



18 January 2023

Peter Hill  
Competition & Markets Authority  
The Cabot  
25 Cabot Square  
London E14 4QZ

**By email:** [REDACTED]

Dear Mr Hill,

**Request for the review of BiB Undertakings given by Sky Limited (“Sky”)**

Sky requests that the CMA reviews the undertakings given by Sky to the Secretary of State in 2001 relating to British Interactive Broadcasting Holdings Limited (“BiB”). The CMA has a statutory duty to keep these undertakings under review and, after 20+ years, and with no specified end date, the undertakings ought to be reviewed. Furthermore, for the reasons set out in this letter there has been a change in circumstances and the undertakings are no longer appropriate and should be released.

**The undertakings**

BiB was a joint venture created in 1997 by a consortium comprising BSkyB Ltd, BT Holdings Limited, Midland Bank plc and Matsushita Electric Europe (Headquarters) Limited to develop of interactive services to be delivered via television set top boxes. Branded ‘Open’, the service launched in 1999, providing a ‘walled garden’ of retail, banking, information and gaming services. Over time, Sky bought out the other joint venture parties, and as part of that process, on 8 May 2001, gave undertakings to the Secretary of State for Trade and Industry pursuant to section 75G of the Fair Trading Act 1973 (the “Undertakings”, a copy of which are enclosed). Responsibility for the Undertakings has subsequently transferred to the CMA.

Sky gave the Undertakings to address a concern at the time that Sky would put interactive icons on its sports and movie channels that would not work properly on other distributors’ platforms.

The Undertakings require Sky to give distributors of its premium sports and movie channels the option:

- to receive a signal of the channel so that they can distribute it without interactive icons; or
- (where the distributor also distributes a Sky interactive service) to receive a signal for the channel which can be processed in such a way that the distributor can distribute it with only relevant interactive icons.

The Undertakings provide that where a distributor wishes to exercise the second option, Sky shall offer all reasonable assistance so that the distributor may develop its systems accordingly.

**The CMA's statutory duty to review**

The CMA has a statutory duty to keep undertakings made under the Fair Trading Act 1973 and the Enterprise Act 2002 under review. In particular, from time to time, the CMA must consider whether, by reason of any change of circumstances, an undertaking is no longer appropriate and either: (i) one or more of the parties to it can be released; or (ii) the undertaking needs to be varied or to be superseded by a new undertaking.

**Change in circumstances**

There have been two significant changes relevant to the Undertakings since they were given.

First, when the Undertakings were given it was anticipated that TV set-top boxes would be a significant route by which consumers used internet services – this was why BiB was set up. Relatively few UK households had access to the internet at home.

Plainly, that view has not been borne out. Instead, technology has rapidly evolved and provided consumers with ubiquitous access to these services over the internet via a broad range of other, more convenient devices (e.g. PCs, laptops, smartphones and tablets). There is virtually no use of TV set-top boxes to access internet services today.

Second, at the time the Undertakings were given there was: (i) a history of substantial regulatory intervention in relation to agreements between Sky and the key distributors of its premium sports and movie channels; and (ii) a concern that Sky might provide inferior versions of its channels to those distributors. By contrast, today the relationship between Sky and the key distributors of its channels is positive and collaborative, governed by extensive commercial agreements, and with minimal regulatory intervention.

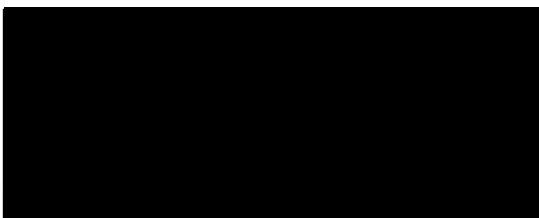
**No longer appropriate**

The only interactive service that Sky provides on the channels subject to the Undertakings is the Sky Sports Red Button (an interactive application that provides additional functionality and content) on its Sky Sports channels. Sky seeks to offer viewers of its Sky Sports channels an equivalent experience for Sky Sports Red Button across both Sky's and other distributors' platforms.

The underlying concern (at the time the Undertakings were given) was that Sky would put interactive icons on its sports and movie channels that would not work properly on other distributors' platforms. However, the commercial reality is that putting icons on Sky's channels which did not work properly on other distributors' platforms would damage both: (i) Sky's important, positive and collaborative commercial relationships with its distributors; and (ii) Sky's brand by creating a poor viewing experience. The underlying concern is therefore unfounded.

Accordingly, there has been a change in circumstances and the Undertakings are no longer appropriate. We therefore ask that the CMA carry out its statutory duty and review the Undertakings with a view to their release as soon as possible.

Yours sincerely,



**General Counsel, UK & ROI**