



# Review of the pay TV wholesale must-offer obligation

**Non-confidential version**

**Consultation**

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# About this document

This document represents the first phase of our review of the rules that require Sky to offer its Sky Sports 1 and 2 channels to other pay TV retailers on wholesale basis. The review will decide whether regulation of the supply of key sports content remains appropriate and, if so, whether any changes to that regulation are necessary.

In this document we consult on our assessment of whether, absent regulation, providers of channels which carry key sports content might limit distribution to some pay TV retailers and whether that would undermine competition.

We plan to set out the conclusions of our assessment and, where necessary, consult further on any proposed remedies, in 2015.

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## Section 1

# Executive Summary

- 1.1 The wholesale must-offer ('WMO') obligation imposed in 2010 requires Sky to offer to wholesale its Sky Sports 1 and 2 ('SS1&2') channels to other pay TV retailers with certain prices and terms set by Ofcom. We are reviewing the extent to which the WMO obligation remains appropriate or whether it needs to be modified in any way or removed.

## **The WMO was imposed in 2010 and there have been a number of developments in pay TV**

- 1.2 In 2010, we issued a statement ('the 2010 Pay TV Statement') which imposed the WMO obligation on Sky under section 316 of the Communications Act 2003 ('the Act') by inserting a condition in the broadcast licences of each of SS1&2 (and their HD versions). We said we would review the WMO obligation after three years.
- 1.3 There have been a number of developments in the pay TV sector since 2010, including the wider availability of sports content on competing retail offerings and platforms, an increased presence of over-the-top internet services and new devices providing additional means of accessing pay TV content. BT has also acquired key sports rights, launched BT Sport and entered as a vertically integrated provider of sports channels and pay TV services.

## **We will review whether there are practices which may prejudice fair and effective competition in pay TV services**

- 1.4 The WMO obligation seeks to address competition concerns arising from the supply of premium sports content. This review is therefore focussed on competition concerns which may arise in connection with the supply of sports content and does not assess whether the supply of other types of content may also give rise to competition concerns.
- 1.5 At the core of the review is an assessment of whether, absent regulation, providers of channels which carry key sports content may engage in practices which would be prejudicial to fair and effective competition in the retailing of pay TV services on a forward-looking basis. Key sports content is that which is capable of influencing the choice of pay TV provider for a significant number of consumers.
- 1.6 We have identified two types of practice which might, in certain circumstances, give rise to concerns:
- i) non-supply of key content, i.e. key content not being supplied to certain pay TV retailers and/or platforms; and
  - ii) distribution of key content but on terms which would not enable rivals to compete effectively in pay TV retailing or potentially other parts of the value chain.

In this document we refer collectively to both types of practice as limited distribution.

- 1.7 Limited distribution of key sports content may make it more difficult for pay TV retailers to compete for subscribers who value this content and may therefore result

in barriers to expansion for those retailers. It may also affect the ability of pay TV retailers to develop their own channels through the acquisition of key sports content.

1.8 Our assessment considers three questions to determine the extent to which such practices may prejudice fair and effective competition:

- What constitutes key content - i.e. is there content that is capable of influencing the choice of pay TV retailer for a significant number of subscribers?
- To what extent would limited distribution of key content be likely to prejudice fair and effective competition?
- To what extent do holders of key content have incentives to limit distribution of that content?

1.9 In this document, we have focussed on the impact of limited distribution of key sports content on competition between pay TV retailers who use traditional broadcast methods (such as digital terrestrial TV, satellite and cable) to offer linear channels bundled with on-demand services. We recognise that new pay TV services provided 'over-the-top' ('OTT') on the internet have emerged in recent years and may offer some alternative to pay TV subscribers. However, to date, OTT services have not offered the full range of services offered by more traditional pay TV retailers, being typically focused on on-demand movies and general entertainment. The majority of subscribers to such services also subscribe to a more traditional pay TV service<sup>1</sup> and may therefore view these services as only a partial substitute. In assessing the impact on competition of limited distribution of key sports content, we have therefore taken account of the fact that OTT providers offer only a limited competitive constraint at this stage. We recognise, however, that this position may change as OTT services develop.

### **Limited distribution of Premier League and Champions League content may prejudice fair and effective competition**

1.10 Our analysis indicates that the availability of sports content on a retail pay TV service continues to be an important driver of consumers' choice of pay TV retailer – a large number of consumers pay a premium specifically to access sport content. Whilst consumer habits continue to evolve with the emergence of new services available on a variety of devices, the principal means of consumption of pay TV services continues to be through subscription to pay TV retail services which offer a core bundle of content and additional services. There are around [3<] subscribers on traditional pay TV services.<sup>2</sup>

1.11 Live coverage of Premier League matches stands out as being the most important sporting competition to a large number of consumers. The value that consumers place on this content is evident from the stated importance of this content compared to coverage of other sporting events and is reflected in the amount spent on sports

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<sup>1</sup> For example our November 2013 survey indicated that of those respondents that had paid to use LOVEFiLM (now Amazon Prime Instant Video) or Netflix, in the previous 6 months, 69% and 77% were also subscribers to pay TV services from Sky, Virgin Media, TalkTalk TV or BT TV. Question B1A.

<sup>2</sup> Subscriptions to OTT services have been growing fast with Netflix now having around 3m UK subscribers. However, as noted in the previous footnote reference, the majority of OTT subscribers also have a subscription to a traditional pay TV service.

rights by channel operators. Statements made by market players reinforce this view that live Premier League content is of particular importance to consumers and pay TV operators alike.

- 1.12 Live Champions League coverage is also important to a large number of consumers, albeit to a lesser extent than live Premier League coverage, and may influence consumers' choice of pay TV retailer. Coverage of other sporting events, however, does not appear to be sufficiently important such that on their own they would be capable of influencing a significant number of consumers' choices of pay TV retailer. In light of those findings, we consider that live Premier League coverage and, to a lesser extent, live Champions League coverage are likely to influence the choice of pay TV retailer of a significant number of consumers and therefore constitute key content.
- 1.13 Limited distribution of this key sports content may diminish both static competition and dynamic competition if pay TV retailers are unable to compete for a significant number of high-value pay TV subscribers as a result and, in turn, are unable to grow their subscriber base as effectively as if they had had access to the key content. Competition may be impacted not only in respect of competition for high-value subscribers but also in respect of the provision of pay TV services to other subscribers. In addition, limited distribution of key sports content may also restrict the ability of pay TV retailers to develop their own sports channels through the acquisition of key sports content. Retail pay TV competition may therefore be less effective at a number of levels.
- 1.14 In considering the impact of limited distribution of key sports content on retail pay TV competition by particular market operators, we have assessed the amount of key sports content they hold and their market position. Where an operator holds only a small amount of key sports content, limited distribution of such content may result in little effect on competition in pay TV. Market position is also important because the impact of limited distribution of key sports content on competition will differ depending on the market position of the holder even where the holding of key sports content is the same. For example, if an entrant or expanding existing firm limits distribution of key sports content, there may be a reduction of some rivals ability to offer an equivalent product. However, competition could also be increased if it allows the entrant to differentiate its product, overcome barriers to entry or expansion and grow into a more effective competitor in the future. In contrast if an incumbent firm with a strong market position limits access to key sports content this may diminish both static and dynamic competition if it makes it more difficult for new or growing firms to enter and compete effectively.
- 1.15 Currently, Sky Sports and BT Sport are the only pay TV channels to show key sports content. We have assessed the impact of limited distribution of these channels by BT and Sky in the context of their current holdings of sports rights, recognising that BT has acquired the rights to broadcast live Champions League content from August 2015 and Sky will no longer show this content from the end of the 2014/15 season.
- 1.16 The content Sky holds appears likely to influence the purchasing decisions of a sizeable proportion of high-value pay TV customers and a retailer without access to this content would find it more difficult to compete for these subscribers. Sky continues to hold the majority of rights to live Premier League matches (over 75%) and, even with the Champions League content moving to BT in 2015/16, Sky's share of revenues for the supply of key sports channels seems likely to remain above 70%. Sky also has a strong market position at both the channel supply and retail pay TV

levels. Limited distribution of its key content might therefore have a significant effect on competition in pay TV retailing.

- 1.17 BT has been growing its portfolio of key sports rights - it has rights to around 25% of Premier League matches per season as well as the forthcoming Champions League broadcasting rights. Nevertheless, survey evidence suggests that the content available on BT Sport influences only a small proportion of consumers' choice of pay TV retailer. In addition, BT's share of revenues in the supply of key sports channels is modest (no more than 20% currently) and it has a relatively small retail TV subscriber base. Limited distribution of BT's content may therefore result in a small impact on short-term competition<sup>3</sup> however this may be offset if BT establishes itself as a more effective competitor.
- 1.18 The above assessment is based on confirmed current and future holdings of key sports rights. However, the rights to the broadcast of live Premier League content held by Sky and BT will expire at the end of the 2015/16 season. Rights to subsequent seasons will be the subject of an auction process and we recognise that this may change our assessment. We will consider whether the outcome of any subsequent auction changes our assessment in the next phase of this review.<sup>4</sup>

### **Absent regulation, holders of key content may face incentives to limit distribution of that content**

- 1.19 Having established that a provider holds key content and assessed whether limited distribution of that content may be prejudicial to fair and effective competition we then assess whether there are reasons to believe that holders of key content may limit distribution, absent regulation. If an operator is unlikely to engage in limited distribution of key sports content (and consequently the risks to fair and effective competition are limited), regulation is unlikely to be appropriate.
- 1.20 We have identified a number of market characteristics which might cause holders of key sports content to limit distribution of that content. These characteristics include, but are not limited to, the degree of strength providers have in channel supply, whether they are vertically integrated with a retail pay TV business and the scope of their interests in downstream and related markets (e.g. broadband).
- 1.21 For key content holders like Sky and BT that have interests in both channel supply, retail pay TV and broadband, the decision about whether to limit distribution involves a trade-off:
- Limited distribution may involve short term costs if it results in foregone wholesale or self-retail revenues to subscribers on a rival retailer's platform that are not recouped through higher sales elsewhere. This short term cost will be higher

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<sup>3</sup> We note, in this respect that BT does not currently supply TalkTalk TV with BT Sport.

<sup>4</sup> We are also currently investigating a complaint from Virgin Media under the Competition Act 1998 in relation to the way in which the Premier League sells live television rights ([http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01138/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01138/)). Whilst this is a separate investigation from this review, we recognise that if its outcome results in a change to the way in which rights are sold, this may impact upon our assessment.

where the rival's platform has a large number of subscribers and the propensity of consumers to switch away from its platform is low.<sup>5</sup>

- However there may also be long term benefits to the content holder as a result of limited distribution that could offset or overcome any short term losses. This might be the case, for example, where limited distribution has an impact on competition and can be used to protect the market position of the content holder.

1.22 We note that Sky is currently supplying all of its Sky Sports channels to a number of competing pay TV retailers. On the basis of the evidence before us, however, it is unclear as to whether this is as a result of Sky's commercial incentives or a consequence of the regulation imposed in 2010. We have identified that there may be a risk that Sky has incentives to limit distribution of its key content in the absence of regulation. In particular, in respect of the supply of key sports content to rivals with relatively small numbers of subscribers, there may be benefits for Sky from limiting distribution of its content where such a strategy could slow the growth of those pay TV retailers and help protect Sky's position.<sup>6</sup>

1.23 Given the relative size of BT's pay TV platform and Sky's satellite and Virgin Media's cable platforms, in terms of subscribers, BT is likely to face significant short term costs if it limited distribution to these rivals' platforms. Limited distribution of BT Sport to those platforms is unlikely to generate significant long term benefits to BT given its current market position and holdings of key sports rights. BT may, nevertheless, have an incentive to limit supply to smaller platforms particularly where this has an impact on the profits made in its broadband business.

### **Subject to this consultation, we may decide to maintain or remove regulation on Sky**

1.24 Limited distribution of key sports content broadcast on Sky Sports to rival pay TV retailers could prejudice fair and effective competition. Under certain circumstances, Sky may face incentives to act in such a manner and our initial view is that regulation may be appropriate to address these concerns.

1.25 We recognise, however, that this proposition is dependent upon a number of considerations. The pay TV sector continues to evolve with the development of new services and distribution methods in such a way that the impact of limited distribution of the key sports content shown on Sky Sports on competition in pay TV services may be reduced. For example we may be less concerned if new players seek to acquire important sports rights where they are able to effectively monetise such investment from new sources. Although we have not seen any evidence that this is currently the case, the advantages which Sky currently enjoys in bidding for key sports content may weaken over time. Similarly if consumers use new means to access key sports content, e.g. using different devices or OTT services, it may be less important for pay TV retailers to access key sports content to compete effectively for pay TV customers.

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<sup>5</sup> This short term trade-off could also be positive, for example, where the propensity of consumers to switch back to the content holder at the retail level is high and where margins on retail customers are high relative to those made on customers on the rival retailer's platform.

<sup>6</sup> We note that Sky was not supplying SS1&2 to BT's YouView platform until it was brought within the scope of the WMO by the Competition Appeal Tribunal.

- 1.26 We welcome stakeholders' views on our assessment and the extent to which new and existing developments in pay TV may affect the extent to which limited distribution of key sports content is a cause for concern. We are therefore consulting on all elements of our assessment to determine whether or not regulation of Sky remains appropriate.
- 1.27 Limited distribution of BT's key sports content is less likely to impact on competition due to the smaller amount of key sports rights it holds and BT's market position. There may be circumstances in which BT would limit distribution of its key sports content to rival pay TV retailers. However, at this stage (with its current portfolio of sports rights), we do not consider it likely that, even if BT were to engage in limited distribution of the key sports content it holds, there would be a material effect on competition such that regulatory intervention would be warranted.
- 1.28 We have set out in this document the types of remedies which may address any competition concerns. Those remedies are illustrative at this stage in order to solicit stakeholder views and include the removal of the WMO obligation.

### **We are seeking stakeholder views on our assessment**

- 1.29 We will consider stakeholder responses before deciding on next steps and are inviting responses to our assessment set out in this consultation by 27 February 2015.

## Section 2

# Introduction and background

2.1 This section outlines the background to this review and how the rest of the consultation is structured.

## The WMO obligation was imposed under section 316 of the Act

2.2 The 2010 Pay TV Statement imposed conditions in the broadcasting licences held by Sky for Sky Sports 1, Sky Sports 2, Sky Sports 1 HD and Sky Sports 2 HD under section 316 of the Act.<sup>7</sup>

2.3 Those conditions, known as the WMO, require Sky to offer to wholesale Sky Sports 1 and 2 ('SS1&2') to other pay TV retailers with certain prices and terms set by Ofcom. In particular the WMO obliged Sky to:

- offer standard definition (SD) and high definition (HD) versions of SS1&2 on reasonable request to any person that wished to retail the channels;
- set a specified retail-minus wholesale price for SD versions of SS1&2 in addition to a requirement to supply on a fair, reasonable and non-discriminatory ('FRND') basis;
- offer HD versions of SS1&2 and interactive content on a FRND basis; and
- make available a 'reference offer' with details of wholesale supply arrangements, including minimum security requirements.

2.4 The decision to impose the WMO was, and continues to be, subject to litigation before the Competition Appeal Tribunal ('CAT'), and the Court of Appeal.<sup>8</sup> At the outset of that litigation in 2010, the CAT put in place interim relief arrangements maintaining the effect of the WMO in relation to the offer of SS1&2 to BT (via digital terrestrial television – 'DTT'), Virgin Media (via DTT and cable) and Top-Up TV (via DTT).<sup>9</sup> Those arrangements were extended to Real Digital (via satellite) in November 2010 and to BT's IPTV platforms in November 2014 (excluding over-the-top internet supply – 'OTT'). The WMO has therefore been partially in place since 2010.

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<sup>7</sup> Sky holds television licensable content service licences under the Broadcasting Act 1990 for its sports channels. These channels are "licensed services" for the purposes of section 316 of the Act. In the 2010 Pay TV Statement, having considered that it would not be more appropriate to proceed under the CA98, we exercised our powers under section 316 to impose the WMO as a condition in the licenses for Sky Sports 1, Sky Sports 2, Sky Sports 1 HD and Sky Sports 2 HD.

<sup>8</sup> The CAT found in August 2012 that Sky had not restricted distribution of Sky Sports channels. However, in February 2014 the Court of Appeal found that the CAT had failed to properly consider Ofcom's concerns in relation to price. The Court of Appeal has therefore remitted the case to the CAT for the decision to be retaken.

<sup>9</sup> The Top-Up TV's retail pay TV service closed in October 2013.

## In line with our duty to review regulations we impose, we are now reviewing whether the WMO remains appropriate

- 2.5 Section 318 requires us to review from time to time any condition we have imposed for a competition purpose under section 316. In the 2010 Pay TV Statement we said we would review the WMO after three years, to establish whether there had been any areas of material change, such as a major change in the ownership of key rights. Our review was delayed, however, by the ongoing litigation against the WMO. Whilst the appeal against the 2010 Pay TV Statement is ongoing, the CAT and the CoA have made clear that Ofcom has the power under section 316 to impose a remedy such as the WMO.<sup>10</sup>
- 2.6 There have also been a number of developments in the pay TV sector since 2010 which may have affected the operation of competition, including an increase in take-up of pay TV services, the development and entry of OTT services, the launch of BT Sport and the increasing importance of bundling of pay TV services with broadband and telephony (known as 'triple-play').
- 2.7 Therefore, in April 2014 we announced that, on the basis of the confirmation of our powers under section 316, and in light of our ongoing duty to ensure fair and effective competition in this market, we had decided to review the WMO.<sup>11</sup>
- 2.8 The focus of the current review is the whether the WMO remains appropriate, in light of market changes, and therefore will be considering the extent to which practices in respect of the provision of key sports content may prejudice fair and effective competition in the retailing of pay TV services.<sup>12</sup>
- 2.9 The focus of this consultation is our assessment of whether there are arrangements or practices which may be prejudicial to fair and effective competition in the supply of pay TV to consumers within the UK (which we refer to as retail pay TV). Retail pay TV has traditionally been delivered over retail platforms such as Sky's digital satellite ('DSat') platform and Virgin Media's cable network incorporating both hardware (typically a set-top box) and content packages through the provision of television channels and services. We found in 2010 that sport was an important driver of the decisions of subscribers to these platforms.
- 2.10 As we discuss in Section 3, since 2010 there have been a number of developments in the delivery of pay TV including the launch of new platforms operated by BT and TalkTalk (YouView). In addition, some pay TV services are now provided 'over-the-top' ('OTT') e.g. via the open internet. This has led to the establishment of a range of pay TV retail services delivered using a variety of technologies. Traditional pay TV retailers increasingly offer OTT services as an addition to the main pay TV retail

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<sup>10</sup> <http://www.catribunal.org.uk/238-6549/1158-8-3-10-British-Sky-Broadcasting-Limited.html>

<sup>11</sup> <http://stakeholders.ofcom.org.uk/broadcasting/reviews-investigations/pay-tv/pay-tv-wholesale/>

<sup>12</sup> We therefore do not intend in this review to reconsider any of the issues that were before the Competition Commission in respect of the distribution of premium movies (<http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/movies-on-pay-tv-market-investigation>). We have also not included commercial supply (e.g. supply to pubs and clubs) within the scope of this review. In 2010 we excluded the supply of key sports content to commercial premises (e.g. pubs and clubs) from the WMO as we had not seen any evidence of limited distribution of premium sports content in this sector and we considered that the nature of competition for this type of supply was different to residential supply - 2010 Pay TV Statement, paragraph 9.230.

packages (e.g. to enable subscribers to access content when away from the home).<sup>13</sup> Sky and BT also provide OTT services to those that do not subscribe to their main pay TV retail service through NOW TV and the BT Sport app and online player.<sup>14</sup> OTT services are also offered on a stand-alone basis by new operators such as Netflix and Amazon Prime Instant Video.

- 2.11 In identifying the extent to which practices may be prejudicial to fair and effective competition in retail pay TV our primary focus has been to consider the impact of limited distribution of key content on competition between traditional pay TV retailers offering bundles of pay TV services including linear channels and on-demand services by traditional broadcast methods such as DTT, satellite and cable. We recognise that new pay TV services provided OTT may offer some alternative to some pay TV subscribers. However, as we explain in Section 6, because consumers are likely to view these services as a partial substitute and they may not yet be exerting a significant competitive constraint on pay TV retailing more broadly, we believe consideration of OTT services is unlikely to have a significant impact on our analysis of the potential impact of limited distribution of key content. As a result we have largely focussed on the impact of particular practices on competition between the traditional pay TV retailers.

## **We will take account of new sector developments in the next phase of our review**

- 2.12 If, following the outcome of this consultation we conclude that it is appropriate to intervene and impose some form of remedy, we will consult further on the details and appropriate scope of any remedy. If we conclude that it is not appropriate to intervene we will remove the WMO obligation.
- 2.13 Our assessment in this consultation is based on confirmed current and future sports rights holdings. However, the rights to the broadcast of live Premier League content held by Sky and BT will expire at the end of the 2016/17 season. Rights to subsequent seasons are expected to be the subject of an auction process and we recognise that this may change our assessment. We will consider whether the outcome of any subsequent auction changes our assessment in the next phase of this review. This consultation seeks to set out principles for analysing possible concerns about practices which might limit fair and effective competition (in particular in Section 4) which we will use to analyse the impact of any changes in the holdings of key content following the auction (i.e. who holds that content, and the how much they hold).
- 2.14 We are also currently investigating a complaint from Virgin Media under the CA98 in relation to the way in which the Premier League sells live television rights. Virgin Media alleges that collective sale of TV rights involves a breach of the Chapter 1 prohibition (concerning anti-competitive agreements) as a result of: (i) the output restriction (154 out of 380 matches are sold for live broadcast); and (ii) the sale of the rights on an exclusive basis.<sup>15</sup> Whilst this is a separate investigation from this review, we recognise that if its outcome results in a change to the way in which rights are sold, this may impact upon our assessment.

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<sup>13</sup> For example, Sky Go, Virgin TV Anywhere and the BT TV Everywhere service.

<sup>14</sup> The BT Sport application and online player is currently only available to those taking BT broadband.

<sup>15</sup> We opened the complaint on 18 November 2014. See:

[http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01138/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01138/).

## Overview of the document

2.15 The rest of this consultation is set out as follows:

- **Section 3** – presents an overview of the pay TV sector, in particular highlighting the major developments that have taken place since 2010
- **Section 4** – sets out our analytical framework for assessing competition in pay TV services;
- **Section 5** – sets out our analysis of what constitutes key sports content in terms of driving consumer pay TV subscription decisions<sup>16</sup>;
- **Section 6** - assesses the potential impact of limited distribution of key content on competition in the retailing of pay TV services. Annexes 6, 7 and 8 contain more detail on the analysis presented in this Section;
- **Section 7** - considers whether Sky and BT (as holders of key content) face incentives to engage in practices in the supply of key sports content which may be prejudicial to fair and effective competition; and
- **Section 8** - sets out our provisional conclusions and next steps.

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<sup>16</sup> We have undertaken two consumer surveys one in November 2013 and the second in October 2014. The data tables and technical appendices for these surveys are published here: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/pay-tv-research/>

## Section 3

# Developments in the pay TV sector

## Introduction

- 3.1 The 2010 Pay TV Statement noted that the pay TV sector has delivered substantial benefits to consumers since its emergence in the late 1980s. Sky has been at the forefront of delivering those benefits to consumers, as well as leading the developments in the market.<sup>17</sup>
- 3.2 Since 2010, there have been a number of developments that have had an effect on the distribution of pay TV content and the way in which consumers access it. There have also been developments in the provision of sports content. Nevertheless, certain characteristics remain in relation to sports content. In this section we set out the key developments across the sector.

## Pay TV take-up and revenues have grown since 2010

- 3.3 Following the completion of digital switchover in 2012, digital TV take-up has grown and is now at 95%.<sup>18</sup> Of those digital households, 53% pay for a TV service in addition to receiving free-to-air television (FTA). Across the main pay TV providers (Sky, Virgin Media, TalkTalk, and BT) total subscriber numbers have risen from around 14m in 2010<sup>19</sup> to roughly 16.5m currently.<sup>20</sup>
- 3.4 In 2013, pay TV subscription revenues were the main driver behind the TV industry's growth; revenues in pay TV grew by 6.7% to reach £5.9bn, with pay TV subscriptions now accounting for 46% of TV industry revenue.<sup>21</sup> This compares to £4.8bn in 2010 (41.5% of total industry revenue).<sup>22</sup>

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<sup>17</sup> 2010 Pay TV Statement, paragraphs 4.1 to 4.4.

<sup>18</sup> 2014 Communications Market Report ('CMR'), Ofcom, section 2.1.1.

<sup>19</sup> 2010 Pay TV Statement, paragraph 4.3.

<sup>20</sup> This figure is based on the providers' published results. As explained in footnote 23 below Sky's published results include Republic of Ireland and NOW TV subscribers. Excluding these the total is approximately [3<].

<sup>21</sup> 2014 CMR, Ofcom, section 2.1.1.

<sup>22</sup> 2010 CMR, Ofcom, section 2.1.2.

**Figure 3.1: Total TV industry revenue, by source: 2008-2013**



Source: Ofcom/broadcasters – See 2014 CMR Figure 2.35.

## While some pay TV retailers have grown in size, Sky remains the largest

3.5 Sky remains the biggest pay TV retailer with up to 10.7m TV customers,<sup>23</sup> compared to 9.7m at the end of 2010.<sup>24</sup> Sky offers a range of basic and premium<sup>25</sup> channels, as well as Freeview channels, and it principally uses DSat as a means of distribution. It has launched a variety of new initiatives since 2010, including Sky Go and NOW TV:

- Sky Go is free to existing Sky TV customers, and allows subscribers to watch the content available to them as part of their TV package live from their PC, laptop, smartphone or tablet. Sky states that 5.65m households are now registered with Sky Go.<sup>26</sup>
- NOW TV (launched in 2012) allows users to access a variety of Sky content on-demand, by purchasing monthly subscriptions (or daily/weekly passes in the case of sports content).<sup>27</sup> NOW TV is available either by purchasing a NOW TV box (for £9.99) or through a range of devices, including Google Chromecast, certain games consoles and mobile devices, as well as the YouView box. Sky does not publish separate subscription numbers for its NOW TV services - instead they are incorporated into its total TV subscriber figures. However, the number of NOW

<sup>23</sup> <http://corporate.sky.com/documents/investors/results/2015/q1-press-release.pdf>. Note Sky's reported subscriber figures include NOW TV subscribers and subscribers in the Republic of Ireland. Sky's UK only subscriber base on the Sky DSat platform, excluding NOW TV, is [x] (Sky's response to the WMO information request dated 31 October 2014).

<sup>24</sup> 2010 Pay TV Statement, paragraph 4.3.

<sup>25</sup> By 'premium' channels we mean those which are sold as a more expensive option on top of a basic tier of channels. Such channels usually include sports and movies content and can be bought as bundles of channels, or in some cases as individual channels.

<sup>26</sup> <http://corporate.sky.com/documents/investors/results/2015/q1-press-release.pdf>

<sup>27</sup> Sports passes are currently available for £6.99 (per day) and £10.99 (per week), although both prices are for a limited period only. The Entertainment and Movies passes are available for £6.99 and £9.99 per month, respectively.

TV subscribers has been estimated to be in the region of 360,000, as of September 2014.<sup>28</sup>

- 3.6 BT and TalkTalk have both emerged as a more significant presence in the pay TV market since 2010, following their involvement in the development of the YouView set-top box ('STB') which launched in 2012. YouView uses a combination of DTT and IPTV to deliver linear TV and on-demand services, as well as allowing users to pause, rewind and record live TV. The service is a joint venture between the public service broadcasters (BBC, ITV, C4 and C5), Arqiva, BT and TalkTalk.
- 3.7 At the beginning of 2010, BT's pay TV offering had 451,000 subscribers<sup>29</sup> – this has now grown to around 1m TV subscribers as of September 2014.<sup>30</sup> In 2010 it operated its BT Vision service primarily on a DTT basis through its Cardinal platform, although it also operated some services via IPTV over this platform. In autumn of 2012 BT re-launched its TV service with the new YouView box. Currently it therefore provides its TV service across both its legacy Cardinal platform and the YouView platform. As of September 2014 [X] of BT TV subscribers had a YouView box.<sup>31</sup> BT has committed to closing its first generation TV service in the first quarter of 2014/15 and exchanging its legacy STBs for YouView boxes.<sup>32</sup> BT TV is only available as part of a BT broadband package and it offers its BT Sport channels for free, as well as offering basic and premium channel packages for an additional charge.
- 3.8 Since 2010, the number of subscribers to TalkTalk's TV service has also risen significantly, from 50,000<sup>33</sup> to over 1.2m as of November 2014.<sup>34</sup> TalkTalk offers a range of TV packages through its YouView box, including basic and premium packages. Its TV service is only available to customers who also take its broadband service.
- 3.9 Virgin Media offers a range of FTA, basic and premium channels through its digital cable network, which is available to 44% of UK premises.<sup>35</sup> As of end of June 2014, Virgin Media had 3.7m TV subscribers,<sup>36</sup> which is broadly similar to the number of subscribers it had in 2010.<sup>37</sup> It provides services through its TiVo STBs, which it launched in 2010.<sup>38</sup> 52% of all its TV subscribers are now TiVo subscribers, with the remainder still on its legacy STBs.<sup>39</sup> In June 2013, Virgin Media was acquired by Liberty Global (the largest international cable company, with operations in 14 countries).

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<sup>28</sup> Enders Analysis estimate for end of calendar Q3 2014.

<sup>29</sup> 2010 Pay TV Statement, paragraph 4.39.

<sup>30</sup> <http://www.btplc.com/News/ResultsPDF/q414-release.pdf>

<sup>31</sup> BT's response to the WMO information request dated 3 November 2014.

<sup>32</sup> <http://www.btplc.com/Sharesandperformance/Quarterlyresults/Quarterlyresults.htm>

<sup>33</sup> 2010 Pay TV Statement, paragraph 4.39.

<sup>34</sup> <http://www.talktalkgroup.com/~media/Files/T/TalkTalk-Group/pdfs/reports/2014/h1-results-11-11-2014.pdf>

<sup>35</sup> As of June 2014 – CMR 2014, Ofcom, section 1.3.2.

<sup>36</sup> <http://investors.virginmedia.com/phoenix.zhtml?c=135485&p=irol-financial-results>

<sup>37</sup> <http://phx.corporate->

[ir.net/External.File?item=UGFyZW50SUQ9MTcwNDIwfENoaWxkSUQ9LTF8VHlwZT0z&t=1](http://ir.net/External.File?item=UGFyZW50SUQ9MTcwNDIwfENoaWxkSUQ9LTF8VHlwZT0z&t=1)

<sup>38</sup> TiVo is a DVR offered to Virgin customers that also offers customers a range of features, including the ability to pause live TV, and catch up on-demand content.

<sup>39</sup> <http://investors.virginmedia.com/phoenix.zhtml?c=135485&p=irol-newsArticle&ID=1899958>

- 3.10 EE also recently launched a pay TV service (in October 2014).<sup>40</sup> Its 'TV smart box' offers Freeview channels, some catch up and on-demand content, as well as recording functionality (controlled via smartphones and tablets). It is offering its TV service for free to all EE mobile customers who sign up to one of its broadband plans. In addition Vodafone announced in November 2014 that it will be launching a broadband and TV service in spring 2015.<sup>41</sup>
- 3.11 Top-Up TV, which previously provided a selection of content via DTT, ceased operation of its retail pay TV business in October 2013.

### **There are now many different ways for consumers to access content**

- 3.12 The average household now typically has four internet-enabled devices.<sup>42</sup> This is consistent with increased broadband take-up and increased broadband speeds. Broadband take-up is now at 77% (up from 71% in 2010),<sup>43</sup> and 27% of all broadband connections are now superfast, compared to 0.3% at the beginning of 2010.<sup>44</sup> Average broadband speeds have also increased, from 5.2Mbit/s in May 2010, to 18.7Mbit/s in May 2014.<sup>45</sup>
- 3.13 Figure 3.3 below demonstrates the number of devices other than TV sets being used to access content. Half of all adults now claim to either always or sometimes watch TV online, with over a third (36%) claiming to do this every week.<sup>46</sup> Nevertheless, the majority of viewing is still of live TV and on the main TV set.

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<sup>40</sup> <http://ee.co.uk/our-company/newsroom/2014/10/08/ee-merges-smartphones-tablets-and-tv-into-new-home-tv-service>

<sup>41</sup> <http://www.bbc.co.uk/news/business-30000481>

<sup>42</sup> CMR 2014, Ofcom, section 4.2.5.

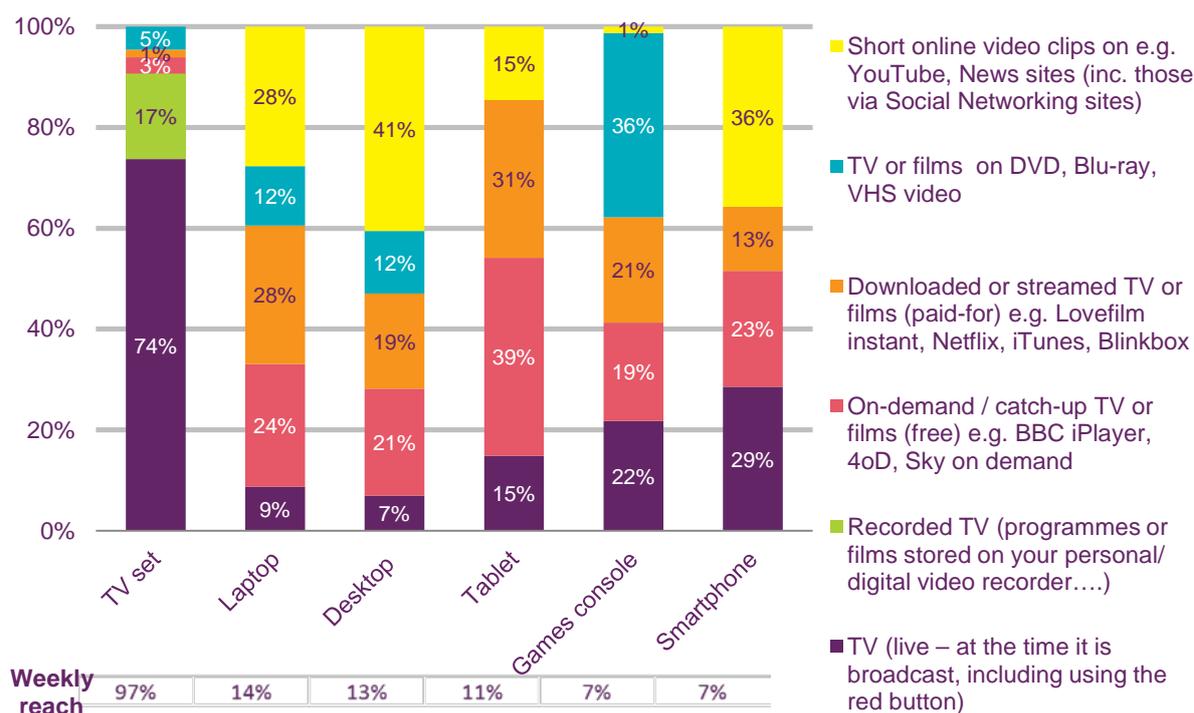
<sup>43</sup> CMR 2014, Ofcom, section 1.2.

<sup>44</sup> CMR 2014, Ofcom, Figure 1.5

<sup>45</sup> <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/broadband-speeds/broadband-speeds-may2014/>

<sup>46</sup> CMR 2014, Ofcom, section 1.4.6. International Communications Market Report ('ICMR') 2014, Ofcom, p.134 - <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr14/international/>

**Figure 3.2: Proportion of watching activities, by device**



Source: Digital Day 7-day diary. Figure 1.61 2014 CMR, Ofcom

- 3.14 Many of these internet-enabled devices, in particular some of the more recently launched products such as smart TVs, Google’s Chromecast, and Apple TV, offer users the ability to stream online content from their devices onto their TV set. Combined with STBs offering access to on-demand content, this means that VOD is now widely available on the main TV set.
- 3.15 Furthermore, as outlined in Section 2, a number of operators have emerged which offer OTT internet services. These services provide access to a range of content either on a pay-per-view basis or for a monthly subscription fee. Unlike the traditional pay TV retailers, OTT providers do not necessarily combine their services with a STB package and can be purchased on a standalone basis. There is, nevertheless, evidence that pay TV subscribers are more likely to use OTT services than those who do not have a pay TV subscription, i.e. they are using it as an ‘add-on’ to their existing pay TV service.<sup>47</sup>
- 3.16 Netflix and Amazon (both of which charge a monthly subscription fee) had estimated subscriber numbers of approximately 2.8m and 1.2m respectively at the start of this

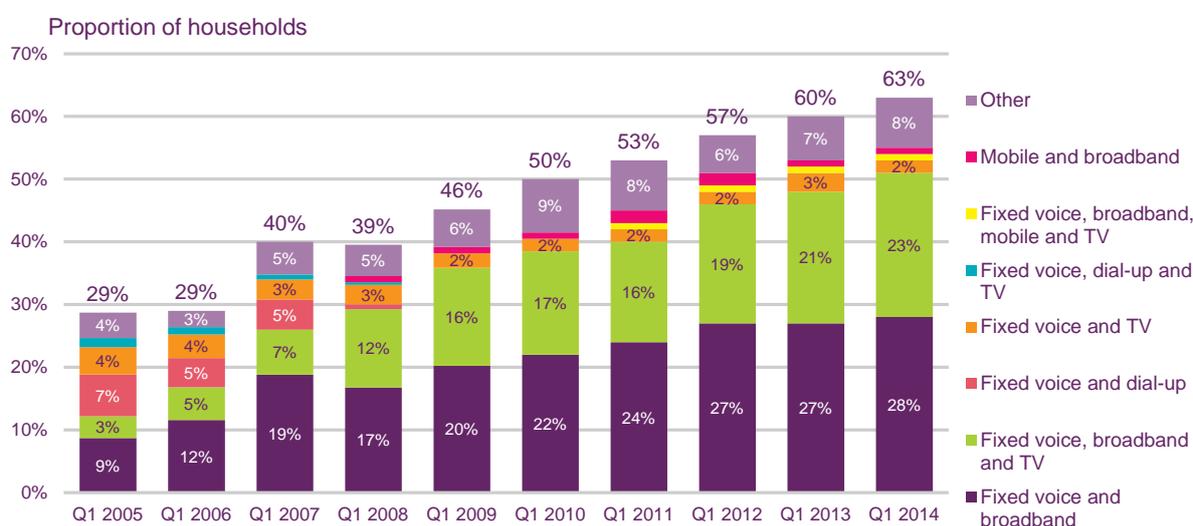
<sup>47</sup> In Q1 2014, 7% of adults with a TV in their household said that they watch TV programmes or films on-demand through their TV service “using a ‘standalone’ subscription service such as Netflix”. Amongst those whose main TV platform at home was Freeview, this figure stood at 2%, and amongst those with a pay TV platform, this figure was higher at 9%. QH13, Ofcom Technology Tracker, Wave 1 2014. In addition, our November 2013 survey showed that of those respondents that had paid to use LOVEFiLM (now Amazon Prime Instant Video) or Netflix, in the previous 6 months, 69% and 77% respectively were also subscribers to pay TV services from Sky, Virgin Media, TalkTalk TV or BT TV. See Section 6, paragraphs 6.41 to 6.43 where we discuss our position on OTT services in our competition assessment.

year.<sup>48</sup> There has been a steep growth in revenue from online subscription services in 2013, rising 75% from the year before to £112m.<sup>49</sup> To date these services have tended to focus on general entertainment and movie content. OTT sports content is available through Sky's NOW TV service or the BT Sport app (available to BT broadband customers), although there are also OTT offerings made available for their existing pay TV subscribers (e.g. Sky Go, and BT TV Everywhere).

## Bundling of pay TV with other communications services is more prevalent

3.17 Bundles are becoming increasingly prevalent when purchasing communications services, with six in ten households now buying their communications services as part of a bundle.<sup>50</sup> 53% of pay TV subscribers take their TV service as part of a bundle.<sup>51</sup> Indeed, BT and TalkTalk only offer their pay TV packages as part of a bundle with broadband and/or phone.

Figure 3.3: Take-up of bundled services



Source: Ofcom Technology Tracker, Figure 1.10 CMR 2014

3.18 While dual play bundles are most popular (28% of households take landline and broadband services from the same provider), 23% of households report having a triple-play bundle of broadband, telephone and multi-channel TV (up from 17% in 2010).<sup>52</sup> BT, Sky, TalkTalk, and Virgin Media all offer triple-play packages, although take-up varies significantly between operators.<sup>53</sup>

<sup>48</sup> BARB establishment survey Q1 2014 - <http://www.barb.co.uk/whats-new/329>

<sup>49</sup> CMR 2014, Ofcom, section 2.1.1

<sup>50</sup> CMR 2014, Ofcom, section 1.3.5

<sup>51</sup> Ofcom Technology Tracker, QG3:

<http://stakeholders.ofcom.org.uk/binaries/research/statistics/2014apr/2014w1.pdf>

<sup>52</sup> CMR 2014, Ofcom, section 1.3.5

<sup>53</sup> 66% of Virgin customers are on triple-play packages, compared to 37% of Sky customers.

<http://investors.virginmedia.com/phoenix.zhtml?c=135485&p=irol-financial-results> &

<http://corporate.sky.com/documents/investors/results/2015/q1-kpi-summary.pdf>

- 3.19 More recently there has been a focus on quad-play packages - Virgin Media has been offering such packages, which bundle mobile services together with landline, broadband and TV, for some time (and 17% of its customers take up these packages<sup>54</sup>). In 2012, TalkTalk also implemented a quad play strategy with the launch of a mobile handset and SIM only contracts for customers taking its broadband and fixed line services. EE has also recently launched a quad-play package (see paragraph [3.10] above). Take-up of quad-play in the UK generally is still low, however, with only 1% of consumers claiming to receive their mobile, fixed line, broadband and TV in a bundle.<sup>55</sup> This may increase in future, however, particularly given BT is due to launch a consumer mobile business in 2015, and Vodafone's recent announcement that it is moving into consumer broadband and pay TV in 2015.
- 3.20 Bundling of services is also increasingly relevant in relation to sports content on pay TV - BT offers BT Sport for free to customers who take broadband services, and Sky previously offered two years' free broadband to customers when it launched its Sky Sports 5 channel.<sup>56</sup>

### **BT has expanded its operations adding another vertically integrated player in pay TV**

- 3.21 Vertical integration of pay TV retailers (combining wholesale and retail operations) remains a common feature of the sector. In 2010 we presented an illustration of the pay TV value chain and noted there that it was common for providers to be vertically integrated across that value chain.<sup>57</sup> With the development of OTT services and IPTV, as well as the launch of new platforms such as YouView, that value chain has become more complex, with providers often offering both OTT services and more traditional pay TV services on existing platforms (e.g. DTT, cable, DSat). Nevertheless vertical integration continues to be a common theme.
- 3.22 There are four main levels of the value chain:
- 3.22.1 **Content production** - for example creating and recording content which can be broadcast.
  - 3.22.2 **Wholesale channel provision, or in the case of OTT services, content aggregation** - this could include commissioning content, acquiring rights to broadcast content, or buying content from other providers. Channel providers aggregate this content into a bundle for a specific broadcast channel, OTT providers into an online content library for consumers' to access on an on-demand basis.
  - 3.22.3 **Platform service provision** – this could be either in some form of hardware (e.g. a STB) with managed architecture, or a software platform, either of which enable retailers to control the supply of content to consumers.

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<sup>54</sup> Virgin Media Q2 2014 operating results -

<http://investors.virginmedia.com/phoenix.zhtml?c=135485&p=irol-financial-results>

<sup>55</sup> CMR 2014, Ofcom, section 1.3.5

<sup>56</sup> <http://www1.skysports.com/football/news/20876/9345942/activate-sky-sports-5-your-new-channel-dedicated-to-european-football>

<sup>57</sup> See Figure 19, p.65 of the 2010 Pay TV Statement.

- 3.22.4 **Retail service provision** – the bundling of channels/content libraries and other services into retail packages purchased by consumers. These services could be provided alongside a traditional platform service (e.g. a requirement for a STB to access the package) or on an OTT basis.
- 3.23 Pay TV retailers continue to be integrated at several levels across this value chain. The four largest pay TV providers (Sky, Virgin Media, BT, and TalkTalk) have integrated their hardware platforms with the retail services they provide on that platform and they also offer OTT services which allow consumers to access their retail content services via IPTV (i.e. separately from their STB). However, the most notable development in this respect is that BT has, with the launch of BT Sport in August 2013, entered as a fully vertically integrated player. Like Sky, BT now holds content rights, packages these rights into channels, wholesales these channels to retailers on other platforms, acts as a pay TV retailer and offers these, and other, channels over its own platform as a retail provider.
- 3.24 New OTT providers, such as Netflix and Amazon, also sit across the value chain - producing content, aggregating it, and then retailing it directly to consumers. However, unlike Sky and BT, they do not necessarily operate a hardware platform,<sup>58</sup> nor do they bundle linear and on-demand content in the same way as the traditional pay TV retailers. Netflix is also now available via platform providers such as Virgin Media, BT, and TalkTalk. BT customers can sign up to Netflix alongside their BT subscription and pay for Netflix as part of their BT bill, which is the first time that it is possible to subscribe to Netflix without paying Netflix directly.<sup>59</sup>

## **BT has acquired major sports rights, but Sky continues to hold the majority of major sports rights**

- 3.25 In early 2013, following BT's acquisition of a number of important sports rights, BT announced the launch of its premium sports channels, BT Sport 1, BT Sport 2, BT Sport 1 HD and BT Sport 2 HD.<sup>60</sup> In addition, in July 2013 it announced the acquisition of ESPN (UK).<sup>61</sup>
- 3.26 Although BT acquired the rights for 38 Premier League matches for the 2013/4 to 2015/16 seasons following the auction held in 2012, Sky continues to hold the majority of rights, with 116 matches. Sky holds 'first pick' rights for 20 rounds (for games on Sunday with a 4pm kick-off), and BT holds first pick for 18 rounds (13 first pick for Saturday 12.45pm kick-off, and five first pick for midweek evenings, and bank Holidays).
- 3.27 While Sky currently holds rights for the majority of Champions League matches for the 2014/15 seasons (128 exclusive matches, plus the final which is shared with ITV<sup>62</sup>), BT has won exclusive rights for the 2015-18 Champions League. Live coverage of all 145 Champions League matches will move to BT Sport, although BT has committed to make at least [3<] per season (including the final) available on FTA TV.

<sup>58</sup> We note, nevertheless, that Amazon has recently launched its 'Fire TV' STB.

<sup>59</sup> <http://www.youview.com/news/2014/11/04/netflix-now-on-youview/>

<sup>60</sup> <http://www.btplc.com/news/Articles/ShowArticle.cfm?ArticleID=cb6a31a3-a853-4ef9-99d4-5eef568289fa>

<sup>61</sup> <http://www.btplc.com/news/Articles/ShowArticle.cfm?ArticleID=022aea86-b466-4c6e-9a3f-0be241ed630b>

<sup>62</sup> ITV holds rights for 17 matches (16 exclusive first pick matches, plus the final).

- 3.28 BT has also won rights for some FA Cup matches (some games are shown on FTA, and the final is shared) and Sky continues to hold the rights for Football League matches. Both BT and Sky hold rights for various international leagues (e.g. La Liga and Eredivisie on Sky, and Serie A and the Bundesliga on BT Sport).
- 3.29 Outside of football, Sky continues to hold a wide range of sports rights. Sky holds rights to all F1 races (some of which are also shown on the BBC); all live cricket (apart from the Caribbean Premier League, on BT Sport, and Champions League Twenty20, on Eurosport); the majority of golf coverage (apart from the Open and the Masters); a selection of rugby union content rights; and a range of other sports rights, including rugby league, darts, and the NFL.
- 3.30 BT has acquired a range of content in addition to its football rights. For instance, it now holds exclusive rights to live English Premiership rugby, previously held by Sky. BT's portfolio of sports rights also includes the NBA, the Women's Tennis Association Tour, NBA basketball, UFC World Championship, and some motor sports content (e.g. the World Rally Championship, Formula E, and Moto GP).
- 3.31 FTA channels also continue to hold rights to a range of sporting events, including the football World Cup, the Six Nations, horse racing, and Wimbledon. Some sports rights are also held by broadcasters such as Eurosport, and Premier Sports.
- 3.32 The table below shows an overview of the main live sports rights holdings of Sky and BT.

**Figure 3.4: Summary of current live sports rights holdings**

Sport	Event	Rights holder		
		Sky	BT	Other
Football	Premier League <sup>63</sup>	✓	✓	
	Champions League <sup>64</sup>	✓		✓
	FA Cup <sup>65</sup>		✓	✓
	Europa League <sup>66</sup>		✓	✓
	Football League & League Cup	✓		
	Key European domestic leagues <sup>67</sup>	✓	✓	
	Scottish Premiership <sup>68</sup>	✓	✓	
Cricket	English Test Match Cricket	✓		
	One Day International	✓		
	Twenty20	✓		
Rugby Union	Indian Premier League			✓ <sup>69</sup>
	Six Nations			✓
	Aviva Premiership Rugby		✓	
	European Rugby Champions Cup <sup>70</sup>	✓	✓	
Golf	Ryder Cup	✓		
	The Open			✓
	Masters	✓		✓
	PGA Championship <sup>71</sup>	✓		
	US Open	✓		
Tennis	Wimbledon			✓
	French Open			✓
	US Open	✓		✓
	Australian Open			✓
Formula 1	F1 Grand Prix	✓ <sup>72</sup>		✓

Source: Ofcom. Note: table does not include rights for highlights. Correct as of October 2014.

<sup>63</sup> Sky holds rights to 116 matches, and BT rights to 38 matches.

<sup>64</sup> 129 matches, including the final on Sky. 17 matches, including the final on ITV.

## The cost of sports rights has increased, with the majority being spent on football

3.33 In 2013, spending on sports programming increased by 19% to reach £1,808m. This amounts to 59% of all programme spend by commercial non-PSB channels.<sup>73</sup> Figure 3.5 below shows how this spending has increased over time, broken down by channel provider.

### Figure 3.5: Total annual expenditure on sports rights, by broadcaster<sup>74</sup>

[X]

Source: data provided by broadcasters.<sup>75</sup>

3.34 Of all content genres, sport remains the single largest source of revenue for multi-channel broadcasters,<sup>76</sup> and this may help to explain the proportion of programme spend that is dedicated to sports content. In 2010, sport generated £1,800m in revenue, which represents 43.9% of total revenue.<sup>77</sup> In 2013, this had increased to £2,329m in revenue (which was up by 13% from 2012 alone).<sup>78</sup>

3.35 As can be seen from Figure 3.6 below, a significant proportion (75%) of the total expenditure on sports rights for 2013 by broadcasters was on football rights. Rugby

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<sup>65</sup> 16 live matches, including one semi-final, shown by the BBC, with 25 live matches, including one semi-final, shown by BT Sport.

<sup>66</sup> 29 live matches including semi-finals and finals on ITV, and 25 live matches on BT Sport.

<sup>67</sup> Sky holds rights for La Liga (Spain) and Eredivisie (the Netherlands); BT holds rights for Serie A (Italy), Ligue 1 (France), and the Bundesliga (Germany).

<sup>68</sup> 30 live matches on Sky Sports, and 30 live matches on BT Sport. Three live matches (and 35 delayed transmission matches) on BBC Alba.

<sup>69</sup> Has been broadcast on ITV4 since 2010, but Sky has won the rights from 2015 (until 2018).

<sup>70</sup> Pool matches shared equally by Sky and BT, both will show two quarter-finals each, one semi-final each, and the final will be broadcast by both live.

<sup>71</sup> Sky has rights to all four rounds over four days. The BBC has rights to the final two rounds over the last two days.

<sup>72</sup> All races on Sky, with nine races also shown on the BBC.

<sup>73</sup> CMR 2014, Ofcom, section 2.1.1.

<sup>74</sup> Data for 2013/14 is based on broadcasters' forecasts as at August 2013. However, the vast majority of forecast expenditure was committed in existing agreements. The "other channels" category includes Channel 4, Five and Eurosport. As Eurosport acquires rights on a pan-European basis, we have included a proportion of its total rights expenditure, equal to the share of channel revenues which came from the UK in 2013. Expenditure by ESPN is approximate as BT was only able to provide limited information.

<sup>75</sup> Broadcasters responses to our section 26 Notice (dated 23 August 2013 for BT, 28 August 2013 for Sky, 25 September 2013 for BBC, Channel 4, Eurosport and Channel 5 and 27 September 2013 for ITV) in respect of our investigation of BT's Complaint against Sky under the Competition Act 1998 ('the BT CA98 Complaint') about the wholesale supply of SS1&2 -

[http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01106/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01106/). Also Eurosport information provided to Ofcom on 11 November 2014. Setanta data is sourced from data underlying Figure 29 in the 2010 TV Statement and ESPN data is based on publicly available information.

<sup>76</sup> CMR 2014, Ofcom, Figure 2.41. This is based on all sources of revenue accruing to multi-channels (predominantly subscription and net advertising revenue). This includes wholesale subscriber payments from platform operators, but excludes Republic of Ireland revenue, and revenue generated by broadband and telephony.

<sup>77</sup> CMR 2011, Ofcom, section 2.2.4.

<sup>78</sup> CMR 2014, Ofcom, section 2.2.4.

Union and Cricket had the second highest broadcaster spend, but each only accounted for 5% of the total expenditure on sports rights for the year.

### Figure 3.6: Breakdown of total expenditure on sports rights in 2013/14, by sport

[✂]

Source: data provided by broadcasters<sup>79</sup>

- 3.36 Within this, significantly more is spent on Premier League rights than any other sports rights, including other football rights. Around 65% of the amount spent on football rights – and around 50% of total spending on sports rights – is accounted for by live Premier League rights alone. In 2010, Premier League rights accounted for around 50% of the total amount spent on the top ten most expensive sports TV rights,<sup>80</sup> compared to around 65% currently.
- 3.37 In 2013/14, Champions League rights, like other football rights, accounted for a smaller proportion of the total amount spent on football rights than Premier League rights. However, Champions League rights will make up a significant proportion of the amount spent on football rights in 2015/16, as a result of the significant increase in the amount committed by BT for these rights. The cost of these rights will still only represent around one-third of the amount spent by Sky and BT on Premier League rights. Sky and BT paid just over £1bn per season for the Premier League rights between 2013-2016,<sup>81</sup> and BT has committed £299m per season for the Champions League and Europa League rights between 2015-2018.<sup>82</sup> By way of comparison, the 2010-2013 Premier League rights cost £594m per season,<sup>83</sup> and the 2012-2015 Champions League rights cost £133m per season.<sup>84</sup>

### Sports content is now more widely available than in 2010

- 3.38 The 2010 Pay TV Statement identified live top-flight sports content (particularly live Premier League football) as having enduring appeal for a large number of viewers.<sup>85</sup> At that time, only a limited number of Sky Sports channels (primarily SS1&2) were available through routes other than by obtaining the channels directly from Sky on DSat – specifically either via Sky Player over the internet, on cable (e.g. via Virgin Media), and on Tiscali's IPTV network (subsequently acquired by TalkTalk) but retailed by Sky.<sup>86</sup>
- 3.39 Sky Sports channels are now more widely available, although until recently they were not available to customers on BT's YouView service.<sup>87</sup>

<sup>79</sup> As per footnote 75 above.

<sup>80</sup> Figure 59, Ofcom, 2010 Pay TV Statement.

<sup>81</sup> <http://www.bbc.co.uk/news/business-18430036> - Sky is paying £760m per season, and BT £246m per season.

<sup>82</sup> <http://www.bbc.co.uk/sport/0/football/24879138>

<sup>83</sup> <http://news.bbc.co.uk/1/hi/business/7875478.stm>

<sup>84</sup> <http://www.theguardian.com/sport/2013/nov/09/bt-sport-champions-league-exclusive-tv-rights>

<sup>85</sup> In the 2010 Pay TV statement we defined this as sports matches from the higher competitive levels of the most popular sports in the UK. For example Premier League matches, FA Cup matches, English test cricket matches, the Ryder Cup, Six Nations rugby union.

<sup>86</sup> 2010 Pay TV Statement, paragraph 7.34.

<sup>87</sup> As noted at paragraph 2.4 above, on 5 November the CAT required Sky to wholesale SS1&2 to BT for distribution via IPTV (and consequently on the BT YouView platform). On 16 December BT announced the launch of SS1&2 on its YouView boxes.

**Figure 3.7: Summary of Sky Sports channel availability on each pay TV platform**

2014	BT TV		Sky	Virgin Media	TalkTalk YouView
	Cardinal	YouView			
<b>Sky Sports 1&amp;2</b>	✓ no HD (with Vision+ box)	✓ no HD	✓	✓	✓ no HD
<b>Sky Sports 3, 4, F1</b>	✗	✗	✓	✓	✓ no HD
<b>Sky Sports 5</b>	✓	✗	✓	✓	✓ no HD

Source: Ofcom

3.40 In particular the Sky Sports channels are available through the following routes:

- **Sky** – Sky satellite subscribers can purchase Sky Sports channels as a bundle add-on to Sky’s basic package of entertainment and news channels. The Sky Sports bundle costs £24.50 per month, on top of the basic package (at £21.50 per month).<sup>88</sup> Sky Sports is also available through the Sky Go service.
- **NOW TV** – Sky’s NOW TV offers the ability to access all Sky Sports channels for a one-off payment of either £6.99 for a day, or £10.99 for a week. This standalone package is likely to appeal to consumers who want a ‘pay TV lite’ option, or are only interested in specific sporting events. Sky recently reported a trebling in NOW TV sports transactions year-on-year.<sup>89</sup>
- **TalkTalk** - Sky supplies its full Sky Sports package (in SD but not HD) to TalkTalk on a wholesale basis for distribution on its YouView service, following an agreement announced on 26 July 2012 (and subsequently extended in July this year).<sup>90</sup> The agreement gives TalkTalk’s YouView subscribers access to a variety of Sky content, including Sky Sports channels. The Sky Sports channels are available for an additional £30 per month to TalkTalk customers that take any of its monthly TV subscription packages. NOW TV is also made available on TalkTalk’s YouView box (i.e. consumers can purchase sports passes direct from NOW TV and watch the content via their YouView box).
- **Virgin Media** - Sky supplies all its Sky Sports channels to Virgin Media on a wholesale basis for distribution on its cable network. In May 2014, Sky and Virgin Media announced an extension to their contract, enabling Virgin Media to now offer Sky Sports 3 HD, Sky Sports 4 HD and Sky Sports F1 HD.<sup>91</sup> Virgin Media customers can purchase all of the Sky Sports channels for an additional £27.25 per month on top of Virgin Media’s TV package prices (although they are

<sup>88</sup> By way of comparison, the standalone cost of Sky Movies is £16.50 per month, on top of the basic package. For customers who already get Sky Movies, the additional cost of Sky Sports is reduced to £16.50 (i.e. £33 for both channel packages in total).

<sup>89</sup> <http://corporate.sky.com/documents/investors/results/2015/q1-press-release.pdf>

<sup>90</sup>

[http://corporate.sky.com/media/press\\_releases/2012/sky\\_talktalk\\_agreement\\_for\\_wholesale\\_distribution\\_of\\_sky\\_channels](http://corporate.sky.com/media/press_releases/2012/sky_talktalk_agreement_for_wholesale_distribution_of_sky_channels)

<sup>91</sup>

[http://corporate.sky.com/investors/press\\_releases/2014/sky\\_and\\_virgin\\_media\\_strike\\_major\\_new\\_channel\\_distribution\\_agreement](http://corporate.sky.com/investors/press_releases/2014/sky_and_virgin_media_strike_major_new_channel_distribution_agreement)

included within the price of its Essential Family Sports collection and VIP collection packages).

- **BT** - Sky supplies its SS1&2 and Sky Sports 5 channels to BT on wholesale basis for distribution to its BT Vision boxes (BT's legacy Cardinal platform). These channels are only available to those subscribers that take its BT Infinity fibre broadband service and BT TV through a BT Vision+ box. BT charges its customers £21 per month to access SS1&2 in standard definition. It also offers either SS1 or SS2 individually for £15.50 per month. Following an order from the CAT (noted at paragraph 2.4 above), Sky was required to make a wholesale offer for SS1&2 to BT for distribution via IPTV (and consequently on the BT YouView platform). On 16 December BT announced the launch of SS1&2 on its YouView boxes.<sup>92</sup>
- **Vodafone** – on Vodafone's 4G plans, Sky Sports is available as an entertainment package. It is included in the subscription price for 6 months on the Red 4G plans, and for 24 months on the Red L, XL, and XXL 4G plans. After this Sky Sports can be purchased for an additional £4.99 per month for SS1&2, or £9.99 per month for all Sky Sports channels.

3.41 BT Sport channels are also available on a number of platforms, but not on TalkTalk's YouView platform and for Sky DSat customers it is only available direct from BT (on a self-retail basis).

**Figure 3.8: Summary of BT Sport channel availability on each pay TV platform**

2014	BT TV		Sky	Virgin Media	TalkTalk YouView
	Cardinal	YouView			
<b>BT Sport 1&amp;2 (&amp; ESPN)</b>	✓	✓	✓ (but only via BT on Sky DSat)	✓ (with TV XL)	✗

Source: Ofcom

3.42 In particular the BT Sport channels are available through the following routes:

- **BT TV (and OTT)** – as well as providing BT Sport free to its BT TV customers, since its launch, BT Sport SD channels have been made available free of charge to BT Broadband customers (regardless of whether they are also subscribers to its BT TV service), provided they are on a contract for a defined fixed period. HD versions are also available for an additional £3 per month. BT offers an online player for accessing BT Sport via PC and mobile. It also offers the BT Sport app, which enables customers to stream sports content straight to their PC, Mac, tablet or smartphone.
- **Sky's DSat platform** - As well as providing BT Sport free of charge to BT Broadband customers who receive Sky's TV service on the DSat platform, BT also offers BT Sport as a standalone pay TV product over Sky's DSat platform on a self-retail basis. BT charges £13.50 for SD and £16.50 for HD versions of the channels to these customers.

<sup>92</sup> <https://www.btplc.com/news/Articles/ShowArticle.cfm?ArticleID=81A969F4-BB68-44B1-98DC-820395D7085F>

- **Virgin Media** – In August 2013, Virgin Media struck a deal with BT, allowing it to offer BT Sport to its subscribers.<sup>93</sup> Virgin Media offers BT Sport channels (including HD) for free as part of its XL package. For non-XL customers, consumers can pay £15 per month to access the HD versions of BT Sport channels.

3.43 Eurosport and Premier Sports both hold rights to certain sports content. Their channels are more widely available than in 2010, partly due to their availability on the YouView platform (which was not available in 2010), and following Premier Sports launch on Virgin Media in 2013. The Eurosport channel is available as part of the basic packages with Sky, Virgin Media, and BT YouView. The Premier Sports channels are also available with Sky, Virgin Media and BT, as well as through TalkTalk TV.

## Both Sky and BT have a large sport subscriber base

3.44 Sky does not publish its sports subscriber numbers. According to BT's latest results, BT Sport is now available in five million homes.<sup>94</sup> The Table below sets out the data we have received from Sky and BT on the number of subscribers to their sports channels on different pay TV platforms.

**Figure 3.9: Number of Sky Sports and BT Sport customers on different platforms in September 2014 (thousands)**

Retailer		Sky Sports	BT Sport	
			Free	Paid
Sky		[X]	-	-
Virgin Media		[X]	[X]	[X]
BT	BT TV	[X]	[X]	-
	Sky DSat	-	[X]	[X]
	App	-	[X]	-
TalkTalk		[X]	-	-
<b>Total</b>		[X]	[X]	

Source: Sky's response to Questions 1a and 2 of the 5<sup>th</sup> section 26 Notice under the BT CA98 Complaint dated 16 April 2014. BT's response to Question 9 of the 4<sup>th</sup> section 26 Notice dated 7 March 2014.

- 3.45 [X]. However, the majority of BT Sport subscribers get the channels as part of a bundle of other services, either as part of the XL package on Virgin Media or bundled with BT's broadband packages. Only [X] of BT Sport subscribers pay a stand-alone charge for the channel in the way that Sky's customers do. In comparison, the vast majority of Sky Sports customers pay a monthly fee.
- 3.46 We have also looked at the total number of subscribers who take some form of pay TV sports content (i.e. Sky Sports and/or BT Sport). In the table below, we present the number of subscribers across each platform, and the share of subscribers that

<sup>93</sup>

[https://corporate.sky.com/investors/press\\_releases/2014/sky\\_and\\_virgin\\_media\\_strike\\_major\\_new\\_channel\\_distribution\\_agreement](https://corporate.sky.com/investors/press_releases/2014/sky_and_virgin_media_strike_major_new_channel_distribution_agreement)

<sup>94</sup> <http://www.btplc.com/News/ResultsPDF/q414-release.pdf>

this represents.<sup>95</sup> This is compared to the overall pay TV subscribers on each platform.

**Figure 3.10: Number and share of pay TV sport subscriptions on different platforms in September 2014**

	Sports subscribers		Total pay TV subscribers	
	Number (k)	Share (%)	Number (k)	Share (%)
<b>Sky</b>	[X]	60%-70% [X]	[X]	60%-70% [X]
<b>Virgin Media</b>	[X]	20%-30% [X]	[X]	20%-30% [X]
<b>BT TV</b>	[X]	5%-15% [X]	[X]	5%-15% [X]
<b>TalkTalk</b>	[X]	0-10% [X]	[X]	0-10% [X]

Source: Ofcom calculations based on Sky's, BT's, Virgin Media's and TalkTalk's responses to the WMO information request dated 31 October 2014 (5 November 2014 in respect of BT)

3.47 As the table above shows, the majority of sport and pay TV subscribers are on Sky's DSat platform. In June 2009, Sky had a larger share of overall subscribers ([X]) and, in particular, a larger share of sport subscribers ([X]).<sup>96</sup>

## Summary of key developments since 2010

3.48 In this section, we have identified a number of developments in the pay TV market generally between 2010 and now:

- take-up of pay TV services has increased since 2010, and revenues have also grown;
- an increased presence of OTT services, and several new devices, provide additional means of accessing pay TV content; and
- bundling of pay TV with other communications services is more prevalent, and has become increasingly important, with sports content being bundled with other services.

3.49 There have also been a number of important developments with regards to the provision of sports content, in particular it is now more widely available than in 2010, in part due to more wholesale deals between Sky and other pay TV retailers. In addition BT has acquired key sports rights, and has launched its BT Sport channels.

3.50 Despite these developments, certain characteristics remain:

- the cost of sports rights are still high (and have increased since 2010);
- the key rights holders are vertically integrated players; and

<sup>95</sup> Because these estimates have been calculated across platforms only, we have not included customers that take BT Sport via the app or online player only. See Section 6, paragraphs 6.41 to 6.43 where we set out our position on OTT services. To estimate the number of sports customers on the Sky DSat platform we have used information from our October 2014 survey to estimate the number of customers that take both Sky Sports and BT Sport.

<sup>96</sup> 2010 Pay TV Statement, Figure 22, p.81.

- Sky continues to have the largest subscriber base, and to hold the majority of major sports rights.

*Question 3.1: Have we accurately represented the key developments in pay TV since 2010? Are there any other developments which you consider may be relevant to our assessment?*

## Section 4

# Analytical framework

## Introduction

4.1 In 2010 we imposed the WMO and it has been in effect since then (as amended by the CAT as set out in paragraph 2.4). We are reviewing the WMO to decide whether it should be modified, retained or removed. In doing so we set out the steps we consider appropriate for that assessment.

### **The first step in our analysis is to identify what constitutes key content**

4.2 Our aim in this first step is to determine whether there is key content that may be capable of affecting competition regardless of who holds it and how it is distributed. We are unlikely to have concerns regarding the distribution of content which is of insufficient importance to have a material impact on competition.

4.3 The 2010 Pay TV Statement identified content on SS1&2 (and ESPN) as key to the ability of retailers of pay TV to compete.<sup>97</sup> In this review, we have assessed a range of evidence to determine whether certain sports content remains key to the ability of pay TV retailers to compete. We identify key content as that which is capable of influencing the choice of pay TV provider for a significant number of consumers. This analysis is presented in Section 5. We have a range of information available to us on the importance of particular types of sport and individual competitions, including survey evidence, rights expenditure, internal documents and statements by market players.

### **The second step is assessing the impact of limited distribution on competition in pay TV services**

4.4 Having identified what content can be considered key we then look at who holds that content and the likely impact that limited distribution by the content holder might have on competition in pay TV retailing.

4.5 Competition is a process of rivalry and rivalry can occur at a number of different levels of the value-chain. This can include the intensity of competition in a static sense between existing suppliers. Rivalry can also occur in a dynamic sense over time through new firms entering and through innovation by new and existing firms to produce new and better products or more efficient methods of production. Sometimes there are trade-offs between maximising static and dynamic competition. In assessing the risks to competition we will seek to achieve the balance that will be of the most benefit to consumers.

4.6 To evaluate the potential impact on competition we consider the interaction of:

- i) the importance of the rights held; and
- ii) the market position of the content holder.

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<sup>97</sup> 2010 Pay TV statement, paragraphs 4.104 to 4.156.

- 4.7 When assessing the importance of the content held by a particular operator we look at the importance of the content held as a driver of choice of pay TV retailer by consumers.
- 4.8 The position of the content holder is also important. For a given set of key content the overall effect of limited distribution on competition will differ depending on the market position of the holder. For example, if an entrant or expanding existing firm limits distribution of key content, there may be a reduction of some rivals ability to offer an equivalent product. However, competition could also be increased if it allows the entrant to differentiate its product, overcome barriers to entry or expansion and grow into a more effective competitor in the future. In contrast, if an incumbent firm with a strong market position limits access to key content this may make it more difficult for new firms to enter and compete, or for smaller firms to grow.
- 4.9 It is also possible that limited distribution may be applied selectively so that some retailers are supplied on terms that enable them to compete effectively while others are not. Limited distribution of key content is likely to be particularly prejudicial to fair and effective competition where it limits the growth of new entrants and smaller suppliers that have the potential to offer increased competition in the future.
- 4.10 Our analysis of this step is set out in Section 6.

### **The third step is assessing the likelihood of limited distribution**

- 4.11 Having established that a provider holds key content and assessed whether limited distribution of that content may be prejudicial to fair and effective competition we then assess whether there are reasons to believe that the holder may limit distribution, absent regulation. If the holder of key content is unlikely to engage in limited distribution of its own accord, absent any regulatory obligation to do so, the need for (and proportionality of) any intervention is unlikely.
- 4.12 We assess the likelihood of limited distribution absent regulation in two ways:
- first we assess whether there are reasons to believe that the content holder might have incentives to limit distribution; and
  - second we look at the current distribution arrangements to assess whether this gives us information regarding the likelihood of limited distribution.

### **There are a number of factors to consider when assessing incentives to distribute**

- 4.13 A content holder will face a trade-off when making decisions about the distribution of its content to rival pay TV retailers:
- Limited distribution, at least in the short term, may lead to reduced revenues from sales on the rival platform. All else equal this will reduce profits.
  - However, limited distribution may also benefit the firm and increase its profits if it leads to higher profits in other markets. The extent of this benefit will depend on a number of factors.
- 4.14 Limited distribution by a vertically integrated operator will result in lost revenue from subscribers on rival retailers' platforms, but may result in increased sales in the retail markets in which key content is bundled (which currently includes pay TV, as well as

phone and broadband services). Limited distribution will be profitable, in the short run, if the profit made on diverted sales in the retail markets is larger than the profit foregone from reduced sales on the rival platform.<sup>98</sup> We refer to this as a static incentive to limit distribution.

- 4.15 However, in practice, content holders are unlikely to restrict their commercial judgements to the consideration of short run factors only and there will be other factors that will affect their decision. These may include the impact that supply to rival firms might have on future competition and consequently on the future profitability of the supply of key sports channels, the retail supply of pay TV or potentially other communications services. We refer to these additional factors as dynamic incentives to limit distribution.
- 4.16 These commercial judgements are complex and rely on a number of factors which are uncertain. Consequently we do not attempt to quantify these factors. However, there are a number of features of markets and of content holders, which may make it more likely that holders of key content will find it profitable overall to limit distribution. These features include the following:
- **the importance of the content and the position of the firm upstream:** the more powerful the firm upstream and the more important the content it controls then the greater the impact that limiting access will have on competition;
  - **vertical integration and downstream market conditions:** the ‘payback’ from limited distribution occurs in part at the retail level. Limited distribution is therefore more likely to be profitable where the content holder has a more significant interest at the retail level (e.g. through vertical integration) and where a large proportion of the customers of the foreclosed retailer are likely to be captured by the retail operator in which the content holder has an interest;
  - **barriers to entry and expansion (upstream and downstream):** where there are significant barriers to entry to a part of the value chain, actions taken to reduce competition may have a higher potential payoff;
  - **strong dynamic effects:** where there are dynamic effects in competition limited distribution is more likely to be profitable. For example if by keeping rivals small today, they are made less effective competitors in the future, the payoff to limited distribution is likely to be greater than where there are no permanent effects on the ability of rivals to compete;
  - **payoffs in other markets:** where firms compete across multiple products limited distribution of key sports channels may yield additional benefits if this also diverts sales to the firm in other related markets (e.g. if sports content also influences broadband choice); and
  - **other strategic reasons for limited distribution:** there may be other reasons that distribution might be limited that are not directly related to competition but may lead to a similar outcome e.g. in order to influence negotiations over the nature of platform access or over the supply of a rival’s channels.

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<sup>98</sup> This in turn will depend on the number of lost wholesale sales that are recaptured by the retail interests of the content holder and on the margins made on retail and wholesale sales respectively.

- 4.17 Predicting the likelihood of future actions of content holders is an inherently uncertain exercise. Consequently it is very difficult to be definitive on the likelihood of limited distribution. The features interact and should not be considered an exhaustive 'checklist' of factors. The decision as to whether or not a particular practice is likely to arise, and whether that practice is of concern, necessarily involves the exercise of regulatory judgement as to whether those factors are relevant, whether any other factors apply and the weight to be given to them in a particular case.
- 4.18 Our assessment of incentives, and of current distribution arrangements, is set out in Section 7.

*Question 4.1: Do you agree with our proposed analytical framework for identifying whether limited distribution of key content is a practice which may be prejudicial to fair and effective competition in pay TV services?*

## Section 5

# Identifying key content

- 5.1 In this section we identify what constitutes key content, by which we mean content that is capable of influencing the choice of pay TV provider for a significant number of consumers.

## **In 2010 we identified live high quality sports content as a key driver of pay TV subscriptions**

- 5.2 In the 2010 Pay TV Statement, we considered that consumers' choice of pay TV service was driven primarily by a desire to access particular content. In order to drive take-up of a pay TV service, we concluded that particular content had to be highly attractive to a large number of consumers and needed to have a high degree of exclusivity to pay TV. We identified sport and movies as genres which stood out as having these characteristics, and therefore we expected them to be key drivers of pay TV subscriptions. Our view that sports content was important was supported by a number of other pieces of evidence including the amounts paid for sports rights, statements by market players, international case studies and the number of consumers who pay for premium sports services.<sup>99</sup>
- 5.3 Survey evidence indicated that consumers generally had strong preferences for specific sports, and for specific competitions and leagues within these sports. We observed that this was reflected in the prices commanded by the rights. We said that by far the most highly-valued TV sports content in the UK was football, and among football content, live Premier League content was the most important, followed by the UEFA Champions League, FA Cup and the UEFA European Football Championships. This, we said, was evident from the value of broadcasting rights, as well as the stated importance of this content to pay TV subscribers.<sup>100</sup>
- 5.4 We noted that a range of other sports were also valued by pay TV subscribers (in particular, rugby union, cricket, motorsports, tennis, boxing and golf). We said that, in general, the appeal of a pay TV proposition to an individual person or household would depend on it having some content that was seen as highly attractive, along with a range of moderately attractive content, and the relative importance of different content will vary according to tastes.<sup>101</sup>

## **We have assessed whether sports content continues to be important**

- 5.5 In order to assess whether sport continues to be an important driver in pay TV services we have reviewed a wide range of evidence, including consumer survey

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<sup>99</sup> 2010 Pay TV Statement, paragraphs 4.5, 4.105, 4.111 and 4.113 to 4.147.

<sup>100</sup> 2010 Pay TV Statement, paragraphs 5.90 to 5.92, 5.121 and 5.189 and 5.198. See also Figures 40 and 49.

<sup>101</sup> 2010 Pay TV Statement, paragraph 5.93 and Figure 40. In our market definition analysis, we observed that there was a large overlap between those Sky Sports subscribers who are interested in football and those who are interested in other sports. However, we said that even if potential substitutes featured coverage of these other sports, if they did not feature significant amounts of Premier League and Champions League matches they would be unlikely to be seen as close substitutes to Sky Sports by football fans. See also paragraph 5.90.

data, sports rights expenditure and subscriber numbers. In conducting this exercise, we are mindful of the development of new services offering pay TV content on different devices. However, at this stage of development, few subscribers use such services as their primary means of consumption of pay TV services. Consumers typically consume pay TV services through subscription to retail pay TV services offering or core bundle of channels and additional channels and services. In considering the importance of sports content, we therefore focus on the extent to which it is important on the choice of such pay TV services.<sup>102</sup>

## **Consumers continue to identify sports content as important to their choice of pay TV retailer**

- 5.6 In order to assess the extent to which the presence of particular content on pay TV platforms may drive consumers' decisions in choice of pay TV service, we carried out two pieces of consumer research. The first survey was carried out in November 2013, and the second in October 2014.<sup>103</sup> The survey evidence suggests that consumers' choice of pay TV service continues to be driven primarily by a desire to access particular content.
- 5.7 In our November 2013 survey, we asked respondents with pay TV why their household subscribed to a pay TV service rather than FTA.<sup>104</sup> The most popular reason given for taking a pay TV service was to access more content with 71% of respondents spontaneously citing access to more channels (either generally or by reference to a specific genre of channel or specific channels). This increased to 78% after respondents were prompted with a list of reasons.
- 5.8 Respondents also indicated that the ability to access specific types of content was an important factor in the decision making process. Of all specific types of content, access to sports channels (either generally or by reference to specific sports channels) ranked highest as a reason for subscribing to a pay TV service – the percentages were 11% unprompted, and 18% including prompted responses.<sup>105</sup> The next most popular specific genres mentioned were kids channels (cited by 6% unprompted, and 12% including prompted responses<sup>106</sup>) and film channels (cited by 3% unprompted, and 6% including prompted responses<sup>107</sup>).
- 5.9 The November 2013 survey also asked respondents which genres of TV programming were considered important to their household. As Figure 5.1 below shows, sport continues to be ranked among the genres of TV programming

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<sup>102</sup> See Section 6, paragraphs 6.41 to 6.43 where we set out the reasoning and evidence for why we have not included these services within scope of our assessment at this stage.

<sup>103</sup> The data tables and technical appendices for this research are available here:

<http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/pay-tv-research/>. In both pieces of research, the majority of the questions were asked to respondents who had some responsibility in the choice of television service, or the channels they receive, in their household. In addition, the majority of the questions asked about the views of the household rather than just the individual responding to the survey. We also note that the questions focussed on the TV service and channels received on the main television set in the household.

<sup>104</sup> Ofcom November 2013 survey, Questions A12A, A12B and A12C. Base: All with Pay TV on main set who are personally or jointly responsible for TV service (2252).

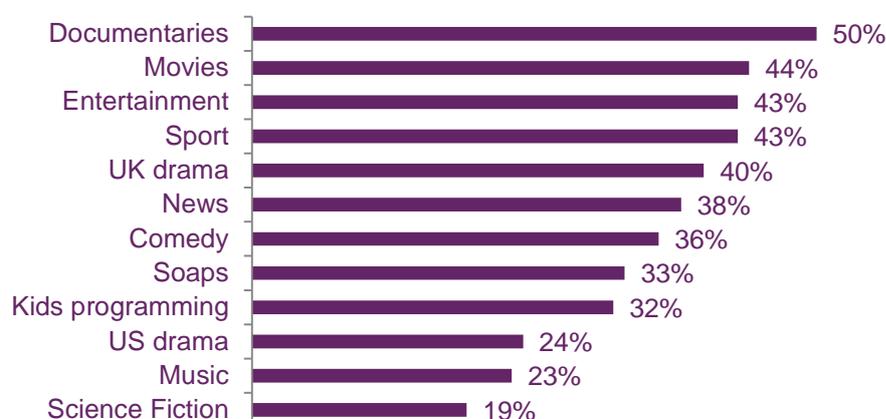
<sup>105</sup> Proportion of respondents saying "To get specific sports channels", "BT Sport", "Eurosport", "Sky F1" and/or "Sky Sports".

<sup>106</sup> Proportion of respondents saying "To get specific kids channels", "Cartoon Network", "CBBC", "CBeebies", "Disney", "Nickelodean" and/or "Nick Junior".

<sup>107</sup> Proportion of respondents saying "To get specific film channels", "Sky Movies" and/or "FilmFour".

considered important to a high proportion of pay TV subscribers with 43% of respondents indicating that sport was important.<sup>108 109</sup>

**Figure 5.1: TV genres important to household**



B2: Which of the following types, or genres, of TV programming are important to your household?  
 Source: Ofcom November 2013 survey. Base: All with Pay TV on main set who are personally or jointly responsible for TV service (2252).

5.10 Although consumers clearly value a range of genres, sports content stands apart in having a high degree of exclusivity to pay TV. Although FTA channels show live coverage of some sporting events, the majority of sports coverage is shown (exclusively) on pay TV channels. In addition, sports coverage of many major sporting events cannot be replicated, as the events are effectively ‘unique’. Sports content is most attractive when broadcast live; once an event is over and the outcome is known, the value of watching it is considerably reduced.<sup>110</sup>

### **Spending on sports rights and consumers paying extra for sports content also provide evidence of its continuing importance**

5.11 Total spend on sports programming in 2013 accounted for 31% of total spending on content by all UK TV channels, and 59% of total programming spend on commercial non-PSB channels.<sup>111</sup>

<sup>108</sup> We also note that 56% of all respondents with a pay TV service said that their households watched sport on TV at least once a week. Ofcom November 2013 survey, Question C1. Base: All with Pay TV on main set who are personally or jointly responsible for TV service (2252).

<sup>109</sup> Sports content also stands out from other genres as a reason why FTA households have considered getting a pay TV service. We asked respondents without pay TV whether they had considered getting a pay TV service in the last year, and if so, why. Of those respondents who had considered getting a pay TV service, 20% said they had considered doing so “to get specific sports channels”. This was second only to the reason “to get more channels in general” (48%). Ofcom November 2013 survey, Question A14A and A14B. Base: All those with a FTA TV service (1252).

<sup>110</sup> This is evident from the wide differential in the price of live rights compared with highlights or near live rights. For example, while live Premier League rights for the seasons 2013/14 to 2015/16 sold for [£<], the delayed rights were sold for [£<], and the highlights were sold for [£<]. Sky’s response to Question 1 of the 2<sup>nd</sup> section 26 Notice dated 28 August 2013, BT’s response to Question 1 of the 2<sup>nd</sup> section 26 Notice dated 23 August 2013 and the BBC’s response to Question 1 of the 1<sup>st</sup> section 26 Notice dated 25 September 2013 under the BT CA98 Complaint.

<sup>111</sup> 2014 CMR, Ofcom, p.10.

- 5.12 Sky's spending on sports rights in 2013/14 accounted for around half [30] of Sky's total programming costs (across all genres) in that year.<sup>112 113</sup> Spending on sports programming was also higher than any other category of operating expenditure in Sky's statutory accounts.<sup>114</sup> The fact that Sky is prepared to spend so much more on sports programming than on other genres of content provides an indication of the aggregate value that Sky anticipates it can recover as a result of offering its sports channels.<sup>115</sup> We also note that BT has committed to spend a significant amount on sports rights: over [30] in 2014/15, and over [30] since the launch of BT Sport.<sup>116</sup>
- 5.13 It remains the case that there are substantial numbers of UK consumers that are prepared to pay a premium specifically to acquire premium sports channels over and above their basic pay TV service (see Figure 3.13 in Section 3). This is also consistent with the view that sports content is likely to be important for a significant group of pay TV subscribers.

### **Taken together, the evidence indicates sports content continues to be important**

- 5.14 In summary, the evidence suggests that live sports content continues to be important to a large number of consumers. In addition, live sports content differs from other genres of content in that it has a high degree of exclusivity to pay TV. On the basis of these two characteristics, we remain of the view that sports content is an important driver of choice in pay TV services. Our view is supported by the fact that sports rights account for a significant proportion of total spend on programming, and the fact that substantial numbers of UK consumers pay a premium specifically to acquire sports channels.

*Question 5.1: Do you agree with our assessment that sports content is an important driver of choice in pay TV services? If not please provide evidence to support your view.*

### **We have assessed the importance of particular sports and sporting competitions in the choice of pay TV services**

- 5.15 We recognise that not all sports content will be of equal value to consumers and, consequently, of equal importance to the exercise of choice in relation to pay TV services. We have therefore considered the extent to which particular sports or competitions may have an impact upon consumers purchasing decisions in respect of pay TV services.

<sup>112</sup> Sky's sports rights costs for its financial year 2013/14 were [30]. Although this figure is based on Sky's forecast rights costs provided to Ofcom in September 2013, the vast majority of the total forecast rights cost was committed in existing agreements. Source: Sky's response to Question 1 of the 2<sup>nd</sup> section 26 Notice dated 28 August 2013 under the BT CA98 Complaint. Sky's total programming costs in its financial year 2013/14 were £2.662bn. Source: Sky's Annual Report 2013/14, page 97.

<sup>113</sup> This excludes other spending on sports programming, such as the associated production costs.

<sup>114</sup> Operating expenditure comprises Programming costs, Direct network costs, Marketing costs, Subscriber management and supply chain costs, Transmission, technology and fixed network costs and Administration costs.

<sup>115</sup> The fact that Sky expects to recover significant sums from offering its sports channels indicates that the willingness to pay for these channels is, in aggregate, high.

<sup>116</sup> Source: BT's response to Question 1 of the 2<sup>nd</sup> section 26 Notice dated 23 August 2013 under the BT CA98 Complaint.

## Consumers identify football, and in particular Premier League content, as the most important

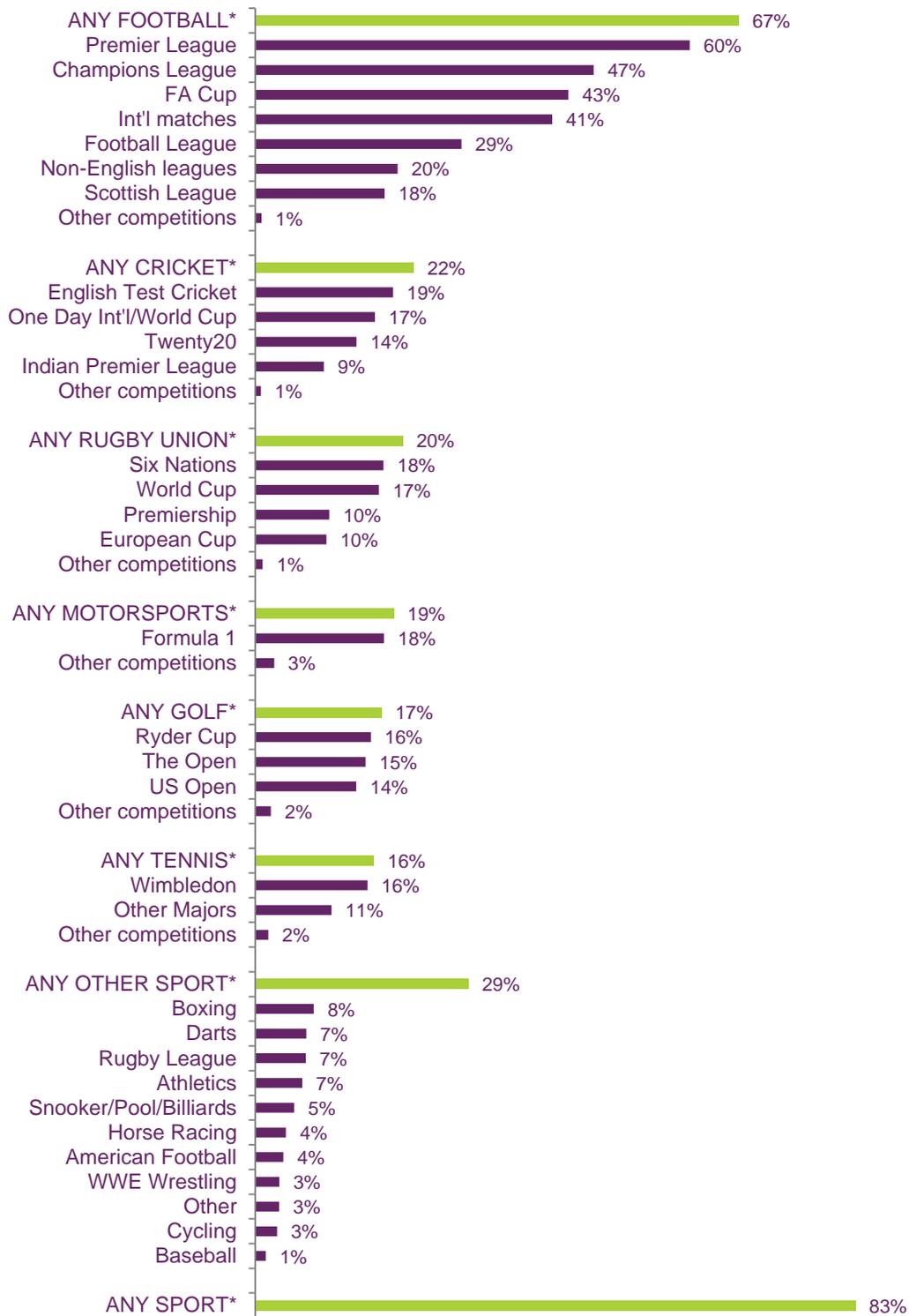
- 5.16 To identify which specific sports and competitions within sports are important to subscribers, we asked respondents who subscribed to Sky Sports and/or BT Sport whether different sports and specific competitions within given sports were essential to have access to as part of their pay TV service.<sup>117</sup> We put to respondents a wide range of specific competitions.<sup>118</sup>
- 5.17 We note that a limitation of this question is that it does not enable us to identify whether access to the whole event or competition, or just part of it, is essential. In particular, we recognise that some consumers may not be interested in the event or competition in itself, but rather in watching certain parts of it (for example, matches featuring particular teams or key matches such as the semi-finals or final).
- 5.18 Figure 5.2 below summarises the proportion of respondents which said each of these particular sports, or competitions within sports, were essential.

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<sup>117</sup> The question was asked of respondents who are personally or jointly responsible for TV service and said that they received any of the following channels via their pay TV service on the main set: Sky Sports 1, 2, 3, 4, F1, BT Sport, ESPN and Eurosport. Here, we report the responses of subscribers to premium sports channels only i.e. Sky Sports and/or BT Sport. Note that we exclude 32 respondents who reported that they received ESPN but not BT Sport (and not Sky Sports), as ESPN no longer existed as a standalone channel as it had become part of the BT Sport package.

<sup>118</sup> Specifically, for football, cricket, tennis, golf and rugby union and motorsports, specific competitions were put to respondents, as well as an "other competition" category. For all other sports (rugby league, athletics, snooker/pool/billiards, horse racing, darts, boxing, WWE wrestling, American football, baseball and cycling), respondents were asked about the sport in general, rather than a specific competition. We only asked respondents about sports (or competitions within sports) which they said they or members of their household watched on TV in response to an earlier question. Respondents were also given the opportunity to identify any other sports or specific competitions they considered essential.

**Figure 5.2: Sports or competitions considered essential by sports subscribers**



C7A: Thinking about the sports TV channels you receive, which of the following does your household consider essential to have access to as part of your TV service with <A2 SERVICE>?

Source: Ofcom November 2013 survey

Base: Sky Sports and/or BT Sport subscribers personally or jointly responsible for TV service (968).

Note: bars marked with an asterisk (\*) are summary codes. Some codes shown have been shorted for presentational clarity.

- 5.19 With the exception of some football events, no individual sport or competition was considered to be essential by more than 25% of respondents. In contrast, Premier League was considered essential by 60% of respondents, and lower proportions said Champions League, FA Cup or international matches (e.g. the European Championships and the World Cup<sup>119</sup>) were essential (47%, 43% and 41% respectively).<sup>120 121</sup> The vast majority of respondents who said that football competitions other than the Premier League were essential also said that Premier League was essential.<sup>122</sup>
- 5.20 A large proportion of respondents said that competitions within more than one sport were essential.<sup>123</sup> Football is the only sport where a sizeable group of respondents considered that sport alone to be essential (specifically, 23% of respondents only identified football competitions as essential).<sup>124</sup> Moreover, the majority of respondents who said that sports other than football were essential also identified football (and in particular Premier League football) as essential.<sup>125</sup>
- 5.21 Survey evidence on the reasons why consumers subscribe to premium sports channels further highlights the particular importance of Premier League coverage to consumers compared with coverage of other sporting events including other football competitions.
- 5.22 In our October 2014 survey, we asked respondents that took Sky Sports and/or BT Sport for the reasons why their household subscribed to these channels, as well as asking them to identify the most important reason. We summarise the proportions citing different specific sports as reasons in Figure 5.3 below.<sup>126 127</sup>

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<sup>119</sup> Our survey asked respondents whether “international matches (including European Championships or World Cup)” was essential. Although the question was not limited to the European Championships or World Cup, we think it seems likely that the majority of respondents would have had in mind these two competitions, given their broad appeal as the most important international football competitions. In what follows, we use the term ‘international football’ to refer primarily to these two competitions.

<sup>120</sup> Other football competitions were each considered essential by less than a third of respondents. In total around two-thirds (67%) of respondents identified one or more football competitions as essential, which is more than three times the number of respondents who said that each of the other sports were essential.

<sup>121</sup> Consistent with this, our November 2013 survey indicates that of all sports watched on TV, football is by far the most popular sport. 69% of respondents who ever watch sport on TV said that their household watched football; the second most popular sports (rugby union and Formula1) were each watched by less than half as many people (30%). Ofcom November 2013 survey, Question C2.

<sup>122</sup> For example, 95% of those who said Champions League was essential also said Premier League was essential. 96% of those who said FA Cup was essential also said Premier League was essential. 94% of those who said international football matches were essential also said Premier League was essential.

<sup>123</sup> 69% of respondents considered two or more individual competitions or sports to be essential. At the level of the sports, 51% considered two or more different sports to be essential.

<sup>124</sup> The corresponding proportions for other sports are all 3% or less.

<sup>125</sup> Overall, 77% of respondents considered at least one sport or sporting event other than Premier League coverage to be essential. 70% of these respondents (so 54% of respondents overall) also said Premier League coverage was essential.

<sup>126</sup> We asked a similar question in our November 2013 survey, but asked respondents to identify their three most important reasons rather than their (single) main reason. Although we do not report the results here, they are qualitatively similar.

<sup>127</sup> We note that in respect of both Sky Sports and BT Sport, a high proportion of respondents also cited sport-related reasons which did not refer to specific sports or competitions. In addition, in respect of BT Sport, a high proportion of respondents said that they subscribed to BT Sport because it

**Figure 5.3: Specific sport-related reasons for taking Sky Sports and BT Sport**

	Unprompted	Main reason
<b>Reasons for taking Sky Sports</b>		
<b>ANY mention of football</b>	60%	46%
<i>Premier League</i>	43%	27%
<i>Football in general</i>	37%	16%
<i>Champions League</i>	28%	2%
<i>Other live football competitions</i>	21%	1%
<b>Cricket</b>	20%	4%
<b>Formula 1</b>	18%	4%
<b>Rugby union</b>	16%	4%
<b>Golf</b>	17%	3%
<b>Other sports</b>	9%	3%
<b>Reasons for taking BT Sport</b>		
<b>ANY mention of football</b>	40%	35%
<i>Premier League</i>	28%	22%
<i>Football in general</i>	22%	12%
<i>FA Cup</i>	14%	1%
<i>Other live football competitions</i>	10%	1%
<b>Rugby union</b>	10%	6%
<b>Motorsports</b>	2%	2%
<b>Other specific sports / events</b>	2%	2%

Note: ANY mention of football is a summary code. Unprompted indicates that spontaneous answers were recorded against a set of codes only seen by the interviewer. Interviewer probing aimed to tease out specific sporting events/competitions.

Q10: Why does your household get Sky Sports? Q11: And which is your main reason for getting Sky Sports?

Source: Ofcom October 2014 survey Base: All Sky Sports subscribers (612)

Q12: Why does your household get BT Sport? Q13: And which is your main reason for getting BT Sport? Source: Ofcom October 2014 survey Base: All with BT Sport on TV (316)

5.23 Figure 5.3 shows that respondents cited a range of specific sports as reasons for subscribing to these channels. Consistent with the survey evidence on which sports subscribers consider essential, football is by far the most popular specific sport given as a reason for subscribing to Sky Sports and BT Sport, with other sports cited by much lower proportions of respondents. In addition, within football, Premier League is the most popular competition mentioned by respondents, with significantly fewer respondents citing Champions League, FA Cup or other football coverage as reasons for subscribing.

5.24 Moreover, when asked to identify their main reason for subscribing, while a sizeable proportion of respondents go on to identify football or Premier League coverage as their main reason, few respondents identify sports other than football or other specific football competitions as their main reason. This suggests that while access to sports other than football, and football competitions other than Premier League, may have been factors in some respondents' decisions to subscribe to these sports channels, for most of these respondents it was not their main reason. In contrast, where respondents cited access to football coverage as a reason, this was much more likely to be a main reason.

5.25 In summary, the survey evidence suggests that live Premier League coverage stands apart from other sports content in terms of the number of consumers who consider it

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came with their broadband/TV package or was free, which reflects the way in which BT Sport is currently made available (i.e. bundled for no additional cost with BT Broadband and included in the XL TV package on Virgin Media).

important. In addition, although most of these consumers are interested in other sports and sporting events, access to Premier League coverage is likely to be particularly important for a large proportion of these consumers.

### **Consumers also identify Champions League as important content**

- 5.26 Our survey evidence on the importance of different sporting events also suggests that live coverage of other top flight football – namely Champions League, FA Cup, and certain international matches – is important to a high proportion of consumers.
- 5.27 In respect of the FA Cup and international matches, although these competitions may feature some highly attractive matches, there are far fewer of them compared to the Premier League. In the FA Cup, matches featuring Premier League and Championship teams take place over just six weekends as these teams enter the competition in the third round.<sup>128</sup> Also, although certain World Cup and European Championship matches are highly attractive, these competitions take place every four years, with the most attractive matches played over a relatively short period of time.<sup>129</sup> This is in contrast to live Premier League coverage which constitutes a high volume of highly attractive matches played regularly throughout a ten month season. In addition, the FA Cup Final and certain World Cup and European Championship matches are Listed Events, and so will always be shown on FTA channels. As such, it seems unlikely that coverage of these events would influence a significant number of consumers' choice of pay TV provider.
- 5.28 Champions League coverage contains a number of attractive matches, particularly those featuring top Premier League teams. Although the precise number – and therefore the attractiveness of the competition in any season – depends on the performance of these teams, these matches are typically shown fairly regularly throughout the football season (although less regularly than Premier League matches). At the same time, our survey evidence indicates that the vast majority of subscribers who consider Champions League to be important also consider Premier League to be important.<sup>130</sup> It therefore seems unlikely that Champions League football alone could drive pay TV retailer choice for a material group of customers. That is, if a pay TV retailer was able to offer Champions League football but not Premier League football, it seems unlikely that Champions League coverage would drive material take-up.<sup>131</sup> However, given the number of consumers for whom Champions League coverage is important, it seems likely that Champions League could increase the degree to which a sports proposition which included Premier League coverage could influence consumers' pay TV retailer choice.

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<sup>128</sup> Also, the number of matches featuring these teams is highly uncertain as the format of the FA Cup is a knock out competition (teams may play just one match in the whole competition).

<sup>129</sup> For example, most World Cup matches are played over a period of one month.

<sup>130</sup> We also note that survey evidence on the reasons subscribers take Sky Sports suggests that Premier League coverage tends to be more important to these respondents. In our October 2014 survey, 28% of respondents taking Sky Sports cited access to Champions League as a reason for subscribing to Sky Sports, the vast majority (98%) of which also said that Premier League was a reason. 60% of the respondents who said Champions League was a reason went on to say that Premier League was the main reason.

<sup>131</sup> Unless Premier League coverage was widely available and therefore not a factor in consumers' choice of pay TV provider.

## Market players provide further evidence on the importance of Premier League and Champions League content

5.29 Figure 5.4 shows the total expenditure on sports rights by Sky, BT, the BBC, ITV, Channel 4, Five and Eurosport in 2013/14, broken down by sport. Spending on football rights continues to account for the majority of total spending on live sports rights and dwarfs the amount spent on other sports. In 2013/14, over 75% of all spending on sports rights was on live football rights.<sup>132</sup>

### Figure 5.4: Total expenditure on sports rights by sport in 2013/14, and breakdown of expenditure on football rights by competition

[X]

Source: data provided by broadcasters.<sup>133</sup>

Notes: (i) Data for 2013/14 is based on broadcasters' forecasts as at August 2013. However, the vast majority of forecast expenditure was committed in existing agreements. (ii) As Eurosport acquires rights on a pan-European basis, we have included a proportion of its total rights expenditure, equal to the share of channel revenues which came from the UK in 2013.

5.30 Figure 5.4 also shows the breakdown of total expenditure on live football rights, by competition. Around 65% of the amount spent on football rights – and around 50% of total spending on sports rights – is accounted for by live Premier League rights alone, suggesting that these rights are far more attractive than any other sporting event.

5.31 The amounts spent on rights to broadcast live coverage of other football competitions are much lower, suggesting that these competitions are not as attractive as the Premier League. The closest is Champions League coverage. Although this only accounted for 8% of the amount spent on football rights in 2013/14, this will increase significantly in 2015/16 to around 17% of the amount spent on football rights as a result of the significant increase in the amount committed by BT for the Champions League rights. Although it will still represent around a third of the amount spent by Sky and BT on Premier League rights, this is substantially higher than the amounts spent on other football (and other sports) rights.<sup>134</sup>

5.32 We have obtained internal documents from both BT and Sky which illustrate clearly the particular value placed on football, and in particular live Premier League and Champions League content. We have taken this into account in our assessment, however, given the confidential nature of this evidence we are not able to present it here.

### We therefore consider live Premier League, and to a lesser extent, live Champions League represent key sports content

5.33 Of all sports content, it remains the case that live football coverage is by far the most highly-valued sports content on TV. In particular, live Premier League coverage stands out from live coverage of other football competitions and other sporting events as being particularly important to a large number of consumers. This is evident from:

<sup>132</sup> Sports rights expenditure of Sky, BT, Eurosport and the PSBs. [X] of spending on sports rights is accounted for by pay TV providers. Remaining [X] is FTA.

<sup>133</sup> Data sources as per footnote 75 in Section 3.

<sup>134</sup> We note that the current FA Cup rights were awarded to BT and the BBC in July 2013, after BT's acquisition of Premier League rights in June 2013.

- 5.33.1 the stated importance of live Premier League coverage compared to live coverage of other sporting events, and the reasons given for subscribing to premium sports channels;
  - 5.33.2 the amount spent on live Premier League broadcasting rights compared to the amount spent on broadcasting rights for other sporting events; and
  - 5.33.3 statements made by market players which illustrate the particular importance of Premier League content.
- 5.34 Survey evidence on the stated importance of different sporting events also suggests that live coverage of the Champions League is important to a high proportion of consumers, albeit to a lesser extent than Premier League football. Champions League coverage also contains a relatively high volume of attractive matches, albeit not as many as Premier League coverage. Although our survey evidence suggests that Champions League coverage alone is unlikely to drive pay TV provider choice for a material group of customers, it seems very likely that it could increase the degree to which a sports proposition which included Premier League coverage could influence consumers' choice of pay TV provider. This is supported by the following evidence:
- 5.34.1 the significant increase in the amount committed by BT to acquire Champions League rights from 2015/16 which is consistent with these rights having a status of importance above other sporting events (even if they are less important than Premier League rights); and
  - 5.34.2 statements made by Sky and BT in relation to the attractiveness of Champions League content.
- 5.35 In relation to other sports and sporting events, these do not appear to be sufficiently important to subscribers such that, on their own, the availability of this content could influence a significant number of consumers' choice of pay TV provider and consequently impact upon competition. In addition, given the majority of consumers for whom these other sports are important also consider Premier League content to be important, any influence will be limited by the availability of this content. We recognise that the agglomeration of other sports content has the potential to influence a greater proportion of consumers' choice of pay TV provider. However, for this to affect a significant number of subscribers the content would need to be very highly concentrated and it is not clear that this is currently the case. For present purposes our focus is on Premier League and Champions League content.<sup>135</sup> However, we welcome views, supported by evidence, on whether this focus is appropriate.
- 5.36 In conclusion, on the basis of the evidence presented in this section, we consider that live Premier League coverage and to a lesser extent live Champions League coverage appear capable of influencing a significant number of consumers' choices of pay TV provider. We have therefore identified them as key content in competition for pay TV services.

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<sup>135</sup> We recognise that the combination of other sporting events with Premier League and Champions League content could increase the degree to which a sports proposition influences consumers' platform choice. Our approach in Section 6 takes into account the full range of content shown on propositions which feature Premier League or Champions League content.

*Question 5.2: Do you agree with our assessment that live Premier League matches represent key content in competition for pay TV services? If not please provide evidence to support your view.*

*Question 5.3: Do you agree with our assessment that live Champions League matches also represent key content in competition for pay TV services, albeit to a lesser degree than Premier League content? If not please provide evidence to support your view.*

*Question 5.4: Do you agree with our assessment of the importance of other sports events? If not please provide evidence to support your view.*

## Section 6

# The impact of limited distribution of key content

6.1 In this Section we set out who holds the content identified as key in Section 5 and the likely impact that limited distribution of that content on competition. Specifically we look first at the importance of the content rights held, and secondly at the market position of the content holders. Annexes 6, 7 and 8 contain further detail on the analysis presented in this section – in particular on our consumer survey evidence, our estimates of retail market shares and our analysis of barriers to entry.

## Key sports content is currently shown on Sky Sports and BT Sport channels

6.2 In Section 5 we set out our view that live Premier League content and, to a lesser extent, live Champions League content were capable of influencing the choices of a significant proportion of pay TV consumers and could therefore be considered key content. Live Premier League coverage and live Champions League coverage is currently shown on the following channels:

6.2.1 154 live Premier League matches are broadcast on television and these are split between Sky and BT. Sky has exclusive live rights to 116 matches, virtually all of which are broadcast on Sky Sports 1.<sup>136</sup> Sky has rights to 20 ‘first pick’ matches.<sup>137</sup> BT has exclusive live rights to 38 matches, all of which were shown on BT Sport 1 in 2013/14. BT has rights to 18 ‘first pick’ matches.

6.2.2 145 live Champions League matches are broadcast on television and these are currently split between Sky and ITV. Sky has exclusive rights to 128 matches, which it now shows predominantly on Sky Sports 5.<sup>138</sup> Sky shows all but one of the matches played on Tuesday evenings, and all of the matches played on Wednesday evenings.<sup>139</sup> Sky also has non-exclusive rights to show the final match. ITV has exclusive rights to 16 matches, and

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<sup>136</sup> In 2013/14, all but three of these matches were shown on Sky Sports 1. On the final day of the Premier League season, Sky Sports showed three matches simultaneously, one on each of Sky Sports 1, Sky Sports 2 and Sky Sports 3. On one other occasion, a match was shown on Sky Sports 3, as the Capital One Cup final was being shown on Sky Sports 1.

<sup>137</sup> This means that on 20 weekends in the season, Sky gets to pick first which match it wants to broadcast in one of its Sunday slots.

<sup>138</sup> Sky launched Sky Sports 5 in August 2014, as the new home of Sky's European football coverage. Prior to this, Sky's Champions League coverage was predominantly shown on Sky Sports 1 and 2, with some coverage also shown on Sky Sports 3 and 4.

[http://corporate.sky.com/investors/press\\_releases/2014/sky\\_sports\\_launches\\_new\\_channel\\_dedicated\\_to\\_european\\_football](http://corporate.sky.com/investors/press_releases/2014/sky_sports_launches_new_channel_dedicated_to_european_football)

<sup>139</sup> All Champions League matches are played on Tuesday and Wednesday evenings, with the exception of the final match which is played on a Saturday. In each season, there are 33 individual broadcast slots in which Champions League matches are played. This means that live coverage of matches must be broadcast simultaneously, either on multiple linear channels or on interactive services ('behind the red button').

non-exclusive rights to show the final match.<sup>140</sup> ITV shows one match per week on a Tuesday evening, and it gets first pick of the matches played on that evening.

- 6.3 The first step in our analysis of the likely impact of limited distribution of a channel showing key content on competition is to assess the importance of the content held by each operator in terms of the influence that the content has on consumers' choice of retail supplier. Below we carry out this assessment the content shown on Sky Sports and BT Sport respectively.<sup>141</sup> We refer to these channels as 'key sports channels' and subscribers that take one or both of these channels as 'key sports subscribers'. In carrying out this assessment, we are mindful of the fact that exclusive coverage of live Champions League matches will move exclusively to BT Sport in August 2015 and we have therefore also considered the extent to which this may alter the assessment.

### **The content on Sky Sports is important to a significant proportion of subscribers**

- 6.4 As of September 2014 [x] pay TV subscribers took a subscription for Sky Sports.<sup>142</sup> This represents some [x] of all pay TV subscribers<sup>143</sup> and we estimate Sky Sports subscribers account for around [x] of pay TV revenues.<sup>144</sup> This arises in part because subscribers on Sky DSat display an average ARPU across all communications services of [x] per month, which is higher than other Sky DSat subscribers.<sup>145</sup>
- 6.5 Subscribers to Sky Sports on DSat typically pay between £16 and £24.50 per month to take Sky Sports, on top of the other payments they make for their TV and communications services. Sky Sports subscribers on other platforms pay similar retail prices to access Sky Sports. The amount which Sky Sports subscribers spend as a proportion of their total spend on communications services is therefore significant.
- 6.6 A large group of consumers therefore place a high value on the content available on Sky Sports and, consequently, it is likely to be an important element of a pay TV package for many of those customers. Retailers that cannot offer a retail proposition

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<sup>140</sup> ITV currently broadcasts one match per match week.

<http://www.theguardian.com/sport/2013/nov/09/bt-sport-champions-league-exclusive-tv-rights>

<sup>141</sup> We do not look at ITV1 as, being a PSB channel, this channel is available through all pay TV providers. Our analysis also focuses on Sky Sports and BT Sport, rather than the standalone channels on which this content is shown as much of the evidence available to us reflects the way in which the channels are typically made available (i.e. as part of a wider bundle). Our assessment also takes into account the influence of other content shown on these channels (in addition to the key content we have identified).

<sup>142</sup> Sky response to the WMO information request dated 31 October 2014, Q1 and Q3.

<sup>143</sup> In this section we have not included data on OTT subscribers and the associated revenues.

<sup>144</sup> This estimate is based on the retail revenues from the supply of Sky Sports to customers on Sky, Virgin and TalkTalk as a proportion of total pay TV retail revenues. See Annex 7 where we set out how we have estimated retail revenues. Due to the availability of data we have excluded revenues associated with the supply of BT Sport on Sky DSat and the supply of Sky Sports on BT TV. Therefore this measure will slightly underestimate the proportion of revenues that Sky Sports customers account for.

<sup>145</sup> In comparison subscribers on Sky DSat that do not take Sky Sports have an ARPU of [x] per month.

that includes Sky Sports may therefore find it more difficult to compete for these customers.

- 6.7 Documentary evidence from BT suggests that BT considers that it will find it more difficult to acquire such customers if it is unable to offer Sky Sports:
- 6.7.1 [redacted]<sup>146</sup>
- 6.7.2 [redacted]
- 6.8 Until very recently<sup>147</sup>, BT has not been able to offer SS1&2 on its YouView platform although it was receiving supply to its Cardinal platform. [redacted]<sup>148</sup>
- 6.9 We have also found that there is a group of Sky Sports subscribers for whom Sky Sports is of such importance to their decision that they are unlikely to consider a pay TV service that cannot offer Sky Sports. We have sought to quantify the size of this group by reference to the following evidence:<sup>149</sup>
- 6.9.1 Survey evidence found that between 12% and 15% of pay TV subscribers would either switch pay TV provider or drop their service altogether if Sky Sports was no longer available via their current pay TV provider.
- 6.9.2 Sky Sports channels offer a number of sports, including live Premier League and Champions League matches, which pay TV subscribers consider to be essential. Survey evidence suggests that 21% of pay TV subscribers see the Premier League to be essential, and 16% of pay TV subscribers see both the Premier League and Champions League were essential.<sup>150</sup>
- 6.10 Given the range of evidence available to us it is difficult to be precise about how many customers view access to Sky Sports as a critical element of their pay TV package. However we consider it is likely that between 12% and 24% (so around 20%) of pay TV subscribers are in this group.<sup>151</sup> We estimate that this group represents between [redacted] of pay TV retail revenues (see Annex 6 for the detail of this survey evidence).

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<sup>146</sup> [redacted]. BT response to Question 15 of the 1<sup>st</sup> section 26 Notice under the BT CA98 Complaint dated 18 June 2013. Annex 15.6, page 3.

<sup>147</sup> In its judgment of 5 November 2014, the CAT held that the interim relief arrangements in respect of BT should be extended to cover provision of IPTV which includes BT's YouView platform. On 12 November 2014, the CAT made an order giving effect to its judgment of 5 November. On 16 December BT announced the launch of SS1&2 on its YouView boxes -

<https://www.btplc.com/news/Articles/ShowArticle.cfm?ArticleID=81A969F4-BB68-44B1-98DC-820395D7085F>

<sup>148</sup> BT's response to Question 18 of the 1<sup>st</sup> section 26 Notice dated 18 June 2013 and Question 6 of the 4<sup>th</sup> section 26 Notice dated 7 March 2014 under the BT CA98 Complaint. [redacted]

<sup>149</sup> See Annex 6 for a more detailed assessment of this evidence.

<sup>150</sup> Respondents were able to cite more than one competition as being 'essential'. A small proportion of subscribers who did not consider the Premier League, or the Premier League and the Champions League, to be essential identified other sports or sporting events shown exclusively on Sky Sports as essential. Including these respondents increases the figures to 24% and 20% respectively.

<sup>151</sup> Or between 20% and 50% of sports subscribers (see Annex 6). These estimates will exclude Sky Sports subscribers who place a significant value on Sky Sports (as evidenced by the amount they are prepared to pay for it), but at current prices for Sky Sports they do not view access to the channel as a significant factor in their choice of provider (i.e. the difference between their valuation of Sky Sports and the price of Sky Sports is small).

6.11 In addition, some consumers that do not currently take Sky Sports may value the option of taking up Sky Sports at some point in the future. Those subscribers might therefore be more inclined to subscribe to a platform which offers Sky Sports even if they do not purchase it at the current time. Pay TV retailers without Sky Sports available on their platform may therefore also face certain disadvantage when competing for non-subscribers to Sky Sports.

**The content currently available on BT Sport is also important, but to a smaller proportion of consumers**

6.12 As of September 2014 there were [redacted] subscribers to BT Sport (excluding online only subscribers), representing [redacted] of pay TV subscribers.<sup>152</sup>

6.13 The amount that subscribers to BT Sport have to pay to access the channels varies depending on how consumers choose to access BT Sport:

6.13.1 [redacted] subscribers pay between £6.75 and £15 per month to watch BT Sport as additional channels on Sky DSat<sup>153</sup> and a further [redacted] Virgin Media customers who are not on the XL package pay £15 a month to watch BT Sport (HD is included as standard on Virgin Media); and

6.13.2 [redacted] subscribers receive BT Sport as part of the XL TV package on Virgin Media, [redacted] receive the channels for 'free' on Sky's DSat platform because they take broadband services from BT<sup>154</sup> and a further [redacted] receive the channels as part of their BT TV package.

6.14 Therefore, a large proportion of BT Sport consumers receive the channels for no additional charge either because it was included with their broadband package from BT or because it was included in the Virgin Media XL or BT TV package.

6.15 The fact that so many BT Sport customers receive the channels for free means that the number of subscribers to BT Sport is unlikely to be informative as to the number of subscribers who place a high value on the content shown on BT Sport. However, it is reasonable to assume that some customers place a high value on BT Sport. [redacted] of BT Sport customers, or [redacted] of pay TV subscribers, pay more than £5 per month extra to receive BT Sport, and some of those who receive the channels as part of their TV or broadband package are likely to place value on the channel. Retailers that cannot offer a retail proposition that includes BT Sport (either as part of a bundle or as an optional extra) will find it more difficult to compete for these customers.

6.16 Internal documents from Virgin Media also indicate that Virgin Media believed it could lose some customers as a result of an inability to offer BT Sport [redacted].<sup>155</sup>

6.17 There is a group of BT Sport subscribers for whom BT Sport is of such importance to their decision that they are unlikely to consider a retailer that cannot offer BT Sport. The evidence which lead us to this conclusion includes:<sup>156</sup>

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<sup>152</sup> BT's response to the WMO information request dated 5 November 2014.

<sup>153</sup> Up until 1 October 2014, subscribers on Sky DSat that are not BT broadband customers paid £12 per month for BT Sport SD and £15 per month for HD (the prices have subsequently increased to £13.50 and £16.50). From August 2014 subscribers on Sky DSat that are BT broadband customers, but are out of contract, have paid £6.75 per month for SD and £9.75 per month for HD.

<sup>154</sup> Of these approximately [redacted] pay £3 per month to receive BT Sport in HD.

<sup>155</sup> [redacted]. Virgin Media's response to Question 2 of the WMO information request dated 30 October 2014.

- for 5% of pay TV subscribers, it was very important to have both Sky Sports and BT Sport; and
- survey evidence shows that 4% of pay TV subscribers would either switch pay TV provider or drop their service altogether if BT Sport was no longer available via their current pay TV provider.

6.18 The evidence indicates that BT Sport is very important or essential to 4%-5% of pay TV subscribers. We therefore consider it is likely that around 5% of pay TV subscribers may not consider a platform that did not offer BT Sport at all.<sup>157</sup> We estimate that this group represents around [3%] of pay TV retail revenues.

6.19 In addition, some consumers that do not currently take BT Sport may value the option of taking up BT Sport at some point in the future. Those subscribers might therefore be more inclined to subscribe to a platform which offers BT Sport even if they do not purchase it at the current time. Pay TV retailers without BT Sport available on their platform may therefore also face certain disadvantages when competing for non-subscribers to BT Sport.

### **We have taken account of the impact of BT's acquisition of the Champions League rights in our assessment**

6.20 We recognise, however, that the position may change as the content available on the Sky Sports and BT Sport offerings changes. In particular, as set out in Section 3, BT has acquired exclusive live broadcasting rights to all Champions League matches for the 2015/16 to 2017/18 football seasons. As set out in Section 5, live coverage of the Champions League appears to be the second most important sports content on television. Although it is highly uncertain at this stage what effect the acquisition of Champions League content by BT Sport is likely to have on consumers choices in the pay TV sector, we have considered the available evidence to assess, in broad terms the degree to which the transfer of Champions League content from Sky Sports to BT Sport might:

- i) increase the importance of the availability of BT Sport in consumers purchasing decisions; and
- ii) reduce the importance of the availability of Sky Sports.

### Consumer survey evidence

6.21 Survey evidence relevant to the forthcoming move of live Champions League coverage to BT Sport in August 2015 is limited. However, evidence on the proportion of Sky Sports subscribers that took Sky Sports in order to access Champions League coverage suggests that the availability of Champions League content is likely to strongly influence the choice of pay TV provider of around 3% of pay TV

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<sup>156</sup> See Annex 6 for a more detailed assessment of this evidence.

<sup>157</sup> We note that a number of respondents considered both BT Sport and Sky Sports as important. Given the preponderance of evidence that Sky Sports is substantially more important to customers than BT Sport, it is likely that this group of customers are likely to regard access to BT Sport as a key element of their platform choice only if Sky Sports is additionally available on the platforms that the customers are choosing between.

subscribers.<sup>158</sup> This figure may include some subscribers for whom BT Sport is already considered important. Therefore, it may be the case that up to an additional 3% of all pay TV subscribers would see BT Sport as important when the Champions League moves.

- 6.22 We note that this estimate is based on Sky Sports subscribers for whom access to Champions League content appears to be very important. There may also be non-Sky Sports subscribers (who may or may not take pay TV) who consider access to the Champions League content currently available on FTA to be important<sup>159</sup>, and may consider access to BT Sport to be important when Champions League content moves there.<sup>160</sup> However, our survey does not provide evidence on the size of this group.
- 6.23 Survey evidence indicates that the vast majority of Champions League fans are also fans of the Premier League, and for most fans of both the competitions, coverage of the Premier League appears to be more important than coverage of the Champions League.<sup>161</sup> As Sky Sports will continue to show the majority of all live Premier League content, Sky Sports is likely to remain an important driver of choice of pay TV platform for the majority of those for whom live Champions League content is important.

### Internal documents

- 6.24 BT's internal documents show that BT expected the acquisition of exclusive Champions League rights to result in an increase in subscribers to BT Sport:
- [redacted]<sup>162</sup>
  - [redacted]<sup>163</sup>
- 6.25 It seems unlikely that all of the expected additional [redacted] subscribers would consider Champions League content to be sufficiently important to influence their choice of pay TV retail platform. [redacted]<sup>164</sup> However, even if this were the case, this would be equivalent to around [redacted] of all pay TV subscribers.<sup>165</sup>
- 6.26 We also obtained internal documents from Sky which provide information which provide some indications of importance of Champions League to Sky Sports.

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<sup>158</sup> See Annex 6 for a more detailed assessment of this evidence. References to Champions League coverage as a reason for subscribing to Sky Sports must refer specifically to the Champions League coverage shown on Sky Sports, over and above the coverage available on FTA.

<sup>159</sup> Fewer matches will be available on FTA from 2015/16.

<sup>160</sup> Some of these non-Sky Sports subscribers may already subscribe to BT Sport and see it as important because of the content it currently shows.

<sup>161</sup> See, for example, paragraphs 5.19 and 5.28.

<sup>162</sup> [redacted] BT's Response to the 4<sup>th</sup> section 26 Notice dated 7 March 2014 under the BT CA98 Complaint. [redacted].

<sup>163</sup> [redacted]. BT's Response to the 4<sup>th</sup> section 26 Notice dated 7 March 2014 under the BT CA98 Complaint.

<sup>164</sup> [redacted]. BT's response to the 4<sup>th</sup> section 26 Notice dated 7 March 2014 under the BT CA98 Complaint.

<sup>165</sup> This estimate does not take into account any increase in the total number of pay TV subscribers as a result of FTA households taking pay TV in order to get BT Sport.

## The impact of BT’s acquisition of Champions League rights may be modest

- 6.27 On the basis of the above, the acquisition of live Champions League content is likely to increase the number of subscribers who are unlikely to consider a platform that cannot offer BT Sport from around 5% of pay TV subscribers to up to 8% of all pay TV subscribers. However, this is uncertain and the impact may be greater or smaller.
- 6.28 With regards to the impact of the loss of such content on Sky Sports, we do not consider that it is likely that the loss of live Champions League content will have a significant impact on the number of subscribers for whom the availability of Sky Sports is likely to be an important or determinative factor in their choice of pay TV provider given its current holding of Premier League content.

## The next stage of our assessment is analysing the market position of the key content holders

- 6.29 Next we look at the positions of BT and Sky and the state of wholesale and retail competition in the provision of pay TV services. This enables us to more effectively assess the impact on competition of limited distribution of content since limited distribution by a firm with a significant market presence may be more likely to impact upon competition.

## Sky enjoys a strong market position in the supply of key sports channels

- 6.30 We have focussed our assessment at the wholesale level on the supply of key sports channels, namely BT Sport and Sky Sports, as key sports content is shown on these channels.
- 6.31 Both Sky and BT are present at the level of channel supply and the retail level. At the channel supply level, both Sky and BT supply their channels to themselves (which they then retail directly to subscribers) as well as to third parties. In assessing their revenue shares at that level, we have included both third party sales and self-supply in order to form a more accurate picture. We have therefore derived prices for self-supply on the basis of published prices and discounts as set out in more detail in Annex 7.
- 6.32 The table below shows the shares of channel supply for Sky, BT and ESPN since 2009.

**Table 6.1: Share of channel supply revenues from the provision of Sky Sports, BT Sport or ESPN since August 2009**

	Sky (%)	ESPN (%)	BT (%)
2009/10	90%-100% [X]	0%-10% [X]	-
2010/11	90%-100% [X]	0%-10% [X]	-
2011/12	90%-100% [X]	0%-10% [X]	-
2012/13	90%-100% [X]	0%-10% [X]	-
2013/14	80 – 100% [X]	-	0%-20% [X]
September 2014	80 – 100% [X]	-	0%-20% [X]

Source: Ofcom calculations

- 6.33 Sky has significant shares of revenue in the supply of key sports channels which are consistently in excess of 80%. Between 2009 and 2013 Sky’s share of supply of key sports channels was broadly constant and above 90%.

- 6.34 Since BT Sport entered the market Sky's share has declined by approximately 6%, but Sky continues to enjoy a strong position in the supply of key sports channels. This is further evidenced by Sky's share of sports rights expenditure since sports rights are the primary input for channel supply. Sky's share of expenditure on sports rights in 2013/14 was over 60% of all sports rights expenditure (including FTA).
- 6.35 In contrast, BT's position is relatively modest. Its share of channel revenues at present is less than 20% and its share of expenditure on sports rights is around 15%. We estimate that BT's share of expenditure on rights will increase to around 30% of all sports rights expenditure (including FTA) following its acquisition of rights to live Champions League and Europa League matches, but BT will remain a relatively modest position in terms of both revenue and rights expenditure.<sup>166</sup>

### **Sky appears to have a significant advantage when bidding for sports rights**

- 6.36 We have assessed the available evidence to determine the extent to which there may be barriers to the ability of rivals to compete for the acquisition of key sports content. We discuss this in more detail in Annex 8. In particular, we have assessed previous auctions of key content rights and whether there are features of the pay TV market which could give Sky an advantage when bidding for rights.
- 6.36.1 Sky won the maximum rights available to a single broadcaster in the 2012 and 2009 auctions for live Premier League rights. This indicates that Sky had a higher valuation of the rights and that it enjoyed an advantage over rival bidders. Although, in 2013 BT outbid Sky for rights to broadcast the Champions League, we note that expenditure on Champions League rights is significantly lower than for the Premier League rights, and live Premier League content remains the most important content for consumers.
- 6.36.2 In 2010 we identified a number of factors that could explain Sky's apparent bidding advantage. These included the time it takes to build a subscriber base, the advantage of being vertically integrated with the largest platform operator and thereby able to bundle key sports channels with other pay TV services and some bidder specific advantages.<sup>167</sup>
- 6.37 We have assessed whether BT's acquisition of Champions League rights provides evidence that it has overcome barriers to entry we identified in 2010. As we set out in Annex 8, in some ways BT's business model is similar to previous entrants strategies and in this respect it is likely to face one of more of the disadvantages identified in 2010. Nevertheless, BT's business model is different to previous rival bidders in respect of the fact that it seeks to monetise rights for sports content by bundling it with broadband. This bundling of BT Sport for free with its broadband package on Sky DSat accounts for [3<] of BT Sport subscribers (excluding online only subscribers). Overall it is not clear whether BT's strategy of bundling its sports offering for free with broadband overcomes Sky's advantage of being the vertically integrated operator on the largest pay TV platform.
- 6.38 There will be an auction of Premier League broadcast rights during the course of 2015. Whilst our assessment of the evidence currently available appears to indicate that Sky continues to enjoy an advantage over other bidders; it remains possible that

<sup>166</sup> This estimate is based on sports rights expenditure in 2013/14 adjusted to reflect only changes in expenditure on Champions League and Europa League rights from 2015/16.

<sup>167</sup> 2010 Pay TV statement, paragraph 5.474.

rivals could outbid Sky in the upcoming auction. We recognise that operators which are able to monetise rights over subscriber bases other than pay TV retail subscribers may consider bidding for rights in a similar manner to BT.

- 6.39 Even if there are lower barriers to the ability of rivals to bid for sports rights, the limited distribution of key content may nevertheless be an issue of concern. Throughout the period key content rights are held, barriers to acquiring those rights are absolute and limited distribution could therefore be prejudicial to fair and effective competition during this period.
- 6.40 The combination of potentially high barriers to entry and Sky's wholesale market shares indicate that Sky has retained a strong position at the wholesale level.

### **We also assess retail competition between traditional pay TV retailers**

- 6.41 As explained in Section 2 (paragraphs 2.9 to 2.11), by traditional pay TV retailers we mean Sky, Virgin Media, BT and TalkTalk. We have also considered whether to include OTT services in our assessment. OTT providers have acquired some movies and entertainment content and have grown with Netflix had approximately 2.8m subscribers in Q1 2014 and Amazon Prime approximately 1.2m.<sup>168</sup> As OTT services offer genres of content which are also available on traditional pay TV platforms, they may exert some competitive pressure for some groups of pay TV subscribers and over certain elements of the pay TV service offered by pay TV retailers. However, to date they have not typically offered the full range of services offered by more traditional pay TV retailers (e.g. bundling of linear and on-demand content along with a STB with DVR functionalities). In addition, they have, up to now, tended to focus on general entertainment and movie content (although Sky and BT have their own OTT sport offerings).<sup>169</sup>
- 6.42 We do not consider that, at the current stage of development, OTT services are likely to significantly change our assessment of competition in pay TV retailing for the following reasons:
- most pay TV consumers still receive their channels through a traditional pay TV platform rather than an OTT service. Our November 2013 survey indicated that 60% of UK adults had a pay TV service from a platform retailer. However, only 16% of UK adults with a TV service on their main set had paid for an OTT service in the past six months;<sup>170</sup> and
  - customers tend to take OTT services as an add-on to other TV services rather than a substitute. Our November 2013 survey showed that of those respondents that had paid to use LOVEFiLM (now Amazon Prime Instant Video) or Netflix, in

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<sup>168</sup> BARB establishment survey Q1 2014 - <http://www.barb.co.uk/whats-new/329>.

<sup>169</sup> OTT sports content is available through Sky's NOW TV service or the BT Sport app (available to BT broadband customers), although there are also OTT offerings made available for their existing pay TV subscribers (e.g. Sky Go, and BT TV Everywhere).

<sup>170</sup> Source: November 2013 survey QB1A: Have you, or anyone in your household paid to use any of the following online services in the past 6 months? Base All UK adults 16+ with specified TV services (Sky, Virgin Media, TalkTalk TV, BT TV and FTA) on main TV set, including non-decision makers. Q A1: Through which of the following ways, if any do you receive television in your household? Base: All UK Adults 16+ including non-decision makers.

the previous six months, 69% and 77% respectively were also subscribers to pay TV services from Sky, Virgin Media, TalkTalk TV or BT TV.<sup>171</sup>

- 6.43 Our assessment of the retail level therefore focusses on the traditional platform retailers, namely Sky, Virgin Media, TalkTalk TV and BT TV. We recognise, however, that this may change in the future as OTT services develop.
- 6.44 We have considered two ways in which competition in this market might be considered:
- i) supply of pay TV services to all pay TV customers, including customers that take key sports channels; and
  - ii) supply of pay TV service to key sports subscribers only – i.e. customers that take bundles of pay TV services including key sports channels.
- 6.45 Sky enjoys a strong market position both in terms of having a large retail subscriber base and a large share of retail pay TV revenues and potentially a number of incumbency advantages over other retailers. Although it faces competition from a number of sources in the retail supply of pay TV all of these competitors are limited in some way:
- Virgin Media offers an extensive pay TV package with a large number of channels including Sky Sports, movies and BT Sport. However, Virgin Media's geographic reach is restricted to approximately half of the country. Virgin Media is dependent on wholesale channel providers for its content, and in particular on Sky and BT for the supply of its sports content;
  - TalkTalk is able to offer national coverage of pay TV, including all the Sky Sports channels and movies, but offers a smaller number of basic entertainment channels than Sky or Virgin Media, and it cannot offer BT Sport. TalkTalk depends on Sky for the supply of its sports content; and
  - BT also offers national coverage of pay TV but like TalkTalk has a smaller number of entertainment channels. Until recently, BT has also been restricted in its ability to supply Sky Sports could only offer SS1&2 via its older STB.<sup>172</sup>

### **Sky holds a strong market position in the retail supply of pay TV**

- 6.46 There are a number of different ways to look at the market position of pay TV retailers:
- first, we can assess shares of supply to those customers that take channels containing key sports content only. Alternatively we can assess shares of supply to all pay TV subscribers including those that do not take these channels; and

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<sup>172</sup> In its judgment of 5 November 2014, the CAT held that the interim relief arrangements in respect of BT should be extended to cover provision of IPTV which includes BT's YouView platform. On 12 November 2014, the CAT made an order giving effect to its judgment of 5 November. On 16 December BT announced the launch of SS1&2 on its YouView boxes - <https://www.btplc.com/news/Articles/ShowArticle.cfm?ArticleID=81A969F4-BB68-44B1-98DC-820395D7085F>

- in addition, all of the platform retailers sell a range of communications services in addition to pay TV. Therefore we can look at shares of supply for TV revenues only,<sup>173</sup> or also include revenues associated with all of the communications services supplied.<sup>174</sup>

6.47 Regardless of which of these measures we use, we estimate Sky has a share of the retail supply of pay TV in excess of 50%.

6.48 The table below shows retail shares for Sky and BT in September 2014 when revenues from the sale of BT Sport on Sky DSat and the app only are included. These estimates indicate the market position of each operator as a retailer of pay TV.

**Table 6.2: Share of retail revenues in September 2014 including revenues from the sale of BT Sport on Sky DSat and the BT Sport app**

Customers included	Revenues included	Sky's share of supply	BT's share of supply
Customers that take BT Sport and/or Sky Sports	TV only revenues	60%-80% [X]	0%-10% [X]
	TV, broadband and voice revenues	40%-60% [X]	10%-30% [X]
All pay TV customers	TV only revenues	60%-80% [X]	0%-10% [X]
	TV, broadband and voice revenues	40%-60% [X]	10%-30% [X]

Source: Ofcom calculations.

6.49 In assessing the revenues from customers that take BT Sport and/or Sky Sports we have included all of the revenues associated with customers that receive BT Sport for free on Virgin Media (as part of the XL package), on Sky DSat (as a BT Broadband customer) and on YouView. We note that this is likely to overstate revenues as some of these customers will not be interested in the content shown on BT Sport.<sup>175</sup>

6.50 We have also looked at the relative position of different retailers by excluding revenues from the sale of BT Sport on Sky DSat and through the BT Sport app. This provides a clearer indication of the position of each retailer based on the sales made on their own platform. The table below shows shares of retail revenues for September 2014 excluding these revenues.

<sup>173</sup> To estimate TV only revenues we subtract an estimate of the communication revenues for all customers that take pay TV from the total retail revenues provided by operators. This is based on the number of subscribers on different voice and broadband packages and the standalone price of the associated package, i.e. the price when broadband and voice is taken as part of a bundle excluding TV. As Virgin offers significant discounts when bundling TV and broadband and both BT and TalkTalk only offer TV as part of a triple-play bundle the TV only shares should be viewed as an approximation and are subject to some uncertainty.

<sup>174</sup> We do not include BT Broadband packages where subscribers did not take BT Sport. That subscribers could take BT Sport (but choose not to) makes no difference to the strength of competition for sports pay TV customers

<sup>175</sup> Evidence from the October 2014 survey suggests that not all BT Sport subscribers are interested in sport. 49% of BT Sport subscribers on Virgin Media gave only non-sport reasons for taking BT Sport. 36% of BT Sport subscribers on BT TV gave only non-sport reasons, and 45% of BT Sport subscribers on Sky DSat and taking BT broadband gave only non-sport reasons. (Ofcom, October 2014 survey, Q12.) If we exclude the BT Sport revenues associated with these proportions of subscribers, Sky's share of retail revenues for the supply of all communication services to customers that take a key sports channel increases from [X] and BT's share falls from [X].

**Table 6.3: Share of retail revenues in September 2014 excluding revenues from the sale of BT Sport on Sky DSat and the BT Sport app**

Customers included	Revenues included	Sky's share of supply	BT's share of supply
Customers that take BT Sport and/or Sky Sports	TV only revenues	60%-80% [X]	0%-10% [X]
	TV, broadband and voice revenues	50%-70% [X]	0%-10% [X]
All pay TV customers	TV only revenues	60%-80% [X]	0%-10% [X]
	TV, broadband and voice revenues	50%-70% [X]	0%-10% [X]

Source: Ofcom calculations.

- 6.51 As a check of the sensitivity of our results, we also considered the supply of all fixed communication services, i.e. including voice and broadband customers that do not take a pay TV package at all. Even on this basis Sky's share of retail supply is in excess of 40%.
- 6.52 BT's share of supply is sensitive to whether or not we include revenues associated with the supply of BT Sport on Sky DSat and through the app and online player. But in all cases it is below 25%.
- 6.53 Overall, BT's acquisition of Champions League rights will mean that BT's retail revenues may increase (we discuss the impact of Champions League on the importance of BT Sport in paragraphs 6.20 to 6.29). The entry of BT Sport has had a relatively modest impact on Sky so far as the majority of BT Sport customers take BT Sport on top of Sky Sports. Consequently the impact on Sky's retail revenues may not be large.

### **Sky may enjoy a number of incumbency advantages at the retail level**

- 6.54 The Competition Commission ('CC') looked at the barriers to entry in the retail supply of pay TV in its movies assessment (in its assessment the CC considered a broad market including both traditional pay TV packages and OTT subscription VOD ('sVOD') services).<sup>176</sup> It identified three barriers to setting up a new pay TV platform, the latter two of which also apply to the ability of an existing smaller platform to expand its operations:
- i) the high fixed costs of setting up a pay TV platform. As new entrants face uncertainty about their future scale high fixed costs can act as a barrier to entry. These costs include the cost of developing the platform and any consumer equipment, e.g. a STB;
  - ii) the high cost of acquiring new subscribers. A new entrant would incur significant marketing costs in order to acquire new customers and for those that do switch the entrant would incur further costs providing new equipment. The incumbent operator already has an existing subscriber base and so does not have to incur

<sup>176</sup> Competition Commission, August 2012, Movies on pay TV market investigation, Section 7: <http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/movies-on-pay-tv-market-investigation>

marketing and only needs incur the costs of maintaining existing equipment and infrastructure for these customers<sup>177</sup>; and

- iii) the likelihood of a competitive response by existing platforms. An entrant may expect incumbents to respond by strengthening their offering and by seeking to retain their existing subscribers (i.e. a normal competitive response). Anticipation of such a competitive response could deter entry or expansion.

6.55 Since the CC published its decision in 2012 both BT and TalkTalk's TV platforms have continued to grow, but still account for less than 15% of pay TV subscribers, and substantially less than that in terms of platform revenues. In addition, recent evidence on consumer switching in the pay TV market indicates that consumer switching remains low, and the time taken to acquire subscribers remains significant. In 2013, only 4% of consumers with a pay TV service switched their main TV provider.<sup>178</sup>

### **The impact of limited distribution will reflect both the importance of content and the market position of the content holder**

6.56 Below we set out our assessment of the impact limited distribution of Sky Sports and BT Sport may have on competition in the supply of pay TV, taking account both of the importance of the content shown on Sky Sports and BT Sport and the market positions of each of Sky and BT.

#### **Limited distribution of Sky Sports may have a significant effect on pay TV retailing**

6.57 We have set out evidence suggesting that limited distribution of Sky Sports may restrict other platforms' ability to compete for a sizeable and high-value segment of pay TV subscribers. Limited distribution of Sky Sports is likely to make it more difficult for rival platform retailers to compete for current Sky Sports subscribers who represent [%] of all pay TV subscribers and around [%] of pay TV revenues. We have also identified a subset of subscribers (between 12 and 24% of pay TV subscribers) that rival retailers are unlikely to be able to compete for at all without Sky Sports. Consequently a decision to limit distribution of Sky Sports may be likely to have a negative impact on static competition in the supply of pay TV.

6.58 Sky also enjoys a strong market position both as a supplier of key sports channels and as a pay TV retailer. In the longer term this may make it more difficult to compete with Sky at both wholesale and retail levels:

- at the retail level, a smaller subscriber base makes it more difficult to recover the fixed costs of setting up and investing in a pay TV platform. Without access to Sky Sports, rivals are unlikely to be able to grow their subscriber base to the same extent. This could raise the risk of rival platforms rejecting investments in new content and platform innovations and as a result growing more slowly and so exerting less competitive pressure on Sky; and

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<sup>177</sup> The cost of acquiring subscribers may be lower for an entrant that has an existing subscriber base in an adjacent industry, e.g. broadband or mobile. However, the entrant would still face a cost in converting these subscribers to pay TV customers.

<sup>178</sup> Ofcom, The Consumer Experience Report 2013, Section 8.2.1.

[http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/TCE\\_Research\\_final.pdf](http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-13/TCE_Research_final.pdf).

- in the supply of key sports channels. If Sky can retain its strong position in pay TV retailing, this may give it continued advantages when bidding for sports rights (see Annex 8).

6.59 The impact on dynamic competition depends in part on the importance of Sky Sports in growing a pay TV subscriber base. Assessing this importance is difficult as it depends on a large number of factors. Recent evidence from the supply of Sky Sports on BT Cardinal and TalkTalk TV is inconclusive on the impact of Sky Sports on subscriber growth. BT has submitted that [redacted].<sup>179</sup>

6.60 The figure below shows total subscribers on BT TV, split by Sky Sports and non-Sky Sports subscribers, since January 2010 (Sky Sports launched on BT Vision in July 2010).

#### Figure 6.4: BT TV subscribers since January 2010

[redacted]

Source: WMO information requests and section 26 notices issued under the BT CA98 Complaint to Sky and BT<sup>180</sup>

6.61 Take-up of Sky Sports on BT TV has been low since launch. At its peak [redacted] of BT TV subscribers took Sky Sports and this had fallen to [redacted] of subscribers by September 2014. Although there has been significant growth in BT TV subscriber numbers since Sky Sports has been available the majority of this growth relates to customers that do not take Sky Sports.

6.62 Take-up of Sky Sports on TalkTalk has also been low. In July 2013 only [redacted] of TalkTalk TV customers subscribed to Sky Sports. The figure below shows the number of TalkTalk TV subscribers, split by Sky Sports and non-Sky Sports subscribers, since September 2012.

#### Figure 6.5: TalkTalk TV subscribers since September 2012

[redacted]

Source: TalkTalk's response to Question 1 of the section 26 Notice under the BT CA98 Complaint dated 22 August 2013 and its response to the WMO information request dated 31 October 2014.

6.63 Although growth of Sky Sports subscribers has been slow on both platforms this does not necessarily imply that Sky Sports is unimportant. In both cases there are a number of limiting factors that may be responsible for low growth:

- it may reflect Sky's response to the availability of Sky Sports on other platforms. BT has submitted that [redacted];<sup>181</sup>

<sup>179</sup> BT's response to Question 8 of the 4<sup>th</sup> section 26 notice under the BT CA98 Complaint dated 7 March 2014.

<sup>180</sup> Specifically BT's response to Question 2a of the 2<sup>nd</sup> section 26 dated 23 August 2013, Question 1 of the 4<sup>th</sup> section 26 Notice dated 7 March 2014 and Sky's response to Question 1a of the 5<sup>th</sup> section 26 Notice dated 16 April 2014. Also, BT's response to Question 1 of the WMO information request dated 5 November 2014 and Sky's response to Question 3 of the WMO information request dated 31 October 2014.

- as set out in paragraph 6.55, there are low levels of switching in the pay TV market. Therefore we would expect relatively slow movement of Sky Sports subscribers from Sky's DSat platform to BT and TalkTalk's platforms;<sup>182</sup> and
- after the launch of YouView in September 2012 BT faced the difficulty of being unable to advertise Sky Sports for supply on its new platform.

6.64 The precise effect of being able to offer Sky Sports on a platform is therefore uncertain. The example of SS1&2 on BT Cardinal suggests that it can be important for attracting or retaining up to [x] of customers. In addition, the impact on BT Cardinal and on other platforms may be understated for the reasons set out in the paragraph above.

6.65 On the basis of the above analysis, limited distribution of Sky Sports may prejudice fair and effective competition between pay TV retailers. Rival platforms which are unable to offer the key sports content available on Sky Sports may face difficulties in competing for a sizeable proportion of subscribers due to the importance attributed by consumers to Sky Sports and to Sky's market position.

### **The overall impact of limited distribution of BT Sport is uncertain**

6.66 Above we set out evidence indicating that the content on BT Sport may influence the decision of around 5% of pay TV subscribers and around [x] of pay TV revenues. When BT starts showing Champions League content this could increase to up to 8% of pay TV subscribers.

6.67 BT is a recent entrant as a key sports channel supplier and its share of supply of both key sports channels and retail supply is less than 25%. Although BT's position will likely improve at both levels when it starts showing Champions League content this alone appears unlikely to change its position in the short to medium term.

6.68 Given the content on BT Sport is important to some consumers a decision to limit distribution may have a small impact on short-term competition as rival platforms without access to BT Sport would find it difficult to compete for between 5% and 10% of pay TV customers.

6.69 However, this effect on competition may be offset over the longer term if BT establishes itself as a more effective competitor. In particular, limited distribution of BT Sport could allow BT to grow its BT TV subscriber base and monetise sports rights more successfully than it otherwise would have. In the medium to long term this could give BT a chance to overcome the barriers to expansion and act as a more effective competitor to Sky in both the supply of key sports channels and at the retail level.

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<sup>181</sup> BT's response to Question 8 of the 4<sup>th</sup> section 26 Notice under the BT CA98 Complaint dated 7 March 2014.

<sup>182</sup> BT and TalkTalk have been able to quickly grow their subscriber base by upgrading FTA households. However, these subscribers are unlikely to be subscribers for whom sports is important since subscribers with a high willingness to pay for sports content typically already subscribe to pay TV. Consequently take-up of Sky Sports by households upgrading from FTA is typically low and low levels of switching in the pay TV market make it difficult to attract subscribers that value sports content highly.

## **We consider limited distribution of Sky's key sports channels may be detrimental to competition**

- 6.70 We find that Sky holds content that is likely to influence a sizable and valuable segment of pay TV subscribers. Sky is the incumbent operator and has a strong existing market position both in the supply of sports channels and as a pay TV retailer. Our analysis suggests that a decision by Sky to limit distribution of this content would be likely to prejudice fair and effective competition between pay TV retailers.
- 6.71 We are aware that developments in pay TV may affect this assessment. As new services develop, the relative importance of the key sports content shown on Sky Sports to consumers' choice of pay TV services may diminish. In addition, although we have not seen any evidence that this is currently the case, the advantages which Sky currently enjoys in bidding for key sports content may weaken over time. Were this to arise, the impact of limited distribution of the key sports content shown on Sky Sports on competition in pay TV services may be reduced. At this point, however, we are of the view that the key sports content shown on Sky Sports remains an important driver of competition in pay TV services and its limited distribution may consequently have a detrimental effect on competition.
- 6.72 BT is a recent entrant to the pay TV market and holds content that is important to a relatively small segment of pay TV subscribers. BT is a relatively new entrant and currently has a relatively modest position in the supply of sports channels and as a pay TV retailer. Given the scale of rights BT currently holds, the impact of limited distribution of BT's content is less clear. There may be a small impact on short-term competition (i.e. lack of supply on TalkTalk). However, this may be offset if BT establishes itself as a more effective competitor.
- 6.73 We note that the rights to the broadcast of live Premier League content held by Sky and BT will expire at the end of the 2015/16 season. Rights to subsequent seasons are expected to be the subject of an auction process in the coming months and we recognise that this may change our assessment. We will consider whether the outcome of any subsequent auction changes our assessment in the next phase of this review.

*Question 6.1: Do you agree with our assessment that limited distribution of Sky Sports may be prejudicial to fair and effective competition?*

*Question 6.2: Do you agree with our assessment that limited distribution of BT Sport is unlikely to be prejudicial effect to fair and effective competition?*

## Section 7

# Incentives to limit distribution of key content

- 7.1 In this section we set out our analysis of whether pay TV retailers face incentives to limit distribution of key content. We assess the available evidence on the likelihood that Sky and BT might choose to limit the distribution of their sports channels in a way that could be prejudicial to fair and effective competition.
- 7.2 In considering the extent to which there may be incentives to limit distribution of key content, we note that there are two means by which holders of key sports rights might make their sports channels available on rival pay TV platforms:
- i) firstly, a provider may offer its channels on a wholesale basis to a rival retail platform. This allows the rival retailer to enter into a contractual relationship with its customers for the retail supply of the sports channel. The retailer will therefore be able to determine the retail price charged to its subscribers and may choose to bundle the channel with other pay TV services or other communications services;
  - ii) alternatively, where technically possible, a holder of key sports rights may enter into a direct relationship with subscribers on a rival retailer's pay TV platform through self-retailing. In such circumstances, the rival retailer will not control the supply of the channel and will not retain retail revenues for itself. However, the key sports content will be available to subscribers of that platform.

## We have identified two types of practice which may result in limited distribution of key content

- 7.3 Against this background, we have identified two types of practice which might result in limited distribution of key sports content to a rival retailer's platform and could have a prejudicial impact on not only competition between pay TV retailers but also in respect of other parts of the value chain (such as the development and distribution of premium sports channels by the rival):
- failure to supply the channel(s) or important parts of the service offered on the channel on either a wholesale or self-retail basis<sup>183</sup>; or
  - supply on terms that do not allow fair and effective competition. This practice could take two forms:
    - supply of the channels on a wholesale basis, but on terms that do not allow the rival retailer to compete effectively<sup>184</sup> or undermine the rival retailer's

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<sup>183</sup> This could include failure to supply the channels at all to a rival platform or limiting supply of the channels in a way that reduces its value to consumers (e.g. by offering lower quality service, more restricted range of channels or by non-supply of important additional services like HD, interactive services, on-demand content, or multi-room).

<sup>184</sup> There are a variety of ways in which the terms of wholesale supply can degrade the ability of a retailer to offer effective competition. These include setting wholesale prices that do not allow a sufficient retail margin to enable the rival retailer to compete effectively and other contractual restraints on the conduct of the rival retailer.

incentives or ability to compete in other parts of the value chain (particularly channel development and distribution); or

- supply of the channels on a self-retail basis where this would undermine the ability of the rival retailer to compete effectively as a pay TV platform or in other parts of the value chain (particularly channel development and distribution).<sup>185</sup>

7.4 We note that there are a number of important differences between wholesale supply and supply on a self-retail basis. In particular where a channel is made available on a self-retail basis the host pay TV platform operator will not be able to bundle that channel with other content and services on its platform and the customer will need to maintain two separate subscriptions. Alternatively, from the channel operator's perspective there may be benefits from a self-retail arrangement, for example by allowing a direct contractual relationship with subscribers on a rival retailer's platform.

### **Channel providers face trade-offs when making decisions about distribution of key content**

7.5 Key content holders will face a complex set of trade-offs in deciding whether or not to distribute key sports channels to a rival retailer's platform. A number of factors may weigh in favour of distribution, for example where this enables sales that might not otherwise be made. Equally, there may be incentives to limit distribution, for example where this would deliver long term benefits to the content holder at different levels of the value chain.

7.6 We identify below some of the considerations which a channel operator will weigh up in deciding whether or not to distribute its channels to rivals:<sup>186</sup>

7.6.1 Distribution of key sports channels to rival retailers or their platforms is likely to increase revenues earned by a vertically integrated supplier of sports channels where it gains customers (either directly through self-retail arrangements or indirectly through wholesale arrangements) it would not have otherwise have been able to attract. This may therefore provide incentives to such a supplier to distribute its key sports channels widely at a price which maximises the revenues it receives from subscribers on retail platforms.

7.6.2 In a static sense<sup>187</sup> limited distribution will reduce those revenues. However, it may also lead some customers to substitute back to the retail offering of the content holder. If the scale of retail customer substitution and the size of margins earned on retail customers relative to the margins that

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<sup>185</sup> This could include setting retail prices on the rival retailer's pay TV platform that are higher than those on the channel operator's own retail offering, or the provision of a lower value product, for example by removing additional channels and functions or amendments to the service that reduce the quality of the viewing experience relative to the service on their own retail offering.

<sup>186</sup> This list is not necessarily exhaustive. We have also only considered the incentives from the perspective of a vertically integrated supplier of sports channels, i.e. a provider of a sports channel which is also a pay TV retailer. Whilst there may be circumstances in which a provider of sports channels that was not vertically integrated may have incentives to limit distribution, neither Sky nor BT is in that position as both are vertically integrated.

<sup>187</sup> i.e. assuming no change in competitive conditions, or other strategic benefits, as a result of limited distribution.

are earned from wholesale or self-retail is large enough, this might lead to an incentive to withhold supply entirely from a rival retailer's platform. If not there will be a static incentive for the content holder to supply.<sup>188</sup>

- 7.6.3 If a rival retailer is prevented from competing effectively for a sizeable group of customers because key content is not available over its platform, this may undermine its incentives or ability to develop and expand its platform to better compete in future periods. A vertically integrated channel operator may gain long run benefits from this reduced future competition which it would factor in to its decisions on whether or on what terms to supply a rival retailer's platform.
- 7.6.4 A channel operator may be able to indirectly or directly influence the ability or incentives of a rival to compete in the provision of key sports channels. An indirect impact might occur if limiting distribution to a rival retailer's platform reduces that retailer's ability to acquire customers, which in turn reduces the retailer's future ability and incentives to bid for sports rights.<sup>189</sup> A direct impact may occur if the channel operator makes it a condition of supply of its channel that the rival retailer alters distribution of any sports channels that the rival retailer supplies (or might develop in future).
- 7.6.5 Bundling key sports channels with other communications services may serve the interests of the channel operator in other markets. If the operator limits distribution of key sports content to a rival retailer's pay TV platform that may reduce the rival's ability to attract customers in other markets, with the channel operator obtaining extra customers in those markets as a result. We note in this respect that BT's very substantial investments in developing a premium sports channel are in part aimed at supporting BT's broadband and voice business and its distribution strategy for its premium sports channels is likely to be influenced accordingly.<sup>190</sup>
- 7.6.6 Channel operators may wish to control downstream retail distribution to better extract value from their key sports channels. For example, in order to bundle the sale of the channel with other channels or services or otherwise seek to price discriminate between different customer groups it may be necessary to exert some control over distribution. Alternatively, channel operators may choose to supply to a rival platform on terms that place

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<sup>188</sup> The balance of static incentives will be determined by the relative profitability of customers on the rival retailer's platform compared to other platforms and the content holder's own platform; and the propensity of subscribers on rival platforms to switch platforms in response to limited distribution. This could vary depending on the type of limited distribution being considered. For example the margins made on a rival platform may vary depending on whether supply is on a wholesale or self-retail basis. The scale of subscriber substitution may also vary depending on whether limited distribution takes the form of non-supply, wholesale supply on terms that do not allow effective competition or self-retail on terms that do not allow effective competition.

<sup>189</sup> This dynamic was discussed at length in our 2010 analysis, see paragraphs 7.170 to 7.201 in the 2010 Pay TV statement. This remains a potential concern for us here.

<sup>190</sup> Ensuring effective competition in retail broadband and voice is of course an important policy priority for Ofcom, and we have a separate set of regulatory arrangements that address this (See – Ofcom's Fixed Access Market Review 2014 - <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/specific-conditions-entitlement/market-power/fixed-access-market-reviews-2014/> ). However, it is not the focus of this WMO review. Here our focus is not on any potential impact of limited distribution on broadband and voice, but simply that limited distribution may have an impact on the position in retail pay TV and this is one reason why a channel operator may limit distribution to rival retail platforms.

strong restrictions or disincentives on how the rival retailer packages or prices the channel so as to protect the way in which it packages or prices the channel itself.

7.7 We have considered the extent to which the balancing of factors such as these in the case of each of Sky and BT might lead to limited distribution. In doing so, we have considered the impact of limited distribution on fair and effective competition in pay TV retailing.<sup>191</sup> We have also considered the consequences of limited distribution in other parts of the value chain, in particular the extent to which limited distribution may prejudice fair and effective competition in the development and distribution of key sports channels by the rival retailer.

## Sky

7.8 Table 7.1 below provides a summary of the wholesale revenues that Sky currently receives as a result of supplying Virgin Media, TalkTalk and BT (both Cardinal and YouView<sup>192</sup>) with Sky Sports. We also include an estimate of the wholesale revenues Sky might receive from BT if it were to supply the YouView platform.

**Table 7.1: Current and potential wholesale subscribers for Sky Sports**

Retailer/platform	No of Sky sports subscribers in September 2014	Estimated Annual Wholesale revenues**
Sky DSat	[X]	n/a
Virgin Media	[X]	[X]
TalkTalk YouView	[X]	[X]
BT Cardinal	[X]	[X]
BT YouView <sup>193</sup>	[X]	[X]

Source: Ofcom calculations based on Sky's response to the WMO information request dated 31 October 2014.

7.9 Limited distribution of Sky Sports will lead to revenues being foregone by Sky at the wholesale level. These wholesale revenues are likely to be largely additional gross margin for Sky, since the per-subscriber costs involved in wholesale supply are likely to be small.<sup>194</sup> This will vary by retailer.

<sup>191</sup> We recognise that there are some circumstances where modest restrictions in the scope or terms of distribution of key sports channels can achieve efficiencies without a loss in competition and so benefit consumers. This includes, for example, minor restrictions in distribution that ensure quality of service, protect against piracy or protect the content holder's brand.

<sup>192</sup> As discussed in paragraph 3.39, until recently, Sky did not currently supply BT YouView with Sky Sports. Table 7.1 therefore includes an estimate of the potential wholesale revenues that Sky might receive from BT if it were to do so.

<sup>192</sup> As discussed in paragraph 3.39, until recently, Sky did not currently supply BT YouView with Sky Sports. Table 7.1 therefore includes an estimate of the potential wholesale revenues that Sky might receive from BT if it were to do so.

<sup>193</sup> Subscribers estimate based on the number of YouView subscribers in September 2014 ([X]) multiplied by the maximum penetration of Sky Sports on BT TV ([X]). Wholesale revenues estimated by multiplying estimated number of wholesale subscribers by average wholesale revenue per subscriber for BT Cardinal (this is lower than Virgin and TalkTalk as only Dual Sports is available on Cardinal).

<sup>194</sup> The majority of the costs in channel operation are related to the cost of the content rights and the production of the channel and are therefore fixed. At the wholesale level there are few direct incremental costs per additional subscriber as there is no need to supply equipment or maintain infrastructure associated with retail delivery.

- 7.10 Table 7.1 indicates that non-supply of Sky Sports to Virgin Media might result in lost wholesale revenues of approximately [x] per year. The platforms operated by TalkTalk and BT have considerably smaller numbers of subscribers and consequently the actual or potential wholesale revenues associated with these platforms are likely to be considerably lower at between [x] per year.
- 7.11 In the short term, if Sky were to fail to supply Sky Sports to a rival retailer's platform, Sky might expect to win back some of the subscribers to Sky Sports as some of them will choose to switch to Sky's own platform and retail service in order to continue to receive Sky Sports. Where this happens Sky will make profits as a result of the capture of the subscriber as a retail customer including the revenues from supplying Sky Sports and the other associated revenues as a result of supplying other TV services and possibly also fixed line and broadband services. The scale of the short term benefit to Sky will depend on the scale of this movement in subscribers and the value of retail margins (including the margins made on other TV services, fixed line telecoms margins and broadband margins). This short term substitution of retail customers will offset, and could surpass, the losses in wholesale revenue. It is therefore the balance of the short term losses and benefits to Sky that will determine its static incentive to supply.
- 7.12 The balance of Sky's static incentives may vary depending on the type of limited distribution considered. It may be the case that the margins Sky earns on a rival platform are different depending on whether supply is on a self-retail basis or on a wholesale basis. When self-retailing Sky will earn retail revenues rather than a wholesale margin, but will not be able to capture any of the benefits associated with bundling as the channel will be sold standalone rather than as part of a wider pay TV bundle. All else being equal, a larger margin on a rival platform will tip the balance of Sky's static incentives in favour of supply.<sup>195</sup>
- 7.13 Our October 2014 survey indicated that were Sky Sports to be withdrawn from Virgin Media, between 19% and 36% of the Sky sports subscribers on that platform would switch to a provider with Sky Sports.<sup>196</sup> Using these figures, a decision not to supply Virgin Media would be expected to result in the loss of approximately [x] wholesale Sky Sports subscribers but Sky could expect to win back between [x] retail subscribers, assuming all these subscribers switched back to Sky.<sup>197</sup> By way of illustration we note that for it to be profitable, on the basis of static incentives alone, for Sky to withdraw supply from Virgin Media the average monthly margin it earns on retail customers that switch to Sky would need to be greater than [x].<sup>198</sup> Sky earns an ARPU on a Sky Sports customer on DSat of [x]. However, the retail supply of pay TV includes some per subscriber costs associated with the supply of equipment,

<sup>195</sup> We note however that self-supply has a number of disadvantages from the point of view of the rival retailer (in particular it denies the rival the ability to bundle Sky Sports with their own pay TV offering). So whilst Sky may be more likely to have static incentives to supply on a self-retail basis, the terms that allow effective competition to emerge may need to be more generous.

<sup>196</sup> Ofcom October 2014 survey, Q17 and Q19. Base: Virgin Media subscribers taking Sky Sports (97). 19% of respondents said that they would switch to a provider with Sky Sports. 3% said they would leave their current provider but did not know what they would switch to and 14% said they did not know whether or not they would continue with their current provider.

<sup>197</sup> This is likely to represent an upper bound on the number retail subscribers Sky could win back as some customers that switch platform might go to an alternative platform, e.g. TalkTalk. The net impact on Sky of a customer moving from Virgin to TalkTalk is likely to be minimal as Sky earns a similar wholesale margin on the two platforms.

<sup>198</sup> This lower bound is derived by dividing Sky's estimated annual wholesale revenues from Virgin [x] by the upper bound of the number of retail customers it could win back ([x]).

customer service and billing. Overall the limited scale of substitution indicated by our survey suggests that Sky may make short run losses if it removed supply from Virgin Media.<sup>199</sup> Sky may therefore have static incentives to continue to supply Virgin Media on a wholesale basis.

- 7.14 Due to the small sample sizes available for TalkTalk and BT Cardinal, we were unable to conduct a similar exercise in respect of those operators. It is therefore unclear whether Sky has static incentives to supply TalkTalk and BT Cardinal. However, we note that because of the small number of subscribers on these platforms the magnitude of any static incentives (whether the balance results in an incentive to supply or to limit distribution) will be small.
- 7.15 Turning to strategic benefits associated with limited distribution, Sky has a strong position in both the supply of key sports channels and as a pay TV retailer. Sky's current share of the supply of key sports channels is over 80% and has share of pay TV retailing of over 50%. Sky is likely to obtain benefits from this market position.
- 7.16 Increased competition has the potential to weaken Sky's market position at one or both levels. Should that occur, Sky's future profits could be reduced and that could give Sky an incentive to refuse supply or to supply on terms designed to limit or eliminate the growth of rivals in the future.
- 7.17 There are a number of different ways in which increased competition from rival suppliers could reduce profits:
- The growth in rivals could come, in part, at the expense of reduced sales by Sky at the retail level and increased competition from rival retailers is likely to put pressure on Sky's retail prices and margins. In addition, over time as rival retailers grow, they are likely to become more effective competitors to Sky as they acquire economies of scale. To date, Sky has managed to retain a strong position in respect of retail pay TV, especially sales to subscribers that are interested in sports channels. If rivals were to expand their market position the nature of how competition might evolve would be unpredictable.
  - This may lead to some customers choosing to stop taking Sky Sports channels but the effect is more likely to be felt in respect of the pricing of the Sky Sports channels.
  - The growth of rivals is also likely to have an impact on Sky's position as a channel operator. As we set out in Section 6, Sky's position as the largest platform operator with a large retail subscriber base may deliver advantages to it when bidding for sports rights. As the relative size of Sky's retail position dissipates this advantage will reduce.
- 7.18 Sky's evaluation of the dynamic threats to its future profitability may vary for different rivals and BT in particular may represent a more serious threat:
- BT has invested considerable sums in acquiring sports rights and marketing in order to set up BT Sport and now competes directly with Sky for sports customers including on Sky's platform where BT self-retails BT Sport on Sky DSat at no extra cost to BT Broadband subscribers;

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<sup>199</sup> This is in line with our conclusion in the 2010 Pay TV Statement where we found that Sky had a static incentive to supply Virgin Media with Sky Sports – see paragraph 7.243.

- at the retail level the prospect that BT could become ‘the home of football’ in that it would be able to offer both Sky Sports and BT Sport in a bundled offer may lead to faster growth in BT’s retail pay TV business. Indeed, [redacted];<sup>200</sup> and
- BT is both a channel operator and a supplier of broadband and fixed line telecoms services. Consequently, it may face different pricing incentives when retailing BT Sport that could lead it to price more aggressively. As a channel operator the cost of BT Sport to BT is largely fixed which may allow BT to price BT Sport more aggressively than a retailer that relies on wholesale supply and must pay a per subscriber fee. In addition BT may have incentives to price aggressively in order to drive broadband sales.

7.19 It is difficult to conclude definitively on the likely conduct of Sky with regard to the supply of Sky Sports as this depends on a complex commercial trade-off of incentives which will be affected by a number of factors that are inherently uncertain. However, we consider that there are risks that Sky might have incentives to not supply rival retailer’s platforms or to supply only on unfavourable terms.

7.20 In the case of the smaller platforms, it is possible that there is a static incentive for Sky to supply Sky Sports. But even if no sales are recouped at the retail level the static losses involved in pursuing limited distribution would only be in the region of [redacted]. Consequently it would take only a small short or long term benefit to render limited distribution profitable. Given this, and the evidence that BT in particular might pose a long term competitive threat to Sky’s existing market position, we consider that there may be a risk that Sky has incentives to limit distribution of Sky Sports or to supply on unfavourable terms absent regulation.

7.21 In the case of Virgin Media there would appear to be a stronger possibility of a static incentive to supply because of the significant wholesale revenues from subscribers to Sky Sports on Virgin Media’s cable platform and because of the relatively low proportion of customers on that platform that Sky might expect to win back at the retail level. It is not clear as to whether the strategic benefits to Sky as a result of limited distribution would be sufficient to overcome this static incentive. We cannot rule out the possibility that the commercial trade-offs for Sky in deciding whether or not to supply Virgin Media may weigh in favour of limited distribution.

## BT

7.22 Given its current holding of key sports content and its current market position BT is likely to have a static incentive to supply BT Sport on the larger platforms. In March 2014 there were [redacted] BT Sport subscribers on Sky’s DSat platform and [redacted] BT Sport subscribers on Virgin Media’s cable platform Our October 2014 survey indicated that the non-supply of BT Sport on these platforms would result in between 10% and 25% of the BT Sport subscribers on that platform would switch to a provider with BT Sport.<sup>201</sup> It is also not clear that BT would win these customers onto its BT TV

<sup>200</sup> [redacted]. Sky’s submission in response to Ofcom’s letter of 4 June 2013 under the BT CA98 Complaint, paragraph 12. We note that Virgin Media is currently able to offer all live Premier League football content on its platform (although BT Sport is bundled with Virgin Media’s XL bundle rather than with Sky Sports) and [redacted]

<sup>201</sup> Ofcom October 2014 survey, Q20 and Q23. Base: Virgin Media and Sky subscribers taking BT Sport (268). 10% of respondents said that they would switch to a provider with BT Sport. 4% said they would leave their current provider but did not know what they would switch to and 12% said they did not know whether or not they would continue with their current provider.

platform<sup>202</sup> Consequently, a strategy of not distributing BT Sport on these platforms, or distributing on unattractive terms, would be likely to result in short run losses.

- 7.23 We set out in Section 6 our analysis of the impact that limited distribution of BT Sport would have on competition. Given the impact that limited distribution of BT Sport would have on the ability of Sky and Virgin Media to compete effectively as pay TV retailers or the ability of Sky to compete as a supplier of key sports channels (see paragraphs 6.67 to 6.70 in Section 6), it would seem unlikely that there would be large strategic benefits to BT from limited distribution.
- 7.24 TalkTalk has [x] subscribers on its YouView platform of whom only [x] take Sky Sports. Consequently BT has weaker incentives to supply BT Sport on the TalkTalk platform since any revenues it foregoes as a result of limited distribution are likely to be small.
- 7.25 BT's business model means that it earns a significant proportion of its revenues from customers that take broadband from BT so that they can watch BT Sport 'free' on the Sky DSat platform or online via the BT Sport app. BT's business model is therefore based upon its ability to bundle BT Sport and BT broadband. As BT is able to self-retail on the Sky DSat platform<sup>203</sup> and can offer sport-broadband-voice bundles, it has an incentive to self-retail BT Sport on the DSat platform since its ability to acquire and retain broadband customers on that platform is increased.
- 7.26 On TalkTalk, BT would not be able to bundle its BT Sport and BT broadband in the same way as on the Sky DSat platform, because TalkTalk's pay TV packages are only available to its broadband customers. Therefore a self-retail arrangement is unlikely to align with BT's business model.
- 7.27 Given TalkTalk's limited subscriber base, BT may therefore have incentives not to supply TalkTalk with its channels so as to protect its own broadband base and to acquire customers from TalkTalk for its bundled pay TV/BT Sport/BT broadband products.

## **We have considered whether current supply arrangements provide an indication of any risk of limited distribution**

- 7.28 In addition to our assessment of incentives we have also considered the extent to which the existing supply arrangements demonstrate Sky and BT's incentives when distributing their sports channels and therefore the risk that they might engage in limited distribution of their key sports channels.

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<sup>202</sup> Our survey questions were asked in the context of BT Sport being currently available on Sky DSat, Virgin Media and BTTV. Our questionnaire did not ask which other provider consumers would switch to. Given the relatively small number of BT Sport subscribers on BT TV ([x] in Mach 2014) relative to the other platforms we might expect a small proportion to switch to BT TV. If this is a case the main beneficiary of subscribers diverted by non-supply of BT Sport to, for example, Sky DSat would be Virgin Media on whom BT would earn wholesale revenues but would not benefit from the associated retail profits.

<sup>203</sup> Sky's satellite platform is an 'open' platform on which third-party channel operators can acquire access to the platform on a fair, reasonable and non-discriminatory basis as long as they meet a set of requirements. This is governed by the Technical Platform Services guidelines - <http://www.ofcom.org.uk/consult/condocs/tpsguidelines/statement/statement.pdf>

## Sky's key sport channels are currently widely available

7.29 Sky is currently supplying a relatively wide range of rival platforms with Sky Sports. Sky's current supply arrangements are summarised in Table 7.2 below.

**Table: 7.2 Current Supply Arrangements for Sky Sports**

	Qualifying platform? <sup>204</sup>	Term	Previous agreement	Services covered	[redacted] <sup>205</sup>	[Price
Virgin Media	From March 2010	to June 2019	November 2008	All Movies and Sports channels including HD and sVOD services.	[redacted]	[redacted]
TalkTalk	No	July 2014 to June 2016	August 2012 to July 2014	All Movies and Sports channels in SD and sVOD services.  Pursuant to a separate agreement, Sky has right to self-retail NOW TV on TalkTalk YouView.	[redacted]	[redacted]
BT Cardinal (DTT)	From March 2010	[redacted]	June 2010 to June 2012	SS1&2 in SD	[redacted]	[redacted]
BT Cardinal (IPTV)	From October 2014	[redacted]	No	SS1&2 in SD	[redacted]	[redacted]. <sup>206</sup>
BT YouView	From November 2014	[redacted]	No	SS1&2 in SD	[redacted] <sup>207</sup>	[redacted]

Source: Contracts provided under section 26 requests under the BT CA98 Complaint and WMO information requests. Also publicly available data on agreements.<sup>208</sup>

7.30 We note that existing contractual arrangements may restrict the ability of content holders to act on any incentives to limit distribution by withdrawing supply or changing the terms of supply. The current supply agreement with Virgin Media runs until June 2019 with the TalkTalk deal running until June 2016.

<sup>204</sup> The date at which this platform became a qualifying platform for the purposes of the WMO obligation under the interim relief arrangements put in place by the CAT

<sup>205</sup> [redacted].

<sup>206</sup> [redacted].

<sup>207</sup> [redacted]

<sup>208</sup> <http://about.virginmedia.com/press-release/9429/sky-and-virgin-media-strike-major-new-channel-distribution-agreement>,

- 7.31 That Sky is supplying rival retailers' that benefit from the WMO is not surprising. However we note that Sky supplies a full suite of Sky Sports channels to Virgin Media and TalkTalk. This is more than Sky is required to supply under the WMO which covered SS1&2 only. [redacted].<sup>209</sup> On the face of it, this could indicate that Sky is acting on commercial incentives to supply that are independent of the WMO and render the WMO obligation redundant.
- 7.32 However, it is difficult to reach clear conclusions from the supply arrangements that have been concluded. All of the current agreements were concluded during the period in which the WMO has been in effect in accordance with the terms of the interim relief arrangements put in place by the CAT (see paragraph 2.4 above). In the absence of the regulatory obligation the supply arrangements might have been different or not concluded at all.
- 7.33 For example, one possibility is that in some circumstances, once Sky is under the WMO obligation to offer on regulated terms (hence denied the dynamic benefits of outright non-supply) it may be better off supplying more channels than the regulatory obligation requires or seeking to incentivise incremental sales through different prices or other incentives. In this scenario, the WMO may simply be the safeguard allowing different deals to emerge, especially where these seek to incentivise more sales to platform customers that are unlikely to switch.
- 7.34 Sky and BT failed to reach a commercial agreement for the supply of SS1&2 on YouView prior to the grant by the CAT of BT's application to extend the WMO to YouView.
- 7.35 We therefore consider that the existing supply arrangements may be of limited value in determining the extent to which Sky would or would not supply its key sports channels in the absence of regulatory intervention.

### **BT Sport is not available on TalkTalk**

- 7.36 BT supplies BT Sport on a self-retail basis to subscribers on Sky's DSat platform. BT Sport is available as a standalone channel for between £13.50 and £16.50<sup>210</sup> per month or 'free' to customers that take BT Broadband. BT has a wholesale supply arrangement with Virgin Media. BT Sport is available free with Virgin Media's XLTV bundle or for £15 per month for subscribers on basic TV packages. We consider that these supply arrangements are consistent with our analysis of the incentives that BT currently faces as set out above.
- 7.37 BT does not supply BT Sport to subscribers on the TalkTalk YouView platform although any BT broadband customer can watch BT Sport online via the BT Sport app. As set out above this is likely to reflect the relatively small number of TV subscribers on the TalkTalk platform and the impact that supply of BT Sport to TalkTalk might have on BT's broadband business.

### **There are circumstances in which both Sky and BT may have incentives to limit distribution of their key sports content**

- 7.38 The decision on whether or not to supply a rival with key sports channels involves a complex trade-off of a number of factors. It is difficult to state with any certainty

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<sup>209</sup> [redacted].

<sup>210</sup> These prices increased from £12 in SD and £15 for HD on 1 October 2014.

whether the trade-off is likely to result in widespread or limited distribution. However, our analysis indicates that Sky could have incentives to limit distribution to smaller platforms, particularly where there may be strategic benefits to doing so either to dampen an emerging competitive threat. With respect to Virgin Media, as a more established retailer with a large existing subscriber base, the incentives to distribute are less clear cut as Sky may face a more difficult trade-off between a possible static incentive to supply and any strategic benefits of limited distribution.

- 7.39 The existing supply arrangements may be of little assistance in this respect since those arrangements were entered into against a backdrop of regulation. It is therefore difficult to draw any clear conclusions from the fact that Sky has entered into supply arrangements, some of which may go beyond the regulation in place.
- 7.40 Because of the large number of subscribers on Sky's DSat and Virgin Media's cable platforms, and the limited evidence that many of these customers would switch to BT TV in response to limited distribution of BT Sport, it appears likely that there are strong static incentives for BT to supply these platforms on terms that would allow for healthy sales of BT Sport. In Section 6, we identified that the impact of limited distribution of BT Sport on competition would be small, suggesting that the strategic benefits to BT of limiting distribution would also be small.
- 7.41 However, because TalkTalk has a relatively small number of subscribers that are likely to be interested in sport and the possible impact on profits in BT's broadband business BT may have incentives not to supply BT Sport to subscribers on the TalkTalk YouView platform. This is reflected in BT's current supply arrangements where BT Sport is available on Sky's DSat and Virgin Media's cable platforms but is unavailable on TalkTalk's YouView platform.

*Question 7.1: Do you agree with our assessment of Sky's incentives to limit distribution of its key content? If not please explain why.*

*Question 7.2: Do you agree with our assessment of BT's incentives to limit distribution of its key content? If not please explain why.*

## Section 8

# Conclusions and next steps

8.1 In this section we set out a summary of our conclusions based on the assessment we set out Sections 5, 6 and 7. Subject to the outcome of this consultation and any further analysis we undertake, we would, if appropriate, consider potential remedy options in more detail in the second phase of our review in 2015. We have, nevertheless, provided an initial outline of our approach to considering remedies in this section.

### **We have identified a risk that Sky may engage in practices which may be prejudicial to fair and effective competition**

- 8.2 In Section 5 we have identified that live Premier League coverage and to a lesser extent live Champions League coverage may be capable of influencing a significant number of consumers' choices of pay TV provider, and therefore consider that they represent key content.
- 8.3 We have also considered the positions of Sky and BT, as the holders of rights to this key content. We recognise that this assessment is based on current holdings of key content and this may change in future, in particular following the next Premier League auction.
- 8.4 On the basis of current holdings, and taking into account the impact of the move of live Champions League content from Sky to BT Sport in August 2015, our assessment in Section 6 indicates that Sky currently holds a significant amount of key sports content which may affect the purchasing decisions of pay TV customers. A platform without access to Sky's key content may not be able to compete for a sizeable and high-value proportion of the pay TV market and limited distribution of that content could therefore diminish static competition. There could also be a negative impact on dynamic competition because competing retailers may not be able to grow their subscriber base as effectively as if they had access to Sky's key content. In the long term this may restrict their ability to compete both at the wholesale level (i.e. for sports rights) and at the retail level. Because of Sky's strong market position and incumbency advantages at both the wholesale and retail levels this effect may be significant.
- 8.5 In Section 7 we considered the factors which Sky will have to weigh up in deciding whether or not to supply their key sports content to rival pay TV retailers. We set out view that, on balance, certain characteristics of Sky, including its strong position at the wholesale level, and its vertical integration with the largest retail pay TV platform, indicate that Sky could have incentives to limit distribution of Sky Sports to rival platforms, particularly where there may be strategic benefits to doing so (for example to dampen an emerging competitive threat).
- 8.6 In summary, there are circumstances under which Sky may have incentives to engage in a practice of limiting distribution of key sports content to rival pay TV retailers. Similar considerations may also lead to concerns that Sky would engage in a practice of supplying key sports content on unfavourable terms which would be equivalent to limited distribution. Those terms might be such that a competing provider would not seek supply at all or may result in a situation where a competing provider enters into a supply arrangement but is unable to compete effectively

without incurring losses (where the wholesale supply price is such that a competitor cannot offer a competitive retail price).

- 8.7 We have identified a risk of two types of practice occurring which would be prejudicial to fair and effective competition in the provision of pay TV services:
- i) limited distribution of key sports content to competing providers of pay TV services; and
  - ii) distribution of key sports content unfavourable terms to competing providers of pay TV services.
- 8.8 In light of our view that there may be circumstances in which Sky has incentives to engage in such practices, and our assessment of the impact of such practices being engaged in, we believe it may be appropriate to maintain regulation on Sky with the objective of ensuring fair and effective competition.

*Question 8.1: Do you consider it appropriate to maintain some form of regulation on Sky in order to ensure fair and effective competition in pay TV? Please provide evidence to support your view.*

## Continued regulation of Sky would first need to consider questions of scope

- 8.9 Were we to decide that continued regulation of Sky was appropriate, we would first need to consider the appropriate scope of any intervention. The types of questions we would need to consider would be:
- 8.9.1 **Which sports channels would be included in the obligation:** Our current view is that Premier League and Champions League represent key sports content and therefore we may consider an approach which links the regulation to the channels on which this content is shown.
  - 8.9.2 **Whether HD versions of channels are included within scope:** The WMO includes both SD and HD versions of SS1&2 although with more limited obligations for HD. We would need to consider whether any distinction between SD and HD remained appropriate.
  - 8.9.3 **Whether interactive services are within scope:** The WMO covers the key sports content shown via the red button associated with SS1&2 channels. We would need to consider whether this remains appropriate and the extent to which any new services might also fall within the regulation.
  - 8.9.4 **Which pay TV platforms would be eligible to request supply:** We have explained in Section 6 that our assessment is focussed on competition between pay TV platform retailers (i.e. Sky, BT, TalkTalk, Virgin Media and any other new entrants with similar services) and not OTT retailers. This would therefore appear to be the appropriate focus for any regulation but we would need to consider this further.
- 8.10 As outlined in Section 2 we have not included supply for onward retail to commercial premises (e.g. pubs and clubs) within the scope of this review. Therefore we would not expect any regulation to include this type of supply.

## Continued regulation could take a number of forms

- 8.11 We have identified concerns above that (i) limited distribution of key sports content; and (ii) distribution of that content on unfavourable terms to competing pay TV platform retailers, may be practices that would prejudice fair and effective competition. Our central question when considering potential remedy options would therefore be how effective any remedy is in addressing these practices of concern.
- 8.12 Two broad remedy approaches might be adopted to target the practices we have identified.

### **A requirement to make content available on competing retail pay TV platforms would ensure widespread availability of key content**

- 8.13 In respect of the practice of limited distribution, this could be addressed through an obligation to offer key content to rivals. That might be a requirement to offer on a wholesale basis or, where technically possible, a self-retail basis. Alternatively, it could be a combination where it is up to the provider of key content how it does it (wholesale or self-retail) where more than one means of distribution is possible. This should ensure the availability of that key content on a competing platform and might therefore overcome the practice which we have identified.

### **An obligation to offer on specified terms could address concerns about unfavourable terms**

- 8.14 In respect of the practice of distribution of key content on unfavourable terms we may consider the imposition of an obligation to offer which included specified terms. The particular term which may be of concern is pricing, since this may limit a competing platform retailer's ability to offer bundles at a competitive retail price. Some form of pricing obligation may therefore be necessary to restrict the ability of a holder of key content to limit the ability of its rivals to compete on price. The precise form will be dependent upon the form of remedy chosen to address limited distribution.

## We have an obligation to ensure any regulation is proportionate

- 8.15 In considering whether regulation is appropriate to ensure fair and effective competition in the provision of retail pay TV services, we will also need to make an assessment about the proportionality of any remedies.
- 8.16 We would therefore anticipate setting out a range of options for intervention. In assessing the proportionality of those options, we will take into account factors such as:
- **What are the benefits to consumers of the intervention?** i.e. as above how effective is the intervention at ensuring fair and effective competition and in delivering the consumer benefits that flow from that.
  - **What are costs of the intervention?** This includes an assessment of:
    - the implementation costs on the regulated firms; and
    - any potential negative impacts of the intervention, for example on stakeholders incentives to invest, on dynamic competition and on innovation.

- **What are the risks of the intervention?** In particular potential risks could be the potential for unintended consequences such as impact on rights values.
- **How practical is the remedy to implement?** This will overlap to some extent with the implementation costs but we are also interested in considering how flexible options are to changes in market circumstances and whether the regulatory review burden could be reduced (both for stakeholders and Ofcom).

8.17 Subject to the outcome of this consultation and further analysis, if we decide that it is appropriate to take further action, we will issue a further consultation in 2015 with a more detailed assessment of the remedy approaches set out in this section.

*Question 8.2: Do you agree with the potential options for regulation we have identified? Do you believe there are other options we should consider?*

## **If we do not identify practices which may be prejudicial to fair and effective competition, we will remove the existing WMO regulation**

8.18 We recognise, however, that this proposition is dependent upon a number of considerations. The pay TV sector continues to evolve with the development of new services and distribution methods in such a way that the impact of limited distribution of the key sports content shown on Sky Sports on competition in pay TV services may be reduced. For example we may be less concerned if new players seek to acquire important sports rights where they are able to effectively monetise such investment from new sources. Although we have not seen any evidence that this is currently the case, the advantages which Sky currently enjoys in bidding for key sports content may weaken over time. Similarly if consumers use new means to access content, e.g. using different devices or OTT services, it may be less important for pay TV retailers to access key content to compete effectively for pay TV customers.

8.19 Respondents may therefore put forward views and evidence which calls into question the extent to which regulatory intervention may be appropriate. For example, if respondents provide evidence that particular sports content is no longer a significant driver of competition in pay TV services, limited distribution of that content is unlikely to give rise to competition concerns. Alternatively, respondents may put forward views that limited distribution of key sports content would only be of concern when carried out by a dominant operator and should be addressed under the Competition Act 1998.

8.20 If we were to conclude that the risk of practices in relation to the provision of key sports content does not give rise to a concern or that any concerns might be dealt with using our powers under the Competition Act 1998, we will need to remove the WMO.

*Question 8.3: Do you consider that the WMO obligation placed on Sky is no longer required to ensure fair and effective competition in pay TV? Please provide evidence to support your view.*

## **We are not minded to consider that regulation of BT is necessary to ensure fair and effective competition in pay TV at this time**

8.21 BT's current holding of key sports content appears likely to affect the purchasing decisions of only a small proportion of pay TV customers. Whilst there could be a

small impact on static competition as a result of limited distribution of its key content, BT is a relative new entrant in wholesale sports supply and at present it has only a modest position at the wholesale and retail market levels. The small impact on static competition from limited distribution of BT's key sports content could therefore be offset if BT is able to establish itself as a more effective competitor. In any event, we note that BT is likely to have strong incentives to supply platforms that have large numbers of existing subscribers although it may have an incentive to limit supply to smaller platforms.

- 8.22 Overall, we are not satisfied that the impact of limited distribution of BT's key content is sufficient to give rise to concerns at this point in time. Given the uncertainty around the impact of limited distribution of its key content (based on its current sports rights holdings) and its relatively recent entry into the market, we are not minded at the current time to consider imposition of a remedy on BT.

*Question 8.4: Do you agree with our assessment that it is unlikely to be appropriate to consider the imposition of regulation on BT to ensure fair and effective competition in pay TV at the current time? Please provide evidence to support your view*

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 27 February 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/wholesale-must-offer/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [WMOREview@ofcom.org.uk](mailto:WMOREview@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Elizabeth Gannon  
Competition Group  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Elizabeth Gannon on 020 7981 3501.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement or further consultation in 2015.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email: [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Review of the WMO

To (Ofcom contact): Elizabeth Gannon

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, 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 that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. 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

Signed (if hard copy)

## Annex 4

# Consultation questions

## Market developments

*Question 3.1: Have we accurately represented the key developments in pay TV since 2010? Are there any other developments which you consider may be relevant to our assessment?*

## Analytical Framework

*Question 4.1: Do you agree with our proposed analytical framework for identifying whether limited distribution of key content is a practice which may be prejudicial to fair and effective competition in pay TV services?*

## Identifying key sport

*Question 5.1: Do you agree with our assessment that sports content is an important driver of choice in pay TV services? If not please provide evidence to support your view.*

*Question 5.2: Do you agree with our assessment that live Premier League matches represent key content in competition for pay TV services? If not please provide evidence to support your view.*

*Question 5.3: Do you agree with our assessment that live Champions League matches also represent key content in competition for pay TV services, albeit to a lesser degree than Premier League content? If not please provide evidence to support your view.*

*Question 5.4: Do you agree with our assessment of the importance of other sports events? If not please provide evidence to support your view.*

## Impact of limited distribution

*Question 6.1: Do you agree with our assessment that limited distribution of Sky Sports may be prejudicial to fair and effective competition?*

*Question 6.2: Do you agree with our assessment that limited distribution of BT Sport is unlikely to be prejudicial to fair and effective competition?*

## Assessing incentives to limit distribution

*Question 7.1: Do you agree with our assessment of Sky's incentives to limit distribution of its key content? If not please explain why.*

*Question 7.2: Do you agree with our assessment of BT's incentives to limit distribution of its key content? If not please explain why.*

## Next steps

*Question 8.1: Do you consider it appropriate to maintain some form of regulation on Sky in order to ensure fair and effective competition in pay TV? Please provide evidence to support your view.*

*Question 8.2: Do you agree with the potential options for regulation we have identified? Do you believe there are other options we should consider?*

*Question 8.3: Do you consider that the WMO obligation placed on Sky is no longer required to ensure fair and effective competition in pay TV? Please provide evidence to support your view.*

*Question 8.4: Do you agree with our assessment that it is unlikely to be appropriate to consider the imposition of regulation on BT to ensure fair and effective competition in pay TV at the current time? Please provide evidence to support your view*

## Annex 5

# Glossary

**ARPU: Average revenue per user.** A measurement used by pay-television or mobile companies to indicate the average monthly revenue earned from a subscriber.

**BARB: Broadcasters' Audience Research Board.** The pan-industry body which measures television viewing.

**Broadband:** A service or connection generally defined as being 'always on' and providing a bandwidth greater than narrowband.

**BT Sport:** the TV channels BT Sport 1, BT Sport 2 and ESPN.

**Bundling.** A marketing term describing the packaging together of different communications services by organisations that traditionally only offered one or two of those services.

**BT CA98 Complaint:** Our investigation of BT's complaint against Sky under the Competition Act 1998 about the wholesale supply of SS1&2 to BT's YouView platform – details at: [http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01106/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01106/)

**The Act: Communications Act 2003.**

**CAT: Competition Appeal Tribunal.**

**CA98: Competition Act 1998.**

**Cardinal.** BT's legacy platform, used along with YouView, to deliver its BT TV service.

**CC: Competition Commission.** The CC has now closed and its functions have been transferred to the Competition and Markets Authority.

**CMA: Competition and Markets Authority.**

**CMR: Communications Market Report.** Ofcom's annual statistical survey of developments in the communications sector.

**CoA: Court of Appeal.**

**DSat: Digital satellite.** A term used in the UK to refer to the distribution of digital content via satellite.

**DTT: Digital Terrestrial Television.** A digital distribution technology using terrestrial transmitters.

**DVR: Digital Video Recorder** (also known as Personal Video Recorder and Digital Television Recorder). A digital TV set-top box including a hard disc drive which allows the user to record, pause and rewind live TV.

**FTA: Free-to-air.** Broadcast content that people can watch or listen to without having to pay a subscription.

**HD: High Definition.** A technology that provides viewers with better quality, high-resolution pictures.

**Internet.** A global network of networks, using a common set of standards (e.g. the Internet Protocol)

**IP: Internet Protocol.** The packet data protocol used for routing and carriage of messages across the Internet and similar networks.

**IPTV: Internet Protocol Television.** The term used for television and/or video signals that are delivered to subscribers or viewers using Internet Protocol (IP), the technology that is also used to access the Internet. Typically used in the context of streamed linear and on-demand content, but also sometimes for downloaded video.

**Multi-channel.** In the UK, this refers to the provision or receipt of television services other than the main five channels (BBC ONE & TWO, ITV1, Channel 4/S4C, Five) plus local analogue services. 'Multi-channel homes' comprise all those with digital terrestrial TV, satellite TV, digital cable or analogue cable, or TV over broadband. Also used as a noun to refer to a channel only available on digital platforms (or analogue cable).

**OTT: Over-the-top.** Refers to audio-visual content that can be delivered on the 'open' internet rather than requiring a managed IPTV architecture.

**Premier League.** The Premier League relates to both the football competition (currently the Barclays Premier League) and the organising body of the Barclays Premier League. References in this document are to the competition itself, rather than the organising body.

**Platform.** A pay TV platform can be defined as the specific combination of distribution and reception technology and conditional access that enables consumers to receive broadcasts. For example, Sky on satellite, Virgin Media on its cable network or BT and TalkTalk on YouView.

**PSB: Public Service Broadcasting, or Public Service Broadcaster.** The Communications Act in the UK defines the PSBs to include the BBC, ITV1, Channel 4, Five and S4C.

**Self-retail.** Where a content provider makes its content available to subscribers on another provider's platform, but has a direct billing relationship with the subscriber rather than making its content available to the platform provider on a wholesale basis.

**Sky Sports:** the TV channels Sky Sports 1, Sky Sports 2, Sky Sports 3, Sky Sports 4, Sky Sports 5, and Sky Sports F1.

**SD: Standard Definition.** As opposed to high definition.

**SS1&2:** Sky Sports 1 and Sky Sports 2.

**STB: Set-top Box.**

**sVOD: Subscription Video-on-Demand.** A type of VOD service that allows subscribers unlimited access to watch programmes or films whenever they choose to, not restricted by a linear schedule, for a regularly charged fee.

**UEFA: Union of European Football Associations.** The governing body of football in Europe.

**VOD: video-on-demand.** A service or technology that enables TV viewers to watch programmes or films whenever they choose to, not restricted by a linear schedule.

**WMO: wholesale must-offer.** The obligation imposed on Sky in the 2010 Pay TV Statement requiring it to offer to wholesale its SS1&2 channels (SD and HD) with certain prices and terms set by Ofcom.

**YouView.** A joint-venture between the BBC, ITV, Channel 4, Channel 5, Arqiva, BT and TalkTalk offering a subscription-free digital TV service, delivered via a combination of a broadband internet connection, television aerial and a YouView set-top box. YouView is one of the two platform systems used by BT to deliver its BT TV service.

## Annex 6

# Survey evidence on the importance of Sky Sports and BT Sport

## Introduction

- A6.1 This Annex sets out evidence from our November 2013 and October 2014 surveys<sup>211</sup> on the number of subscribers for whom Sky Sports and BT Sport respectively are of such importance to their choice of pay TV service that they are unlikely to consider a pay TV service that cannot offer these channels. This evidence informs our assessment of the overall importance of these channels, which is set out in Section 6.
- A6.2 Ascertaining a precise figure based on survey evidence is difficult. There are a number of questions in our surveys which shed some light, which we consider below. A number of the survey questions we consider were hypothetical. We recognise the limitations of hypothetical questioning<sup>212</sup> and treat the results with due caution. However, we consider that the questions are still a valid part of our evidence base.

## Survey evidence on the importance of Sky Sports

- A6.3 Our November 2013 survey asked respondents who took both Sky Sports and Sky Movies why they subscribed to both. 21% of all respondents who subscribed to Sky Sports and Sky Movies said that they did so because they wanted Sky Movies and Sky Sports did not cost much extra.<sup>213</sup> It seems unlikely that these respondents – equivalent to 9% of all those respondents taking Sky Sports<sup>214</sup> – would see Sky Sports as important in their choice of platform. Removing this group points to 91% of Sky Sports subscribers, or 30% of all pay TV subscribers<sup>215</sup>, as an upper bound for the size of the group that are unlikely to consider a pay TV service that cannot offer Sky Sports.

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<sup>211</sup> The data tables and technical appendices for these surveys are available at: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/pay-tv-research/>. In both pieces of research, the majority of the questions were asked to respondents who had some responsibility in the choice of television service, or the channels they receive, in their household. In addition, the majority of the questions asked about the views of the household rather than just the individual responding to the survey. We also note that the questions focussed on the TV service and channels received on the main television set in the household.

<sup>212</sup> While hypothetical questions are useful as they provide consumers' own predictions on the actions they believe they would take given a particular scenario, it is also accepted that the data is not straightforward to interpret. For example, the scenarios provided may involve a number of uncertainties or assumptions, in the research situation the respondent has not had time to consider or research their possible options as they may in real life, and intention to take action does not always result in actions being taken in reality.

<sup>213</sup> Ofcom November 2013 survey, Question D5. Base: All with Sky Sports and Sky Movies (331).

<sup>214</sup> 44% of respondents taking Sky Sports said that they also took to Sky Movies. Question C5, Ofcom November 2013 survey. Base: all with Sky Sports (800). [3<].

<sup>215</sup> Calculated based on the fact that 33% of respondents taking pay TV said that they took Sky Sports. Ofcom November 2013 survey, Question C5. Base: All with Pay TV service on main set (2252).

- A6.4 At the other extreme, somewhere between 6% (unprompted) and 10% (prompted) of respondents with a pay TV service told us that one of the reasons they chose a pay TV service over FTA was to access Sky Sports.<sup>216</sup> It seems likely that Sky Sports is very important to these respondents, so this provides a lower bound for the proportion of pay TV subscribers that are unlikely to consider a pay TV service that cannot offer Sky Sports.
- A6.5 Ascertaining a more precise figure based on survey evidence is difficult.
- A6.6 As explained in Section 5, in our November 2013 survey we asked respondents who subscribed to sports channels whether different sports and specific competitions within sports were essential to have access to as part of their pay TV service. Among respondents who subscribed to Sky Sports, 64% considered access to Premier League coverage to be essential to have as part of their pay TV service.<sup>217</sup> For some of these respondents, Sky Sports may not be that important in their choice of pay TV provider given the availability of Premier League matches on BT Sport. However, there are likely to be others who would not consider the minority of Premier League on BT Sport to be enough for their purposes and so would see Sky Sports as important.
- A6.7 Our survey evidence does not directly inform how many fall into each category. However, 47% of respondents who subscribed to Sky Sports said that access to both Premier League and Champions League coverage was essential to their pay TV service.<sup>218</sup> If these respondents are keen followers of football who would not consider the minority of Premier League on BT Sport to be enough for their purposes, this would suggest that the availability of Sky Sports would influence the choice of 47% of respondents taking Sky Sports, or 16% of all respondents taking pay TV.<sup>219</sup> However, the figure could be as high as 64% of respondents taking Sky Sports – or 21% of all respondents taking pay TV<sup>220</sup> – if we include all those who considered Premier League coverage to be essential.
- A6.8 These estimates do not take into account preferences for coverage of other sporting events currently shown on Sky Sports. We recognise that these sporting events may drive the platform choice of some customers:
- in addition to the 64% of respondents taking Sky Sports who said Premier League coverage was essential, a further 10% of respondents said that at least one other specific competition which is shown exclusively on Sky Sports to be essential;<sup>221</sup> and

<sup>216</sup> Ofcom November 2013 survey, Questions A12A and A12B. Base: All with Pay TV service on main set (2252). 6% of respondents cited Sky Sports as one of their three most important reasons (Question A12C).

<sup>217</sup> Ofcom November 2013 survey, Question C7A. Base: All with Sky Sports (800).

<sup>218</sup> Ofcom November 2013 survey, Question C7A. Base: All with Sky Sports (800).

<sup>219</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking pay TV. 33% of respondents taking pay TV said that they took Sky Sports. Ofcom November 2013 survey, Question C5. Base: All with Pay TV service on main set (2252).

<sup>220</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking pay TV. 33% of respondents taking pay TV said that they took Sky Sports. Ofcom November 2013 survey, Question C5. Base: All with Pay TV service on main set (2252).

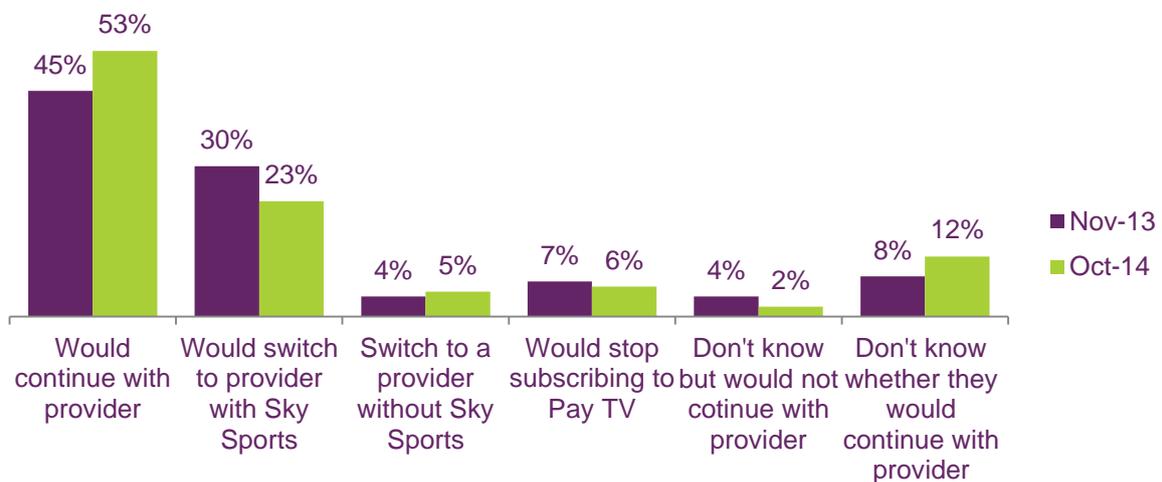
<sup>221</sup> 10% of respondents did not say Premier League coverage was essential, but did identify coverage of at least one of the following competitions as essential: Football League, Cricket - English Test Match Cricket; Cricket - One Day International or Cricket World Cup; Cricket - Twenty20; Golf - Ryder

- in addition to the 47% of respondents who said that both Premier League and Champions League coverage was essential, a further 14% of respondents said that at least one other specific competition which is shown exclusively on Sky Sports to be essential.

A6.9 It seems likely that these respondents would see Sky Sports as an important factor in the choice of pay TV provider.<sup>222</sup> Including these in our estimates points to a range of around 61-73% of Sky Sports subscribers, or 20-24% of pay TV subscribers<sup>223</sup>, for the size of the group that are unlikely to consider a pay TV service that cannot offer Sky Sports.

A6.10 In our November 2013 survey, we asked respondents who took Sky Sports what they would do if their existing TV service stopped offering Sky Sports channels. We asked a similar question in our October 2014 survey. The results of both questions are summarised below.

**Figure A6.1: Action taken if Sky Sports wasn't available on current TV service**



Ofcom November 2013 survey: D7. If <TV SERVICE> stopped offering Sky Sports channels would your household continue to get your TV service with them? D8. If you cancelled your TV service with <A2 SERVICE> do you think your household would...? Base: All with Sky Sports (800)

Ofcom October 2014 survey: Q.17 If for some reason Sky Sports was no longer available on [INSERT] but you could still get it on other pay TV services, would you continue to get your TV service from [INSERT 2]? Q.19 If you cancelled your TV service with [INSERT 2] do you think your household would...? Base all with Sky Sports (612)

A6.11 In our November 2013 survey, 46% of respondents said that they would either switch pay TV retailer, or drop pay TV altogether if Sky Sports was not available via

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Cup; and Golf - US Open. We understand that live coverage of all of these sporting competitions is currently broadcast exclusively on Sky Sports.

<sup>222</sup> It is possible that some respondents may have identified content as essential when in reality they might be prepared to consider a pay TV service that could not offer this content. However, we also think it may be overly conservative to focus solely on competitions that are available exclusively on Sky Sports since this would exclude any respondents who identified coverage of other sporting events or sports shown partially on Sky Sports as essential.

<sup>223</sup> Figures calculated by expressing these respondents as a proportion of all respondents taking pay TV. 33% of respondents taking pay TV said that they took Sky Sports. Ofcom November 2013 survey, Question C5. Base: All with Pay TV service on main set (2252).

their existing pay TV provider.<sup>224</sup> In our October 2014 survey, the equivalent figure was 35%.<sup>225</sup>

- A6.12 The fact that these respondents say they would drop their TV service in response to the withdrawal of Sky Sports suggests that it is a decisive factor in their choice of platform or would become so if they couldn't get it on their current provider.<sup>226</sup> As such, these survey questions suggest that Sky Sports is likely to be a significant factor in the choice of pay TV provider for somewhere in the region of 35-46% of Sky Sports subscribers, or 12-15% of all pay TV subscribers.<sup>227 228</sup>
- A6.13 Given the range of evidence available to us it is difficult to be precise about how many customers view access to Sky Sports as a critical element of their pay TV package. However we think that it is likely that between 12% and 24% (around 20%) of pay TV subscribers are in this group.
- A6.14 This is equivalent to between 30% and 60% of all sport subscribers (i.e. respondents taking Sky Sports and/or BT Sport).<sup>229</sup> Because the survey likely understates the total number of respondents within the overall sample who take BT Sport (see paragraph [A6.16]), these figures are likely to overstate the proportion of sport subscribers who consider Sky Sports to be important.<sup>230</sup> Making an

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<sup>224</sup> Specifically, 30% of respondents said that they would switch to a provider with Sky Sports, 4% of respondents said that they would switch to a provider without Sky Sports, 7% of respondents said that they would stop subscribing to pay TV and 4% of respondents indicated that they would not continue with their current provider, but did not know what they would switch to. Figures do not sum due to rounding.

<sup>225</sup> Specifically, 23% of respondents said that they would switch to a provider with Sky Sports, 5% of respondents said that they would switch to a provider without Sky Sports, 6% of respondents said that they would stop subscribing to pay TV and 2% of respondents indicated that they would not continue with their current provider, but did not know what they would switch to. Figures do not sum due to rounding.

<sup>226</sup> We do not know the reasons why some respondents who said that they would switch their TV service would switch to a service without Sky Sports or FTA. Possible explanations include that these respondents were unaware that Sky Sports was available on other platforms, or considered those platforms that they understood to offer Sky Sports to be materially inferior to those that did not.

<sup>227</sup> Figures calculated by expressing these respondents as a proportion of all respondents taking pay TV. In our November 2013 survey, 33% of respondents taking pay TV said that they took Sky Sports. Question C5. Base: All with Pay TV service on main set (2252). In our October 2014 survey, 34% of respondents taking pay TV said that they took Sky Sports. Question 8. Base: All with Pay TV service on main set (1834).

<sup>228</sup> A further 8% of respondents in November 2013, and 12% of respondents in October 2014, indicated that they did not know whether they would continue with their current provider or not. Exclusion of these respondents increases the proportion who would switch their TV service in response to the withdrawal of Sky Sports to 49% (in November 2013) and 41% (in October 2014). This assumes that the excluded respondents would act in proportionally the same way as those who indicated what they would do. If this were the case, then this would suggest that Sky Sports is likely to be a significant factor in the choice of pay TV provider for 41-49% of Sky Sports subscribers, or 14-16% of all pay TV subscribers.

<sup>229</sup> Figure calculated by expressing respondents as a proportion of all respondents taking Sky Sports and/or BT Sport. In our November 2013 survey, 41% of respondents taking pay TV said that they took Sky Sports and/or BT Sport. Question C5. Base: All with Pay TV service on main set (2252). In our October 2014 survey, 39% of respondents taking pay TV said that they took Sky Sports and/or BT Sport. Question 8. Base: All with Pay TV service on main set (1834).

<sup>230</sup> This arises because the survey may understate the total number of respondents who take BT Sports and therefore the total number of respondents who take sports (i.e. the denominator or base size is understated).

adjustment for this overstatement results in a figure between 20% and 50% of all sport subscribers.<sup>231</sup>

- A6.15 Finally, we note that in BT's Complaint to Ofcom against Sky alleging abuse of a dominant position regarding the wholesale supply of Sky Sports 1 and 2, BT submitted [redacted].<sup>232</sup>

## Survey evidence on the importance of BT Sport

- A6.16 In both our November 2013 and October 2014 surveys, 18% of respondents taking pay TV said that they subscribed to BT Sport.<sup>233</sup> This is lower than the actual proportion of subscribers who take BT Sport based on subscriber data provided by pay TV operators. As at September 2014, [redacted] of all pay TV subscribers received BT Sport via their pay TV package.<sup>234</sup> This is likely to be explained by the fact that a large proportion of BT Sport subscribers receive the channels automatically as part of their pay TV package.<sup>235</sup> As such, it seems that some respondents were unaware of having the channels within their own package. This is potentially more likely if respondents have no interest in sport. Our surveys therefore under-represent the number of BT Sport subscribers.<sup>236</sup> However, it seems reasonable to assume that most of those respondents who did not realise they had BT Sport are unlikely to consider it to be important. As a result, although our surveys may under represent the numbers of BT Sport subscribers, we are still able to identify the proportion of pay TV subscribers who both know they are BT Sport subscribers and who consider BT Sport to be important.<sup>237</sup>

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<sup>231</sup> In our November 2013 and October 2014 surveys, the proportions of respondents taking pay TV that said they took Sky Sports and/or BT Sport were 41% and 39% respectively. From (i) actual subscriber data provided by pay TV operators; and (ii) survey evidence on the proportion of respondents taking Sky Sports who said that they also took BT Sport; we estimate that the proportion of all pay TV subscribers that took Sky Sports and/or BT Sport was [redacted] in November 2013 and [redacted] in September 2014. To adjust the proportion of sport subscribers for whom Sky Sports is important, we multiply figures derived from our November 2013 research by (41%/[redacted]) and figures derived from our October 2014 survey by (39%/[redacted]). Making this adjustment results in a figure between [redacted] and [redacted] of all sport subscribers.

<sup>232</sup> [redacted]. BT's CA98 Complaint, 24 May 2013, paragraph 2.16.

<sup>233</sup> Ofcom November 2013 survey, Question C5. Base: All with Pay TV service on main set (2252). Ofcom October 2014 survey, Question 8. Base: All with Pay TV service on main set (1834).

<sup>234</sup> As at November 2013, [redacted] of all pay TV subscribers received BT Sport via their pay TV package. These figures exclude subscribers who receive BT Sport exclusively via the online player or BT Sport app.

<sup>235</sup> [redacted] Virgin Media customers receive BT Sport automatically as part of their XL TV package. In addition, some BT TV customers receive BT Sport automatically as part of their TV package. Virgin Media response to WMO information request dated 31 October 2014.

<sup>236</sup> We cannot tell the extent to which our survey under-represents the number of BT Sport subscribers taking BT Sport only versus BT Sport subscribers who also take Sky Sports. However, it may be that the issue with awareness will be greatest among the former, as Sky Sports subscribers may be more aware if they have BT Sport within their package than non-Sky Sports subscribers.

<sup>237</sup> It is not clear that there is any material bias in the proportion of respondents *within the overall sample* for whom BT Sport is important (since respondents who did not realise they had BT Sport are unlikely to consider it to be important). Rather, the potential bias is in the proportion of *respondents taking BT Sport* who consider BT Sport to be important arises. This is because the survey may understate the total number of respondents who take BT Sport (i.e. the denominator or base size is understated). Because of this, it is not clear that there is any material bias in the proportion of all respondents taking pay TV who consider BT Sport to be important (i.e. when the number of

- A6.17 In our November 2013 and October 2014 surveys, when BT Sport subscribers were asked why they subscribe to BT Sport, the most common reason cited for taking BT Sport was ‘comes with broadband package’. In our October 2014 survey, 34% of respondents taking BT Sport (via their TV service<sup>238</sup>) said that this was the main reason they took BT Sport.<sup>239</sup> It seems unlikely that these respondents would see BT Sport as important in their platform choice. Removing this group points to 66% of BT Sport subscribers, or 12% of pay TV subscribers<sup>240</sup>, as an upper bound for the size of the group that are unlikely to consider a pay TV service that cannot offer BT Sport.
- A6.18 At the other extreme, in our October 2014 survey, 10% of respondents taking BT Sport told us they switched pay TV provider or started a pay TV subscription to get BT Sport initially.<sup>241</sup> These respondents may have taken such actions solely in order to get BT Sport. If so, this would suggest that BT Sport is likely to be very important to them. This would point to at least 2% of all pay TV subscribers as a lower bound for the size of the group that are unlikely to consider a pay TV service that cannot offer BT Sport.<sup>242 243</sup>
- A6.19 Ascertaining a more precise figure based on survey evidence is difficult.
- A6.20 Our October 2014 survey found that 39% of respondents who took both Sky Sports and BT Sport considered it very important to have both.<sup>244</sup> This points to 5% of pay TV subscribers who consider BTS to be important (albeit in combination with Sky Sports).<sup>245</sup>

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respondents who consider BT Sport to be important is expressed as a proportion of all respondents taking pay TV).

<sup>238</sup> Unless otherwise indicated, references to “respondents taking BT Sport” hereafter means respondents taking BT Sport through their main TV service, and excludes respondents who receive BT Sport exclusively via the online player or BT Sport app.

<sup>239</sup> Ofcom October 2014 survey, Question 13. Base: All with BT Sport (through TV service on main set) (316). [§<] Annex 7.1.3 to BT’s response to the 4<sup>th</sup> section 26 Notice under the BT CA98 Complaint dated 7 March 2014.

<sup>240</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking pay TV. In our October 2014 survey, 18% of respondents taking pay TV said that they took BT Sport. Question 8. Base: All with Pay TV service on main set (1834).

<sup>241</sup> 4% switched pay TV to a provider with BT Sport and 6% started a pay TV subscription. Ofcom October 2014 survey, Question 14. Base: All with BT Sport (through TV service on main set) (316).

<sup>242</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking pay TV. In our October 2014 survey, 18% of respondents taking pay TV said that they took BT Sport. Question 8. Base: All with Pay TV service on main set (1834).

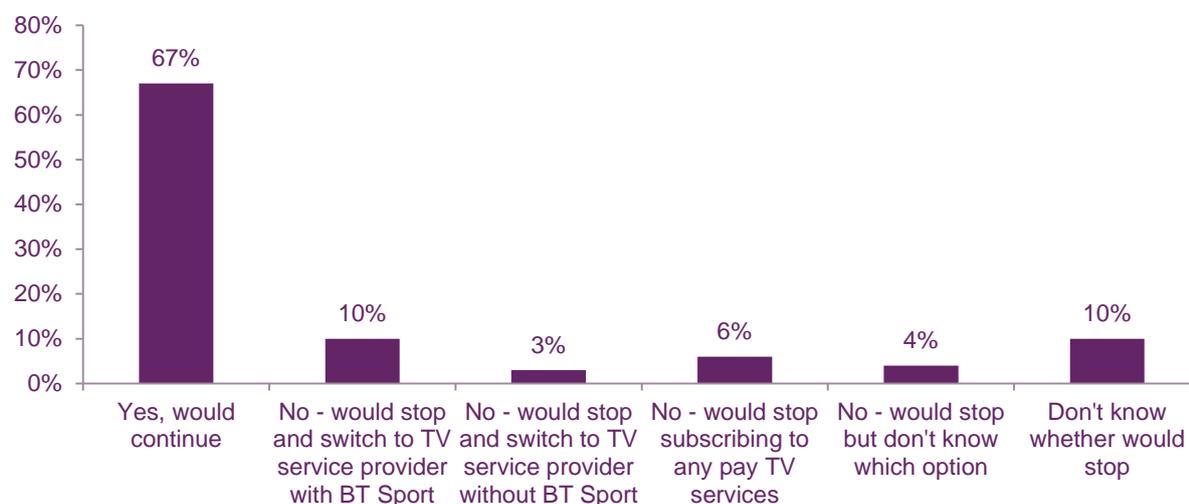
<sup>243</sup> We note that in our November 2013 survey, just 1% prompted (and 0% without prompting) of pay TV subscribers told us that one of the reasons they chose a pay TV service over FTA was because of BTS. However, as BTS had only recently launched, we do not think this represents a meaningful lower bound for the proportion of pay TV subscribers that consider BTS to be important. Ofcom November 2013 survey, Questions A12A and A12B. Base: All with Pay TV service on main set (2252).

<sup>244</sup> We note a further 33% of respondents who took both Sky Sports and BT Sport considered it ‘fairly important’ to have both. October 2014 survey, Q16. Base: All subscribing to both Sky Sports and BT Sport (through TV service on main set) (211).

<sup>245</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking pay TV. In our October 2014 survey, 12% of respondents taking pay TV said that they took both BT Sport and Sky Sports. Q8. Base: All with Pay TV service on main set (1834).

A6.21 In our October 2014 survey, we asked respondents taking BT Sport via their TV service what they would do if their existing TV service stopped offering BT Sport channels. The results of this question are summarised below.

**Figure A6.2: Action taken if BT Sport wasn't available on current TV service**



Ofcom October 2014 survey.Q.20 If for some reason BT Sport was no longer available on [INSERT] but you could still get it on other pay TV services, would you continue to get your TV service from [INSERT 2]? Q.23If you cancelled your TV service with [INSERT 2] do you think your household would... Base: All with BT Sport (through TV service on main set) (316).

A6.22 22% of respondents said that they either switch pay TV retailer, or drop pay TV altogether if BT Sport was not available via their existing pay TV provider.<sup>246</sup> As in the case of the question in relation to Sky Sports, the fact that these respondents say they would switch their TV service in response to the withdrawal of BT Sport suggests that it is an important factor in their choice of platform. As such, this survey question suggests that BT Sport is likely to be a significant factor in the choice of pay TV provider for 22% of BT Sport subscribers, or 4% of all pay TV subscribers.<sup>247 248</sup>

A6.23 Given the range of evidence available to us it is difficult to be precise about how many customers view access to BT Sport as a critical element of their pay TV

<sup>246</sup> Specifically: 10% of BT Sport subscribers would switch to a provider with BT Sport; 3% of BT Sport subscribers would switch to a provider without BT Sport; 6% of BT Sport subscribers would stop subscribing to pay TV and 4% of BT Sport subscribers did not know what they would do but indicated they would not continue with their provider.

<sup>247</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking pay TV. In our October 2014 survey, 18% of respondents taking pay TV said that they took BT Sport. Q8. Base: All with Pay TV service on main set (1834).

<sup>248</sup> A further 10% of respondents indicated that they did not know whether they would continue with their current provider or not. Exclusion of these respondents increases the proportion who would switch their TV service in response to the withdrawal of BT Sport to 25%. We recognise that this assumes that the excluded respondents would act in proportionally the same way as those who indicated what they would do. If this were the case, then this would suggest that BT Sport is likely to be a significant factor in the choice of pay TV provider for somewhere in the region of 25% of BT Sport subscribers, which is equivalent to approximately 5% of all pay TV subscribers.

package. We think that it is likely that around 4% to 5% of pay TV subscribers fall into this group.

- A6.24 This is equivalent to between 10% and 12% of all sport subscribers (i.e. respondents taking Sky Sports and/or BT Sport).<sup>249</sup> Because the survey understates the total number of respondents within the overall sample who take BT Sport, these figures are likely to overstate the proportion of sport subscribers who consider BT Sport to be important.<sup>250</sup> Making an adjustment for this overstatement results in a figure lower than 10% of all sport subscribers.<sup>251</sup>

## Survey evidence on the impact gaining the Champions League has on the importance of BT Sport

- A6.25 Below, we discuss data from our surveys relevant to the forthcoming move of live Champions League coverage to BT Sport in August 2015. We note that we do not have any direct survey evidence on the likely impact this will have on the importance of BT Sport which we can place weight on.<sup>252</sup> Therefore, we are limited to considering more general evidence on the number of subscribers for whom Champions League content appears to be important.
- A6.26 As set out in Section 5, our November 2013 survey found that 47% of respondents taking Sky Sports and/or BT Sport, or 19% of all respondents taking pay TV,<sup>253</sup> said that Champions League coverage was essential. We think this is likely to overstate the proportion of pay TV subscribers for whom the availability of Champions League content is likely to influence their choice of pay TV provider. This is because some of these respondents may be satisfied with the partial coverage that is currently

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<sup>249</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking Sky Sports and/or BT Sport. In our October 2014 survey, 39% of respondents taking pay TV said that they took Sky Sports and/or BT Sport. Q8. Base: All with Pay TV service on main set (1834)

<sup>250</sup> This arises because the survey may understate the total number of respondents who take BT Sports and therefore the total number of respondents who take sports (i.e. the denominator or base size is understated).

<sup>251</sup> In our October 2014 survey, 39% of respondents taking pay TV said that they took Sky Sports and/or BT Sport. From (i) actual subscriber data provided by pay TV operators; and (ii) survey evidence on the proportion of respondents taking Sky Sports who said that they also took BT Sport; we estimate that [x%] of all pay TV subscribers took Sky Sports and/or BT Sport in September 2014. To adjust the proportion of sport subscribers for whom BT Sport is important, we multiply the figures by (39%/[x%]). Making this adjustment results in a figure between [x%] and [x%] of all sport subscribers.

<sup>252</sup> In the 2014 omnibus, we asked all respondents hypothetical questions about which sports channels they thought they would take when Champions League moved from ITV and Sky Sports to BT Sport, assuming everything else stayed the same. However, we do not have confidence that this particular hypothetical question was well understood or is sufficiently robust for this purpose. This is due to a number of factors; our knowledge that the described scenario may not fully match the reality of the change regarding Champions League coverage (e.g. prices may not stay the same), the relatively high proportion of respondents saying "don't know" (21%), and a proportion of potentially counter-intuitive responses (e.g. 66 respondents who currently do not have any sports channel subscriptions who respond that they would take-up Sky Sports (and not BT Sport) in the scenario when Sky's offering is decreasing in quality and BT's is increasing in quality. As such, we do not place weight on this question.

<sup>253</sup> Figure calculated by expressing these respondents as a proportion of all respondents taking pay TV. In our November 2013 survey, 41% of respondents taking pay TV said that they took Sky Sports and/or BT Sport. Question C5. Base: All with Pay TV service on main set (2252).

available and will continue to be available on FTA.<sup>254 255</sup> In addition, survey evidence on the reasons why consumers subscribe to Sky Sports suggests that while access to Champions League coverage on Sky Sports may have been a factor in their decision to subscribe to Sky Sports, for most of these respondents it was not their main reason.<sup>256</sup>

- A6.27 Looking at the survey evidence on the reasons consumers take Sky Sports in more detail, this indicates that access to Champions League content was a reason for taking Sky Sports for between 10% and 28% of respondents taking Sky Sports.<sup>257</sup> 9% of respondents taking Sky Sports in our November 2013 research said that access to Champions League content was one of the three main reasons taking Sky Sports,<sup>258</sup> and 2% of respondents in our October 2014 survey said that it was the main reason.<sup>259</sup>
- A6.28 It seems unlikely that all of the respondents who cited Champions League coverage as a reason will be influenced in their choice of pay TV provider by the availability of this content, as in most cases this was just one of a number of reasons cited. At the other extreme, it seems very likely that most of the 2% of respondents who said access to Champions League content was the main reason for getting Sky Sports in our October 2014 survey will be influenced in their choice of pay TV provider by the availability of this content. However, just because the other respondents did not identify access to Champions League content to be the most important reason for subscribing to Sky Sports does not mean that they do not place a high value on this content.
- A6.29 It is difficult to infer from the survey questions on reasons for taking Sky Sports a precise estimate of the proportion of Sky Sports subscribers for whom the availability of Champions League content is likely to strongly influence their choice of pay TV provider. However, we think these survey questions point to a figure of around 10% – based on the proportion who cited Champions League as a reason without being prompted/probed and the proportion who identified Champions League as one of their three main reasons.
- A6.30 It is likely that some of these subscribers already see BT Sport as important because of the content it currently shows, but we are unable to identify how many. Therefore, all we can say is that the survey questions on reasons for taking Sky

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<sup>254</sup> ITV currently shows 16 exclusive live Champions League matches, plus the final. BT has committed to show at least [X] live matches on FTA, including the final.

<sup>255</sup> Indeed, of those respondents who said that Champions League coverage was essential, 14% did not subscribe to Sky Sports and so were only able to watch the coverage available on FTA. In addition, some of those who were Sky Sports subscribers may be satisfied with the partial coverage shown on FTA.

<sup>256</sup> Unlike the survey question discussed above, references to Champions League coverage as a reason for subscribing to Sky Sports must refer specifically to the Champions League coverage shown on Sky Sports.

<sup>257</sup> In our November 2013 survey, 10% of respondents taking Sky Sports without being prompted cited access to Champions League football as one of the reasons that their household subscribes to Sky Sports. With prompting, this figure increased to 23%. Ofcom November 2013 survey, Questions D4A and D4B. Base: All with Sky Sports (800). In our October 2014 survey, when asked why the household gets Sky Sports, 28% of respondents cited access to live Champions League football without being prompted with a list of answers (although respondents were probed to encourage specific rather than vague answers such as 'to watch sports' or 'football'). Ofcom October 2014 survey, Question 10. Base: All Sky Sports subscribers (612).

<sup>258</sup> Ofcom November 2013 survey, Questions D4C. Base: All with Sky Sports (800).

<sup>259</sup> Ofcom October 2014 survey, Question 11. Base: All Sky Sports subscribers (612).

Sports point to a figure of up to 10% of Sky Sports subscribers, or up to 3% all pay TV subscribers,<sup>260</sup> for the number of additional subscribers who are unlikely to consider a pay TV service that cannot offer BT Sport when the Champions League moves.

A6.31 We note that this estimate is based on Sky Sports subscribers for whom access to Champions League content appears to be important. There may be non-Sky Sports subscribers (who may or may not take pay TV) who consider access to the Champions League content currently available on FTA to be important. Some of these non-Sky Sports subscribers may consider access to BT Sport to be important when Champions League content moves there.<sup>261</sup> However, our survey does not provide evidence on the size of this group.

## Estimating revenue shares

A6.32 Above we set out that approximately [X] of pay TV subscribers take Sky Sports. Based on revenue data provided by pay TV operators, we estimate that these subscribers account for [X] of total pay TV revenues (including communication revenues).

A6.33 This estimate includes revenues associated with Sky Sports subscribers on Sky DSat, Virgin Media and TalkTalk TV. It does not include revenues associated with Sky Sports subscribers on BT TV as we do not have the data to do this. In addition, our estimate of the revenues associated with Sky Sports subscribers on Sky DSat does not include revenues associated with the supply of BT Sport to these subscribers, as again we do not have the data. Therefore, our estimate of [X] slightly understates the proportion of total pay TV revenues accounted for by Sky Sports subscribers.

A6.34 We also set out above that we think it is likely that between 12% and 24% of pay TV subscribers view access to Sky Sports as a critical element of their pay TV package. We don't have information on how the revenues from these subscribers compare to other pay TV subscribers. However we do have information on the revenues of Sky Sports subscribers compared to non-Sky Sports subscribers:

- Sky Sports subscribers on Sky DSat typically spend [X] more per subscriber per month than non-Sky Sports subscribers;
- Sky Sports subscribers on Virgin Media typically spend [X] more per subscriber per month than non-Sky Sports subscribers; and
- Sky Sports subscribers on TalkTalk typically spend [X] more per subscriber per month than non-Sky Sports subscribers.<sup>262</sup>

A6.35 Across these three platforms, Sky Sports subscribers spend on average [X] more per subscriber per month than non-Sky Sports subscribers. Therefore we estimate that the 12% - 24% of pay TV subscribers that view access to Sky Sports as a

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<sup>260</sup> Calculated based on the fact that 33% of respondents taking pay TV said that they took Sky Sports. Ofcom November 2013 survey, Question C5. Base: All with Pay TV service on main set (2252).

<sup>261</sup> Some of these non-Sky Sports subscribers may already subscribe to BT Sport and see it as important because of the content it currently shows.

<sup>262</sup> We do not have equivalent data in relation to subscribers on BT TV.

critical element of their pay TV package account for between [x] % and [x] % of pay TV revenues.<sup>263</sup> Using the same methodology we estimate that the around 5% of pay TV subscribers for whom BT Sport is very important or essential account for around [x] of pay TV revenues.<sup>264</sup>

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<sup>263</sup> If non-Sky Sports subscribers pay one unit per month then the [x] of pay TV customers that don't take Sky Sports pay one unit per month and the [x] of pay TV subscribers that take Sky Sports pay [x] per month. Therefore, 12% of subscribers taking Sky Sports account for these subscribers account for  $12\% \cdot [x] / ([x] \cdot [x]) + ([x] \cdot 1) = [x]\%$ . 24% of subscribers taking Sky Sports account for these subscribers account for  $24\% \cdot [x] / ([x] \cdot [x]) + ([x] \cdot 1) = [x]\%$ .

<sup>264</sup> Solely for the purposes of deriving this estimate, we assume that all of these subscribers take Sky Sports and on average spend around the same amount as all Sky Sports subscribers.

## Annex 7

# Estimating revenues from the supply of key sports channels

A7.1 This Annex sets out the approach we have used to estimating revenues which we have used to calculate the revenue shares of the wholesale supply of key sports channels in Section 6.

## Explanation of our approach

A7.2 In order to estimate these revenue shares of the wholesale supply of key sports channels we need to estimate the revenues associated with Sky Sports and BT Sport respectively. To do this we need to determine the correct channel rates to use. Where there is a contractual rate in place we use this (including any discounts). However, in practice, Sky does not set a charge in respect of the subscribers that take it on the Sky DSat platform. In addition, BT does not set a charge in respect of subscribers that take BT Sport on Sky's DSat platform and those that take it via BT TV or via the BT App.

A7.3 For the self-supply of Sky Sports we have used the rate-card prices set by Sky, summarized the table below.<sup>265</sup> As this is the effective rate that Sky charges for Sky Sports packages taken alongside Sky Movies.

**Table A7.1: Sky monthly wholesale price per retail customer from September 2014 (excl. VAT)<sup>266</sup>**

	Single sports	SS1&2	SS1,2,3,4 & F1
Sports only	[X]	[X]	[X]
Sports and single movies	[X]	[X]	[X]
Sports and dual movies	[X]	[X]	[X]
Single movies only		[X]	
Dual movies only		[X]	
Estimated price range of sports only <sup>267</sup>	[X]	[X]	[X]

Source: Sky's response to Question 5 of the 1<sup>st</sup> section 26 noticed under the BT CA98 Complaint, dated 18 June 2013

A7.4 To attribute revenues to Sky Sports when sold as part of a bundle including movies we have used the following method:

<sup>265</sup> An alternative approach would be to use [X]. However, this would have a very minor impact on Sky's share of wholesale supply.

<sup>266</sup> Since September 2013 Sky has charged slightly different rates to different operators. The rates in this table are the rates charged to small cable operators.

<sup>267</sup> The bottom of the range is the difference between a package containing sports and movies, and a package only containing movies; and the top of the range is the incremental price for sports alone (on top of basic).

- a) Where Sky Sports is taken on a stand-alone basis (i.e. without movies) we have assigned all subscribers the appropriate rate card (or commercially negotiated) price that was in effect in that period.
- b) Where Sky Sports and Sky Movies are taken in a bundle we allocate the revenue associated with the resulting tariffs between Sky Sports and Sky Movies based on consumer preferences.<sup>268</sup>

A7.5 For the supply of BT Sport to Virgin Media we have used the revenues defined in the Virgin Media contract. For BT Sport self-supply we have used the rates in the Virgin contract.<sup>269</sup>

- where BT Sport is retailed on Sky DSat at £12 a month<sup>270</sup> we use the rate for standalone subscribers in the Virgin Media contract – namely [X];
- where BT Sport is retailed (i) for free on Sky DSat alongside BT broadband; (ii) for free on the BT TV platform; or (iii) for free via the BT app we use the rate Virgin Media would pay for BT Sport customers on the XL bundle. [X] we use the average rate actually paid by Virgin Media for 2013/14; this was [X], for August and September 2014 the average rate was [X]; and
- where BT Sport is retailed at a discounted price on Sky DSat to BT broadband customers that are out of contract we use half the rate paid by standalone Virgin Media subscribers – namely [X].<sup>271</sup>

A7.6 We also include HD revenues for Sky based on the rates agreed between Sky and Virgin Media. We have not included additional HD revenues for BT as BT Sport HD is supplied for no additional charge on the Virgin Media platform and therefore the rates in the Virgin Media contract effectively include HD.

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<sup>268</sup> This is a weighted average price based on responses to our November 2013 survey. The survey revealed that 45% of sports customers were primarily interested in sports, 21% were primarily interested in movies and 21% cared about both. To calculate the preference price we assigned the standalone price, i.e. the price of Sky Sports if purchased without Sky Movies, to customers who cared about sport, the incremental price, i.e. the difference between the bundled price of Sky Sports and Sky Movies and the standalone price of Sky Sports, to customers who primarily cared about movie and a weighted price (the bundled price multiplied by the ratio of the standalone sports element to the standalone movies element) to customers who cared about both.

<sup>269</sup> We note that in the June 2014 VULA Margin consultation (<http://stakeholders.ofcom.org.uk/consultations/VULA-margin/>) we rejected the option of inferring the channel price from BT's offers to other retailers in light of how BT Sport is currently distributed, see paragraphs 6.126 – 6.127. In this case we have used the rates in the Virgin Media contract as an approximation of BT's market position in the supply of key sports channels. However, were we to use the net cost of BT Sport as estimated in the VULA consultation this would not materially change BT or Sky's market position.

<sup>270</sup> We note this price increased to £13.50 (and to £16.50 for HD) on 1 October 2014, however, our calculations are based on data up to September 2014.

<sup>271</sup> BT broadband customers on Sky DSat that are out of contract pay £6.75 for BT Sport SD and £9.75 for HD. This is approximately half the rate standalone customers on Sky DSat pay. Therefore we use half the standalone subscriber rate in the Virgin Media contract.

## Annex 8

# Bidding for sports rights

A8.1 In Section 6 we set out that Sky may have a significant advantage when bidding for rights which rivals may find difficult to overcome. In this Annex we look at this in more detail. In particular we look at two pieces of evidence:

- i) Evidence from previous auctions; and
- ii) Features of the pay TV market that could explain Sky's bidding strength.

## Evidence from previous auctions

- A8.2 Sky was the only UK broadcaster of live Premier League matches from the inception of the Premier League in August 1992 until May 2001 and between August 2004 and May 2007. In 2006 commitments were put in place by the European Commission which prevented the grant of sole and exclusive rights requiring a minimum of two broadcasters to be granted rights. In the 2006 auction for rights to the Premier League 2007/8 to 2009/10 seasons Sky was awarded the rights to 92 live matches and Setanta was awarded the rights to 46 live matches.
- A8.3 In the 2009 auction for rights to the 2010/11 to 2012/13 seasons, Sky was awarded the rights to 115 live matches with Setanta being awarded the rights to 23 live matches.
- A8.4 In the 2012 auction for rights to the 2013/14 to 2015/16 seasons, BT was awarded the rights to 38 live games, including 18 first pick games, with Sky awarded the rights to the remaining 116 live games including 20 first picks.
- A8.5 The fact that Sky won the maximum rights available to a single broadcaster in the 2012 and 2009 auctions for live Premier League rights suggests that Sky may retain an advantage when bidding for those rights.
- A8.6 In the 2013 auction for UEFA rights BT successfully outbid Sky for exclusive rights to the Champions League and Europa League for the 2015/16 – 2017/18 seasons. In the first round of the auction BT bid [£] per annum for exclusive rights compared to Sky's bid for exclusive rights of [£] per annum.<sup>272</sup> Whilst this may indicate that the barriers to BT's ability to bid for rights are lower than in the past, we note that expenditure on Champions League and Europa League rights is significantly lower than for the Premier League and, as we have identified in Section 5, live Premier League content remains the most important content for consumers. Therefore the fact that BT expects to recover its investment in Champions League content does not necessarily provide an indication that it would be able to monetise any future investment in Premier League rights.

## Features of the pay TV market could explain Sky's bidding strength

A8.7 In 2010 we identified three factors that could explain Sky's advantage when bidding for sports rights:

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<sup>272</sup> [£]

- a) the time it takes to build a subscriber base. In 2010 we set out evidence that were a firm to acquire Premier League rights they would face delays in building a subscriber level comparable to the level that could be attained by the current rights holder. This would reduce the value of Premier League rights to a new entrant relative to Sky (as the incumbent) and therefore reduce the chance of them outbidding Sky;
- b) the advantages of being a vertically integrated operator on the largest platforms. Specifically we said that Sky was the most effective retail outlet on the largest platform and that, since third parties would be unable to access this platform as effectively, Sky would have an advantage when bidding for Premier League rights; and
- c) bidder specific advantages. We identified a range of bidder specific factors that could explain Sky's bidding strength. In particular, we identified brand strength and funding advantages over FTA channels.<sup>273</sup>

A8.8 We would expect a stand-alone sports channel entrant to face the same disadvantages when bidding for rights compared to Sky as we identified in 2010.

A8.9 However, given that BT was successful in the Premier League and UEFA rights auctions we have looked at its business model in more detail to assess whether it is able to overcome the barriers other new entrants face.

A8.10 In some ways BT's business model is similar to previous entrants' strategies and in this respect we expect BT to face one or more of the disadvantages identified in 2010:

- selling BT Sport as standalone channel on Sky DSat accounts for [X] of BT Sport subscribers (excluding online only subscribers). When retailing on Sky DSat BT faces the same disadvantages Setanta did as a self-retailer on the Sky DSat platform compared to Sky as the vertically integrated retailer. First, BT will face a delay in building a subscriber base. Although BT does have a large number of Sky DSat customers many of these customers receive BT Sport as part of their broadband package. Second, BT is unable to bundle sports content with other pay TV content, e.g. basic and movies. As a result Sky is able to generate revenues from the synergies associated with aggregating sports content with other content and services that are not available to BT; and
- selling BT Sport on BT TV accounts for [X] of BT Sport subscribers (excluding online only subscribers). When monetising BT on this platform BT has an advantage over Sky as it is the vertically integrated operator. However, BT TV's small existing subscriber base on BT TV (1m subscribers) means that this is only a small offsetting factor against Sky's large advantage on the Sky DSat platform (around 10m subscribers). Low levels of consumer switching in the pay TV market mean that attracting a large number of subscribers in the period which rights are typically made available, e.g. three years, is unlikely to be feasible.

A8.11 Wholesaling to Virgin Media accounts for another [X] of BT Sport subscribers (excluding online only subscribers). Both BT and Sky wholesale their content to Virgin Media.

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<sup>273</sup> 2010 Pay TV Statement, paragraph 5.474.

A8.12 However, a central focus of BT Sport's business model differs from Setanta and ESPN in that it seeks to monetise rights for sports content by bundling it with broadband on Sky DSat. This accounts for [8<] of BT Sport subscribers (excluding online only subscribers). We did not consider this factor when we looked at barriers in 2010. Therefore we have considered whether this might offer BT some advantages that would enable it to overcome some of Sky's bidding advantages set out above. We identified two ways in which broadband could give BT an advantage compared to other new entrants and potentially Sky.

- a) **The ability to bundle broadband with sports content.** Synergies in selling broadband and sports content together may allow BT to access more customers and extract more revenues than an entrant that does not have a broadband business. However, it is not clear that this will overcome Sky's other advantages. First, Sky also has a large broadband business. Second it is not clear that the advantage of bundling broadband and sports content is as effective a way of monetising rights as bundling wider pay TV products (e.g. basic and movies) with sport.
- b) **An established subscriber base.** BT's established broadband subscriber base has given it a large group of customers to which it can market sports content. This could reduce BT's marketing costs. However, this does not give BT an advantage over Sky which already has an established pay TV subscriber base.

A8.13 Overall it is not clear whether BT's strategy of bundling a light sports offering for free with broadband overcomes Sky's advantage of being the vertically integrated operator on the largest platform.