

Organisation (if applicable):

ITV plc

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Additional comments:

ITV welcomes the opportunity to respond to Ofcom's consultation concerning whether to remove the Access Control ("AC") Continuation Notice by which regulation of access to interactive services is imposed on Sky's satellite platform.

As Ofcom is aware, ITV is not currently a user of AC services from Sky. As such, we do not offer specific answers to the consultation questions below, but instead offer some broader comments relating to the future of the regulation in question.

We note the comment that demand for interactive services has declined, and that Sky claims that the increasing take-up of internet services means that the interactive services delivered via Sky's set top boxes (STBs) are "virtually obsolete" (paragraph 2.25 of the consultation).

We also note, however, Sky's claim that the application of AC conditions on Sky is burdensome (paragraph 5.38 of the consultation).

In our view, there is an obvious tension between the above statements made by Sky - if there is limited demand for services which relate to the AC conditions, then it is difficult to see how the application of the AC conditions could impose a significant burden on Sky. Put another way, if demand for such services is very low, it could be argued that the regulation is unnecessary - but it is difficult to see how it could be simultaneously argued that the regulation is burdensome.

In this context, we consider that it is premature to conclude that continued AC conditions are unnecessary. As Ofcom itself highlights in the consultation, demand for interactive services subject to AC conditions may have declined over recent years, but it is eminently possible that other relevant services could emerge over the coming years.

For instance, emerging services which may require access to Sky's APIs include second screen applications, personalised services and other services discussed in the consultation at paragraphs 5.21 onwards.

If there is significant future demand for such emerging services, then the removal of the AC conditions would mean that Sky no longer has a requirement to provide FRND access to third party service providers. As such, in the absence of regulation, Sky would have greater control over access to its STBs in a manner that may allow it to discriminate against competing

providers.

Given the inherent uncertainty regarding demand for such services, and given that the current regulation is unlikely to impose significant burdens on Sky at present, we consider that the potential downside risks of removing the AC conditions would outweigh the potential benefits. Specifically, there is a risk that removal of the regulation would enable Sky to engage in discriminatory behaviour in future, in a way that would be detrimental to consumers.

We therefore consider that it is prudent to retain the AC conditions at present, and for Ofcom to monitor how the market for the relevant services evolves over the next two to three years. There may be a stronger case for removal of the conditions if no issues emerge over that period, but we do not support the immediate removal of the AC conditions.