



Proposed BSkyB digital terrestrial television services

Ofcom is to be commended for putting together an excellent background paper for its consultation on BSkyB's proposals. Time and lack of available resources have prevented us from submitting a detailed response along the lines suggested in the Consultation... but we feel that Ofcom has in fact, in the background paper, itself implicitly made the core point that we would wish to make:

The BSkyB proposal raises a large number of issues which cannot be addressed in isolation, but which emphasise the need for a full platform review of the Pay TV (and indeed whole DTV) market. Ofcom should not make any decisions regarding the BSkyB and NGW application until this wider review has been completed, and its conclusions debated and actioned.

Further, we submit that, given that Ofcom has already indicated (December 2007) its intention to conduct a full Platform review of the Pay TV markets, it would be manifestly wrong (and dangerous) to reach any conclusions in relation to these proposals in isolation.

The current level of litigious activity in the Digital TV marketplace provides considerable evidence that all is not well. There is ample evidence of dominant behaviour by major players (not just BSkyB) which is distorting competition, stifling innovation and restricting consumer choice. Broadcast and broadband technology, digital switchover, and consumer expectations are all changing the environment extremely rapidly, and presenting new challenges and opportunities to all the stakeholders. Differing technical constraints across the platforms for DTV are complicating what for consumers may have been perceived as substitutional technologies, but which are not necessarily so – especially if dominant platform operators exist.

BSkyB has for several years enjoyed a quasi-monopoly on the Digital Satellite platform in the UK. Its monopoly impacts not just consumers, but also broadcasters, on both Pay and Free TV via DSat. Its core business is one of PayTV. It has engineered a platform (DSat) over which it has dominant control, which despite a modest level of regulation, has not permitted sufficient innovation or competition. The current proposal seeks to extend its power to the DTT platform. In parallel, BSkyB is already building its presence on broadband. Further, it is not just a platform operator, but is also a broadcaster (in theory, a customer of the platform, in competition with other broadcasters).

BSkyB operates a level of vertical integration which, in other similar markets, has already been deemed unlawful. Further, its horizontal presence in adjacent, but related, markets is such as to potentially add further distortion of competition.

Permitting an already dominant operator to further extend its domination horizontally or vertically could irreparably damage competition, innovation and consumer choice.

Public policy concerns around DTV have many dimensions, some of which are still emerging, and many of which are changing. It would be hugely damaging to the UK if a single operator – with its own vested interests – were to be allowed to develop dominance over technology, content and distribution.

We therefore feel strongly that the BSkyB/NGW proposals should be rejected in their entirety, at least until such time as full consideration can be given to the wider issues of the development of Digital TV across all platforms.

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