

Ofcom's EPG prominence consultation

ITV PLC's response

Summary

PSB is critical to our democracy, to our culture and to our economy

For most of the post-war period in the UK, public service broadcasting (PSB) has made a vital contribution to the UK economy, to our culture, and to our democracy. PSBs still account for the bulk of spend on high quality original UK TV content each year (c.£2.5bn). This content delivers the PSB purposes – informing our understanding of the world, stimulating knowledge and learning, reflecting UK culture and identity, and representing diversity and different viewpoints. Each PSB makes a distinctive contribution to the system as a whole.

ITV's large audiences for original content enable us to raise the revenue to pay for accurate and impartial news and current affairs – and ensure a mass audience to consume it. This is crucial in an era of fake news and social media filter bubbles. Ofcom data shows that TV remains the most important source of news for UK citizens, and the BBC and ITV are the most used sources in the UK. ITV reaches 19m viewers per week with its news, reaching a great proportion of younger viewers, female viewers, and C2DE viewers than the BBC. Ofcom (and separate ITV) research shows that ITV is perceived as the most impartial of all the major TV news services¹. The provision of high quality nations and regions TV news by ITV (and the BBC) is critical to audiences and to democracy as there is little other provision. In total, ITV spends around £120 million each year on national, international, nations and regions news.

At a time when national divisions are sometimes stark, PSB programming is able to bring people together like little else. Whether it is coverage of the World Cup or the Royal Wedding, Saturday night entertainment or high quality UK drama, PSBs play a crucial role in bringing the nation together and fuelling the national conversation. Original content “made by us, for us and about us” is the defining cultural purpose of PSB, with ITV dramas like *Endeavour*, *Vanity Fair*, *Marcella*, *The Good Karma Hospital*, *Butterfly* and *Vera* at the forefront. And of course PSB is about so much more than drama. In the first half of 2018, ITV showed 747 programmes with reach of over 3 million viewers across 88 different programme titles and 9 different genres.² The PSB system as a whole delivers substantial spend across a wide range of genres, including news, current affairs, drama, children's programming, factual, soaps, entertainment, and comedy.

The impact of the PSBs extends well beyond the programmes we make. ITV is a global business with the nations and regions of the UK at its heart. We work with a huge number of independent producers and other suppliers, and employ thousands of people across the country's nations and regions – nearly half of our group employees are outside London. This investment underpins the wider creative industries sector, which is growing around three times faster than the economy in general, and will have created a million jobs by 2030.

¹ Ofcom, News Consumption in the UK: 2018 (https://www.ofcom.org.uk/data/assets/pdf_file/0024/116529/news-consumption-2018.pdf)

² Source: BARB/AdvantEdge. Jan-Jun 2018 Individuals. Programmes 10 mins or over.

PSB is highly valued by citizens and consumers

Despite a boom in choice, viewing to PSB channels remains high, accounting for over half of all TV viewing. When including the portfolio channels from PSB providers, this rises to over 70%.³ Satisfaction with the system is high, with three-quarters (75%) of regular or occasional viewers of any PSB channel claiming to be either very, or quite satisfied. Viewers continue to believe that the purposes and characteristics of PSB are important.

ITV plays a critical role within the PSB system and is performing strongly, recognised by audiences in Ofcom research for its “*well-made, high-quality programmes.*” Whether its *Coronation Street* or *Emmerdale*, *Vanity Fair* or *Victoria*, *The X Factor* or *The Voice*, *I’m a Celebrity* or *Love Island*, coverage of the World Cup or the Tour de France, people love the programmes that ITV provides.

This popularity is reflected in consumption: ITV is the biggest primetime channel in the UK⁴ and registered the biggest year-on-year growth of any UK TV channel between 2017 and 2018⁵, with the channel’s share now standing at 16.9%. The ITV Family is the fastest-growing group of channels in the UK, with a share of 23.4%. ITV2 in particular is doing well and is now the biggest digital channel for 16-34s, overtaking E4.

Globalisation is fundamentally changing the media landscape

It is increasingly obvious that across many areas of economic life, technological change is facilitating intense global competition. The result is a global commercial battle to shape and influence what we watch, listen to or buy from the comfort of our homes. Whether it’s Amazon’s search results determining what we buy when we shop online, Facebook deciding which stories and posts we see on social media, or Google controlling the results when we search the internet, these firms are shaping our choices and our influences.

Unsurprisingly, what we watch on television screens and tablets is emerging as a key battleground. Technological change is fundamentally changing the way people watch TV – superfast broadband delivers streaming services to the home through connected TVs and streaming sticks, 4G mobile allows people to watch on demand wherever they are, whenever they like.

Global online platforms and distributors are playing an ever-increasing role in content distribution and discovery, attempting to disintermediate UK players. Facebook, Google, Amazon and Apple in particular are emerging as key global distributors of video content. Global content providers such as Netflix (as well as Apple and Amazon themselves) are emerging in parallel.

In response, other distributors and content providers are consolidating and vertically integrating globally – Virgin is owned by Liberty Global and Sky by Comcast. Major TV manufacturers are adopting operating systems from global providers such as Google. The result is that we are now entering a different phase of competition in UK television driven

³ https://www.ofcom.org.uk/data/assets/pdf_file/0014/116006/media-nations-2018-uk.pdf

⁴ Source: BARB/AdvantEdge Individuals prime time (1900-2229) SOV

⁵ Source: BARB/AdvantEdge Individuals, consolidated, all time Channels include +1 & HD where applicable Weeks1-38, 2018 vs Weeks1-38, 2017

by technological change which is facilitating intense global competition for the attention of UK audiences.

ITV is taking advantage of the opportunities this offers

These developments bring real business opportunities for UK television producers. In particular, ITV has a growing international production business and has successfully produced programmes for both a UK and global audience in partnership with recent entrants. ITV Studios is successfully winning global commissions from the likes of Netflix and Amazon. We are working through our subsidiary production companies across the world and in partnership with other PSBs to maximise revenues globally, launching Britbox US with the BBC and investing for the long-term term in the future of Freeview as it develops into a full hybrid DTT-IP platform.

ITV is negotiating hard with global platform providers

As a content distributor, the entry into the market of new competitors has also brought opportunity for ITV. Fairly obviously, in every carriage deal ITV enters into, we seek to ensure that our content is easy to find and access. To date this has been broadly successful, with the ITV Hub present on most major devices and platforms in a reasonably prominent position. To become established, many global players have recognised the attraction at the outset of accessing national content from players such as the PSBs in order to enter markets and build scale. This is because ITV, along with the other PSBs, offers high quality UK content that is loved and heavily consumed. In a world of increased choice, consumers continue to come to ITV in their millions each day.

Global players have commercial incentives to promote non-PSB content

But that quality and popularity in the UK may not, by itself, be enough. The PSBs' medium term ability to maintain these positive outcomes is threatened by asymmetric competition from global media aggregators and distributors who have long run incentives not to promote PSB services (or other national players in other territories).

[🔗] For large vertically integrated global companies there is a clear incentive to promote their own content (or that of their commercial partners) globally ahead of that produced by the PSBs.

Platforms that are not vertically integrated in content and distribution nonetheless appear to show signs of preferring the convenience and immediate financial benefit of paid-for global partnerships with the likes of Netflix, rather than promoting the national content (such as that from the PSBs in the UK) that is most relevant and important to citizens and consumers in a particular country. This is also occurring worldwide on a country-by-country basis. The prominence of Netflix on UI's and remote controls is an illustration of this.

The risk is that, over time, popular PSB services become harder and harder to find, edged out by global content that delivers a greater benefit to platform operators and aggregators.

The way in which global players choose to exercise their power will be crucial

The global TV aggregators and distributors are investing globally in artificial intelligence (AI), augmented reality (AR) and data processing on a scale that UK PSB cannot match⁶. This potentially offers much to be excited about for consumers as, over time, content recommendations become increasingly intelligent and targeted. But as more and more content discovery moves away from lists of channels and VOD services it is also important to recognise the potentially negative consequences this may bring. Instead of presenting the consumer with all possible options, the risk is that they surface and give prominence to that content they have commercial incentives to prioritise. In this world, the quality (or local/national popularity) of content alone will not be enough to ensure that consumers are made aware of its existence, and broader PSB outcomes are unlikely to be supported by global businesses or reflected in purely commercial algorithms.

User interfaces are only going to get more powerful, more personalised and more influential over time. The algorithms driving content recommendation will be powerful: already more than 80 per cent of the TV shows people watch on Netflix are reportedly discovered through the platform's recommendation system.⁷ Recent Ofcom data bears this out: when people are using SVOD services it's not to watch UK content, with three quarters of the top 20 SVOD programmes in Q1 2018 coming from the USA or Canada. These concerns are not just hypothetical: we and the other PSBs are already beginning to experience them across the market.

There are already signs that global companies are changing their approach

[✂]

A very real threat to PSB

If left unchecked, over time, this emerging control over of content discovery by global content aggregators and TV manufacturers will threaten the virtuous circle of investment, viewing, and reinvestment that sustains the PSB system. In the medium term we should be concerned about the prospects for investment in UK-specific content, investment in key genres, and the wider creative economy. This will ultimately impact negatively on our democracy and our culture.

In an era of increasingly intense but asymmetric global competition, the policy concerns today are rather different to those of the last few decades. The emerging concern today is not about the lack of competition to all-powerful, vertically-integrated PSBs within a predominantly domestic market, or about PSBs withholding content from vulnerable platforms.

The concern today should be about how we can safeguard the flourishing free to air, universal PSB system we value so highly and which effectively serves citizens and consumers in the face of asymmetric competition from powerful, vertically-integrated global firms

⁶ This is not limited to those from Silicon Valley. Broadcast reports that Jeremy Darroch described Artificial intelligence, personalisation and on-demand content as among the "decisive bets" being laid by Sky. <https://www.broadcastnow.co.uk/the-tech-bets-at-the-heart-of-skys-plans/5132565.article>

⁷ <https://www.wired.co.uk/article/how-do-netflixs-algorithms-work-machine-learning-helps-to-predict-what-viewers-will-like>

operating in a global market. At the heart of this will be the increasing inability of the PSBs to ensure that people can easily find and access the content they have paid for, directly or indirectly, that supports the UK's economy, culture and democracy. This is an issue that is not just of concern in the UK but across Europe too.

The power of the PSBs working in partnership, notably through Freeview Play, have hitherto helped to some extent in negotiations with global players. This is particularly true at a time when most operators are still in the process of designing and optimising their user interfaces. [X]

Experience in the linear space suggests that once user interfaces have become firmly embedded, reinforced by global commercial contracts, it becomes increasingly difficult and disruptive to change their layout and the ordering of services within them⁸. Reform of the regime now, whilst the market is still taking shape, will help overcome the negative externalities outlined. Relying on intervention ex post will be exceptionally challenging, if not impossible. Concerted action by Ofcom and by Government is therefore needed to support the steps taken by the PSBs before these trends fundamentally alter the UK media ecology.

The prominence regime needs to be reformed

From the beginning of multichannel TV in the UK, Parliament has insisted that PSB services should be prominent on EPGs. This priority remains but needs adapting in an era of global content production and distribution. To support the steps being taken by the PSBs to compete in global market against international online players and global content providers, Government must reform the EPG prominence intervention to reflect the changing market and allow UK PSB to compete effectively.

The prominence regime must continue to deliver high levels of visibility for PSB content

It is important that UK consumers benefit from the innovations that are emerging from global technology companies. However, at the same time, it is important that the major players in TV content distribution, both now and in future, who are investing heavily, have clarity at the outset about the degree of prominence expected for PSB in the UK market.

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

⁸ This is particularly the case for smart televisions given the lengthy replacement cycle (5-7 years) once purchased.

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.⁹

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 consumers¹⁰. Such functions are likely to include linear EPGs and VOD player landing pages.
- *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.

⁹ 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.

¹⁰ For example, linear EPGs remain a popular way to access programmes yet a platform might chose to make the EPG much less prominent

- 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).

The regime must also provide clarity, with clearly defined roles for Government, regulator and UI providers

Currently, the EPG prominence 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.

This approach will ensure that PSBs can continue to play their vital role in the UK's democracy, culture and creative economy, whilst giving platforms and user interface operators the freedom to innovate.

Ofcom is right to ensure the linear regime remains effective but needs to rethink its approach to ensure its proposals are proportionate

ITV is clear and unequivocal in its support for prominence for PSB services. However, with fourteen¹¹ such services eligible for some form of prominence, clearly not all of these can be in the first slot or even on the first page. This means judgment is required in considering what degree of prominence is appropriate and proportionate for each service.

We agree with Ofcom's approach to distinguish between the degree of prominence required for the main five channels versus the others. The five main PSBs carry the most onerous public obligations, invest the most heavily in meeting them, and are intended for consumption by everyone in the UK. They are also the most used and most popular. As such, the highest degree of prominence is merited.

The proposal to ring-fence the first five slots in linear lists for the main channels appears unlikely to deliver any incremental public value. The combination of market dynamics in linear channel provision and the current high level requirement for 'appropriate prominence' would likely result in these channels retaining these positions due to their popularity with audiences and long history of being located in these slots. As such, whilst we do not oppose such a requirement nor do we believe it offers any material additional benefit to us.

Beyond the five main services, we believe Ofcom's proposals do not strike quite the right balance between affording all PSBs some degree of prominence and minimising the impact on the market. This is in part because Ofcom does not appear to have assessed the cost to commercial broadcasters, [redacted].

Whilst increased prominence might result in a small degree of increased consumption, the other factors that drive consumption (that Ofcom itself has identified) such as channel brand, audience loyalty, and the quality or appeal of content will remain unaltered and act as major constraints to consumption growth. This is particularly true for channels in indigenous minority languages or offering distinctive special interest content.

[redacted] in order to promote a small number of niche PSB services. It seems implausible that such changes could result in a growth in total TV consumption. The channels being promoted are somewhat niche in nature and, as such, already likely to be consumed by those with an interest. [redacted]

Such a disproportionate approach, [redacted] is particularly disappointing at a time when commercial television – and commercial PSB – is already under pressure due to the increase

¹¹ BBC One, BBC Two, BBC Four, CBBC, CBeebies, BBC News, BBC Parliament, BBC Alba and forthcoming the BBC Scotland, ITV/STV, Channel 4, Channel 5, S4C, and local television services

in on demand viewing and asymmetric competition with international firms operating under substantially lower legal and regulatory burdens.

Ofcom therefore needs to [✂]

Absent a full impact assessment, ITV suggests that Ofcom should seek to mitigate the risk to the market by lowering the page threshold (or lower slot limit) from the first three to the first five pages. Such an approach would achieve Ofcom's policy objective of prominence for the smaller PSB services using "...the least intrusive means..." in line with Ofcom's own guidance

Section 1: Context

PSB is critical to our democracy, to our culture and to our economy

Ofcom's first *Media Nations* report¹² showed that in 2017 just over £7.5 billion was spent on network television programmes by UK channels. It also showed that the PSBs and their commercial portfolio channels still accounted for the bulk of this spend (over £3 billion), with the rest of the sector (defined by Ofcom as 'Other multichannels') contributing just under £1.2 billion on content other than sports. The bulk of this spend by PSB channels and PSB commercial portfolios is on new first run UK content (Ofcom puts this figure at just under £2.8 billion).

This investment funds programming that delivers the PSB purposes – informing our understanding of the world, stimulating knowledge and learning, reflecting UK culture and identity, and representing diversity and different viewpoints. Each PSB makes a distinctive contribution to the system as a whole.

ITV's large audiences for original content enable us to raise the revenue to pay for accurate and impartial news and current affairs – and ensure a mass audience to consume it. This is crucial in an era of fake news, social media filter bubbles, declining trust in public institutions and ever more challenging business models supporting the production of high quality international, national, regional and local news are under pressure.

Ofcom's publication *News Consumption in the UK* shows that TV remains the most important source of news for UK citizens and that the BBC and ITV are the most used sources in the UK. ITV reaches 19m viewers per week with its news, reaching a greater proportion of younger viewers, female viewers, and C2DE viewers than the BBC. ITV is perceived as the most impartial of all the major TV news services¹³. The provision of high quality national and regional TV news by ITV (and the BBC) is critical to audiences as there is little other provision. In total, ITV spends around £120 million each year on national, international, national and regional news.

The influence of the PSB extends online, with the BBC and ITV among the top 3 most-followed news providers on Facebook, Twitter and Instagram. PSB output is highly trusted and viewed as impartial, in stark contrast to audience attitudes to social media.¹⁴

At a time when national divisions are sometimes stark, PSB programming is able to bring people together like little else. Whether it is coverage of the World Cup or the Royal Wedding, Saturday night entertainment or high quality UK drama, PSBs play a crucial role in bringing the nation together and fuelling the national conversation.

Original content "made by us, for us and about us" is the defining cultural purpose of PSB, with ITV dramas like *Endeavour*, *Vanity Fair*, *Marcella*, *The Good Karma Hospital*, *Butterfly* and *Vera* at the forefront. And of course PSB is about so much more than drama. In the first half of 2018, ITV showed 747 programmes with reach of over 3 million viewers across 88 different programme titles and 9 different genres.¹⁵ The PSB system as a whole delivers

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substantial spend across a wide range of genres, including news, current affairs, drama, children’s programming, factual, soaps, entertainment, and comedy.

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PSB is highly valued by citizens and consumers

Ofcom’s own research shows that, despite the proliferation of choice in recent years, viewing to PSB channels remains high, accounting for over half of all TV viewing. When including the portfolio channels from PSB providers, this rises to over 70%.¹⁶

Satisfaction with the system is high, with three-quarters (75%) of regular or occasional viewers of any PSB channel claiming to be either very, or quite satisfied. Viewers continue to believe that the purposes and characteristics of PSB – such as informing our understanding of the world, reflecting UK cultural identity, and providing high quality, original programming – are important.

ITV plays a critical role within the PSB system and is performing strongly, recognised by audiences for its “well-made, high-quality programmes,” with 82% of respondents to Ofcom’s survey rating ITV highly for this.

This popularity is reflected in consumption. ITV registered the biggest year-on-year growth on an UK TV channel between 2017 and 2018¹⁷, with the channel’s share now standing at 16.9%. It is also the biggest primetime channel in the UK¹⁸.

ITV’s total share, including its portfolio channels, is 23.4%. The ITV Family is the fastest-growing group of channels in the UK. ITV2 in particular is doing well, with a total share of over 6%. It is now the biggest digital channel for 16-34s, overtaking E4.

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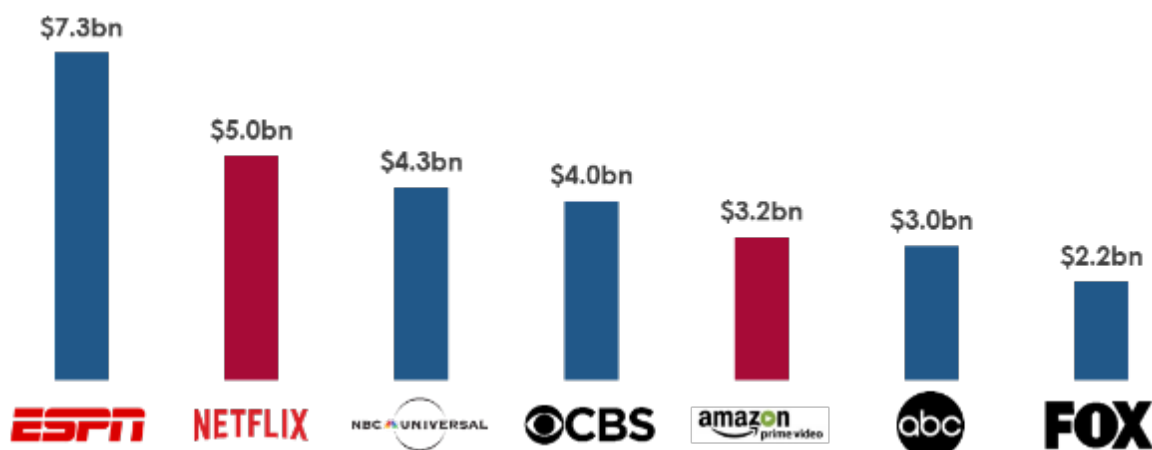
In response, other distributors and content providers are consolidating and vertically integrating globally – Virgin is owned by Liberty Global and Sky by Comcast.

The result is that we are now entering a different phase of competition in UK television driven by technological change which is facilitating intense global competition for the attention of UK audiences. There is clear evidence that younger people in particular are spending more and more time watching content on demand. Some of this consumption is shifting to the online services of linear TV players, some is shifting to new entrant online offerings and some away from TV content entirely. The main players in every point of the supply chain are now global technology firms and content aggregators.

Content funding and production

It is increasingly clear that a global market for TV content is emerging rapidly. The scale of investment in content of global appeal by global players has been widely discussed in the media, although accurate and consistent numbers are hard to come by. BCG's The Future of Television suggested that Netflix and Amazon's spend on content was comparable to that of the major US networks:

Annual content spend Netflix and Amazon vs. top five US cable networks, 2016¹⁹



That spend has increased dramatically since 2016, with Netflix originally setting its content budget for 2018 at \$8bn and media reports suggesting this has now risen further,

¹⁹ BCG, The Future of Television (2016)

potentially as high as \$13 billion.²⁰ Amazon is reported to be spending between \$4-5 billion this year.²¹ At one level these figures are unmatched in the UK market, whether by the PSBs combined or by purely commercial providers. But, of course, these aggregate content spend numbers are for the whole world in contrast to PSB content investment which is still focussed primarily on engaging UK audiences.

The stimulus provided to the UK TV production market by the array of new players is clearly welcome economically. Making /commissioning TV programmes in the UK is clearly increasingly attractive. Many players that are investing in/making new content in the UK each year are part of global groups, including both broadcasters – for instance Sky (now owned by Comcast); Discovery (a US based company) etc – as well as the production companies supplying them – such as All3Media (Liberty Global), Shed Media (Warner Bros), Left Bank Pictures (Sony), Shine and Kudos (Endemol) and Carnival (NBCU).

Content distribution and discovery

The presence of global groups is not limited simply to content production and channel ownership. Even more importantly, they are also increasingly present in content distribution and discovery, where we are moving rapidly from the old world of bespoke national platforms and televisions that were simply screens to the new, where platforms, services and devices are global products with little or no national variation.

This is not just about new online players but can also be seen in the changing approaches of more established TV platforms which are themselves increasingly part of global groups facing increasingly intense competition from the emerging online platforms. So, for instance, just under half of all UK households' television services²² are provided by companies that are subsidiaries of global cable/entertainment groups: Virgin Media (owned by Liberty Global) and Sky (now owned by Comcast).

In this context, the importance of securing the long-term future of the Freeview platform clear. Reaching 20m households²³, owned and controlled by the UK's PSBs, hitherto it has ensured high quality UK content is widely available, easily discoverable, and free to all.

Even in households where Freeview is the primary TV service, however, the take up of connected TVs and devices is growing. The number of households with a connected TV, including streaming sticks and consoles, has risen from 30% in 2012 to 77% in 2017. Sales of smart TVs complete with apps from SVOD and broadcasters have significantly increased in recent years, and now account for just under 80% of TV sales. This is a market dominated by international firms, such as Samsung, Sony, LG, Amazon, Apple.

There is a growing trend for these firms to be vertically integrated – involved not only in the distribution of content but also in investing heavily in their own content production. And, it is no longer necessary for these global players to even to have a broadcasting licence or platform in order to reach audiences in the UK. Some of the most popular routes to content – Netflix, Amazon Prime, YouTube and NowTV – are delivered via IP, with on-demand

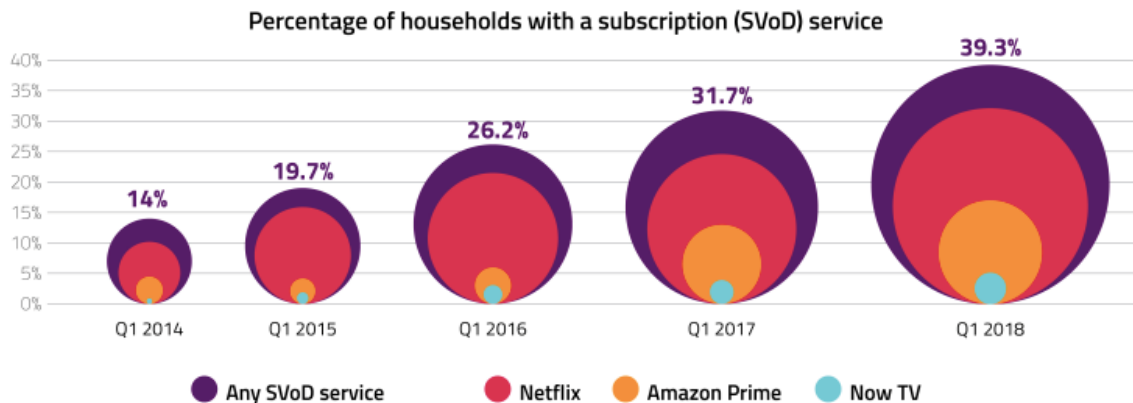
²⁰ <https://www.economist.com/briefing/2018/06/30/netflix-is-moving-television-beyond-time-slots-and-national-markets>

²¹ <https://www.mediapost.com/publications/article/315055/amazon-expected-to-spend-5-billion-on-video-content.html>

²² https://www.ofcom.org.uk/data/assets/pdf_file/0014/116006/media-nations-2018-uk.pdf

²³ http://www.digitaluk.co.uk/data/assets/pdf_file/0006/94308/Digital_UK_Spectrum_factsheet_May_2018.pdf

services licensed very differently from broadcasting services in the UK. The growth in take-up of these services has been very substantial in recent years.



Source: Ofcom. *Media Nations 2018*.

As such, consumers have access to more content than ever before, and this choice is undoubtedly a good thing in general. But such choice can also be overwhelming without a trusted guide helping you to discover programming of most relevance to you. Improved recommendations and personalisation, if done well, could undoubtedly benefit consumers and citizens.

This means that control of routes to content discovery – control of consumer eyeballs – is becoming an increasingly critical part of the market that is emerging. Amazon is looking to control voice search, Google is seeking to become the standard operating system for smart TVs, with Android TV, while Netflix and others are seeking global deals for the most prominent positions in UIs.

Such power over what people choose to watch, if vested in only a handful of companies, could result in less than positive outcomes. The picture here, again, is one of the emerging power of global content service providers and content aggregators – Samsung, Amazon, Google, Apple, Sky and Roku. Each with global business models and little interest in the public benefits and investment delivered by UK PSB.

There are good reasons to believe that this combination vertical integration and global business models will have a negative impact on the UK market.

ITV is taking advantage of the opportunities a global market offers

To be clear, the growth in global demand for content has brought economic advantages to UK producers. So, for instance, ITV has a growing international production business and has successfully produced programmes for both a UK and global audience in partnership with recent entrants. ITV Studios is successfully winning global commissions from the likes of Netflix and Amazon.

Recent global production highlights include:

- *Queer Eye*, made by ITV America (part of ITV Studios) and Scout Productions, debuted on Netflix in February this year, with the second season following soon afterwards and a third due to air in 2019. The show won three Creative Arts Emmy

Awards: Outstanding Structured Reality Series, Outstanding Picture Editing for a Structured or Competition Reality Program, and Outstanding Casting for a Reality Program

- *Love Island* has been commissioned in the US by CBS for a 20-episode series, which will be produced by ITV Entertainment, an ITV America company part of ITV Studios
- ITV Studios Australia to produce the first ever Australian version of *Saturday Night Takeaway*. Called *Sunday Night Takeaway*, commissioned by Network Ten
- ITV Studios France winning a number of recommissions, including a new season of *I'm a Celebrity... Get Me Out Of Here!* for TF1, *The Voice*, and *Four Weddings*
- *Dancing on Ice* in pre-production in Germany, through ITV Studios Germany

Similarly, new ways of distributing content online open up the possibility for ITV of reaching new audiences directly. So, for instance, we are working in partnership with other PSBs to maximise our audience and revenue online, launching Britbox US with the BBC and investing for the long-term term in the future of Freeview as it develops into a full hybrid DTT-IP platform.

ITV is negotiating hard with global platform providers.

Similarly, the growth of new TV platforms also presents opportunities for ITV as a content and channel wholesaler. Fairly obviously, in every carriage deal ITV enters into, we seek to ensure that our content is easy to find and access. To date this has been broadly successful, with the ITV Hub present on most major devices and platforms in a reasonably prominent position.

This has been helped by that fact that, to become established, many global players have recognised the attraction at the outset of accessing national content from players such as the PSBs in order to build scale. This is because ITV, along with the other PSBs, offers high quality UK content that is loved and heavily consumed by consumers. In a world of increased choice, consumers continue to come to ITV in their millions each day.

The combination of these incentives and ITV's strong content offer have to date helped ensure positive outcomes for ITV on major content platforms and services. However, it is apparent that global players also have the incentives, and increasingly the ability to act on them, that could potentially threaten these outcomes.

Global players have commercial incentives to promote non-PSB content

The PSBs' medium term ability to maintain these positive outcomes is potentially threatened by asymmetric competition from global media aggregators and distributors who have long run incentives not to promote PSB services (or other national players in other territories).

For large vertically integrated global companies there is a clear incentive to promote their own content ahead of that produced by the PSBs. This may take the form of content decisions – which content is promoted where – or be reflected in the structure of user interfaces – which might seek to relegate those areas where PSB performs well to less obvious locations within the overall UI. [✂]

Content discovery businesses will also be heavily incentivised to promote content from commercial partners globally in return for payment. [🌐] Global business models mean that user interface operators are likely to have a preference for striking single, global, paid-for deals with global content players, which are easier to negotiate, more lucrative than territory-by-territory deals, and certainly far more efficient for providers looking to roll out platforms globally. The result can be the first few slots on a smart TV homepage being occupied across the globe by global content players (e.g. Netflix) at launch.

These incentives will remain strong even if domestic content retains a strong appeal for UK audiences. While it is early in the development of these technologies for television, accusations of such behaviour have already surfaced in comparable areas.²⁴

Such an outcome would be of grave concern, particularly given the increasing importance of user data and analytics could result in a handful of ‘white label’ user interfaces come to dominate the device market ([🌐]) in the same way that a handful of interfaces have come to dominate online retail.

The risk is that popular PSB services become harder and harder to find, edged out by global content that delivers a greater benefit to platform operators.

The way in which global players choose to exercise their power will be crucial

Content discovery was straightforward in a world where the only option was linear broadcast. In channel listings, the main PSB channels occupy the top slots because this is where they have always been – and, as Ofcom’s own work shows, it is where consumers expect them to be. Despite the explosion of choice offered by multichannel television, and an Ofcom Code that allows platforms full discretion in how they choose to define ‘appropriate prominence’, the presence of the PSBs at the top of EPG listings has never been seriously challenged. Hitherto the market for TV has been overwhelmingly national rather than global.

However, the majority of consumer routes to content are no longer so simple. People are able to search – by text or by voice, to follow recommendations, browse programmes by genre or actor, choose between live and on-demand services, or press specific buttons on their remote controls to launch individual services. Often all of these functions and services are brought together within a single smart connected user interface.

These user interfaces and their myriad functions and tools do not offer single, standard products, identical for each user. Instead, the major players in the content discovery market are increasingly using or developing interfaces that can draw on the power of machine learning, artificial intelligence, augmented reality, and extensive data analytics to offer more personalised services.

The result will be a powerful, targeted user experience. Sky, for example, is reportedly developing technologies that will tailor its recommendations according to your mood,²⁵ while Samsung’s *Universal Guide* “...reflects the latest trends, in addition to the user’s past

²⁴ <https://www.propublica.org/article/amazon-says-it-puts-customers-first-but-its-pricing-algorithm-doesnt>

²⁵ <https://www.computerworlduk.com/data/how-sky-is-looking-recommend-movies-according-your-mood-3673839/>

viewing patterns...”²⁶ with aspirations that “...the algorithm will evolve to be able to cater to individual user needs, instead of recognizing the viewing patterns of the whole family.”

Such ambitions are not limited to device manufacturers and TV platform operators. Netflix has said that:

“We want our recommendations to be accurate in that they are relevant to the tastes of our members, but they also need to be diverse so that we can address the spectrum of a member’s interests versus only focusing on one. We want to be able to highlight the depth in the catalog we have in those interests and also the breadth we have across other areas to help our members explore and even find new interests. We want our recommendations to be fresh and responsive to the actions a member takes, such as watching a show, adding to their list, or rating; but we also want some stability so that people are familiar with their homepage and can easily find videos they’ve been recommended in the recent past.”²⁷

Its public explanations of how it makes its recommendations and how it decides which content to make most prominent amply demonstrates the power and complexity of its approach.²⁸

This potentially offers much to be excited about for consumers as, over time, content recommendations become increasingly intelligent and targeted. But as more and more content discovery moves away from lists of channels and VOD services it is also important to recognise the potentially negative consequences this may bring too.

For established pay TV operators and more recent entrants alike, this sophistication offers the opportunity to push their own content at consumers ahead of that from the PSBs, so potentially increasing subscriber retention by highlighting exclusive content over free-to-air PSB.

The resulting algorithms are powerful: more than 80 per cent of the TV shows people watch on Netflix are reportedly discovered through the platform’s recommendation system.²⁹

Recent Ofcom data bears this out: when people are using SVOD services it’s not to watch UK content, with three quarters of the top 20 SVOD programmes in Q1 2018 coming from the USA or Canada.

²⁶ <https://news.samsung.com/global/all-in-on-ai-part-4-your-personal-guide-helps-find-your-new-favorite-tv-show>

²⁷ <https://medium.com/netflix-techblog/learning-a-personalized-homepage-aa8ec670359a>

²⁸ <https://medium.com/netflix-techblog/netflix-recommendations-beyond-the-5-stars-part-1-55838468f429>

²⁹ <https://www.wired.co.uk/article/how-do-netflixs-algorithms-work-machine-learning-helps-to-predict-what-viewers-will-like>

Rank	Programme	Genre	Sub Genre	Commission Type	Service	Origin	Total Streams
1	Friends	Comedy	Sitcom	Acquisition	Netflix	USA	1985
2	The Grand Tour	Entertainment	Magazine	Original	Amazon	UK	911
3	The Crown	Drama	History	Original	Netflix	UK	651
4	Stranger Things	Drama	Sci-Fi/Fantasy	Original	Netflix	USA	628
5	Peaky Blinders	Drama	Crime	Acquisition	Netflix	UK	519
6	Black Mirror	Drama	Sci-Fi/Fantasy	Original	Netflix	UK	504
7	The Big Bang Theory	Comedy	Sitcom	Acquisition	Netflix	USA	485
8	Brooklyn Nine-Nine	Comedy	Sitcom	Acquisition	Netflix	USA	369
9	The Good Place	Comedy	Sci-Fi/Fantasy	Original	Netflix	USA	343
10	Vikings	Drama	History & War	Acquisition	Amazon	Ireland/Canada	335
11	Lucifer	Drama	Sci-Fi/Fantasy	Acquisition	Amazon	USA	330
12	Altered Carbon	Drama	Sci-Fi/Fantasy	Original	Netflix	USA	312
13	Orange is the New Black	Drama	Comedy	Original	Netflix	USA	310
14	Designated Survivor	Drama	Thriller	Original	Netflix	USA	302
15	Grey's Anatomy	Drama	Medical	Acquisition	NOW TV	USA	298
16	Breaking Bad	Drama	Crime	Acquisition	Netflix	USA	290
17	Homeland	Drama	Crime	Acquisition	Netflix	USA	288
18	Paw Patrol	Animation	Children's	Acquisition	Netflix	Canada	278
19	Riverdale	Drama	Mystery	Acquisition	NOW TV	USA	256
20	Peppa Pig	Animation	Children's	Acquisition	Netflix/Amazon	UK	244

Source: Ofcom. *Media Nations 2018*.

In future, these interfaces are only going to get more powerful, as Viaccess Orca's Director of Product Management, Content Discovery & Personalization observes:

*"Contextual recommendation is the new frontier: algorithms that will be sophisticated enough and have enough data to work with, that they will be able to suggest what viewers want to watch at precisely that moment and get it right the majority of the time. And with sophisticated AI increasingly penetrating the home — Amazon has already incorporated its Alexa intelligent personal assistant into its Fire TV stick — TV content personalization is going to become the new normal fairly rapidly."*³⁰

Instead of presenting the consumer with all possible options, the risk is that they surface and give prominence to that content they have commercial incentives to prioritise. In this world, the quality (or local/national popularity) of content alone will not be enough to ensure that consumers are made aware of its existence, and broader PSB outcomes are unlikely to be supported by global businesses or reflected in purely commercial algorithms.

These concerns are not just hypothetical: we and the other PSBs are already beginning to experience them across the market.

There are already signs that global companies are changing their approach

[🔗]

[🔗]

[🔗]

³⁰ <https://www.viaccess-orca.com/blog/how-content-personalization-enhances-tv-experience>



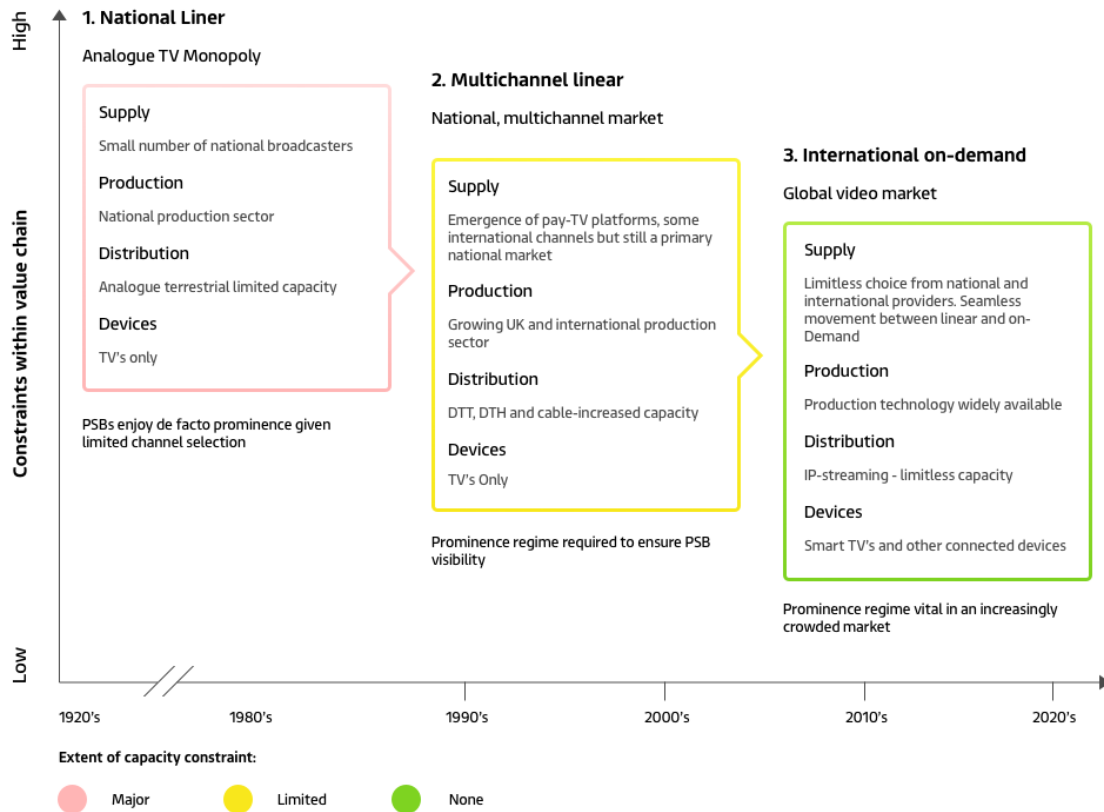
A very real threat to PSB

Over the past few decades, public policy has consistently sought to introduce more competition to the PSBs at every level of the value chain. For many years this made sense given the strong incumbent position they occupied. So, for instance:

- *Competing PSBs*: ITV was created to break the BBC monopoly. Channel 4 was created to provide an additional alternative voice and Channel 5 followed later, further increasing competition among the PSBs;
- *Competing content producers*: Channel 4 was also created to be a platform for content from the independent sector, which was further supported by the introduction of content commissioning quotas for ITV and the BBC, and regulated terms of trade allowing producers to retain the bulk of the secondary revenues raised from programmes commissioned by PSBs;
- *Competing infrastructure*: whereas once there was only analogue television, there was a deliberate policy of encouraging competing TV infrastructure in satellite, cable and latterly IP; and
- *Competing broadcasters more generally*: Multichannel subscription television on satellite and cable was encouraged and, coupled with the switch from analogue to digital television, resulted in the number of channels competing with PSB channels growing dramatically.

This pro-competitive approach was fully justified and played a part in developing the successful, vibrant, creative sector we have today. But while the benefits of this have been significant but there have also been costs. In particular, the old approach to funding PSB genres of content based on the regulation of monopoly has not been sustainable. The inevitable result of the decline in the value of PSB licences has been a set of choices about which genres of programming to prioritise above others. This process has been analysed at length in successive Ofcom PSB reviews.

As the chart below highlights we are increasingly moving from the familiar world of national multichannel TV to the more unfamiliar era of international online on-demand TV. And, as we have set out above, the world is changing rapidly.



In an era of increasingly intense but asymmetric global competition, arguably the policy concerns today are rather different to those of the past few decades. The emerging concern today is not about the lack of competition to all-powerful, vertically-integrated PSBs within a predominantly domestic market, or about PSBs withholding content from vulnerable platforms.

The concern going forwards will be how we can safeguard the flourishing PSB system we value so highly and which effectively serves citizens and consumers in the face of asymmetric competition from powerful, vertically-integrated global firms operating in a global market. At the heart of this will be the increasing inability of the PSBs to ensure that people can easily find and access the content they have paid for, directly or indirectly, that supports the UK's economy, culture and democracy. This is an issue that is not just of concern in the UK but across Europe too.

Across the value chain, global players will have powerful positions from content creation to distribution and devices, often vertically integrated or having powerful vertical relationships with other global players. They will benefit from global economies of scale, enabling them to invest more heavily in content, technology, marketing and partnership deals, and to recover their fixed costs across multiple territories.

The ability of these firms to in large part dictate in future what content is surfaced and when to UK citizens and consumers represents a fundamental challenge to the continuing effectiveness of the PSB system in delivering the aims set for it by Parliament.

The power of the PSBs working collectively, notably through Freeview Play, have hitherto helped to some extent in negotiations with global players. This is particularly true at a time when many newer platform operators are still in the process of designing and optimising their user interfaces. [✂]

Experience in the linear space suggests that once user interfaces have become firmly embedded, reinforced by global commercial contracts, it becomes increasingly difficult and disruptive to change their layout and the ordering of services within them³¹. Reform of the regime now, whilst the market is still taking shape, will help overcome the negative externalities outlined. Relying on intervention *ex post* will be exceptionally challenging, if not impossible.

If left unchecked, over time, this dominance of content discovery by global firms directing the audience away from UK PSB content will have potentially serious implications:

- *It threatens the virtuous circle of investment in UK-focussed TV content:* While some global firms may continue to invest in programmes made in the UK (albeit for the global market), it is the PSBs that are the engine room of UK-specific content creation for UK audiences.
- *It threatens investment in key genres:* in the face of such a sizable threat and with PSB licenses that deliver less and less compensating value, UK broadcasters will need to increasingly focus on the most profitable genres, and on content with global appeal. This puts less profitable – or loss-making – PSB genres, particularly news, at risk (continuing a trend Ofcom has identified in consecutive PSB reviews)
- *It threatens the wider UK creative economy:* PSBs, ITV included, are massive employers across the whole of the UK, it's nations and its regions. If revenues and investment are reduced the impact will be felt well beyond the individual broadcasters, in the creative industries more broadly
- *It threatens our democracy and civil society:* PSB content that helps people understand the world around them and informs debate will no longer be as widely provided or as easy for UK citizens to find. In an era of fake news and globalisation it is more important than ever that high quality, national PSB content remains highly prominent and easy to discover, delivered on mass-reach services that maximise impact and consumption.

Concerted action by Ofcom and by Government is therefore needed to support the steps taken by the PSBs before these trends fundamentally alter the UK media ecology.

³¹ This is particularly the case for smart televisions given the lengthy replacement cycle (5-7 years) once purchased.

Section 2: Establishing a new framework for prominence

The prominence regime needs to be reformed

From the beginning of multichannel TV in the UK, Parliament has insisted that PSB services should be prominent on EPGs. The Communications Act 2003 ensures PSB channels are easily discoverable on Electronic Programme Guides (EPGs). There are arguably three key benefits from this, which vary by PSB:

- *Increased impact and viewing of PSB content:* Benefiting all of the PSBs, prominence helps ensure that PSB services are easy to find and highly visible. This increases the consumption of PSB programmes, so increasing the public value that they deliver. Competing PSB news services, for example, are easily visible and accessible, helping to support the debate that underpins democracy.
- *Increased revenue for Channel 4:* as well as increased public value, higher viewing means greater advertising revenue for Channel 4. With its not-for-profit status, any additional revenues raised are available to Channel 4 to invest in the delivery of its public remit.
- *Sustaining the delivery of public value by the PSBs:* ITV's agreement to very substantial PSB obligations (particularly for news) above and beyond those of purely commercial broadcasters is critically reliant on the value in PSB licenses part of which is provided by the guarantee of prominence (as well as ring-fenced DTT spectrum).

Ultimately, investment in new, original and popular content is the key to the PSBs' success. Future success here is clearly in our own hands. But that success has also been underpinned by the combination of a strong free-to-air, UK-controlled platform (Freeview) run by the PSBs and prominence for PSB services on all major platforms which has allowed the PSB system and wider creative ecology to flourish and grow.

The importance of prominence remains but needs adapting in an era of global content production and distribution. Against this backdrop, Government must reform the EPG prominence intervention to reflect the changing market and ensure that UK PSB can compete effectively with global players.

Last year, Government gave Ofcom a new duty (in the Digital Economy Act), to review the prominence of PSB content on TV and on-demand, committing to legislate if Ofcom concluded there was a problem. Ofcom has published its initial findings and its conclusion is unequivocal:

"...If Parliament wishes for PSB to remain easy to find, then new legislation is needed to reflect the growth in television delivered via the internet."

We agree. Hybrid platforms and EPGs are the new normal but in these connected environments prominence often rules do not fully apply. It is therefore essential that Government updates the prominence rules to ensure PSB remains easily discoverable in an intensely competitive global media market.

Action is needed now, while these firms are still in the early stages of designing the products and user interfaces that will shape consumer behaviour in the decades to come. Action at a

later date, once these products are in every home, requiring these players to unpick their (often global) product designs, will be far harder (if not impossible) to achieve.

There appears to be an emerging political consensus that change is now required. For instance, in Jeremy Wright's speech at the recent RTS conference, he said that:

*"Younger viewers are more open to new technology and more receptive to new brands than any generation before them. This change in consumption habits is showing no sign of slowing down. So [the PSBs] must reach them where they want to be reached. **And they must find [PSB] where they expect [PSB] to be found.**"*

We agree. Government can play a part in ensuring PSBs continue to deliver the aims set for them by Parliament by ensuring that PSB services are found where audiences expect them to be found. Action on prominence is a vital step in supporting the PSBs' own actions and to deliver on the secretary of State's welcome commitment to:

"...ensure the government is playing [its] part in supporting the future of public service broadcasting at the very heart of our vibrant media sector."

A prominence regime that continues to deliver high levels of visibility for PSB content

The degree of competition and innovation currently evident in the market, and the range of different UIs currently offered as a result, is to be welcomed. It is important that reform of the prominence regime does not dampen this process and that UK consumers benefit from the innovations that are emerging from global technology companies.

However, at the same time, it is important that the major players in TV content distribution, both now and in future, who are investing heavily, have clarity about the degree of prominence that will be expected for PSB in the UK market. This will not inhibit innovation but will ensure that within that innovation PSB is built into the foundations.

This means that the new regime should place the onus on UI providers to work with PSBs to deliver prominence that works with the grain of individual products and consumer expectations, giving them discretion as to how to implement the legal and regulatory requirements.

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.³²

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 consumers³³. Such functions are likely to include linear EPGs and VOD player landing pages.
- *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.

³² 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.

³³ For example, linear EPGs remain a popular way to access programmes yet a platform might choose to make the EPG much less prominent

- 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).

The regime must provide clarity, with clearly defined roles for Government, regulator and UI providers

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.

This approach will ensure that PSBs can continue to play their vital role in the UK's democracy, culture and creative economy, whilst giving platforms and user interface operators the freedom to innovate.

Ofcom is right to ensure the linear regime remains effective but should ensure that its proposals are proportionate

ITV is clear and unequivocal in its support for appropriate prominence for PSB services. However, fourteen such services eligible for some form of prominence, clearly not all of these can be in the first slot or even on the first page. This means Ofcom's judgment is required in considering what degree of prominence is appropriate and proportionate for each service.

We agree with Ofcom's approach to distinguish between the degree of prominence required for the main five channels versus the others. The five main PSBs carry the most onerous public obligations, invest the most heavily in meeting them, and are intended for consumption by everyone in the UK. They are also the most used and most popular. As such, the highest degree of prominence is merited.

Ofcom's proposal to ring-fence the first five slots in linear lists for the main channels is a sensible confirmation of the status quo but appears unlikely to deliver incremental public value. This is because a) the services are already in slots 1-5; and b) it is highly likely that, in linear lists, the combination of market dynamics in linear channel provision and the current high level requirement for 'appropriate prominence' would likely result in these channels retaining these positions due to their popularity with audiences and long history of being located in these slots. As such, whilst we certainly do not oppose such a requirement nor do we believe it offers any material additional benefit to us.

Beyond the five main services, we believe Ofcom's proposals do not strike quite the right balance between affording all PSBs some degree of prominence and minimising the impact on the market. As a result, the proposals are disproportionate. Our concerns, more specifically, are:

- *They will deliver little to no public benefit* [🗑️]: Ofcom itself acknowledges that its proposals will only "...help secure..." or at best "...slightly increase..." the discoverability and viewing of the services in question. Set against this, [🗑️].
- *They go against audience preferences in relation to nations and regions services*: Ofcom's own research shows that just 4% of adults across the UK place some importance on S4C and BBC Alba being easy to find in the TV guide on their TVs. This figure is higher for local TV but still very much a minority, at 22%. Such support cannot justify the degree of pan-UK prominence Ofcom proposes for these services in non-regionalised EPGs. Even where EPGs are regionalised, there is still not a high degree of support for prominence for S4C (just 22% of adults in Wales place some importance on the service being easy to find) or BBC Alba (12% of adults in Scotland in Scotland).
- *They go against audience behaviour*: the small reach and share of the services Ofcom proposes to promote reflects in large part the value placed on them by UK

consumers as a whole. These services offer valuable niche content offer of strong appeal to a small subset of UK viewers. Given the distinctive nature of these services, and the lack of alternative sources of such content, all viewers who are likely to watch these channels are likely to seek them out regardless of EPG position.

Such a disproportionate approach which, as we set out in more detail below, [redacted], is particularly disappointing at a time when commercial television – and commercial PSB – is already under pressure in a market where competition for the audience and for advertising revenue is intensifying rapidly.

Ofcom therefore needs to reduce the negative impact of its proposals on the market

Ofcom states that “*Public value benefits are qualitative and are challenging to quantify in any meaningful way*” but that it nonetheless believes that the: “*...proposals would help secure or slightly increase the discoverability and viewing to these nation specific and Local TV channels, thereby supporting the personal and public value created for the relevant audiences and better secure the policy objective of the prominence regime and our broader broadcasting duties.*”³⁴ It is unclear from the consultation document on what basis it has reached this view.

Whilst increased prominence might result in a small degree of increased consumption, the other factors that drive consumption (that Ofcom itself has identified) such as channel brand, audience loyalty, and the quality or appeal of content will remain unaltered and act as major constraints to consumption growth. This is particularly true for channels in minority languages or offering distinctive special interest content.

Whilst the increase in public value is therefore likely to be minimal, the proposals appear near-guaranteed [redacted]

It seems implausible that such changes could result in a growth in total TV consumption. The channels being promoted are somewhat niche in nature and, as such, already likely to be consumed by those with an interest. [redacted].

[redacted]

[redacted], it is somewhat disappointing that while Ofcom states that it has “*...had regard to the potential impacts of [its] proposal[s]...*” it does not appear to have set out that assessment in its consultation document. While it has identified possible high-level impacts of the proposals overall (in paragraphs 5.7 and 5.8), it is not clear whether Ofcom has then gone on to consider the extent to which these factors apply to the proposals they put forward.

Where it has published supporting data, in the form of the EMP report and its own economic model, they exclude any information of the impact of changes on the Freeview platform, the largest in the UK, due to a lack of slot trading. Indeed, Ofcom has been explicit that it has “*...not sought to quantify the potential impact of our proposals in relation to the Freesat or Freeview EPGs.*”

Absent a full impact assessment, ITV suggests that Ofcom should seek to mitigate the risk to the market by lowering the page threshold (or lower slot limit) from the first three to the first five pages. Such an approach would achieve Ofcom’s policy objective of prominence for

³⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/116273/consultation-epg-code-prominence-regime.pdf

the smaller PSB services using “...the least intrusive means...,” in line with Ofcom’s own guidance.³⁵

³⁵ Ofcom. *Better Policy Making: Ofcom’s approach to impact assessment.*

Section 3: Response to Ofcom’s 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?

The proportionality of any proposed changes might be assessed by considering the balance between the delivery of the policy goals set for each individual service by Parliament versus the associated impact on the broader market. Such an approach could consider the scale of obligations attached to PSB services, the level of investment in the content they produce, and the size of their target audience.

On this basis, we agree with Ofcom’s approach to distinguish between the degree of prominence required for the main five channels versus the others. The five main PSBs carry the most onerous public obligations, invest the most heavily in meeting them, and are intended for consumption by everyone in the UK. They are also the most used and most popular. As such, the highest degree of prominence is merited.

Crucially, though, while it should be open to Ofcom to put in place a regime that distinguishes between different levels of PSB provision or different levels of consumption etc, once Ofcom’s requirements are in place it should not be for UI operators to judge further the relative value of different types of PSB obligations or the ‘PSB-ness’ of different services within their UI policies.

The proposal to ring-fence the first five slots in linear lists for the main channels is a sensible confirmation of the status quo but appears unlikely to deliver incremental public value. This is because a) the services are already in slots 1-5; and b) it is highly likely that, in linear lists, the combination of market dynamics in linear channel provision and the current high level requirement for ‘appropriate prominence’ would likely result in these channels retaining these positions due to their popularity with audiences and long history of being located in these slots. As such, whilst we certainly do not oppose such a requirement nor do we believe it offers any material additional benefit to us.

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?

ITV would welcome clarification that Ofcom does not believe there are any circumstances where it would consider the position of the main PSB channels in the first five slots as open to question. Were this not the case it would negate any conceivable benefit Ofcom intends from the introduction of ring-fencing or minimum requirements in the first place.

Such an approach could also open the door for UIs to leave PSB services in insufficiently prominent positions if that’s where they have historically been – a concern that would appear particularly pertinent in relation to where VOD services are placed ahead of legislative reform, given this might create an incentive to fill up home screens before any new regime comes in.

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

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?

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 agree with the underlying principle behind the proposals, guaranteeing a degree of prominence for these services commensurate with the scale of their obligations and original UK content investment while remaining proportionate in light of BBC's funding model and potential impact on the broader market. This is particularly important in relation to news and children's TV, where the economics of provision are sensitive and market provision should be disrupted as little as possible while meeting policy goals.

However, we do not believe that 'number of pages' is the most meaningful or effective way in which to define the intended outcome. We unpack this further in answer to questions 6-9, where the issue of 'number of pages' is particularly relevant.

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

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

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?

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

ITV does not entirely agree with these proposals. We believe Ofcom should consider in more detail whether the likely benefit of their approach is proportionate relative to the impact on others.

As Ofcom has previously noted, local TV services are unlikely to be in a position to increase the delivery of their obligations any time soon. Indeed, the direction of travel for local television appears to be to reduce licence commitments. Despite very significant prominence on DTT, local TV still achieved only 0.15% share in 2017.

BBC Alba and S4C's obligations and revenues are unlikely to be positively and materially impacted by the proposals, as people interested in these services are highly likely to already be aware of them and viewing.

While the citizen benefit of such proposals is therefore marginal, [🚫].

This is particularly the case on non-regionalised guides, where the proposals result in the first three pages being disproportionately full of content not of interest to most UK audiences (e.g. S4C, Alba and BBC Scotland across England). Outside of the particular nation in which the particular service should be prominent, platforms should be free to take

into account the interests of the viewer experience in deciding whether such focussed national services should in fact be visible at the prominent national EPG position across the UK.

The impact of these proposals (and those in relation to BBC Four above) are exacerbated by the fact that on major TV platforms the number of channels per page varies widely. This is particularly the case for Freeview (which represents 47% of all TV viewing³⁶) and Freesat, where the number of channels per page ranges between five and nine. We understand similar challenges occur on Sky and Virgin Media boxes. It is unclear how Ofcom's proposals are intended to apply to the millions of devices in people's homes. With as few as five channels per page on some devices, to achieve compliance in all cases could require eleven PSB services (BBC One, BBC Two, ITV/STV, C4, C5, BBC Four, BBC Alba, BBC Scotland, S4C, BBC Scotland and local TV) to be included within the first 15 slots of general entertainment menus. This outcome appears disproportionate.

We suggest a more practical and proportionate approach is adopted, such as a specific slot 'floor' below which services may not be listed (e.g. 'must be listed no lower than slot 25').

If Ofcom decides to persist with a focus on pages then it will need to clarify how such rules apply in relation to services with a range of channels per page. Were Ofcom to require compliance on all devices, we would suggest that inclusion within the first five pages rather than first three would be more appropriate. Such an approach would arguably deliver a similar degree of benefit for these specialist services whilst ensuring Ofcom has chosen "*...the least intrusive means of achieving [its] objectives...*"³⁷ as it is committed to doing.

A similar approach might apply to the launch of new services. If a compliant slot is unavailable, new channels could be offered the highest available slot at launch and promoted over time.

As set out above, regardless of the approach Ofcom ultimately decides to adopt, if it wishes to proceed with such changes it should consult on a full assessment of both the incremental public value created by its proposals and the likely impact on the market. Currently its proposals are disproportionate.

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

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?

There are a number of considerations in relation to the SD/HD swapping issue. These include the extent to which there are legacy SD receivers/TVs still being used at scale, and the ability of the channel/platform to deal with expensive and complex regionality requirements.

In addition, ITV offers HD variants of its services on a purely commercial basis, which is an important revenue stream for PSB channel operators. While HD take-up is increasing, we

³⁶ http://www.digitaluk.co.uk/policy/research_and_reports/digital_uk_update_2018/facts_and_stats

³⁷ Ofcom, Better Policy Making. https://www.ofcom.org.uk/data/assets/pdf_file/0029/45596/condoc.pdf

are nonetheless likely to be operating in a mixed economy for some time. It therefore makes sense for a degree of pragmatism to be taken in relation to the application of prominence rules where platforms and PSBs are in agreement about which PSB service should be given prominence.

However, it is important that such pragmatism does not undermine over time the absolute, legally enshrined prominence afforded to the SD channels. If platforms wish to agree with the PSB to swap the HD with the SD version this should be negotiated and not mandated.

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

Some period of time is clearly needed, following the publication of Ofcom's revised EPG Code, for EPG providers to implement the required changes. Specifically, EPG providers will need to:

- a) Revise their EPG Policies (in consultation with industry);
- b) Deal with any possible legal challenges;
- c) Communicate forthcoming changes to viewers; and
- d) Implement changes to channel listings (as required by their revised Policies).

Given Ofcom is not mandating specific slots for each PSB services on each platform, a degree of discretion is left with EPG providers. Ofcom is therefore right to consider an extended time period for the implementation of the requirements of its new Code. This will allow channel and EPG operators time to consider what form revised policies might take, what form of channel reordering (or, indeed, EPG restructuring more broadly, such as genre changes or regionalisation) would be required as a result, and the potential to mitigate the impact of this on their platforms and third party services as best they can. Sufficient time should be given to allow EPG providers to explore options that are both compliant with Ofcom's Code and in line with consumer expectations.

However, 12 months is not a sufficient amount of time to do this. We know, for instance, that reorganisations on DTT have taken 18 months to two years in the past. At most, Ofcom should specify a backstop of two years to complete any changes.

However, we believe a better approach would be for Ofcom to allow compliance to be delivered over time via a 'right to promotion' for any PSB services in non-compliant slots (as is the case with DUK's current policy) as and when higher slots become vacant. This would achieve the same objectives over time but without the disruption for viewers and the market that would result from a forced reshuffle. If Ofcom requires services to be 'bumped' to accommodate PSB services then it should be explicit about this – and assess the impact of such a requirement fully.

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

Yes. It is critical that PSB services are prominent within UIs as a whole, as our detailed proposals above make clear.

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

ITV agrees broadly with the factors for consideration as set out by Ofcom. We have followed these in developing our detailed proposals for a reformed regime as set out above.

What degree of prominence is desirable and what metrics should define prominence?

ITV would urge caution in seeking to develop a regime based on “metrics [that] define prominence” as Ofcom suggests. It is difficult to be too prescriptive about what ‘significant prominence’ should look like. It is therefore desirable that the regime avoids being unduly restrictive in this sense.

A reliance on simplistic universal metrics such as ‘clicks’, whilst appearing superficially attractive at first glance, risks a regime that is compliant in letter but misses the much wider and subtler influence of UI design on content discovery and user behaviour.

Instead we propose above a regime that defines the outcomes to be delivered and places the onus on user interface operators to set out how such outcomes will be delivered in the context of their own services.

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.

What types of content should benefit from prominence?

As set out above, we believe significant prominence should be required for all PSB linear services and associated on-demand services provided by one of more PSBs. The Secretary of State should maintain (and have the power to vary by Order) a list of these ‘in-scope services’. We expand on this further in response to question 16 below.

What platforms, services or devices should be captured?

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.

This would ensure that established, regulated platforms (such as Sky and Virgin Media) would remain within scope, but that major players currently outside of scope (such as Amazon’s Firestick and Samsung’s smart TVs) would be brought within scope.

Standalone content services (such as Netflix) carrying only their own content or that acquired from others would remain out of scope for now.

What elements of navigation interfaces should be included?

The law should place a requirement on Ofcom to define ‘significant prominence’ within its guidance, and require such guidance to include (but not limited to):

- 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 consumers³⁸. Such functions are likely to include linear EPGs and VOD player landing pages.
- *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.

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

ITV agrees that basing the regime on a set of enduring principles is sensible. However, we are concerned that Ofcom’s principles are somewhat too limited and negative in nature. As a result, they risk diluting the regime and offering UI providers a method to avoid ensuring appropriate prominence for PSB services. We have suggested above a broader set of overarching outcomes and principles which should be introduced through legislation and developed further through regulation.

We are concerned by Ofcom’s characterisation of the ‘promotion of programmes based purely on personal preferences’ as somehow akin to ‘active consumer choice’. There are broadly only two categories into which consumer behavior falls:

1. *A precise and unambiguous choice:* where a consumer knows exactly what they are looking for and makes a specific request (or follows a pre-determined series of actions in their UI which they know will deliver the programme they want)
2. *All other search and browsing behaviour:* the more normal approach in a world of potentially overwhelming choice, browsing by channel type, brand, content genre or terms such as ‘something entertaining’.

The clarity of search required for category 1 to apply is rare. Even a search such as Sherlock Holmes could legitimately encompass the latest series of *Sherlock* on BBC One, catch up on

³⁸ For example, linear EPGs remain a popular way to access programmes yet a platform might choose to make the EPG much less prominent

BBC iPlayer, repeats of a previous series on another linear channel, *Elementary* on Sky, or a number of films potentially available live, in box sets or in online stores.

It is category 2 that constitutes that vast majority of content discovery. And it is this on which modern UIs are focused – intending to remove doubt or ambiguity, to present ‘choice’ but in a manner which is in fact heavily guided and curated.

In those limited instances where a consumer does legitimately search for something unambiguously returning a single result, that search should not be undermined either by PSB prominence or platform choices.

But in reality, the distinction is likely to be less clear cut. For instance, other programmes will be suggested alongside the searched-for result or legitimate results may be available from both PSB and non-PSB providers.

‘Personal preferences’ is a potentially broad definition. This could cover, for instance, a ‘preference’ for drama, for a particular sports team, or for programmes starring a certain actor. Serving recommendations or programme results in relation to these preferences will still require a high degree of intervention and choice (whether editorial or algorithmic) by the UI provider.

Inherent within the very existence of a prominence regime is the idea that a reliance on consumer preferences only will not deliver the intended policy results. The regime needs to allow for both consumer and citizen needs to be met and balanced. As such, consumer preference is an unhelpful principle against which to judge prominence and offers scope for UI providers to ignore the intent of the regime.

Transparency is an important consideration. But it is unclear to ITV why it is only the PSBs – and associated search results – that should be made transparent. UI providers should need to be transparent about why any given search result is served, whether due to prominence rules, a commercial deal with a global content service provider, or data-driven analytics. Such transparency does not necessarily need to appear on-screen, but could instead be provided within the policies of UI providers. This would allow for due scrutiny of prominence decisions without unduly negatively impacting on either the consumer experience or, in the case of Ofcom’s suggestion, the reputation of PSB.

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

We support the extension of the regime beyond linear services: it is in line with consumer behaviour, technological changes, and evolving market norms. It would support the continued effectiveness of the PSB system in meeting the goals set for it by Parliament – and be in line with the direction of travel indicated by Ofcom in its recent statement on the future of PSB.

Prominence has traditionally attached to individual licenced linear services, packaged and controlled by the PSBs. It is also straightforward to identify the standalone VOD services provided by PSBs (whether individually or, potentially, in partnership). It is these services, packaged and controlled by the PSBs, clearly and appropriately branded, that should be granted appropriate prominence throughout UIs. Those on demand services contain most if not all of the PSB content broadcast so their inclusion within the prominence regime is a

logical extension of the current regime as consumption habits change. The bulk of the impact will be increased PSB delivery as the majority of viewing on ITV Hub is to content first shown on the linear PSB service. Such an approach is more straightforward than either brand prominence or individual programme prominence.

This will require technical support for non-linear services. Just as UIs are currently required to carry PSB linear services in full – including not only the individual programmes but also the full schedule of programmes as broadcast, the adverts within and between programmes, subtitles, audio description, red button functionality, regionalisation etc – so we would expect the same to apply in the non-linear space. The ITV Hub service, for instance, includes the prevention of ad-skipping, full Hub functionality, dynamic ad insertion, and control of end user data. This should be the default position for platforms and is key to the future sustainability of PSB.

Ofcom is concerned that audiences are confused about the different regulatory systems for linear versus VOD content, and the potential for extending VOD prominence to the non-linear space to make this worse. ITV views this as an exaggerated problem: PSBs are highly responsible, with the vast majority of content having previously been carried on linear services. The issue that needs addressing is surely that entirely unregulated video services are appearing on our TV screens. Ofcom's recent statements on internet regulation are to be applauded in this context. The boundary is blurring faster than ever and will continue to do so regardless of whether PSB's are granted non-linear 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?

As set out in answer to question 14, we believe caution should be exercised in seeking to too-tightly define what prominence means across the board. Instead, the onus should be on UI providers to determine what prominence means in their particular circumstance. To the extent to which search and recommendation functions are integral parts of the UI experience, then PSB content and services should be prominent within them.

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?

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

As set out in our suggested principles above, we agree that the prominence requirements should apply to all major user interfaces. Such a regime should be technologically neutral and, subject to any scale thresholds, UIs should be caught regardless of the device they are carried on (whether TVs, streaming boxes or devices, mobiles, tablets etc) and how they are delivered (i.e. DTT, satellite, cable, IP).

In the event that a consumer has access to multiple UIs (e.g. a smart TV or the Firestick plugged into it), there is no need to 'choose' which is the responsible party, as Ofcom suggests. Both are UI operators, both are competing to control content discovery, both are

providing access to PSB services, and both fall within the definition of a UI, and so both should provide prominence within those elements of their products within their control. To the extent to which they share control, the onus should be on such providers to agree a shared solution.

The current definition of UI excludes standalone services offering only their own content or content acquired commercially under license (e.g. Netflix). We believe that such an outcome is acceptable for now, although the Secretary of State should be given powers to vary the definition of UI by Order should market developments make the proposed framework ineffective.

To the extent that social media services develop to focus on the discovery and distribution of TV and/or TV-like content, and meet the thresholds for regulation we have suggested, they would clearly come into scope sooner rather than later.

Away from the current Ofcom consultation, which is focused on TV and TV-like content services and platforms, there is a different debate to be had about the prominence of reliable news on social media and other internet platforms in an era of fake news and filter bubbles. This is a critical debate for the future which may be addressed in the Cairncross Review. However, it is separate from the current debate about TV content.