



# Review of the pay TV wholesale must-offer obligation

Supplementary consultation

Consultation

Publication date: 27 July 2015

Closing Date for Responses: 21 September 2015

## About this document

In December 2014 we issued a consultation ('the 2014 WMO consultation') on the first phase of our review of the rules that require Sky to offer its Sky Sports 1 and 2 channels to other pay TV retailers on a wholesale basis.<sup>1</sup> We received a number of responses to the 2014 WMO consultation which we are continuing to consider.

In this document we are consulting further with stakeholders on whether Sky's insistence on reciprocal supply of key sports content (i.e. making supply of its key sports channels conditional on a rival supplying its own key sports content to Sky) is a practice which may be prejudicial to fair and effective competition.

We plan to set out the conclusions of our assessment from both this consultation, and the 2014 WMO consultation, later in 2015. Where necessary, we will consult further on any proposed remedies.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/wholesale-must-offer/summary/condoc.pdf>

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## Section 1

# Introduction

- 1.1 The wholesale must-offer (WMO) obligation requires Sky to offer to wholesale its Sky Sports 1 and 2 (SS1&2) channels to other pay TV retailers<sup>2</sup> with certain prices and terms set by Ofcom.
- 1.2 We imposed the WMO in 2010<sup>3</sup> under section 316 of the Communications Act 2003 (the Act) by inserting a condition in the broadcast licences of each of the SS1&2 channels (and their HD versions). We said we would review the WMO after three years.
- 1.3 We started our review in 2014 and in this document we are consulting with stakeholders on the practice of an insistence on reciprocal supply of key content before reaching a conclusion on whether the WMO obligation remains appropriate, or whether it needs to be modified or removed.

## We consulted in December 2014 on the first phase of our review

- 1.4 We published a consultation in December 2014<sup>4</sup> in which we set out our assessment of whether, absent regulation, providers of channels which carry key sports content may engage in practices which would be prejudicial to fair and effective competition in the retailing of pay TV services.
- 1.5 Our definition of key sports content in particular included live coverage of the Premier League because it stood out as being sufficiently important to consumers that it would influence choice of pay TV retailer for a significant number of subscribers.<sup>5</sup>
- 1.6 We consulted on our view that limited distribution of this key sports content broadcast on Sky Sports to rival pay TV retailers could prejudice fair and effective competition and that, absent regulation, Sky may face incentives to act in such a manner.<sup>6</sup> Our initial view was that regulation might be appropriate to address those concerns. We recognised that the pay TV sector was continuing to evolve, which might affect the extent to which limited distribution of key content was a cause for concern. We therefore also consulted on potential removal of the WMO obligation on Sky.<sup>7</sup>

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<sup>2</sup> As a result of interim relief arrangements put in place by the Competition Appeal Tribunal (CAT) following litigation against the 2010 Pay TV statement, the effect of the WMO obligation has only been maintained in relation to the offer of SS1&2 to BT (via digital terrestrial television (DTT)) and Virgin Media (via DTT and cable). Those arrangements were extended to Real Digital (via satellite) in November 2010 and to BT's IPTV platforms in November 2014.

<sup>3</sup> Ofcom, *Pay TV statement*, 31 March 2010 ('the 2010 Pay TV statement') -

[http://stakeholders.ofcom.org.uk/consultations/third\\_paytv/](http://stakeholders.ofcom.org.uk/consultations/third_paytv/)

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/wholesale-must-offer/summary/condoc.pdf>

<sup>5</sup> 2014 WMO consultation, Section 5. We also said that live Champions League coverage was key content, albeit to a lesser extent than Premier League content.

<sup>6</sup> We also considered the impact of limited distribution of BT's key content, however, we found that, based on its current sports rights holdings and its market position, it did not appear sufficient to give rise to concerns at the current time and we were therefore not minded to consider imposition of a remedy on BT. 2014 WMO consultation, paragraphs 8.21-8.22.

<sup>7</sup> 2014 WMO consultation, paragraphs 8.6-8.9, and 8.18-8.20.

## **We are consulting further on the extent to which an insistence on reciprocal supply of key content may be prejudicial to competition**

- 1.7 We received responses to the 2014 WMO consultation from BT, the Premier League, [3<], Real Digital, Sky, TalkTalk, and Virgin Media (as well as from three individuals).<sup>8</sup>
- 1.8 We have reviewed these responses and are continuing with our assessment. Following our review of the responses we have identified a specific issue on which we consider it appropriate to consult further with stakeholders and gather additional evidence. In particular we are consulting in this document on the extent to which an insistence by Sky on reciprocal supply of channels containing key sports content<sup>9</sup> may be a practice which is prejudicial to fair and effective competition.
- 1.9 We are not addressing stakeholder comments on any other aspects of our assessment received in response to the 2014 WMO consultation at this stage. We will respond to all relevant stakeholder comments as part of our next document as set out below. For the purposes of this consultation, we are therefore proceeding on the basis that, with the exception of the specific issues raised in this document, all other aspects of our analysis are as set out in the 2014 WMO consultation.

## **We plan to publish a further document later in 2015 setting out our conclusions**

- 1.10 We are inviting responses to this supplementary consultation by 21 September 2015. We will consider responses to this document, alongside the responses received to the 2014 WMO consultation, before deciding on next steps.
- 1.11 We plan to issue a further document later in 2015 in which we will set out our conclusions on all stages of our analytical framework and identify whether holders of key content are engaging in, or there is a risk of them engaging in, practices which are prejudicial to fair and effective competition in retail pay TV.
- 1.12 If appropriate, we will consult further in the same document on appropriate remedy options (taking account of the broad remedy approaches initially outlined in Section 8 of the 2014 WMO consultation).
- 1.13 Alternatively, if we conclude that the risk of practices in relation to the provision of key sport content is not such as to warrant the imposition of regulation on holders of key content, we will issue a statement revoking the WMO obligation.

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<sup>8</sup> All the non-confidential responses are published here:

<http://stakeholders.ofcom.org.uk/consultations/wholesale-must-offer/?showResponses=true>

<sup>9</sup> [3<]. We have focussed on an insistence of reciprocal supply of channels containing Premier League content although we recognise that this practice could go further.

## Section 2

# Reciprocal supply of key content

- 2.1 In our 2014 WMO consultation we identified the following as practices which could be prejudicial to fair and effective competition:
- i) failure to supply key sports channel(s) or important parts of the service offered on those channels, on either a wholesale or self-retail basis; and
  - ii) supply on terms that would not allow a rival retailer to compete effectively, or which would undermine those retailers' incentives or ability to compete in other parts of the value chain.
- 2.2 In this consultation we invite further submissions on whether Sky insisting on reciprocal supply of key content as a condition for supply of Sky Sports is a term of supply that would prejudice fair and effective competition.

## An insistence on reciprocal supply of key content has been raised as a potential practice of concern

- 2.3 Sky and BT entered into commercial negotiations for the wholesale supply of the SS1&2 channels to BT's YouView platform following the 2012 Premier League auction. In those negotiations, BT has said that Sky was making wholesale supply of SS1&2 conditional on BT wholesaling its BT Sport channels to Sky for retail on Sky's satellite platform.<sup>10</sup>
- 2.4 In its response to the 2014 WMO consultation, BT pointed to Sky's insistence on reciprocal supply (which it described as 'anti-competitive') as an example of a practice which was prejudicial to fair and effective competition.<sup>11</sup>
- 2.5 Sky has indicated that its concern about reciprocity of supply is not a recent development and is not linked to BT's emergence as a significant competitor to Sky in the past few years.<sup>12</sup> [X]. [X]. Therefore it appears likely that Sky would include similar terms with anyone that has acquired, or may acquire, key content rights [X].
- 2.6 We are now seeking stakeholder views and evidence on the extent to which Sky is engaging, or may engage, in a practice which is likely to be prejudicial to fair and effective competition.
- 2.7 An insistence on reciprocal supply in effect forces a rival operator to choose between the following scenarios, both of which need to be considered to understand the competitive impact of this practice:
- a) non-supply of Sky's key content; and

<sup>10</sup> See in particular Section 3 of our decision on BT's request for interim measures under BT's Competition Act 1998 Complaint against Sky regarding wholesale supply of Sky Sports 1&2: [http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01106/IM\\_decision.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01106/IM_decision.pdf)

<sup>11</sup> BT referred to Sky's insistence on reciprocal supply as the 'Grant-Back Condition'. BT's response to the 2014 WMO consultation, paragraphs 2.50, 5.4, 6.15(ii) and 6.16.

<sup>12</sup> Sky's response to the 2014 WMO consultation, paragraph 4.36.

- b) a reciprocal agreement (where both parties are supplied with each other's content).

2.8 Below we set out stakeholder comments and our understanding of the arguments in relation to each of these scenarios.

## **BT has argued that Sky's insistence on reciprocal supply amounts to effective non-supply of Sky's key content**

- 2.9 BT considers that Sky's insistence on reciprocal supply in effect prevented BT from having access to Sky's key content. [§<]. BT pointed to the stylised economic model it commissioned from Compass Lexecon in the context of its complaint to Ofcom under the Competition Act 1998 ('BT CA98 Complaint')<sup>13</sup> as evidence of its position. [§<].<sup>14</sup>
- 2.10 Sky, however, considered it was fair and reasonable that, given BT's position as a vertically integrated player with its BT Sport channels, either (a) there was reciprocal wholesale supply of each other's key sport channels or (b) that each firm should be able to self-retail their channels on the other's platform.<sup>15</sup> Sky said a one-way wholesale arrangement would provide BT with a significant commercial advantage over Sky and it would not be commercially rational for Sky to enter into an agreement of that type.<sup>16</sup>
- 2.11 We understand BT's argument to be that the nature of Sky's insistence on reciprocal supply was such that BT was unable to accept and this in effect therefore amounts to a practice of non-supply of Sky's key content. In the 2014 WMO consultation, our position was that non-supply of Sky's key content would be a practice that was likely to prejudice fair and effective competition, because rivals would not be able to compete effectively in the absence of such key sports content.<sup>17</sup>

## **BT also argues that accepting a reciprocal supply arrangement would prejudice fair and effective competition**

- 2.12 BT has argued that an insistence on reciprocal supply should be considered an abuse of a dominant position as it seeks to undermine any rival pay TV retailers' incentive and ability to compete in channel development and distribution, by allowing Sky to appropriate their upstream investment and maintain its market position.<sup>18</sup> [§<].

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<sup>13</sup> [http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01106/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01106/)

<sup>14</sup> BT's response to the 2014 WMO consultation, paragraph 6.15(ii), footnote 406.

<sup>15</sup> BT is already able to self-retail its BT Sport channels on Sky's DSat platform because it is a platform on which third-party channel operators can acquire access on a fair, reasonable and non-discriminatory basis as long as they meet a set of requirements. This is governed by the Technical Platform Services guidelines - <http://stakeholders.ofcom.org.uk/consultations/tpsguidelines/statement/>. Sky noted in its consultation response that, whilst it is currently able to self-retail its sports channels on TalkTalk's YouView platform it is unable to do so in respect of BT's YouView platform because this requires either (a) the provision of multicast capacity by BT or (b) YouView upgrading the capabilities of STBs so that they can receive linear channels via unicast delivery. Sky's response to the 2014 WMO consultation, paragraphs 4.30 and 4.34.

<sup>16</sup> Sky's response to the 2014 WMO consultation, paragraph 4.33.

<sup>17</sup> For example see paragraph 8.4 of the 2014 WMO consultation.

<sup>18</sup> BT's response to the 2014 WMO consultation, paragraphs 2.50, 5.4, 6.15(ii) and 6.16.



BT also considered in this respect that the CAT had determined that it was an inappropriate condition for Sky to seek to impose.<sup>19</sup>

- 2.13 [redacted].<sup>20</sup>
- 2.14 We have set out below our understanding of the implication of BT's arguments about the impact on competition resulting from a rival accepting a reciprocal supply arrangement.
- 2.15 Our assessment in the 2014 WMO consultation found that Sky had a strong market position, both in the retail supply of pay TV services and in the supply of key sports channels, and it has held this position for a number of years.<sup>21</sup> We said Sky may benefit from certain incumbency advantages, for example scale advantages (because of its large existing, high value, subscriber base), its ability to offer a range of attractive content, (not all of which is currently supplied to rivals), and barriers to switching.<sup>22</sup>
- 2.16 The concern we understand BT to be presenting is therefore that Sky is able to use its strong market position, and the strength of its key content offering, to influence or determine the commercial strategy of its emerging rivals.
- 2.17 Sky being able to influence or determine the conditions of competition in this way could have a number of prejudicial effects for competition:
- i) any competitive advantage which rivals may gain through the development of new content proposals as a competitive differentiator (i.e. something that enables them to provide a differentiated offering to that of Sky or other pay TV retailers) could be reduced, because Sky would automatically obtain the benefit of that content. In particular, it could reduce the competitive pressure that may have resulted from the rival using bundles of attractive content (in particular bundling their own key content with Sky's key content) as a point of differentiation to attract subscribers;
  - ii) as a result of rivals being unable to fully benefit from their competitive differentiator, their incentives to develop new content proposals may be reduced. In particular where a rival pay TV retailer is operating, or intends to operate a sports channel which includes key sports content, its incentives to acquire rights may be affected if it is faced with a choice of either (a) being unable to access Sky's key sports content or (b) being deprived of the full benefit of its investment if it has to give up the key content it acquires to its major rival; and
  - iii) a reciprocal deal might influence competition in the sale of sports content to satellite subscribers. At present BT makes use of regulated access to Sky's platform to sell BT Sport products to satellite customers, either as stand-alone sales of the channels, or in bundles with BT's broadband products. These offers provide a source of competition to Sky in respect of sales of Sky Sports to

<sup>19</sup> BT pointed to paragraph 67 of the CAT's November 2014 decision: "*BT has spent some £1.5 billion acquiring football broadcasting rights in order to improve its position in the market and I do not see that BT should be required, in effect, to deprive itself of the competitive gain from that investment in order to achieve the benefit of the WMO remedy order by Ofcom*".

<sup>20</sup> Compass Lexecon, *Modelling static and dynamic competition in the retail CPSC market*, A report prepared for BT, April 2014.

<sup>21</sup> Section 6, paragraphs 6.29 to 6.53 of the 2014 WMO consultation.

<sup>22</sup> See e.g. paragraphs 6.54 to 6.55 in the 2014 WMO consultation.

satellite customers. A cross supply agreement could affect BT's incentives to compete as strongly with Sky for these customers.

- 2.18 As a consequence, the competitive pressures which Sky faces could be reduced, both in the short term (through the loss of the differentiator or moderated competition in retailing to satellite customers), and in the longer term (through reduced incentives for rivals to develop competing content propositions). The latter concern may not only have an effect on competition between key sports channels (because rivals will not seek to invest in competing offerings to Sky's key content), but also on competition in retail pay TV because rivals may not offer their own key sports channels as a competitive differentiator.

### **Sky, however, has argued that an insistence on reciprocal supply is fair and reasonable**

- 2.19 As set out above, Sky considers that it is fair and reasonable for there to be reciprocal supply of key content between itself and its rivals.
- 2.20 We understand the implication of Sky's arguments is that there may be certain benefits to competition where rival retailers enter into reciprocal supply arrangements, in particular:
- i) it creates a level playing field in the supply of key content, i.e. all retailers have access to the full range of key content and they are able to differentiate their service on the basis of other elements of the bundles they offer to consumers (e.g. other types of content);
  - ii) it may create a more positive experience for consumers who will be able to access all key content from a single retailer; and
  - iii) where a reciprocal deal provides Sky's rival with better terms of supply for its key content than would be the case under a stand-alone supply arrangement with Sky (e.g. because Sky offered higher wholesale price for the rivals' content under a reciprocal supply arrangement), the possibility of entering into such deals might be a factor that encourages the rival to invest in developing its own sports channels.

### **We are now seeking stakeholder comments and evidence on an insistence on reciprocal supply as a potential practice of concern**

- 2.21 We have not reached a conclusion on the extent to which an insistence on reciprocal supply of channels containing key content is a practice which may be prejudicial to fair and effective competition at this stage. Rather, we are inviting comment and evidence from stakeholders as to why such a practice is, or is not, prejudicial to fair and effective competition. In particular, as outlined in the arguments above, we are seeking evidence on the extent to which an insistence on reciprocal supply of channels containing key content:
- i) may in effect amount to non-supply of Sky's key content;
  - ii) may prejudice fair and effective competition at different levels of the value chain, e.g. by neutralising the competitive differentiators of rival pay TV retailers and/or undermining their incentives or ability to compete in other parts of the value chain (particularly, channel development); or

iii) has led to rival retailers being forced to change their behaviour in considering whether or not to bid for sports rights.

2.22 At this stage, we are only aware of Sky insisting on reciprocal supply in relation to rival channels containing key sports content. We recognise, however, that there may be circumstances in which Sky has required the provision of other services or content in return for the supply of its key sports content. We welcome stakeholders' evidence on the extent to which Sky may have engaged in such a practice and, if so, how such a practice may have prejudiced fair and effective competition.

*Q1: To what extent may an insistence on reciprocal supply of channels containing key sports content amount to a practice that is prejudicial to fair and effective competition? Please provide evidence and reasoning to support your view.*

*Q2: Do you have evidence that Sky has engaged in a practice of requiring rival retailers to supply services or content other than key sports content in return for the supply of Sky's key sports content? If so, to what extent do you consider that this may have been prejudicial to fair and effective competition? Please provide evidence and reasoning to support your view.*

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 21 September 2015**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/wmo-supplementary/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [WMOReview@ofcom.org.uk](mailto:WMOReview@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Elizabeth Gannon  
Competition Group  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Elizabeth Gannon on 020 7981 3501.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement or further consultation later in 2015.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing  Name/contact details/job title

Whole response  Organisation

Part of the response  If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)



## Annex 4

# Consultation questions

*Q1: To what extent may an insistence on reciprocal supply of channels containing key sports content amount to a practice that is prejudicial to fair and effective competition? Please provide evidence and reasoning to support your view.*

*Q2: Do you have evidence that Sky has engaged in a practice of requiring rival retailers to supply services or content other than key sports content in return for the supply of Sky's key sports content? If so, to what extent do you consider that this may have been prejudicial to fair and effective competition? Please provide evidence and reasoning to support your view.*

## Annex 5

# Glossary

**2010 Pay TV statement:** [http://stakeholders.ofcom.org.uk/consultations/third\\_paytv/](http://stakeholders.ofcom.org.uk/consultations/third_paytv/)

**2014 WMO consultation:** <http://stakeholders.ofcom.org.uk/consultations/wholesale-must-offer/>

**BT Sport:** the TV channels BT Sport 1, BT Sport 2 and ESPN.

**BT CA98 Complaint:** Our investigation of BT's complaint against Sky under the Competition Act 1998 about the wholesale supply of SS1&2 to BT's YouView platform – details at: [http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw\\_01106/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01106/)

**The Act: Communications Act 2003.**

**CAT: Competition Appeal Tribunal.**

**CA98: Competition Act 1998.**

**DSat: Digital satellite.** A term used in the UK to refer to the distribution of digital content via satellite.

**DTT: Digital Terrestrial Television.** A digital distribution technology using terrestrial transmitters.

**HD: High Definition.** A technology that provides viewers with better quality, high-resolution pictures.

**IPTV: Internet Protocol Television.** The term used for television and/or video signals that are delivered to subscribers or viewers using Internet Protocol (IP), the technology that is also used to access the Internet. Typically used in the context of streamed linear and on-demand content, but also sometimes for downloaded video.

**Premier League.** The Premier League relates to both the football competition (currently the Barclays Premier League) and the organising body of the Barclays Premier League. References in this document are to the competition itself, rather than the organising body.

**Self-retail.** Where a content provider makes its content available to subscribers on another provider's platform, but has a direct billing relationship with the subscriber rather than making its content available to the platform provider on a wholesale basis.

**Sky Sports:** the TV channels Sky Sports 1, Sky Sports 2, Sky Sports 3, Sky Sports 4, Sky Sports 5, and Sky Sports F1.

**SD: Standard Definition.** As opposed to high definition.

**SS1&2:** Sky Sports 1 and Sky Sports 2.

**STB: Set-top Box.**

**WMO: wholesale must-offer.** The WMO obligation was imposed on Sky in the 2010 Pay TV statement requiring it to offer to wholesale its SS1&2 channels (SD and HD) with certain prices and terms set by Ofcom.

**YouView:** A joint-venture between the BBC, ITV, Channel 4, Channel 5, Arqiva, BT and TalkTalk offering a subscription-free digital TV service, delivered via a combination of a broadband internet connection, television aerial and a YouView set-top box. YouView is one of the two platform systems used by BT to deliver its BT TV service.