

**Representing:**

Self

**Organisation (if applicable):**

**What do you want Ofcom to keep confidential?:**

Keep name confidential

**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:**

Yes

**Question 1: Do you agree with our current view that under the Proposal, Sky would be likely to emerge as the sole or main retailer of pay TV services on DTT, given its market power in the wholesale markets for Core Premium channels and its incentives to withhold its Core Premium channels from other retailers of pay TV services?:**

**Question 2: Do you agree with our current view that the emergence of Sky as the sole or main retailer of pay TV services on DTT and the consequent adverse effects on competition would be likely to occur in a relatively short timeframe?:**

**Question 3: Do you agree with our current view that Sky should not be prohibited from retailing pay TV services on DTT provided that its Core Premium channels on DTT are made available to its retail competitors on a suitable wholesale basis?:**

**Question 4: If we were to consent to the Proposal, subject to a condition that Sky must make its Core Premium channels available to competing retailers on a suitable wholesale basis, do you agree that it would not be necessary to impose additional conditions addressing the provision of TPS by Sky?:**

**Question 5: Do you agree with our current view that the Proposal is unlikely to have a significant adverse effect on the DSO process or the appeal of Freeview to consumers?:**

**Question 6: Do you agree with our current view that the extent to which the Proposal may increase complexity in the decision-making process for consumers wishing to buy DTT reception equipment, this issue can be managed effectively without the need for imposing relevant conditions on Sky?:**

**Question 7: Do you consider that to the extent the Proposal may lead to a (greater) conflict of interests between Sky and the other members of DTVSL (the company which operates Freeview), this is a matter which in the first instance should be resolved by the relevant parties through commercial negotiation?:**

**Question 8: Do you agree with our current view that a wholesale must-offer arrangement, under which Sky must provide wholesale access to its Core Premium channels on DTT, is the most appropriate solution for us to pursue to address the competition concerns we have identified?:**

No, I disagree. It is not clear that consumers will be net beneficiaries of the proposed solution. In common with the competition concerns that have been identified the solution utilises too narrow a definition of the market.

It is unlikely that consumers will be net beneficiaries of spreading the provision of premium Sports and Hollywood programming across a variety of subscription, Pay TV channels. This solution will result in less choice, increased industry costs that will be passed onto the consumer and an increased in the time & risk burdens on consumers.

1) Any increase in subscription channels on Freeview will allow less frequencies for free to air television. This will result in less choice for the majority of the population who do not subscribe to these channels. In addition it is likely that the Pay TV channels will repeatedly re-play their expensively purchased programming at the cost of other programming. Allowing the simulcasting of the same programme on different channels by the same medium (satellite, cable or Freeview) can only lead to less consumer choice.

2) By encouraging consumers to utilise a variety of Pay TV channels will result in significant increase in central office functions (advertising, call-centres, account management etc). This increase in costs should be considered on a probability of outcome basis against the likely decrease in Sky's profits. The outcome of introducing inefficiencies into this market upon the broader economy should also be considered.

3) Subscribers are likely to be faced with a number of different Pay TV providers and might have to manage several subscriptions in order to view their desired

programming. In addition, it is possible that some of these providers might be of a mixed financial strength introducing an element of financial risk to consumers.

The definition of a market in this case is probably too narrow. The consumers can receive the Sports and Hollywood content by a variety of channels and Sky's position should be evaluated in light of this broader market. In addition, these alternative channels could be considered when developing the solution. It is possible that measure taken to reduce the cost and increase the competitiveness of other channels would be the most effective way of reducing the competitive power of Sky.

**Question 9: Do you agree that simulcrypt is the most appropriate means of allowing multiple retailers to have access to Sky's Core Premium channels on DTT?:**

**Question 10: Do you consider that Sky or relevant third party retailers on DTT would be provided with an incentive to reduce the effectiveness of a wholesale must-offer arrangement? If so, in what ways might they seek to achieve this?:**

**Question 11: If we were to consent to the Proposal subject to a suitable wholesale must-offer arrangement being put in place, do you consider that any ancillary conditions would be required to ensure that it was workable from a commercial and technical perspective? If so, please explain: (i) the ancillary conditions that would be required and the specific concern(s) they would seek to address and (ii) why there would be no other practicable and less restrictive means of addressing the concern(s) in question:**

**Question 12: Do you consider that our indicative analysis, summarised at paragraphs 4.7 to 4.12 and set out more fully in Annex 6, supports our current view of whether we should opt for Option 1, Option 2 or Option 3?:**

**Comments:**