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February 3, 2009

Dear Mr Hayter,

### **Pay TV – Second Consultation**

We congratulate Ofcom on the thoroughness of its examination of this issue, and the rich background information and research which has been provided.

We are in broad agreement with the headlines and main thrust of Ofcom's observations, its conclusions, and its intentions.

Our only observation – and to an extent, disagreement – with Ofcom's approach is in the restriction of its thinking to what Ofcom defines as "Premium Content", and in particular, the focus on just movies and sport. We strongly believe that in addressing the remedies for what has become an unacceptable level of vertical integration, then the same logic should be applied to **all** Pay TV channels, regardless of whether they are explicitly offered to consumers as a stand-alone subscription, or bundled as part of a subscription "mix".

Ofcom has understandably focused on a few key areas where a *large* number of consumers see specific content (sports and movies) as having high value. But the same issues arise where the audience for premium content is small. To niche audiences, premium content is every bit as valuable. And the same levels of vertical integration exist, with similar denial of choice to consumers.

We believe that in the multichannel era, the future development of TV will in large measure be around *niche* channels. These are now technically possible and economically viable – if they are given an opportunity. Therefore, any remedies implemented for the large premium market sectors, must surely also apply to smaller sectors. Indeed, it would be technically, commercially and legally difficult to envisage a regime – if it is to incorporate FRND (Fair and Reasonable Non-Discrimination) objectives – that did not also apply to **all** Pay TV channels.

The current commercial policies of the main platform operators (Sky and Virgin) have prevented the development of what could be innovative and viable Pay TV propositions, even though these are technically feasible.

While we strongly support Ofcom's suggestion of a wholesale must-offer remedy, and the implicit requirement of Sky's abandonment of a proprietary encryption system not available to any other platform or set-top box manufacturers, we suggest that the same logic must be applied to **all** platforms, and specifically to Cable, which should have a "must carry" provision as is common elsewhere in the EC.

Vertical Integration in *any* market is potentially anti-competitive, and not in the interests of either consumers or market suppliers to the sector. While the thrust of Ofcom's thinking in this consultation is around Competition Law issues, Ofcom must surely accept that these have, to a degree, arisen because of the failure of the FRND Regulatory regime to have the desired effect.

It might be argued that the primary concern at present arises around the Competition Law aspects of a small number of key market sectors, in the context of the *current* distribution of programming for these sectors. However, the distribution of TV is undergoing immense technological – and therefore commercial – changes. The full impact of these changes is at present only beginning to become apparent. The consumer stands to benefit greatly (or, conversely, be denied the opportunity of doing so) according to whether or not the same, more 'open' (and FRND), approach is applied across the board, on all distribution platforms.

Business models for the development of "premium" content for niche sectors are still at an embryo stage of development. It is, we argue, crucial that Ofcom recognises that in seeking remedies for the Competition Law issues of a small number of large sectors, it also embraces the Broadcast Regulatory (in FRND terms) issues for smaller sectors, where growth will undoubtedly exceed (in percentage terms) that of movies and sports.

Niche Television is healthy, and in high growth, but heavily constrained by the behaviour of the vertically integrated platform operators... satellite, cable, and now emerging, IPTV. We hope and trust that Ofcom will recognise the importance of ensuring the development of FRND requirements to allow this part of the broadcasting sector to develop further, for the benefit of *all* stakeholders, beyond the small number of would-be monopolists in control of distribution platforms.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'F. J. Perkins', with a long horizontal stroke extending to the right.

**Fred J Perkins** (Chief Executive, Information TV Ltd)