BT response to Ofcom's review of the rules for prominence of PSBs and local TV

October 2018

Overview

Why this matters to BT

BT is in a unique position to comment on the issue of PSB prominence. Across our three brands – BT, EE and Plusnet – we have a presence in around half of all UK households. As a broadcaster, a TV platform, and a provider of broadband and mobile phone services, we are able to consider how customers access content across a range of different platforms and devices.

We are a shareholder, affiliate ISP and content provider in the YouView platform. We're also an important content-aggregator, with commercial partnerships in place with providers including AMC, Netflix, Amazon and Sky (for the future launch of Now TV). Our aim is to ensure that our customers have access to an extensive content offering from a range of different sources, including the UK PSBs.

We continue to invest in sport content, with innovation at the heart of everything that we do. This includes the launch of the UK's first dedicated 4K UHD channel in 2015 and partnering with YouTube to simulcast the last two UEFA Champions League Finals.

We value the role played by PSBs in delivering UK-centric content and PSB content remains incredibly popular with our customers.

Current PSB prominence

There are six channel listings per page on the YouView Electronic Programme Guide (EPG), which is used on the BT and Plusnet TV services. The decision to organise the platform in this way was made on the basis of audience expectation and commercial reasoning.

We support the regulatory requirement that the five PSB linear channels hold the top five slots on EPGs and - without any regulatory intervention in place at present - we are also committed to placing PSB on-demand players in a prominent position on the YouView platform.

We already comply with many of the proposed changes suggested by Ofcom in this consultation document regarding the placement of PSB channels within the top three pages of the EPG. We do so not because this is required of us, but because it's what our customers want and expect.

We are concerned that, if Ofcom decides to introduce more prescriptive prominence requirements for PSB channels, then this would not only disrupt existing channel listings but would also stifle future innovation. With the advance of technologies such as voice activation, it's likely that consumers will find content in new and different ways and EPGs will need to evolve with this to meet their needs and expectations.

We therefore believe that platforms should retain the ability to allocate channels within the genres of their EPG channel listings, rather than be subject to more prescriptive regulation than applies today in this area. Provided that the PSB channels continue to produce high-quality content that is popular with viewers, platforms will continue to be incentivised to afford them prominence, based on customer expectation and in line with existing regulatory requirements.

One important means of future-proofing the regulation of electronic programme guides which is not addressed in this consultation document would be to move away from the current framework based on ‘traditional’ channel listing and methodologies and towards one which is more technology-neutral.

The current regulatory regime managed by Digital UK operates a listings methodology which is unsatisfactory from a customer perspective. This is because it distinguishes between different transmission technologies, rather than grouping all Ofcom-licensed channels by genre. Consequently, we are not able to group channels of the same genre together if they are distributed using different technologies (i.e. DTT and IPTV). This is not appropriate for the digital age and we urge Digital UK and Ofcom to review this.

The future of the prominence regime

In principle, we are supportive of the idea of introducing a regulatory backstop to ensure that PSB content is appropriately displayed in a prominent position in non-linear TV environments. It’s what our customers want and expect, and it meets the public policy objective of ensuring public-funded content is easy to find and enjoy.

However our support for prominence of PSB on-demand players is conditional on two important caveats: firstly, that the extension of regulatory obligations is technology neutral and applies equally to all platforms which carry PSB content; and secondly, acknowledging that in return for providing a backstop regulatory protection for the PSBs with regards to prominence, an appropriate PSB supply obligation should also be considered.

In our view, it is appropriate that all PSB services which are granted regulatory prominence protections should also be subject to “must offer” obligations, equivalent to those in Section 272 of the 2003 Communications Act.

Although these conditions may create some challenges, they need to be addressed. Otherwise, an asymmetrical regulatory environment would be created (for example if only “traditional” TV platforms were in scope) which would not only disadvantage platforms which have historically been more ‘PSB-friendly’, but would also not meet the public policy objective of ensuring PSB content is easily accessible to consumers.

Today, our television customers enjoy channels through a hybrid of IP channels and DTT. However in the context of YouView, the current Digital UK EPG policy means that we are unable to integrate linear broadcast and IP-streamed content in pragmatic and consumer-friendly ways.

Our overall goal is to provide customers with a seamless experience, whether they are viewing content via SVOD players, linear TV channels, catch-up services or content recorded on their PVRs. Consequently, the integration of these different content pathways into user-interfaces (UIs) also needs to be seamless.

In their 2017 statement following the last EPG consultation, Digital UK said: “regarding the integration of IP-delivered services into their relevant content genres, and the possible creation of more granular genres, Digital UK will continue to monitor the evolution of the platform and viewer preferences in the coming years and decide whether, and when, it may be appropriate to consult on these matters"[1]. We believe that the lack of specificity and urgency on this issue is fundamentally against the interests of viewers who do not recognise artificial technology distinctions.

Going forward, it will be increasingly important that platforms like ours are able to integrate linear broadcast and IP-streamed content in pragmatic and consumer-friendly ways. Ensuring that the PSB channels and services are afforded appropriate prominence in this environment will be very important.

Our view is that industry, Government and Ofcom should begin discussing a timetable for this eventuality now, and that this review of the prominence regime is an appropriate opportunity in order for Ofcom to do so.

A plan or timetable would allow stakeholders time to adapt and prepare. Without one, the market may be left to larger, international operators creating a more significant risk to the long-term health of the PSB ecosystem.

Finally, we agree with Ofcom's principle-based approach that any future regime should not inhibit future developments around personalisation, search transparency and viewer choice. In our view, any regulation of search and recommendation functionality *will* stifle choice. There are also challenges in defining PSB content in the context of search and recommendation.

For this reason, although we are supportive of Ofcom's proposals to introduce some sort of regulation to ensure PSB prominence obligations remain appropriate for the future, we do not consider it appropriate to extend prominence obligations to search.

[1] See http://www.digitaluk.co.uk/__data/assets/pdf_file/0010/92296/LCN_Consultation_2017_Statement.pdf [pages 14 and 15]

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?

We understand the importance of PSB prominence to the UK broadcasting ecology, and support the role that it plays in informing public debate.

In the linear environment we continue to support the requirement that the five PSB channels hold the top five slots on EPGs UK wide or in the UK outside of Wales. This is an important part of the PSB compact and it aligns with our consumers' expectations.

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?

As above, we support the requirement that the five PSB channels hold the top five slots on the EPG, and we recognise that this guarantees slot four of the EPG for S4C in Wales.

However, beyond this, we urge caution about drafting prescriptive rules which could result in outcomes which prohibit or hinder innovation of the EPG platform in the future; for example, associating prominence to a particular page of the EPG.

The inherent risk with this approach is that it does not future-proof the development of EPGs.

From a BT TV point of view, the proposal to move Channel 4 to the first page of the EPG in Wales would mean reallocating ITV2 on our platform. This has implications for our commercial arrangement with ITV, and could cause confusion to viewers who are already familiar with ITV2's channel number on the EPG.

Furthermore, it's unlikely that this proposed change would only affect viewers in Wales (as per Ofcom's analysis in the impact assessment which accompanies this consultation). Channels aim for consistency wherever possible across UK-wide EPGs, so that they remain easy for consumers to find and so that marketing communications contain aligned messaging across the nations. It is therefore likely that if this change was to be introduced, it would require EPGs to be readjusted on a pan-UK basis, causing confusion for viewers across the UK.

Finally, we are not aware of any research which suggests that Welsh viewers are unable to easily locate Channel 4.

Given the lack of evidence to support the need for this regulatory provision, the potential for viewer confusion and the likely commercial implications which it would have, we do not agree with the proposed changes to the rules governing EPG listings in Wales.

If Ofcom does decide to proceed with this proposal, given the potential impact across all EPGs in the UK, we would encourage Ofcom to conduct additional research ahead of introducing any changes, so that the impact on industry and viewers can be better understood.

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

At present, BBC Four is at slot 9 on the YouView platform, which is located on page two of the EPG. Consequently, we already comply with this proposed wording, so no changes would have to be implemented on the YouView EPG.

However, as noted above, we do not consider it to be beneficial for Ofcom to introduce prescriptive regulations about PSB prominence in a way that is tied to the existing EPG framework (e.g. with reference to particular “pages” of an EPG).

Furthermore, it is not clear from this consultation whether similar prominence requirements would be applied if the make-up of PSB channels were to change in the future. For example, what would the process be if a new PSB channel launched in the UK, or if BBC3 was to return from its current online presence into the traditional linear space?

Affording prescriptive regulatory protections that are tied to page numbers to all new PSB services could create a significant disruption to channel listings across all EPGs, but we appreciate that it would be difficult for regulatory protections to be afforded to some PSB channels and not others.

For this reason, and given the lack of evidence of customer harm as a result of BBC Four not having a regulatory guarantee of being placed in an EPG slot in the top three pages of all EPGs, we do not support this proposal.

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?

We understand the important role which broadcast news channels play in delivering accurate and impartial news programmes to viewers in the UK. We therefore agree that Ofcom-licensed news services in the UK, including PSB, should be easily accessible on EPGs.

In addition, we do not consider that there should be any distinction between channels delivered via DTT and those delivered by IPTV. Channels should be listed in genre categories, with appropriate flexibility for platforms to decide on channel listings.

On our platform, the BBC News Channel (channel number 231) and BBC Parliament (channel number 232) occupy the first two slots of the news genre section, so in practice no changes to our platform would have to be made if these proposed changes were incorporated into the EPG Code.

However, we do not see the long-term benefit for consumers or PSBs of linking prominence to an EPG page, which varies by platform and which ties the regulations to a specific means of accessing content, which might not remain prevalent in the future.

Finally, EE TV does not offer sections within the EPG: it simply displays all channels in their number order. Consequently, if the Ofcom EPG Code is revised following this proposal, Ofcom should clarify this is applicable to only those platforms which include genre sections.

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?

We do not consider regulation in this area to be necessary, although in practice, our platform would not be directly affected. Please see our response to Q4 in relation to EE TV.

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

We do not consider regulation in this area to be necessary, although in practice our platform would not be directly affected.

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

We do not consider regulation in this area to be necessary.

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?

We do not consider regulation in this area to be necessary.

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

We do not consider regulation in this area to be necessary.

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

We agree that prominence should be for either the SD version or the HD version, not both.

Viewers benefit from being able to watch a TV channel in the best possible quality, so we therefore support the ability for PSBs to showcase their HD, as well as their SD, services.

However, guaranteeing prominence for both SD and HD channels would mean the BBC channels would be at the top of the EPG in almost all genres, resulting in a disproportionate impact for commercial channels who would be pushed down the EPG in order to clear the necessary slots.

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?

When creating content for our BT Sport channels, we have technology and innovation at the heart of everything we do, not only with respect to formats such as HD and 4K UHD, but also utilising Virtual Reality to enhance our audience’s viewing experience. So, it’s important to us that viewers get the best experience possible.

However, for commercial and consumer experience reasons, it might not always be possible to broadcast everything in HD.

We believe that there is merit in allowing broadcasters the flexibility to swap HD and SD channels simulcast variants of their designated channels because it stimulates innovation by broadcasters into better viewer experiences by allowing them to promote services such as HD rather than SD in their most prominent slot. However, this should be subject to the relevant platform / EPG menu structure being able to support this proposed “swapping" functionality.

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

Some of Ofcom’s proposed changes would require considerable time to deliver, especially as further commercial implications would need to be considered. Any changes may also require individual platforms to redraft and, potentially, consult on their own EPG Policies. Therefore a *minimum* 12 month transition period is sensible.

The future of the prominence regime

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

The EPG is still one of the most common ways our viewers access content. It is therefore important that viewers can easily access the EPG, although search and recommendations also have an important role to play, as does consistency of channel numbering.

TV platforms require sufficient flexibility to develop their EPGs and User Interfaces (UIs) in ways that make content accessible to all in the future. Consequently, our view is that Ofcom shouldn't prescriptively mandate this as future consumer behaviours, expectations and needs cannot accurately be predicted.

This is an area where regulatory intervention is unlikely to be necessary, as it is in platforms' interests to ensure that the content which viewers want to watch is easily accessible to them. For this reason, we do not consider that regulation is required in order to protect the EPG regime itself. It will continue to be used for as long as it is valuable to the majority of consumers.

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

As noted earlier in this response, we consider that in practice, for as long as the PSBs continue to produce high-quality original content, it will be in the commercial interests of platforms and devices to ensure that this is easily accessible.

Regulation should be a backstop

Our view is that regulatory powers should be a backstop and only be triggered should commercial relationships breakdown. This model is one that operates today, for example in Ofcom's Code on the Prevention of Undue Discrimination. In this Code, para 5.11 states: "Ofcom would expect advertisers and broadcasters to attempt to settle any dispute between themselves prior to any complaint being submitted". We believe this same approach could be adopted for on-demand prominence.

Prominence should continue to be tied to the definition of PSB

These proposals aim to extend the prominence benefit to PSB content in the on-demand environment; but under Section 264 of the 2003 Communications Act, the BBC is the only public broadcaster for whom all of its channels and services have PSB status. All the other PSB players contain a mixed ecology of PSB content and content which was commissioned/acquired for their non-PSB channels.

Before introducing a prominence requirement, it is important that Ofcom clarifies how this would be tied to the definition of PSB.

Prominence should be considered as part of the PSB compact

The PSB compact provides a delicate balance between PSB benefits and obligations, and it is important to consider the compact in the round.

One area which Ofcom has not considered in this consultation is whether, as a quid pro quo for any extension of the PSB prominence regime to cover on-demand players, the PSBs should be subject to "must offer" obligations in relation to their on-demand players comparable to those applicable to linear channels under Section 272 of the Communications Act.

Such an extension of the “must offer” obligation to PSB players would be appropriate and provide much needed protections for new and emerging platforms seeking access to important content from the PSBs.

Prominence regulations should be platform agnostic

We believe that the prominence regime should be extended to include all relevant platforms and devices that carry PSB channels or services. Put simply, if platforms/devices such as smart TVs, TV sticks and games consoles carry any of the PSB on-demand players or channels, then they should give prominence to them, as well as traditional TV platforms. This includes platforms that utilise tiles on their UI, rather than placing PSB content under an ‘umbrella’ PSB player or portal.

To do otherwise, would create asymmetrical regulation which would not succeed in delivering the objective of ensuring that PSB content was easily accessible, however viewers chose to seek it.

In practice, we would expect that prominence would mean a requirement for on-demand players (or portals) which contain PSB content to be prominently positioned on the landing/home page (e.g. BBC iPlayer NOT portals such as BBC Sport and BBC News, which the vast majority of users access via the BBC website). The same reasoning could apply to TV sticks and smart TVs. For platforms such as Apple TV, the tile design could prioritise on-demand content with PSB status.

However, there are significant challenges to meet, especially in relation to devices such as smart phones and tablets. On these devices, where users can control what apps to download, where they place them and – ultimately – when to delete them, the concept of prominence becomes less clear and obvious. Although pre-loading PSB apps onto devices is possible (although only on those devices which have sufficient memory or resources), it requires restrictions imposed by mobile handset manufacturers who focus software around a global marketplace to be lifted.”

For example, Apple does not permit third party apps to be pre-loaded onto their smart phones and, for Android devices, every manufacturer would need to co-operate if pre-loading was mandated. Given these significant challenges, it would seem more pragmatic to mandate prominence within app stores themselves and/or within “TV” apps distributed by operating system providers which contain PSB content.

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

If implemented this extension of on-demand prominence could be incorporated into Ofcom’s periodic PSB reviews, to ensure the principles were being adhered to and assess the implications (if any) on the market.

Q16. Do you think that the prominence regime should be extended to ensure PSB players can be easily found?

Yes. A regulatory backstop could help ensure that PSB content, which plays a valuable societal role, continues to be easily accessible. However, as mentioned in our response to question 13, prominence should be applied as it is in the linear world: as part of the PSB compact (i.e. a benefit for PSBs in return for meeting certain PSB obligations). As we’ve stated, as part of the assessment of the PSB compact, we consider that the must offer obligation should be extended to PSB players, in return for receiving regulatory protection for prominence.

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, we do not believe the prominence regime should be extended to search and recommendation functionality. Our view is that paid-for search and recommendations should be prohibited. However, this prohibition should not encompass clearly recognisable advertising messages being shown to the consumer as part of their search/recommendation results.

In terms of legislating this functionality, there are practical challenges to this recommendation. For example, how should a series like "Top Gear" be treated within a search? Should the new series of "Top Gear" (premiering on BBC2) be more prominent than the older series shown on the channel Dave?

Secondly, prescribing rules in this area may have the detrimental effect of recommending series that the viewer simply does not want.

As the world of search and recommendation is still developing, such as incorporating technology like voice activation, we do not believe it is necessary or desirable to prescribe rules in this evolving space. Not only could it inhibit innovation but, to our knowledge, there is no evidence to suggest that viewers are confused or misled in accessing content they did not originally search for. As an example, if a viewer searched for 'Sherlock', wanting to view the BBC series, but the results gave more prominence to Sky's "Elementary" series (based on the same Conan Doyle characters), isn't it more likely that consumer behaviour would mean the viewer would simply scroll to the BBC series which they had in mind? If Ofcom or the Government were committed to legislating in this nascent space, then extensive research needs to be undertaken to support such a significant change. One area, however, in which there might be a case for prominence in search in exceptional circumstances, e.g. genres that have very high public value. For example, Ofcom might determine that in the interests of ensuring that citizens and consumers have access to reliable, unbiased news sources, Ofcom might wish to consider introducing a prominence requirement in search to promote appropriately regulated news providers in the UK.

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?

As noted above, it is critical that PSB prominence obligations are "platform agnostic" and that the prominence regime is extended to include all relevant devices that consumers use to view PSB content on i.e. smart TVs, TV sticks and games consoles, as well as traditional set-top boxes. Not doing so would create an uneven playing field and would not succeed in delivering the objective of ensuring that PSB content was easily accessible, however viewers chose to seek it.

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

At the moment, long-form PSB content is not viewed by large numbers of consumers in this way. Consequently, we do not believe any proposed rules should be prescriptive to include (or exclude) these platforms. However, this position could be assessed in Ofcom's periodic PSB review.