# Decision by the Broadcasting Sanctions Committee

**Teletext Limited**
**for the revocation of the public teletext service licence on 29 January 2010**

| | |
|---|---|
| **Consideration of sanction against:** | Teletext Limited |
| **For:** | Revocation of the public teletext licence (Licence number PTS1) |
| **On** | 29 January 2010 |
| **Decision:** | To impose a financial penalty (payable to HM Paymaster General) of **£225,000**. |

# 1. **Summary**

1.1. For the reasons set out in full in the Decision, under the powers delegated from the Ofcom Board to Ofcom's Broadcasting Sanctions Committee ("the Committee"), the Committee has imposed a statutory sanction on Teletext Limited ("Teletext"), the former holder of the public teletext licence, of **£225,000**.

1.2. This sanction is in respect of the revocation of the licence on 29 January 2010 as a result of Teletext's failure to provide the public service content of the licence.

1.3. The holder of the public teletext service licence is one of a number of broadcasters which, under the Communications Act 2003 ("the Act"), are 'public service broadcasters'. The other designated public service broadcasters are the BBC, Channel 3/ ITV1, GMTV, Channel 4, Five and S4C. These broadcasters have a duty through their public service broadcasting licences (or Charter in the case of the BBC and S4C) to contribute in general to the purposes and characteristics of public service broadcasting, as set out under the Act. Additionally, there are particular obligations in the form of output quotas for each of the public service licences. The licences are intended to secure universal availability, quality of service, and particular content and plurality of suppliers of it, that might otherwise not be provided by the wider market.

1.4. Public service broadcasting licences are offered for a fixed term. The licences require the holder to provide the licensed service throughout the licence period. In accepting a licence, the broadcaster takes account of the likely cost of the obligations under the licence, and the value of the benefits associated with the licence, for the duration of the licence period.

1.5. On 16 July 2009 Daily Mail and General Trust plc ("DGMT"), the parent company of Teletext, issued a press release announcing its intention to cease broadcasting the "loss-making analogue service and a number of digital terrestrial services" in January 2010. This announcement of the closure of the public teletext service also referred to other commercial television text services which the company planned to either close or continue to operate.

1.6. In mid October 2009, Teletext informed Ofcom that it intended to bring forward the date when it would cease providing the public teletext service to mid December. Accordingly in mid December 2009 Teletext ceased to provide any of the public service content required under the terms of the public service teletext licence. Having satisfied itself that Teletext had ceased to provide the public service elements of the licence obligations, namely the regional and national news and information pages, and following Teletext's confirmation that the analogue and digital editorial public service to all regions had ceased to broadcast and that it had no plans to restore the service, and having considered Teletext's representations on the matter, the Ofcom Executive revoked the public teletext licence on 29 January 2010.

1.7. Under the statutory scheme, the imposition of a financial penalty is mandatory in the event of the revocation of the public teletext licence. The maximum penalty that can be imposed is the greater of 7% of the qualifying revenue of the licence in its last complete accounting period within the term of the licence and £500,000. In this case the maximum penalty that can be imposed is £500,000.

1.8. The matter was accordingly referred to the Committee for consideration of the appropriate level of financial penalty.

1.9. In making its decision, the Committee took into account all the relevant material provided to the Committee including written representations from Teletext and its oral representations made at the hearing. The Committee also had regard to Ofcom's Penalty Guidelines.

1.10. The Committee noted that this financial penalty is being imposed following the revocation of the public teletext service licence, and that the circumstances leading to a decision to revoke the licence must necessarily have been sufficiently serious to justify that decision. The Committee also noted that the maximum amount of the penalty that can be imposed in this case is higher than the maximum level of financial penalty that can be imposed on the holder of the public teletext service licence in other circumstances. Where the holder of the licence to provide the public teletext service has contravened a condition of the licence, or failed to comply with a direction given to him by Ofcom, the maximum amount of the financial penalty that Ofcom may impose is 5 per cent of the licensee's qualifying revenue for the last complete accounting period[1]. In summary, the statutory scheme recognises that revocation of the public teletext service licence is a serious matter, requires a financial penalty to be imposed following revocation of the licence, and allows for a maximum level which is higher than the level that applies in other circumstances.

1.11. Being the holder of the public teletext service licence involves an obligation to deliver particular public service content, with consequent costs, but also benefits for the licensee in terms of privileged access to analogue and digital capacity. The public teletext service licence is intended to secure benefits for viewers that might not otherwise be provided by the wider market. In return, the licence holder is able to make use of scarce public resources (terrestrial spectrum) to provide these and commercial services.

1.12. In deciding to cease providing key elements of the service in December 2009, Teletext committed a serious breach of the obligations in the public teletext service licence such that the licence was revoked. This breach occurred against a background of an announcement by Teletext that it intended to cease providing the public teletext service before expiry of the licence in 2014. Accordingly, the public purposes which the public teletext service was intended to deliver are no longer being delivered. The Committee considered this to be an extremely serious breach of the licence.

1.13. The Committee took into account Teletext's representations that the digital public teletext service was structurally loss making because the amount of digital capacity reserved for the service was inadequate. Teletext stated that, by contrast with the Channel 3 and Channel 5 licensees, for whom sufficient capacity had been reserved to enable them to offer new digital services on the DTT platform, the digital capacity awarded to the public teletext licensee was inadequate to replicate the depth of (non-advertising)

[1] Paragraph 9(2), Part 2 of Schedule 10 to the Act.

content on the analogue service and inadequate to allow the digital service to include sufficient advertising to make it commercially viable.

1.14. The Committee noted that under the statutory scheme the holders of various categories of broadcasting licence, including the public teletext licence, are required to broadcast throughout the relevant licence period with revocation of the licence before the end of the licence period leading to the imposition of a mandatory financial penalty on the licensee.

1.15. In addition to the public teletext service licence, the categories of broadcasting licence which are subject to mandatory financial penalties on revocation before the end of the licence period are: the Channel 3 licences; the Channel 5 licence; television multiplex service licences; national analogue radio licences; and radio multiplex licences.

1.16. The Committee considered that it was very important that the level of the financial penalty to be imposed in this case should be sufficient to act as an effective incentive to all the holders of the categories of licences listed above, including the holder of any future public teletext service licence, to continue to provide all elements of their respective licensed services throughout the licensed period, even if the licensee believes that there are commercial reasons for it to cease providing all or part of the licensed service during the licence period.

1.17. The Committee considered that in ceasing to provide the specified public elements of the public teletext service from 15 December 2009, and the entire public teletext service from revocation of the public teletext service licence on 29 January 2010, Teletext will receive a considerable financial benefit from the position it would have been in had it continued to provide the public teletext service for the remainder of the licensed period.

1.18. The financial benefit to Teletext consists of the avoidance of the losses that Teletext would have incurred had it continued to provide the public teletext service. The Committee considered that this amount is likely to be considerable and significantly more than the maximum amount of the financial penalty that can be imposed on Teletext (£500,000).

1.19. The Committee considered that the revocation of the Licence, and the circumstances leading to revocation, has caused and continues to cause serious and significant harm to consumers of this service generally. The cessation of the public teletext service means that the public purposes of the public teletext service are no longer being delivered, and in particular that the specified public service elements (news and regional information pages) are no longer available to consumers. This will continue to be the case unless and until a new public teletext service licence is awarded.

1.20. In arriving at this view the Committee took into account research findings on the reach and use of the public teletext service. The Committee also noted Teletext's representations as to the popularity of the service, the high value placed on it by consumers and the loss caused to its viewers by its withdrawal.

1.21. The Committee also considered that Teletext's co-operation with Ofcom and other stakeholders in managing the cessation of the public teletext service, and the costs that Teletext had incurred in maintaining the broadcast of elements of the service from mid December 2009 until revocation of the licence on 29 January 2010 should be given due weight as a factor tending to mitigate the amount of the financial penalty.

1.22. Having regard to Ofcom's Penalty Guidelines, and having given careful consideration to the written and oral representations made, the Committee decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£225,000** on Teletext (payable to HM Paymaster General).

## 2. Background

2.1. The holder of the public teletext service licence is one of a number of broadcasters which, under the Act, are 'public service broadcasters'. The other designated public service broadcasters are the BBC, Channel 3/ ITV1, GMTV, Channel 4, Five and S4C. These broadcasters have a duty through their public service broadcasting licences (or Charter in the case of the BBC and S4C) to contribute in general to the purposes and characteristics of public service broadcasting, as set out under the Act. Additionally, there are particular obligations in the form of output quotas for each of the public service licences. The licences are intended to secure universal availability, quality of service, and particular content and plurality of suppliers of it, that might otherwise not be provided by the wider market.

2.2. In return for the costs associated with delivering public service broadcasting requirements, the regulatory regime offers these broadcasters the benefit of privileged access to capacity for distribution of the service, on both analogue and digital (DTT) platforms. The DTT multiplexes on which capacity is reserved for the public service broadcasters have universal reach.

2.3. Public service broadcasting licences are offered for a fixed term. The licences require the holder to provide the licensed service throughout the licence period. In accepting a licence, the broadcaster takes account of the likely cost of the obligations under the licence, and the value of the benefits associated with the licence, for the duration of the licence period.

### The public teletext licence

2.4. Teletext, a wholly owned subsidiary of Daily Mail and General Trust plc, was the holder of the sole public teletext licence until its revocation on 29 January 2010. The public teletext licence was awarded in 1993 under a competitive process against other bidders (including the incumbent Oracle teletext service provider) that included commitments to the quality of service and a cash bid. Under the licence as originally granted Teletext was required to provide the public teletext service in analogue form only. In 1996 the public teletext licence was amended to require Teletext to provide a digital version of the public teletext service in addition to the analogue version.

2.5. The public service obligations that the statutory scheme requires the public teletext licensee to deliver include a general public service remit, and specific content requirements:

a) the Act states that the public service remit of the public teletext licensee is the provision of a range of high quality and diverse text material (section 265), and requires this remit to be fulfilled separately on the digital and analogue versions of the public teletext service.

b) the Act requires Ofcom to include in a licence to provide the public teletext service appropriate conditions to secure that the service includes (a) a suitable quantity and variety of news items, which are up to date and regularly revised[2]; and (b) an appropriate proportion of material that is of particular interest to persons living in different parts of the United Kingdom[3].

2.6. Capacity is reserved to carry the analogue and digital versions of the public teletext service:

a) the analogue version of the public teletext service was (until cessation of the service) carried on spare capacity on the frequencies used by the analogue versions of the Channel 3 services and the Channel 4 service. Nine pairs of lines of this spare capacity were allocated for the use of the public teletext service;

b) capacity for carriage of the digital version of the public teletext service is reserved under a statutory instrument made by the Secretary of State[4]. Under this statutory instrument, 3 per cent of the digital capacity available on the frequencies on which Multiplex 2 is broadcast is reserved for carriage of the public teletext service. The legislation provides for fees for carriage to be determined by Ofcom in the absence of agreement between the public teletext service provider and the Multiplex 2 licensee.

2.7. In common with the providers of the Channel 3 services, Channel 4 service and Channel 5 service, a digital replacement licence ("the Licence") was offered to Teletext in 2004 for a 10 year period to the end of 2014. The Licence contained an obligation to broadcast the analogue version of the service until the analogue versions of the Channel 3 and Channel 4 services had ceased at the end of digital switchover, and to broadcast the digital service to the end of 2014. There was no competitive element to this process: the offer of a digital replacement licence was automatic under the statutory scheme and was subject only to Teletext's acceptance of the terms on which the Licence was offered.

2.8. The Licence included conditions that placed specific obligations on Teletext relating to the provision of national and international news (not less than 20 pages), regional news (not less than 12 pages), and regional non-news information pages (not less than 24 pages). These requirements applied to both the analogue and the digital versions of the public teletext service and were imposed under the statutory framework described above. These specific obligations relating to news and non-news information pages have been reduced during the lifetime of the Licence.

2.9. Apart from the general public service obligations and specific content requirements outlined above, Teletext was free to provide commercial content as part of the public teletext service. Teletext focused on regularly updated text information pages on sport, entertainment, local listings, travel and finance. The analogue and digital services incorporated full page and inserted advertising (historically the main source of advertising revenue for teletext services has been advertising for late travel deals). The analogue service carried a higher volume of pages overall compared to the digital terrestrial service.

---

[2] Section 284 of the Act.
[3] Section 289 of the Act.
[4] The Television Multiplex Services (Reservation of Digital Capacity) Order 2008.

2.10. The analogue service also included an index page and launch page (888) which enabled the user to navigate to the subtitles provided for the analogue versions of the Channel 3 services and Channel 4. Teletext was not obliged to provide the pages for navigation under the conditions of the Licence, but did so by arrangement with the holders of the Channel 3 licences and Channel 4. The analogue service also carried information for viewers about the digital switchover process on a region by region basis.

2.11. The analogue service was accessed by the viewer pressing a text button on a remote control when viewing ITV1 or Channel 4. The digital terrestrial service was a separate channel (latterly number 100) listed in the Electronic Programme Guide.

**Use of the public teletext service**

2.12. Ofcom research in 2008[5] suggested that the reach of the public teletext service declined between 2004 and 2007, but stabilised in 2008: the public teletext service accessed via Channel 3 had a weekly reach of 1.7 million households, with the public teletext service on Channel 4 reaching 0.8 million households per week. The weekly reach of analogue text services on Channels 3 and 4 was more than twice that of digital text services on DTT.

2.13. The research showed that the most popular types of pages accessed by Teletext users in 2008 were weather, regional news and national news. These pages were all provided as part of Teletext's public service obligations.

## Additional payments under the Licence

2.14. In common with holders of certain other categories of broadcasting licences, the holder of the public teletext licence is required to make annual payments which Ofcom collects and pays into the Consolidated Fund, consisting of a 'cash bid' amount, and a percentage of the 'qualifying revenue' generated by the licence holder from the provision of the licensed service during an accounting period.

2.15. The amount of the cash bid and the percentage of qualifying revenue are first set at the time of the original licence award, the cash bid being proposed by the bidder as part of the competitive bidding process, but statute provides for certain trigger points at which the licence can be 'revalued' by Ofcom. Revaluation could lead to a different cash bid amount and a different percentage of qualifying revenue being specified in the licence. In the case of Teletext's Licence, the most recent revaluation took place in 2006.

2.16. For the revaluation, Teletext made submissions to Ofcom about the future projected profitability of the Licence. Having applied Ofcom's published methodology for recalculating the financial terms[6], Ofcom concluded that, if held for its full duration to expiry at the end of 2014, the Licence would have a net positive value. However, the generation of profits was significantly skewed towards the earlier years of the Licence and the Licence would not

[5] http://www.ofcom.org.uk/tv/psb_review/annrep/psb09/
[6] http://www.ofcom.org.uk/consult/condocs/channel3_consultation/c3mstatement.pdf

be expected to generate profits in its later years. New financial terms were set accordingly to recover the value of the Licence over its full duration to expiry at the end of 2014.

2.17. Prior to the revaluation, the annual cash bid payable by Teletext was £1.9 million and the percentage of qualifying revenue payable was 18%. Ofcom reduced the financial terms of the Licence in 2006, with effect from September 2005. The cash bid was reduced to £25,000 increasing with RPI annually thereafter and the percentage of qualifying revenue was reduced to 5%. These reduced financial terms were accepted by Teletext.

**Ofcom's Public Service Broadcasting Review**

2.18. Ofcom's Second Public Service Broadcasting Review in 2008 to 2009[7] ("PSB Review") considered the current and potential future position of the holders of the licences for the commercial public service broadcasting ("PSB") services (Channel 3, Channel 4, Channel 5 and the public teletext service), taking into account structural market change and the costs and benefits of PSB status. The licensees were invited to make submissions in the consultation phases.

2.19. Ofcom's analysis of the public teletext service in the PSB Review suggested that the costs of Teletext's obligations under the Licence would outweigh the value of the benefits available to it from around 2010.

2.20. As part of their submission to the PSB Review, Teletext requested a reduction in the number of national news pages and regional news and regional non-news information pages that they were obliged to provide on the analogue and digital service. Ofcom accepted these proposals in view of the conclusions from this analysis and on the basis that they would continue to ensure the availability of material of particular interest to those in different parts of the UK, while helping to reduce the costs of Teletext's obligations and allowing greater flexibility in delivery.

2.21. Teletext's submission to the PSB Review said that they considered that continued intervention, in the form of a public teletext service licence, would be justified following the end of the current licence period (in 2014).

2.22. Ofcom stated in the PSB Review that it considered that intervention via a public teletext service licence was unlikely to be necessary to secure public purposes after 2014. This was because Ofcom considered that on current evidence the market would deliver a plurality of information service providers, with content related to the public purposes, both on television and via the internet. However, Ofcom proposed that the retention of a public teletext service should be reviewed again in 2012 in the light of broadband take-up, the development of relevant text services at that point, and the usage of digital teletext services post digital switchover.

[7] http://www.ofcom.org.uk/consult/condocs/psb2_1/

### Teletext's requests for additional reservation of capacity

2.23. Teletext has made representations over a number of years to Ofcom that the digital terrestrial capacity reserved for carriage of the digital version of the public teletext service was insufficient to carry the volume of editorial and advertising pages available on the analogue version of the service, and that in order to provide an economically viable service on the digital terrestrial platform it required an increase in the amount of reserved capacity. Teletext set out this view in its response to Ofcom's Digital Dividend Review in 2007[8].

2.24. Digital capacity is reserved for the public teletext service under a statutory instrument made by the Secretary of State. The terms of carriage are a matter for negotiation between the multiplex operator and broadcaster. Ofcom has power to determine the fees to be paid for carriage on the multiplex in the absence of agreement between the multiplex operator and the broadcaster, but Ofcom does not have power to require additional capacity to be made available for carriage of the public teletext service.

### Circumstances leading to revocation of the Licence

2.25. On 16 July 2009 DMGT issued a press release announcing its intention to cease broadcasting the "loss-making analogue service and a number of digital terrestrial services" in January 2010. The announcement also referred to other commercial television text services which the company planned to either close or continue to operate.

2.26. Following this announcement there were a number of meetings and exchanges of correspondence between Ofcom and Teletext. The focus of these discussions were:

- whether there were any alternative options to Teletext ceasing provision of the public teletext service and, given that there were not;
- putting arrangements in place to ensure that viewers of analogue television services could continue to access subtitles;
- putting arrangements in place to ensure that viewers of analogue television services could continue to access information about digital switchover;
- managing the cessation of the public teletext service so as to avoid consequential problems to the stability of the analogue television broadcasting network.

2.27. As a result of these discussions, Teletext explored a number of alternative options to ceasing the service, but considered that none were viable.

2.28. In October 2009 Teletext told Ofcom of its intention to cease provision of the public teletext service a month earlier than had previously been announced, on or around 15 December 2009.

2.29. At Ofcom's request, Teletext agreed that while it would cease providing the public service elements of the service in mid December, it would not make

[8] http://www.ofcom.org.uk/consult/condocs/ddr/responses/st/Teletext.pdf

any changes to its analogue broadcasting infrastructure until the Licence was revoked, and worked with other parties to manage transition of relevant analogue services at the end of January 2010.

## 3. **Ofcom's decision to revoke the public Teletext service licence**

3.1. On 15 December 2009 Teletext ceased provision of the news and regional non-news required under the terms of the Licence.

3.2. Ofcom revoked the Licence on 29 January 2010 in accordance with section 42 of the Broadcasting Act 1990 and paragraph 11, Part 2 of Schedule 10 to the Act[9].

[9] The notice of revocation is published at http://www.ofcom.org.uk/tv/ifi/tvlicensing/pt/revocation_notice.pdf

## 4. **Legal Framework**

4.1. Where Ofcom revokes the public teletext licence, Ofcom is required to impose a financial penalty on the public teletext licensee, subject to a maximum limit on the amount of the financial sanction of whichever is the greater of £500,000 and 7 per cent of the qualifying revenue for the last complete accounting period of the licence holder falling within the licence period. The relevant statutory provisions are in paragraph 12 of Part 2 of Schedule 10 to the Act.

4.2. In determining the amount of the financial penalty to be imposed on Teletext, Ofcom must have regard to the Penalty Guidelines issued by Ofcom under section 392 of the Act.[10]

4.3. Teletext has supplied Ofcom with figures for its qualifying revenue for their last complete accounting period falling within the licence period, October 2008 to September 2009. Based on these figures, the maximum penalty payable by Teletext in respect of the revocation of the public service teletext licence is £500,000.

[10] Published at http://www.ofcom.org.uk/about/accoun/pg/

## 5. Referral by the Ofcom Executive to the Chair of the Committee for Provisional Decision

5.1. Under the statutory scheme the imposition of a financial penalty is mandatory in the event of the revocation of the public teletext licence.

5.2. The case was therefore referred to the Chair of the Committee to make his provisional decision on the level of financial penalty to be imposed.

## 6. **Provisional Decision by the Chair**

6.1. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in broadcasting or other licence-related cases[11], the Chair set out his provisional decision on the amount of financial penalty to be imposed on Teletext taking into account all of the relevant material in this case and with reference to Ofcom's Penalty Guidelines.

6.2. In reaching his provisional decision, the Chair also took into account a letter which Teletext sent to the Chair that it asked should be taken into account. In the letter Teletext made the following points by way of representations:

- Teletext had a good compliance record during the period when it held the public teletext service licence;
- the provision of the public teletext service was 'structurally loss-making';
- that Teletext believed as a result of discussions with Ofcom that the Licence would not be renewed at the end of the current licence term in 2014;
- that the digital capacity reserved for carriage of the public teletext service was not sufficient to allow enough commercial content to be carried to subsidise the cost of provide the service;
- that in the four years to December 2009, Teletext incurred significant losses in providing the public teletext service.

6.3. The provisional decision was provided to Teletext. Teletext was given the opportunity to make written representations in response.

[11] Published at http://www.ofcom.org.uk/radio/ifi/ifiguidance/sanctions/

## 7. **Written representations on the Chair's provisional decision**

7.1. Teletext did not provide any further written representations to Ofcom in response to the Chair's provisional decision.

8. **Sanctions Hearing**

8.1. The Committee held a hearing on 12 May 2010 to consider this case. In reaching its decision on the level of financial penalty to impose on Teletext the Committee was not bound by the provisional view of the Chair.

8.2. The Licensee was given the opportunity to attend the hearing and make oral representations to the Committee.

8.3. Teletext was represented at the meeting by Mike Stewart, former Managing Director of Teletext and by John Sage, former Editor of Teletext. At the hearing, Teletext's representatives made oral representations to the Committee, and then the Committee put questions to the representatives.

**Oral representations from Teletext Limited**

8.4. Teletext considered that the essential points had been considered in the Chair's provisional decision. However, Teletext wished to highlight certain of these points.

8.5. Teletext drew the attention of the Committee to the allocation of capacity for the digital terrestrial element of the public teletext service made in 1996. Teletext commented that they had long considered that the reservation of 3% of capacity on Multiplex 2 had been inadequate as:

- While the other public service broadcasters had been able to launch new services in their reserved capacity, Teletext were only able to carry a reduced version of the analogue service in their allocated capacity;

- This had been recognised by the ITC[12], which reduced the content obligations for the digital service , in order that the service could carry a sufficient number of editorial pages to comply with its specific public service content obligations;

- Having met its specific public service content obligations, there was limited capacity available for commercial content or innovation in delivery of the digital service.

8.6. Teletext considered that this had required them to remove the Teletext Holidays classified advertising – which represented the great bulk of revenue for the public teletext service – from the digital public service and to contract commercial DTT capacity in 2001 to carry this as a separate service. Teletext subsequently noted in response to a question from the Committee that the digital Teletext Holidays service now outperforms the analogue public service (which includes the holiday advertising) as it can be more directly accessed and fits with its internet and mobile services.

8.7. Teletext considered that the digital public teletext service had been structurally loss-making since launch, and subsidised by the analogue version of the service. However, it said it had been encouraged by the technological innovation on the DTT platform to believe that additional DTT

[12] The Independent Television Commission, one of the five regulatory bodies which were replaced by Ofcom in 2003.

capacity would in time become available. Teletext had therefore decided to continue to operate the service on this basis.

8.8. Teletext recognised that the allocation of DTT capacity was a matter for government. Teletext stated that it had made representations to Ofcom on a number of occasions, including in responses to Ofcom's Digital Dividend Review (2008) and Public Service Broadcasting Review (2008) that the digital service required significantly more capacity to be viable.

8.9. Teletext said that in practice however, while both government and the regulatory authorities had been encouraging in their dialogue with Teletext, no commitments had been made and no action to increase the capacity reserved for the digital service had in fact been taken.

8.10. Teletext considered that Ofcom's statement in the Second PSB Review, which indicated that Ofcom considered that intervention via a public teletext service licence was unlikely to be necessary to secure public purposes after 2014 but that this should be reviewed in 2012, suggested that the licence and reservation of DTT capacity may not be continued beyond 2014. This contributed to its decision to close the service before the end of the licence period.

8.11. Teletext noted that since a peak in revenue in 2001, the public teletext service had experienced a substantial structural decline in revenues, falling to less than 5% of the peak level in 2009. Teletext attributed this to the declining reach of the analogue service, and the lack of replacement commercial revenue associated with the digital service. Teletext noted that this revenue decline was likely to increase as analogue transmission was switched off during digital switch over – particularly in regions outside of the South East, where Teletext's user base was higher.

8.12. Teletext noted that revenues from the public teletext service were now less than the cost of the contract to provide editorial content for the service, and that the net loss of the service was even greater once other costs were taken into account. As noted in Teletext's written representations summarised in paragraph 6.2 above, in the four years to December 2009 it had incurred significant losses in providing the public teletext service. Teletext questioned whether it was the regulatory intention that it should continue to "haemorrhage" losses due to a licence obligation to continue to broadcast.

8.13. Teletext considered that the losses in the digital service were a drain on its resources and could not be sustained, and that investment should be switched to profitable service on its internet, mobile and commercial DTT services. Teletext stated that it had developed these services to offset losses from the public teletext service.

8.14. Teletext considered that it had acted beyond its own interests in managing the closure of the public teletext service. It had informed Ofcom of the date of cessation of the service in advance, and had also carried statements to viewers of the date for cessation of the service. It considered it had responded positively to Ofcom's concerns about the stability of the analogue platform and access to sub-titles – neither of which were Teletext's responsibility – and had re-recruited redundant staff and liaised with BT and Arqiva to manage the transition. From December to March Teletext estimated that these actions had incurred £50,000 in costs that otherwise would have been avoided.

8.15. Teletext also drew attention to its “exemplary” compliance record during the period when it held the public teletext service licence and its compliance with requests from Ofcom for reports and other information.

8.16. Teletext concluded that its decision to cease to provide the public teletext service was a matter of considerable regret to itself and to its viewers who highly valued the service, but that it could no longer sustain the losses which were also “starving” other profitable businesses of investment.

## 9. Decision by the Committee

9.1. In reaching its decision, the Committee considered carefully all the material before it, including the Chair's provisional decision, and the written and oral representations made by Teletext.

9.2. Under the statutory scheme the Committee was required to impose a financial penalty on Teletext Limited in respect of the revocation of the public teletext licence up to a maximum of £500,000.

9.3. In deciding on an appropriate and proportionate level of financial penalty in this case, the Committee had regard to Ofcom's Penalty Guidelines.

9.4. The Committee decided, for the revocation of the public service teletext licence, to impose a financial penalty of **£225,000** for the reasons set out below.

### Seriousness of the Breach

9.5. The Committee noted that this financial penalty is being imposed following the revocation of the Licence, and that the circumstances leading to a decision to revoke the Licence must necessarily have been sufficiently serious to justify that decision. The Committee also noted that the maximum amount of the penalty that can be imposed in this case is higher than the maximum level of financial penalty that can be imposed on the holder of the public teletext service licence in other circumstances. Where the holder of the licence to provide the public teletext service has contravened a condition of the licence, or failed to comply with a direction given to him by Ofcom, the maximum amount of the financial penalty that Ofcom may impose is 5 per cent of the licensee's qualifying revenue for the last complete accounting period[13]. In summary, the statutory scheme recognises that revocation of the public teletext service licence is a serious matter, requires a financial penalty to be imposed following revocation of the licence, and allows for a maximum level which is higher than the level that applies in other circumstances.

9.6. In applying the general criteria to the particular circumstances of this case, the Committee considered the seriousness of the fact of the revocation of the Licence and the circumstances leading to the revocation.

9.7. The Committee took into account Teletext's representations that the digital public teletext service was structurally loss making because the amount of digital capacity reserved for the service was inadequate. Teletext's position was that by contrast with the Channel 3 and Channel 5 licensees, for whom sufficient capacity had been reserved to enable them to offer new digital services on the DTT platform, the digital capacity awarded to the public teletext licensee was inadequate to replicate the analogue service and inadequate to allow the digital service to include sufficient advertising to make it commercially viable.

[13] Paragraph 9(2), Part 2 of Schedule 10 to the Act.

9.8. Teletext told the Committee that in consequence, it had acquired additional digital capacity on a different multiplex in order to continue to provide the Teletext Holiday advertising service from which the bulk of its advertising revenues were derived. Teletext stated that this meant that the digital public teletext service had very limited revenue earning capacity, although the separate digital Teletext Holiday service was clearly profitable.

9.9. However, the Committee considered that the revocation of the Licence and the circumstances leading to the revocation were extremely serious, for the following reasons.

9.10. As set out in paragraphs 2.1 to 2.6, being the holder of the public teletext service licence involves an obligation to deliver particular public service content, with consequent costs, but also benefits for the licensee in terms of privileged access to analogue and digital capacity. The public teletext service licence is intended to secure benefits for viewers that might not otherwise be provided by the wider market. In return, the licence holder is able to make use of scarce public resources (terrestrial spectrum) to provide these and commercial services.

9.11. As set out in paragraph 2.7, Teletext accepted the offer of a digital replacement licence for a 10 year period in 2004. The Licence contained an obligation to broadcast the public teletext service throughout the licensed period (until the end of 2014).

9.12. The revocation of the Licence took place in circumstances where Teletext had announced its intention to cease providing the public teletext service. The specific event leading to revocation of the Licence was Teletext's decision to cease providing the specified public service elements of the public teletext service.

9.13. Teletext's public announcement that it intended to cease providing the public teletext service and its representations to the Committee made it clear that the reason for this decision was commercial: that Teletext considered that the continued provision of the public teletext service would be loss-making for the company.

9.14. Holding the Licence has enabled Teletext to make profits. Ofcom considered the profitability of the provision of the public teletext service as part of its 2006 review of the additional payments associated with the Licence. As set out in paragraph 2.16, Ofcom considered that, if held for its full duration to expiry at the end of 2014, the Licence would have a net positive value, although the generation of profits would be significantly skewed towards the earlier years of the Licence and the Licence would not be expected to generate profits in the later years. As set out in paragraph 2.17, Teletext had accepted the financial terms offered in 2006.

9.15. In deciding to cease providing key elements of the service in December 2009, Teletext committed a breach of the Licence obligations such that the Licence was revoked. This breach occurred against a background of an announcement by Teletext that it intended to cease providing the public teletext service before expiry of the Licence in 2014. Accordingly, the public purposes which the public teletext service was intended to deliver are no longer being delivered. The Committee considered this to be an extremely serious breach of the Licence.

### Precedent

9.16. The Committee noted that there has been no previous case where Ofcom has imposed a financial penalty following revocation of a broadcasting licence. This is the first occasion on which a public service broadcasting licence has been revoked.

### Incentive

9.17. The Committee noted that under the statutory scheme the holders of various categories of broadcasting licence, including the public teletext service licence, are required to broadcast throughout the relevant licence period with revocation of the licence before the end of the licence period leading to the imposition of a mandatory financial penalty on the licensee.

9.18. In addition to the public teletext service licence, the categories of broadcasting licence which are subject to mandatory financial penalties on revocation before the end of the licence period are: the Channel 3 licences; the Channel 5 licence; television multiplex service licences; national analogue radio licences; and radio multiplex licences.

9.19. The Committee considered that it was very important the level of the financial penalty to be imposed in this case should be sufficient to act as an effective incentive to all the holders of the categories of licences listed above, including the holder of any future public teletext service licence, to continue to provide all elements of their respective licensed services throughout the licensed period, even if the licensee believes that there are commercial reasons for it to cease providing all or part of the licensed service during the licence period.

### Other Specific Criteria

9.20. In considering the appropriate size of the financial penalty, the Committee took account of other criteria in accordance with Ofcom’s Penalty Guidelines.

*Any gain (financial or otherwise) made by the regulated body in breach (or any connected body)*

9.21. The Committee considered that in ceasing to provide the specified public elements of the public teletext service from 15 December 2009, and the entire public teletext service from revocation of the Licence on 29 January 2010, Teletext will receive a considerable financial benefit from the position it would have been in had it continued to provide the public teletext service for the remainder of the licensed period.

9.22. The financial benefit to Teletext consists of the avoidance of the losses that Teletext would have incurred had it continued to provide the public teletext service.

9.23. The Committee has not attempted to estimate the amount of those losses in detail, but considered it likely that the total amount would be considerable and in any event significantly more than the maximum amount of the financial penalty that can be imposed on Teletext (£500,000). In reaching this view the Committee took into account the following;

- the latest qualifying revenue figures that Teletext has supplied to Ofcom for its most recent financial period;
- confidential financial information provided by the Licensee at the hearing including details of the financial performance of the public teletext licence in the last full financial year;
- the downward trend in the level of qualifying revenue figures for recent calendar years, as reported on an annual basis to Ofcom and outlined by the Licensee in its representations at the hearing;
- the likely amount of the future additional payments that would have been made by Teletext under the Licence;
- as set out in paragraph 2.17, the additional payment obligations consist of an annual cash bid payment which was set at £25,000 in 2006 (to be increased annually in line with RPI), and payment of 5% of Teletext's qualifying revenue.

*The extent to which the contravention was caused by a third party, or any relevant circumstances beyond Teletext's control*

9.24. The Committee considered that the contravention of the Licence terms that led to the revocation of the Licence was deliberate and planned by senior management of the Licensee and its parent company.

*The degree of harm to consumers*

9.25. The Committee considered that the revocation of the Licence, and the circumstances leading to revocation, has caused and continues to cause harm to consumers of this service generally. The cessation of the public teletext service means that the public purposes of the public teletext service are no longer being delivered, and in particular that the specified public service elements (news and regional information pages) are no longer available to consumers. This will continue to be the case unless and until a new public teletext service licence is awarded.

9.26. The Committee also noted the Licensee's oral representations as to the popularity of the service, the high value placed on it by consumers and the loss caused to its viewers by its withdrawal.

9.27. The Committee noted that Ofcom research suggests that in 2008 the public teletext service accessed via Channel 3 had a weekly reach of 1.7 million households, with the public teletext service on Channel 4 reaching 0.8 million households, and that the research suggests the reach of the digital terrestrial service is lower.

9.28. The Committee also noted that the Ofcom research shows that the most popular types of pages accessed by Teletext users were the public service elements of weather, regional news and national news.

9.29. The Committee considered that the harm to consumers from the cessation of the analogue services accessed from Channels 3 and 4 ahead of digital switchover in 2012 represented a particularly significant and serious consumer detriment. The Committee considered that the harm to consumers from cessation of the digital service was also significant and serious but was likely to be less than the harm to viewers from the cessation of the analogue service given that the reach of the digital service is lower than the reach of the analogue service.

9.30. The Committee also took into account that, as advised by Ofcom's Advisory Committee for Older and Disabled People, teletext services are of particular value to many deaf and hard of hearing people as a means of accessing regional and local information services which are more readily available to hearing audiences by means such as local radio.

*Size and turnover of the regulated body*

9.31. In considering this criterion the Committee took account of the amount of Teletext's turnover that is attributable to the provision of the public teletext service (i.e. its qualifying revenue), and not turnover attributable to Teletext's activities providing other (commercial) text services.

9.32. Teletext provided figures for the qualifying revenue during its most recent completed financial period October 2008 to September 2009.

**Factors increasing the level of penalty**

9.33. The Committee considered that there were no specific factors in this case that should increase the level of financial penalty that should be imposed, in line with the Penalty Guidelines.

**Mitigating factors tending to decrease the level of financial penalty**

9.34. The Committee reviewed whether there were any factors which in its view might limit or decrease the level of financial penalty in line with the Penalty Guidelines.

*The extent and timeliness of any steps taken for remedying the consequences of the contravention*

9.35. The Committee considered that Teletext's co-operation with Ofcom and other stakeholders in managing the cessation of the public teletext service should be given due weight as a factor tending to mitigate the amount of the financial penalty.

9.36. As set out in Teletext's oral representations at the hearing, Teletext continued to provide a reduced public teletext service during the period from 15 December 2009 (which it had previously told Ofcom was the date on which it intended to cease providing the public teletext service completely) to 29 January 2010 (the date of revocation of the Licence). The continued provision of the service by Teletext during this period meant that a significant risk of harm to consumers and other stakeholders over the Christmas period was avoided. The potential harm that was avoided was:

- that users of analogue television services on Channels 3, 4 and 5 would not be able to navigate to the subtitles for those services; and

- that the analogue transmission network would become unstable, possibly leading to cessation of the broadcasting of all analogue television services for some or all of this period.

9.37. The Committee considered that the time period involved, from the middle of December to the end of January, was also of particular significance as it included Christmas, a period when viewers watch a great deal of television and the loss of subtitles, or indeed the analogue service in its entirety, would have been a particular problem. Broadcast transmission systems resilience is particularly important at this time, not only because of viewer needs but also because it is difficult to find engineering resource to respond to any systems problems due to the holiday period and also winter weather.

9.38. In taking this factor into account in mitigation, the Committee noted that Teletext incurred costs in providing the reduced public teletext service during this period:

- based on Teletext's oral representations, it cost them £50,000 between December 2009 and March 2010 to provide the reduced public teletext service;
- as the Licence was not revoked until 29 January 2010, Teletext became liable to pay the full amount of the cash bid element of the additional payments due under the Licence for the calendar year 2010. (This sum has been paid into the Consolidated Fund.)

9.39. The Committee also considered, however, that the following considerations should be set against the fact that Teletext incurred costs in continuing to provide a reduced service during this period:

- during this period Teletext continued to provide commercial elements of the service, including classified advertising, which would have offset some of the incremental costs incurred;
- the potential risks to analogue subtitling navigation and the resilience of the analogue transmission network over the Christmas period were at least in part due to the fact that Teletext brought forward the date on which it intended to cease provision of the public teletext service with relatively little notice. DMGT's announcement on 16 July 2009 stated that it would cease providing the public teletext service in January 2010. Teletext then informed Ofcom in its letter of 2 October 2009 that it would cease broadcasting the public teletext service a month earlier, on or about 15 December 2009.

**Level of financial penalty**

9.40. The maximum level of penalty which can be imposed on the public teletext licence holder in consequence of the revocation of its licence is the greater of £500,000 and 7 per cent of the qualifying revenue for the last complete accounting period of the licence holder falling within the licence period. In the case of Teletext, the relevant maximum is £500,000.

9.41. Having regard to all the factors referred to above and all the representations from Teletext, the Committee's decision is that an appropriate and proportionate financial penalty is **£225,000**.

Broadcasting Sanctions Committee

Philip Graf
Stewart Purvis
Millie Banerjee