Channel 4 Response to Ofcom Consultation: Designation of Television Selection Services

Q1: Do you agree with our proposed principles and methods for assessing the number of UK users of a TSS?

We agree with the principles Ofcom has set out. Given the lack of any universally available or consistent data on TSS usage, it is right for Ofcom to take the pragmatic approach described, including using proxies where individual user numbers cannot be measured reliably.

It is essential that any approach to assessing the number of UK users of a TSS takes into account that individual models will launch at zero users. We understand that Ofcom's intention is to designate RTSS as a concept applying automatically across different generations of devices, which should address this issue.

There is a small risk that RTSS could be incentivised to claim that adopting a new operating system (OS) constitutes the launch of an entirely new TSS – which could mean that the service escapes regulation until it reaches the 'significant number of users' threshold. We would therefore welcome assurances from Ofcom that if an RTSS upgrades to a new OS, this will still be regarded as the same overall TSS and therefore will remain within the scope of regulation. Any designation should be sufficiently clear and broad enough to ensure that designations will stand despite potentially significant changes to how an individual RTSS may operate over time.

Q2: Do you agree with our proposed principles and methods for assessing whether the number of UK users of a TSS is significant?

We support each of the principles that Ofcom sets out regarding how it determines if a number of users is 'significant'.

It would be helpful for Ofcom to set out some more detail on how it will make determinations of significance in borderline cases, where the number of users of a TSS is very slightly under the threshold but where there is clear potential for the TSS to grow in user numbers. In such cases, it may be relevant for Ofcom to consider the demographic mix of users of a TSS and whether its user-base skews towards younger audiences whom, as Ofcom has acknowledged on numerous occasions, are particularly challenging for PSBs to reach. Where a borderline TSS does skew towards younger audiences relative to other comparable services, Ofcom should err on the side of recommending that the TSS should be designated.

To ensure clarity and stability for both PSBs and TSS providers, Ofcom should aim to avoid a situation where a platform with user numbers that fluctuate around the threshold may veer in and out of scope of the regime. To address this challenge, Ofcom should consider setting an appropriate minimum period in which a given TSS will remain a RTSS, even if its user numbers fall below the user threshold after designation. Ofcom may also wish to consider setting a margin or range around the user-numbers threshold so that an RTSS does not become immediately eligible for de-designation as soon as its numbers fall below the threshold.

Supplemental Q1: We welcome views on this potential use of 'number of TSS installed on ITE devices in UK homes' as a proxy, and on the potential use of an absolute number of UK users when setting a threshold for significant use in our first report setting out our recommendations on designation of TSS. Please provide evidence to support your views.

We agree that it is reasonable to use the presence of devices in the home as a proxy for the number using the devices, and that setting out an absolute number of UK users is a sensible

approach for Ofcom's first report (though see response to Q2 above – Ofcom should consider its approach to 'borderline' cases where the number of users fluctuates around the threshold).

Q3: Do you agree with our proposed principles and methods for assessing the manner of use of a TSS?

We agree with these principles. Ofcom should ensure that the 'active use' threshold is set an appropriate level. Audiences use a wide range of platforms and some audiences (including younger audiences) may regularly use a TSS but only at reasonably long intervals. Ofcom should also take account of the fact that TV viewing tends to dip during summer months. We would consider a requirement for weekly or monthly use to be too high a bar that could leave key platforms out of scope of the regime. Taking 'active use' to mean use of a platform at least every two months would be a more reasonable approach.

Supplemental Q2: We welcome views on this potential approach to assessing the manner of use of a TSS for our first report setting out our recommendations on designation of TSS. Please provide evidence to support your views.

The approach set out by Ofcom appears sensible and we support it.

Q4: Do you agree with our proposed principles and methods for advising on the functions that a TSS is capable of carrying out, or may be made capable of carrying out?

Supplemental Q3: We welcome views and supporting evidence for our first report setting out our recommendations on designation of TSS on:

- *The number of people using older versions of TSS that are no longer supported by their provider;*

- *When TSS providers release a new version of their service, for how long do they normally support it?*

- *When IPS providers release a new version of their service, for how long do they normally support it?*

- *The technical limitations and/or costs that are associated with supporting older versions of TSS and older versions of IPS still available in the market.*

We support the broad principles that Ofcom has set out for how it will consider if a TSS is capable of functioning as an RTSS. Ofcom should apply these principles in a way that is fully consistent with the Agreement Objectives. For example, if Ofcom were to recommend the designation of a very old platform which presents high technical support costs but small audiences and/or minimal potential for earning advertising revenues, this would not be consistent with the Agreement Objectives (specifically the objective that agreements should not adversely affect the ability of PSBs to fulfil their public service remits) and thus Ofcom should not recommend designation.

Ofcom's approach to determining if a TSS is capable of carrying a DIPS should also account for the fact that a PSB's DIPS may not operate in the same way on all RTSS. It is common practice for PSBs to modify the services provided to older platforms so that they can continue to operate on platforms for as long as is reasonable – for example, removing or reducing certain features of the service to make it easier for an older platform to operate. Ofcom's interpretation of PSBs' 'must offer' duty must therefore allow scope for variance in the nature of the product offered to RTSS.

There are various factors that we consider when deciding whether to end support for a particular platform specification: [**Commercially sensitive]**

Taking the above factors into account, we believe Ofcom should take a context-dependent approach to enforcing PSBs' 'must offer' duties. We think it would be reasonable to expect that the duties would be in force in almost all cases (bar exceptional circumstances) for five years. Beyond this point, Ofcom should take a more flexible approach to the duty which acknowledges that there will be some cases where the costs of maintaining support for a platform are not proportionate to the resulting audience benefits.

Ultimately, for those TSS that are designated as RTSS, the scale and cost of any necessary modifications and the question of who is liable for those costs are matters for Ofcom to consider as part of the dispute resolution process, with reference to the Agreement Objectives.

Q5: Do you agree with our proposed principles and methods for assessing any other additional matters?

Ofcom should also commit to periodically reviewing and if necessary revising its recommendations on which services should be designated as RTSS. This should be done sufficiently regularly to ensure that the designations keep pace with technological advances and to allow Ofcom to adjust its approach over time to ensure it remains effective and proportionate. We would suggest every three years as the right balance between promoting stability but also keeping the regime up to date.

Ofcom's recommendation on which services should be designated as RTSS is determined in part by the Government's specification of the devices that are to be considered 'internet television equipment' (ITE). In October 2024 regulations were laid in Parliament which determined that smart TVs and streaming devices are to be considered ITE – but not games consoles. Alongside other PSBs, Channel 4 had strongly advocated to the Government that games consoles should be included within scope of the regime given that they represent a significant proportion of viewing and are a particularly important route for younger audiences to access PSB services. Whilst we recognise that the definition of ITE is outside the scope of this consultation, we would urge Ofcom to continue to monitor and gather data on how games consoles are used by audiences to watch TV content, with a view to recommending their inclusion in the regime at the earliest possible opportunity.