

OFCOM'S PAY TV MARKET INVESTIGATION

Comments by the British Broadcasting Corporation on Ofcom's consultation document published 18 December 2007

Summary of key points:

- The BBC's overriding objective is to ensure an open and competitive pay television market that protects universal access to the BBC and to other public service broadcasters and allows them to continue to deliver their public broadcasting remits via open platforms and other gateways into the home.
- Consumers continue to face limited platform competition in many areas given the geographical limitations of platforms other than satellite. As a result, channels face limited platform choice also. The BBC believes Ofcom may be over optimistic about the extent to which new distribution methods such as IPTV, pay-DTT and hybrid DTT are offering or will be offering a constraint to existing pay tv operators in the next few years.
- Ofcom should consider combining this investigation and its proposed review of wholesale platform markets. Given vertical integration is only a concern when there is market power, by excluding platform analysis Ofcom risks underestimating a potential source of market power in the pay-TV value chain that may affect downstream markets and, ultimately, final consumers.

Introduction

Although the BBC does not operate in the pay TV market,¹ it has three broad objectives in respect of this investigation: ensuring universal access for (and to) licence fee payers; maintaining a competitive television sector (including the pay TV market) and fostering the development of open standards.

The BBC welcomes Ofcom's timely and very thorough analysis of the pay television sector, with which it broadly agrees. The BBC has set out its views of the pay TV sector on various occasions² and notes they are broadly in agreement with Ofcom's analysis.

The main focus of this submission is to argue that Ofcom's current focus on the final retail consumer risks underplaying a key source of market power in the pay TV value chain; namely pay TV platforms. This is of particular concern given the importance of vertical integration to the review, the need to identify market power within a vertically integrated structure, and the increased role of technical gateways.

Answers to the specific questions raised by Ofcom in its consultation document are attached as an annex.

¹ BBC Worldwide, a wholly owned commercial subsidiary of the BBC, has a 50% stake in the UKTV suite of channels.

² For example:

- BBC's pre-consultation submission during this investigation (dated 13 September 2007).
- BBC submissions to Competition Commission Sky/ITV investigation and hearing summaries can be found at <http://www.competition-commission.org.uk/inquiries/ref2007/itv/index.htm>.
- BBC submission to Ofcom's consultation on Proposed BSkyB digital terrestrial television services.

BBC comments on Ofcom's analysis

As noted above, the BBC has previously set out its views of the pay television sector; Ofcom's approach is broadly consistent with our views. We would, however, offer the following comments (in addition to those comments contained in the annex, which provides specific answers to the questions raised in Ofcom's consultation document):

- Market definition and the identification of market power

The BBC strongly agrees with Ofcom's analysis of the relevant markets for the purpose of this investigation. We share their view that free TV should not be included within the same market as pay TV channels, because they do not currently offer a sufficient constraint on the providers of pay TV channels or premium channels. We also agree that free and pay-basic channels are moving closer together and that the distinction between the two may diminish over time. We also broadly agree with Ofcom's identification of the sources and holders of market power in those markets.

We note, however, that Ofcom has not addressed wholesale platform markets in this review.³ We believe it is vital for Ofcom to include analysis of pay TV platforms in any review of the pay TV sector as they represent a source of potential market power. Through the operation of the various technical platform services on offer, pay TV platform operators control the ability of channels to access consumers (and hence the ability of consumers to access channels), as well as the quality of that access and the quality experienced by consumers. Sky's recent consultation on its EPG methodology, for instance, uses technical standards to limit the editorial and commercial freedoms of its channel customers (e.g. see answer to question 5).

As pay TV platforms are a significant potential source of market power, it is vital for Ofcom to undertake its analysis from the perspective of intermediate customers (including channel providers and other platform operators) as well as final customers. Finally, any analysis of the performance of the actors in the pay TV sector, e.g. their profitability, must take into account the revenue flows at the platform layer to offer a complete picture of whether or not consumers are being unfairly exploited.

We believe, therefore, that Ofcom should include its review of wholesale digital television broadcasting platforms within this investigation.

- The consumer experience

We broadly agree with Ofcom's analysis, although we would suggest that Ofcom also considers:

- (a) whether the level of innovation identified by Ofcom is consistent with the level that would have occurred in a more competitive market and the identity of the innovators; Sky's reluctance to introduce interactive functionality for its radio customers via its EPG is also illustrative of its ability to frustrate innovation (e.g. see answer to question 6).

³ See, for instance, paragraphs 2.31-2.33 and paragraph 6.2 of annex 13.

- (b) the use of two-sided market analysis when analysing the profitability of the key players to identify possible excessive pricing.

- *Competition in pay TV*

We broadly agree with Ofcom's analysis although we believe that Ofcom should:

- (a) Consider the effects of channel bundling on the ability of channels to enter the market and, given vertical integration concerns
- (b) Include analysis of the pay TV platform market in this investigation, which has the advantage of including a potential additional source of market power into the pay TV value chain and better recognise the link between platform operation and retail services for 'pay basic' channels.

OFCOM'S CONSULTATION QUESTIONS

1. Do you agree with the criteria against which we propose to assess the functioning of the pay TV sector?

The BBC agrees with the set of criteria against which Ofcom assesses whether the pay TV market is functioning well in terms of its impact on consumers.

• **Overall consumer satisfaction levels:** The BBC agrees that whilst satisfaction levels of existing pay TV subscribers are informative, Ofcom must take care to ensure that it also consults non-consumers of pay TV to test whether some consumers might feel excluded from pay TV because of excessive prices.⁴

• **Choice of platform and content:** Assessment against this essential criterion should be made at two stages: choice between platforms when a consumer first decides to go for a pay platform and channel choice on the chosen platform. Consideration of switching costs in both instances is essential. It is noted that the Freesat proposition, which will provide an alternative to satellite pay TV and will be available with low switching costs to households with existing satellite dishes, has the potential to introduce a new competitive constraint (albeit that it will be a free service).

• **Innovation in platform services:** In a competitive market, consumers benefit from a high level of innovation. But it is important for Ofcom to:

- (a) Consider not only the degree to which innovation has happened in the market, but also to try and assess whether that level of innovation would have been higher if the market was more competitive. For instance, Ofcom is aware of the frustrations faced by the BBC in encouraging innovation in radio specific TPS services offered by BSkyB. Comparisons with the innovations occurring in overseas markets may be informative.
- (b) Examine the source of the innovation. If innovation is restricted to only one operator two possibilities arise: the operator is continually winning the innovation race against competitors or the operator is successfully stifling third party innovation. The question is: can all operators (even those who are only channel providers and not platform operators) introduce innovation successfully?
- (c) Consider carefully the innovation storyline set out in Ofcom's analysis. The development of personal video recorders (PVRs), for instance, was instigated by TiVo. As PVRs have most value in multi-channel homes, TiVo found it necessary, to undertake partnerships with the pay-TV platform operators, which were, ultimately unsuccessful. Nevertheless, the pay TV platform operators recognised that PVRs offered an additional revenue stream (initially

⁴ Ofcom itself acknowledges this issue at paragraph 1.16 of its consultation document.

a least) and a means of reducing churn. So, once TiVO had exited the market platform operators were able to introduce PVRs as part of their proprietary offering.

• **Pricing of pay TV services:** It is important, as stressed by Ofcom, to look not only at pricing of pay TV services but also at (a) switching costs and (b) bundling with other services, which have the potential of increasing total costs for consumers as well as introducing switching barriers.

2. Does our overview of the pay TV market fairly reflect the key developments within this market?

As noted above, the BBC's main objectives are to maintain an open and competitive market, and to continue to be able to deliver its public purposes, giving free, safe and easy access to its services for licence fee payers on all platforms. In this context, the BBC agrees that Ofcom's overview of the pay TV market fairly reflects the key developments within this market. As Ofcom describes, the important recent developments to note are:

- Consolidation and restructuring of UK cable under Virgin Media brand.
- The recent emergence of new platforms for pay TV (Tiscali/Homechoice, BT Vision, Top Up TV) based on new distribution technologies.
- Intervention by the European Commission to change the way in which Premier League football rights are sold.
- Convergence and the bundling of pay TV services with broadband and fixed and mobile telephony services.

The BBC fully agrees that these are essential factors in considering the appropriate analytical framework. The BBC also broadly agrees with Ofcom's conclusions. In particular, the BBC agrees that distinct narrow economic markets exist for pay TV subscription channels containing premium sports and movies content, at both the wholesale and retail level of the value chain and that Sky has market power in these markets. That said, we would make three observations:

- (1) We would highlight technological developments within platforms as another significant development in the market. Ofcom should consider the increasing importance of technological standards, whether for encryption or for interactive or advanced applications. Unless properly analysed, they offer the potential for incumbents to use proprietary standards to close otherwise open platforms and to create gateways to the consumer.
- (2) The emergence of new platforms for pay TV (Tiscali/Homechoice, BT Vision, Top Up TV) based on new distribution technologies and the role of convergence cannot be challenged. But their impact on the market is still to be seen. As demonstrated by Ofcom in figure 22, most households cannot yet access these new platforms; they are currently in their infancy and Ofcom is absolutely right to

base its market analysis on the current situation (and not what might happen in ten years). Nonetheless, we believe that Ofcom may have overstated the constraint that these new platforms are currently offering, and likely to offer in then next few years to incumbents.⁵

- (3) The BBC is also concerned that vertical integration in the industry and continuing technological convergence create a fertile environment for market power to be exploited, which would be to the potential detriment of the market, including consumers. In this regard, we remain concerned that Ofcom has failed to analyse a strong potential source of market power – pay TV platforms – in this investigation. In this regard, the BBC suggests that Ofcom also consider the competitiveness of the market from the viewpoint of channel providers wishing to access distribution networks (either channel retailers or platform operators).

Response to questions 3 and 4

3. Do you agree with our analytic framework for the pay TV value chain? If not, why not?

4. Are there any additional comments or evidence which you wish to provide?

The BBC broadly agrees with Ofcom's analytic framework for the pay TV value chain. However, for clarity, we would suggest slight amendments to the description of the value chain as set out in figure 6. This figure should:

- Recognise (in the case of DTT) the role of multiplex operators in the value chain (at a similar level as wholesale platform service providers).
- Clarify that there is also an unmediated relation between the free-to-air channels and the customer base.

5. Do you agree with the views we have expressed as to the level of platform and content choice available?

- *The final consumer perspective*

The BBC agrees that consumers have a higher level of choice, both of platform and of content on a platform, than ten years ago. But the choice, although higher, is still fairly limited. Switching costs between platforms or providers add further limitations (see question 16).

⁵ We would also note that, as stressed in the BBC's response to Ofcom's consultation on Sky's pay TV offer on DTT, it is unlikely that any one pay TV platform can support multiple retailers (other than retailers of premium sport and film content). Therefore, should Picnic be approved, Top-Up TV and BT Vision might not be able to survive without strict conditions being imposed on BSkyB.

As made clear by Ofcom,⁶ there are still significant geographic limitations in terms of platform competition:

- Whilst premium pay content is available both on cable or satellite, less than 50% of UK consumers can choose between these two platforms.
- Although pay DTT is available to three quarters of the population, the premium content available on this platform is limited, and
- Only 15% of the households have access to IPTV.

In addition, as we have made clear in our submission on BSkyB's 'picnic' proposal, we do not believe that having multiple retailers of 'pay basic' channels⁷ on each pay TV platform is viable; network efficiencies (including the need to offer buy through to premium content) arise from each 'pay basic' channel joining with the incumbent retailer (which is usually vertically integrated with the platform operator). This means that once a consumer has chosen a platform, its choice of content is de facto limited. Of particular concern, as stressed by Ofcom, effective consumer choice is restricted by the fact that the same content is not available on all platforms:

- BSkyB's offer via cable is of a significantly different quality (limited interactive capabilities and no high definition);
- BSkyB's premium content is not currently provided to other retailers on DTT, although Sky has recently proposed its own pay DTT service.
- Channel bundles are not uniform across platforms and 'buy through' to premium channels is imposed by all retailers.

Therefore, consumers wishing to access pay TV face limited choice between platforms (because of geographical limitations) and between channels on each platform (given lack of retail competition).

- *The intermediate consumer perspective*

It is illustrative to consider platform choice from the perspective of a channel provider.⁸ The business models of Premium channels (those mainly offering premium sports or movies content) rely on subscription (given rights costs free to air distribution is not a feasible option). For such channels, access to the maximum number of subscribers, and therefore distribution on the main Pay TV platforms (satellite and cable), is key to commercial success (pay DTT is currently a peripheral player). This, in turn, gives Virgin Media and BSkyB a powerful position, which they can then potentially lever into other markets.

⁶ Ofcom consultation document, figure 22, p 48

⁷ Experience suggests that only channels carrying premium content (Setanta – sport), adult content (e.g. Playboy, Television X) or highly specialised niche channels (such as minority language channels in Chinese etc) can retail their channels independently of the incumbent – usually vertically integrated with the platform operator - channel retailer.

⁸ Public service channels are required to be free-to-air and are therefore not included in this analysis.

On the other hand, being able to offer to their subscribers the unique content offered by these premium channels will be key to the success of pay TV retailers. Commercial negotiations between premium channel operators and pay TV retailers should therefore be quite balanced and it should be in the interests of both parties to contract together. However, the situation for non-premium channels is more delicate as they must first choose between the free to air (FTA) or the pay model. Given the decline of the TV advertising market, a free-to-air fully-advertising funding model appears very difficult to sustain for almost all non-premium channels. Experience to date suggests that the only non-premium channels that can viably adopt the FTA model are those which belong to the same group as one of the large analogue FTA channels (i.e. the commercial PSBs) that already exhibit some power in advertising (as demonstrated by their premium) or those with a relatively large audience share in multi-channel homes; for all others, pay TV is the only option.⁹ In addition, the limited availability of slots on the main FTA platform (DTT) make the FTA option even more challenging.

And, when considering how they can enter the pay TV market, once again their options are very limited - access to the satellite platform and BSkyB's retail package is paramount. This is due to three factors:

- (a) The existing 8 million subscriber base;
- (b) Until switchover, satellite has the widest digital coverage (which means that its potential customer base is also higher¹⁰) and
- (c) Satellite capacity maybe less constrained than DTT or cable capacity.¹¹

These factors make negotiating carriage (including access to the necessary technical services) in BSkyB's retail package essential for a new 'pay basic' channel launch to be successful. Being only on cable, on pay DTT or on IPTV is simply not viable.

Moreover, as noted above, a channel operators' choice of retailer is also limited - they have only two options: retail their channel themselves, or negotiate a deal with the incumbent vertically integrated retailer to be distributed as part of one of their retail packages. Each platform has different issues:

⁹ It is illustrative to note that of the channels that have switched from pay basic to FTA distribution, only *Dave* is not part of a family of channels operated by the PSBs.

¹⁰ A proportion of UK households do not have DTT or cable services available in their areas; DTT coverage for all six multiplexes is currently limited to about 33% of UK households and broadband cable, at present, passes only about 45% of UK households. (Ofcom Digital Progress Report, Digital TV, Q1 2007, and Ofcom: The Communications Market 2006).

¹¹

- DTT has limited spectrum. There is some potential for new capacity through digital dividend review, but not until end 2012 for a full UK coverage.
- Cable and IPTV: very high investment costs, very long set up process, limited capacity.
- Satellite: limited UK footprint capacity, with none currently available.
- Mobile: currently very limited capacity in the UK. Although through may be forthcoming through spectrum auctions.

- For cable, the closed nature of the network requires a channel to retail via the cable operator;
- For satellite, the absence of a multicrypt solution in set top boxes and the unwillingness of BSkyB to licence its proprietary conditional access (CA) software to third party channels or to third party set top box manufacturers make it impossible for a third party to emerge as an independent retailer of pay channels on the digital satellite system. Under such circumstances, the negotiating power of non-premium channels vis a vis the platform operator or retailer is very limited and they must accept those terms and conditions imposed on them. This adds another potential source of market power to the pay TV value chain and should be taken into account in any analysis of vertical integration. This, in turn, reinforces the need to include pay TV platform markets in this investigation.

This affects both new and existing pay TV channel operators that cannot credibly consider leaving a platform given the material effect on their advertising and subscription revenue. We would note that the BBC is also in a similar position to the extent that it too cannot credibly consider leaving either the satellite or the cable platform.

It is also clear that there can be direct consequences on channel competition arising from TPS provision. For instance, in Sky's EPG methodology (issued recently for consultation) Sky has included requirements on channels wishing to be placed on the Sky EPG. Two are of particular concern to the BBC:

- specified minimum amount of non-repeating programming and
- the technical specification of HD channels.

Restrictions are being placed on the editorial and technical freedoms of channels through control of technical platform services. Given that Sky is also a channel provider, these restrictions potentially affect competition between third party channel providers and Sky's suite of pay TV channels. This clearly demonstrates that control of pay TV platforms by vertically integrated operators can affect channel competition – and the consumer experience - directly.

In summary, the BBC has three key observations:

- (a) Given the importance of advertising at the margin to the finances of pay-basic channels, Ofcom's failure to include both sides of the market in its profitability analysis may understate the relative market power of incumbents.
- (b) The possibility of market power at the retail and, more importantly, the platform level increases the potential concerns around vertical integration in the industry.
- (c) Therefore the BBC urges Ofcom to revisit its decision to separate the pay TV market investigation and its review of technical platforms.

6. Do you agree with our analysis of innovation levels in UK pay TV? Do you agree with our assessment of what has driven innovation in the past, and what will drive it in the future?

The BBC agrees that it is possible to observe many instances of innovation in the UK market. We would suggest that many innovative developments have been initiated by FTA broadcasters; in particular the BBC. However, whilst there is no question that there has been innovation in the pay TV market, Ofcom should consider the following three questions:

1. Would more innovation have occurred if the market had been more competitive?
This is of course very difficult to assess, but there is some evidence of innovation which could have occurred and did not. It is striking that developments on the BSkyB platform were those which were useful to the platform operator given it is also a retailer and a channel provider, and that developments proposed by other users of the platform have not occurred. For instance, despite repeated requests, the BBC has never received from Sky the software developments necessary for it to offer interactive radio on BSkyB's platform (despite the fact that it has been made available on other platforms). One might wonder whether the situation would have been the same had BSkyB operated radio channels.

Other examples of thwarted innovation include:

- visual EPG – with mini screens,
- easy navigation between interactive services,
- full access for radio services to the 7 day EPG and Sky+ functionality
- support for dual language subtitling – regionality is a feature that is generally not well supported on the Sky platform

2. Are all operators able to innovate, whether or not they are vertically integrated? In many markets innovative developments come as much from small operators developing new products or finding a new route to market as from incumbents. The question arises in the pay TV market as to whether innovation has been limited to only the incumbents (see the discussion in our answer to question 1 and 5 above).
3. Is there a risk that further consolidation could decrease future levels of innovation? There is no doubt that more competition drives innovation; and there is a risk that should one operator become dominant (or further strengthen its existing dominance) on the market, innovation will suffer. The same situation could also happen if one operator became dominant (or further strengthen its existing dominance) on any of the platforms; consumers could of course respond to this lack of innovation and switch platform, but that might not be straight forward (a) because of high switching costs (from, for instance, limited channel choice on alternative platforms), and (b) because of the unavailability, in their area, of an alternative platform.

Response to questions 7 - 10

7. Do you agree with our analysis of pricing structures in UK pay TV? Do current pricing structures act in the aggregate interests of consumers?

8. Do you agree with our assessment that there is currently insufficient evidence to support a conclusion that prices in the UK are excessive?

9. Do you agree with our initial assessment that there is not convincing evidence to support the claim that the industry is earning excessive profits? Is there evidence to support the suggestion that Sky is pursuing objectives other than short term profitability?

10. Are there any other comments or evidence which you wish to provide?

The BBC welcomes Ofcom's thorough analysis. However, the BBC is not in a situation where it can usefully comment on the nature of the profits made by the pay TV industry. We would, however, encourage Ofcom to (a) take a two-sided market approach to its profitability analysis, particularly for channel operators and (b) to include platform operators in its analysis as excess profits at one level can be transferred to (or extracted by) another upstream level, for instance platform operators.

Response to questions 11 - 15

11. What is your view on our approach to defining markets?

12. Do you agree with our definitions of premium content markets?

13. Do you agree with our preliminary conclusions on basic / free-to-air markets?

14. Do you agree with our assessment of market power?

15. Have we identified the correct set of intrinsic market characteristics? Are there any that you would add?

The BBC strongly agrees with Ofcom's analysis of the relevant markets for the purpose of this investigation. We agree that free TV does not currently offer a sufficient constraint on the providers of pay TV channels or premium channels to be included within the same market as those channels. We also agree that free and pay-basic channels are moving closer together and that the distinction between the two may diminish over time.

We also broadly agree with Ofcom's identification of the sources and holders of market power in those markets. We note, however, that Ofcom has not addressed wholesale platform markets in this review. As noted above, however, we believe that Ofcom should include its review of pay TV platforms within this investigation.

In that context the intrinsic characteristics of the pay TV platform market (high fixed costs and low marginal costs, proprietary technology in satellite, closed network in cable) and the network externalities that tend channel retail towards platform monopoly (particularly if retail is vertically integrated with the platform operator) should also be added to the analysis.

16. Have we correctly captured the role of vertical integration?

Whilst we agree that vertical integration is not, in itself, always negative for consumers, it is vital that it is kept under review, particularly if there is market power at one or more stages of the pay TV value chain. For this reason we remain concerned that Ofcom has not included pay TV platforms in this investigation.

The BBC believes that vertical integration remains an issue of concern. The general trend towards vertical integration reinforces the market power of major players in the market. Whilst there are legitimate commercial reasons for vertical integration, this can be detrimental to the wider market if it leads to strong market power and creates the potential to act anti-competitively, particularly in related markets. Increasing vertical integration in the media sector must not put at risk the open, competitive markets, which are essential for the benefit of consumers.

In this context, it is vital to assess the impact of vertical integration on the way the market is structured and the way it functions.

For consumers

Vertical integration between platform operation and channel provision and horizontal integration between related horizontal markets (fixed and mobile telephony and broadband) increases the occurrence of product bundling such as triple and quad play. Whilst such bundling can have positive impact on prices for consumers, it can also make it more difficult and more expensive to switch suppliers. The BBC agrees with Ofcom's analysis of the different types of switching costs

- Between retailers on the same platform.
- Between retailers on different platforms, but where those platforms use the same distribution technology.
- Between retailers on different platforms using different distribution technologies.

The BBC agrees with Ofcom that "*In addition to the switching barriers intrinsic to pay TV, further switching barriers may be added through the bundling of pay TV and other services.*" We would highlight quad and triple play – the bundling of fixed telephony, mobile telephony and/or broadband services – with pay television services in this context.

For channel providers

Completion of Digital Switchover (DSO) is likely to increase the number of consumers dependent on pay TV platforms for access to all television services, whether FTA or Pay. As such, it will also increase the dependency of channel providers (both FTA and pay) on Pay TV platforms. In addition, consumers

increasingly wish to access television content when and where they want it, which increases their dependence on pay TV service providers able to offer triple or quadruple play.¹²

Vertical integration also contributes to the market power of key players in the pay TV sector. It is significant that the two key pay TV players control both a platform and channel retail on that platform (as well as operating channels – in the case of BSkyB premium channels). This influence over a number of stages of the value chain allows them the opportunity to dominate and control the gateway to audiences, further reinforcing existing and future market power.

Vertical integration and convergence together offer new opportunities for strong players to leverage their market power to new markets. Strong incumbents (e.g. the owners / operators of today's proprietary gateways), can seize on technological developments (e.g. accessing television content via the PC) and extend their existing market power into other related markets such as the on-demand and mobile broadcasting environments. There is already significant evidence that key Pay TV players – e.g. Virgin Media, BSkyB (potentially BT) – are attempting to extend existing access controls (either in broadcasting or telephony) into digital media, both linear and non-linear. Consider, for instance, the introduction of triple (or quadruple) play by Virgin Media, BSkyB and BT with the aim of controlling all media connectivity to the home.

Control of a combination of a key gateway, key content and a strong offering of connectivity in the home creates an increasingly strong base to dominate the future Pay TV market. This might reinforce the positions of potentially to the detriment of continued innovation and value for money for the consumer.

A further point to consider is that even if it is the case that a vertical integrated operator has, at a given time, sufficient incentives to provide content to downstream operators, or to give access to its platforms, he might, taking a more dynamic and forward looking approach, still have a long-term interest in denying them such access, e.g. in order to weaken or eliminate future platform competition.

Response to questions 17 - 20

17. Do you agree with our assessment of the effects of content aggregation on retail competition?

18. Do you agree with our summary of the possible issues relating to the short-run operation of the market?

19. Do you share our possible concerns over the long-run operation of the market?

20. What do you see as the impact of these considerations on consumers?

¹² Connectivity via a decoder integrated in or added to the TV is likely to remain the primary means of accessing television services for the foreseeable future.

The BBC broadly agrees with Ofcom's analysis in chapter 6 of its consultation document. In particular, we agree that:

- In the short run, access to premium content is limited.
- Aggregation of premium content can create – and has created – market power in relation to sport and movies.
- Vertical integration between platform operators and premium content channel operators can change the incentive to offer premium channels on all distribution platforms given their potential effect on platform competition. This may manifest itself in offering reduced quality services to competing platform operators (or, ultimately, complete refusal to supply).
- Vertical relationships in the value chain are vital for the complete analysis of the market. In this regard, the BBC again requests that Ofcom include pay TV platform analysis in this investigation.
- Channel aggregation in retail packages – and the imposition of buy through – can have efficiency benefits but care must be taken to assess the true effects of this activity. Does the current structure of channel bundling at the retail level encourage inefficient entry of pay basic channels? Also, do retailers favour their own basic channels making it more difficult for similar basic channels from other operators to benefit from buy-through?
- Buy-through can also affect the ability of basic-only retailers to compete with retailers that can also offer premium content– especially where those premium content retailers are vertically integrated with the platform operators. The evidence on customers' demand for premium content suggests that there will be little interest in a basic only retailer that cannot offer opportunities to upgrade to premium content. In addition, it is very unlikely that more than one retailer of premium content will emerge on any one platform.