

24th November 2008

Re – Sky Picnic Consultation

Dear Ofcom,

We already have had a consultation on the Sky Picnic proposal where the majority of the people who matter i.e. the viewers have made their opinions known and opted for Option 3 non consent to proposal indeed as Ofcoms own figures suggest that was the opinion of 87% which begs the question why we need a second consultation? (A note for future Consultations if you want the publics opinion you need a much shorter document 111 pages is way to long)

Ofcom Consultation

- 1. Do you agree with our current view that under the proposal , Sky would be likely to emerge as the sole or main retailer of pay TV services on DTT, given its market power in the wholesale markets for Core Premium channels and its incentives to withhold its Core Premium channels from other retailers of pay TV services?**

Yes absolutely they have the financial resources to see off TopUp TV and Setanta. You only have to look at recent history with BSB and ON/ITVDigital.

- 2. Do you agree with our current view that the emergence of SKY as the sole or main retailer of pay TV services on DTT and the consequent adverse effects on competition would be likely to occur in a relatively short timeframe?**

Yes it would happen in a very short timeframe, only possibly delayed by the current economic downturn.

- 3. Do you agree with our current view that Sky should not be prohibited from retailing payTV services on DTT provided that its core Premium channels on DTT are made to its retail competitors on a suitable wholesale basis?**

Disagree you should implement Option 3 non consent to proposal as per the wishes of 87% of respondents to original Consultation.

I have no objection on Sky making their services available to other retailers as long as it does not reduces the number of FTA channels on Freeview.

- 4. If we were to consent to the proposal, subject to a condition that Sky make its Core Premium channels available to competing retailers on a suitable wholesale basis, do you agree that it would not be necessary to impose additional conditions addressing the provision of TPS by Sky?**

Big business can always find their way round rules and regulations. As for consent to proposal I refer back to original consultation when 87% (ofcoms own figures) 'voted 'for Option 3 non consent to proposal.

5. **Do you agree with our current view that the Proposal is unlikely to have a significant adverse effect on the DSO process or the appeal of Freeview to consumers?**

Totally disagree the loss of 3 Quality 24 hour channels will reduce the appeal of Freeview. Also Ofcoms decision to clear Multiplex B for HDTV means in addition to losing the 3 Sky channels we would also lose

1 ITV service,
1 Channel 4 service
and a BBC service

The possible loss of 6 24 hour videostreams on an already limited service is totally unacceptable. Indeed when Freesat has all it's channels in place for those who can have a dish it is looking like a much better option than Freeview and they will have no Subscription services on their EPG.

6. **Do you agree with our current view that the extent to which the Proposal may increase complexity in the decision making process for customers wishing to buy DTT reception equipment, this issue can be managed effectively without the need to impose relevant conditions on Sky?**

Another box, different system bigger confusion for Consumers, we have/will have Standard Freeview box,

Freeview box with slot (for Setanta)

(New Sky box for Subscription services,)

New box for HD late 2009,

TopUp TV DVR,

Freeview PVR / DVR,

Freeview Playback PVR (may not be upgradeable to Freeview+),

Freeview + PVR,

BTVision

These are only the Terrestrial boxes.

7. **Do you consider that to the extent the Proposal may lead to a (greater) conflict of interest between Sky and the other members of DTVSL (the company which operates Freeview); this is a matter which in the first instance should be resolved by the relevant parties through commercial negotiation?**

If the proposal was to go ahead (against the wishes of the majority – from original consultation) yes of course there would be a conflict of interest, if Sky offer no FTA channels then they are not entitled to sit on the Freeview board and have any say, influence or knowledge of future Freeview plans.

8. **Do you agree with our current view that a wholesale must-offer arrangement, under which Sky must provide wholesale access to its core Premium channels on DTT, is the most appropriate solution for us to pursue to address the competition concerns we have identified?**

9. **Do you agree that simulcrypt is the most appropriate means of allowing multiple Retailers to have access to Sky's Core Premium channels on DTT?**

No view.

10. Do you consider that Sky or relevant third party retailers on DTT would be provided with an incentive to reduce the effectiveness of a whole sale must offer arrangement? If so in what ways might they seek to achieve his?

No view.

11. If we were to consent to the proposal subject to a suitable must-offer arrangement being put in place, do you consider that any ancillary conditions would be required to ensure that it was workable from a commercial and technical perspective? If so please explain (i) the ancillary conditions that would be required and the specific concerns they would seek to address and (ii) why there would be no other practicable and less restrictive means of addressing the concerns in question.

12. Do you consider that our indicative analysis, summarised at paragraph 4.7 to 4.12 and set out more fully in Annex 6, supports our current view to whether we should opt for option 1 , Option 2 or Option 3?

It would appear reading through the lengthy consultation and summaries on respected media web sites, that you have already decided as long as wholesale conditions are met to allow Sky Picnic which begs the question why this new consultation?

My view is Option 3 non consent of Proposal as per my original submission on the following grounds in no particular order

- There is no proven demand for Sky Picnic
- Sky are already to dominant in Broadcasting and must not dominate DTT
- Yet another set top box and encryption system cause more consumer confusion.
- The future of niche players Setanta and Top UP TV would be under threat.
- The loss of 3 quality channels will further reduce an already very limited service.
- BBC would be the sole News Channel (no competition)
- If Sky wish to withdraw from Freeview they can do so and hand back their 3/ 24 hour slots for other FTA services.
- If approved it would set a precedent for current FTA broadcasters to become encrypted.
- Real danger of Freeview becoming Skyview by Sky buying out or persuading other channels to join their encrypted service and Freeview as we know it becoming a predominantly pay service with very few FTA services.
- Would create less choice to Freeview viewers (loss of 3 /24 hour channels)
- The effect of current FTA Freeview channels on Multiplex C with a new mixed transmission system is unknown
- There is already an abundance of ways for people to get Pay services, Setanta, TopUP TV, BTVision, Tiscali TV, SKY, and Virgin Media.

I predict that if Sky Picnic is approved in a relatively short timeframe Freeview will cease to exist in its current form and become a predominantly Pay service with a few FTA services, from the 5 main terrestrial channels and once the floodgates are opened there will be no turning back.

If Sky desperately wants to do a Pay service on DTT why not goes down the IPTV route this would not have to adverse effect on current Freeview services and would release the 3 Sky slots for FTA services. Indeed Sky has recently announced plans to put their main Channels available on-line so there is no need for Picnic.

Looking at the lack of responses to this Consultation, strongly suggests respondents to the original Consultation feel they have already made their views known, and the fact Sky had shelved their proposal prior to this latest Consultation, they probably viewed the matter closed.