

Title:

Mr

Forename:

Steve

Surname:

Boswell

Name and title under which you would like this response to appear:

Steve Boswell

Representing:

Self

What do you want Ofcom to keep confidential?:

Keep nothing 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: To what extent do you consider that DTT, DSat, cable and IPTV are in competition with one another for subscribers of pay TV services ? either at present or in the future?:

The adoption of digital broadcasting technologies has led to the situation today where digital television services are available from a number of providers on a number of platforms. Consumer choice in the digital television market is greater today than at any previous date.

Service providers such as Sky and Virgin Media can be considered to be in direct competition for customers who are willing to pay for premium content such as sports and movies. Those customers who want more channel choice (and not sports or movies) can choose between Sky and Virgin Media, as well as (comparatively) smaller providers such as Top Up TV and Tiscali TV.

Each individual provider, however, is able to differentiate itself from the others because they can offer unique features and services. Digital satellite has the benefit of being able to offer a vast range of channels; digital cable (and IPTV) allows for 'true' on-demand viewing and broadband internet connections; digital terrestrial provides a easy route into digital television thanks to its simplicity and low entry costs.

Freeview is not in direct competition with any other provider, for the simple reason that it is an entirely free service (excluding the cost of the licence fee and equipment). However, it is vitally important that the availability of high-quality services on the platform is maintained, in order to act as an incentive to encourage the take-up of digital television in all UK households (and thus aid the digital switchover programme).

Question 2: To what extent do you consider the Proposal is likely to deliver benefits to the consumer?:

The proposal aims to bring limited coverage of premium sports and a limited selection of movies, as well as selected programming from 'premium' entertainment channels, to the digital terrestrial (DTT) platform. This would, however, require the removal of three channels available via Freeview.

Whilst the proposal would broaden the range of premium content available to the DTT viewer, it is not providing an entirely new service. Premium sport is already available on DTT via Setanta Sports' subscription channel, and premium movies are available from the Picture Box service carried by Top Up TV. Both these services are available individually, allowing the consumer to subscribe only to the content they are interested in. Programming from channels only available with paid subscription, such as children's and entertainment, is also available to the DTT viewer through the Top Up TV and Top Up TV Anytime services. BT Vision provides a similar selection of content via its hybrid DTT and IPTV service.

The removal of three channels from the Freeview line-up would be highly detrimental to the service's appeal, especially as the platform is already highly restricted in terms of the quantity of channels it can offer (due to bandwidth constraints). Furthermore, due to the content of the channels selected for removal, their removal would be harmful to the balance of Freeview's offering. The loss of Sky Three would not have a major impact, as there are several other 'general entertainment' channels available, but it would reduce the number of entertainment channel providers. The loss of Sky Sports News would rid the platform of a unique service, and one which could not be replaced without further disruption to the Freeview line-up. Were Sky News removed, there would only be one 24-hour news channel (BBC News 24) left broadcasting on the platform. This would reduce the plurality of news services available to the DTT viewer, and sets a potentially dangerous precedent for the provision of broadcast news services on the whole.

On balance, the benefits to the consumer are far out-weighed by the disadvantages that the proposal would place upon Freeview's customer base (currently over 8 million consumers, a figure which will grow significantly as we approach digital switchover).

Question 3: To what extent do you consider that there is scope for sustainable competition in pay TV on the DTT platform and, more broadly, across all pay TV platforms?:

Very little, if any. The existing pay-television service on DTT, Top Up TV, already faces stiff competition from virtually all pay-TV providers, including Sky, Virgin Media, BT Vision, and Tiscali TV. Each of the aforementioned providers benefits from the availability of more bandwidth and greater flexibility on their respective platforms to deliver content to the consumer. The scarce availability of bandwidth on DTT means that the existing pay-TV services are already operating at the limits of their capacity: further erosion of any available capacity to competitors (and more specifically, to the proposal) would severely limit opportunities to improve existing services or to effectively compete with BSkyB on yet another digital television platform.

Question 4: What are likely to be the key aspects of competition between providers of retail pay TV services on the DTT platform? E.g. what is the role of premium sports and movies content?:

There is a clear distinction between consumers willing to pay for premium sports coverage and movies, and those who do not: most obviously, this is shown in the number of consumers who currently subscribe to such services. On DTT, there are already services which provide such content – Setanta Sports and Top Up TV/Picture Box – and other such services are available on other platforms. Sky Sports' channels and a movie service are available, for example, via Virgin Media. This suggests that premium sports and movie content is attractive to consumers.

Question 5: Do you consider that if Sky were to become the only provider of pay TV on the DTT platform it would be likely to have a significant detrimental effect on competition in the long term? How might this affect the development of other platforms for the delivery of pay TV services?:

BSkyB already hold a dominant position in the market. As well as having the largest pay-TV platform, they exercise complete control the distribution of many of the most popular digital television channels, including Sky One, Sky Sports and Sky Movies on rival platforms (who cannot be refused carriage of these channels, but must agree to BSkyB's pricing and conditions).

Were Sky to become the sole provider of pay-TV services on DTT, the effect would be extremely damaging for not only the platform itself, but also for competition in the UK's television market as a whole. Consumer choice would be no greater than at present, but the number of service providers would have reduced. Any potential

?new? competition to their (BSkyB?s) dominance would be unable to match the strength of BSkyB in terms of their financial might, content available to them, and existing reach.

It is obvious that BSkyB?s intention is to extend their dominance of the UK?s television and telecommunications market to another platform, and not to improve consumer choice. Were the latter to be the case, the opportunity to access premium sport and movie content on a limited basis could and would have been offered on their own satellite platform. As this is not the case ? indeed, consumers who wish to subscribe to such services must also subscribe to other packages of channels on Sky ? their intentions must be carefully scrutinised.

Such a scenario would only have a negative impact on consumer choice, and be highly detrimental to competition.

Question 6: To what extent, if at all, do you consider that the Proposal would be likely to lead to any of the public policy concerns outlined at Section 4?:

Sky?s position as a shareholder of DTSL, the organisation responsible for the promotion of Freeview, would be untenable were the proposal accepted. BSkyB?s apparent support for the promotion of Freeview would be wholly undermined by its intention to remove three channels from the service (representing an entire withdrawal from the service).

Question 7: Specifically, to what extent do you consider that the Proposal would be likely to lead to consumer confusion?:

As well as being potentially confusing for any consumers who wished to subscribe to the proposed pay-TV service, the existing 8-million-strong ?customer? base of Freeview must be considered. Having purchased Freeview equipment and become used to receiving Sky?s three channels, consumers will feel aggrieved that the service was being reduced. Furthermore, it may lead some to question the longevity of other services on Freeview, and as a consequence, the longevity of the Freeview platform itself.

Question 8: To what extent do you consider that it is beneficial for consumers to be able to obtain Sky and existing DTT pay TV content without having to purchase separate STBs?:

The cost of purchasing equipment for other digital television platforms is often included in the price of subscription, heavily subsidised by subscription revenue, or non-existent because equipment is provided for free on the basis that the consumer may keep it for as long as they continue to subscribe.

For the consumer to receive all services on DTT under the existing terms of the proposal ? ie: that a separate receiver will be required to view the proposed service ? they would need to purchase two separate units. In some cases, for example those with IDTVs (integrated digital television sets) or digital video recorders, the purchase

of both boxes would be necessary despite their possession of a multitude of digital television tuners. It is conceivable that a consumer could find half-a-dozen different boxes are required to comprise their 'living-room' television set-up.

The purchase of an additional box could not only be costly, but also damaging to the environment: additional boxes all require additional power. The number of suitable connections for both devices is likely to be problematic: a television with only two SCART sockets, for example, is likely to already have a DVD or VHS player attached to one of them. It is likely that consumers will also have to use an additional remote control to operate the additional equipment, and be forced to switch between audio-visual equipment to access the entire range of services available to them.

Question 9: Do you consider that the Proposal might lead to any additional public policy concerns:

The preservation of the plurality of news services on any given platform is a vitally important consideration. The removal of Sky News would also remove the channel from the screens of consumers who subscribe to Top Up TV, BT Vision, TV Max and any other service which incorporates a DTT tuner. This would be a highly unfavourable outcome.

Question 10: If Sky becoming the only provider of pay TV services on the DTT platform were likely to have a significant detrimental effect on competition, do you consider that it is possible to address this through a set of additional conditions and/or directions? If so, what form should those conditions/directions take?:

No. The proposal should be refused outright, and in its entirety. If approved, severe conditions should be imposed, but this is a virtually impossible task. It would not be practical to reduce the DTT bandwidth available to BSkyB for their proposal (for example, by blocking the removal of Sky News), as this would most likely render their business model unprofitable/unworkable (and reduce the quality of service available to potential subscribers and Freeview viewers in equal measure). Similarly, it would be difficult to impose conditions on BSkyB's other operations as these are, effectively, entirely separate from the proposed service.

Additional comments:

The proposal should be rejected. The proposal put forward by BSkyB is an elaborate attempt to improve subscriber numbers on its digital satellite service by:

- Attempting to reduce the quality of a 'competing' digital television platform (Freeview) by removing its channels from DTT;
- Remove competition from smaller pay-TV providers with limited resources, such as Top Up TV and Setanta Sports' DTT service, by introducing a pay-TV service backed by the backing of BSkyB financially, in terms of content, access to an existing customer base, and support;
- Create customer confusion and dissatisfaction with Freeview with the removal of channels and introduction of its own, incompatible, hardware;

- Secure a wider subscription base for its channels by offering them on more platforms, but in such a limited capacity so as to encourage the up-take of the full premium service available via Sky (the digital satellite platform).