

Title:

Mr

Forename:

David

Surname:

Henry

Representing:

Organisation

Organisation (if applicable):

Rapture TV

Email:

What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

None

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Comments:

Ofcom has failed to enforce the EU Directives that make it mandatory for all Digital Satellite DVB networks to use Simulcrypting technology.

Only when Sky is forced to open its channels to proper retail competition and the consumer has a choice of which satellite equipment they wish to use will the consumers rights be protected.

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

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

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

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

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

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

Yes but there is also the issue of Sky's use of the NDS encryption system and the fact that all Sky's consumer equipment is in breach of EU Directives. This is the reason that Sky is able to prevent competition and control all technical services on the uK's only Pay TV DTH service.

Question 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, all the matters when added together are a serious breach of Competition Law and as such should be dealt with by a full competition complaint with a referral to the Competition Commission. If found in breach of Competition Law then the full weight of the law should be used to prevent any further abuse.

Question 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 it is not enough. Sky must also open up the technical services to full competition by allowing Simulcrypting and at least one other EPG supplier to access the consumers Digital equipment.

Furthermore BSkyB uses contracts with a 'Exclusive' DTH supply clause that is designed to

prevent innovation or competition from any other DTH platforms in the UK. The 'Exclusive' clauses should be removed by force.

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

Yes. Only suppliers with 25% or above should be subject to similar requirements.

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

No. The consumers rights are being infringed by Sky's ability to fix retail prices for both its own channels and those from third parties.

The consumer is forced to purchase packages of channels that Sky bundles together and therefore the consumer may be having to pay excessive fees which includes channels they have no interest in.

Third party Pay TV retailers could offer the consumer a more cost effective solution with small packages or just individual channels. This would lead to retail innovations and lower cost options for consumers.

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

Yes. Sky must supply the channels to all Pay TV platform operators regardless of the technical delivery method.

A margin of 25% of the Sky retail price would appear to be a minimum wholesale margin.

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

Yes, but Sky will use all sorts of trick with its accounts to inflate its claimed costs. The aim Ofcom must achieve is to allow the UK consumer a real choice on how much they pay to get the content that they are interested in.

Sky's retail price minus a percentage which is in line with retail margins for a similar product is what should be the focus. DVD's which BSkyB has used in the past to help its submissions could be used as an example. 25-50% is the typical margin when looking at the RRP on a DVD.

So the wholesale margin for Sky's premium channels to all other platform operators should be similar 25-50%.

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

Yes all Sky channels that carry the Premium content should be subject to the same regulations.

Sky has used Sport in the past as a weapon against its competitors. When On-Digital was attempting to compete Sky refused to supply Sky Sports 3 and this was after they moved some of the football to Sky Sports 3. They have also move football to Sky One when they have a dispute with the cable operator Virgin Media.

So all channels that Sky puts the Premium content on must be subject to the regulations.

A strick time scale must also form part of the regulation as Sky are well known for delaying for many months and even years before agreeing terms. No more than 28 working days to supply should be enforced.

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

Not sure.

Question 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?:

It is unclear what Ofcom means by this statement. However Ofcom is not an experienced retailer so the costs of any third party are not relevant. Keep it simple and clear. Sky retail price minus wholesalers discount then let wholesaler to retail is own service. The consumer will decide if its a competitive offer.

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

Not sure.

Question 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. A ratchet will be used by Sky to restrict the growth of any competition. Sky is also able to use increased revenue from both its own retail and wholesale to inflate the costs of acquiring Premium content. This damages the rights of the UK consumers as these inflated costs are fed into the supply chain.

Question 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?:

Yes.

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

The consumers right must come first. Therefore if Sky is bundling costs and make high returns by bundling channels into package then Ofcom must increase the calculation and allow third party platform operators larger margins. Sky has plenty of scope to reduce its programme acquisition costs.

Question 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. Sky is not an efficient retailer as you can see from the £300 million + per year they spend on marketing.

It should be simply a basic calculation that if Sky retails its Sky Sports package for £17 to a consumer then 25-50% should be deducted and that should be the wholesale price. If Ofcom believes that Sky is hiding additional value and consumer income in a Sky basic retail package that a calculation should be made to deduct that from the Premium wholesale price as well.

Question 21: 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?:

No DTT is a rigged market place with limited technical supply.

A much better solution is to take a platform neutral approach.

If bandwidth was unrestricted then the DTT approach would be helpful but it is not. DTT bandwidth is very expensive due to limited supply.

Who is to say that DTT will be the future of Digital TV. Ofcom should not attempt to 2nd guess innovation as it is highly likely that it will get such guesses wrong.

Pricing should be based on the retail margins as submitted by BSkyB themselves in the ITV Shares investigation. DVD was argued by Sky to part of the same retail market as the supply of Pay TV content. So let's agree with Sky and use the DVD retail market as a guide. New release DVD's have a RRP of £20-25. There is a 50% margin on the wholesale price based on the RRP. Many supermarket retailers sell the new release DVD at cost so £13 is quite normal after release. Sky has argued that the DVD market is in the same retail market as its Pay TV service. So the UK consumer should be able to benefit to the same level. All platform operator no matter what delivery method used should receive the same margin. 50% discount off from Sky's own retail prices.

Question 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?:

Not sure.

Question 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 all retailers of Pay TV must be included. Any restriction on what Ofcom deems a minimum qualifying retailer will simply reduce the choice for consumers.

On the subject of minimum security. Sky's supplier of Conditional Access, NDS has admitted in a recent court case that it was responsible for hacking other Pay TV operators Smart Cards. (Echostar Vs NDS)

I am happy to supply Ofcom with a copy of other legal documents that show NDS has also hacked other Pay TV operators systems. Therefore the problem of security is linked to the activities of NDS the Sky conditional Access supplier.

The only requirement should be that all platform operators are required to use a recognisable Conditional Access system that complies with the EU Simulcrypting regulations.

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

Yes it will add nothing to Sky costs.

Question 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?:

Yes but it must apply to the supply of all Pay TV platforms including any new platforms that develop over time.

Question 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?:

It must apply to the supply of all Pay TV platforms including any new platforms that develop over time.

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

Yes.

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

No. It is not enough simply to ask the FAPL to agree on how it will comply with competition law.

That requirement is not optional and no more than 3 of the 6 packages should be contracted to Sky either directly or indirectly via a third party channel provider that also happen to have a carriage agreement with BSkyB Group which includes a clause make the supply of the third party channel exclusive to Sky on DTH.

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

No more than 3 package to any single channel operator or platform provider. Real competition.