

SPEECH BY  
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CHECK AGAINST DELIVERY

When I first agreed to make this speech I was told that it would be at a Conference sponsored by Andersen UK and that I would be speaking between presentations from the OFT and ITV Digital. Since then both Andersen UK and ITV Digital have disappeared, thank goodness the OFT is still with us.

I am delighted that this Conference has attracted a very impressive array of broadcasting executives and regulators. Nonetheless, I did think twice about being seen meeting so many of my competitors in front of the Director General of Fair Trading.

I am conscious that John Vickers would certainly be aware of Adam Smith's assertion in *The Wealth of Nations* that:

“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices”

Fortunately, if the OFT applied that dictum literally to the broadcasting industry, we wouldn't have this conference today, and most of Soho would have to be shut down.

We meet to address the future of broadcasting. But first I'd like to set the context by talking of its recent past. The industry has gone through an extraordinary period of flux, both internationally and domestically, and the lessons from this are crucial to understanding its future.

Over the last three years, many people in this room have seen the value of their broadcasting assets explode and then implode. The new paradigms many were talking about just three years ago have mostly turned out to be a mirage. New digital delivery mechanisms which were to change the television industry completely have generally failed to take off. Thousands of internet companies, including many in which broadcasters had invested, failed. Their appeal was too limited to generate significant advertising revenue and their content too replicable to generate subscription revenues. A huge amount of value has been destroyed since the top of the boom. In the US in the year 2000, \$800 billion of market capitalisation was destroyed in digital related industries, more than the value of notes and coins in circulation. In Europe the TMT sector went from boom to bust in an even shorter timeframe.

Here in the UK, the closure of ITV Digital, and the debt problems experienced by cable companies have left the broadcasting industry, and the government, looking back at the predictions made for the transformational power of digital and wondering what they were smoking.

I think we should draw a common lesson from the failure of many technology businesses internationally and the recent problems in the domestic television industry.

It is that many in our industry became producer rather than consumer led – a trend that must be reversed if we are to secure a strong future.

Customers have shown that they will not buy into something just because some clever new technology has made it possible, or because a couple of spotty MBAs have devised a neat new business plan. They will pay for new technology, and the services it provides, only if it adds value and utility to their lives.

Equally, they will not switch to digital television simply because the government tells them that Britain has achieved a world first, or that digital is the inevitable future of TV, or that it will help break down social divisions. They will select the best television proposition for them, with the best services and the best prices.

I make no ideological or political point here. Over the last three years, businesses and governments have both shown themselves to be capable of focussing too much on what producers or technology make possible, and not enough on what customers actually want. If the future of broadcasting is to be successful, the consumer must come first.

But these recent failures should not obscure a large measure of success in the UK television environment. More people in the UK have digital television than anywhere in Europe – around 40% – and Britain continues to have the fastest growth rate. A range of interactive services has been developed which customers really do value and use. For millions of customers, an Electronic Programme Guide is now an essential part of what a television is. For hundreds of thousands, interactive services are a daily part of their lives. Even if digital TV has not created a social revolution as some thought it would, it has certainly made the lives of many people happier and easier.

Sky has played a leading role in driving digital penetration and now has around 6 million direct digital customers. We have emerged from the dot com boom and bust with a much better understanding of the services which customers value.

I do not want to make too much of a partisan point, but I think that as we address the strategies needed for growth in the industry, one lesson from Sky's recent success stands out.

There are three digital delivery platforms in the UK, satellite, cable, and DTT. Two of them have at various times been given substantial and deliberate support by the regulators and government. Cable was given assistance to break the BT monopoly, and DTT was in many ways a joint project between the government and some of the ITV companies. These were both attempts at using regulation to shape a market.

Currently of course the DTT platform is under review. We cannot afford to have another pay-TV fiasco and the BBC free-to-air option offers the best mass-market proposition.

Regardless of the rights and wrongs of regulatory support to cable and DTT, I think it is no coincidence that the satellite platform, which has always been the outsider, created entirely by private enterprise, often in the face of overt hostility from the incumbents, has been the most successful. The lack of government assistance to get it off the ground has given Sky a more customer focussed mentality as the market has developed. It has had to rely on the quality of its service, rather than on regulatory

assistance, to succeed. This has served us extremely well in the battle for subscribers and viewers.

This is an important lesson to remember as we turn to look to the future of broadcasting in this country. There is still far too much regulatory involvement in the industry and I would like to use the rest of this time to talk about the need for further deregulation by developing two key arguments.

First, strong competition law should be the basis on which the industry functions. The concept of sector specific regulation, such as special media ownership regulation, in addition to competition law, is increasingly untenable. Remaining ownership laws should go.

The argument that we need strong ownership laws to protect against over-powerful voices, did carry considerable weight at a time of great scarcity of media outlets. However the changes in the media landscape have eliminated that scarcity.

Viewers in the UK now have access to 240 TV channels, including 8 news channels. There are 11 daily and 11 Sunday national newspapers, scores of local newspapers, hundreds of radio stations, millions of websites. In broadcasting, strict impartiality rules govern coverage so that owners are barred from promoting their own views. And by far the biggest player in broadcast news is a public corporation, the BBC. The idea that in such an environment one commercial voice can exert undue influence over people's thoughts is increasingly nonsense.

Indeed, it is possible to argue that politicians' use of ownership laws actually becomes the bigger threat to democracy. Every few years in Britain, Ministers review the laws and as a result come under pressure from media companies to change them. After months of lobbying, they announce their decision, and it is pored over to see who has benefited most. This process gives Ministers huge and unhealthy power over media companies. It would be far safer for democracy if Ministers removed themselves from these ownership decisions, by having them decided by the independent competition authorities.

So I am glad that the government has agreed to considerable relaxation in many ownership rules in the Communications Bill. I do not want to use this time to make a whole host of Sky lobbying points about the Bill. In general we support its approach. All I would say is that the Bill's commendable liberalisation of many ownership restrictions, makes those that remain all the more arbitrary and inconsistent.

My second argument is that competition regulators should not attempt to fill the void left by the abandonment of previous sector specific rules. They should remember that their purpose is to deal with unfair trading, rather than try to shape markets to suit their own particular preferences.

Sky's experience so far is that regulators are using their powers to create their preferred outcomes, rather than to let the market work, and we are concerned that this approach might also guide OFCOM's work.

Sky has been prescriptively regulated by the OFT's competition law powers for 7 years. And that regulation has been under review for the past two and a half years.

I do not intend to treat this audience to a detailed legal exposition of the case – believe me, you really don't want to hear it - but I do want to give Sky's views on the central charges, and then develop some general thoughts on the role of regulators at a time when the government is repealing many of the previous rules which governed the sector.

Essentially, the OFT alleges that Sky has been unfairly trying to harm other pay TV distributors by charging too high a wholesale price for its premium movies and sports channels. It also alleges that Sky has been preventing new premium channels entering the market by charging too low a price for its channels as a result of offering discounts approved by the OFT. The attempt to argue that a price is simultaneously too high and too low has undoubtedly contributed to the OFT's difficulties and delays.

The OFT's case is based on a fundamental misconception: that it is in Sky's interests to make it uneconomic for other platforms to distribute Sky's channels, and ultimately to see those platforms fail. This is completely untrue. We are reliant on third party platforms for a significant proportion of our revenues. Sky's wholesale revenues for the year to June 2001 were approaching £300 million.

All our business modelling suggests that effective distribution outlets for our premium channels are in our financial interests. Put simply, the revenue our DTH platform foregoes as a result of this competition is balanced by the revenue our programming arm receives by distributing our channels on other platforms.

But our attempts to develop new terms for distribution with cable and DTT have been thwarted rather than helped by the OFT. Let me give you one example.

In September 2000, Sky reached a new distribution agreement with NTL which reduced base prices, in return for minimum guarantees to incentivise NTL to sell more of our premium channels. They were happy, we were happy and the consumer would have benefited. All it needed was for the OFT to give it the go-ahead. In October 2000 we, Sky and NTL, went to the OFT and asked for their permission to implement the agreement. Well, we waited and waited and eventually, both sides gave up waiting, and got on with the rest of their lives. Well over a year later – approaching 16 months – the officials at the competition regulator stepped forward with the courageous decision not to make a decision. Let's hope none of them ever decides actually to go into business.

Whichever way our OFT case is resolved, I hope that OFCOM is able to implement a speedier and more equitable process. I am generally in favour of uniting the sectoral regulators, but I am concerned with OFCOM's remit to "promote competition".

Although it sounds benign, I believe it is fundamentally misconceived. The media industry is a competitive one. There is no former state monopoly with vast market power, as was the case when the telecommunications industry was liberalised. There is therefore no need for OFCOM to apply OFTEL's duty to promote competition to

the media industry. OFCOM should use its competition powers to tackle any unfair trading rather than use industrial policy to shape the market as it sees fit.

Above all OFCOM should recognise that innovation creates new markets and markets themselves create competition. Where would the telecommunications industry be today if as soon as Alexander Graham Bell patented the telephone, the nineteenth century version of OFCOM took it upon itself to promote a rival. What would be Britain's legacy to the world of written literature if after inventing the printing press, Caxton was immediately subject to a seven year investigation into whether his price ratecard promoted market entry?

There is real danger that the regulation previously set down by governments will be replaced not by the application of competition law, but by the unelected board of OFCOM with a charter to interfere. It is one thing for politicians to bring clarity to regulation by allowing independent regulators to apply the law without political pressure, it is quite another to give regulators the power to intervene in a competitive market before any unfair trading has occurred. In short, as the government considers who to appoint as chairman and chief executive of OFCOM, it should recognise that the industry needs a policeman, not a dictator.

Enough of my gripes. This conference aims to address the future of broadcasting and the strategies needed for an increasingly convergent and competitive market.

Despite my concerns about regulation, I am extremely optimistic about the future of British broadcasting. The industry has emerged from the turmoil of the last few years with a greater understanding of its strengths and weaknesses, and consumers stand to benefit from the application of those lessons.

As I said at the start, there are no new media strategies in the way that people thought there were just three years ago. All that matters is getting the most compelling content and the best services into people's homes. Technology has certainly changed many ways in which the industry does business. Sky's move to a digital platform has changed much about our company. Most obviously, the move to digital has resulted in much greater customer satisfaction evidenced by our new customers, many via referral, and our churn rate falling from 15% to 10%. But the fundamentals of our business remain the same: secure great content; provide customers with choice and convenience; and provide a very high level of customer service.

Britain is the leader in digital TV. Sky receives a continual flow of visiting delegations of businessmen and politicians from around the world coming to see how Britain has achieved this. This pre-eminence, coupled with a welcome if somewhat inconsistent emphasis on competition from the government, could allow our industry to set an example to the world in the years ahead.

All parts of the British broadcasting industry have the potential to enjoy a very healthy future. Whatever the rights and wrongs of some of the BBC's expansionary ambitions, or some of its drift to commercialism (and in my view there are more wrongs than rights) it is undeniable that the corporation now has the resources, thanks to the fantastically generous licence fee settlement, to set new quality benchmarks in British programming. ITV's extremely strong market position in commercial

television should enable it to offer strong competition, especially now that it is now open to all-comers. Cable companies are recapitalising, leaving shareholders with virtually nothing, but providing the companies and management with the resources to develop new services.

And Sky continues to lead the transition to digital. Not always liked by the chattering, not always admired by those whose cartel was broken by Sky's arrival. But proud of its achievements and looking forward with confidence.

I have spent my whole working life in the TV industry, in all sorts of roles, both here and abroad. It is an industry I care passionately about, but it's an industry that can be deeply frustrating here in Britain. Built on two great monopolies, one public and one private, it often finds the concept of competition deeply distasteful. It often fights regulatory battles as if they were the only reason that television companies exist. Serving customers is sometimes considered a rather unimportant secondary activity.

In the airline industry, new entrants which break monopolies, shake things up and provide a better deal for customers are treated as folk heroes. In the TV industry, companies such as Sky that have done the same thing are sometimes regarded by the establishment with deep suspicion and contempt.

Competition is not easy. There are winners and there are losers. But ultimately it is the consumers who benefit. As we consider the future of broadcasting over the next two days, we should remember that it is the job of all of us here to make sure that television consumer is as well served as possible. If we learn the lessons of the last 3 years, let our actions be led by customers' needs rather than producers' or regulators' desires, and have the courage to let competition work, we will be well on the way to securing, for the industry and for its customers, an extremely bright future.