



# Access to on-demand services on TV platforms

Terms of Reference

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## Section 1

# Ofcom's assessment of access to on-demand services

- 1.1 This document sets out our terms of reference for the assessment of access to on-demand content on TV platforms, and competition issues in relation to these services as they grow in popularity. Its purpose is to inform stakeholders of the focus and scope of the assessment, and our intended approach in advance of a consultation document setting out our preliminary views.

## Introduction and context

- 1.2 Our duties require us to secure the availability of a wide range of high quality TV services. We are therefore concerned to ensure that consumers can access content they value on the TV platforms of their choice. In particular, as set out in our Review of Public Service Broadcasting (PSB),<sup>1</sup> part of the structure underpinning the PSB framework is the carriage of that content across a range of platforms. One question we are exploring in that review is whether a faster shift away from live/linear TV viewing to on-demand viewing may challenge the PSB system in its ability to deliver its intended public policy objectives.
- 1.3 More generally, the ability to access content, both PSB and non-PSB content, on-demand, at any time, at any place and on a range of devices, has the potential to unlock significant consumer benefits, better meeting audience needs through better targeting, personalisation, greater convenience and deeper engagement. Our assessment will consider whether competition issues exist or are likely to arise on TV platforms which could diminish the benefits that consumers would otherwise enjoy from on-demand content.
- 1.4 Depending on the nature of our findings, we will consider whether there are areas which would benefit from continued monitoring, or if there are any concerns, whether intervention may be merited, taking account of both our competition and public policy duties.

## On-demand TV services

- 1.5 Traditional linear broadcast TV continues to have enduring appeal, with UK consumers watching on average around three and a half hours per day. Consumers make decisions about how to watch linear TV by choosing a pay TV or free-to-view (FTV) TV package. That TV package consists of a selection of content (TV channels) as well as a user interface to navigate that content, typically an electronic programme guide (EPG), and potentially other services such as personal video recording functionality.<sup>2</sup> In order to provide this, access to a delivery platform is required; for example, Freeview using digital terrestrial TV, Sky's satellite platform, or Virgin Media's cable platform.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/broadcasting/reviews-investigations/public-service-broadcasting/psb-review-3/>.

<sup>2</sup> In addition the TV package may be bundled with non-TV services such as broadband and telephony.

- 1.6 However, convergence between communications and media services is changing the way in which consumers engage with these services and consume content. Ten years ago the number of TV platforms was limited. There is now a wider, and increasing, range of ways that content can be accessed, increasing the choice enjoyed by consumers in how, when and where they access content. In addition, the way content is delivered is evolving. Content is now being viewed in ways beyond the broadcast linear TV channels, with video on-demand (VOD) services increasing in popularity.
- 1.7 The PSBs have developed catch-up TV services, such as BBC iPlayer and ITV Player, which enable viewers to watch on-demand programmes that have been broadcast on linear TV channels. These on-demand services were first available online (e.g. by using a laptop), with linear TV platforms then developing the capability to provide access to these services. The PSB on-demand catch-up services are now well established and are all available on all major linear TV platforms. The implementation of these on-demand services has taken account of the capabilities of each of the platforms; for example, on Sky+HD and Virgin Media V HD set-top boxes, the on-demand content is delivered from the platform operator's own servers, while in other cases it is delivered over-the-top (OTT) using the internet.
- 1.8 Other content providers, such as Netflix and Amazon Prime Instant Video, are also offering on-demand services. These are typically delivered OTT using the internet and so may not be currently available on some platforms.
- 1.9 In addition, content providers, including PSBs, are increasingly using OTT delivery to evolve their on-demand services and develop their content offerings further. For example, the BBC offers its Connected Red Button (CRB) service, which brings together linear TV, online content and BBC iPlayer. The CRB is available on a range of platforms, including Virgin Media's TiVo and YouView set-top boxes. The BBC Trust is also consulting on a proposal to deliver BBC Three online only, and Channel 4 intends to replace its 4OD service with a new service – All 4 – which will integrate broadcast channel content and on-demand content through a single user interface.
- 1.10 With new ways of delivering content, and content providers increasingly looking to make use of these opportunities to provide new services to consumers, it is now an appropriate time to consider whether there is likely to be effective competition in the delivery of these new content services to the benefit of consumers.

## **Focus and scope of assessment**

- 1.11 To date, consumers have benefited from competition in the delivery of TV services through a choice of platforms, range of prices and innovations such as multichannel TV and HD services. We want to ensure that consumers continue to benefit from competition in TV services as new ways of delivering content evolve.
- 1.12 Factors such as vertical integration of content providers and platform operators, and increased convergence and bundling of services, can add complexity to the way in which firms compete with each other. Competition concerns may exist or emerge if a platform provider can engage in behaviour to restrict access to its platform, and hence its viewers, for example, in order to benefit its own content offerings. To the extent that a platform provider engages in these activities and consumers are unable to access the content easily via alternative means, intervention to enable access may be appropriate.

- 1.13 We also recognise that new functionality and new ways of delivering content present opportunities for innovation and investment. There is uncertainty in how some of these services will develop and an environment in which both platform providers and content providers have incentives to innovate and invest is important if consumers are to benefit from these opportunities.
- 1.14 Taking account of these observations, the central hypothesis that we propose to consider is that over the next three to five years:
- a) a significant proportion of viewers will continue to identify a single platform as the main way in which they watch TV content;
  - b) the majority of consumers' viewing will continue to be linear TV, so that linear TV platforms continue to be of primary importance;
  - c) the existing platforms used to view linear TV are also likely to be important platforms for the delivery of VOD content and OTT services; and
  - d) there is a potential for existing platforms to use their position in the viewing of linear TV to gain a position of strength in the viewing of VOD and OTT services. There is a risk this could diminish competition in the delivery of content services.
- 1.15 The scope of our assessment will therefore focus on linear TV platforms and traditional broadcast platforms in particular, given that the significant majority of TV viewing is anticipated to remain on these platforms over the next few years. These platforms may have the ability to act as a 'gateway' in terms of providing access to a significant number of viewers. Areas of interest will include the availability and integration of linear TV channels with VOD and OTT content services, as well as user interfaces and navigation services which enable the content available on the platform to be easily discoverable.
- 1.16 In contrast, while new platforms exclusively offering on-demand content using OTT delivery are relevant to our analysis in terms of how consumers engage in new content services such as VOD, these will not be the focus of our assessment.

## Approach to assessment

- 1.17 Our assessment will involve gathering information in order to analyse factors that may influence platform developments and behaviour. A key part of this work will involve understanding the perspective of consumers, including conducting consumer research. In particular, we intend to consider:
- a) consumer behaviour: To what extent do viewers rely on a single platform vs multiple platforms as their primary means of accessing linear TV services and VOD or OTT services? What factors determine viewers' initial choice of TV platform and under what circumstances are they likely to switch platforms or make use of multiple platforms? How do viewers engage with TV platform user interfaces and how do they navigate to the content they wish to watch (e.g. between linear TV and VOD services)?;
  - b) consumer impact: Is there a potential for platforms to act as a gateway which might result in competitive distortions and poor consumer outcomes? For example, could third party content services be disadvantaged by (i) restricting access to interactive services that directly enhance linear TV channels? (ii) designing user interfaces to provide greater prominence or easier navigation to

some new content services rather than others? (iii) not providing access to third party standalone VOD services?;

- c) likely consumer outcomes: Our analysis will consider whether any adverse consumer outcomes are likely to emerge in practice, and the circumstances under which concerns may arise, taking into account factors such as the ability of platform operators to influence these issues and any incentives they may have to do so.

1.18 In addition to understanding the consumer perspective, we will engage with platform operators and content providers:

- a) Platforms: including both FTV platform operators (Freeview / Digital UK, Freesat and YouView), pay platform operators (Sky, Virgin Media, BT, TalkTalk) and other new platforms to understand the scope of services offered, incentives to work with content providers of linear TV and VOD services, and how these may evolve over the medium term;
- b) Content providers: including PSBs given the importance of the availability and discoverability of public service content, to understand their approach to, and concerns about, gaining access to platforms to deliver VOD content.

1.19 We anticipate publishing a consultation document setting out our preliminary findings in the autumn of 2015. Any subsequent steps would depend on whether we identify areas which would benefit from continued monitoring, or whether there are any concerns which merit considering intervention and further consultation.

1.20 We would be pleased to receive comments about these Terms of Reference and the scope and content of this assessment. To let us know your thoughts please email [richard.orpin@ofcom.org.uk](mailto:richard.orpin@ofcom.org.uk), by 17 April 2015, or contact Richard Orpin on 020 7981 3243.