

Title:

Please select

Forename:

Philip

Surname:

Waller

Representing:

Self

What do you want Ofcom to keep confidential?:

Keep nothing confidential

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

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:

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

Yes

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

Yes

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

Yes

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

Yes

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

Yes

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

Yes

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?:

Yes

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? :

Yes. I fully support this proposal. BSkyB has a monopoly over live English cricket and a near-monopoly over live football and its refusal to wholesale Sky Sports to other broadcasters has left the vast majority of the British public with little or no access to live coverage of those sports. It is wrong and unfair that sport of national importance, such as Ashes Test matches, is now available only to Sky Sports subscribers. A wholesale must-offer is an ideal way of improving choice and making that coverage much more widely available to those people who can't afford Sky, or who simply don't want to subscribe to it.

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

I agree with this provided BSkyB is not able to use it to argue that it is being unfairly treated, thereby undermining Ofcom's attempts to make its premium sports coverage more widely available. If BSkyB DOES manage to do this, then I would suggest the same remedy is applied to other broadcasters, so that a level playing field exists and BSkyB cannot cry foul.

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

Yes

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

Yes, it is essential that Ofcom sets the prices of a wholesale must-offer. BSkyB's refusal to wholesale Sky Sports to companies like BT Vision and TopUpTV at reasonable prices is preventing those companies being able to show Sky Sports to their customers on their platforms and on Freeview. If Ofcom does not set the prices, there is a possibility Sky will simply offer the channels at unrealistic rates, which will not improve the situation. Therefore Ofcom must set the prices.

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

Yes

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

Yes

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

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?:

Yes

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

Yes

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?:

Yes. They should obviously keep track with inflation and allow those involved to make a reasonable return on their investment, while making sure that the prices charged to consumers are fair and reasonable, allowing as many people as possible to access Sky's premium sports coverage.

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?:

The "factory gate" price should be set at a reasonable level which enables retailers to buy and show Sky Sports coverage and prevents market exploitation or restriction of availability and choice by BSkyB, while enabling all parties to make a reasonable return.

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

Yes

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?:

Yes

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?:

Yes. Prices should be based on a retailer with wide reach, ie. a DTT/Freeview retailer, thereby reflecting the cost of enabling the largest number of consumers to access BSkyB's coverage.

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?:

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?:

Yes

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. BSkyB would benefit from higher revenues by wholesaling Sky Sports, which I would imagine are likely to offset either partly or wholly any administrative costs incurred. The muted reaction of the stock market to Ofcom's wholesale must-offer proposal illustrates that investors are not overly concerned that such a move would significantly or adversely affect BSkyB's financial performance.

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

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?:

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

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

Yes. The European Commission's decision to prevent one single broadcaster taking all six Premiership live match packages was commendable and completely justified and anything Ofcom can do to continue or improve on that regulatory approach should be welcomed.

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

Ofcom should ensure live Premiership coverage remains open to more than one broadcaster, to maintain and improve choice and prevent abuse of market power by BSkyB. At least two packages out of the six should be given to an alternative broadcaster, because it could be argued that such a regulation would have prevented the demise of Setanta, allowing it to carry on increasing subscriber numbers and therefore continuing to provide a valuable alternative to BSkyB.