

TeliaSonera Case (C-52/09)

At the end of the 1990s and the beginning of the 2000s, a growing number of Swedish end users of internet services moved from dial-up internet connections, with low transmission speeds, to various types of broadband connection with considerably higher transmission speeds. At that time the most widespread form of broadband connection was that achieved by asymmetric digital subscriber line ('ADSL'). Those connections used a telephone network, or a cable television network, or a local area network.

4 Historically, TeliaSonera, formerly Telia AB, has been the Swedish fixed telephone network operator, the holder in the past of exclusive rights. It has long been the owner of a local metallic access network to which almost all Swedish households are connected. In particular, TeliaSonera owns the local loop, in other words the part of the copper pairs telephone network which connects the telephone operator's exchange to the subscriber's telephone.

5 TeliaSonera offered access to the local loop to other operators, in two ways. On the one hand, it offered unbundled access, in accordance with its obligations under Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop (OJ 2000 L 336, p. 4).

6 On the other hand, without being legally obliged to do so, TeliaSonera offered to operators an ADSL product intended for wholesale users. That product enabled the operators concerned to supply their broadband connection services to end users.

7 At the same time, TeliaSonera offered broadband connection services directly to end users.

8 In the opinion of the Konkurrensverket, between April 2000 and January 2003 TeliaSonera abused its dominant position to the extent that it applied a pricing policy under which the spread between the sale prices of ADSL products intended for wholesale users and the sale prices of services offered to end users was not sufficient to cover the costs which TeliaSonera itself had to incur in order to distribute those services to the end users concerned.

IV/31.851 - Magill TV Guide/ITP, BBC and RTE

Independent Television Publications Ltd, London, was established in 1967 in order to publish a national programme journal for independent television in the United Kingdom. The shareholders of ITP are the current television contractors franchised by the Independent Broadcasting Authority (IBA) to supply independent television programmes. The IBA itself is a public corporation established in order to provide (independent) television and radio broadcasting services as a public service in the United Kingdom, the Isle of Man and the Channel Islands additional to that of the BBC. The IBA awards contracts to private undertakings to supply programmes for particular regions of the country or to supply a particular programme service. These contractors together provide the programmes for one TV channel (ITV). In addition Channel 4 Television Company Ltd, a subsidiary of the IBA, also provides a television programme service.

The British Broadcasting Corporation is incorporated in the United Kingdom by Royal Charter and operates under a licence granted by the Secretary of State for Home Affairs. The BBC's revenue is derived from three sources: television licence income; grants; and the BBC's own commercial trading activities conducted through BBC Enterprises Ltd, the BBC's wholly owned subsidiary, including publications.

Radio Telefis Eireann Authority is a statutory corporate body established in Ireland to provide a national television and sound broadcasting service, fulfilling public service conditions. RTE has also been granted authority to publish, with or without charge, such printed matter as may seem conducive or incidental to its objects. RTE's revenue is derived from three sources: television licence income, advertising revenue and publications.

Magill TV Guide Ltd, Dublin, was established in order to publish in Ireland and Northern Ireland a weekly magazine containing information on forthcoming television programmes available to television viewers in the area. Publication began initially in May 1985. Following injunctions obtained by ITP, BBC and RTE, restraining Magill from publishing their advance weekly television listings pending full national proceedings on the right to publish this material, Magill has for the present ceased its publishing activities.

Advance weekly listings are sent, free of charge, on request, to newspapers, and in some cases, to magazines in the form of programme information sheets or summaries. These sheets or summaries may include additional information on the content of individual programmes.

They also include a copy of, or reference to, the copyright notice or licence defining the limits within which publishers are permitted to reproduce this information which viewers and listeners in Ireland and in the United Kingdom or substantial parts thereof can receive. A listing is defined for present purposes as a list of programmes to be broadcast by or on behalf of a broadcasting organization within a given period of time, the list including the following information: the title of each programme to be broadcast, the channel, the date and time of transmission. The market for radio programmes is not considered separately in the present Decision because advance listings for radio programmes services are normally published together with television programme listings.

It has been expressly confirmed that television programme listings, including programme summaries (that is, a factual synopsis of each programme) are entitled to copyright protection as literary works under the 1956 Copyright Act (1). As a result the owners of programme listings are entitled to prevent unauthorized third parties inter alia from reproducing, publishing or broadcasting the whole or a substantial part of the protected work. No precise definition of what constitutes a 'substantial part' of a programme listing, however, has yet been established.

Ownership of the copyright in the programme listings for BBC 1 and BBC 2 is vested initially in the BBC itself. Since an agreement signed in May 1986, however, this copyright has been assigned to BBC Enterprises Ltd, subject to the right of the BBC to exercise such rights as are necessary for its own publicity. Ownership of the copyright in the programme listings for RTE 1 and RTE 2 is vested in RTE.

THE DESCRIPTION OF CONDUCT

At present publishers have no means of producing a comprehensive TV guide for consumers in Ireland and Northern Ireland. Instead consumers wishing to obtain advance weekly programme information are required to purchase three separate guides, that is TV Times, Radio Times and RTE Guide, published by ITP, BBC and RTE, respectively, at a total weekly cost of £ Irl 1,54 or around £ Irl 77 annually. Even so the consumer in Ireland is not fully informed of all programme services available in his area as a number of cable and satellite channels are also distributed in various parts of the country. Although publishers are entitled

to publish this information free of charge, it is not commercially viable to do this in the form of a weekly publication which does not also include the ITP, BBC and RTE weekly listings.

The impossibility for publishers to produce and publish a comprehensive TV guide results from the refusal of ITP, BBC and RTE to permit the publication of advance weekly listings as well as from the legal proceedings which ITP, BBC and RTE institute against those publishers not respecting the terms of the licences granted and those not granted licences at all. That is confirmed by the experience of Magill and the declared policies and practices of the parties themselves in this regard.

ITP, BBC and RTE (individually or collectively) claim that their current policies and practices with regard to their advance weekly listings are motivated by the need to ensure comprehensive high-quality coverage of all their programmes, including those of minority and/or regional appeal, and those of cultural, historical and/or educational significance. The Commission is of the opinion that these policies and practices are not necessary to achieve these aims, but can instead be achieved by less restrictive means, if necessary by imposing terms to this effect upon publishers to whom they grant licences to publish their programme listings. The Commission does note, however, that none of the parties have considered it necessary to impose any limitations on the publication by third parties of daily (or two days') listings in order to achieve this purpose. Indeed, having regard to the actual policies and practices of ITP, BBC and RTE, respectively, which are to supply publishers with their advance weekly listings but to limit by means of the terms of licences granted the reproduction of these listings to one or at most two days' listings at a time or to refuse licences altogether.

IV/30.178 Napier Brown - British Sugar

British Sugar plc (hereinafter 'BS'), based in Peterborough, United Kingdom, is the largest producer and seller of sugar in the United Kingdom and the only processor of sugar beet in the United Kingdom. S is a subsidiary of S. & W. Berisford plc (hereinafter 'Berisford').

The Sugar Act of 1956 gave BS a legal monopoly in the production of beet sugar in the United Kingdom. At this time BS placed a voluntary limitation of 640 000 tonnes on the amount of refined sugar it would produce, and any surplus beet raws were sold to the cane refiners. On accession to the EEC, the United Kingdom sugar market became subject to the Common Agricultural Policy sugar regime.

As the sole United Kingdom beet sugar producer, BS is allocated the entire United Kingdom basic quantity of sugar under the EEC sugar regime, and is thus the only company involved in the production of sugar from beet origin.

NB is the largest sugar merchant in the United Kingdom. The company engages in buying and selling sugar (including import and transport operations) both as nominal and real merchant.

As a sugar merchant NB buys and re-sells sugar in two ways: real merchanting, where the merchant buys the sugar in bulk quantities, re-selling it to other customers at a premium, and nominal merchanting, where a customer places an order through a merchant so that the job of the merchant is to obtain the best conditions available for his client. The merchant receives a fee for this service. The merchant may choose to deliver the sugar to its client using its own transport facilities. In fact, NB has its own transport facilities for such purposes.

In October 1983, NB decided to attempt real merchanting in retail packet sugar, which merchants had only done before in large quantities with sugar for industrial use. NB requested 50 000 tonnes of retail sugar (Silver Spoon) from BS. After prolonged negotiations, NB decided that it would be impossible to reach agreement with BS for the purchase of such sugar. To overcome this problem, NB arranged with Whitworths to package industrial sugar under the 'Whitworths' brand for retail sale. To this end 25 000 tonnes of bulk industrial sugar were purchased by NB from BS for supply between July and December 1985 (1), part of this sugar being intended for packing into retail packets. At the time of purchase BS was unaware of the intended use of the sugar.

NB began to sell its new brand in mid 1985, and a 'new phase' to the case arose shortly after this, when NB claimed that BS was attempting to remove it from the retail sugar market. This 'new phase' to the case effectively began on 26 July 1985, when NB first drew the attention of the Commission to problems that it was having in its packeting operations allegedly due to BS's actions. NB subsequently extended its formal complaint by alleging that BS has, with the intention of removing NB from the retail sugar market, pursued amongst other actions, those indicated below.

NB claims that BS, between early 1985 and 1986, had been undercutting NB's retail sugar prices to clients or potential clients to a level at which it was impossible for a repackager of sugar in the United Kingdom without an internal source of industrial sugar to survive in the long term, thus artificially maintaining an unrealistically low margin between its prices of industrial and retail sugar with the objective of forcing NB out of the market. NB also alleges that, until the end of 1986, BS refused to supply sugar to any customer for use on the relevant market otherwise than on a delivered basis.

Assuming the BS repackaging margin of [. . .] to be correct (i.e. not taking account of a profit margin on repackaging), then the minimum at which NB could sell packet sugar in order not to make a loss (using industrial sugar purchased from BS) would be, assuming that it matched BS's efficiency, [. . .]. Thus, with retail prices below [. . .] NB or any repackager as efficient as BS, had an insufficient margin to repackage and sell sugar for retail sale, even without trying to make a profit.

(31) Certain offers made by BS to NB's clients or potential clients undercut the prices offered by NB and were not made to match offers made by NB, as was claimed by BS.

Furthermore, in a memorandum from the Executive Marketing and Sales Director to the Managing Director and other Executive Directors dated April 1985, it was stated that:

'So far Whiworths/NB have had no success in gaining distribution for their granulated sugar in any major account but it would appear as an act of some desperation they have made an offer to [. . .] which heavily undercuts our price. We have had no option, therefore, but to react with a new lower price than meets the competitor's offer' (emphasis added).