

Title:

Mr

Forename:

Matthew

Surname:

Roberts

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

Matthew Roberts

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?:

Sky themselves have said in another consultation that FTA television is competition for its own pay TV services, In that as the quality of FTA television improves the desire to subscribe to pay television services decreases.

Sky's DTT services proposals is aimed at limiting the quality of the FTA lineup and

therefore drive take-up of its own DTH satellite services . It is not aimed at creating a viable pay TV service on the DTT platform.

DTT, DSAT, Cable and IPTV are in direct competition with each other if you subscribe to a pay television service on one platform you are unlikely to subscribe to another; Sky's control of pay television on DTT would lead to effectively competing with itself and Virgin Media creating an effective duopoly which would not provide the innovation and cost cutting that competition does.

It would also lead to Sky being the effective gatekeeper of pay television on two platform's would deter other companies from launching, or continuing on their own pay TV services.

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

The proposal is unlikely to benefit the consumer. Pay Television penetration on the Digital Terrestrial platform, only attracts a minority of its user's and is therefore an inefficient use of public spectrum.

The content that is being proposed by BSkyB I believe is not going to enhance the current Digital Terrestrial Line-up. They are essentially replacing a news channel, A sports channel and a general entertainment channel. With another general entertainment channel; Another sports channel and an encryption of the existing news channel.

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?:

The limited nature of bandwidth on the DTT platform means that there is limited scope for competition in pay TV on the DTT platform and as such any pay television service on the DTT platform should be granted that right through a public tender process based on the relative merit of its application.

Pay TV on the DTT platform has limited potential to compete against other pay platforms but only through providing an alternative to the pay TV content being offered by other platform, Eg Top Up TV's service which is aimed at the lower end price bracket of the market .

However, the only true way for DTT to compete effectively against other platforms is through a largely or completely FTA service that would serve as a viable alternative to actually subscribing to television. Freeview already has had a considerable competitive effect on Sky digital as a pay TV platform forcing Sky to launch its own lower subscription initiatives such as its mix package service and its own Free To View services such as Freesat From Sky.

Even Sky has conceded that there is some success from Freeview with the launch of its own Sky Three service an effort to get a slice of the commercial revenue that can

be made from the Freeview platform.

I believe that Sky's Picnic proposals is an attempt to try and limit that success by attempting to take away and restrict the choice offered by the FTA platform and therefore restrict the competition that it offers to Sky's own existing satellite pay TV services.

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 place for premium sports and movie's content on the digital terrestrial platform. However the provision of such television services needs to be put up for public tender by the regulator and it shouldn't be done in this underhand way of a broadcaster replacing their existing FTA services with Pay Television services.

The role of premium sports and movies content is going to be more significant as analogue television begins to get switched off, as channels like Film4 get set up FTA on the DTT platform, as advertising revenues increase for these channels they are going to be able compete more effectively for rights to premium sports and movie content.

The relative unwillingness for consumers on the DTT platform to pay high prices for subscription content, as demonstrated by the lower priced content on the Top Up TV anytime service means that premium sports and movies content are never going to be a long term commercial success on the DTT platform without cross subsidy from the broadcaster's other services, Such as Sky's premium sports and movie channels on the satellite and cable platform and setanta's services on the satellite and cable platform.

Cross subsidy however unfairly distorts the market and pushes the price of commercial DTT slots beyond the realms of the average broadcaster' Sky's pay TV services is only going to further exasorbate this situation.

I believe that Pay TV services on the DTT platform are going to increasingly rely on non premium content that would mimic what is found on the FTA channels.

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?:

Through the launch of Picnic Sky would become in effect the sole provider of Pay TV on the DTT platform. Sky already own a 17% share in ITV who own the space the TUTV broadcast's on. Sky could use this influence to limit TUTV's access to future and current broadcast capacity.

Sky's control of pay television on two platform's would have an significant, detrimental effect on competition . Other parties may not consider launching or

maintaining their own pay TV services on the DTT platform if they believe it would put them in direct competition with Sky for broadcast capacity, as well as for market share.

This is also negating any competition that would be provided by a strong FTA lineup against Sky's pay television services.

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?:

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

I believe that this proposal has been put forward by Sky to create consumer confusion. Confusion surrounding the DTT platform would only serve to increase takeup of Sky's own DTH Satellite services.

A strong element of Freeview's success has been its FTA offering with the Pay tv operation of TUTV only attracting a minority of customer's. If sky manage to create the perception that DTT is largely a Pay Television service it would drive up subscriptions of its own DTH satellite services.

The use of proprietary equipment by BSKYB such as its own set top box, epg and encryption software would also give the impression that the DTT platform is controlled by BSKYB and it will become not much more than a 'sky digital lite' pay television service which could lead to the consumer perception that in order to receive Public Service Broadcaster's you would have to subscribe to either a Sky or Virgin pay television service.

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?:

It would be extremely beneficial to the consumer not to have to purchase separate DTT receiver's for Sky as well as other pay television content an inter-operability between pay TV services on the DTT platform would ease confusion for the consumer would then be confident that they are buying the right pay television box, It would also increase competition between the two pay TV operator's in which a switch between pay television operators would only have to give the consumer a new viewing card in order for them to switch to pay TV operators.

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

It is an bad faith move on Skys part to provide its channel's on a FTA basis to secure space through Crown Castle's (Now NGW) multiplex licence bid and then once it has received that space to convert them to pay television.

Although other regulatory amendments allow NGW to launch pay TV services on its multiplexes. Sky's FTA channels were a cornerstone of the original bid and therefore if possible, should remain on the platform FTA if Sky feels it is not commercially viable or desirable enough to remain on the DTT platform it should remove its services from that platform and allow other broadcasters to bid for that space on a fair and non discriminatory basis.

Furthermore, Sky's ring fencing of a section of public spectrum for pay television services would be against the public interest when there currently isn't the capacity on the DTT platform to provide the full range of television services funded through public money such as full versions of Teacher's TV, NHS Direct as well as the additional BBC interactive and high definition services.

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?:

I don't think it would be possible to address this concern with an additional set of conditions and/or regulations; The mere existence of two Sky controlled Pay TV platforms would have a significant detrimental effect on competition within the Pay television and the FTA television industries;

However, if Ofcom gives regulatory permission for this pay TV service to launch it should be done on the condition that Sky uses the open DTT epg system and a non NDS controlled encryption standard that, Should a broadcaster choose to use it should not have to pay licensing fee's to either sky or a company that sky or its shareholders have a significant stake in, such as NDS.

Ofcom should mandate that a conditional access module is provided for a reasonable cost for existing DTT receivers and IDTV's Sky should also be explicitly forbidden from releasing a box with its own proprietary firmware as this is what Sky has used to achieve control of the Digital satellite platform.

Additional comments:

I believe that Ofcom should firmly reject any Pay TV proposals from BskyB for competition reasons.

If Ofcom believes there should be a dominant pay TV operator on the DTT platform, it needs to go through a fair and transparent tender process, much like the original multiplex licence proposals in 2002 which lead to the current Freeview service and Sky and to a lesser extent Virgin Media need to be forbidden from that process as they already have dominant control of Pay TV on their respective platform's.