



# Review of competition rules in the EPG Code

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BBC Response

25 September 2020

## **1. Introduction**

The BBC welcomes Ofcom's review of the FRAND terms governing the EPG and the opportunity to comment on the proposed amendments to the EPG Code. As Ofcom has found, the EPG and slot positions therein continue to serve an important role in bringing audiences to our linear TV content. We therefore consider that more clarity on a number of FRAND issues could be hardcoded into the EPG Code to create business certainty (both for EPG providers and channel providers) and to prevent any circumvention of the Code that would hinder its effectiveness in securing fair and effective competition over EPG slot positions. We set out below areas where we consider that the Code would benefit from greater specificity and expansion.

We are happy to discuss any of the issues raised in this response, as Ofcom wishes.

## **2. Ofcom's proposed amendments to the Code**

### **2.1 Transparency**

Ofcom has proposed adding to the Code additional language on transparency in EPG provider consultations with channel providers. We consider that such transparency is crucial to supporting a fair and effective competitive process and for this reason think Ofcom's language should go further. Ofcom's consultation document has detailed the expectation that EPG providers should: inform all channels of their intention to undertake a review, set out details of the review, ensure there is a reasonable timeframe for consultation, and set out an explanation for the final decisions taken and how channel providers' comments have been taken into account.<sup>1</sup> We would encourage Ofcom to make these expectations explicit in the Code itself, and in particular, to emphasise the requirement of transparency around the final decisions that EPG providers take. Ofcom's proposed addition does not reflect the aforementioned sentiment that EPG providers have an obligation to follow due process and show proper consideration for the interests of the channels their decisions affect. Instead, as is currently the case, EPG providers could decide to move channels without providing justification.

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<sup>1</sup> Consultation: Review of competition rules in the EPG Code, paragraphs 4.18 to 4.20.

## 2.2 Two year review period

Ofcom has proposed to remove the intention to carry out a review of the Code every two years and to instead review this “as appropriate”.<sup>2</sup> Given the continued importance of the EPG to linear channel providers and the rapid pace of change in the media landscape, we consider it important that Ofcom maintain at least a two year review period. We would therefore encourage Ofcom not to adopt this proposed amendment.

## 3. Further issues for consideration

### 3.1 Additional channel types in the EPG

We wish to draw to Ofcom’s attention the instances of additional channel “types” which some EPG providers have afforded themselves the right to include in the EPG, but which do not appear to be explicitly governed by the Code. For example:

- Virgin Media places a home page channel in EPG position number 100, ahead of BBC One in position number 101. We understand that this channel comprises a combination of marketing content and trailers, as well as occasional simulcasts of other channels. This is, in our view, a possible loophole in the Code and we encourage Ofcom to investigate the insertion of platform-owned channels ahead of position number 101 in the EPG further.
- Virgin Media also has EPG placeholders for Netflix and YouTube, and includes its own VOD channel “My Virgin TV Kids” at EPG position 700.<sup>3</sup> It is not clear to us whether it is permissible under the EPG Code to include such services in the EPG, and we encourage Ofcom to investigate this further.

### 3.2 Futureproofing the EPG Code for the move toward IPTV

We encourage Ofcom to update the EPG Code to govern the delivery of IP channels to ensure the Code is futureproofed for the move toward IPTV. Ofcom’s consultation document does not make clear whether the scope of the current Code includes Smart TV manufacturers and operating system providers. We note two prominent trends arising on IPTV which we consider should be explicitly addressed in Ofcom’s EPG Code.

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<sup>2</sup> Consultation: Review of competition rules in the EPG Code, paragraphs 4.33.

<sup>3</sup> See Virgin’s own description of the channel at <https://www.virginmedia.com/corporate/media-centre/press-releases/virgin-tv-launches-personalised-video-on-demand-channel-for-kids-in-partnership-with-zonetvmtm>

### 3.2.1 Prominence of the linear EPG

Ofcom's consultation document makes no mention of the placement of the EPG within the device UI. However, a clear theme of the recent Mediatique report commissioned by Ofcom<sup>4</sup> is the impact on the linear EPG from the growing number of video-on-demand competitors vying for prominence on the UI.

As the return on investment grows for on-demand services and monetisation opportunities in the UI increase, IPTV platforms' incentives will be to increasingly give prominence to video-on-demand services and other content propositions at the expense of the linear EPG. As a practical example, Sky Q initially attempted to move the live TV linear EPG several clicks away from the home screen (with BBC One being approximately 10 clicks away from the home screen). While the decision was sensibly reversed, such a move would have had a significant detrimental effect on all linear channel providers. Nevertheless, Sky Q still does not give highest prominence to the linear EPG on its UI.<sup>5</sup> This too applies for some smart TV manufacturers whose own IP services are placed ahead of the linear EPG in their UI. Indeed, OEMs and platforms are seeking to use the value of the linear EPG to build new habits with users by placing various service alternatives in front of the user before they get to the linear EPG.

Similarly, it is important that established, high valued routes for audiences to navigate to linear content are not obstructed. In this regard, we consider it fitting that: (i) a linear "guide" button should be present on all TV remote control units, or at the very least on those with shortcut buttons to VOD services, and (ii) audiences should be able to navigate to linear content via operating number keys on the remote control in all parts of the UI, in light of the evidence of some OEMs partly disabling this.

It is ultimately futile to secure effective competition over EPG slots if the EPG itself has low discoverability. Therefore, we consider that the Code should include explicit protections governing the prominence and accessibility of live TV and in particular the prominent placement of the linear EPG in the UI and on the remote control.

### 3.2.1 *De facto* EPG environments for IP-channels

Major smart TV manufacturers appear to be operating EPG environments for IP-delivered channels. These manufacturers either list their IP channels directly after the linear channels in a single EPG, or in a separate IP-channel-specific EPG. Despite the fact that these smart TV manufacturers do not have EPG provider

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<sup>4</sup> Connected TV gateways: review of market dynamics, Mediatique, August 2020.

<sup>5</sup> EPG Prominence: A report on the discoverability of PSB and local TV services, Ofcom, July 2018.

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licences, it is clear that they are *de facto* operating EPGs.<sup>6</sup> Similarly, “Big Tech” platforms and TV operating systems are also launching IP-channels in a listing format akin to an EPG. As such, these players should sensibly be governed by Ofcom’s EPG Code and its FRAND terms.<sup>7</sup>

Inclusion of IPTV players in the code would also redress the emerging issues within their IP-channel EPGs. First, as mentioned previously, the placement of IP channels and services ahead of the linear EPG on the UI. Second, the requirement for users to download and sign in to a player app before they are shown the IP channels available to them. Governance pertaining to these and other issues could then be incorporated into the Code, ensuring fair and effective competition in the move toward IPTV.

Therefore, we encourage Ofcom to require IPTV manufacturers and operating system providers to obtain EPG provider licences, and to be included in the scope of the EPG Code.

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<sup>6</sup> We note that Samsung, LG and BT all have a similar setup with regards to their IP-channels being listed in addition to the DTT EPG. In contrast to Samsung and LG however, BT does have an EPG listings policy for its IP-delivered channels on YouView.

<sup>7</sup> “Big Tech” here refers to the large technology companies with growing activities in the media sector, such as Amazon, Apple, and Alphabet.