

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

Anonymous 72

Representing:

Self

What do you want Ofcom to keep confidential?:

Keep name/contact details/job title 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?:

I consider that pay-for Dsat, cable and IPTV (in the context of Homechoice/Tiscali TV - effectively a cable TV provider) are in direct competition, as each offers a broad range of channels and each have almost unlimited capacity or technology to deliver, compared to the severely limited spectrum available to free-to-view DTT and the small proportion of pay-to-view DTT channels.

Even after the digital switchover, DTT will never be able to compete at the same level. I consider it to be in a very different market, simply because it will never have the capacity to offer the breadth of Dsat, cable and IPTV.

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

I do not believe it delivers any benefit to the consumer, but does deliver a great deal of benefit to News International by widening the market for their pay-TV channels and for their conditional access/encryption technology.

Moreover, it would appear blindingly obvious that the market is not there for pay-TV on DTT, given the failure of ONdigital/itv digital. Point 1.5 of the executive summary of the proposal claims that the launch of DTT in the UK has been a success - I would argue that the launch of *Freeview* has caused DTT to be a success. It is hard to view the collapse of a pay-TV service as part of a success.

Furthermore, I believe that the appeal of Freeview increases with the wider availability of free-to-view content, such as the move by Channel 4 to bring E4, More4 and Film4 to free-to-view.

Pay-for sport is already catered for by two competing content providers, BBC, ITV, Channel 4 and Virgin 1 already provide access to multiple mass-market entertainment. I do not believe that offering a single Sky Sport and Sky Movie channel for a pay-to-view basis delivers significant benefit.

I believe the quality of the "factual" and "childrens" channel would need assessing before any other option than refusing the proposal should be considered. With the BBC and ITV children's channels, and Disney's considering of a children's channel, does DTT really need more children's TV? Particularly if the percentage of original and educational material is low.

However, if these two daytime channels are to provide substantial original and or/new material this may provide benefit to the consumer.

In my opinion, the proposal is more likely to reduce the appeal of DTT - there will effectively be only a single news channel and the mass-market appeal of Sky Three will be gone. It also appears to send a message that Sky is essentially taking over Freeview, and that the "Free" in Freeview was a con introduced to ease digital switchover.

Requiring the 85% of existing households to change, or acquire, a further set-top box is ludicrous to receive just five channels. The degradation in signal strength by looping through multiple tuners may mean that for some people multiple set-top boxes are simply not an option on basic technical grounds, as opposed to the extra cost and clutter around the TV.

Above anything else, this reason is why I believe Ofcom cannot simply approve the request.

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?:

Attempting to turn DTT into another largely pay-TV platform is foolhardy, in my opinion. The fundamental limitation on capacity that all involved acknowledge means that there will never sensibly be scope for competing encryption systems, for example. On that basis, one party is going to have the monopoly on licencing CA technology - much as that may be the case already.

DTT can never be a replacement for pay-for DSat, where cable is not available. Until

every household in the country has access to more than one technology with the capacity to deliver the number of channels available on DSat and cable, it's hard to see that there is any competition, never mind sustainable, for the provision of pay-for TV.

Broadband and IPTv may prove to be the answer to give the majority of households an alternative to DSat. Given that would essentially give households the choice of a cable-TV style service or Dsat, I believe that is a sustainable environment, much as it's likely to simply become a duopoly.

Ideally a broadband connected household would have access to a number of IPTv providers, but the nature of the Internet would make it unlikely that a good quality IPTv service could be provided other than by the household's ISP.

This is all well and good for the pay-for TV delivery platform; the issue of content/channel providers and competition seems to be separate. Competition in that area is clearly between the content companies and those companies providing the delivery platform.

Which begs the question who owns the limited DTT spectrum? The IPTv content system is clearly as good as the network the ISP chooses to implement; Dsat the number of satellites or satellite transponders the company is prepared to pay for.

Should the scarce number of DTT multiplexes be auctioned off in such a way that the company operating the multiplex is solely responsible for the channels provided within it? Should the consumer, presumably in the form of Ofcom, be involved in much the same way as analogue licences (or indeed the multiplex licences) are awarded?

I think so. But that probably isn't sustainable - or, at least, maintainable if the award of licences goes from below ten to tens of channels.

With the capacity limitations of DTT, I believe it will simply be a matter of time before we return to the historical situation of BBC, ITV and Channel 4 on free-to-view, and all other capacity taken by pay-to-view channels from a dominant content provider, or at best content provider and channel for third party content.

Is competition on DTT about choice for the consumer, or actually about the money that can be raised for the providers of content?

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?:

Content is clearly the key aspect, although as itv digital showed it is also a pitfall. On the DTT platform, the role of pay-to-view content is to remove capacity from spectrum that ought to be viewed as a national asset for the good of all.

I believe it will supply the needs of a minority of consumers at the cost of innovation. A wider benefit would be for capacity to be granted to free-to-view HD content

providers, for example.

Sport and films are clearly the two most identifiable assets that consumers might pay to watch. It's hard to see that there is much other content that consumers choose particularly to watch, as is demonstrated by the basic channel bundles offered by Dsat and cable.

Clearly the providers don't expect that enough people will want to particularly to watch any one channel in the bundle, otherwise they would market and charge for it as an additional channel.

In the (unlikely I think) event that two companies manage to establish sufficient channel presence on DTT to offer something resembling a basic Dsat/cable channel package, there is scope for competition there - assuming a common CA/encryption standard. However, whichever company secures the rights to major sporting events or is consistently first to screen popular films is likely to become the victor.

Except, of course, if the company pays too much for the rights, as history as shown in the DTT arena.

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?:

Idealistically, I would say of course it will be detrimental as they will effectively control delivery of pay-TV in the UK. From a practical point of view, they already do either directly on Dsat or indirectly via cable - although Virgin Media appear to be making a valiant effort to stand up to them.

So unless the situation changes, if Sky were to dominate pay-to-view DTT it is unlikely to be more detrimental than it already is.

If Sky, or any other company, were to become the dominant provider in DTT, that provider should have a legal obligation to include every channel available in the broadcast EPG data, unless it specifically requested exclusion. Then at least independently provided channels that can obtain spectrum/bandwidth will be visible to all viewers in the guide.

Careful consideration should also be given to how much time the dominant supplier should be permitted to advertise or otherwise market its wider Dsat or cable services on DTT.

I can't see that DTT pay-to-view will have any effect on Dsat or cable - quite the reverse. DTT may extend the size of the pay-TV audience, but significant usage pay-to-view is only likely on those platforms, so DTT pay-to-view is almost certainly going to be a slave to them.

The development of IPTv delivery models and services such as Tiscali TV may ultimately render DTT pay-to-view redundant. At worst the IPTv providers would fall into the model currently followed by cable, where the platform provider is tied to a dominant content supplier.

At best, the companies may innovate and provide additional channels - provided that they are not hamstrung by contracts with the dominant channel provider.

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?:

I would view the approval of this proposal, ie modifying the FTA agreement already in place, as a sign that DTT was to be turned into an extension of Sky's dominant TV position in the UK.

As 4.2 and 4.5 imply, it would send a signal that Ofcom are prepared to award licences on an FTA basis but then be prepared to amend the contract to deny those FTA services to viewers before the contract was up for renewal. That sends the wrong signal to consumers who selected Freeview, and makes a mockery of the bidding process.

As 4.3 notes, 90% of overall viewing is estimated to be for the FTA channels, which shows there is little interest in pay-TV on DTT. In my opinion, priority for access to spectrum should be given to FTA developments - for example, extra bandwidth for a channel to broadcast in HD.

I would agree with the concerns expressed in 4.6; Sky has already exhibited dubious behaviour in the purchase of ITV shares. I believe its interactions with Virgin Media demonstrate that it is only interested in taking direct market share for itself, or permitting its content to be carried on its terms alone. I believe there is significant conflict of interest if the operator of a multiplex and/or shareholder in DTSL supplies pay-to-view content on DTT.

The suggestion to move to an CA/encryption standard licensed by a company within the same group is hard to see as anything but an anti-competitive measure.

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

The proposal will cause significant damage to the brand reputation of Freeview, and will re-introduce the confusion that DTT is a subscription service.

I believe a significant proportion of the population find having to have a set-top box confusing enough, particularly with installing and cabling the device and its interaction with analogue video recorders. Announcing that a consumer may have to have two of these devices to receive all the DTT services they wish can only add to the general confusion over DTT.

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?:

In my mind, this is an absolute requirement. Pay-TV on DTT must use the existing CA/encryption standard - or at worst, it must be possible to simply change viewing card on the same set-top box to switch between providers.

Having to buy and install multiple set-top boxes will make a laughing stock of DTT, and I suspect negate any use of DTT other than FTA.

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

As I've expressed earlier, I would view the spectrum for terrestrial TV as part of the national infrastructure that should be fairly managed by the government for the common good.

To me, that common good is for the resource to be used for as much high quality, HD if possible, programming and innovation that is FTA. The use of the resource for profit must be a secondary basis, no matter that it might satisfy the needs of 10% of the population.

Where pay-TV is concerned, it would be nice if DTT were not to become a Dsat/cable equivalent, where a consumer is expected to buy a pre-defined package of channels. Ultimate competition would allow channels to be broadcast, and subscribed to, independently.

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?:

It seems that a model such as been created with the telecommunications market may be appropriate. Sky (or any multiplex operator) would be required to create a structure equivalent to BT Openreach to operate its pay-TV (or perhaps multiplex) capacity on an equal access basis.

This part of the business would have to treat access by Sky content in the same as third party content. Thresholds could be set such that if a channel's viewing figures could be shown to be consistently low another company could challenge that capacity assignment. If Ofcom were convinced by the business case that the channel would attract more viewers, it could require the dominant operator to replace the existing channel by that of the new company.

As part of a model where channel packages were forbidden, permitting consumer to choose channels as they wished, much as they choose extra services on their phone, this would encourage competition between individual content providers. It would also

prevent dominant operators from filling capacity with their own unattractive content to crowd-out content that may be more appealing to a wider range of viewers.

Additional comments: