Non Confidential Version Contains Redactions

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: **Pay TV Third Consultation "Proposed Remedies"**

To (Ofcom contact): **William Hayter**

Name of respondent: **Stephen Dean**

Representing (self or organisation/s): **BT**

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

As per redactions on this submission.

If you want part of your response, your name or your organisation to be confidential, 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)? **No**

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. 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 **Stephen Dean** Signed (if hard copy)

BT's response to Ofcom on Pay TV Third Consultation "Proposed Remedies"

18 September 2009

BT welcomes any comments on its position as laid out in this document, which will be available electronically at http://www.btplc.com/responses.

Comments should be addressed to Stephen Dean, BT, Newcastle Telephone Exchange, Carliol Square, Newcastle upon Tyne, NE1 1BB.or by email to stephen.h.dean@bt.com

1. Introduction and Executive Summary

1.1 BT is one of three parties[1] who have together submitted a Joint Response to Ofcom's Pay TV phase 3 document, proposed remedies dated 26 June 2009 ("Ofcom's 3rd Consultation Paper"). The Joint Response is a comprehensive document which sets out detailed views on a number of issues raised in Ofcom's 3rd Consultation Paper, which BT fully supports. In particular, BT endorses the progress Ofcom has made in setting out its retail-minus methodology and the recognition that it is necessary to establish *ex ante* Wholesale Must Offer ("WMO") prices and other non-price terms for Sky's wholesale premium channels rather than leaving pricing open to commercial negotiations with Sky. BT is also supportive of Ofcom's approach to addressing remaining concerns with on-demand rights that sit outside the scope of Ofcom's current proposals by way of a market reference to the Competition Commission. BT believes that going forward it will be essential that Ofcom rapidly concludes this consultation process and implements appropriate remedies in sufficient time for competitors to bring competing products to market ahead of the FAPL season beginning in August 2010.

1.2 Ofcom's WMO proposals are predicated on a desire to ensure long term sustainable entry to pay TV markets and not simply to create pricing arbitrage opportunities for the resale of premium channels in the short run. BT is supportive of this approach which it believes should deliver the benefits of effective competition to consumers.

1.3 BT has already demonstrated a significant commitment to pay TV [✂]. In that time BT has delivered substantial innovation to retail pay TV markets by introducing considerable consumer flexibility, in pricing terms (including access to premium channels and content with no buy-through obligations and allowing subscribers to pay only for the content that they want to watch), in terms of product choice (on-demand content allowing consumers to have the freedom to choose what and when they wish to watch) and in terms of platform development (an innovative combination of DTT and DSL distribution technologies). [✂] As a result, Ofcom's WMO proposals are essential to BT's ability to deliver further, enhanced consumer benefits in retail pay TV markets.

1.4 However, BT is concerned that Ofcom's current proposed WMO prices do not reflect properly the cost to a new entrant of providing a competing pay TV business. BT believes that Ofcom's modelling and analysis are predicated on assumptions and investment timetables that do not reflect the reality of commercial investments. If WMO prices are set too high and are based on unrealistic investment assumptions, this increases the risk to BT (and other competing operators) of investing in pay TV markets, thereby delaying innovation and the delivery of anticipated consumer benefits, and potentially undermining the efficacy of Ofcom's remedy. Moreover, in BT's view, the long term solution to the lack of effective competition in pay TV markets today is the emergence of competitors with scale customer bases that can compete with Sky for content rights. Appropriately determined WMO prices are the first step in the investment ladder that allows BT (and other competitors) to be able to

[1] The parties are BT, Top up TV and Virgin Media ("The Three Parties").

compete effectively with Sky at the retail level, develop scale through innovation, [✂]. Therefore, if WMO prices are set inappropriately high there is a risk that Ofcom's aim of achieving long term sustainable competition is delayed unduly, thereby adding unnecessary risk and uncertainty to the market affecting the consequent benefits to consumers.

1.5 This paper addresses the following issues:

- Section 2 sets out the considerable consumer benefits that BT believes will be delivered as a result of the establishment of appropriate *ex ante* WMO prices;
- Section 3 sets out BT's assessment of Ofcom's current WMO pricing proposals, and in particular why BT believes that Ofcom's current preferred prices are too high;
- Section 4 provides BT's views on Ofcom's proposals to adjust WMO prices for wider bundles;
- Section 5 outlines BT's views on the issue of security;
- Section 6 assesses Ofcom's proposals in respect of Subscription Video on-demand (SVoD); and
- Annex A responds to the specific consultation questions posed in Ofcom's 3rd Consultation Paper.

2. Consumer benefits of Ofcom's WMO intervention

Introduction

2.1 The Three Parties have previously provided a substantial body of evidence demonstrating that there are structural features of pay TV markets (such as Sky's vertical integration and its control of mutually reinforcing bottlenecks) which confer on Sky unique advantages in the acquisition and distribution of premium sports and movie channels which dictate a structure for the whole industry that impedes fair and effective competition. Sky's large base of pay TV subscribers, together with its gatekeeper position on the satellite platform, gives it significant bidding advantages and enables it to continue to acquire and retain the rights to the most attractive content. As a consequence, the development of competition in pay TV markets has been limited to the detriment of consumers.

2.2 Ofcom's WMO proposals are designed to address these competition concerns by ensuring long term sustainable competition in pay TV markets which, in BT's view, will deliver substantial consumer benefits.

2.3 Section 7 of Ofcom's 3rd Consultation Paper sets out Ofcom's assessment of the consumer benefits that it believes will result from the introduction of a WMO obligation on Sky. Broadly, Ofcom has identified consumer benefits in terms of increased choice, lower prices and greater innovation. BT agrees that these will be the three areas where consumer benefits will be manifest though, as the detail set out in the Joint Response suggests, actual consumer benefits are likely to be more significant than outlined in Ofcom's assessment. Below, BT sets out the role it has already played in terms of delivering innovation in pay TV markets as well as its latest thinking on the products and services that it envisages developing as a result of Ofcom's WMO intervention.

BT's history of innovation

2.4 BT Retail has a strong record of innovation and delivering new products in communications markets. In recent years, BT Retail has built a customer base of over four and a half million broadband subscribers. BT has invested [✂] building a broadband network, migrating its customers from broadband speeds of 1-2 MB to faster speeds of up to 8 MB broadband. It is now investing [✂] in its 21st century network to migrate about half its customers to speeds up to 20 MB on ADSL2+. Faster broadband access has been key to the development of new ways to access content in the UK (youtube, BBC iPlayer, 4oD etc). BT also launched the BT Home Hub with its powerful wifi capability and integral VoIP handset and VoIP line, providing consumers with the opportunity to make voice calls over IP as well as over traditional voice lines. On top of this, BT is investing [✂] over the next few years in its superfast broadband network to offer customers speeds of up to 40Mb per second. All of this innovation and investment is driven by the highly competitive pressures in the broadband market facilitated by regulation.

2.5 BT has also driven innovation, increased choice and lower prices in pay TV markets. BT Vision's proposition is based on a combination of DTT and DSL distribution technologies, using an existing BT broadband line and a bespoke set top box with integrated personal video recorder (PVR) and DTT capability. BT's technology allows consumers to access content "on-demand" allowing consumers to determine what they want to watch and when they wish to watch it. [✂]

2.6 In addition, BT Vision has historically avoided imposing "buy-through" requirements on its customers, i.e. requiring customers to purchase a basic package before they are allowed to buy a premium package. For example, in August 2008, a BT Vision customer could buy Setanta Sports on a standalone basis for £10.99 per month. A Sky customer who wished to purchase Setanta Sports would have had to buy a basic package at £16.00 per month as well as the Setanta Sports channel at £12.99 per month, costing a total of £28.99[2]. Similarly, today a BT Vision customer can download a single pay per view movie without needing to purchase any basic packages or commit to any subscription plans from BTV. BT's customers can spend as little as 29 pence on a single item of content if they wish. BT's internal research suggests that consumers value the ability to access content in this way without being required to purchase additional, unwanted, content[3].

2.7 BT Vision's approach has given customers a wider choice of content packages at lower price points than were previously available in pay TV markets. BT's entry into video-on-demand has provoked Sky into announcing recently that it intends to imitate BT's video-on-demand (VoD) offering next year[4]. Therefore, BT's entry in to pay TV markets has already led to a reduction in prices and increased innovation. However, despite these benefits, BT Vision has been unable to build scale without access to Sky's premium pay TV channels. As BT is unable to offer these "must have" premium products, its addressable market of pay TV customers is substantially smaller than that of competitors that are in a position to offer Sky's premium channels, and it is denied the revenue scale necessary to recover the costs of investment in its pay TV business, both in terms of platform and proposition development and in terms of customer acquisition and marketing.

Consumer benefits resulting from the WMO obligation

2.8 The Joint Response has set out a number of the consumer benefits that can be expected as a result of the introduction of Ofcom's proposed WMO obligation on Sky. (Please see the section titled "Consumer benefits from the proposed remedy".]). Below BT sets out specifically how such benefits relate to BT's own investment plans in terms of the products and services it envisages becoming achievable as a result of a WMO obligation on Sky to supply its premium channels.

---

[2] [✂]
[3] [✂]
[4] http://corporate.sky.com/media/press_releases/2009/3d_tv.htm

2.9 BT believes that consumer benefits - increased choice, lower price and greater innovation - will be demonstrated at all points in the value chain. Specifically, BT believes that Ofcom's WMO proposals will lead to significant changes in:

- Technology development and platform innovation
- Consumer propositions and the pay TV business model
- How content and rights are bought and used

Technology development and platform innovation

2.10 As discussed in the Joint Response, those platforms where operators have been unable to access Sky's premium channels on a wholesale basis have typically struggled to build scale. For example, on DTT, Top-Up TV (TUTV) has been unable to access Sky's premium content and has developed a subscriber base of approximately [✂]; on DSL, HomeChoice does not have wholesale access to Sky's premium channels and has only a few tens of thousands of customers. However, it is only by achieving revenue scale that the fixed costs of developing pay TV platforms and propositions can be recovered. Therefore, it is central to the development of sustainable competing platforms that they are able to offer premium channels in order to offer a proposition that is attractive to the largest number of potential subscribers possible and, in particular, to attract those subscribers who are willing to pay the higher monthly subscriptions for these premium channels. Consumers will not typically subscribe to two different pay TV providers in order to access the content that they want, because of the dual monthly subscription prices for pay TV and the inconvenience of having two set top boxes. Thus 'must have' content must be available on rival platforms in order to ensure the effective development of a competitive market.

2.11 BT believes that the emergence of a thriving market of multiple competing pay TV platforms with comparable scale in the market will benefit consumers in terms of choice, price and innovation. Each platform technology has different strengths and weaknesses, which will appeal more closely to the preferences of different groups of customers[5].

2.12 BT operates a combined DTT and DSL platform, BT Vision. As a combined platform BT Vision has the advantages of both technologies:

- a video-on-demand pay TV component over DSL
- linear TV distribution over DSL which has the potential to deliver significant numbers of linear pay TV channels

---

[5] For example those who do not want or cannot have a satellite dish will not need one, those who do not want a new cable connection can avoid having one, those not in a cable-built out area will have a choice of pay TV providers, those that do not want to pay a monthly subscription but are willing to pay for a set-top box to gain access to pay TV channels will be more readily able to do so and those whose preferences are orientated to on-demand viewing rather than linear TV will have more opportunity to access this type of programming. Moreover, it is important to remember that currently for almost 50% of UK households, satellite is the only way to access Sky's premium channels, and for a proportion of those that are unable to erect a satellite dish there is no option to access these premium channels.

- linear free-to-air and pay TV channels over DTT.

Both technologies offer a low cost entry point to pay TV for the consumer. BT also distributes the only available alternative to Sky in pay TV sports channels, ESPN (formerly Setanta).

2.13 On the assumption that Ofcom imposes a WMO obligation on Sky, and therefore BT gains access to Sky's premium channels on reasonable terms, BT is planning to undertake very substantial investment in its pay TV platform, particularly through its Canvas joint venture [✂]. Canvas is a set of open standards and elements of a TV platform, supporting both free-to-air and pay TV, with both linear channels and on-demand content. The intention is that Canvas will be a mass-market national TV platform, backed by these public service broadcasters. [✂]

2.14 Like the existing BT Vision platform, Canvas is a combined DTT and DSL platform. It has the potential to provide a radically new and innovative set of services to consumers, including the following:

- a set-top box, either bought from retail shops as Freeview set top boxes are today or provided by Internet Service Providers [ISPs] on a free or subsidised basis, so that all the capabilities listed below are integrated into a single customer experience at the TV rather than being fragmented between TV and PC devices

- all the Freeview channels distributed over DTT, which the consumer will be able to access without a TV subscription as they can with Freeview today alongside both basic and premium pay TV channels, to which the consumer will have an option – not an obligation – to subscribe

- high definition channels from both DTT and IPTV sources

- multiple video-on-demand services: free-to-air catch-up TV, such as BBC iPlayer services; and free-to-air archive content from public service broadcasters as well as paid-for video-on-demand services.

- access to internet content, both from professionally produced video material from organisations like Lovefilm.com and user-generated content from organisation such as YouTube

- content delivered over DSL in full TV picture quality for professionally produced long-form content, rather than the internet quality video standards today

- subject to rights issues, direct access to TV channels and sporting events from other countries (eg HBO from the USA, Pakistan vs. India cricket matches, etc). The greater capacity of DSL will allow pay TV operators to cater to the needs of niche audiences .

2.15 In addition, the Canvas platform will be able to deliver the integration of TV and communications into a converged user experience, allowing TV viewing and social interaction simultaneously at the TV screen. For example, once interactive functions based on broadband technologies are built into the typical TV experience, consumers will benefit by being able to participate actively in the TV experience, through voting, gaming, contributing to the content live in real time, calling down related video material on-demand and other such activities, which are currently beyond what is possible from one-way broadcast platforms[6]. Equally, Canvas may be able to deliver the capability to conduct person-to-person communication through the TV device simultaneously with TV viewing. Applications such as video-conferencing or access to social networking sites, such as Facebook, can be built into the TV experience, so that communities of consumers can participate in the common TV experience in real time.

2.16 This is a vision of a truly converged communications and media experience. It is common today to see consumers – particularly younger consumers – operating multiple screen technologies simultaneously: using the TV for linear TV channels, the laptop for web-searching and the mobile phone for calls and texts. In future all these activities will be possible on a single TV screen, in ways that integrate the related activities together.

2.17 Video-on-demand and linear TV can also be fully integrated into a single seamless customer experience, exploiting the capabilities of the communications network. Canvas will integrate a large variety of non-linear TV content, including catch-up, archive and on-demand content, both free-to-view and paid for, professionally produced and user-generated content. Consumers will benefit from being able to access this content in an integrated proposition at their TV set, without having to acquire alternative devices, such as PVRs, for recording TV. This on-demand proposition will also reduce the need for "plus 1" time-shifted TV channels which currently require additional, non-optimal, capacity usage on broadcast platforms. [✂]

2.18 In order that Canvas should develop as a compelling pay TV platform delivering these innovative services and effective competition to Sky's satellite proposition, it is essential that BT (and other operators) gain wholesale access to Sky's premium channels, [✂]. This will spur the emergence of this new combined DTT and DSL platform and allow the organisations building this platform [✂]. BT's own experience is that it is essential to offer must have premium content, such as sport, to attract pay TV subscribers. [✂] [7]

2.19 The Canvas platform is constructed as an open platform, open to all content service providers and Internet Service Providers. This is an important contrast to the cable platform, which is a closed platform not available to competing pay TV retailers. [✂].

2.20 BT believes that the emergence of competing pay TV operators on the same platforms will further facilitate the exploitation of the different capabilities of those platforms, as competing operators find newer, quicker and cheaper ways to take advantage of technological capabilities. An open platform with published standards will allow anyone to create a service or application bringing the creativity and innovation associated with the openness of the internet to the creation of TV content and services. Therefore, consumers will benefit in terms of more choice, more price competition and more innovation even within the Canvas

---

[6] As broadcast technologies, including satellite and DTT, are one-way transmissions they are not capable of matching the two way capabilities that Canvas will be able to harness.

[7] [✂].

platform, as well as across other competing platforms. Consumers will be able to choose between any Canvas affiliated ISPs on the basis of their own individual choice criteria – e.g. range of content, nature of market propositions, pricing, innovation, customer service, experience of the organisation in the past, etc.

2.21 As the UK moves toward a fibre-based access network, the development of profitable pay TV services using the fixed line DSL network is essential to the business case for investment in this infrastructure, In every other country in the world investing in fibre, the investment in superfast fibre-based broadband is heavily dependent on TV subscriptions[8]. Pay TV is the primary source of additional revenue per user necessary to pay for such infrastructure investments. As such, access to premium content underpins Ofcom's and the UK government's aspirations for wider coverage of superfast broadband for the benefit of consumers. Superfast broadband will deliver all of the additional public policy benefits identified by government, in addition to facilitating the desired benefits of e-government and access and inclusion objectives.,The substantial investment necessary to deliver such broadband access will be underpinned by pay TV access which in turn will be driven by the successful implementation of Ofcom's proposed WMO remedy.

Consumer propositions and the pay TV business model

2.22 In the pay TV industry at present in the UK, there is a standardised approach to the business model adopted by pay TV operators:

- A set top box is provided free in return for a commitment to a monthly subscription
- Bundling of basic channels into category bundles with a large number of channels
- "Buy-through" to premium channels, requiring customers to subscribe to at least one package of basic channels before being eligible to subscribe to premium channels.

2.23 This business model is designed to sustain the interests of the small number of operators currently in the market, as it allows them to maximise the size of monthly subscriptions from customers. Opening the market to competition by providing wholesale access to Sky's must have premium channels will allow pay TV competitors to experiment with new business models which will introduce greater consumer choice and lower price points for accessing premium content and bundled services.

2.24 [✂]

- [9]

[8] One of the key drivers for fibre usage is HD video content and HD sports channels in particular.
[9] [✂]

2.25 [✂] Crucially, this depends upon BT's ability to access the must have premium channels which are the primary driver of customer acquisition and higher subscription rates and the basis on which TV platform and business investments can be made.

2.26 Moreover, customers are moving increasingly towards purchasing bundles of services including pay TV, broadband, telephony and access lines. BT's customer research shows that, of customers leaving BT, [✂] leave to purchase a bundle of services and [✂] of these bundles include pay TV. Therefore, there is a clear preference for bundles in the communications market, yet currently only Sky and Virgin Media are able to offer bundles incorporating Sky's premium pay TV channels. Wholesale access to Sky's premium channels will allow BT, and other communications providers, to compete effectively with Sky in the provision of pay TV and communications bundles, improving consumer choice. Now that access to BT Group's source of market power – its copper access network – has been provided on equal terms to all competitors, Sky benefits from the key remaining source of market power in the converging fixed line communications and pay TV market: exclusive access to must have premium channels. Unless this market power is addressed through regulation, by the successful implementation of the WMO regime, the converging market will tip towards the provider with the near-monopoly of the remaining bottleneck asset – Sky.

How content and rights are bought and used

2.27 BT believes that the opening up of pay TV markets to competition, investment and innovation through mandated wholesale access to Sky's premium channels will have implications all the way through the value chain, including upstream into the way channels, programme content and underlying audio-visual rights are bought, sold and used. The standard approach to TV content currently is that most newly commissioned programmes, including high value events such as live sporting fixtures, are broadcast on linear TV channels. There is no reason why this should continue in the long run if the market is opened up to the full effects of consumer driven competition.

2.28 The internet has already revolutionised the consumption of other audio-visual material, such as the music industry through MP3 downloads, and the press industry through new methods of news and information distribution. The same may happen to TV programming, where on-demand distribution is likely eventually to exceed linear distribution. [✂] Rather than the on-demand catalogue consisting of content that has already been broadcast for the first time, and perhaps many times before, it could become the approach to distributing first-run content, including films from the major Hollywood studios, in future. For such a business model to be commercially viable, competing pay TV operators will have to recruit a sufficiently large base of subscribers interested in consuming such content first. Thus wholesale access to Sky's premium channels is an essential pre-condition for such a market to develop as it is the first step for competing pay TV operators in acquiring a critical mass of subscribers.

2.29 Similarly, there is currently very little consumption of live sport, such as FAPL, by means of pay-per-view (PPV). PPV does not optimise the returns from such events for a pay TV operator. However, when the new combined DTT and DSL pay TV platform develops, with its much stronger focus on on-demand content, and when competition from BT and other operators drives the market towards more flexible propositions more closely tailored to customer preferences, then there may be greater exploitation of the opportunities to distribute live sport on a PPV basis. Experience from the US suggests that a higher installed consumer base allows greater numbers of diverse PPV events to be broadcast (boxing, concerts, WWF, football matches, etc) as there is more scope for recovering the costs associated with such one off events. Moreover, in the US, many such events are provided free of charge alongside linear subscriptions in order to provide greater added value to subscribers.

2.30 Ultimately, the acquisition of a sufficiently large-scale subscriber base of customers, with a willingness to pay for premium channels, will provide a basis for alternative pay TV platform operators to consider bidding for premium content rights directly. As BT has set out in previous submissions, [✂] Sky can afford to bid an amount that it believes it can recover from its installed subscriber base of 9.4 million (of which 5.9 million already subscribe to a Sky premium channel)[10], whereas [✂]. Furthermore, auctions for rights do not happen at the same time. Therefore, even if BT was successful in a particular auction for a specific set of rights, any channel that it created would not be likely to be a substitute for Sky's Sports channels given the significant volume of other attractive sports rights which Sky would continue to hold. Therefore, BT's channel would primarily be acquired by sports fans who could afford to pay for both Sky Sports and BT's channel further limiting BT's addressable market for recouping its investment in the rights.

2.31 However, as BT has previously set out, the long term solution to the market power Sky holds in pay TV markets today is the emergence of competitors with scale customer bases that can compete with Sky for content in an unregulated world in future. Appropriately determined WMO prices are the first step in the investment ladder that will allow BT (and other competitors) to be able to compete effectively with Sky at the retail level, develop scale, and [✂]. This will then allow BT (and other competitors) to develop new, innovative ways to sell such content to its customer base. A plural market in key content rights may develop, enabling price competition and new propositions to develop in downstream markets, to the ultimate benefit of consumers.

[10] British Sky Broadcasting Group plc -Annual Report 2009 http://corporate.sky.com/documents/pdf/1ffb247d89b6490c9cd3dc7a4f24f4eb/report_09. These figures include both the UK and Ireland.

3. BT's assessment of Ofcom's WMO remedy

Overview

3.1 Throughout Ofcom's pay TV investigation, BT has been supportive of the need for Ofcom to impose a WMO obligation in relation to Sky's premium sports and movies channels. BT, along with other parties, has previously provided evidence demonstrating that any solution involving commercial negotiations with Sky for access to these channels is not practicable as it would inevitably lead to a failure to conclude satisfactory negotiations, and a dispute or complaint ultimately requiring Ofcom to determine the price in any case. Therefore, BT strongly welcomes Ofcom's proposals to specify wholesale prices on an *ex ante* basis for access to Sky's premium sports and movie channels.

3.2 As set out in the Joint Response (see section titled "Retail-minus methodology")), in principle BT supports Ofcom's "retail-minus" approach, with a cost-based analysis as a cross-check[11]. However, as BT has previously argued, correctly determining the "minus" element within this proposal is essential to ensure that the WMO remedy meets Ofcom's objective of encouraging competition to develop in retail pay TV markets in a manner that best serves consumers. While BT is supportive of Ofcom's desire to ensure long term sustainable entry to pay TV markets with the aim of delivering the benefits of effective competition to consumers, BT is concerned that Ofcom's preferred approach – to set the actual WMO prices at the mid-point of Ofcom's identified retail-minus range – risks setting wholesale prices that do not reflect properly the cost of providing a competing pay TV business. If WMO prices are set inappropriately high there is a risk that Ofcom's aim of achieving long term sustainable competition is delayed unduly, thereby adding unnecessary risk and uncertainty to the market, affecting adversely the consequent benefits to consumers.

3.3 As BT has highlighted in its previous submissions, as a relatively new entrant in retail pay TV markets at both the platform and content service provision level, BT is in a good position to provide data on the actual costs of entry to this market. BT Vision has experienced [✂] that characterise the difficulty of being a new competitor in this market [✂]. BT is, therefore, well placed to provide information on the challenging economics faced by a new entrant as it attempts to build scale.

3.4 In this section, BT sets out evidence demonstrating that certain key inputs to Ofcom's financial modelling process have not been set at appropriate levels, and that Ofcom's modelling and analysis are predicated on assumptions and investment timetables that do not reflect the real challenges of commercial investment for a new entrant. As a result, Ofcom's proposed WMO prices are too high, making it difficult for a new entrant – even after it is has

---

[11] In general, BT believes that a cost-plus approach can have merit given that it is a well-established methodology for determining appropriate wholesale pricing. However, BT can see the drawbacks of a cost-plus approach in this particular case (as discussed in Ofcom's second pay TV consultation and reiterated at paragraph 8.76 of Ofcom's 3rd Consultation Paper).

reached reasonable scale and efficiency – to invest and innovate in order to deliver the desired consumer benefits.

Ofcom's modelling parameters

3.5 Certain parameters within Ofcom's retail-minus calculation that have been used to determine Ofcom's preferred WMO prices appear to have a large effect on the WMO pricing outcome. In BT's view, some of these parameters need to be adjusted for the realities of the market in order for Ofcom to achieve its objectives. As discussed in the Joint Response (section "Retail-minus methodology"), these include:

- The scale of retail operator
- Transmission cost assumptions with respect to DTT
- The appropriate cost of capital that has been used
- The level of fixed costs of retailing.

Scale of retail operator

3.6 BT supports the principle that Ofcom should set wholesale prices which allow an efficient entrant to compete with Sky in retail markets, and that this should take account of the fact that an entrant operating at lower scale will have higher average costs than Sky because of the presence of fixed costs. BT believes that it is entirely reasonable that Ofcom should make an allowance to reflect the fact that an efficient entrant cannot immediately achieve the benefits to Sky from its scale and scope which have arisen from its presence and growth in the market over many years.

3.7 As discussed in the Joint Response (section titled "Retail-minus methodology") Ofcom's scale adjustments have a significant effect on the pricing outcome and result in a smaller entrant facing WMO prices that are [✂] higher than the level which would allow them to compete effectively with Sky. In BT's view this may limit the scope for smaller entrants to enter the pay TV market and compete. As described in Section 2 of this response, the Canvas platform will be an open platform and as such, BT expects that there will be multiple pay TV retailers offering different propositions on the Canvas platform via DSL. BT expects that some of these pay TV retailers may, in fact, be small in scale but could deliver a valuable consumer proposition to a niche set of consumers. BT believes that the success of such pay TV offerings should be determined by the market and therefore WMO prices should be set which equally allow a reasonable number of these smaller scale customers to compete effectively with Sky.

3.8 In addition, [✂][12]. BT believes that these subscriber volumes are a challenging yet realistic figure that it could achieve providing WMO prices are appropriately set. However, it is also

---

[12] [✂].

important to remember that BT already has an installed base of [✂], and has been operational in this market for almost three and a half years. It is also has experience of delivering non Sky-owned premium services to pay TV subscribers (Setanta and ESPN).

3.9 Given BT's existing installed subscriber base for broadband, its existing brand presence and the fact that it has already been operational in the pay TV market for three and a half years, [✂] BT believes that it is likely to be better placed than other potential new entrants to take advantage of Ofcom's proposed WMO obligation once introduced. [✂] [13].

3.10 Therefore, in considering the relevant scale of pay TV retail operators, BT believes that Ofcom must adjust its proposed WMO prices downward to ensure that smaller scale competitors would equally be able to compete effectively with Sky and to reflect the fact that Scenario 5 in Ofcom's modelling assumptions is more likely, in reality, to be the most relevant scenario when assessing the scale that competitors are likely to reach.

Transmission costs on DTT

3.11 BT agrees with Ofcom's assessment that competitors are particularly likely to adopt DTT distribution technology in the short to medium term, and supports Ofcom's approach of considering wholesale prices for a DTT-based retailer[14]. As specified in Ofcom's letter to [✂]

3.12 BT recognises that there are limited data points available in order to provide a benchmark for the costs associated with DTT transmission. However, in BT's view, [✂] new entrant DTT transmission costs could be [✂]. Some additional benchmark pricing information is also discussed in the joint submission (see section titled "Retail-minus methodology").

3.13 [✂][15]

3.14 [✂]

3.15 [✂]

3.16 As an additional point in respect of how DTT costs are assumed to be recovered in Ofcom's model, BT notes that Ofcom appears to have assumed in Scenario 4, that 3 pay TV operators would each have 3 million premium pay TV subscribers after 10 years i.e. Ofcom has assumed that there will be 9 million premium pay TV subscribers on DTT after 10 years. BT believes that this is not a realistic assumption for premium pay TV take up on DTT, especially since Sky itself has only acquired 5.9 million premium pay TV subscribers[16] after

---

[13] [✂]
[14] Paragraph 9.135 of Ofcom's 3rd Consultation Paper.
[15] [✂]
[16] This figure also includes Sky subscribers in Ireland. British Sky Broadcasting Group plc -Annual Report 2009 http://corporate.sky.com/documents/pdf/1ffb247d89b6490c9cd3dc7a4f24f4eb/report_09.

10 years of operating the satellite platform. Nor is this consistent with Ofcom's own model assumptions about the likely scale of new entrants.

3.17 As a result of these issues, BT believes that Ofcom's assumptions rely on DTT distribution costs that are significantly lower than is likely to be the case in reality. Therefore, BT believes that higher DTT distribution costs must be used in Ofcom's calculation of the "minus" in determining appropriate retail-minus WMO prices.

An appropriate cost of capital

3.18 BT supports the view set out in the Joint Response that a reasonable return on investment should reflect the *ex ante* risks faced by a new entrant at the outset of its investment. As such, BT believes that an appropriate cost of capital for an entrant to retail pay TV markets would be higher than the 10.3% that Ofcom proposes to use in setting WMO prices. Indeed, BT would highlight that Ofcom has recently stated that BT's own cost of capital (excluding Openreach) is higher than this at 11%[17]. BT Retail (including BT Vision) currently uses a WACC rate of [✂] as advised by BT Group Treasury. Moreover, BT Vision is a relatively risky venture for BT (given that BT is a relative new entrant to pay TV markets). Given the increased risks, BT would expect a higher rate of return to be generated by the BT Vision part of its retail business than that generated by its retail business overall.

3.19 Therefore, BT would expect that since it is a well established and diversified business, BT Vision's cost of capital would be likely to represent the absolute lower bound of the cost of capital that should be used in calculating the "minus" in determining appropriate retail-minus WMO prices, and that should be in excess of [✂]. In practice, if Ofcom's desire (as stated throughout the pay TV review process) is to ensure efficient entry then a much higher allowance for the cost of capital that better reflects the true cost that entrants face would need to be made. As set out in the Joint Response BT believes that [✂] would, therefore, be a more appropriate rate.

The fixed costs of retailing

3.20 Ofcom has assumed that a pay TV retail business would incur just £12 million per annum of fixed costs.[18] Ofcom also calculates that two thirds of this figure (£8 million) consists of marketing costs, assessed on the basis of the minimum expenditure necessary to mount a marketing campaign.[19] As set out in the Joint Response (section "Retail-minus methodology") the Three Parties consider the estimate of £12 million to be a significant understatement of the annual fixed costs which are likely to be incurred by an efficient retailer of premium pay TV channels. In addition, the Three Parties believe that £8 million is a significant underestimation of the actual fixed costs of marketing campaigns to promote

---

[17] Please see Ofcom's document entitled "*A New Pricing Framework for Openreach*" dated 22 May 2009.
[18] Paragraph 9.163 of Ofcom's 3rd Consultation Paper.
[19]Second bullet of paragraph 9.127 of Ofcom's 3rd Consultation Paper.

pay TV retail packages, especially in light of the fact that Sky's total marketing expenditure in the financial year ending 30 June 2009 was £907 million.[20] [✂].

3.21 Below, BT provides what it believes to be a more reasonable assessment of the actual fixed costs incurred by a pay TV retail business, based on BT Vision's 09/10 forecast figures. These figures represent the total fixed cost of BT Vision's retail business. [✂][21].

[✂]

3.22 BT believes that by significantly underestimating the fixed costs incurred by a retail pay TV business, Ofcom's analysis will have over-estimated the appropriate level of WMO prices necessary to allow an efficient entrant to compete effectively with Sky.

Conclusions on modeling parameters

3.23 Each of the issues identified in this section of BT's response point to the fact that Ofcom's modelling will have resulted in inappropriately high WMO prices. Therefore, Ofcom's preferred approach to set the actual WMO prices at the mid-point of its identified retail-minus range risks setting wholesale prices that do not properly reflect the cost of providing a competing pay TV business. BT believes that, at a minimum, when considered collectively the issues raised in this section of its response support the conclusion that WMO prices should be set at the bottom of Ofcom's proposed retail-minus range.

3.24 Moreover, BT notes that Figure 69 of Ofcom's 3rd Consultation Paper shows that the floor of the retail-minus price ranges determined by Ofcom is significantly above the cost-based prices which Ofcom has calculated in several cases.[22] BT does not believe that the role of Ofcom's proposed "cost-plus cross-check" should be limited solely to ensuring that the wholesale prices which are set by Ofcom permit Sky to recover efficiently incurred costs in the provision of its premium channels. BT considers that the cost-plus cross-check should also be used by Ofcom as a proxy to ensure that there isn't a significant discrepancy in retail margins between Sky and third party pay TV retailers of Sky's premium channels. If Sky is able to earn a significantly higher retail margin than other pay TV operators, then this could substantially limit the ability of rival retailers to compete effectively.

3.25 Figure 64 of Ofcom's 3rd Consultation Paper shows that the weighted average (by Sky's volumes) of Sky's wholesale prices for Scenario 5 (i.e. the bottom of Ofcom's retail-minus range) is £14.55, whereas the weighted average (by Sky's volumes) of cost-plus wholesale prices is £13.57.[23] Thus even at the bottom of Ofcom's calculated retail-minus range Sky is likely to be able to earn, on average, a higher retail margin than its competitors. BT believes that this again supports its view that Ofcom should, at the very least, determine wholesale prices at the bottom of its retail-minus range in order to minimise this discrepancy in

---

[20] British Sky Broadcasting Group PLC "Results for the twelve months ended 30 June 2009".
[21] [✂].
[22] Paragraph 9.197 of Ofcom's 3rd Consultation Paper.
[23] Paragraph 9.168 of Ofcom's 3rd Consultation Paper.

margins[24]. In addition, BT believes that this suggests there may be some scope to consider reducing the floor of Ofcom's retail-minus range (particularly in light of the issues set out in the preceding paragraphs of this section of BT's response), to align retail-minus prices more closely with the true cost of provision of a competing pay TV business.

Consistency of Ofcom's modelling approach with the commercial realities of investment

3.26 BT recognises that Ofcom's WMO proposals are predicated on a desire to ensure long term sustainable competition in pay TV markets and not simply to create pricing arbitrage opportunities for the resale of premium channels in the short run. However, BT believes that Ofcom's 10 year planning and modelling horizon does not reflect the real challenges of investment decisions undertaken by commercial companies in communications markets.

3.27 TUTV has attempted to replicate Ofcom's modelling, and has shared its model with BT, in order to better understand the commercial business case that would be required to support entry in to pay TV markets based on Ofcom's WMO proposals. [✂] This implies that all of the value accrues 10 years from now, which is a very long period of time in an uncertain economic environment. Given the current volatile economic climate, investors are more risk averse and expect payback to be achieved over considerably shorter periods especially in risky ventures in new markets. This is further exacerbated by the fast moving nature of communications markets, where technology over a 10 year period advances so quickly to the point where previous investment is often rendered obsolete in rapidly changing competitive areas of the market.

3.28 [✂]

3.29 Therefore, BT does not believe that a 10 year planning horizon is consistent with investment decisions taken by commercial companies within this market place. As a result, there is a risk that while Ofcom's proposed WMO prices may lead to entry and investment on a theoretical basis it may not deliver competition and the associated consumer benefits in practice. WMO prices that are set too high based on unrealistic investment assumptions increase the risk to BT (and other competing operators) of investing in pay TV markets, delaying innovation and the delivery of the anticipated consumer benefits.

3.30 BT strongly believes that Ofcom should ensure its modelling aligns with commercial imperatives and realistic time horizons. BT believes that this means that a reasonably scaled reasonably efficient operator must be able to make a reasonable margin per subscriber on a reasonable timeframe consistent with business planning time horizons in this market place. BT believes that a 5 year planning horizon would be more consistent with this objective. However, on the basis of a 5 year planning horizon, BT believes that the terminal value of Ofcom's modelling exercise would be negative. This again suggests that WMO prices should

---

[24] Though BT supports the use of the cost-plus price for those packages where the bottom of the retail-minus range is below the cost-plus price

be set lower than Ofcom currently proposes in order to reflect a more realistic investment time horizon.

An analysis of WMO prices across the proposed retail-minus range

3.31 In the preceding sections, BT has supported its view that Ofcom's assumptions do not reflect appropriately the costs of providing a competing pay TV business, and that Ofcom's modelling does not reflect fully the commercial realities of investment in this market. As a result, BT believes that Ofcom's favoured approach – to set WMO prices in the middle of the identified retail-minus price range – results in WMO prices that are too high. BT believes that, at a minimum, WMO prices should be set at the bottom of Ofcom's current consultation range.

3.32 The result of WMO prices that are set too high is that a reasonably scaled, reasonably efficient operator will be unable to compete effectively in retail pay TV markets. Therefore, if WMO prices are set inappropriately high there is a risk that Ofcom's aim of achieving long term sustainable competition is delayed unduly, thereby adding unnecessary risk and uncertainty to the market effecting consequent benefits to consumers.

3.33 In practice, BT believes that Ofcom's proposed WMO prices will limit BT's ability to compete effectively with Sky. Below, BT provides figures of the actual costs incurred by a reasonably scaled, reasonably efficient operator in providing a competing pay TV service based on an analysis of BT Vision's costs as set out in its internal strategic plan.

<u>The changing economics of BT's business</u>

3.34 As BT set out in its response to Ofcom's second pay TV consultation document in December 2008 ("BT's Second Response"), as a relatively new entrant to pay TV markets BT Vision's unit costs per subscriber per month are [✂]. In addition, the fact that BT Vision offers an entirely new pay TV proposition (one that places emphasis on on-demand content) and a very different business model (no obligatory monthly subscription, no buy-through requirements to higher demand content), has also meant [✂]. As a result, [✂] BT remains committed to pay TV given Ofcom's focus on ensuring WMO access to Sky's premium content which BT believes will resolve a key competitive distortion in this market.

3.35 [✂]

3.36 [✂][25]

3.37 [✂][26]

---

[25] [✂]
[26] [✂]

The costs of providing a competing pay TV service

3.38 [✂][27]

3.39 Therefore, BT examined the cost at various points in time of providing an equivalent pay TV service in order to assess whether it would be able to match Sky's current pay TV offering and make a positive margin per subscriber. BT carried out this analysis based on 2009/10 costs, Year 2 following access to Sky's premium channels ("Year 2") and Year 5 following access to Sky's premium channels ("Year 5"). In relation to each of the key inputs we have used the targets currently employed in BT Vision's strategy plan which, as described above, are likely to underestimate the true cost of the challenge associated with entry in to this market. As such, this assessment is likely to provide a ceiling for the size of the achievable retail-minus margin in each case. Key inputs to note were: [✂]

- [28]
- [29]

3.40 BT recognises that Ofcom is interested primarily in ensuring fair and effective competition that is sustainable in the long run and, as such, BT understands that Ofcom expects that entrants may make losses in earlier years of investment. Nonetheless, BT believes it is important that Ofcom is aware [✂].

[✂]

3.41 [✂]

[✂]

3.42 [✂]

3.43 [✂]

3.44 [✂]

3.45 Therefore, the assumptions underpinning the figures in the table above are based in every case on the most challenging and optimistic inputs that BT believes are realistically achievable. [✂] As a result of the challenging approach that BT has adopted, these margins should be considered to be the maximum retail margin that would be achievable at the bottom end of the retail-minus range.

---

[27] [✂]
[28] [✂]
[29] [✂]

The effect of setting WMO prices too high

3.46 [✂]

3.47 [✂] Increasing BT's (and other pay TV operators') risk, means it is more difficult to invest and innovate. This in turn means it is more difficult for BT to attract new customers and build scale which puts further pressure on BT's pay TV business model. The result is that the delivery of the anticipated consumer benefits (set out in Section 2 of this submission) is delayed. Conversely, WMO prices that are set appropriately such that a reasonably scaled, reasonably efficient operator can make a positive margin on retailing equivalent premium channels and premium channel bundles will allow for greater flexibility and innovation in the proposition that is delivered to consumers both in the short and long term.

3.48 Therefore, BT believes that it is essential that WMO prices are set at a level that allows effective competition to emerge and deliver the associated consumer benefits over the shortest possible time horizon. For this to occur BT believes that, at a minimum, WMO prices must be set at the bottom of the current proposed retail-minus range. BT believes that this will allow it to build scale within a reasonable time frame, which in turn will allow it to deliver greater innovation in pay TV products and pricing to the benefit of consumers over a faster timescale.

4. Ofcom’s proposals to adjust wholesale prices for wider bundles

4.1 This issue is covered in detail in the Joint Response in the section titled “Retail-minus methodology”. BT fully supports the comments and conclusions drawn in that section. It would add that, [✂], Sky is currently bundling additional retail broadband products with its Core Premium channels such that the incremental prices for those additional retail broadband products are below its long run incremental costs. [✂], BT would expect the adjustment detailed in paragraphs 9.203 to 9.208 of Ofcom's 3rd Consultation Paper to be applied from the outset of the WMO remedy coming into force. For the avoidance of doubt, BT would be [✂] to support its pay TV findings provided, of course, that any information highlighted as confidential is not disseminated to third parties.

4.2 In the application of the adjustment mechanism, BT submits that Ofcom should adjust WMO prices by the full amount of any loss on any product bundled into pay TV propositions including core premium channels, but should not include any profits on any products bundled into the proposition. The anti-competitive effects of bundling core premium pay TV products with other products only apply to products where a cross subsidy from pay TV to the other product occurs. These are the effects that could undermine the efficacy of Ofcom’s remedy, and why it is, therefore, right to make this adjustment. In the event that a profitable product is bundled into a proposition with core premium pay TV products, no anti-competitive effect is likely to occur, so long as other competitors are also able to supply such products. In such circumstances, competitors would be expected to be able to match Sky’s proposition in a sustainable competitive fashion.

4.3 BT remains concerned that the adjustment mechanism proposed in Ofcom’s 3rd Consultation Paper will not solve all the anti-competitive effects of Sky’s conduct in associated markets, and will not address ex post behaviour on the part of Sky, which has already had a significant effect. As a result, BT remains concerned about the anti-competitive foreclosure effects of Sky’s continued conduct. BT also remains concerned about the consumer detriment arising from Sky’s conduct: through high prices for uncompetitive pay TV products, pay TV subscribers are subsidising the costs of broadband products that they may not wish to buy.

4.4 Moreover, BT would highlight the fact that the concerns detailed in the section titled “Draft licence conditions and resolution of complaints” of the Joint Response regarding enforcement and the resolution of complaints apply equally, if not more so, to the adjustment to wholesale prices for wider bundles. As a result [✂], BT is concerned to ensure that any measures introduced to address Sky's anti-competitive bundling practices are vigorously enforced.

5. Minimum Security Requirements (MSRs)

5.1 Following the establishment of WMO prices, BT believes that security requirements are the most obvious non-price term that Sky may deploy at the outset in order to circumvent Ofcom’s WMO remedy. Historically, security concerns have been a significant stumbling block in concluding commercial terms for access to Sky's content.. BT believes that it will be essential for Ofcom to establish clear, reasonable and accessible requirements on Sky to prevent Sky using artificial security concerns o game the WMO remedy.

5.2 As set out in the Joint Response, BT believes that Ofcom must ensure that the definition of minimum security requirements (MSRs) and the process by which they are established does not act as a barrier to entry to accessing Sky’s premium pay TV channels following the introduction of a WMO obligation. [✂] BT is concerned that Sky will require MSRs that go beyond those required by other content providers in an effort to avoid or delay the effective introduction of competing premium pay TV services.

5.3 [✂]

5.4 A consequence of Sky requiring MSRs that are not realistic or are difficult to achieve is that it introduces a further delay to the process of introducing premium pay TV content on DTT. As BT has set out in Section 3 of this submission, the contractual cost of purchasing DTT transmission may be as high as [✂] per video stream per annum. It is difficult for a pay TV operator to commit to such expenditure while the issue of security remains unresolved. Without certainty on a timetable for resolving MSR issues, there is likely to be an added lead time of several months in securing DTT capacity once MSRs have been established – thus any delays in making use of the WMO remedy in terms of creating viable competing retail propositions on pay TV can quickly multiply. As a result, BT believes that a firm timetable for resolving security issues and rigid adherence to the deadlines within it is an essential part of the governance of the WMO reference offer.

5.5 BT has examined a number of areas where security standards could be set that would ensure a reasonable outcome for both the supplier of the content (Sky) and the wholesale customer (BT and other competitors). At BT’s meeting with Ofcom on Friday September 4th it was agreed that BT’s security experts and Ofcom’s experts in this area could meet to discuss these areas. BT believes that this is the most useful way to take forward the technical matter as to what security standards it would be reasonable to require Sky to include in a reference offer. As a matter of principle, however, Ofcom should not allow Sky to set MSRs that are higher than those already prevalent in the market, or higher than those that they themselves have observed in the UK or other markets in recent times

6. Subscription Video on Demand (SVoD)

6.1 BT has, in previous submissions to Ofcom, emphasised the potential for SVoD to be a critical driver of innovation in pay TV markets, for the benefit of consumers. BT has emphasised, in particular the importance of SVoD movie services, and would highlight the success of SVoD services in other markets (particularly the US) where competitive distortions in accessing SVoD rights - such as those that exist in the UK market – are not present. Accordingly, BT supports fully Ofcom's analysis of the "*high strategic importance*"[30] of VoD, including SVoD. BT agrees with Ofcom's view of the capacity for these on-demand services to provide very new and innovative services and that "*the enhanced level of choice this would confer is likely to be highly attractive to consumers*."[31]

6.2 In this regard, BT would emphasise the particular importance of SVoD rights in the provision of on-demand services. BT agrees with Ofcom's statement that SVoD "*offers a payment mechanism which is likely to be particularly attractive to customers*"[32] and this is supported by BT Vision's experience:

- Whilst BTV provides both a subscription VoD and a pay per view (PPV) VoD service, [✂] of customer now recruited to BT Vision are doing so with a VOD subscription. This shows the high level of demand for SVOD services. .
- [✂]

6.3 [✂]

6.4 BT believes that premium content, particularly output from the Hollywood movie studios, will be a key driver of future innovative SVoD services. Moreover, addressing the anti-competitive features that prevent, restrict and distort access to SVoD rights will allow new business models – and in particular new ways of attracting payment for content – to emerge which could help to combat piracy issues and illegal downloading of content.

6.5 [✂]

6.6 [✂]

British Telecommunications

September 2009

---

[30] Paragraph 12.17 of Ofcom's 3rd Consultation Paper
[31] Paragraph 6.144 of Ofcom's 3rd Consultation Paper.
[32] Paragraph 12.17 of Ofcom's 3rd Consultation Paper.

Annex A: Consultation Questions

Q1. Do you agree with Oxera's approach to the valuation of Sky's intangible asset base?

This question is covered in the Joint Response section "Sky's high Wholesale prices and profitability".

Q2. Do you agree with Oxera's approach to assessing Sky's profitability?

This question is covered in the Joint Response section "Sky's high Wholesale prices and profitability".

Q3. Do you agree with our assessment of Sky's weighted average cost of capital?

This question is covered in the Joint Response section on "Retail-minus methodology" and in this BT Response, section, "An appropriate cost of capital".

Q4. Do you agree with the conclusions we draw about Sky's aggregate profitability?

This question is covered in the Joint Response section "Sky's high Wholesale prices and profitability".

Q5. Do you agree with the conclusions we draw about Sky's profitability at a disaggregated level?

This question is covered in the Joint Response section "Sky's high Wholesale prices and profitability".

Q6. Do you agree with our characterisation of the relationship between high wholesale prices and retail pricing?

This issue is covered in the Joint Response section "Cost-based cross-check".

Q7**.** 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?

BT supports Ofcom's decision to use it's broadcasting sectoral powers in order to introduce a WMO obligation.. BT has addressed this issue in detail in its response to Ofcom's Second Pay TV Consultation in the section titled "Use of Ofcom's broadcasting sectoral powers". This was also addressed in Annex 1 of the Joint Response to the Second Pay TV consultation. BT continues to support the views set out in these two documents.

Q8. 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?

This issue is covered in the Joint Response section "Consumer Benefits from the proposed remedy" and in the BT Response section "Consumer benefits from Ofcom's WMO remedy".

Q9. Do you agree with our proposal not to apply a remedy to wholesalers without market power?

BT believes that the application of regulation should be linked to market power. It would be disproportionate to apply regulation where market power is not present.

Q10. Do you agree with our proposal not to extend a remedy to retailers on Sky's own platforms?

This issue is covered in the Joint Response section "Non Sky Platforms".

Q11. Is it necessary for us to set the prices of a wholesale must-offer?

As set out in the section "BT's Assessment of Ofcom's WMO Remedy in this response BT believes that it is necessary for Ofcom to set the prices of a wholesale must offer remedy. This issue is also covered in detail in the Joint Response section "Retail-minus methodology".

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

This issue is covered in the Joint Response section "Retail-minus methodology" and in the BT Response section "BT's Assessment of Ofcom's WMO Remedy".

Q13. Do you agree with our proposal to include HD and primary interactive sports content in a remedy?

This issue is covered in the Joint Response sections "Retail-minus methodology" and "Sky Sports 3 and Sky Sports Xtra".

Q14. Do you agree with our views as the concerns relating to commercial premises?

This issue is covered in the Joint Response section "Commercial Market".

Q15. 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?

This issue is covered in the Joint Response section "Retail-minus methodology".

Q16. Do you agree with our proposal to set simple linear prices per subscriber, allowing flexibility for other pricing structures?

This issue is covered in the Joint Response section "Retail-minus methodology".

Q17. 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?

This issue is covered in the Joint Response section "Changes in Sky's Wholesale Prices over time".

Q18. 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?

This issue is covered in the Joint Response section "Retail-minus methodology".

Q19. Do you agree with our approach for deriving starting retail prices given the complexity of retail bundling?

This issue is covered in the Joint Response section "Retail-minus methodology" and the BT Response above in section "Ofcom's proposals to adjust wholesale prices for wider bundles".

Q20. Do you agree with our calculation methodology to deduct retailing costs – in particular the use of a discounted cash flow analysis, deduction of incremental and pro-rated fixed and common costs, and the use of Sky's costs as an efficient retailer?

This issue is covered in the Joint Response section "Retail-minus methodology" and the BT Response above in section "BT's assessment of Ofcom's WMO remedy".

Q21. Do you agree with our proposal to focus on deriving prices for a "large" entrant scale retailer using DTT transmission and what are your views on our range of prices?

This issue is covered in the Joint Response section "Retail-minus methodology" and the BT Response above in section "BT's assessment of Ofcom's WMO remedy".

Q22. 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?

This issue is covered in the Joint Response section "Retail-minus methodology".

Q23. Do you agree with our proposals for non-price terms – in particular on Minimum Qualifying Retailer, Minimum Security Requirements and a Reference offer?

This issue is covered in the Joint Response in sections "Reference offer and qualifying criteria" and "Minimum security requirements "and in the BT Response above in the section "Minimum Security Requirements".

Q24. Do you agree that a wholesale must-offer remedy is unlikely to contribute significantly to the administrative costs currently incurred by Sky?

BT does not have a detailed understanding of Sky's administration costs but BT would agree with Ofcom that the WMO remedy is unlikely to add significantly to Sky's administrative costs.

Q25. 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?

It is difficult for BT to answer this question as our response will depend on the final form and price of the WMO remedy.

Q26. 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?

This issue is covered in the Joint Response sections "Draft Licence Condition and resolution of complaints" and "Reference Offer and qualifying criteria".

Q27. Do you agree with our proposed approach to addressing concerns about the restricted exploitation of SVoD movies rights?

This issue is covered in the Joint Response section "SVoD" and in the BT Response above in section "SVoD".

Q28. Do you agree with our proposed way forward on FAPL?

This issue is covered in the Joint Response section "FAPL".

Q29. In particular, what remedies do you believe we should consider on FAPL, if any?

This issue is covered in the Joint Response section "FAPL".

British Telecommunications

September 2009