



## Ofcom's EPG prominence consultation

### Joint PSB position paper

#### Establishing a new framework for prominence

The PSBs continue to strongly support the principle of prominence for linear PSB television channels and welcome Ofcom's review of the extent to which this is delivered. But globalisation is fundamentally changing the media landscape. Technological change is facilitating intense global competition. Global online platforms and global TV distributors are playing an ever-increasing role in content distribution and discovery, attempting to disintermediate UK players. To address this growing threat, the critical priority on which the PSBs are agreed is to update legislation to modernise the current prominence regime by extending it beyond linear television and linear EPGs.

We believe the most effective legislative updates will not be based on trying to predict what future technologies for finding and accessing content will look like. Instead, key outcomes should be enshrined in legislation, and include a right to significant prominence for PSBs. Specifically, this should include:

- *Significant prominence for all PSB linear services and associated on-demand services provided by a PSB (or several PSBs):* The Secretary of State should maintain (and have the power to vary by Order) a list of these 'in-scope services'.
- *Significant prominence on all major user interfaces:* the regime should cover those who exercise editorial control of all user interfaces (UIs) on all major platforms, devices and services in the UK to consume TV or TV-like content. The Secretary of State should have the power to vary this definition by Order. In the event of dispute about whether a UI is in-scope, Ofcom should determine.<sup>1</sup>

The law should place a requirement on Ofcom to define 'significant prominence' within its guidance. It should also require Ofcom's guidance to specify:

- *Which UI functions in-scope services should be prominent within,* including (but not limited to) all those areas of UIs:
  - *Positioned by the UI provider as central to the user experience:* This will vary by UI as different providers emphasise different functionality, but is generally likely to include homepages, linear EPGs; VOD player landing pages; search and recommendations; or
  - *Used by a substantial number of people to access TV or TV-like content:* It is possible that areas of a UI are not prominently positioned but nonetheless have significant appeal to consumers<sup>2</sup>. Such functions are likely to include linear EPGs and VOD player landing pages.

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<sup>1</sup> In considering what constitutes a 'major platform' Ofcom should have the discretion to take into account a range of factors as it sees appropriate, potentially including the number of users, the volume of viewing delivered, its importance to certain demographics, or its place in the wider market.

<sup>2</sup> For example, linear EPGs remain a popular way to access programmes yet a platform might choose to make the EPG much less prominent

- *The degree of prominence to be provided, including (but not limited to):*
  - Where services are discoverable in their entirety (e.g. VOD app landing pages), in-scope services are easily discoverable and quick to access; and
  - Where individual pieces of content are discoverable as a result of editorial decisions and/or algorithmic curation, a substantial amount of such content should be immediately visible and attributable to the relevant PSB, and quick to access. The individual content displayed should be chosen by the relevant PSBs from the total catalogue of their in-scope services.

In putting in place its guidance, Ofcom should be required to have regard to:

- The need to deliver consumer benefit: High quality UK PSB content remains popular with UK audiences, and remains the bulk of content consumed despite the growth in choice. The prominence intervention should ensure that this popular content is not marginalised by global operators with an incentive to dilute consumer appetite for UK content over time and/or deliver global content deals and arrangements.
- The need to deliver citizen benefit: it is important that UI and content providers are able to continue to innovate to meet the demands their consumers. Taking account of consumer expectations is a part of this. But it is equally important that the citizen interest is served, for instance by ensuring a wide range of content from the PSBs is promoted, so ensuring people are encouraged to watch content that delivers the purposes and characteristics of PSB that they might not ordinarily have chosen. Where such interests appear to be in tension, the citizen benefit should take precedence.
- The need for prominence to be free and non-contingent: The degree of prominence offered by EPG operators should not be made contingent on other factors (e.g. prominence should not be reduced unless VOD rights are granted) or require payment by PSBs.
- The importance of ensuring sufficient transparency: UI operators should be open with consumers and industry about how they decide which content to include in which areas of their UI, and how they choose to promote it. This should include not only decisions about PSB prominence but also any commercial arrangements (e.g. paid-for prominence), editorial decisions, and any data / algorithmic approaches taken. Such transparency is important in relation to all scheduling and promotion, whether PSB or non-PSB content and services.
- The right of consumers to personalise: PSB prominence should not be enforced above audiences' own direct actions (e.g. viewers should be free to set their own favourites menu or rearrange the order of apps on a page). Nor should prominence override requests for specific programme assets with a single possible outcome (e.g. 'show me episode 2, series 3 of...'). But in search with any ambiguity, where more than one outcome may be presented or served to consumers, prominence rules should apply.

Such a regime can be implemented in a way that is both proportionate and effective, potentially functioning in a broadly similar manner to the way it does today (with some enhancements). Currently, the legislation is enabling. It delegates power to the Secretary of

State to set the channels within scope and enables Ofcom to decide how to apply the code. We believe the legislation should be updated to reflect developments in the market:

- Government: should retain enabling legislation, setting in law the required outcomes and giving the Secretary of State powers (after consulting Ofcom) to amend which services are in scope and the criteria by which user interfaces are assessed to be in scope so that the regime can be updated more easily as and when technology and audience needs and expectations change;
- UI providers: should be given the space to design products that work for consumers and foster competition, but given clarity as they do so on the minimum expectations of PSB prominence that those products should deliver. The regime should amend the existing requirement from publishing an EPG Policy to publishing a UI policy. Policies should be required to set out how UI providers have taken account of the views of the providers of 'in-scope services' and Ofcom; and
- Ofcom: should continue to hold responsibility for updating the prominence code, giving guidance as to practices to be followed, as it does today with the linear EPG code. It should determine whether user interfaces are in scope where there is disagreement. It should have a backstop role in compliance, taking firm action as necessary if either policies or outcomes do not comply with its code or guidance. Consideration should be given to the merits of requiring Ofcom to conduct reviews of the effectiveness of the intervention, perhaps every 3-5 years. It should continue its role in relation to FRND for UI relationships beyond prominence.