

Representing:

Self

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:

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?:

Yes.

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?:

Yes.

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?:

This is an important provision but it is not sufficient.

SKY can still tie up the terrestrial pay-tv market in the same way that it has tied up the satellite market by dominating and controlling the pay tv set top box market. As in the early days of Sky they can heavily promote their set top boxes - perhaps give them away free with every subscription to PICNIC - or perhaps £5 and a coupon from the

Sun - or perhaps free with every new tv purchased at Currys. Once consumers have the box they will be reluctant to buy a different box in order to subscribe to a rival service.

Sky may have a big enough development budget to offer innovative and sought after features on PICNIC boxes that also work for freeview channels but which can be disabled if the viewer cancels his/her PICNIC subscription (on the satellite platform SKY currently disables SKY+ functions even on BBC channels if the sky subscription is cancelled).

These are important issues. Not everyone can readily afford to replace their set top box - especially as it is increasingly normal for such boxes to incorporate pvr technology. It is also very likely that this type of equipment will become less affordable as living standards fall over the next few years.

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. Please see response to 3.

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?:

It may have an adverse impact on DSO. Not so much because a few channels may be removed from the Freeview platform but because it may increase confusion about the compatibility and longevity of set top boxes.

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?:

No. SKY appears to have a close relationship with some big retailers such as Currys. There are suggestions that Currys has avoided actively promoting Freesat and reports of its sales staff advising customers who have an existing Sky dish that they will need a new dish to receive Freesat thus making the Freesat proposition less attractive.

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?:

No comment.

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. It is not sufficient.

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. The encryption technology should be handled through a third party.

The third party would set technical standards and could therefore ensure that one set top box would be capable of accessing any channel. It would administer the issue and update of viewing cards and perhaps collect subscriptions. It would be paid for by all the participating pay tv companies according to an equitable formula approved by Ofcom. It would foster much greater choice and competition because it would remove some barriers to entry and ensure that smaller operators only pay their share of the overheads. Some small operators might just offer one channel and this might force bigger rival to respond by unbundling some of their packages - perhaps allowing customers to pick a few channels for just a few pounds a month.

The LINK bank network demonstrates the huge benefit to the consumer of this type of arrangement. Without LINK we would be restricted to using only those ATMs that belong to our bank.

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 comment.

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 comment.

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 comment.

Comments: