

**Title:**

Mr

**Forename:**

Joss

**Surname:**

Hyde

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

Joss Hyde

**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?:**

Cable is not available to a significant proportion of UK households and is consequently not in competition with other platforms in those un-cabled areas. Cable, as a retail distributor of digital television, is intrinsically a single provider on that platform at any one location.

DTT, until digital switchover is limited to about 75% of UK households. At present, the same Electronic Programme Guide (EPG) information is available to the majority Freeview audience and the minority subscription channels. Off the shelf DTT receiving equipment, optionally with Conditional Access Modules for subscription channels, can be used to receive all services. In areas outside DTT coverage, it cannot compete with other platforms.

DSat has been allowed to develop into a monopoly with Sky not only providing retail digital television distribution, via proprietary Sky receivers and its proprietary Electronic Programme Guide, but also as a provider of Sky television channels. This includes monopoly ownership of many imported programs, films and sports rights.

Satellite television could be an open platform available for competing providers using internationally agreed standards. The role of "gatekeeper" retail distribution of the service should be mutually exclusive with the role of content provider, i.e. the holder of the sports rights should not be allowed to be a "gatekeeper" provider, let alone the only one. Until, the monopoly is removed, DSat in the UK would fail normal tests for a competing free market, despite the platform's potential for multiple providers.

IPTV is still in its infancy and suitable regulations need to be imposed to avoid the appalling BSkyB digital satellite situation being permitted again.

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

Anecdotal evidence from Sky's earlier involvement in subscription DTT channels on the ill-fated OnDigital / ITV Digital service and its current Freeview line up is that the content of these channels tends to be watered down by Sky in order to entice viewers to the full Sky service on satellite. Similarly, Sky do not allow removal of high cost channels from its proprietary Electronic Programme Guide for cheaper packages and even the so called FreesatFromSky service.

However, on the OnDigital / ITV Digital service it did at least share a common platform with other providers. The proposed DTT subscription Sky service would have to be available to the majority of DTT viewers using Freeview set top boxes or competition in subscription provision would be compromised. Similarly, a suitable Conditional Access Module, which can also be used by other programme providers such as Setanta Sport, is needed for it to be receivable on Integrated Digital Televisions to avoid the stifling of competition.

DTT has limited capacity compared to other platforms. Removing capacity for subscription services inevitably reduces capacity for free to air (Freeview) services. One of the main benefits of digital switchover for the consumer, as opposed to government or programme makers, is the additional choice of channels freely available. Freeview has been an outstandingly popular success which could easily be undermined by the Sky proposal.

**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?:**

Competition on the DSat platform has been eliminated in the UK as a result of the BSkyB monopoly using proprietary closed access mechanisms, i.e. the Sky Electronic Programme Guide (EPG) works only with proprietary Sky set top boxes and conditional access is via Sky proprietary set top boxes only rather than with standard Conditional Access Modules.

However BSkyB is also a channel provider with monopoly rights.

If BSkyB is allowed to provide subscription channels on DTT, an independent (non-Sky) access mechanism would be needed to offer opportunities for other channel suppliers, such as Virgin Media and UKTV, to provide channels, without favouring Sky channels. Otherwise competition would be compromised.

Since bandwidth is limited on DTT, the total capacity for subscription services needs to be regulated to ensure that the choice available to Freeview is not reduced. Capacity for additional channels will be made available at digital switchover as a result of migration of all multiplexes to 64QAM. Consequently, Digital Switchover (DSO) might be an appropriate time to allow the extra channel space to be used for subscription services open to all channel providers, not limited to BSkyB.

**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?:**

If premium content, such as sports and films, is to be provided on DTT, all providers must use the same technical mechanisms and the control of this mechanism must be independent of the content providers to avoid the competition failure of the DSat platform. Access must be by a standard Conditional Access Module with programme information optionally available as part of the Freeview Electronic Programme Guide (EPG). This would allow an equal opportunity to any content provider, such as Setanta Sport, Sky or Virgin Media.

Controls would be needed to ensure that Sky's potential to 'loss lead' would not be permitted to stifle the market and eliminate competition.

Premium content should not be available on DTT until extra channel capacity is released at DSO by the switch of all multiplexes to 64QAM in order not to reduce the Freeview service which has been such an outstandingly popular success.

**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?:**

If Sky were to provide a proprietary mechanism for access to pay TV services on DTT, such as an exclusive encryption method without a Conditional Access Module, competition on DTT would be eliminated. If Sky wishes to provide subscription content, it cannot not be allowed to provide the access mechanism without undermining competition.

However, the Sky channels, including premium sports channels could be allowed alongside other content providers such as Setanta Sport and Virgin Media, so long as regulations are in place to ensure that Sky is not permitted to force out the competition.

The roles of content providers and the access provider need to be clearly separated to avoid the uncompetitive situation which has developed on the DSat platform being replicated on DTT.

**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?:**

If the proposed Sky subscription service were allowed to reduce the number of channels available to Freeview, this would inevitably reduce the value of that service at a time when households need to be encouraged prior to Digital Switchover (DSO). Post-DSO, there will be new channel capacity as a result of the switch to 64QAM. Arguably this capacity could be used for subscription services so long as all subscription content providers are able to use it, not exclusively Sky.

Unless all subscription services are available on the same equipment using the same encryption technology and with a Conditional Access Module for use particularly with Integrated Digital Televisions, the DTT offering will become confused. Individuals would be forced to buy receivers which would work with only one service or to have racks of different equipment in their sitting rooms. The success of Freeview has in part been the result of the simplicity of the offering and the proliferation of Freeview receivers from competing manufacturers.

It is my understanding also that Paragraph 11. (6) of Part Two of the Multiplex C licence (attachment to variation 5, dated 19 February 2007) requires National Grid Wireless to ?give all reasonable technical support for the purpose of the development and/or production of an implementation of the conditional access system used by the Licensee in a form appropriate for connection to an open-standard digital television set?

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

TopupTV Anytime already requires a specific PVR DTT receiver. TopupTV?s original service featured a disproportionate number of Electronic Programme Guide (EPG) entries compared to the number of actual streams it represented. These featured on the Freeview EPG and on many receivers they could not be removed or removal was difficult. This potentially led to confusion for the less technically competent and

was a cumbersome overhead to the rest. It was especially confusing for the old and vulnerable.

The introduction of different equipment requirements for different Pay TV offerings will inevitably lead to confusion and frustration. Freeview is a highly successful service and part of its attraction is its simplicity. Vulnerable consumers must not be confused into thinking that they have to subscribe to DTT or DSat services.

The failure to regulate DSat services adequately has led to a widely held perception that DSat is the same thing as Sky television. A tiny proportion of DSat receivers sold in the UK are open standard receivers, the vast majority being Sky proprietary set top boxes. This same confusion must not be allowed to evolve on the DTT platform.

**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 is of course essential that Pay TV services are clearly differentiated from Freeview. This would avoid, for instance, the situation where once an individual buys a TopUpTV receiver. Even though he finds he has little interest in the TopUpTV channels, he believes that he has to continue to subscribe to TopUpTV in order to receive the content which does interest him and is in fact Freeview.

If subscription services are wanted, it is essential that any set top box with a slot and any Integrated Digital Television can use one Conditional Access Module to receive any subscription DTT services. This must be open to any subscription content providers, including Sky, if competing services are to exist. However, because of Sky's dominant position it is important that Sky be more tightly controlled than any other content provider. Content provision must preclude involvement in the DTT subscription provision mechanism itself in order to avoid a conflict of interest.

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

It is important that Sky is not given a privileged position on DTT. In order not to compromise competition, no individual subscription content provider should be allowed to introduce any proprietary aspects to the DTT platform. The provider and regulator of any DTT subscription access cannot have any interest in subscription content provision. If Sky wishes to provide content, for instance Sky One television, it should have no interest in the 'gateway' subscription provision mechanism or encryption technology. Without these provisions competition between subscription content providers will not be possible. 'Gateway' provision must be separately controlled allowing Sky to provide content along with Setanta Sport or Virgin Media or any other aspiring subscription content provider.

No proprietary solutions should be permitted if public confusion is to be avoided. Viewers must not be forced to buy a multiplicity of receivers in order to access channels from different content suppliers.

**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?:**

Sky as a content provider must be differentiated from 'gateway' subscription access provision. Sky may offer content which would be attractive to some households willing to subscribe. Similarly Setanta Sport or Virgin Media may have content which is attractive to some potential subscribers. Access to all these services must use the same mechanisms, equipment and encryption to avoid public confusion and the requirement for multiple receivers. Without these provisions, competition will be compromised.

Similarly open internationally agreed standards should be adopted wherever possible rather than proprietary solutions.

Provision of 'gateway' access services (equipment, EPG, encryption) must not be put in the hands of any one content provider. It would be uncompetitive if a vested interest in content could influence public choice as a result of uncompetitive ownership of the 'gateway' access provision.

**Additional comments:**

The objective of this submission is that the outcome of this consultation is:

Option 3: not consent to the Proposal