

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: **Second Consultation on Sky's Picnic proposal**

To (Ofcom contact): **William Hayter**

Name of respondent: **Stephen Dean**

Representing (self or organisation/s): **BT**

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

**Nothing**

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments. Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name **Stephen Dean** Signed (if hard copy)

## **Ofcom Second Consultation on Sky's Picnic Proposal**

### **Introduction**

BT is one of the four parties<sup>1</sup> who have together submitted a Joint Response to Ofcom's second consultation on Sky's proposal to launch a pay TV service on DTT ("Picnic"). This Joint Response is a comprehensive statement of the collective views of the four Parties which BT fully supports. However, it would be unusual for a combined response from four different companies to reflect fully all the various priorities and concerns of each company.

Consequently BT wishes to set out its views on one additional issue.

### **Sky's Picnic proposals**

As BT set out in its first response on Picnic, any support for Sky being in a position to retail pay TV services in the DTT market can only be given on the basis of the identified competition concerns being resolved in a way which assists the development of a competitive market and thereby increases consumer choice. BT was clear in that response that if Ofcom wished to consent to Sky's proposal, this should only be done subject to the imposition of strict and enforceable conditions,

BT wishes to set out in more detail its position as regards the ancillary requirements that BT believes are critical in the authorisation of the Picnic arrangement. BT has attempted to address the majority of these issues in the Joint Response on Picnic and BT believes that ancillary conditions such as those set out in that Joint Response are fundamental to address the significant competition detriments that could arise as a result of the Picnic proposal, notwithstanding Ofcom's proposed wholesale must-offer obligation.

Whilst BT believes that the proposed wholesale must-offer obligation in combination with the more comprehensive set of ancillary conditions proposed in the Joint Response are necessary to address the identified competition concerns, BT cannot be certain at this stage that they will be sufficient. BT does, however, believe that it should be possible for a full and comprehensive set of obligations to be developed and imposed which would be a sufficient remedy to the competition detriments to allow Sky to launch Picnic on DTT, providing such conditions are devised and implemented in such a way as to be fully effective. BT's primary objective from this process is to ensure that there is a set of obligations that are sufficiently robust for BT Retail and other organizations to be able to compete with Sky in fair competition.

### **Migration of content from Sky's premium channels on DTT**

As set out in the Parties Joint Response on Ofcom's pay TV consultation, there is a concern that Sky would have a strong incentive to try to neuter the effect of any wholesale must offer obligation by migrating key pieces of content away from the Sky Sports 1 channel in order to minimise the ability of competitors to compete. As the Parties highlighted in that response, Sky's ability to "game" the proposed remedy in this way stems from Ofcom's erroneous market definition and narrow focus on FAPL content.

---

<sup>1</sup> The four parties are BT, Setanta, Top up TV and Virgin.

BT's preferred outcome in the pay TV investigation is for Ofcom to correctly specify the market definition, which in turn will allow for the correct assessment of Sky's market power. This will then ensure the correct scope of the wholesale must-offer remedy to cover Sky's sports channels as a whole, and limit this and other forms of gaming.

However, BT believes that concerns regarding Sky's incentives and ability to make the remedy less effective are also relevant in the context of the Picnic consultation, particularly in light of the fact that capacity constraints on DTT may mean that only one Sky sports channel (Sky Sports 1) and one Sky movies channel (Sky Movies Screen 1) are likely to be made available on the platform. Therefore, BT believes that Ofcom must ensure that there is no diminution of the attractiveness of the channels made available to competing operators on alternative platforms compared to that being retailed by Sky on its satellite platform. In the context of Picnic specifically, this means introducing further anti-gaming measures to prevent the migration of content away from Sky Sports 1 and Sky Movies Screen 1.

*British Telecommunications*

*December 2008*