

# **Ofcom Pay TV Market Investigation**

## **Tiscali UK Ltd Consultation Response – February 2008**

This submission is intended to address the issues raised and analysis made in Ofcom's consultation document and to put forward Tiscali's views on the state of the UK pay TV market and what should be done to improve its competitiveness. Many key issues were raised in connection with the recent consultation on Sky's proposals for the DTT platform and Tiscali's response to that is attached as an annex and referred to where appropriate.

Answers are given to Ofcom's questions below. A representation of Tiscali's main concerns and requests for regulatory action is as follows:

**1 Wholesale content should be made available by aggregators with market power on a non-discriminatory basis across platforms. This is key to enabling the development of new platforms and to enabling the technological innovation and service development that will give increased choice and quality to the UK consumer.**

**2 Regulatory action should be taken to eliminate the opportunity for vertically integrated content aggregators with market power to exercise a restrictive influence on the way content producers deal with other downstream operators and the ability of alternative platforms to gain access to valuable content.**

**3 Regulatory action should be taken to limit the potential for powerful vertically integrated content aggregators to accumulate cross-platform rights that are not used, thereby restricting the ability of operators on other platforms to compete on a fair and equal basis.**

**4 Cross-industry cooperation on the development of technical standards for set-top boxes should be instigated, to ensure that a consistent approach is taken as services change and consumer harm and confusion does not result where it can be avoided.**

It is appropriate at this stage in Ofcom's work for a thorough consideration of the nature and operation of the content rights market to take place. A clear view should be taken on how well the current FAPL remedy works in the UK market and whether it should be extended (or reduced) for the good of the consumer. The power of certain types of collective rights aggregation and selling flows downwards through the market. Competition effects of that collecting of rights should be examined and possibilities around auction remedies and onward wholesale obligations explored.

It is also appropriate for Ofcom to connect the work of the investigation with the pay TV DTT consultation and consider what actions could be taken to prevent one powerful firm dominating that platform, assuming that aim is desirable. If such actions are not feasible, then it will be necessary to ensure that Sky acts fairly in channel composition and content availability between platforms, so the consumer does not suffer from a degradation of choice as a result of any new developments.

## **Consultation questions**

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

Tiscali is in general agreement with the criteria Ofcom proposes. Particular emphasis should be placed on platform innovation as Tiscali believes this is an area of some vulnerability that offers great potential for change in the quality and variety of service consumers can receive. It is also important, as Ofcom acknowledges, that this review is coordinated with regulatory work on platform markets and DTT proposals and that delays and missed opportunities do not result because of overlap.

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

The overview gives a good picture of the nature of the UK pay TV market and current developments within it.

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

Yes, the supply chain representation made by Ofcom is accurate and useful.

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

Tiscali will provide technical and business development details to Ofcom alongside this consultation response to give a better insight on access to wholesale content for smaller operators, technical issues affecting IPTV and the potential for services such as subscription VOD (SVOD) and consumer benefit.

It is vitally important that Ofcom's focus remains on the facts of the UK market and what might need to be done to protect and advance the interests of competition and thus the consumer, rather than commercial and public conflicts between large companies.

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

Tiscali agrees with Ofcom's views on the levels of content choice available in the UK.

Ofcom's analysis of platform choice is accurate, but the IPTV footprint is subject to change as Tiscali and others roll out to new areas in the UK. Tiscali TV services are only available to a limited proportion of the UK population and the ability of Tiscali to extend the reach is limited by the fact that BT wholesale products are not fit or adequately priced to allow off-net (non-LLU) TV delivery by anyone other than BT Retail and the fact that they do not enable multicast TV over DSL. BT Vision is theoretically available across the whole country and one assumes that network capabilities upon which it is based may be equivalently supplied to other customers. The fact that Tiscali, the only other IPTV operator with any scale, cannot make an

economically viable case for off-net TV based on the BT product set implies that BT is able to run its service at a significant loss.

**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?**

Ofcom does not really analyse innovation levels, but conclusions are sound. It is important that inputs are received from the industry to provide Ofcom and the public with a clear view of the current state of innovation and potential for the future. Along with the possibilities presented by technological advances, there are also risks associated with non-compatibility issues and proliferation of set-top boxes. This is relevant to the review of Sky plans for pay services on DTT and is mentioned in Tiscali's submission (see annex).

Innovation in the market definitely offers potential benefits for UK consumers. The focus for medium term innovation is IPTV as this is the platform with the most ground to cover to catch up with the competition. The ability to run a national network (see above), availability of premium content on the same terms as competitors (see the rest of this submission) and the development of set-top boxes incorporating all key features (DTT, DVR, HD etc) will all enable IPTV operators like Tiscali to compete effectively and offer new benefits to consumers. Examples of these include SVOD for premium movies allied with equivalent sports packages and interactivity, flexibility and convergence inherent in the IPTV platform.

**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?**

Ofcom's analysis of pricing structures is accurate and representative of the current UK situation.

Although it is true that consumers must usually sign up to a basic package to be able to buy a premium content offering, this practice is economically necessary to allow providers to construct overall packages and pricing strategies that optimise revenue generation and guarantee choice and quality for consumers. Negative impacts on consumers are observed where access to wholesale premium content is impossible (as opposed to expensive retail arrangements), making service offerings incomplete or expensive and limiting the competitive potential in the market.

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

Tiscali does agree and believes that no adequate analysis has been offered to properly measure prices paid throughout comparable countries or assess differences in quality between countries.

**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?**

Tiscali does agree with Ofcom's assessment. Sky must be pursuing many objectives other than short term profitability and growth is one of them, but that doesn't mean that consumer harm is being done or that excessive profits will result at some point in the future. It is natural for Sky to act as a rational vertically integrated firm and optimise its commercial position throughout the value chain. Regulatory remedies already exist to address market power concerns and the opportunity now is to update and adjust these to properly reflect the market position and promote competition and innovation for the good of the UK consumer.

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

As mentioned above, Tiscali intends to supply further detail on the IPTV market to assist Ofcom in assessing the market and the potential effects of regulatory action on competition and consumer choice.

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

Ofcom's approach to defining markets is sound.

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

Tiscali agrees with definitions of premium content markets and believes that sports markets include Sky Sports and Setanta.

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

Tiscali believes that FTA services do offer a substitute to basic pay TV services, acting as a competitive constraint to the basic market. The demand for basic packages is stable enough without it having to be derived from demand for premium content and it is often driven by platform choice and brand commitment. 'Free' TV that competes in the same space as basic packages offered by Sky and Virgin Media currently includes all content supplied by PSBs (analogue, digital or otherwise) as well as Freeview. No TV is really free to the consumer as it is paid for through advertising or the licence fee if not directly per viewing or by subscription.

Tiscali believes that the similarities between entry-level basic pay TV offerings and FTA services are enough to prove substitutability and that FTA and basic are in the same market.

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

Tiscali agrees with Ofcom's assessment.

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

Tiscali is in general agreement with Ofcom's analysis and believes the full range of characteristics has been identified. Some points in this regard are worth highlighting:

- Content aggregation is necessary to the construction of viable pay TV propositions that are relatively easy for consumers to understand and offer value for money. It may be true that not many specific content items are wanted by all consumers, but there are some and they are likely to be enduring and significant.
- Aggregation remedies such as that applied to the FAPL by the EC may address competition concerns around collective rights selling, but will not necessarily result in the same or better conditions for consumers. Setanta now has rights to certain FAPL match packages that used to belong to Sky, but the consumer must buy a more expensive channel package to watch them without any available HD offering (Setanta services versus Sky's PremPlus service, now defunct).
- Cross-technology rights allow powerful aggregators to collect rights (to movies, for example) for platforms that it is not necessarily interested in, thereby seriously impacting the ability of alternative platform operators to develop a competitive, attractive service. This issue is currently hindering the development of IPTV in the UK.
- Issues of complexity and confusion may arise for consumers with the proliferation of set-top boxes in the UK. This is relevant to the DTT consultation and has been mentioned in Tiscali's response (see annex). Without any collective effort to avoid unnecessary variety in technologies, consumer harm may result.

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

Ofcom does seem to have correctly captured the different aspects of vertical integration. The potential for action contrary to the best interests of UK competition is acknowledged and this can take the form of foreclosure in both retail and platform markets.

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

Ofcom correctly identifies the effects on retail competition. Key points that Tiscali would emphasise are as follows:

- The observation that market power at the wholesale level can result in high retail prices regardless of the existence of retail competition is well made. In the UK market there is competition on platforms (to a degree) and between platforms (to a greater degree), but no equality in access to premium content. The consequence is reduced flexibility and high prices for some retailers, impacting consumer choice.
- Consumers expect a certain level of 'completeness' in a bundle and expect to be paying for that. Adding more channels may not increase willingness to pay,

as Ofcom observes, but removing them could well result in consumer reaction (giving incentive for retailers to maintain a correct bundle size and reflecting the power of the wholesaler over retail competitiveness).

- It is clear that the phenomenon of the dominant retailer (on a platform) occurs in the UK market. Although competing retailers for movie and sports content exist on satellite, Sky is dominant and Virgin Media enjoys a similar position on the cable platform.
- Buy-through is probably more valuable as an enabler of bundling efficiency than threatening as an inhibitor of competition in basic content; access to wholesale premium content and absence of restrictive trading terms across content types and platforms are the most important issues to address.

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

Ofcom identifies key areas of risk to effective competition. Comments are as follows:

- The effect of advertising revenues on channel wholesaling will surely diminish as advertising impacts reduce in a world of personal viewing schedules, VOD and DVRs.
- The concept of the ‘critical diversion factor’ is only of value if there is potential for a change in arrangements on the supply of premium content. If there is no wholesaling (on the same and/or different platforms) and no prospect of it, then the concept is academic. This factor does exist in limited circumstances but is significantly affected by the switching issues referred to.
- Ofcom correctly observes that Sky wholesales premium content to cable but not to satellite or DTT. The lack of wholesaling to IPTV is not mentioned and should be acknowledged, especially as the platform offers the potential for increased choice and service innovation to the benefit of consumers.
- Exclusivity clauses, preventing the supply of content to some platforms on an equal basis, have a disproportionately serious impact on IPTV as a developing platform. Not only can the content provider/aggregator limit channel availability for its own channels, but it can also influence the way its suppliers deal with platforms and retailers in a negative way (by placing conditions on its trading relationships with content producers that prevent those producers from trading equivalently with other operators).
- The incentive to supply reduced quality of content to competitors may manifest in less interactive functionality (such as the Sky red button), but those decisions are as likely to result from technical factors and a legitimate desire to protect image, identity and service reputation. Alternative platforms such as IPTV may add to or improve functionality, but the opportunity to make that work are lost if access to content is limited in a market power scenario.
- Ofcom correctly describes the buy-through phenomenon in the UK. Buy-through does have the effect of reducing competition for basic content between retailers on the same platform and adds to the lack of competition between retailers on different platforms, where access to wholesale premium content does not exist.
- Issues with the economics of stand alone premium content pricing would probably make a conversion to such a model of supply unviable. The current

position of Setanta, benefiting from a premium content rights remedy, should be acknowledged; more time is needed to assess whether that business model is sustainable and if there is more potential for content aggregation remedies in regulation.

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

Tiscali shares Ofcom's concerns for the future of the market and the prospects for inter-platform competition and various issues affecting the success of the IPTV platform have already been mentioned above.

It is clearly the case that there are barriers to entry in the market for wholesale premium content and that Sky currently has SMP in the relevant UK markets. The availability of rights on a staggered basis makes contesting these markets very difficult and the fact that rights are often sold on a cross-technology arrangement can mean that they are not exploited on all platforms when the aggregator has an overriding interest in just one. Existing remedies such as the FAPL EC rule and requirement for Sky to wholesale to Virgin Media do have an effect on the extent to which monopolist tendencies are followed, but they need to be revised and re-applied to the whole market and all platforms.

The IPTV platform is currently suffering the consequences of lack of access to premium content and ability to compete on an equal basis with powerful vertically integrated competitors. The experience of IPTV operators in gaining access to wholesale content has been mixed so far, but will have to improve to allow the platform to develop in such a way that its potential is fully realised.

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

The major impacts identifiable are reduced choice between platforms and retail offerings and reduced ability to benefit from technological innovation. Certain aspects of the market, such as buy-through and bundled pricing, are likely to be necessary factors (to some degree) that allow other consumer benefits to transpire. The lack of equality in access to content is not such a factor and this issue can be addressed by revising existing regulatory approaches to take account of new platforms and market developments.

Platform equality will benefit DTT and IPTV in particular. The innovation potential in IPTV is significant, allowing a richness and depth of features and control that cannot be achieved by other platforms. This potential will not be realised for the good of consumers unless the platform is allowed to develop on a level playing field in the UK. Issues to be addressed include the market power enjoyed by Sky in aggregated rights for premium sports and movies content and the ability of powerful platform operators to influence the way other rights holders trade with alternative platforms. As a particular example, subscription VOD should be able to provide the consumer with more choice and flexibility through the IPTV platform than any linear channel can offer. This will not happen unless IPTV operators can package the right premium content into those services and really compete with what is currently available on cable and satellite.

In conclusion, content aggregation and retail bundling can be effective in the market, allowing for efficiencies in supply and benefits for consumers, but concerns may arise from market power being leveraged into other markets without any such gains.

Wholesale content should be made available by aggregators with market power on a non-discriminatory basis across platforms. This is key to enabling the development of the IPTV platform in the UK, allowing better content mixes, pricing flexibility and subscription VOD for premium movie content and bringing a real change to the level of consumer choice and quality that exists in the market.



## Annex

### BSkyB DTT Proposal

#### Tiscali UK response to Ofcom consultation

Sky proposes to remove the three free-to-air (FTA) channels it currently provides on DTT and replace them with five pay TV channels. These would include premium sports and movies content. Sky proposes to use technical standards that will require new set-top boxes that may not be compatible with other services on DTT.

The key points that Tiscali would like to make in relation to this consultation are set out below. Brief responses to the questions posed within the document follow at the end of this submission.

- Pay TV already exists on DTT. The Sky proposal would provide better content and more choice to consumers.
- Technical standards for set-top boxes are already changing (to enable HD broadcast, for example), so any proposal to improve them would be consistent with this reality.
- Consumers would not be compelled to change set-top boxes, other than to be able to take the Sky service, and may have to change to receive HD services in future anyway.
- Sky would be able to leverage power and control over premium content into pay DTT (which is just a part of the all pay TV market), although the situation for sport (Setanta pay services already being present on DTT) would be slightly different to movies.
- Sky is able to maintain dominance in the control of premium content (sports and movie rights) because of its power in the retail market (satellite pay TV) in a form of 'virtuous circle' but will only sell to Virgin Media on a wholesale basis.
- Any remedies to address such dominance should be in place regardless of plans now or in the future for pay TV over DTT by Sky or others.
- **An extended remedy of obliging Sky to sell premium content on a wholesale basis to all market players (satellite, DTT, IPTV and cable) is required in pay TV and should therefore apply in the conclusion of this consultation.**
- **Cross-industry cooperation on the development of technical standards for set-top boxes should be instigated, to ensure that a consistent approach is taken as services change and consumer harm and confusion does not result where it can be avoided.**
- Dominance in the control of rights over premium content is bought rather than owned and initial control always lies with the content owners; it is appropriate for regulators to review existing remedies and perhaps investigate ways to attach wholesaling obligations to content deals to address dominance issues affecting the industry at their root.

Answers to questions posed by Ofcom in the consultation document are given below.

**1 To what extent do you consider that DTT, Dsat, cable and IPTV are in competition with one another for subscribers of pay TV services – either at present or in the future?**

The platforms are in competition for pay TV subscribers and that competition will grow, but the market is dominated by satellite and cable and will remain so for some time to come. Sky is the most powerful competitor in the market, benefiting from effective technology, complete geographical coverage and control of significant content rights. Virgin Media is very competitive (or should be) in the 50% of the UK it can reach on the cable network. DTT is a very effective platform in the 70% of the UK it reaches, but the competitiveness of pay TV over DTT depends on content availability and the propensity of consumers to pay for content at all on a platform they regard as 'free'. Pay TV services provided over IPTV (BT Vision and Tiscali TV, for example) are in competition with the other platforms but likely to be hindered by lack of access to content at competitive rates (premium sports and movies etc) and lack of ability to reach the whole of the UK (Tiscali in particular cannot reach half the UK because supply over BT Wholesale products is unviable). Competition between the platforms in pay TV should increase in the near term, but only if regulatory issues currently facing Ofcom are effectively dealt with.

**2 To what extent do you consider the Proposal is likely to deliver benefits to the consumer?**

Consumers would benefit from the provision of pay content on DTT that includes some premium viewing, adding to the choices available and removing channels that consumers may deem less desirable. Freeview viewers would be able to access a type of content previously unavailable, as well as more of something already there (Premier League football). More competition on DTT should encourage technical development and competitive constraints on pricing, although the former may create some confusing proliferation of set-top boxes.

**3 To what extent do you consider that there is scope for sustainable competition in pay TV on the DTT platform and, more broadly, across all pay TV platforms?**

Without action to address dominance issues in the control of pay TV content, mainly concerning Sky, it is likely that Sky will eventually dominate pay TV on DTT in the same way that it dominates pay TV in the UK market as a whole. Regulatory actions necessary should arise from this consultation and the ongoing pay TV market investigation and wholesale remedies will be required to address problems identified. Dominance in pay TV is derived from content rights and retail market power that affects the ability of other players to compete. The different types of dominance enable and reinforce each other, so some form of functional separation and transparent internal trading will be necessary to promote a competitive environment.

**4 What are likely to be the key aspects of competition between providers of retail pay TV services on the DTT platform? E.g. what is the role of premium sports and movies content?**

Competition for pay TV services on DTT could be expected to focus on premium sports and movies content. An increase in pay content available on DTT reduces the difference between traditionally 'heavy' pay TV services (Sky and Virgin) and DTT, which was developed as a FTA proposition that enabled customers to access digital channels without having to pay for extra content and make decisions on combinations of channel deals. Consumer choice will be increased and one would expect pay TV on DTT to maintain a level of popularity, but most consumers will continue to regard DTT as something they don't have to pay for on a monthly basis. Those that do pay subscriptions are likely to do so to access premium content that they could otherwise obtain from Sky or Virgin, having made the decision to remain a DTT customer. IPTV services that make premium content available on a comparable basis will aim to take a share of this business, of course.

Arrangements between content owners and the distributing operators will also be important to the future of pay TV on DTT. The current split in rights over Premier League football in the UK between Setanta and Sky will be effective in enabling some sort of competition for DTT pay services (but only if a choice is made between 'packages' of football matches). No comparable situation exists for key rights over movies content, however, and the dominant position in controlling premium content enjoyed by Sky would transfer to DTT.

**5 Do you consider that if Sky were to become the only provider of pay TV on the DTT platform it would be likely to have a significant detrimental effect on competition in the long term? How might this affect the development of other platforms for the delivery of pay TV services?**

It would be detrimental to competition in pay TV in general if Sky were to become the only provider of pay TV on DTT, because consumers would experience limited choice and the potential for DTT to provide balance and stimulate service and price innovation would be diminished.

Other platforms, such as IPTV, would continue to experience difficulty in competing against Sky if this situation were to transpire. If Sky gains control over pay TV and premium services on DTT, the incentives to limit others' access to content and the ability to do so will increase. The likely outcome would be to guarantee the niche characteristic of such services and entrench Sky control of the wider pay TV market.

The current existence of Top Up TV and Setanta on DTT should be encouraging in this regard, as the aim should be to ensure that services with valuable content remain on the platform and give good balance and breadth to choice available to consumers. It will obviously be important to ensure that technical aspects of proposed developments do not end this existence for the wrong reasons.

**6 To what extent, if at all, do you consider that the Proposal would be likely to lead to any of the public policy concerns outlined at Section 4?**

Tiscali does not believe that the Proposal would have any significant detrimental effects on the availability of FTA channels on DTT or that it would lead to major changes in terms of charges for previously free channels or the take-up of DTT.

Tiscali does believe that there are issues to address in respect of future incompatibility between set-top boxes, whether they are caused by Sky proposals or other developments like HD service provision or offerings from other providers.

**7 Specifically, to what extent do you consider that the Proposal would be likely to lead to consumer confusion?**

It is very difficult to predict levels of confusion that may arise in the minds of UK consumers, but easy to imagine some confusion arising. It is probably unlikely that issues with boxes will significantly affect the take up of digital television in the medium term. However, the market may present consumers with a set of choices that are sub-optimal and some form of intervention may need to be considered to remove the worst of these problems. As Sky is not likely to be solely responsible for any profusion of set-top box technologies, it may be difficult to enforce a solution on Sky alone. However, it will be necessary for Ofcom and the industry as a whole to consider these issues and try to produce sensible plans to deal with them for the good of the UK consumer.

**8 To what extent do you consider that it is beneficial for consumers to be able to obtain Sky and existing DTT pay TV content without having to purchase separate STBs?**

It would be beneficial for consumers to need only one set-top box to access pay TV content on DTT, but that aim may be unrealistic and impossible for Ofcom or anyone else to guarantee. See answers above for further relevant comment.

**9 Do you consider that the Proposal might lead to any additional public policy concerns?**

No.

**10 If Sky becoming the only provider of pay TV services on the DTT platform were likely to have a significant detrimental effect on competition, do you consider that it is possible to address this through a set of additional conditions and/or directions? If so, what form should these conditions/directions take?**

Taking account of what has been said above, Tiscali does believe that competition issues can be addressed by setting conditions that affect Sky and the other providers in the market.

Firstly, Sky should be required to wholesale content to other providers on a pricing basis that enables competition and does not unfairly impact Sky. This is likely to have to focus on premium sports and movies content and may raise issues about the control

of similar content by other parties and the consistency (or otherwise) of approaches taken to the sale of rights over such content in the market. The wholesale obligations to be placed on Sky should benefit all pay TV platforms, so there is consistency in opportunity between cable, DTT and IPTV. These obligations should be imposed along with commitments from Sky to trade internally on a transparent and equivalent basis, so that no unfair advantages may be gained by downstream parts of the Sky organisation and margin squeezing would be exposed and discouraged. In addition to the remedies described, a review of contractual conditions and rights deals that allow a dominant player such as Sky to influence trading between other parties and limit competition and the development of services should take place, probably as a part of the ongoing pay TV market investigation.

Secondly, a cross-industry collaborative approach should be taken to the development of technologies affecting compatibility of set-top boxes and the services that will be made available to consumers. This should aim to maximise the opportunity to adopt standards and cross-compatibility for the good of consumers and industry. If Ofcom finds that any provider is promoting the use of hardware or software that locks the consumer into buying a box for every service, then stronger action should be taken.

As mentioned briefly in paragraphs above, it may be appropriate for Ofcom to consider issues of control over content beyond the familiar boundaries of Sky versus the rest of the industry. This is likely anyway, as a coherent review and analysis of markets and existing remedies should be central to Ofcom's ongoing investigation of the pay TV market. Sky has been able to achieve a dominant position in the acquisition of premium content rights because of success in platform markets and the two elements of success support each other in a virtuous circle. If rights were sold with an obligation to wholesale to other market participants many issues may be solved, although it would be argued that the value of those rights would drastically reduce. Such ideas may be difficult to apply to movies content, where many studios and producers are supplying and issues centre on the ability of a dominant aggregator to control rights windows. They may be more appropriate to sports, where measures are already taken to ensure supply to more than one downstream customer (eg Sky and Setanta for Premier League football) but the market is still locked up by the lack of wholesale availability to all market participants.

Content wholesaling obligations will be central to remedies that Ofcom must apply to Sky dominance in the UK pay TV market, which is currently under investigation. For this reason, it is crucial that appropriate and consistent solutions result from this consultation and the outcomes are best for the UK at the end of both processes.