



Sky's response to Ofcom's consultation on Non-Domestic TV channels: proposals to modify access service obligations

Introduction

1. Sky plc ("Sky") is Europe's leading pay TV operator.¹ Sky also provides electronic communications services and is the UK's second largest and fastest growing broadband and telephony provider. Sky welcomes this opportunity to respond to Ofcom's consultation on non-domestic TV channels ("the Consultation").
2. Sky invests significant resource to ensure that our services are accessible to all of our customers, including those who have sensory impairment, often working with disability interest groups to maximise the benefit for customers. We subtitle 90% of our linear content and have audio description available for 27% of linear content on Sky's wholly owned channels.² We are committed to increasing the level of provision of VOD access services.³ Our access services are simple to operate and are enabled through the on-screen menu of Sky's EPG.
3. We also support customers whose preference is British Sign Language ('BSL') through a partnership with the British Sign Language Broadcasting Trust ('BSLBT'). This partnership consists of the funding for content that we contribute not only as a result of Ofcom's regulations, but also through other measures such as collaborating on video relay services which enable our customers to contact our service teams using BSL. Further information regarding how we assist our customers with sensory impairments can be found on our website.⁴
4. Sky is fully committed to providing access services, however, Sky is concerned that a more strategic approach should be taken by the regulator in order to avoid a disproportionate burden on broadcasters, and provide better accessibility solutions for viewers. In particular, in addition to the current proposals, Sky has engaged with Ofcom on a number of connected topics in recent months including: speaking EPGs; live subtitling; increase in the provision of access services for domestic channels; and access services for on demand services. In light of these competing priorities, Sky considers that a more holistic approach to access services would enable Ofcom and broadcasters to adopt a more targeted approach and deliver more appropriate solutions for viewers more quickly.

¹ Sky plc provides pay tv services in the United Kingdom, Ireland, Germany, Austria and Italy.

² Period from 30 December 2013-4 January 2015 <https://corporate.sky.com/documents/bigger-picture/supplementary%20information/additional-customer-data.pdf>

³ <https://corporate.sky.com/media-centre/our-blog/2015/our-commitment-to-providing-subtitles-on-our-on-demand-service>

⁴ <http://accessibility.sky.com/>

5. Sky faces a number of investment decisions both as a broadcaster and a platform operator. In taking these decisions, we seek to strike a balance between our regulatory obligations and measures which will best serve our customers. This commonly means that we over-deliver on certain services (for example, by providing twice the amount of audio description than is required and providing access services on some channels on which it is not required). Significant technological developments have occurred in access services since Ofcom last examined the market in detail, most notably with regard to the significant uptake of on-demand services, where we are committed to increasing the provision of access services.⁵ Ofcom's general approach to access services should, as far as possible under existing laws, recognise that licence holders face significant cost increases on a number of levels at the same time, as well as the fact that new technology is creating opportunities for giving audiences greater choice in how access services are provided.
6. In relation to these specific proposals, Sky supports Ofcom's proposal to extend transitional arrangements by 12 months, although Sky notes that a longer period may be necessary. We also share Ofcom's view that to impose signing obligations in Ireland would be disproportionate given the access to, and viewing of, BSL sign-interpreted programmes.
7. Sky is keen that before imposing additional obligations on non-domestic channels, Ofcom needs to ensure it takes a proportionate response considering all relevant circumstances, including share of viewing of the channel in non-domestic territories, the availability of access services on domestic services, and the needs of disabled viewers in the local markets.

Q1. Do you agree that the transitional period should be extended to 31 December 2016, during which time broadcasters would be able to provide additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, in lieu of their signing obligation?

8. Sky is supportive of the introduction of a transitional period. This is important to allow broadcasters sufficient time to plan for new obligations, and for Ofcom to undertake further assessment of an appropriate regime for non-domestic channels in the Member States in which they broadcast.
9. Whilst we support the immediate introduction of a transition period, we believe that a period greater than 12 months may ultimately be required to properly complete Ofcom's analysis and still give industry sufficient time to implement any necessary changes.

Q2. Do you agree that requirements on non-domestic channels to provide minimum amounts of sign-presented programming should rise over time, as shown in the table at Figure 3, in the same way as the requirements on domestic channels?

Q3. Do you agree that any requirements to provide sign-interpreted programmes or extra subtitling should rise over time as indicated in the table at Figure 3?

10. Ofcom has clear obligations under section 3(3) of the Communications Act 2003 to adhere to principles ensuring that its regulatory activities are "transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed". We do not believe Ofcom has demonstrated that its specific proposals are proportionate to an identified need.
11. Ofcom's proposal that the provision of sign-presented programmes, sign-interpreted programmes or extra subtitling should rise over time are inextricably linked to its proposals

for access services on domestic channels⁶, rather than being based on any premise that existing provision is currently deficient in each Member State.

12. Our preference would be for proposals to be based on a better understanding of the existence of a market failure or the specific need for access services in each Member State, and then for the regime to be sufficiently flexible for broadcasters to meet those needs, taking account of the preferences of specific audiences.
13. The proposed model is underpinned by the policy created for domestic channels. We did not support Ofcom's conclusions in this area as Ofcom failed to adequately assess audience demand, current levels of consumption or the preferences of BSL users.
14. Furthermore, we believe that the decision to impose a three-fold increase in funding for BSLBT was arbitrary, disproportionate and risks adversely affecting the provision of other access services in new markets such as on demand programming. The proposals in Figure 3 exacerbate our concerns.

Q4. Do you agree that, in cases where Ofcom has decided that a substitute requirement is appropriate, it should: a) consider proposals for alternative arrangements that would contribute to the provision of the same type of assistance; and b) make the consequential changes to its Guidance as shown in Annex 5?

15. Ofcom's acknowledges that sign language users would welcome more accessible programming, but their needs and preferences vary from one country to another and broadcasters would like be able to propose substitute arrangements that might differ from those in the UK.
16. Sky welcomes that broadcasters are permitted to propose alternative arrangements that would meet the same objectives as the requirement to broadcast sign-presented programmes, such as sign-interpreted programming or subtitles. We support the further proposal that broadcasters can suggest alternative arrangements to these substitute models, and therefore support the consequential change in Annex 5. However, we are disappointed that Ofcom does not believe that this can extend to on demand programming.

Q5. Do you agree that the proposed minimum contributions towards alternative arrangements should rise over time, as set out in the table at Figure 3, and be protected from inflation by index-linking to the UK Consumer Price Index?

17. As discussed above, we believe that the underlying premise to this policy as set out in the arrangements for domestic channels is flawed. The proposed extension, in particular, significant annual increases, exacerbates our previously identified concerns.

Q6. Do you agree with the proposed amendments to the Code and Guidance?

18. We support the amendments to the extent they represent a 'tidying-up' exercise.

Q7. Do you agree with Ofcom's initial view that requiring non-domestic channels broadcasting in the Republic of Ireland to be subject to specific signing obligations would be disproportionate?

19. Sky makes its UK domestic channels available in the Republic of Ireland on a number of platforms including its own digital satellite platform. Access services are available across

⁶ The consultation 4.14

these channels in the same way and to the same degree as they are available in the UK. Due to differences in the promotional and advertising material broadcast on some of the services, Sky has had to obtain separate broadcast licences from Ofcom for these Irish 'feeds', notwithstanding the fact that the editorial content on the channels is identical to that which is broadcast on the UK 'feeds'.

20. Accordingly, Sky agrees with Ofcom's view in this area. Given the duplicative nature of the channels, it would be disproportionate to impose different levels of access services. Furthermore, Ofcom has identified that there are relatively few users of Irish sign language, and that deaf people in Ireland have benefited from the BSLs Sign Zone, accessing a wider range of programming than would otherwise be available. Ofcom also note the high provision of subtitling enjoyed by Irish viewers.

Q8. Do you agree with the proposal that the implementation of access service obligations for channels targeting EEA EFTA member countries should start from 1 January 2017?

21. Please see our answer to Q1

Q9. Are you a deaf sign language user?

22. No

Sky

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