

Statement on Code on Electronic Programme Guides

Statement by Ofcom

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Contents

Section		Page
1	Statement	1
Annex 1	Code on Electronic Programme Guides	4
Annex 2	Ofcom's response to consultation comments	8
Annex 3	Regulatory impact assessment	20

Code on Electronic Programme Guides

Statement by Ofcom

Ofcom published a draft Code on Electronic Programme Guides on 15 January 2004, setting out its proposals for giving effect to the requirements under section 310 of the Communications Act 2003 and for securing fair and effective competition in accordance with section 317.

A significant number of bodies and individuals responded to the consultation, and we considered all the comments carefully before finalising the Code at Annex 1. Those comments which were not confidential have been posted at <http://www.ofcom.org.uk/consultations/responses/epc/?a=87101>. Ofcom's response to those comments is summarised in Annex 2. We have also supplemented the regulatory impact assessment in the light of additional and updated information, and this is set out in Annex 3.

The Code sets out requirements on EPG providers to provide information for viewers with hearing and / or visual impairments on how to use the EPG, and to promote awareness amongst such viewers of the information and facilities available on the EPG relevant to them. EPG providers are expected to work with disability groups, broadcasters and set top box manufacturers on ways of improving the usability of their EPGs by viewers with hearing and / or visual impairments over time, and to this end, to publish annual statements of what they are doing, and what plans they have for further improvements.

The Code also requires EPG providers to devise arrangements for giving appropriate prominence to public service broadcasters that are objectively justifiable, and to publish them. They are also required to publish and comply with an objectively justifiable method of allocating listings for other channels, as part of broader obligations to deal with channels listed on their EPGs in a fair, reasonable and non-discriminatory way.

Fair, reasonable and non-discriminatory treatment

Ofcom explained in the consultation document that almost all Broadcasting Act licences include a condition requiring licensees to ensure fair and effective competition (imposed under section 316 of the Act). The condition requires licensees (amongst other things) to abide by any code published by Ofcom for the purposes of the condition. The section of the code entitled 'Fair, reasonable and non-discriminatory treatment' at paragraphs 14 to 16 is such a code for the purposes of the condition and includes rules that require licensed EPG providers to deal with television channels included on the EPG in a fair, reasonable and non-discriminatory (FRND) way. The reason for this, as presented in the consultation document, is that discriminatory treatment of a channel in terms of listings or presentation would constrain its ability to compete effectively with other channels for audience share and advertising revenue, and would thus be prejudicial to fair and effective competition.

As required by section 317(2) of the Act, before exercising its Broadcasting Act powers for a competition purpose Ofcom considered whether it would be more

appropriate to deal with any unfair, unreasonable or discriminatory treatment that did arise under the Competition Act 1998.

In particular Ofcom considered that ex ante rules would be more appropriate, for the following reasons:

- (a) the code would provide continuity, given the ITC's EPG code (applying to most EPGs before 29 December 2003). This is consistent with the policy objectives made clear to Parliament, that Ofcom should have the same flexibility to ensure fair and effective competition as its predecessors;
- (b) the code would provide clarity both to EPG providers and channels of the practices to be followed, in the absence of a body of precedents in competition law in the broadcasting sector. This is a significant point given the likely entry of new EPG providers on the digital terrestrial platform;
- (c) the code would allow Ofcom to issue directions to cease behaviour that would be prejudicial to fair and effective competition without the necessity to demonstrate abuse of a dominant position. By contrast, reliance upon ex post Competition Act powers would require Ofcom to demonstrate abuse of a dominant position before it could seek remedies; and
- (d) licensees would retain the right of appeal to the Competition Appeals Tribunal against a decision made by Ofcom under those rules relating to fair and effective competition.

Exercise of Broadcasting Act powers for a competition purpose

Having considered in the consultation document whether it would be more appropriate to deal with any unfair, unreasonable or discriminatory treatment that did arise under the Competition Act 1998, and having given careful consideration to the representations made in relation to the FRND requirements of the code, Ofcom maintains its view that broadcasting licensees should be required to comply with the FRND requirements set out in the code.

Imposing these requirements amounts to an exercise by Ofcom of its Broadcasting Act power set out in section 317(1)(b) of the Act, to give an approval to a code for the purposes of the licence condition made under section 316 of the Act.

Ofcom is exercising its Broadcasting Act powers for a competition purpose in that the only or main reason for imposing the FRND requirements of the code is to secure that licensees do not enter into or maintain arrangements or engage in a practice which Ofcom would consider to be prejudicial to fair and effective competition in the provision of EPGs.

As Ofcom has decided to exercise its Broadcasting Act powers for a competition purpose Ofcom hereby gives notice of its decision (as required by section 317(4) of the Act). Further, as required by section 317(5) of the Act, Ofcom wishes to draw attention to the right of those affected by this decision to appeal against this decision to the Competition Appeal Tribunal.

Alternative formats

A copy of this document in a format suitable for use by screen readers has been posted on Ofcom's website. Ofcom can provide consultation documents to individuals in alternative formats (e.g. Braille, audiotape or large print) on request. We may also provide translations of documents into languages other than English. To request non-standard versions of documents, please contact Peter Bourton at peter.bourton@ofcom.org.uk, or on 020 7981 3494. Please note that the time needed to produce an alternative format document will depend on the length of the document.

26 July 2004

Annex 1

Code of practice on electronic programme guides

Introduction

- 1 This Code sets out the practices to be followed by EPG providers¹:
 - a. to give appropriate prominence for public service channels;
 - b. to provide the features and information needed to enable EPGs to be used by people with disabilities affecting their sight or hearing or both; and
 - c. to secure fair and effective competition.

Appropriate prominence

- 2 Section 310(2) requires that Ofcom's EPG code oblige EPG providers to give the degree of prominence that Ofcom considers appropriate to the listing and promotion of public service channels, for members of the intended audience. The Secretary of State may add to, or subtract from, the list of relevant public service broadcasting (PSBs) channels, which comprises the digital versions of BBC and ITV services, as well as the digital services of Channels 3, 4 and 5, Teletext and S4C Digital. The Code is also to ensure that members of the intended audience for services provided for a particular area or locality are able use the EPG to select the programmes included in that service.
- 3 Ofcom considers that 'appropriate prominence' permits a measure of discrimination in favour of PSB channels. However, it does not propose to be prescriptive about what appropriate prominence means, as there are many possible ways in which EPGs could display information about programmes included in PSB services. Accordingly, EPG providers are required to comply with the following general principles:
 - a. EPG providers should ensure that the approach they adopt to the requirement for appropriate prominence is objectively justifiable and should publish a statement setting out their approach;
 - b. Ofcom will have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listings public service channels constitutes appropriate prominence; and
 - c. in giving appropriate prominence to PSB channels, EPGs should enable viewers in a region to select the appropriate regional versions of those channels through the primary listings for those channels provided the PSB in question has secured services that enable this.

¹ The term 'EPG provider' means any organisation providing an electronic programme guide as defined by section 310 of the Communications Act under a Broadcasting Act licence.

- 4 These principles would have broad application. For example, they would justify a decision by an EPG operator using a menu-based approach to position public service channels no more than 'one click' from the home page. They might also justify giving public service channels first refusal on vacant listings higher in the category that they were placed.

Assistance to people with hearing and / or visual disabilities

- 5 Section 310(3) requires that Ofcom's EPG code obliges EPG providers to incorporate such features in their EPGs as are appropriate to enable, so far as practicable, people with disabilities affecting their sight or hearing to use the EPGs for the same purposes as people without such disabilities. EPGs are also to provide information about assistance in relation to programmes (e.g. how to navigate radio and television listings, and how to operate television access services such as subtitling, signing and audio description), as well as facilities for making use of that assistance. This section sets out the requirements that EPG providers should meet in order to comply with the Code.

General principles

- 6 EPG providers are required to:
 - a. make such adjustments to their EPGs as are practicable to secure that they can be used by people with disabilities affecting their sight or hearing for all the same purposes as they are used by other people; and
 - b. promote awareness of the scope of EPGs to provide information about programmes with access services, in conjunction with broadcasters and representatives of people with disabilities affecting their sight or hearing.
- 7 Ofcom expects EPG providers to consult disability groups about the way they meet their obligations under the code, which are set out below.

Adjustments to EPGs to facilitate their use by disabled people

- 8 At present, there is limited scope to reconfigure EPGs so as to facilitate their use by people with disabilities affecting their sight or hearing. In particular, much of the functionality of EPGs is dependent upon set top box hardware and software, as well as the data made available by broadcasters. However, Ofcom expects the needs of people with disabilities affecting their sight or hearing to be an integral part of planning for the future development of EPGs. To this end, Ofcom expects EPG providers to work with disability groups, broadcasters and set top box manufacturers on ways of improving usability.
- 9 EPG providers are required to produce by 30 November 2004, and thereafter annually a statement of the steps they have taken and plan to take to facilitate the use of their EPGs by disabled people. Ofcom will assess the adequacy of these statements in the light of the particular circumstances of each EPG.
- 10 EPG providers will need to have regard to their obligations under the Disability Discrimination Act 1995 to make reasonable adjustments in the provision of facilities and the delivery of services so as to make these accessible to disabled people, and should seek their own advice on this.

Provision of information

- 11 EPG providers will be required to ensure that information included in relation to television programmes indicates which programmes are accompanied by television access services. A corresponding provision has been included in the Code on Television Access Services requiring broadcasters to make such information available to EPG providers. Where practicable, programme information in the EPG should indicate by means of standard abbreviations the nature of the access service provided, in accordance with guidance to be devised by Ofcom in consultation with disability groups, broadcasters and manufacturers of digital receiver equipment.
- 12 EPG providers should provide on an easily accessible part of their EPGs (where practicable) or alternatively in other accessible ways (e.g. on websites or interactive services) information for people with disabilities on:
 - a. how to use the EPG;
 - b. how to use the access services accompanying the programmes;
 - c. what options exist for customising the appearance of the EPG to make it easier to use; and
 - d. what additional sources of help and information are available in other places (e.g. on websites, or from telephone / textphone helplines), whether from the EPG operator, or television service providers.

Promotion of awareness

- 13 EPG providers are required to work with broadcasters, platform providers and disability groups to publicise the information and facilities available on EPGs to assist disabled people. This should include information targeted at publications used by disabled people, and periodic publicity featured prominently on EPGs.

Fair, reasonable and non-discriminatory treatment

- 14 Ofcom has concluded that, in order to secure that the providers of EPGs licensed by Ofcom do not enter into or maintain any arrangements or engage in any practice that Ofcom considers would be prejudicial to fair and effective competition in the provision of the licensed radio or television services or of connected services as defined in section 316 of the Act, EPG providers should comply with the provisions set out in this section.
- 15 In particular, EPG licensees are required:
 - a. to ensure that any agreement with broadcasters for the provision of an EPG service is made on fair, reasonable and non-discriminatory terms;
 - b. to publish and comply with an objectively justifiable method of allocating listings. This does not preclude different methods – for example, objectively justifiable methods could include ‘first come, first served’, alphabetical listings, and those based on audience shares;

- c. to refrain from giving undue prominence in any listing or display to a channel to which they are connected, except as required by the appropriate prominence provisions set out at paragraphs 2 to 4 above;
 - d. to carry out periodic reviews of their listing policy and of channel listings made in accordance with that policy, in consultation with channel providers;
 - e. to ensure that viewers are able to access all television and radio services included in the EPG service on the same basis, provided that the viewers are equipped to use the EPG service and to receive the relevant programme services;
 - f. to ensure that free-to-air services are at least as accessible as pay TV services, and that reception does not require additional equipment or commercial agreements over and above those required for the acquisition of the receiving equipment; and
 - g. to refrain from imposing any condition in an agreement for EPG services between an EPG operator and a channel provider specifying exclusivity to one EPG for any service or feature, including the ability to brand services and access to interactivity.
- 16 EPG licensees that are channel providers or are connected to a channel provider must ensure that access to and from all television services included in the EPG service is easily available to all viewers equipped to use the EPG service and to receive the relevant programme services.

Code review

- 17 Ofcom intends to review the Code at intervals of no more than two years, or more frequently if circumstances warrant it. As part of the review, it will consult stakeholders, including EPG providers, broadcasters, and disability groups. The issues it will consider may include whether:
- a. the guidance on appropriate prominence is adequate, or needs to be amended;
 - b. provisions on information and facilities need to be changed, having regard to technological and market developments, amongst other things; and
 - c. *ex ante* regulation requiring EPG providers to give channels on their EPGs fair, reasonable and non-discriminatory treatment so as to ensure fair and effective competition remains appropriate.
- 18 Where appropriate, Ofcom will consider whether competition would facilitate the achievements of the objectives in the code, and so obviate or reduce the need for regulation, or whether the promotion of competition requires continuing regulation.

Annex 2

Ofcom's response to consultation comments

1. This document summarises the comments made by consultees (other than those who did not wish their comments to be published), as well as Ofcom's response to those comments.

Respondents

2. Responses were received from several members of the public. A significant number of groups representing disabled people also responded (Disability Action, Disability Rights Commission - DRC, Hearing Concern, RNIB, RNID, Sense) Other respondents included Age Concern, the Christian Broadcasting Council (CBC), Voice of the Listener & Viewer (VLV), Ricability (providing consumer information for older and disabled people).
3. The commercial multiplex licensees (SDN, Digital 3 & 4 Ltd – D3&4, Crown Castle) all contributed, together The Digital Network (TDN), which co-ordinates provision of the EPG on behalf of the multiplex licensees. Other EPG providers responding included Telewest and NTL. Public service broadcasters (PSBs) who responded included the BBC, Channel 4, ITV and S4C. A number of other content providers (ITN, QVC, UKTV) also commented. There were comments from some of these respondents, and from others who did not wish any part of their response to be published.
4. Finally, there were contributions from Sony, which manufactures set top boxes and digital televisions, and Intellect, which represents a wide range of other such manufacturers.

Appropriate prominence

Question 1: *Ofcom would welcome views on the general proposition in the draft code that the requirement for appropriate prominence should permit due discrimination between public service and other television channels, but should not mandate one particular approach over another.*

5. CBC, Hearing Concern, Sony and UKTV agreed with the proposition; UKTV said that Sky's EPG already provided an appropriate degree of prominence for PSB channels, and that no substantive change was necessary. Age Concern, NTL, Telewest and another respondent welcomed Ofcom's intention to refrain from prescriptive regulation, and agreed with Ofcom that EPG technologies and formats were likely to develop over time. Hearing Concern favoured the positioning of PSBs not more than one click away from the home page.
6. There was a mixed response from digital multiplex licensees. D3&4 agreed with the proposition, but said that it would welcome advice on how appropriate prominence should be achieved. D3&4, TDN and another respondent pointed out that set top box manufacturers could override the

'logical channel numbers' contained in data broadcast by the multiplex licensees, and arrange channels in any order they chose; on some EPGs, viewers could also arrange favourites in any order they chose. Sony endorsed this view.

7. SDN argued that channels launched by commercial public service channels (such as ITV 2, ITV News, Four Teletext and S4C2) should be given parity of treatment with the BBC's digital only services (BBC 3, BBC 4, CBBC, CBeebies, News 24 and BBC Parliament). Another broadcaster said that the BBC's digital only services were not genuine public service channels, and should not be given prominence similar to that of BBC 1 and 2, as this would be unfair to other providers and prejudicial to fair and effective competition. QVC did not consider that the BBC's digital only channels required the same measure of prominence as the terrestrial channels, a view shared by Colin Lewis.
8. Channel 4 argued that, in Wales, it merited a higher listing on the Sky EPG than BBCs 3 and 4, because of its higher audience share. NTL said that a poll of its subscribers in Wales (with a response rate of 50%) found that over 80% watched Channel 4 more often than S4C and that over 90% would prefer that it retained the 104 position on the NTL EPG. S4C is currently at number 752 on the NTL EPG in Wales, although NTL say that they accept that this is not sufficiently prominent, notwithstanding that a slight majority of their customers would prefer the listing to remain unchanged.

Ofcom response

9. It is not feasible, as a few respondents suggest, that PSBs should not be given appropriate prominence, given the explicit requirements of the Communications Act. By the same token, it is not possible to require that non-PSB channels launched by commercial PSBs be given appropriate prominence. Nonetheless, some flexibility in the way different public service channels are treated may be justified, and for this reason, Ofcom will refrain from prescribing the form which appropriate prominence will take. For this reason, Ofcom does not consider it appropriate to specify how many 'clicks' from the home page PSBs should be listed. However, Ofcom recognises the need for clarity in this area, and for this reason has amended the draft code to require EPG providers to set out their policies for achieving due prominence. Ofcom encourages any PSB which is dissatisfied with its listing and which believes that it has a case within the criteria in the code for a different listing to make its case to the EPG provider concerned; if it remains dissatisfied, it is open to the PSB to make a complaint to Ofcom.
10. A number of respondents have pointed to the fact that key elements of the functionality of EPGs reside in set top boxes, the manufacturers of which are not subject to regulation. Ofcom will continue the dialogue it has already begun with equipment manufacturers and representative bodies with a view to encouraging voluntary adherence to the code, so far as possible, although it cannot compel compliance.

Question 2: *Should Ofcom have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listing public service channels constitutes appropriate prominence?*

11. Most of those who commented (Age Concern, CBC, NTL, RNIB, S4C, Sony, VLV and two other respondents) supported this approach; the RNIB said that prominent listings for the PSBs were important to encourage reluctant adopters to move from analogue to digital services. Some wanted additional factors taken into account, such as other relevant public policy considerations (S4C), and the interests of free and fair competition in the market (QVC). Telewest noted that Ofcom was required to consider the interests of citizen-consumers, but said that as viewers became more familiar with EPGs, the need to list public service channels in a prominent position should diminish. It pointed out that the Telewest EPG allowed viewers to give prominence to the channels they preferred to watch. NTL also said that the new EPG that it was rolling out would allow subscribers to re-arrange channels.
12. Several public service broadcasters (BBC, Channel 4, S4C and on other) and some others (VLV) wanted more detail about how Ofcom would interpret appropriate prominence. S4C suggested that the PSBs could be grouped together, or at least, that Ofcom could say that this was an acceptable approach. Channel 4 felt that, in the absence of criteria, the draft code created regulatory uncertainty.
13. Like the BBC, S4C wanted programmes to be listed by genre as well as by channel, so that (for example), someone looking for children's programmes would find S4C's Planed Plant as well as dedicated children's channels.. Age Concern pointed to research by the ITC that showed viewers would find it easier if PSB programmes were listed in the appropriate genre listings and said Ofcom should undertake similar research into patterns of EPG use.

Ofcom response

14. Although a number of respondents would like Ofcom to set out more detailed criteria on appropriate prominence, we remain of the view that there are a number of different approaches that could be justified. We believe that broad guidance maximises the scope for diversity, to the benefit of consumers. It will also allow Ofcom to take account of a range of issues that are relevant to the interests of citizens and the expectations of consumers. Nevertheless, Ofcom recognises the need for clarity and transparency in this area, and for this reason has amended the draft code to require EPG providers to set out their policies for achieving due prominence.
15. We also note that some EPG providers provide scope for consumers to list favourite channels separately, and in future may enable them to re-order listings. Provided the default EPG listings comply with appropriate prominence requirements, Ofcom welcomes any measures that enhance consumer choice.

Question 3: *Should EPGs enable viewers in particular regions to select the appropriate regional versions of those channels through the primary listings for those channels?*

16. Several respondents (CBC, Channel 4, RNIB, Sony, VLC, and another broadcaster) agreed with this proposal. NTL agreed, subject to feasibility, but reiterated that subscribers would be able to re-arrange listings if they wished. Telewest pointed out that only the appropriate regional version was available to viewers on its networks. QVC did not want Ofcom to be prescriptive.

Ofcom response

17. Ofcom notes that those who subscribe to multichannel services are able to access the appropriate regional service of PSB channels through the primary listings in the EPG for that service. Those viewing free-to-air satellite broadcasts of PSB channels may still access PSB channels that are not encrypted through the free-to-air version of Sky's EPG, or through the EPG installed in their own set top box, though not necessarily through the primary listing. Ofcom notes that it is feasible to provide both subscribers and non-subscribers to Sky's services with viewing cards that enable them to select the appropriate regional version of PSB channels, and that PSBs have funded schemes for non-subscribers in the recent past. It considers that it is reasonable for PSBs to pay for the services needed to deliver regionalisation to viewers, whether or not they are subscribers to Sky services. In these circumstances, Ofcom does not consider that it would be reasonable to require Sky to reconfigure its EPG or associated systems to ensure appropriate prominence for regional PSB services made available to free-to-air viewers.

Other comments

18. Consultees made a number of other comments in relation to EPG listings:
 - Several respondents made suggestions about the content of listings on the EPGs. CBC suggested that they should indicate from which country the service is being uplinked. David Jones wanted EPGs to provide warnings about the content of programmes, as well as information about the timing of repeats. A few respondents (Geoff Gornall, Gary Hook, Thanh Nguyen) complained that inaccurate listings on EPGs caused difficulties for those people using them to programme personal video recorders.
 - RNIB and Sense advocated the standardisation of channel numbering across all EPGs. Philip Hope agreed, but acknowledged that channel numbering would need to be reviewed every few years, to take account of new channels. Pointing to examples from the NTL EPG where the 'first come, first served' approach means that 'families' of channels are not grouped together, Shaun Daubney said that it was a real mess, and that Ofcom should consider regulating the position of non-PSB channels as well.
 - Several members of the public (Richard Danielian, Andy Gilbert, Joss Hyde, Sheri Jones, Paul Nield, Richard Shipton, Julian Thornhill) wanted the power to delete channels from their EPGs, either because they objected to the channel content or title (as in the case of pornography channels), or because they did not want the EPG cluttered up by listings for channels they did not watch or subscribe to. Another respondent (Colin Lewis) was insistent that EPGs should be configured to allow users to change the ordering and numbering of channels.
 - Some respondents (Francois Chesnay, Patrick Limbard, Christopher Wyatt) complained that the system employed by Sky to broadcast their EPG made it inaccessible to people without a Sky set top box,

and that this demonstrated an attempt to monopolise the provision of satellite digital television in the UK.

Ofcom response

19. Ofcom -

- considers that it is a matter for EPG and programme service providers to decide on the information to be provided in programme listings, and to ensure that it is accurate;
- considers that listings policies should be a matter for EPG providers to decide within the framework of the code, but agrees that periodic reviews would provide an opportunity to rationalise listings, to the benefit of both consumers and broadcasters. For this reason, Ofcom has amended the draft code to provide for such periodic reviews;
- sympathises with those respondents who wish to be able to remove or re-order channels in EPGs, but considers that it is a matter for commercial judgement by EPG providers as to whether they wish to invest in the necessary changes;
- notes that the framework for assessing whether particular arrangements for listing PSBs constitute appropriate prominence allow Ofcom to take account of interests of both citizens and consumers (paragraph 3 of the code); and
- does not consider it unreasonable that Sky's EPG should be geared to meeting the needs of those who have acquired a Sky Digibox and of those broadcasters which have paid for a Sky EPG listing, rather than viewers who have not contributed through their subscriptions or (in the case of broadcasters) charges towards the cost of the EPG. Ofcom also notes that there are a number of commercially-available set top boxes in the UK that allow purchasers to devise their own EPG providing 'now and next' information on free-to-air services.

Assistance to people with hearing and / or visual impairments

20. There was broad support from most respondents (Channel 4, NTL, RNIB S4C, Sony, Telewest) for the proposed approach, including the suggestion that Ofcom should work with set top box manufacturers, as well as disability groups and broadcasters. However, a number of EPG providers pointed to financial or technical constraints (Telewest and two other respondents), while NTL said that, as a commercial company, it was guided mainly by the expectations of customers. Disability Action said that the process should involve the participation of individuals with disabilities.

Ofcom response

21. Ofcom understands that EPG providers, like other commercial companies, are guided mainly by commercial considerations, and might not choose to spend money on improving access for people with hearing and / or visual impairments. It was for this reason that Parliament has required Ofcom to ensure that EPG providers provide appropriate features in their EPGs.

Nonetheless, Ofcom recognises that cost is a consideration, and will work with both EPG providers and other relevant groups (including disability groups) to ensure that the code is applied in a proportionate way, with particular regard to the needs of people with hearing and / or visual impairments.

Question 4: *Should EPG providers be required to produce an annual statement of the steps they plan to take to facilitate the use of their EPGs by disabled people?*

22. Several disability groups (DRC, Hearing Concern, RNIB, RNID, Sense) welcomed the proposal for annual statements of future plans, as did other respondents (CBC, VLV). Several wanted the statement to include information on other aspects – action already taken to facilitate access by disabled people (Disability Action), current levels of accessibility (DRC, Ricability), action to improve accessibility of set top box hardware and remote controls (RNID). Ricability also wanted independent monitoring of implementation, and of the appropriateness of the plans; RNIB wanted a role for disability groups.
23. Telewest said that it would welcome the opportunity to produce an annual statement of what it had done. The BBC said that, while it was inappropriate to require EPG operators to radically overhaul their EPG overnight, it would be reasonable for them to commit to public roadmaps for improvements in accessibility. Channel 4 suggested that bi-annual statements might be more appropriate, given that the first review would be undertaken in two years' time. NTL supported the proposal in principle, but said that there was a need for co-ordination between EPG providers, broadcasters and disability groups in order to identify what is required before EPG providers make investment decisions. It believed that annual statements would have to be made in response to an agreed plan signed up to by all parties.

Ofcom response

24. Ofcom notes that there is general support for annual plans, and agrees that it would be helpful if they set out what action had been taken to improve access for people with hearing and / or visual impairments, as well as what action was planned. As publication of the code has been somewhat delayed, it has deferred the deadline for completion of these until 30 November 2004. Ofcom welcomes the suggestion that EPG providers should involve other interested parties in drawing up their plans, but does not agree that it should be a precondition that such plans should be underwritten by those parties. Ofcom intends that the plans should be published, which will provide interested parties with the opportunity to comment on their appropriateness, and to follow the extent to which they are implemented.

Question 5: *What nature of information should be provided in relation to programmes with assistance, and how should that information be presented?*

25. Disability groups (DRC, Hearing Concern, RNIB, RNID, Sense) and others (VLV, Mr Barry Cook and another respondent) supported the proposals for common symbols or wording denoting access services as part of programme information on EPGs – DRC said Ofcom should promote use of these symbols or wording by newspapers and listings magazines. They also suggested that programmes carrying audio description should be preceded

by an audible signal. Several (Age Concern, RNID, Sense, Sony, VLV) attached importance to standardisation across Europe; RNID suggested that, pending agreement in Europe, words should be used instead of symbols. DRC also wanted Ofcom to work towards ensuring that all visual instructions were replicated with clear audio instructions for the benefit of people with visual impairments. RNIB said that standard symbols, abbreviations or words should be used, but noted that people with learning difficulties or language barriers favoured symbols. RNID said that Ofcom should also work to simplify menu structures.

26. Telewest said that it had begun to discuss the information that should be provided. However, the functionality of set top boxes was a constraint. NTL agreed that, ideally, there should be common symbols for different access services, but noted that the process of agreeing these could take some time. Different EPG providers had used different symbols, and it might take time to harmonise these. TDN and D3&4 said that capacity was an issue, although D3&4 agreed that so long as it was agreed that display of symbols should be a receiver function in response to a flag within the EPG, this would not be a concern.

Ofcom response

27. We note the general support amongst representatives of users for common symbols or wording to identify programmes accompanied by particular access services, and conclude that a common approach should be introduced across EPGs on all platforms. In the light of practical considerations suggested by EPG providers, the code will require that the necessary identification of programmes accompanied by access services be included in the programme data broadcast by EPG providers, rather than the primary programme listings. For a variety of reasons, we intend that abbreviations rather than symbols be used. Firstly, use of abbreviations included in broadcast programme data would avoid problems of backwards compatibility, given that manufacturers of the installed base of set top boxes are likely to be reluctant to spend money on developing and implementing software upgrades to allow symbols to be shown. It would also avoid the long delay that might result from the need to devise, test and implement software changes. Secondly, there are existing abbreviations for some types of access services that already enjoy widespread recognition. Thirdly, the use of abbreviations would minimise the demand on bandwidth. Ofcom has concluded that significant delays could occur if it waited for a consensus between EPG providers and disability groups to emerge about suitable abbreviations. Accordingly, it will initiate consultation with these parties with a view to deciding on what common abbreviations should be used or the purpose of paragraph 11 of the code.

Question 6: *How should EPG providers be required to publicise the availability of information and functions on the EPG intended to facilitate their use by disabled people?*

28. There were a number of suggestions as to the channels that should be used to reach disabled people. Disability Action, Hearing Concern and Sense welcomed the proposal that information about EPGs be advertised in media used by disabled people, as well through periodic publicity on EPGs and on-air promotions. On other hand, Age Concern, DRC and Ricability pointed out that many people who had acquired disabilities later in life tended not to

regard themselves as disabled, and looked to mainstream rather than specialist sources for information. EPG providers needed to take account of this by ensuring that material such as set up manuals made clear how to find access services, and that access services were listed prominently on EPG menus. VLV said that websites and helplines should also be considered. RNIB said that the way in which functions should be publicised in ways that were appropriate to the target users, e.g. a message about the ability to display information in large fonts should be displayed in a large font size.

29. Telewest said that it had no objection to providing easily accessible information concerning its EPG for people with disabilities, possibly on the website or in its customer magazine. However, both it and D3&4 said that Ofcom and disability groups were best placed to publish unbiased guides for older and disabled consumers - CBC agreed that disability groups should be closely involved. D3&4 said that if EPGs were required to broadcast information that consumed significant capacity on DTT multiplexes, this could result in substantial costs. TDN said that, given the horizontal separation of EPG data providers from set top box manufacturers, it did not have the power to ensure that individual set top box manufacturers provided information on their EPGs about accessibility.

30. NTL's response suggested an alternative (which did not address the question), under which it would hold an annual meeting with all parties concerned to explore the 'real needs' of users with disabilities. However, it also showed how it was publicising the availability of subtitles on its digital services through information printed on the back of bills sent to all customers on which channels were available with subtitling, and how this could be turned on and off.

Ofcom response

31. Ofcom welcomes the helpful suggestions that have been made on ways in which the availability of information about EPGs which would be relevant to people with hearing and / or visual impairments should be made available. We consider that a combination of approaches would be most effective in communicating successfully with target audiences, including people using mainstream sources of information. Ofcom expects EPG providers to set out their communication strategy in their annual statements. We have amended the code to make clear that, where it is not currently feasible to provide information on the EPG itself, alternative sources of information should be provided, such as websites or telephone / textphone enquiry points.

Other comments

32. Consultees made a number of other comments:
 - Ricability said that Ofcom should consult regularly to ensure that the code kept abreast of developing technology, so that disabled people were able to benefit from these. The code should be reviewed by Ofcom's Consumer Panel, and its Advisory Committee on Older and Disabled People.

- Age Concern urged that the EPG code be extended to cover accessibility by people with dexterity and cognitive impairments, as they also experienced difficulty using existing EPGs.
- Sense wanted remote controls to include a button giving access to key features for disabled people, such as audio description.
- DRC suggested that consolidated guidance could be issued to EPG providers on their obligations under the Disability Discrimination Act 1995 (DDA), dealing with user requirements, and advice on how to respond to these having regard to the Ofcom code and the DDA. DRC also called on Ofcom to monitor awareness of subtitling, audio description and signing, and the ease with which these could be found on different platforms.
- Two members of the public had specific suggestions about EPGs. Mr Barry Cook said that Ofcom should press for the development of an audio EPG for use by blind and partially-sighted, as this would be far easier to use than printed listings for the hundreds of channels available on satellite services. Philip Hope said that viewers with visual impairments found difficulties with the Telewest EPG, as there was insufficient contrast in the colours used.
- SDN argued that the data set broadcast by it and other multiplex licensees does not constitute an EPG as defined by Ofcom. That said, it noted that consortium co-ordinating the data broadcast by multiplex licensees (TDN) intends to comply with the code.

Ofcom response

33. Ofcom -

- agrees with Ricability that the code should be reviewed periodically. We have already invited the views of Advisory Committee on Older and Disabled People;
- sympathises with Age Concern's view that the EPG code should be extended to cover accessibility by people with dexterity and cognitive impairments, but this would go beyond the remit set by the Communications Act. By the same token, we are not able to prescribe standards for remote controls, though Ofcom has participated in research about voluntary standards that should apply to the labelling of remote controls, including buttons for accessing services such as subtitling;
- notes that the obligations of the DDA apply directly to service providers, including broadcasters, rather than through the medium of Ofcom. In particular, Ofcom has no powers of enforcement under the DDA. However, we have amended the code to remind broadcasters of the need to satisfy themselves that they are meeting their obligations under the DDA;
- expects technological advances to improve the scope for making EPGs more accessible to people with hearing and / or visual

impairments, and to this end, will be reviewing the code periodically to ensure that it properly reflects the existing capabilities of EPGs. It will also be requiring EPG providers to make annual statements on their plans for improving accessibility, including the future prospects for both audio EPGs, and the scope for users to choose the way in which information is displayed to make it easier to read; and

- believes that the data set broadcast by multiplex licensees meets the definition of an EPG in section 310(8), but accepts that it would make sense for TDN to co-ordinate action, and has initiated discussions with TDN to this effect.

Fair, reasonable and non-discriminatory (FRND) treatment

Question 7: *Is it appropriate for to set ex ante rules requiring EPG providers to give fair, reasonable and non-discriminatory (FRND) treatment to channels featured on their EPGs?*

34. There was general agreement (CBC, NTL, QVC, RNID, SDN, Sony, Telewest and UKTV, VLV and two other respondents) that the *ex ante* rules were appropriate. NTL accepted the FRND principles, and said that its treatment of channel listings, was fair, objective and non-discriminatory towards channels, although it might not represent the most logical format from a customer's perspective. The two original components of NTL listed channels according to audience share, with some changes being made when these components merged. Subsequently, like Sky, NTL has listed new channels on a first come, first served basis.

Ofcom response

35. We note that there is general acceptance of the need to set ex ante rules requiring EPG providers to treat channels listed on their EPGs in a fair, reasonable and non-discriminatory way.

Question 8: *If the answer to the above question is yes, are the proposed rules appropriate?*

36. The BBC and Channel 4 argued that the proposals placed much greater emphasis on non-discrimination than on fair and reasonable treatment. Channel 4 argued that the listings on the NTL and Telewest EPGs could not be regarded as objectively justifiable, and that those on the Sky EPG were increasingly anomalous, as many new channels had joined the EPG on a first come, first served basis, since it was established in 1998 on the basis of audience share. Channel 4 argued that it was insufficient for listings to be objectively justifiable – on this basis, it would be possible to justify listings based on random selection.
37. Channel 4 pointed to research co-commissioned with the BBC which purported to show that viewers correlated higher positions with higher quality. Pointing to Ofcom's general duties, Channel 4 asserted that it was important to secure an approach to listings that was in consumers' interests. Both they and ITN suggested that these interests would best be served by listing channels by audience size. ITN also wanted Sky to split its 'News and Documentaries' genre into two. The BBC advocated a review of EPG listings every three years on the basis of audiences share and reach. D3&4 also

suggested channel numbering on DTT EPGs should be reviewed at intervals of no more than three years.

38. A number of respondents made other points:
- One was concerned that the FRND term had not been defined, and that 'not unduly discriminatory' was used interchangeably with 'non-discriminatory' – it wanted all discrimination prohibited;
 - SDN said that platform operators and broadcasters would welcome guidance from Ofcom about how it would interpret the rules in the event of a complaint; the BBC and Channel 4 concurred, and expressed concern about the adequacy of the rules.
 - QVC's main concern was that channels should be able to keep their existing numbers following a review, even if this meant that channels were displayed out of numerical sequence in genre categories;
 - In relation to the Sky EPG, the BBC said that it was unreasonable for an EPG operator to be able to determine the architecture of EPGs in such a way as to meet the needs of in-house channels, but not those of independent channels. Similarly, it objected to an EPG operator having unilateral powers to change channel numbering and genre categories, and to decide whether replacement channels should occupy the existing slot in an EPG, or be relegated to a lower slot. It also considered that a refusal to list programmes in mixed genre channels in the appropriate genre was discriminatory; and
 - Philip Hope considered that non-English channels should be listed in the appropriate genre (e.g. Asian music channels should be listed in the music category), and that to locate them in the specialist category was discriminatory.

Ofcom response

39. Ofcom agrees with the arguments in favour of EPG providers publishing the policies they will apply in listing channels. We have amended the code to make this clear. However, we do not consider that it would be appropriate for Ofcom to prescribe what these policies should be, since this would constrain the approaches that EPG providers could adopt.
40. We also agree that there is a risk that EPG listings could become anomalous over time, particularly when different policies are applied to channels present at the inception of the EPG or following a review of listings by an EPG provider, and to those channels which are listed subsequently. Accordingly, we have amended the code to require that EPG providers should carry out periodic reviews of listing policies, and of the actual listings made under those policies. Ofcom accepts that such reviews may result in changes to the positions assigned to individual channels, and that both broadcasters and viewers may be reluctant to see frequent changes. However, we consider that the frequency of the reviews should be a matter for the commercial judgement of the EPG provider, in consultation with broadcasters.
41. As regards the other points made by respondents:

- the Communications Act prohibits ‘undue discrimination’. In this instance, this restriction would mean that it is permissible to require EPG providers to give appropriate prominence to PSB channels, notwithstanding that this results in more favourable treatment than is accorded to other channels. For convenience and by convention, the constraints that may be placed upon parties regulated in accordance with relevant parts of the Act are paraphrased as ‘fair, reasonable and non-discriminatory’. We shall consider in the light of experience of actual cases whether further guidance is needed on how Ofcom will interpret FRND for the purpose of securing fair and effective competition. However, Ofcom considers that it would be appropriate for the rules to include a general provision against terms that are not fair, reasonable or non-discriminatory, on the lines set out in the ITC code, and we have amended the Code accordingly;
- Ofcom notes that the architecture of Sky’s EPG was determined a long time before many of the channels now listed joined the EPG. Ofcom does not consider that an EPG operator is obliged to invest in upgrades or reconfigurations of its EPG simply to meet the aspirations of channels listed or seeking a listing on the EPG.
- as regards the points made by the BBC and Philip Hope on the positioning of individual channels and programmes within genres, Ofcom considers that these are matters for the EPG provider and the channel concerned, having regard to the published listings policy of the EPG provider. It remains open to any channel provider to complain to Ofcom if it is dissatisfied with the outcome of discussions with the EPG provider.

Annex 3

Regulatory impact assessment

1. This assessment looks at the potential regulatory impact of different options for securing the policy objective set out below, in the light of the risk assessment, as well as comments from consultees and further information supplied by satellite and cable EPG providers, who were asked what incremental costs they would expect to incur as a result of the proposals, over and above their obligations under the Disability Discrimination Act 1995.

2. In preparing the assessment, and as required by section 7 of the Communications Act 2003, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance. While we take the Cabinet Office guidelines into account, Ofcom reserves the right to prepare regulatory impact assessments in the manner it considers appropriate to the circumstances of each case. In this case, we do not consider that it is necessary to carry out a Competition Assessment or a Small Firms' Impact Test, as Ofcom's proposals already take account of the need for proportionality when imposing regulatory burdens that might hinder competition or bear particularly heavily on small firms. In this case, none of the firms directly affected by the proposed regulation are small firms.

Policy objective

3. Ofcom is required by the Act to devise a code of practice for EPG providers dealing with how prominently public service channels (as defined in section 310(4) of the Communications Act) are to be displayed on EPGs, and what features the EPG should provide to assist viewers with hearing and/or visual impairments to use the EPG to use them for all the same purposes as other people, so far as practicable. The Act also empowers Ofcom to require licensed EPGs to comply with a code intended to secure fair and effective competition in the provision of EPGs. Ofcom seeks to ensure fair and effective competition between channel providers, and considers that EPG listings have a significant part to play in this.

Risk assessment

4. If the code made no specific provisions as regards appropriate prominence for public service channels, and did not specify the features that EPGs should provide to assist viewers with hearing and / or visual impairments, it would be up to individual EPG providers to decide how to deal with these issues against the background of their obligations under the DDA. In relation to appropriate prominence, it is likely that there would be a lack of clarity about what rules EPG providers were applying.

5. As regards accessibility for people with hearing and / or sight impairments, it is likely that there would, as now, be different levels of provision and different levels of publicity about these features. These differences in the availability of accessibility features and awareness of them could mean that some multichannel viewers would not be aware of facilities to help them use the EPG and television access services, and that accessibility features on some platforms would not be as good as they could be. However, it is not possible to be precise about this, since EPG providers have continued to take steps to improve both accessibility and publicity, possibly in the

light of the DDA, Parliament's enactment of the Communications Act 2003, Ofcom's publication of a draft code, and their own policies for improving accessibility.

Options

6. This assessment looks at three options – a base case in which Ofcom does the minimum necessary to fulfil its statutory obligations; a second option in which Ofcom also regulates to require EPGs to deal with channels listed on their EPGs in a fair, reasonable and non-discriminatory manner (FRND), and a third option in which EPG providers are additionally required to accelerate the development of accessibility features.

Option one: minimal intervention

7. In the regulatory impact assessment published with the consultation paper, we used (as suggested by Cabinet Office guidelines) a base case in which there was no code, even though this option is not open to Ofcom, which has a statutory duty to publish those parts of the code required under section 310 of the Act. One respondent said that this was inappropriate, and on reflection we consider the most appropriate base case to be the least intrusive regulatory intervention consistent with Ofcom's statutory responsibilities.

8. Ofcom does not consider that it could comply with its statutory obligations in respect of appropriate prominence or accessibility features for people with hearing and / or visual impairments by regulating in a less intrusive manner than is set out in its consultation proposals. As regards:

- (a) appropriate prominence, EPG providers were already required by the ITC's EPG code to accord 'due prominence' to PSB channels. While Ofcom now proposes that EPG providers should make their policies on appropriate prominence transparent, Ofcom is satisfied that this could be done without incurring significant additional cost (e.g. by publication on websites); and
- (b) accessibility features, Ofcom considers that to require EPG providers to do less than they reasonably can to meet the needs of people with hearing and / or visual impairments would be inappropriate, and therefore would not be consistent with its obligations under section 310(3) of the Communications Act 2003.

9. Thus, in this option, Ofcom would fulfil its obligations to publish a code dealing with appropriate prominence, and with the features required to enable people with hearing and / or visual impairments to use EPGs for all the same purposes as other people, so far as practicable. But it would refrain from requiring EPG providers to deal with channels in a fair, reasonable and non-discriminatory (FRND) fashion for the purpose of securing fair and effective competition.

10. It is clear that there are a substantial number of people with disabilities who would benefit from easier-to-use EPGs. On the basis of independent research, the Royal National Institute for the Deaf estimates that there are about 9 million deaf and hard of hearing people in the UK (of whom 8.3 million suffer mild to moderate

deafness, and 700,000 suffer severe to profound deafness)², and that the number is rising as the number of people over 60 increases. Of these, a number use British Sign Language as their first or preferred language. Ofcom is not aware of any independently-validated surveys of the number of people who use British Sign Language, but current estimates vary between 50,000³ and 70,000⁴. As regards potential users of audio description, research published in 1999 by the (then) Department of Social Security suggests that there are just under 2 million people with a 'seeing' disability⁵.

11. Ofcom considers that the benefits of improved publicity about how to use EPGs, and of using standard abbreviations / symbols would include increased awareness of and usage of EPG and television access services by people with hearing and / or visual impairments. This in turn would make it easier for disabled viewers to identify suitable programmes for viewing, and to would assist social inclusion. It would not be easy to quantify precisely the number of people who would benefit or to monetize those benefits. However, given that Ofcom is under a statutory duty to secure through the EPG code that viewers with hearing and / or visual impairments are able to use the EPG, and are informed about television access services, Ofcom considers that further research into the value of the benefits would not be useful or necessary. Ofcom notes that disability groups have welcomed the proposals.

12. The costs in relation to improved accessibility relate principally to improved information, labelling of programmes accompanied by access services, and the preparation of an annual statement. There are also prospective costs that may arise as further adjustments become practicable from a technological and financial point of view, but as the code does not impose any specific requirements, these are outside the ambit of this assessment.

13. As regards the incremental costs of better publicity on how disabled viewers can use the EPG and the subtitling, signing and audio provision services to which it provides access, responses from most EPG providers bear out our initial view that such costs would not be significant – to the extent that providers do not already have, or are implementing measures to improve publicity, they have indicated that they expect to absorb the costs.

14. In addition to improving publicity, Ofcom has proposed that EPG listings of television programmes should use standard symbols or wording to denote programmes with access services. As an interim measure, Ofcom is minded to

² The National Study of Hearing carried out by the Medical Research Council Institute of Hearing Research (Adrian Davis, Hearing in Adults 1995, Whurr) found the prevalence of different degrees of deafness for each age group in the UK population. These prevalence rates have been found to stay fairly constant. It is the age profile of the general population that changes and this affects the total estimated numbers of deaf and hard of hearing people in the UK. RNID's estimates come applying the Medical Research Council prevalence rates to the current population figures. Because most deafness is age-related, as the number of elderly people in the population increases, the total number of deaf and hard of hearing people also rises.

³ RNID (www.rnid.org.uk/)

⁴ British Deaf Association (<http://www.britishdeafassociation.org.uk/>).

⁵ 'Disability in Great Britain' DSS Research report No 94 HMSO (1999), Emily Grundy et al. This reports that 23% of those that are disabled have a 'seeing' disability (Table 3.6) and that 8, 582, 000 are disabled in GB (Table 3.1). This gives 1.97m as having a seeing disability. Criteria for inclusion in this group is if a person has difficulty seeing a friend across the road even when wearing glasses.

require that suitable data should be included in programme summaries, which are prepared for each programme and can be easily edited. Use of abbreviations rather than symbols would enable the identifiers to be introduced quickly, would ensure backwards compatibility with the large number of DTT set top boxes already in people's homes, and would avoid the expense of a separate exercise to develop, test and roll-out software. By contrast, other EPG providers have told us that incorporating abbreviations in programme summaries would be relatively inexpensive, though they have not quantified what these costs would be. Ofcom will be consulting on what abbreviations should be used, and what the regulatory impact of implementing such a labelling system would be.

15. Finally, this option would also require EPG providers to consider how to improve accessibility for people with disabilities as part of future plans for the development of their EPGs. In support of this, EPG providers would be required to produce annual statements. Most EPG providers have indicated that they are content to do so, and Ofcom therefore considers it reasonable to assume that the additional costs would not be significant.

Option two: FRND treatment

16. Under this option, EPG providers would be required to implement the appropriate prominence and accessibility policies referred to under option one, and also treat channels listed on their EPGs in a FRND manner. This would include a requirement to review listings policies in consultation with channels, and to publish those policies.

17. Ofcom does not consider that requirements as regard appropriate prominence and FRND treatment are likely to result in significant additional costs for EPG providers, since they have been regulated in a similar way hitherto. However, channels listed on EPGs would benefit from protection against treatment that was unfair, unreasonable or unduly discriminatory. In the absence of such protection, EPG providers would have greater discretion to treat channels in different ways, and might seek to extract commercial advantage from the situation by discriminating unduly in favour of channels associated with the EPG provider⁶, and against competing channels, in ways that militated against fair and effective competition between channels. Ofcom therefore considers that a requirement on EPG providers to offer FRND treatment to channels listed on their EPGs is proportionate in order to secure fair and effective competition.

Option three: accelerated accessibility requirements

18. In this option, and in addition to the measures set out in option two, EPG providers would be required to take rapid steps to improve the accessibility of EPGs, through changes to the software in set top boxes. Such changes could include facilities to sort programme listings by the nature of the access services available, to

⁶ Both Telewest and Sky are associated with a number of channels. Telewest is linked to Flextech (owners of channels such as LivingTV, Bravo, and ftn) and indirectly to UKTV (owners of channels such as UKTV Gold, UKTV Lifestyle and UKTV History). Sky is linked to a number of channels, both directly and indirectly (e.g. Sky Sports 1, Sky Movies 1, and The History Channel).

select alternative forms of display to make EPGs more legible for people with particular forms of visual impairment, and to have programme listings read out, for people who found it difficult or impossible to read programme listings. However, they would require developments in software and technology. Some of these could not be achieved at all in the short term, while in other cases, attempts to hasten the development and implementation of new features would pose significant risks to the operation and stability of the EPGs.

19. While EPG providers were not asked to provide detailed costs of the sort of changes envisaged in this option, some did explain the process that would be involved in making some of these changes, as well as the scale of costs (several million pounds) that would be incurred in implementing changes as a separate exercise in advance of other business-driven changes.

20. Ofcom considers that the changes outlined in paragraph 18 are legitimate aspirations for people with hearing and / or visual impairments, but accepts that it would be impracticable and disproportionate to demand rapid changes on this scale, as many of the enabling technologies are still in the developmental stage, and could not safely be implemented without significant risks to the stability of EPGs for all users. For this reason, despite the undoubted benefits that would accrue to such viewers, we do not think that it would be useful to seek to quantify those benefits now. Ofcom does expect the annual statements that would be required of EPG providers would provide visibility of the scope for progressive improvements to the accessibility of EPGs alongside other improvements.

Conclusion

21. Ofcom considers that option one represents the minimum that it could do to comply with its statutory obligations, but that the additional costs in option two of imposing FRND requirements on EPG providers are proportionate in order to secure fair and effective competition. By contrast, Ofcom does not consider that option three is practicable or proportionate at this stage, although it does expect that a number of the accessibility features will become practicable over time.