the seriousness of the perpetrator's intentions), and sanctions handed down by economic law, of which this affair is an example, and of which regulation is a part.

Furthermore, this decision is a perfect example of the use of economic analysis in legal reasoning, since the regulator's reasoning in imposing the fine is a *de facto* use of this type of analysis (Cf. Posner, Richard, *The Economic Analysis of Law*, 7th Ed, Aspen Publishers, New York, 2007).