



# **Review of rules for prominence of BBC Three**

## **Consultation on proposed changes to the linear EPG Code**

### **Virgin Media O2 response**

**14<sup>th</sup> October 2021**

**Non-Confidential response**

## EXECUTIVE SUMMARY

Virgin Media O2 welcomes the opportunity to respond to Ofcom’s consultation (“the consultation”) regarding the “Review of rules for prominence of BBC Three”.

Linear programming continues to attract significant audience volumes, with Public Service Broadcasting (“PSB”) content forming more than half of these overall volumes. At the same time, Electronic Programme Guides (“EPGs”) remain a key means of linear content discovery. The position occupied by a channel within a provider’s EPG is therefore an important factor in determining linear audience share.

While these are important factors from a broadcaster’s perspective, accommodation of channels within EPGs is also an important – and often challenging – issue for EPG providers, an issue further complicated for EPG providers of pay TV services. When considering prominence rules, Ofcom must therefore be careful to take a balanced view across all affected stakeholders and consider the full implications of any options under consideration.

If Ofcom ultimately permits the BBC to re-launch BBC Three as a broadcast television channel, we understand that it will also be entitled to a certain level of prominence, given that it will have a PSB designation. We appreciate the analysis provided by Ofcom in consideration of the level of prominence that BBC Three should be afforded and do not, in principle, object to Ofcom’s broad proposals. However, we wish to highlight some issues that we believe have not been considered by Ofcom and note that accommodating the channel within EPGs, with the required level of prominence, may not be a straightforward task in all cases.

## PROMINENCE AND IMPLEMENTATION

It is important to recall that EPG providers have very recently emerged from a period of prolonged uncertainty and disruption. Significant changes to Ofcom’s EPG Code of Practice came into effect only nine months ago<sup>1</sup>. This followed a period of approximately 12 months of consultation and subsequent preparation and publication by Ofcom of a final decision, and a further 18 months for EPG providers to make the necessary changes to their EPGs to comply with the amended Public Service Broadcasting (PSB) prominence requirements<sup>2</sup>.

(X)

(X)

Considering the issue of the returning BBC Three linear channel in isolation, Virgin Media O2 does not hold any objections in principle to its PSB designation and the proposed level of prominence. We understand Ofcom’s desire to shorten the implementation period as much as possible, but we believe that 18 months is a reasonable period in which to implement the necessary changes. The

---

<sup>1</sup> Ofcom EPG Code of Practice, effective 4 January 2021

<sup>2</sup> See Ofcom consultation “Review of rules for prominence of public service broadcasters and localTV: Consultation on proposed changes to the linear EPG Code and future of the regime” of 27 July 2018 and the corresponding final statement “Review of prominence for public service broadcasting: Statement on changes to the EPG Code” of 4 July 2019

availability of such a period will allow providers to plan and implement the necessary changes in an orderly and structured way.

(S)

We consider that there is a broader lens through which Ofcom should consider the re-introduction of BBC Three. As Ofcom is aware, it is less than 12 months since providers implemented a significant change to their EPGs, accommodating numerous changes in relation to PSB channels. While the newly proposed changes to the prominence requirements in the EPG Code of Practice are not on the same scale as the changes that took effect in January of this year, it will result in further changes, nonetheless. Furthermore, the recent and planned changes begin to point to a theme of relative fluidity in the placement of PSB channels. We acknowledge that this consultation is necessarily confined to the specific matter of the prominence of BBC Three. However, Ofcom should be mindful of potential developments that are likely to materialise in the near future. (S)

In regard to the economic assessment undertaken by Ofcom relating to our potential ability to place slots up for auction if they become available, (S) The availability of slots within the top echelons of our EPG is something that we are always reviewing and there may be future opportunities to make slots available. As the EPG owner, we need to be able to configure our EPG in a way that balances the interests of our customers, the interests of our content partners and our own commercial interests.

#### **CONSULTATION QUESTION RESPONSES**

Please see below for our response to the specific questions in the Consultation.

**Question 1: Do you agree with our provisional view on appropriate prominence for BBC Three? Please provide evidence to support your views.**

In principle, Virgin Media O2 does not object to Ofcom's provisional view on the appropriate level of prominence for BBC Three.

**Question 2: Are there any material impacts that we have not considered and should be included in our analysis? Please provide details and evidence to support your answer.**

As we set out above, while we acknowledge the bounds of this consultation, we consider that Ofcom must be cognisant of likely further changes to PSB providers' portfolios and should not view the re-introduction of BBC Three as a linear channel in isolation of the evolving PSB landscape.

**Question 3: Do you agree with our proposed implementation period of 18 months?**

Virgin Media O2 believes that an implementation period of 18 months is an appropriate period in which to comply with BBC Three prominence requirements.