



## **Proposed changes to the linear EPG Code and future of the prominence regime – Virgin Media consultation response**

### **Introduction**

Virgin Media welcomes the opportunity to respond to Ofcom’s consultation on the linear EPG Code and the future of the prominence regime. Our response focuses mainly on the proposals relating to linear EPGs. Although we are not convinced of the need for rules applicable to the linear EPG, we suggest a pragmatic way forward which minimises disruption for our channel partners. While we have included comments on the proposals relating to the extension of the prominence regime beyond its current scope, we consider that such a move is premature, given the evolving nature of non-linear content distribution and consumption and, more fundamentally, unnecessary, given the absence of any evidence to suggest that an extension is necessary.

It is critical however that Ofcom explicitly recognises that linear EPG prominence (and the changes that it proposes) form part of the PSB Compact. The latter is an internally consistent set of rights and obligations which are designed to ensure that socially beneficial programming is produced, widely available and consumed. Virgin Media plays its part by giving the PSB channels appropriate prominence on its EPG in slots that could otherwise be sold; the PSB providers make available their PSB channels for free to the platforms (must offer) and the State subsidises a key input cost: spectrum. Periodically, Ofcom reviews whether PSB licence arrangements are still ‘fair’.

We acknowledge that, from time to time, it is appropriate to consider whether the EPG obligations are keeping pace with technology, viewing habits and customer tastes. However, Ofcom does not situate its consultation within the PSB Compact; Virgin Media believes that it must.

### **Virgin Media’s Response to Consultation Questions**

#### **Q1) Do you agree with our proposals that the main five PSB channels hold the top five slots on EPGs provided UK wide or in the UK outside of Wales?**

Virgin Media currently places the main five PSB channels within the first five slots of its EPG (at channel numbers 101 – 105). Although Virgin Media gives the highest level of prominence to these channels, we do not agree with Ofcom’s assertion that such prominence needs to be mandated by regulation. When moving from a principles-based to a rules-based approach, as Ofcom proposes, clear evidence of current or expected detriment is necessary. No such evidence is presented in this case.

Our customers value the high-quality programming provided by PSB broadcasters with such content having the highest viewing figures on our platform. Further, the placement of the channels in the first five slots of EPGs is essentially a legacy, long standing position adopted by all major platforms in the UK – and is widely recognised, and expected, by consumers. This gives rise to a very strong incentive for Virgin Media (and other platforms) to ensure that customers’ expectations are met. Imposing regulation to “guarantee” this arrangement is therefore unnecessary.

#### **Q2) Do you agree that on EPGs provided for viewers specifically in Wales BBC One, BBC Two and the relevant Channel 3 service should take the top three slots, with S4C in slot four, Channel 5 in slot five and Channel 4 guaranteed a position on the first page?**

Virgin Media sees no justification for such guarantees. Further, the implementation of the proposals in the manner set out by Ofcom in this and following questions would risk significant disruption to Virgin Media's EPG, as the insertion of new channels into an EPG where available slots are already scarce, would necessitate the movement of a considerable number of existing channels and have a detrimental impact upon both Virgin Media and our broadcast partners. Ofcom does not appear fully to have considered such consequences in its consultation.

Virgin Media has, however, carefully developed an alternative approach to the listing of nation-specific PSB channels that we consider meets Ofcom's objectives in a pragmatic and proportionate way, and avoids disruption. The proposed solution is described below and set out in Annex A. It covers Virgin Media's approach to the proposals in Question 2, along with those put forward by Ofcom in relation to the other nation-specific PSB channels.

### Virgin Media's Proposed Approach

In order to best achieve Ofcom's desired outcomes, we would need to introduce nation-specific versions of our EPG. Geographic differentiation of the EPG is something that Virgin Media has sought to avoid doing for the following practical reasons:

- The impact on national programming information relating to EPG numbers: Virgin Media currently publishes a printed and digital national EPG guide for our customers with consistent numbering to make communication and comprehension easier. Any change to this would make communication with our customers more fragmented, increase costs and add to the already complex nature of clearly communicating our products to our customer base;
- Operational impact: Such a change would create additional operational complexity within our call centres and for our technical teams when diagnosing and managing outages, faults or issues impacting subscribers. In these instances, staff will first have to identify the EPG configuration relevant to the customer in question in order to then begin to deal with the query or diagnose the issue.

Virgin Media's proposed approach is dependent on the BBC providing Virgin Media with HD versions of BBC One for Wales, Scotland & Northern Ireland. This would require the BBC to include either HD or upscaled SD local opt outs. Recent moves by the BBC to launch HD versions of BBC Two in both Wales and Northern Ireland by the end of November 2018 support Virgin Media's belief that this can be accomplished. [✂]

### **Q3) Do you agree that BBC Four should be guaranteed a slot within the top three pages of all EPGs?**

Please see our response to Question 2.

### **Q4) Do you agree that the designated public service News channels (currently BBC News and BBC Parliament) should be guaranteed slots on the first page of the news genre section or an equivalent position within the grouping of news channels on the EPG, as applicable?**

Please see our response to Question 5.

### **Q5) Do you agree that CBeebies and CBBC should have guaranteed slots on the first page of the Children's genre or area of the EPG, as applicable?**

Within Virgin Media's current EPG, both designated PSB News channels, and the CBeebies and CBBC channels, are placed within the first page of their respective genres. These channels are popular and well known within their genres, which creates an incentive to ensure that customers' expectations about their discoverability are met. Virgin Media is not aware of any evidence to suggest that there is a risk of their prominence being reduced. As such, we see no justification for mandating guaranteed positions.

**Q6) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?**

Please see our response to Question 2.

**Q7) Do you agree that local TV should be guaranteed prominence within the first three pages of UK wide EPGs?**

We believe this proposal is disproportionate and therefore it is not supported by Virgin Media. Over time, the obligations to which these services are subject have been diluted. For example, ESTV has been permitted to reduce the amount of local programming that it broadcasts. Affording local TV a prominence guarantee would 'gift' additional benefits to the broadcasters of these services, without any corresponding adjustment to their requirements. Further, with Ofcom recently choosing not to advertise or re-advertise local TV licenses in a number of areas where such licenses have not been awarded to date, the policy of attempting to ensure substantial prominence for local TV appears inconsistent. If such prominence was to be imposed, the disruption caused (including to consumers) by the need to reposition other channels, would potentially make the future carriage of these channels hard to justify.

**Q8) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of relevant Nation specific EPGs e.g. S4C in Wales, BBC Alba and BBC Scotland in Scotland?**

Please refer to the response given in Question 2.

**Q9) Do you agree that local TV should be guaranteed prominence within the first three pages of relevant regionalised EPGs?**

Please refer to the response given in Question 7.

**Q10) Do you agree with our proposals to ensure prominence for either the SD or HD version of BBC channels rather than both?**

Please see our answer to Question 11.

**Q11) Do you agree with our proposals to allow broadcasters to swap HD simulcast variants of their SD designated channels, such that those HD variants could occupy the slots which the SD channels would be entitled to?**

As more and more customers consume content in High Definition (HD), it is vital that we as platforms move to meet those needs. [3<]

If prominence is required for both SD and HD variants, meeting the various prominence needs of these PSB services would not be possible due to the lack of available EPG slots.

HD is quickly becoming the default viewing experience for our subscribers. It is a good time for the prominence regime to be brought up to date to reflect consumer preferences such that the prominence requirement applies only to HD versions of the PSB linear channels. In order to achieve this, it will be necessary to ensure that in all instances, the PSB HD channels are provided in all of their regional variants.

**Q12) Do you agree with our proposal to provide a 12 month transition period once the Code is finalised?**

In light of the work required by Virgin Media to introduce our proposed EPG changes, a transition period of twelve months should be the minimum period of time allowed. In this time period, Virgin Media would need to undertake numerous lengthy activities to ensure that the relevant changes could be implemented, alongside implementing a strategy for communicating the changes to our customers and reworking the Virgin Media website and printed materials to reflect the move to a nation-specific EPG. Virgin Media is aware that our proposal is dependent upon the BBC making changes that, once made, would allow us to take the necessary steps towards implementation of our proposal. Virgin Media is, however, not aware of the timescales involved in the changes that the BBC would need to make.

**Q13) Do you think that the prominence regime should be extended to ensure EPGs themselves can be easily found?**

Extending the prominence regime to the location of the EPG itself is a proposal that Virgin Media rejects. As Ofcom has set out, linear viewing remains the most popular option for viewers when they are consuming content. In August 2018, 89.7% of customer viewing on Virgin Media's TV platform was linear broadcast content – this is a clear indication that Virgin Media's customers are able to locate easily our EPG. It is in our and our customers' interests to maintain a user interface environment that meets customers' expectations. There is, therefore, no case for extension of the prominence regime to ensure that EPGs themselves can be found easily as it is clear to Virgin Media that customers' value using our EPG and, therefore, it would not be in our interests as a platform to make this difficult to discover.

**Q14) Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?**

Virgin Media agrees with the factors for consideration that Ofcom has identified.

**Q15) Do you agree with the principles we have set out? Are there other principles that should be considered?**

Virgin Media agrees with the principles that Ofcom has set out within the consultation.

**Q16) Do you think that the prominence regime should be extended to ensure PSB Players can be easily found?**

As acknowledged by Ofcom, PSB players are currently widely available and easily discoverable across the majority of platforms. As we have set out in our response to previous questions, there is a strong commercial incentive on platforms to ensure that content that consumers value and prioritise is easily discoverable. Therefore, regulation in this area is unnecessary.

Although these Players contain a variety of PSB content, in many cases this content can be in the minority. For example, alongside its PSB content, ITV Hub prominently displays ITV2 content such as Love Island and Weekender: Boat Party, whilst All 4 highlights numerous E4 shows along the lines of Celebs Go Dating & Made in Chelsea, amongst many others. Requiring platforms to afford these Players prominence would therefore be disproportionate – and there is no evidence that PSBs are willing to entertain the obligations that a PSB designation would confer on their players, such as imposed quotas for defined PSB content. In addition, affording prominence to non-pure PSB players could potentially distort the competitive landscape. PSB Players are popular amongst Virgin Media customers and so, as with the PSB channels themselves, this gives rise to a strong incentive to ensure that they are easily discoverable. It is also worth noting that all of the PSB players take advantage of the Virgin Media platform's search functionality enabling viewers to discover content held within the Players themselves without having to access them directly.

**Q17) Do you think that the prominence regime should be extended to ensure PSB content can be easily found via recommendations and/or search? If so, what key parameters would you set for this aspect of the regime?**

No. Virgin Media firmly believes that search and recommendations should continue to remain outside of the prominence regime. There is a clear distinction between disaggregated content, and content that is packaged up within a 'gated environment' such as within a Player or a channel. There is a difference too between consumers undertaking a specific 'search' (e.g. to search for subject matter or genre-specific content) and the accessibility of content of public value.

Content search results should make sense to the consumer. If a consumer searches for specific content which is not PSB, they should not be returned with PSB content that is irrelevant to their request. Further, in a world of personalised recommendations based on past viewing behaviour, it will not always make sense that PSB content is promoted to the consumer – Virgin Media should be able to innovate to offer consumers what they want, and consumers should trust what is presented to them and not feel that such choices have been manipulated. The search functionality in Virgin Media's set top boxes operates to a strict set of parameters, based on customer viewing habits and reflecting their preferences. The prominence of the PSB channels within the linear EPG is a suitable window through which consumers can discover content. If people chose not to view PSB channels/programming with this prominence advantage they should not then have such content forced upon them via the search functionality. If this is the case, the programmes that they do want to see are given a lower priority, something clearly not in the interests of the individual customer.

We are concerned that extension of prominence to search and recommendations would inhibit consumer choice (in the case of search) and stifle innovation (in the case of recommended content). Ofcom's focus should be on ensuring that consumer demand, and innovation to meet that demand, is at the forefront of its consideration – including, for example, by ensuring that platforms are not encumbered by unnecessary and disproportionate requirements, such as unwarranted extensions of the PSB prominence regime.

**Q18) Do you think that the prominence regime should be extended to platforms and devices not currently captured by the EPG prominence regime? If so, how do you think the regime could be extended and who should be captured?**

Virgin Media has no comment to make in response to this question at this time.

**Q19) Do you think that the prominence regime should be extended to online services? If so, who should be captured?**

Virgin Media regards the BBC's (and others') relationship with Netflix, Amazon etc. as a commercial one and outside of the PSB compact. As this is a commercial relationship through BBC Studios, with the intention of generating revenue, the BBC is quite able to make prominence and search part of those discussions. Therefore, Virgin Media believes that it is not for Parliament or Ofcom to intervene and regulate in this area at the current time.

**Annex A: Virgin Media Proposed EPG amendments**

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