

Representing:

Self

What do you want Ofcom to keep confidential?:

Keep name 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

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?:

No. While I admire the regulator's research and evidence-gathering, Ofcom has not shown that it has any facility to predict future market developments with precision. Perhaps in the very short term, Ofcom's claim may be correct. But in the medium to long term, the situation is much less clear.

DTT competes with many other forms of content provision, including online provision. Sky is apparently soon making its broadband Tv service more open to non-subscribers. Is it bypassing Ofcom altogether?

If I were Sky I would pull out of DTT altogether as it seems badly over-regulated.

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?:

No. Whatever lack of competition exists in the UK television market probably exists because of the huge state intervention in the form of public ownership of C4 and the BBC. Together, the state controls about 16 of Freeview's 48 channels. These entities

seem to partner with the state to reduce competition and punish vigorous competitors such as Sky.

Sky's position as a commercial competitor is much less powerful, as the mere fact of this drawn-out investigation shows.

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?:

Sky should be allowed to compete vigorously. Ofcom's proposal seems to be geared more towards protecting specific competitors rather than allowing vigorous competition. Any firm can bid on premium content -- there are no market entry barriers.

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?:

No.

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?:

Ofcom cannot really know how Freeview will develop. Right now, the services on Freeview are quiet poor, and exclude many interesting competitors such as HBO and Discovery.

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?:

Well, the same is true in other markets, such as mobile telephony. Robust competition always involves some degree of consumer confusion and switching costs.

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?:

Yes. Ofcom should not get involved in such commercial matters.

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. As Ofcom notes -- they are merely hypothetical concerns. You should always have a stronger basis before imposing ex ante regulations and there is always the option of intervening at a later date, on an ex post basis.

I'm concerned that this affair shows a bias in Ofcom against pay TV, against consumerism in media, and against non-state owned competitors.

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?:

No opinion.

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?:

No opinion

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:

No opinion

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?:

No opinion

Comments:

Two general thoughts:

1. In April 2006 Ofcom issued a press release entitled "Deregulation for Pay TV channels on digital terrestrial television."

Ofcom wrote: "Ofcom believes that the current restriction on pay TV channels is no longer a matter requiring regulatory intervention and that finding the right balance between pay and free-to-air services on the DTT platform can be better left to the market."

Now here we are approximately 2.5 years after that bold deregulatory claim, dithering over a proposed pay DTT offering.

Ofcom badly mishandled this entire matter -- what happened to the importance of regulatory certainty?

2. Ofcom needs to develop a broader view of the market that puts pay TV alongside free-to-air, broadband, cable, etc. This proceeding seems overly-focused on DTT... so much so that the findings tend to ignore the larger competitive environment.

Good luck -- everyone wants Freeview to improve...