

# Adjudication

## In the case of AUCTIONWORLD LIMITED

### Summary

#### **On the basis detailed in the Decision:**

*Under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee, Ofcom has decided:*

- a) to give notice to Auctionworld Ltd ("Auctionworld") that Ofcom intends to revoke its licence: however, in accordance with section 238 (2)(c) of the Communications Act 2003 ("the Act"), Ofcom is first required to specify a period in which Auctionworld should take certain specified steps to remedy its breaches of the Ofcom Code (with which it is obliged to comply), and should only proceed to revocation if it considers that Auctionworld has failed to take those steps; such steps to include steps designed to satisfy Ofcom that customers' complaints have been properly resolved;*
- b) to fine Auctionworld £450,000 (payable to HM Paymaster General);*
- c) to direct Auctionworld to include in its licensed service (Auctionworld) a statement of Ofcom's findings, three times a day for 21 days with immediate effect.*

*Following an unprecedented number of complaints received by Ofcom, Ofcom considered that the following breaches of the Advertising Standards Code ("the Code") by Auctionworld were extremely serious:*

#### **Delays in delivery of goods and poor customer service in breach of:**

- Section 11.2.2(c) : Adequate arrangements to handle enquiries*
- Section 11.2.2 (e) : Fulfilment of orders within advertised time*

***Misleading and inaccurate guide prices for loose diamonds in breach of:***

- *Section 5.1 : Misleading advertising*
- *Section 5.2.1 : Adequate objective evidence*
- *Section 5.3.1 : Accurate pricing*

***Misleading guide prices for diamond jewellery also in breach of:***

- *Section 5.1 : Misleading advertising*
- *Section 5.2.1 : Adequate objective evidence*

*On the evidence before it, Ofcom considered that the Code breaches had resulted from:*

- *severely inadequate failures in customer services, specifically, inadequate arrangements to handle enquiries and delays in deliveries of goods, and*
- *the use of misleading and inaccurate 'guide prices' for its diamond jewellery and loose diamonds*

*Taking into account Ofcom's statutory duties, including its general duty "to apply standards that provide adequate protection to members of the public from the inclusion of harmful material in television and radio services" (section 3 of the Act), the seriousness and repeated nature of these breaches, the volume of complaints, Auctionworld's compliance history and their representations (oral and written), Ofcom concluded that it should commence the process required by statute to revoke Auctionworld's licence.*

**Note:** This decision to start the process of revocation is the culmination of an extensive investigation of Auctionworld by Ofcom under the Act. It has been incumbent on Ofcom in accordance with due process to give Auctionworld an opportunity at each stage of the investigation to address the specific concerns raised and to provide satisfactory explanations. However, some months ago, prior to the completion of its full investigation and due to the seriousness of the case against Auctionworld, Ofcom took action directing Auctionworld immediately to suspend the use of its (then) guide prices matrix for loose diamonds.

The decision to institute revocation of Auctionworld's broadcasting licence is not taken lightly given Auctionworld employs almost 300 people (employees and sub-contractors) and its service has been broadcast for 3 years. It has only been

considered after all other avenues have been exhausted and is a final resort, taken only when Ofcom is satisfied that revocation is justified on the basis of detailed and robust evidence.

## **Decision**

### **Introduction**

1. Auctionworld has been broadcasting under licence since 1 November 2001. Auctionworld is a teleshopping channel available on satellite and cable. It offers viewers the opportunity to bid, live on air, for a range of goods. Unlike many other teleshopping channels, it sells products that are at the high end of the market, for example loose diamonds, diamond jewellery, plasma televisions, cameras, computers and collectable items. Whilst its name implies that the service is an auction, it is in fact in most cases a shopping channel which offers a quantity of the same product it is 'auctioning'. All the goods offered come with a "guide" price. This is supposed to reflect what the item would cost if bought on the high street, thereby indicating to viewers what Auctionworld is claiming they save by bidding for or buying from Auctionworld. When viewers see an item they wish to purchase, they have to call a premium rate telephone number (charged at 60p a minute) to place their bids. The customers with winning bids 'win' the item at the price they bid. Once a customer's offer has been accepted, Auctionworld phones the customer back to take credit card details and debits the customer's account in the next day or two.

### **The Hearing**

2. Auctionworld having been found in breach of Ofcom's Advertising Standards Code (sections 5 and 11), Ofcom held an oral hearing on Monday 8 November 2004, before deciding whether breaches by Auctionworld of Ofcom's Advertising Standards Code (formerly the ITC Standards Advertising Code) warranted the imposition of statutory sanctions, and if so at what level. Ofcom was addressed at the hearing by leading counsel on behalf of Auctionworld. Its senior management, in responding to subsequent questions at the hearing about the nature and seriousness of the Code breaches, made clear their stance, that whilst they have had and continued to have serious problems with customer delivery, these were largely due to factors outside their control and they believed their guide prices were fair.
3. Because Ofcom has received hundreds of complaints about Auctionworld's service, primarily about its customer services but also about its guide prices, it had repeatedly, in the months preceding the oral hearing, invited Auctionworld to explain why its service was attracting such an unprecedented

number of complaints. However, Ofcom was not satisfied by Auctionworld's explanations.

### **Customer service breaches**

4. Of the breaches of the Code committed by Auctionworld, Ofcom concluded that the most serious were its continued and repeated failings in customer service. Auctionworld lacked adequate arrangements to handle enquiries, contrary to section 11.2.2(c) of the Code. It also failed to fulfil orders within the advertised time, contrary to section 11.2.2(e).
5. We considered Auctionworld's standard of customer service to be severely inadequate, whether viewed individually or in comparison with its competitors.
6. Auctionworld blamed all its past difficulties on a succession of problems, each said to have been beyond its control, such as deliberate computer sabotage of its computerised database, the inability of a telecommunications company to install lines quickly enough, and of suppliers to meet quality controls, supply goods to Auctionworld and deliver goods to customers. However, no independent verification of these problems was offered, and Ofcom was invited to rely upon assertions by Auctionworld's management of their effect on Auctionworld's business. For example, Auctionworld's former managing director and current operations director Mr George Spitaliotis told us that daily back-ups had been made of the computerised database, but he was unable to give us a coherent or convincing explanation why the database could not be restored by someone from these back-ups if made. Ofcom was not persuaded that these problems made more than a small contribution to Auctionworld's difficulties. If they had, we would have expected a surge in the number of complaints at the relevant times, rather than the more or less steady rate of complaints that Ofcom has experienced to date.
7. We considered it of critical significance that Auctionworld did not have available any record of the total number or the substance of complaints that customers had made to it, or how the complaints had been dealt with, with the result that Auctionworld was unable to tell us the overall scale of the problem. We were satisfied that the unprecedented level of hundreds of complaints made to Ofcom by customers of Auctionworld, even if a few of them may have been duplicated or were not sufficiently specific to be investigated, illustrated a very serious and systemic problem, and it can only be assumed that there were many more complaints made to Auctionworld that were not made to Ofcom. Complaints continued to be made to Ofcom at a high level throughout October 2004, and we reject the suggestion that all serious problems with customer services had already been solved.
8. After 3 years' broadcasting, Auctionworld is no longer a new business which could be excused by start-up problems. We were surprised to be told that

Mr Grant Lin, who has recently become the managing director (as well as majority shareholder), lives and mostly works abroad, but Auctionworld wished to reassure us that the company was currently finding a flat for him to use when he is in this country. Mr Lin was not available to attend the oral hearing. Mr Spitaliotis and Mr Nigel Rowley (Auctionworld's former legal director, still its compliance officer, a shareholder, and the managing partner of its solicitors) each gave answers to our questions on customer service problems which we found to be unhelpful, and indicative of an approach that appeared to disregard the consequences of failing to comply with the Code and the effect on Auctionworld's customers, as well as showing a lack of rigour in recognising and solving real problems in customer service. We believed this to be symptomatic of a management failure to institute proper systems and control, or any proper structure for customer relations. The result has been a large number of very angry customers, demonstrable harm to consumers, and prejudice to the teleshopping sector as a whole. The fact that Auctionworld may have a number of other happy customers is beside the point. The large number who are unhappy is indicative of the culture of the company, and its attitude to consumers. Even at this late stage of Ofcom's investigation, satisfactory procedures are still in the process of being devised by Auctionworld, and have not yet been put into effect. It was noted Auctionworld had recently appointed a new customer relations manager Mr Ian Farrer, who appeared genuine in his desire to achieve a consistently adequate level of customer services. Since he had only started working for Auctionworld in July 2004, he was not party to the previous service inadequacies.

### **Guide prices for loose diamonds and diamond jewellery**

9. Auctionworld had committed further breaches by broadcasting misleading and inaccurate guide prices for loose diamonds, so as to constitute misleading advertising contrary to the Code, section 5.1. These guide prices were not backed, as required by the Code, by adequate objective evidence, in breach of section 5.2.1, and therefore constituted inaccurate pricing in breach of section 5.3.1. Auctionworld had also committed similar breaches with regard to diamond jewellery contrary to sections 5.1 and 5.2.1.
10. In respect of the sale of diamond jewellery, the Committee was particularly concerned by the apparent differential in Auctionworld's guide prices and complainants' own retail valuations. For instance, Auctionworld's guide price for an item of jewellery of £14,000 compared to a complainant's independent valuation of £500. In these cases Auctionworld's guide prices had been set by suppliers to Auctionworld and Ofcom has concluded that such valuations for high value goods such as jewellery were totally unacceptable. These valuations had been found in breach because they did not constitute adequate and objective evidence under the Code.

11. In respect of the sale of loose diamonds, Ofcom had obtained independent expert advice that the 'guide prices' which were based on a matrix provided to Ofcom were misleading and inaccurate. Auctionworld continued to maintain that the guide prices were fair, despite Ofcom's expert opinion that some loose diamonds had been valued at a guide price, for example of £19,360, when in fact in his opinion they were worth £3,580. We were surprised to hear Auctionworld continuing to press the case that there was no serious problem with the 'guide prices'. Indeed, we found Auctionworld's position on its guide prices and matrix confusing. In the submissions made to Ofcom by leading counsel on instructions from Auctionworld, she stated (with emphasis added by us):

"It has been in connection with its attempts to offer to viewers the opportunities to bid at substantial discounts for very high value items, where everyday High Street price comparables do not exist, that [Auctionworld] has attracted problems in 2004 over 'guide prices'. One of the lessons [Auctionworld] has learned from the episodes currently under scrutiny is that their innovative and pioneering approach to television shopping *has brought unique problems. In the light of this, [Auctionworld] ceased offering loose diamonds for sale many months ago. [Auctionworld] has also decided, under the new business leadership of Grant Lin, that it will no longer sell 'high end' products. This means that the controversial issue of how to set 'guide prices for goods that are not available in the High Street should never occur again.*"

Therefore we were very surprised indeed to hear from Mr Spitaliotis in answer to our questions, first his insistence that the decision to cease selling loose diamonds was wholly unrelated and uninfluenced by any issue about guide prices, and second that Auctionworld was continuing to sell high price jewellery with guide prices and intended to continue to do so until it had sold all of its current stock.

12. We also found confusing and self-contradictory, Auctionworld's explanations in previous correspondence of how the guide prices had been set. At the oral hearing, Mr Tim Cochrane, Auctionworld's merchandising director, told us that Auctionworld had relied upon Mr George Cromar (from whom no witness statement was produced) to devise, check and approve a matrix that applied a mathematical formula to a few base prices to provide a very wide range of 'guide prices'. Mr Cochrane confirmed, contrary to previous contentions by Auctionworld, that Mr Cromar was at the time employed by a then current supplier of diamonds to Auctionworld. Mr Cochrane also told us that Mr Cromar was not paid for his work on guide prices, which we take to confirm that he was doing that work as a supplier to Auctionworld. Mr Cochrane also said that Auctionworld realised that Mr Cromar could not have had the time to check as well as approve every entry in the diamond matrix and that Auctionworld were unconcerned about this. We could not

reconcile these answers with Mr Rowley's letter to Ofcom of 5 October 2004, in which he wrote that:

“. . . it came as a great concern and surprise to us when [Mr Cromar] admitted . . . that he had only checked certain entries in the matrix and assumed the accuracy of the rest”.

Since Auctionworld knew that Mr Cromar had devised the matrix, that the figures in it resulted from the operation of a formula devised by Mr Cromar, and that Auctionworld had previously been unconcerned that Mr Cromar could not have checked and did not check all of the figures produced by the operation of that formula, we could not understand the “great concern and surprise” professed by Mr Rowley.

13. Despite Mr Cochrane's attempts to invest the matrix with some sort of authenticity, we were satisfied that it had none, and that the 'guide prices' based upon it were seriously misleading and inaccurate. It was revealing that Mr Cochrane admitted that Auctionworld's guide prices were in a range of 6 and 11 times as much as the cost price paid by Auctionworld itself, whereas the letters from other retailers produced by Auctionworld showed a range of only 4.5 to 7 times the cost price paid. We reject without hesitation Auctionworld's submission that the breaches of the Code in this regard were merely technical.
14. We accept that Auctionworld has now ceased to sell loose diamonds. However, despite giving an initial assurance at the hearing that there were to be no more sales of diamond jewellery except at the lower end of the market, Auctionworld confirmed that in fact it still had an unspecified quantity of stock of higher priced diamond jewellery that it intended to sell.

## **Sanctions**

15. Ofcom is obliged by the Communications Act 2003, section 3(1)(b), to further the interests of consumers in relevant markets, and by section 3(3)(a) to regulate in a manner that is proportionate and targeted only at cases in which action is needed. We are left in no doubt that this is a case in which action is needed.
16. We were not persuaded by Auctionworld's submission that we ought to look at each class of breach separately and conclude that overall there was no serious problem. We believe that Auctionworld's breaches were grave and of considerable duration, that overall there is a very serious problem, and that it is compounded by the failure of Auctionworld's senior management (other than the recently recruited Mr Farrer) to recognise openly how serious a problem there is.
17. We were told by Auctionworld at the hearing that it is under investigation by other regulatory bodies as a result of hundreds of complaints made against it.

It was submitted that Ofcom as co-regulator is dealing with what were probably the same complaints. We were therefore invited to defer our consideration of Auctionworld for 3 months. We do not consider it necessary or appropriate to do so. We are dealing with statutory sanctions for specified breaches of the Ofcom Advertising Standards Code established against a broadcaster licensed by Ofcom.

18. Auctionworld has a compliance record far worse than all of its competitors, taken either individually or together. The Independent Television Commission (“ITC”) found breaches of the Code by Auctionworld in March/May 2002, and again in September 2002; in January 2003 it imposed a fine of £10,000; and found further breaches in March 2003. Ofcom (which took over from the ITC as Auctionworld’s regulator on 29 December 2003) has found breaches in June 2004, September 2004, and October 2004.

### **Revocation procedure**

19. Taking into account all the facts and matters to which we have referred, the other material put before us, and the submissions of leading counsel, we decided that we ought to reflect the very serious nature of the breaches by instituting the process for revocation of Auctionworld’s licence prescribed by section 238 of the Communications Act 2003. Ofcom will serve notice on Auctionworld specifying in accordance with section 238(2)(c) that Ofcom will revoke Auctionworld’s licence unless Auctionworld takes, within the times specified in the notice in relation to each step, steps to remedy its breaches of the Code. Those steps will be to abide by the following directions:

- 20.1 a direction (taking effect within 12 hours of being made) preventing Auctionworld from referring in its service to any guide prices for loose diamonds or for diamond jewellery (including watches) unless and until an independent expert approved by Ofcom has verified those guide prices;

- 20.2 a direction requiring Auctionworld to broadcast, in sound and vision, Ofcom’s statement of findings three times a day at 1200, 1600 and 2200 hours respectively for every day for the next 21 days with immediate effect. The statement should read:

“Ofcom, the communications regulator, has found Auctionworld in breach of the Advertising Standards Code for its customer service and misleading viewers about its guide prices for diamond jewellery and loose diamonds.

Ofcom considers these continued and repeated breaches to be extremely serious and has fined Auctionworld. It has also required Auctionworld to remedy these failures.

For a fuller account, log on to [www.ofcom.org.uk](http://www.ofcom.org.uk)”

- 20.3 a direction requiring Auctionworld within 21 days to inform Ofcom in writing with respect to every complaint referred to Auctionworld by Ofcom or by the Advertising Standards Authority (Broadcasting) ("ASA(B)") since 21 June 2004 whether that complaint has been resolved; if so, how; and if not, why not;
  - 20.4 a direction requiring Auctionworld in respect of each and every complaint received by the ASA(B) from today's date and forwarded by the ASA(B) to Auctionworld, until further notice to inform Ofcom in writing within 10 working days of the ASA(B) forwarding such a complaint to Auctionworld, whether that complaint has been resolved; if so, how; and if not, why not;
  - 20.5 a direction requiring Auctionworld within 28 days to put into operation and lodge with Ofcom an effective written procedure for customer service and complaints handling, to include key performance indicators for the answering of telephone calls, letters, any other communications used by customers (for example email and fax); substantive responses to enquiries and complaints; and to include a clear statement of policy for refunds and the payment of compensation;
  - 20.6 a direction requiring Auctionworld until further notice to send to Ofcom on or before the 15th day of each month from December 2004 a written report of the working of its customer services in the previous month;
  - 20.7 a direction requiring Auctionworld to ensure, with immediate effect, that when delivery times are referred to in the broadcast service, it is made clear that delivery times are not guaranteed;
  - 20.8 a direction requiring Auctionworld, with immediate effect, to inform every buyer when concluding the sale of his or her rights of cancellation.
- 21 It is our intention that Ofcom should within the next six months review the taking by Auctionworld of these remedial steps, with a view to revoking Auctionworld's licence with immediate effect if satisfied in accordance with section 238(3) of the Act that Auctionworld has not complied with any step within the time specified for that step, and that it is necessary in the public interest to revoke the licence.

## **Fine**

- 22 In any event, we determined that the breaches are so serious that Auctionworld should in addition pay a fine of £450,000 (payable to HM Paymaster General).

Members comprising the Committee for the purposes of this decision are:

Richard Hooper  
Sara Nathan  
Tim Suter  
Ian Hargreaves