

Astrium Response Due Date 18th September, 2009	Ofcom Consultation - Pay TV phase 3 document Proposed Remedies	Prepared by David Robson Principal Consultant Telecommunications Satellites Division
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Executive Summary

Astrium feels obliged to respond to certain aspects of this consultation because of the potentially harmful impact of the proposed remedies (aimed at the actions of one successful company) on the future growth prospects of the satellite sector at large in the UK.

Space is presently the focus of an Innovation and Growth Team which will report its findings in early 2010. It would be unfortunate if these remedies were implemented precipitously without due consideration of their wider implications.

Regulatory intervention in the broadcast sector does not have a proud record of success. The demise of Setanta is just the latest manifestation. This proposed intervention is in a sector dominated by one method of payment. It may have unintended consequences at a time of great uncertainty for all broadcasters (no matter their source of revenues) and Astrium suggests that Ofcom should err on the side of caution in its approach.

This Astrium response will be provided to the Space IGT team for its consideration as an example of well intentioned regulation which may have unintended harmful impacts on the UK space sector. *Astrium suggests that Ofcom might wish to consult with that team (Ofcom is represented within the IGT) before making final decisions on Pay TV.*

Satellite operators and service providers face huge long term investments both to install in orbit capacity and to acquire users. Iridium is an example of a satellite operation which failed to meet its investors' expectations. *Ofcom shows no research to allow the conclusion that Sky is now a mature company whose investors have been repaid in proportion to the risk that they have taken and managed away.*

It is important that existing operators (making high margins) are not attracted elsewhere. It is also important that new investors in satellite services and operations see that the UK will be a good place to invest, allowing them to make a fair return for their investment, measured against such operators in other countries.

The emergence and growth of Pay TV markets has been driven historically by cable and satellite broadcasters, providing consumers with the option of paying to access a wider choice of content than had previously been available from free to air terrestrial broadcasters.

Without access to public revenues through a licence fee or to substantial advertising revenues Sky in particular was forced to create new demand for previously unavailable content. They secured rights to the Premier League and to Hollywood Films and marketed these in substantial packages to eager subscribers. Prior to this action there was no actual demand since no one had defined a product. Anyone else could have done this: no one else did.

Whilst terrestrial broadcasters continued 'business as usual' Sky chose to innovate further, initiating a digital switchover of all its customers in 1997. Sky's Digital Switchover and the expansion of the SES fleet led to a huge increase in the number of available channels and customer choice. Some of this choice has been utilised to facilitate reruns (Film4+1 etc). This provided the user with a choice of viewing time whilst sticking to a linear programming model.

More recently Sky has innovated with Digital PVR technology, a user cache which allows the user to choose in advance which programmes are to be recorded with a user friendly electronic programme guide.

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This has been further enhanced through use of the large available capacity to deliver choice (over 30 HD channels and still growing) in HD programmes whilst taking advantage of the huge user investment in HD Ready large flat screens.

Together the HD programming and Digital PVR with cache available in the 320Gbyte to 1 Tbyte range provides the user with an ever increasing choice. In particular many users are unhooking themselves from the live linear broadcast channel and choosing to watch the content stored on the PVR for at least some of their viewing time. This is an important message for linear broadcasters and IPTV entrants alike.

The user appetite for choice has been further illustrated through the success of catch up TV on the internet - for example the uptake of BBC's i-player for PC rather than TV platforms. The BBC has further courted controversy through its Canvas proposal to connect broadband to the set top box allowing downloads and other on line material to be viewed on the TV. A new standard is also being proposed (HbbTV) by a consortium including RTL, Canal+, SES Astra etc. to integrate broadband and broadcast content at the user TV interface.

The suitability of the present broadband networks to support unfettered user demand for on line video content has not faced substantive critical examination. Ofcom has sponsored research from Analysys Mason 'Delivering High Quality Video Services Online' which shows that the UK core network would need to move from an average bandwidth provision per user in busy hour of 30kbps today to 1- 2Mbps (around a 50 fold increase) to provide services spearheaded by HD VoD.

All of the interactive solutions proposed today require the user to subscribe to ADSL. [The question which should be asked here is whether the use of caching technology in the satellite network can provide a user experience similar to 'true' VoD in a manner which makes better use of the broadcast satellite capabilities and which frees many users from the need for the broadband subscription?](#)

We note that in 9.134 p 293 of the Ofcom "Pay TV phase three document " it is effectively acknowledged that satellite provides the least cost method for distributing video content. *'.....recognising that the costs of DTT transmission are higher than those associated with DSat'*

[Ofcom's proposal of a Retail Minus approach to deriving wholesale prices is not technology neutral from a satellite manufacturer's perspective. On the contrary it attempts to neutralise satellite's technology advantage in a sector where DTT has legislative advantage.](#)

It discourages other operators from taking up a satellite platform if Ofcom allows an operator on a high cost platform to offset his higher costs to enable flat price competition with an operator on a low cost platform. Effectively the following paragraph 9.135 leads into a proposal to tax Sky to subsidise DTT's inefficiency.

Astrium is increasingly puzzled as to the difference between 'true VoD' as provided via IPTV which seems to be deemed 'good' and nVoD using digital PVR which is deemed 'bad'. Following through the latest Canvas numbers for download of an HDTV film it is going to be available only to 'play later' and later is 'up to 8 hours later' based on the 2Mbps universal service.

In this context it is disappointing that the present Canvas proposition fails to exploit the power of the Freesat platform to achieve "push VoD". Canvas is not true VoD. It is not even nearly VoD (nnVoD?). This will not be able to compete with push VoD PVR /large storage developments making use of the large broadcast pipes that satellite provides. The BBC is

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making a mistake in not integrating Freesat from day 1 and seems to be trying to align Canvas with HD launch on DTT2 where it is the dominant broadcaster.

One might ask a number of questions of broadcasters other than Sky.

Is the Freesat platform being restricted by its ownership?

Is it right for a public sector broadcast organisation to integrate wholesale and retail arms or should they be separated?

Should Ofcom's approach to PayTV remedies focus on measures which will encourage a new satellite based operator? If Freesat is unwilling then someone else might be encouraged to harness the unrivalled capacity and costs of a satellite based system to build a sustainable business.

Ofcom asserts that Sky's satellite platform is not suited to exploitation of sVoD rights. This argument should not be extended to conclude that satellite technology could not support the necessary return channels and encryption systems. Astrium would be happy to supply satellites with the required functionality but have not been asked to do so! Perhaps Ofcom might like to consider remedial measures to require such satellite systems to be implemented in an appropriate time scale?

Finally Astrium considers it inappropriate for Ofcom to include in this serious document anti satellite remarks. An example is in 7.59*Virgin Media's platform has been able to provide true VoD for several years, unlike satellite; in addition, it avoids the need for a satellite dish*'. It would be equally valid to say that Sky's platform has avoided the need to dig up the roads.

Section 2: Introduction

1. Do you agree with Oxera's approach to the valuation of Sky's intangible asset base?

No comment.

2. Do you agree with Oxera's approach to assessing Sky's profitability?

No comment.

3. Do you agree with our assessment of Sky's weighted average cost of capital?

No comment.

4. Do you agree with the conclusions we draw about Sky's aggregate profitability?

No comment.

5. Do you agree with the conclusions we draw about Sky's profitability at a disaggregated level?

No comment.

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6. Do you agree with our characterisation of the relationship between high wholesale prices and retail pricing?

Astrium does not agree that there is a technological restriction on Sky as suggested in 7.94. It has chosen not to implement technology for a return link by satellite. Astrium would be happy to sell further satellites with this capability.

In the same paragraph confusion over true VoD surfaces again. All that matters is that a user gets the download that he has requested for a price commensurate with the quality of the product on offer in a time that is acceptable. How this is done is irrelevant. If a similar service can be supplied using storage rather than fixed lines then it should be the user that decides if this is what he wishes to subscribe to.

7. Do you agree with our view that it would not be more appropriate to proceed in relation to some or all of the matters in question under CA98?

No comment

8. Do you agree that a wholesale must-offer is in principle the best way of answering our concerns around restricted distribution of Core Premium channels?

No comment.

9. Do you agree with our proposal not to apply a remedy to wholesalers without market power?

No comment

10. Do you agree with our proposal not to extend a remedy to retailers on Sky's own platforms?

No comment.

11. Is it necessary for us to set the prices of a wholesale must-offer?

No comment.

12. Do you agree with our overall price-setting approach of using retail-minus, with a cost-plus cross-check?

No. The proposed approach neutralises the cost advantage that a broadcaster using a satellite platform has over one using DTT or IPTV. This will discourage operators from entering competition in the UK using the SES or any other satellite capacity.

13. Do you agree with our proposal to include HD and primary interactive sports content in a remedy?

The current ability of Sky to offer tens of HD channels is only the start of the exploitation of the potential of satellite bandwidth. It is pointless to include HD on the DTT channel as users desiring this HD content will prefer to have more channels available than DTT will ever support. Freesat should be encouraged to develop its capacity to provide many more HD channels. Why are there still so few?

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14. Do you agree with our views as the concerns relating to commercial premises?

No comment.

15. Do you agree in principle that our retail-minus calculation should start from Sky's retail prices and deduct the retail costs of an efficient entrant?

No. We fundamentally disagree with your retail minus approach. The wholesale price should be set to encourage other satellite operators by allowing the higher costs of a DTT operator to be reflected in higher consumer prices. In addition the DTT operator should be penalised for his higher environmental impact in accordance with BIS policy and UK's commitment to carbon reduction. This should include carbon production from the transmitter masts.

Also, as Ofcom is aware, planning proposals for wind farms are subject to coordination with Arqiva. The use of hill tops for terrestrial TV masts is likely to reduce the wind generation capacity of the UK by denying turbines access to these already despoiled sites. This should also be taken into account.

If these costs are not allowed to flow into higher prices then there is no incentive for anyone to improve the efficiency of the transmission network.

16. Do you agree with our proposal to set simple linear prices per subscriber, allowing flexibility for other pricing structures?

No comment.

17. Do you agree with our proposal for wholesale prices to evolve over time according to a 'ratchet' approach and how should these prices track retail prices over time?

No comment.

18. Do you agree with the principle that the same price for a 'factory gate' product should apply to all retailers regardless of their scale and choice of distribution technology?

No. Astrium believes that those with high financial and wider environmental costs than Sky should pay the price.

19. Do you agree with our approach for deriving starting retail prices given the complexity of retail bundling?

No comment.

20. Do you agree with our calculation methodology to deduct retailing costs – in particular the use of a discounted cashflow analysis, deduction of incremental and pro-rated fixed and common costs, and the use of Sky's costs as an efficient retailer?

No. This approach is flawed. Sky is actually a victim of its own success with limited bargaining power with its chosen transmission supplier. A new satellite entrant using an alternative orbital location would have lower transmitter costs than Sky.

21. Do you agree with our proposal to focus on deriving prices for a 'large' entrant

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scale retailer using DTT transmission and what are your views on our range of prices?

No. This approach is flawed. A DTT operator should be paying a higher price than a new entrant using satellite.

22. Do you agree with our approach to deriving a wholesale price for HD services and what are your views on the resulting range of prices?

No. This approach is flawed. A DTT operator should be paying a higher price than a new entrant using satellite.

23. Do you agree with our proposals for non-price terms – in particular on Minimum Qualifying Retailer, Minimum Security Requirements and a Reference offer?

No comment.

24. Do you agree that a wholesale must-offer remedy is unlikely to contribute significantly to the administrative costs currently incurred by Sky?

No comment.

25. Do you consider that our impact assessment above supports our view that it would be appropriate to impose a wholesale must-offer obligation in the form proposed in order to ensure fair and effective competition?

No. If the intention is to improve availability of VoD services then Ofcom is encouraging the use of the wrong technologies. It should at least take steps to encourage existing as well as new satellite operators to introduce these services and should encourage any investment in new satellite capacity which might be required to do so.

26. Do you have any comments on the draft wording of this condition, in light of the positions we have set out in the previous two sections?

No comment.

27. Do you agree with our proposed approach to addressing concerns about the restricted exploitation of SVoD movies rights?

No. If the intention is to improve availability of VoD services then Ofcom is encouraging the use of the wrong technologies. It should at least takes steps to encourage existing as well as new satellite operators to introduce these services and should encourage any investment in new satellite capacity which might be required to do so.

Astrium would be pleased to describe in confidence to Ofcom how an operator might offer SVoD and IPTV over satellite.

28. Do you agree with our proposed way forward on FAPL?

No comment.

29. In particular, what remedies do you believe we should consider on FAPL, if any?

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No comment.