

Consultation: Pay TV market investigation

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Response from: DGTVi, Italian Association of Digital Terrestrial Broadcasters

Introduction

DGTVi is the Italian Association of Digital Terrestrial Broadcasters, established in 2004 and participated by RAI, Mediaset, TIMedia, D-Free and the two major associations of local TVs, Federazione Radiotelevisioni Televisive (FRT) and Aeranti Corallo.

DGTVi believes that the OFCOM investigation on the pay TV market in UK is relevant at European level, as the decisions that will be taken will influence market analysis and regulation and might have an impact on some of the open issues in the Italian market.

DGTVi wishes to comment on some of the issues posed by OFCOM, in particular as regards access to premium content and access to basic content.

Access to premium content: DGTVi outlines the positive effects of the regulation deriving from the Newscorp Decision on the pay TV market in Italy, as regards premium content. On the basis of the Newscorp decision, Sky Italia cannot acquire premium content rights for platforms other than the satellite, so that rights are presently licensed at retail level on a per platform basis.

Access to basic content: the comparison between the UK and the Italian market on basic tier channels shows a different situation. The Ofcom analysis regards this market to be competitive at retail level, given the presence of two big operators with similar market shares, and the presence of other offers. We would like to better understand the conditions that have allowed competition to develop in the UK market. When looking at the same market in Italy, it emerges that no real alternative offer to that of Sky is available. This is due to difficulty of access by third parties to basic tier channels. The reason behind this is that Sky Italia owns multiplatform exclusivity on its basic channels. While the Newscorp Decision imposed obligations on the access to premium content, it did not regulate basic content, in the assumption that the market would allow for channel development and competition for basic



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content. The experience later demonstrated that that was not possible and that exclusivity clauses allowed the dominant operator to maintain its market shares.

Before analysing these issues in further detail, we provide a synthetic overview of the Italian TV market and of existing regulation (deriving mainly from the Newscorp Decision).

Italian TV Market

The Italian TV market still relies much on terrestrial analogue reception. At the end of 2007, more than half households only had access to analogue TV. Digital TV households represented 47% of total.

TV households in Italy 2007 1st access ['000]

	'000	%
Analogue Terrestrial	12 350	53%
DTV	11 100	47%
<i>DTH – free and pay</i>	6 000	26%
<i>DTT – free and pay</i>	4 800	20%
<i>IPTV- pay</i>	300	1%
Total households	23 500	100%

Source: ITMedia Consulting

Satellite is the most popular digital platform, and its success has been largely pushed by the pay TV bouquet operated by Sky Italia, which started its service in 2003, after the European Commission cleared the merger between the two former pay TV operators, Tele+ and Stream. At the end of 2007 Sky Italia had 4.4 million subscribers; there are also a significant part of TV households with only a free DTH access. Total DTH reception in Italy amounts to 6 million households, representing 26% of total households and 54% of digital households.

DTV households in Italy 2007

	'000	%
DTH	6 000	54%
DTT	4 800	43%
IPTV	300	3%
Total DTV	11 100	100%

Source: ITMedia Consulting

Digital Terrestrial TV was launched in Italy in 2004, and so far 4.8 million households are equipped with a DTT decoder/tuner. They represent 20% of total Italian TV households and 43% of DTV households. Italian DTT is mostly a free to air offer, with around 30 national channels. However, a strong boost to DTT penetration came when the two main commercial broadcasters, Mediaset and Telecom Italia Media launched a pay per view offer in January 2005. The PPV offer on DTT started with the matches of the Italian Football Championship. Matches were available for sale on a single basis with a pre-paid card, at €5 per match, but



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later a season ticket was introduced, along with other packages, such as all matches of any single club, or monthly packages.

The new offer was possible thanks to the European Commission's Decision on the Telepiù-Stream merger, in April 2003¹. The European Commission cleared the merger submitted to a certain number of obligations onto the platform resulting from the merger. The combined platform undertook to waive exclusivity on premium content on platforms other than DTH. In this way, sport rights and film rights were made available for direct sale from content owners to other network transmission, such as DTT.

The European Commission also ruled about the wholesale offer of the combined platform's premium content at a regulated price (the retail minus), but no regulation was set on basic content.

Later both Mediaset and Telecom Italia Media enlarged the PPV offer to films, concerts, theatre and other non premium content. In January 2008 Mediaset also launched a mini bouquet of 3 thematic channels (entertainment), for a monthly fee of €8. A +1 version of the three channels is also available. No subscription is required, payments are made with the pre-paid cards. This is the cheapest pay offer available on the Italian market.

LA7 PPV offer on DTT 2008

Content	Price €
Soccer ²	
Match	6
Monthly ticket ³	19
Season ticket	39
Delayed match	2
Rugby	free
Series	From €1/episode
Films (library)	From €2
Cartoons	From €2/episode

Mediaset Pay TV offer on DTT

Content	Price €
Soccer ⁴	
Match	6
Champions League	69
Season ticket Serie A	99
Season ticket all soccer	159
Gallery [3 channels]	8/month
Films	From €4
Gallery 6 months ⁵	32
Gallery+Calcio 6 months ⁵	80
Gallery+GF [reality show] 6 months ⁵	45
Gallery+Calcio+GF 6 months ⁵	95

Source: Company data

So far around 2.8 million households have activated a pre-paid card with one or both DTT providers.

¹ Case COMP/M.2876 - Nescorp/Telepiù

² Domestic matches of Fiorentina, Palermo, Reggina, Sampdoria, Cagliari e Catania and Uefa domestic matches for Fiorentina.

³ Includes all content available on LA7 Cartapiù

⁴ All matches of Juve, Milan, Inter, Roma, Lazio and Napoli, all domestic matches of Torino, Genoa, Atlanta and Livorno. Uefa Champions League tournament.

⁵ Special launch offer, expires in June 2008



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In spite of being home to one the first IPTV services in Europe, in Italy IPTV is not much widespread yet. Fastweb launched its service in 2001, while Telecom Italia launched its IPTV Alice Home TV in December 2005. Tiscali and Wind joined the market with an IPTV proposition only recently, in December 2007. So far, 300 000 households have an IPTV access, representing 1% of total TV households and 3% of digital TV households.

The pay TV market in Italy 2007

	'000	%
Total TV households	23 500	100%
Total Pay TV/PPV households	7 510	32%
<i>DTH</i>	4 440	19%
<i>DTT</i>	2 770	12%
<i>IPTV</i>	300	1%

Source: ITMedia Consulting

In terms of revenues, the Italian TV market is still largely ad-funded, but, while the advertising market shows very modest growth rates, pay TV is the driver with a a 24% CAGR in the last five years.

The Italian TV market: revenue 2007 - €'000

€	'000	%
Licence fee	1 500	18%
Advertising	4 400	53%
Pay TV	2 440	29%
Total TV market value	8 310	100%

Source: ITMedia Consulting

Before the PPV offer on DTT was launched in 2005, the pay TV market was dominated by the satellite platform, and with the creation of a combined platform in 2003, Sky Italia was actually a monopolist in this market, with the small exception of Fastweb small customer base.

With DTT some degree of competition was introduced in the market.

Italy: Pay TV/PPV customers 2007

Platform	'000	%
DTH	4 440	59%
DTT	2 770	37%
IPTV	300	4%
Total Pay TV/PPV customers	7 510	100%

Source: ITMedia Consulting



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Although DTT accounts for almost 40% of pay customers, the market share in terms of revenues is only 7%, while Sky Italia, five years after it was created, still holds 90% of market share.

It is also interesting to note that Sky Italia sells its contents at retail level onto the Alice TV IPTV platform, having reached an agreement at the end of 2007 with Alice Home TV for the sale of all its packages to its IPTV customer base.

Italy: Pay TV market revenues 2007

Platform	€'000	%
DTH [Sky Italia]	2 180	89%
DTT [Mediaset Premium, LA7Cartapiù]	180	7%
IPTV [Fastweb, Alice Home TV, Tiscali, Wind, Sky Italia]	80	3%
Total Pay TV	2 440	100%

Source: ITMedia Consulting

Existing regulation

As mentioned above, regulation in the pay TV market is given by the Newscorp Decision. In allowing for the merger of the two satellite pay TV platforms Stream and Telepiù, the Commission concerns were directed mainly at issues concerning access to premium content and access to platform:

1. Access to premium content. The Commission intervention regarded the duration and scope of exclusive premium rights held by Sky Italia: maximum 3 year contract for film rights, and 2 year contracts for football rights. Exclusive rights were limited to the DHT platform. No obligation was set as regards basic contents.

2. Access to platform: Sky Italia agreed to grant access to its satellite platform and to technical services that are necessary and instrumental to the offering of TV channels such as EPG and conditional access at fair, non discriminatory and transparent conditions. Sky Italia was also obliged to sell terrestrial frequencies (licensed to Telepiù), so that potential competitors could launch alternative services on this platform, using those frequencies.

The obligations set out in the Decision are valid until 2011. After that date, in the absence of further regulation, Sky Italia will be able to acquire all contents – premium and basic – on a multiplatform exclusive basis.



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Access to content: Ofcom analysis of the pay TV market in UK and the Italian experience

The key issues submitted to Ofcom by the Parties are centred on market definition. Ofcom investigates on whether current market developments and evidence allows for a broader definition of the TV market.

The preliminary conclusions of Ofcom are that:

- there are separate retail and wholesale markets for the supply of premium sport and movies channels;
- it is likely that basic pay TV and free to air TV are also in separate retail markets, although it is recognised that free to air represents a growing constraint on basic pay TV, thanks to the growth of the Freeview platform.

Premium content

OFCOM analysis shows that BSkyB is dominant in the premium content market for sports and movies, and is therefore likely to intervene on these markets.

DGTVi wish to contribute to the evaluation of possible regulatory measures with the experience deriving from the obligations set by the Newscorp Decision on Sky Italia, which is obliged to give access to premium content at wholesale level and cannot buy rights for platforms different than the DHT at retail level. The consequences of such regulation on the pay TV market have been:

1. access to content through the wholesale offer: Fastweb and Telecom Italia both accessed premium content on a wholesale basis. This allowed third parties to redistribute Sky's premium channels, but did not create the conditions in the market to create an alternative offer to that of Sky (see next paragraph on basic content). Access to premium content at wholesale level did not work for alternative operators, which have now reached commercial agreements with Sky which offers at retail level all its packages on their platforms.
2. direct access to content rights: in 2004 two terrestrial broadcasters acquired directly from the football clubs the rights to broadcast matches on the DTT platform. The ppv offer was launched in January 2005, based on a free from subscription pay per view model. Consumers can buy a separate prepaid card to access Mediaset Premium offer and La7Cartapiù offer. These are two separate cards, but can be used on the same STB, which supports two different CA systems.

From the point of view of consumer welfare, the PPV DTT offer allow consumers to buy single matches, or a package of matches, without having to subscribe for basic tier channels. Notwithstanding the limited market share, the new offer has exerted some competitive pressure on Sky which has reacted with a number of commercial promotion in order to attract new subscribers.



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DGTv believes that retail access to premium content was the most effective measure in terms of allowing access to premium content by other operators and prompting competition. Licensing rights on a per package multiplatform exclusivity is not the only solution possible and it might not prove the best solution either. The Italian experience shows that preventing the dominant operator from acquiring multiplatform exclusivity on premium content can be effective in allowing premium content to be offered on different platforms (exclusivity by platform) with greater satisfaction of the consumer.

The Italian experience shows that the benefits on consumers is immediate, although the market share of new operators on the pay TV market are still limited and grow slowly, which suggests that the intervention by the regulator cannot be limited to the short period.

In other words, although circumstances under which the original undertakings have been agreed by Sky Italia have partially changed, it is important that alternative platform offerings have the time to consolidate. Today Sky Italia holds over 90% of market share, and is likely to be dominant for still a number of years.

Basic-tier content

Ofcom still considers free to air and basic pay services as separate markets. However given the rapid growth of the Freeview multichannel offer, it acknowledges that FTA services put competitive pressure on basic pay TV service providers.

Within the basic tier pay TV services Ofcom distinguishes between stand alone services and buy through services.

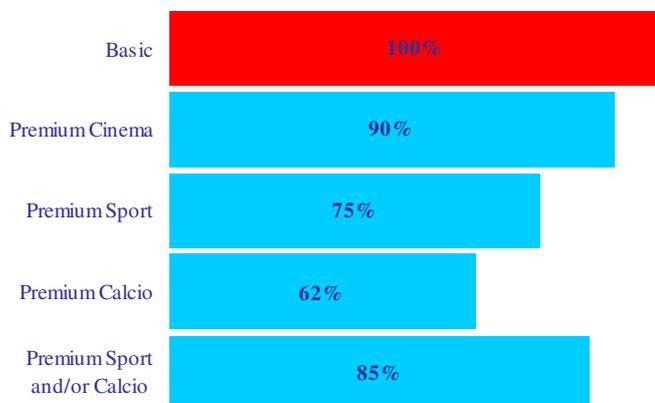
The primary characteristics of stand alone services is that they provide a wide range of general entertainment and themed channels. Ofcom judges that the offers of BSkyB, Virgin Media and Freeview are similar. Since 2005 BSkyB has marketed different sizes of its basic packages and this might be the response to greater competition coming from Freeview.

Although in its investigation Ofcom consider this market to be sufficiently competitive, it acknowledges that BSkyB total demand for basic tier pay TV services is considerably larger than the demand of stand alone basic packages because of the derived demand from consumer purchasing premium sports and movies (buy through practices). This may afford Sky a degree of buying power when negotiating with the third parties wholesale channel providers, even if it does not have market power in relation to the sale of stand alone basic tier services.



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Sky Italia subscribers 2006



In Italy alternative offers to that of Sky on basic content are those of Fastweb and Alice TV, but the range and attractiveness of the offer is not comparable to that of Sky Italia. All basic offers include the 28 national channels available free to air on DTT, including the 9 simulcast channels and on demand services for Fastweb and Alice TV.

However, the DTT FTA multichannel offer (19 channels) is still not sufficiently attractive to exert a competitive pressure, accounting for less than 1% of total audience.

Fastweb basic tier: thematic channels

Thematic channels: kids	Cartoon Networks
Thematic channels: news	CNN Bloomberg
Thematic channels: sports	ESPN

Price: €20/month, including FTA 28 DTT channels and on demand services

Source: Company data

Alice Home TV basic tier: thematic channels

Thematic channels: news	Class CNBC Class Life Al Jazeera Al Jazeera International France24
Thematic channels: young adults	Bonsai
Thematic channels: sports	MUTV Chelsea TV Liverpool FC TV
Thematic channels: music	MTV2 VH1 Base VH1 Classic

Price: €22.95/month, including 28 FTA DTT channels and on demand services

Source: Company data



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Sky Italia basic tiers: thematic channels

Kids pack	10 channels	RaiSat YoYo, Jim Jam, Nickelodeon, CN, Cartoon Network, Boomerang, Rai Smash, Playhouse Disney, Disney Channel, Toon Disney, Jetix.
Entertainment pack	17 channels	Sky Vivo, Fox, Fox Life, Fox Crime, FX, E!, comedy Central, Sky Show, Real time, Rai Extra, Rai Premium, Rai Fantasy, AXN, Hallmark, BBC Prime, Jimmy
Music and young people pack	13 channels	GTX, Cultoon, MTVHits, MTV Gold, MTV BrandNew, MTV Pulse, VH1, Video Italia, DeeJay, Match Music, Music Box, Rock TV, Music on Sky
Documentaries pack	14 channels	Discovery Channel, National Geographic, Nat Geo Adventure, Nat Geo Wild, Nat Geo Music, History Channel, Rai Gambero Rosso, Marco Polo, Alice, Leonardo, Animal Planet, Discovery Science, Discovery Civilisation, Travel&Living
News pack	13 channels	Sky TG24, Sky Meteo24, Bloomberg, CNBC, Sky News, Fox News, CNN, CNBC Europe, Eurosport News, ESPN, Nuvolari, SNAI, Yacht&Sail

3 basic tier combinations: 15€, 20€ and 24€ per month. Basic tiers comes with all channels available free to air on satellite.

Source: Company data

In fact, differently from the UK market, in Italy the basic tier pay TV market is dominated by Sky Italia, and there is little competition from other platforms. This is due mainly to the market power exercised by Sky, which allows it to negotiate deals imposing to the content provider multiplatform exclusivity, as well as pre-emption clauses for any new channel produced by the channel providers using its brand.

To our knowledge, in UK since 2001 BSkyB has decided not acquire exclusive multiplatform rights for basic TV channels, following a EU investigation. It would be interesting to understand whether this condition was at the basis of greater competition form other platforms deriving from availability of contents and channels necessary to offer a basic TV package.

The abovementioned situation was actually pointed out in par. 173 of the EU Commission Decision⁶ as a competitive concern for the content providers. Such competitive concern is due

⁶ “The competitive concern in the case of TV channels arises from the fact that, unless another competitor enters the market (and this will not be the case if access to premium content is not guaranteed), the merger will lead to a monopsonistic situation (100%) for the acquisition of channels in Italy. Therefore, following the merger the bargaining position especially of the smaller independent suppliers of channels will be weakened due to the absence of alternative platforms to the combined entity. This could indirectly harm consumers. welfare, should the merged entity decide to stop purchasing rights to TV channels or exert its monopsonist power to such an



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to Sky's monopsonistic position towards service providers in Italy. Such position enables Sky to impose to content providers: (i) full buy-out clause on exploitation right covering also the communication to the public in techniques different from DTH; (ii) exclusivity clauses on use of channel brands (including derivative brands) on other distribution platforms; and (iii) pre-emption or first refusal right clauses on the launch of new channels (or even new editorial activity) in the territory. Thanks to this set of clauses which are more or less included in all third parties channels distribution agreements, Sky is able to sub-licence third parties channels to other distribution platforms such as IPTV or DVB-H. As a result, Sky is able to re-distribute its third parties channels set as one pit-stop at marginal price. In particular, content providers may be excluded from this marginal benefit because Sky often excludes sub-licence or sub-distribution fees from third parties distribution agreements.

The Italian experience suggests that, in the absence of regulation or self-regulation, exclusivity clauses and pre-emption practices are an obstacle to the creation of basic tier channels offerings, both free to air and pay.

Conclusions

DGTVi supports the Ofcom analysis focused on the 3 markets for access to content: sport premium content, movie premium content, basic channels. DGTVi believes that the absence of remedies is an obstacle to the development of a competitive market in pay TV. The Italian experience shows that to premium content, is not per se sufficient to develop competition.

The scenario in the Italian market is that the availability of premium content, both at retail and wholesale level is not per se sufficient to ensure competition from other retailers – either in the same platform or on other platforms – unless access to basic content is possible (either through regulation or self regulation). The existence of a foreclosure by Sky Italia on the access to basic content channels, deriving from multiplatform exclusivities and pre-emption clauses makes it difficult for other retailers to compete on the market for basic content. It also has negative effects on the market for wholesale channel provisions, deriving from the existence of only one buyer.

In conclusion, market competition must be assessed on a long term basis, with reference to all kind of pay content, in order to prevent the risks connected to what Ofcom call dynamic foreclosure, i.e. the risk that dominant firms might foreclose entry by new providers or act to drive out firms that have recently entered the pay TV market.

extent that some TV channel providers exit the market, due to unsustainable economic conditions. If that were to be the case, consumers would enjoy a greatly reduced variety of products and freedom of choice. These adverse effects on consumers can only be offset by creating the conditions allowing these channels to be broadcast (free-to air or pay) via DTH even without being acquired by the merged platform.



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