



A **BBC** STUDIOS
COMPANY

10 Hammersmith Grove, London, W6 7AP
Tel: +44 (0)20 3752 7600 | Fax: +44 (0)20 7504 8166
uktv.co.uk

Ofcom's Consultation on Competition Rules in the EPG Code

UKTV Response – 23 September 2020

Introduction

UKTV welcomes the opportunity to respond to Ofcom's consultation on the Competition Rules in the EPG Code.

UKTV agrees with Ofcom that EPGs remain a vitally important way for many viewers to find content, not only in terms of returning to existing content which they already know and love, but also in terms of discovering new content. UKTV's own experience supports Ofcom's finding that channels in higher EPG slots do tend to get greater viewing figures. In the context of the ongoing decline of linear viewing, and the increasing presence in recent years of linear channels owned by EPG operators or their shareholders (particularly by Sky and BT), we believe the need for a binding regulatory code to ensure that EPG operators perform in a fair and objective manner is more important than ever.

UKTV therefore agrees with Ofcom's provisional conclusions that "rules to ensure fair and effective competition are necessary and provide an effective backstop to prevent behaviour that could be prejudicial to fair and effective competition" and "the promotion of fair and effective competition therefore requires continuing regulation".

Enforcement

Ofcom notes that forcing an EPG operator to reverse an EPG change that did not comply with the Code may inconvenience or confuse viewers, and therefore Ofcom's efforts are focused on prevention rather than cure in the first instance. We agree with that view. However, we note that it may still be necessary for Ofcom to direct a reversal of an EPG change should the EPG operator nevertheless go ahead and make a change in breach of the Code. Although that may inconvenience or confuse viewers, it must be the case that breach of the Code has consequences and must be remedied. The long-term interests of viewers are clearly best-served by a Code which is effectively enforced. We would invite Ofcom to clarify that that is how Ofcom would proceed in circumstances where a breach of the Code had occurred, notwithstanding the inconvenience to viewers.

Transparency

UKTV supports Ofcom's emphasis on the need for transparency in reviews of EPGs. In the absence of open and honest disclosure by EPG operators as to the rationale for the



proposed changes, it will be difficult or impossible to ascertain whether a proposed EPG change is being done on a fair, reasonable and non-discriminatory manner, or to provide useful comments as part of the consultation. We further welcome and share Ofcom's view that "the outcome of any review should clearly set out the decisions taken, including how channel providers' comments have been taken into account." However, we note that Ofcom is not proposing to replicate that specific obligation in the new version of the Code. We do not think that this obligation is sufficiently clear from simply saying that consultations should be "transparent". We are concerned that unless the obligation is specifically stated in the Code, EPG operators will take the view that the transparency obligation only obliges them to provide the *initial* rationale for the review, rather than also providing information as to how the consulted parties' comments have been taken into account. We therefore propose that the words "including how channel providers' comments have been taken into account" be included in the amended paragraph 16c of the Code. We do not see why EPG operators would object to this being expressly included, and it would avoid any ambiguity.

Periodic Review

UKTV does not agree that the Code should be changed to allow for reviews by Ofcom to occur less often than every two years. We believe that with consolidation in the TV market (e.g. Sky being bought by Comcast) and the erosion of linear TV viewing, the balance of power in the market continues to move in favour of platforms and EPG operators and away from broadcasters. Further, it may be that in the very near future Ofcom may need to look at the prominence more generally of linear EPGs within user interfaces (as opposed to just the ordering of channels within EPGs). At present, EPG operators can, in effect, largely bypass the EPG Code by demoting the linear EPG to a relatively obscure position within their overall user interface. We therefore believe that in order to ensure effective competition, Ofcom will need to keep an active focus on developments in this area, and reviews of the Code will be required every two years at the very least. We therefore urge Ofcom not to make any changes to the first sentence of paragraph 18 of the Code.