

## [GB] Regulator Consults on Proposal to Require Sky to Make Premium Content Available to Competitors at Regulated Prices.

**IRIS 2009-8:1/21**

*Tony Prosser  
University of Bristol Law School*

Ofcom, the UK communications regulator, has completed a further phase in its long-running investigation into pay-TV markets and is now consulting on possible remedies (see IRIS 2009-1: 13). The central issue is the wholesale supply of premium content by Sky to its competitors.

Ofcom has found that live top-flight sports and first-run Hollywood movies are particularly effective in driving pay-TV subscriptions because they combine broad audience appeal with a high degree of exclusivity to pay-TV. There are narrow economic markets for the wholesale of Core Premium Sports and Core Premium Movie channels and Sky has market power in those markets to residential customers. Ofcom is concerned that Sky may distribute its premium content in a manner that favours its own platform and its own retail business, exploit content rights selectively and set high wholesale prices. These channels are provided to only one major third-party retailer and to none outside the cable platform. This means that Sky can manage competition between retailers on different platforms to protect its own satellite platform and prevent rival retailers from establishing a strong retail presence, which would also strengthen their position in bidding for content rights. Analysis commissioned by Ofcom suggested that Sky had made an aggregate return of above 20%, significantly above its cost of capital. Consumer choice is reduced by restricted availability of premium content and by the range of retail bundles made available on each platform.

Ofcom proposes to remedy the problems through a wholesale must-offer obligation, extending to Sky Sports 1 and 2 and all Sky Movies channels apart from Classics; high definition and interactive versions would be included. Prices would be set by Ofcom on a retail-minus basis, using current costs as a cross-check.

Ofcom is investigating subscription video-on-demand rights further with a view to separating their sale from standard subscription rights.

***Ofcom, “Pay TV Phrase Three Document”, 26 June 2009***

[http://www.ofcom.org.uk/consult/condocs/third\\_paytv/](http://www.ofcom.org.uk/consult/condocs/third_paytv/)

