



Respondent Overview

Expert Media Partners (EMP) is responding as a participant in the UK audiovisual sector with an interest in platform regulation, content distribution, and the sustainability of the UK production and advertising ecosystem. EMP is the leading advisor and broker in Electronic Programme Guide (EPG) prominence, representing the buyer or seller in most transactions that have taken place over the last 12 years, working with all the UK's major broadcasters, and a wide range of smaller and mid-tier broadcasters. EMP has also conducted work for Ofcom on the value of EPG prominence.

We support Ofcom's main objective of ensuring that Public Service Broadcaster (PSB) services remain available, prominent and accessible on connected TV platforms. However, we consider that the consultation's focus on PSB prominence in isolation risks overlooking wider structural issues that will determine whether the regime is effective in practice.

The draft Code of Practice is of particular significance in this context. While the consultation is framed in terms of high-level principles, the draft Code sets out detailed expectations regarding interface design, including the positioning, ordering and visibility of services within connected TV environments. In practice, this moves the regime beyond general guidance and towards the regulation of a gateway to audiences that is functionally analogous to an Electronic Programme Guide. This has

important implications for how the regime should be structured, particularly in relation to fairness and market access.

EMP Responses

Question 1: Do you agree with Ofcom's proposed approach to securing PSB prominence on regulated television selection services?

We support the objective of securing appropriate prominence for PSB services. However, we do not consider that the proposed approach, taken in isolation, is sufficient to achieve Ofcom's stated aims.

The consultation focuses primarily on the positioning and visibility of PSB services within new platform interfaces which, as reflected in the draft Code, increasingly resemble EPG-like environments in their structure and function. While this is an important component, it represents only one aspect of a broader discovery ecosystem in which audiences increasingly find and consume content.

The draft Code makes clear that platforms are expected to determine service ordering, tile placement, and navigation hierarchy. In practice, this constitutes control over a primary gateway to audiences, similar in function to traditional EPG management, but within a more complex and dynamic IP-delivered environment.

In practice, audience discovery is shaped by search and recommendation systems, platform-level editorial and algorithmic choices, and commercial arrangements governing inclusion and visibility. In the linear world, this leads to significant additional value in more prominent (or lower) channel numbers, but in an IP-delivered world, there are many additional ways in which prominence is created.

As such, any prominence obligations that focus solely on listings and ordering of services risk being circumvented or diluted if the wider commercial and management systems that sit behind content discovery are not addressed.

We therefore consider that Ofcom's approach should be expanded to reflect the full range of factors that determine practical discoverability, such as personalisation, programmatic algorithms, and recommendation engines.

Question 2: Do you agree with the draft Code of Practice recommendations on how platforms should deliver prominence?

The draft Code provides a useful starting point in identifying practical ways in which prominence may be delivered, including the positioning of PSB services and treatment within search results. However, we consider that the recommendations place significant reliance on superficial platform implementation without sufficient safeguards regarding the deeper terms and conditions under which PSB prominence is provided.

Where platforms are required to organise and present services in ways analogous to an Electronic Programme Guide, this constitutes regulation of a key gateway to audiences. The draft Code goes beyond general principles and introduces specific expectations around interface hierarchy, including the relative positioning of PSB services and their visibility within core navigation pathways. This degree of prescription effectively regulates how audiences access content at the point of entry. Where regulation extends to this level, it is not sufficient to define outcomes (i.e. prominence) without also defining the conditions under which services are granted access to that prominence. In such circumstances, it is essential that prominence is supported by a wider regime of fair, reasonable and non-discriminatory (FRND) access principles.

Without such safeguards, platforms may retain the ability to impose disproportionate or distortive commercial terms, prominence may become contingent on broader and invisible commercial arrangements, and the effectiveness of the regime may be undermined in practice.

We therefore recommend that Ofcom explicitly incorporates FRND-style principles into its framework for platform access and prominence. The trade-off for PSB gifted

prominence must therefore be the establishment of a fair and level playing field for all broadcasters. A new regulatory framework ought not enable anti-competitive practices to emerge in the management of listings, navigation and recommendations for non-PSB services, particularly where those functions are now central to audience access.

Question 3: Do you agree with Ofcom's proposed approach to search and recommendations?

We agree that search and recommendation functions are central to content discovery and should be within scope of the prominence regime.

However, we consider that the current approach does not go far enough in addressing the role of platforms as algorithmic gatekeepers.

The concept of relevance in search results is not neutral and may be influenced by commercial or platform-driven priorities. Personalisation may further obscure whether PSB content is genuinely prominent in practice, and without a wider FRND regime against which decisions and algorithms can be measured, it seems challenging to envisage how such decisions to highlight-or-hide could be policed in the real world.

We therefore consider that Ofcom should provide clearer guidance on how relevance is to be interpreted, ensure transparency in how search and recommendation systems treat PSB content, and consider whether broader non-discrimination principles should apply to search and recommendation outputs. If content is to be considered *prominent*, it has to be prominent against a benchmark; and what is absent at the moment is any definition of what *normal* is, against which PSB content could be considered *prominent*. Content cannot be prominent without a clear agreed background of what the prominence is to be measured against. A mountain cannot be prominent without a landscape to view it against. The draft Code recognises the role of search and recommendation but does not establish a framework for ensuring that these systems operate on a fair and non-

discriminatory basis. Given that these systems are now the primary means by which audiences navigate IP-delivered television, this represents a significant gap in the proposed regime.

Question 4: Do you agree with Ofcom's draft Guidance on Agreement Objectives?

We welcome Ofcom's intention to ensure that agreements between platforms and PSBs support the policy objectives and do not undermine prominence through inappropriate commercial arrangements.

However, we consider that the draft Guidance does not go far enough in establishing a clear and durable framework for fair access. We note that in the UK market since the introduction of digital broadcasting, even operators without a clear legal obligation to adopt an FRND regime have sought to adopt or mimic those regimes, as they have proven to be an effective and consumer-friendly model. We note that Sky Glass has already demonstrated that IP-based platforms without these safeguards are free to pick-and-choose content services without regulatory oversight, denying potential broadcasters access to the platform. The draft Code's focus on the presentation and ordering of services reinforces the importance of this point. If platforms are able to determine both whether a service is carried, and how it is presented within a regulated interface, without clear obligations on fairness and non-discrimination, then the risk of exclusionary or preferential behaviour is materially increased: it is our contention that this would represent a dramatic and anti-competitive step in how UK viewers access content.

We recommend that Ofcom explicitly adopts fair, reasonable and non-discriminatory (FRND) principles as a guiding standard for platform agreements, clarify that prominence and inclusion should not be contingent on disproportionate or invisible financial or commercial concessions, and ensure that comparable services are treated consistently.

The experience of the UK market demonstrates that FRND-based regimes have been effective in enabling market entry, supporting service diversity, and preventing

exploitative platform behaviour. We consider that similar principles are necessary in the connected TV environment. Failure to develop policy along these lines risks making the transition to digital a deeply anti-competitive environment, rather than the exciting space for British innovation in programming and services that it has the potential to be.

Question 5: Do you agree with Ofcom’s proposals on accessibility?

We support Ofcom’s emphasis on improving accessibility for audiences with disabilities.

However, we emphasise that accessibility and discoverability must be considered together. Technical accessibility features will not deliver meaningful inclusion unless users can also easily find PSB services and content within platform environments.

We encourage Ofcom to ensure that accessibility measures are outcome-focused, measurable, aligned with real-world user journeys, and implemented consistently across platforms.

Question 6: Do you have any comments on the potential impact of the proposals?

We consider that the consultation underestimates the broader market impacts of the proposed regime, particularly in relation to competition, innovation, and advertising market dynamics.

A regime focused narrowly on PSB prominence, without addressing wider platform access conditions, risks entrenching established players, increasing barriers to entry for new services, and reducing incentives for innovation.

The prominence regime will also shape the evolution of the UK advertising market in an IP-delivered television environment. The draft Code makes clear that platforms will

control how services are presented, ordered and surfaced within user interfaces. In practice, this means that the regime will influence how audience attention is allocated across services.

Audience attention is directly linked to advertising value. As such, the design of prominence rules will have a material impact on how advertising revenues are distributed across the market. An understanding of the advertising market impact of the Code seems to us a necessary next step, before implementation, as the purpose of PSB prominence historically, with the exception of the BBC, is precisely to impact the size and distribution of the viewing market, and therefore directly the value of the advertising market.

This need for market impact assessment extends beyond advertising, because whilst viewing is increasingly shifting to connected TV, IP-delivered television advertising revenue has not yet reached a scale sufficient to sustain a fully healthy UK production sector.

As this market develops, it is essential that advertising value can grow across a broad range of broadcasters and services, new entrants are able to build scale and compete effectively, and that the market remains dynamic and competitive.

If PSB prominence is implemented without wider safeguards and market impact analysis, audience reach may become increasingly concentrated amongst a smaller group of operators, advertising revenues may accrue disproportionately to a limited set of players, and the broader content ecosystem may be weakened. This would have direct implications for investment in UK-originated content and the long-term sustainability of the production sector.

Concluding Remarks

We support the objective of securing PSB prominence and accessibility. However, we consider that PSB prominence alone is a necessary but not sufficient intervention.

To be effective, the regime must be embedded within a broader framework that reflects how audiences actually discover content, ensures fair, reasonable and non-discriminatory platform access, supports innovation and new market entry, and enables the development of a dynamic and sustainable advertising market.

Without such an approach, there is a risk that the regime becomes narrowly protective rather than genuinely pro-competitive, limiting its effectiveness, distorting the development of the advertising market, and ultimately undermining Ofcom's wider statutory objectives in relation to competition, innovation and consumer outcomes.